

**ARTICLE VIII      ADMINISTRATION AND ENFORCEMENT**

**SECTION 801      ENFORCEMENT**

The responsibility of administering and enforcing the provisions of this Zoning Ordinance are hereby conferred upon the Zoning Enforcement Officer and his/her authorized assistants, who shall have the powers conferred upon him/her by this Zoning Ordinance, those as may be reasonably implied therefrom and those powers conferred upon him/her by other application laws. The Enforcement Officer and his/her authorized assistants shall be appointed by the Town Board and receive such compensation as determined by the Town Board. All references to duties and/or authority of the Zoning Enforcement Officer shall be deemed to also include any duly authorized assistants.

**SECTION 802      DUTIES OF THE ZONING ENFORCEMENT OFFICER**

A.      Applications and Permits

It shall be the duty of the Zoning Enforcement Officer, or his/her duly authorized assistants, to process applications and issue the permits required by this Zoning Ordinance.

B.      Inspection and Review

It shall also be the duty of the Zoning Enforcement Officer, or his/her duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected so as to determine whether or not they are in violation of the provisions of this Zoning Ordinance. He/she shall have the right to enter any building or premises with the consent of the owner, or by a court order, during reasonable hours in the course of his/her duties.

C.      Violations and Written Orders

When the Zoning Enforcement Officer determines that any plans, buildings or premises are in violation of the provisions of this Zoning Ordinance, he/she shall issue a written notice of violation to the owner and/or other responsible party directing that said violation be remedied. Said written notice shall specify the nature of the violation found to exist, the remedy ordered, the time permitted for such remedial action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal.

D.      Revocation of Certificate of Compliance

On service of the above described notice of violation, the Certificate of Compliance for such building or use shall be held null and void. A new

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Certificate of Compliance shall be required for any further use of such building or premises.

E. Appearance Ticket

The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.

F. Records

The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him/her. Such records shall form a part of the records of his/her office and shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following:

1. Application File

A separate, permanent file shall be established for each application for a permit required by this Zoning Ordinance at the time said application is filed. Such file shall contain one (1) signed copy of the application and all supporting documents and plans, notations regarding pertinent dates and fees, etc., one (1) copy of any resolution and/or decision of the Planning Board and/or Board of Appeals adopted in connection with the application, and the date the permit applied for was issued or denied by the Zoning Enforcement Officer, together with a copy of such permit or denial.

2. Monthly Report

The Zoning Enforcement Officer shall submit a monthly written report for the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him/her, all permits and certificates issued and denied, all complaints of violations received, all violations found by him/her, and any action taken by him/her in connection with each such violation. A copy of this monthly report shall also be provided by the Zoning Enforcement Officer to the Tax Assessor, Planning Board and Board of Appeals.

**SECTION 803 CERTIFICATES AND PERMITS**

The following certificates and permits are hereby established for the equitable enforcement and administration of the provisions of this Zoning Ordinance.

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A. Zoning Permit

The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans involving the construction or alteration of a building or structure or part of any building or structure including signs, or the change in use of any land, building or structure or part thereof, where he/she determines that such plans comply with the provisions of this Zoning Ordinance. A zoning permit is not a building permit. An applicant may need both permits.

B. Temporary Use Permit

Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit pursuant to Sections 611.A.1.c, 701.B. and 708.B.4. Except as otherwise provided in Section 611.A.1.c and 701.B, a temporary use permit shall only be effective for a period not exceeding twelve (12) months, and such permit may be extended by the Planning Board for an additional consecutive period not exceeding six (6) months.

C. Emergency Housing Permit

The Zoning Enforcement Officer is hereby empowered to issue a nonrenewable emergency housing permit when a dwelling unit is rendered uninhabitable (e.g. fire, flooding, etc.), for a period not exceeding ninety (90) days. To extend this ninety (90) day period a temporary use permit must be issued by the Planning Board

D. Special Use Permit

The Zoning Enforcement Officer is hereby empowered to issue a special use permit when granted by the Planning Board as provided for in Section 808.

E. Certificate of Compliance

The Zoning Enforcement Officer is hereby empowered to issue a Certificate of Compliance certifying that all provisions of this Zoning Ordinance have been complied with in respect to the location and use of the building, structure or premises in question.

**SECTION 804 APPLICATION PROCEDURES**

A. Application

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Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be affected, the size and location of all buildings or structures to be constructed, altered or extended as well as unaffected structures that shall remain, the intended use of each building or structure, the exact location of all utility and other easements and rights-of-way, and any other information with regard to the lot affected and neighboring lots as may be necessary for compliance with requirements of this Zoning Ordinance. The applicant is solely responsible for the accuracy of all information, data and site plans submitted pursuant to this Zoning Ordinance. Four (4) copies of the application, together with the layout sketch, shall be submitted. The Zoning Enforcement Officer shall carefully consider the application, layout sketch and any supporting documents for compliance with this Zoning Ordinance and timely either issue or deny the zoning permit in a timely manner.

B. Issuance of Zoning Permit

The Zoning Enforcement Officer shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and any required variances and/or special use permits have been obtained.

C. Installation of Foundation

The Zoning Enforcement Officer shall be notified when the site is prepared for installation of the foundation for any building or structure, and shall inspect the site to check the proposed location thereof.

D. Completion of Construction

A zoning permit shall expire if construction is not substantially completed within a period of one (1) year from the date of said permit. The Zoning Enforcement Officer may issue a six (6) month extension for good cause shown. Only two (2) such extensions shall be permitted.

E. Location of Permit

The zoning permit shall be located in a place readily visible to the public during the construction process.

**SECTION 805 FEES FOR PERMITS, AMENDMENTS, VARIANCES, SPECIAL  
USE PERMITS, SITE PLAN REVIEW AND PLANNED UNIT  
DEVELOPMENTS**

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Fees may be charged for the processing of applications for the various permits, amendments, and variances required and/or permitted by the provisions of this Zoning Ordinance together with site plan review and Planned Unit Developments. The fees shall be set by separate resolution of the Town Board and may be changed from time to time in the same manner.

**SECTION 806      CERTIFICATES OF COMPLIANCE**

No land shall be used, occupied or changed in use and no building hereafter erected, altered, or extended shall be used or changed in use until a Certificate of Compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Zoning Ordinance.

**SECTION 807      BOARD OF APPEALS**

A.      Organization

The Town Board shall appoint members to the Zoning Board of Appeals in accordance with the provisions of Section 267 of the Town Ordinance and shall designate the chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as acting chairperson.

B.      Meetings, Minutes and Records

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Ordinance. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

C.      Filing Requirements

Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.

D.      Hearing Appeals

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision

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or determination of the Zoning Enforcement Officer, or to grant a use or area variance. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239-m, a majority plus one vote of the entire Zoning Board of Appeals is necessary to override a County Planning Board recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.

E. Time of Appeal

1. Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.
2. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer, from whom the appeal is taken, certifies to the Board of Appeals, after notice of appeal shall have been filed with the Zoning Enforcement Officer, that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause eminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Hearing an Appeal

1. A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Town of a notice of such hearing at least five (5) days prior to the date thereof. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.
2. At least thirty (30) days before the date of the public hearing unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice

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of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

3. The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R or C-I District, or five hundred (500) feet when the involved property is located in an A-R or EP District, at least ten (10) days before the date of the hearing.

G. Time of Decision

The Zoning Board of Appeals shall decide upon an appeal within sixty-two (62) days after the conduct of the public hearing. Prior to rendering its decision the Board shall first complete the SEQR process. Said time of decision may be extended by mutual consent of the applicant and Zoning Board of Appeals.

H. Filing of Decision and Notice

The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant by regular mail.

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made.

2. Use Variances

- a. The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which

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otherwise would not be allowed or would be prohibited by this Zoning Ordinance.

- b. No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:
  - i. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - ii. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - iii. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - iv. That the alleged hardship has not been self-created.
- c. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

- a. The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Zoning Ordinance.
- b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:



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- i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
  - ii. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - iii. Whether the requested area variance is substantial;
  - iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
  - v. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- c. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Ordinance, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

J. Solar Access

Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Ordinance the Zoning Board of Appeals shall consider the specific conditions of the case and may make

provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any members of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

**SECTION 808 PLANNING BOARD**

A. Organization

The Planning Board shall consist of five (5) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so, the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

B. Powers and Duties

1. Site Plan Review

Review of site plans in accordance with NYS Town Law Section 274-a set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless otherwise required by this Zoning Ordinance (i.e., special use permit).

2. Special Use Permits

Granting of special use permits in accordance with NYS Town Law Section 274-b as set forth in this Zoning Ordinance based upon the criteria set forth in paragraph G of this Section.

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3. Review Area and Use Variances

Review area and use variance applications referred to the Planning Board in accordance with Section 807.F and make a recommendation to the Zoning Board of Appeals.

4. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows.

- a. The Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, except for temporary residences which may be issued for a maximum period of two (2) years, for incidental nonconforming uses and structures as follows:
  - i. Temporary uses incidental to a construction project.
  - ii. Temporary real estate sales office incidental to a subdivision.
  - iii. Other similar temporary incidental uses which:
    - (a) Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and
    - (b) Contribute materially to the welfare and well-being of the Town.
  - iv. Temporary residences in compliance with Section 701, Subsection B.
- b. Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.
- c. Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove a site plan in connection with any

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application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings.

1. Notice and Public Hearing

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R or C-I District, or five hundred (500) feet when the involved property is located in an A-R or EP District, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The applicant shall submit to the Town Clerk four (4) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

- a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
- b. Layout sketch showing proposed lots, blocks, building locations and land use area.
- c. Traffic circulation, parking and loading spaces, and pedestrian walks.
- d. Landscaping plans including site grading, landscape design, open space and buffer zone.

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- e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- f. Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
- g. Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
- h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- j. description of proposed measures to control runoff and drainage from the site and when required by NYS DEC and/or SEQR process, a Stormwater Management and Erosion Control Plan.
- k. a description of the proposed generation, storage and/or disposal of hazardous materials and/or hazardous wastes on-site, including estimates of amounts involved and provisions for transport, storage and environmental protection.
- l. Together with any other permits or applications made to other governmental agencies and any additional information requested by the Planning Board.

3. Site Plan Review Criteria

The Town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

- a. Harmonious relationship between proposed uses and existing adjacent uses.
- b. Maximum safety of vehicular circulation between the site and street

including emergency vehicle access.

- c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
- d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
- e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.
- f. Protection of the aquifer and aquifer recharge areas that provide drinking water for both private and municipal wells. In evaluating the protection of the aquifer, aquifer recharge areas and the water supplies, the Planning Board shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality that would result if the control measures failed.

4. Area Variances

Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Town Law Section 274-a, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection

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with the issuance of permits by applicable enforcement agents or officers of the Town.

6. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Ordinance, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

7. Reservation of Parkland on Site Plans Containing Residential Units

- a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or Zoning Ordinance, a park or parks suitably located for playground or other recreational purposes.
- b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.
- c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies

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required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.

- d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the



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Planning Board and the developer. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where, due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

12. Reimbursable Costs

Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with their review of a proposed site plan shall be charged to the applicant.

D. Special Use Permit

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Ordinance if certain standards and conditions are met. Each such use is listed in this Zoning Ordinance as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Ordinance shall be followed and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the public welfare. Also, the Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Ordinance.

1. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Four (4)

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copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the Planning Board. One (1) copy shall be retained by the Zoning Enforcement Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Ordinance.

2. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Ordinance, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 274-b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.

3. Notice and Public Hearing

The Planning Board shall hold a public hearing as part of the special use permit process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R District, or five hundred (500) feet when the involved property is located in any other district, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

4. Conditions

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed special use permit plan. Upon its approval of said special use

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permit, any such conditions must be met in connection with the issuance of the special use permit by the Zoning Enforcement Officer.

5. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Ordinance, and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

6. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

7. Abandonment of Special Use Permit

A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the special use permit.

8. Standards Applicable for all Special Use Permits

The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in

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addition to any other applicable standards and conditions contained elsewhere in this Zoning Ordinance.

- a. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.
- b. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent and buildings, nor impair their value.
- c. The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.
- d. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.
- e. When a commercial or industrial special use abuts a residential property the Planning Board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
- f. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
- g. The proposed use shall meet the off-street parking and loading requirements of similar uses.
- h. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
- i. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards. The Planning Board shall review and approve all such proposals.
- j. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a

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minimum.

- k. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Ordinance unrelated to the use which is the subject of the requested special use permit as determined by the Planning Board.
- l. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
- m. In addition to the general standards for special permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Ordinance.
- n. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e., mining.

**SECTION 809 VIOLATION AND PENALTY**

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building, structure or land or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.
- B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.
- C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any building or violate any of the applicable provisions of this Ordinance, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.
- D. Any violation of this Section, the Zoning Ordinance or any Town of Alexander Local Law shall be punishable by a fine as set forth in Section 268 of Town Law as amended. [LL No. 3 of 2007]
- E. The Zoning Enforcement Officer may, with permission of the Town Supervisor,

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request that the Town Attorney initiate legal action to enforce provisions of this Ordinance.

- F. In addition to the foregoing remedies, the Town may maintain an action for injunction to restrain, correct or abate any violation of this Ordinance and/or maintain an action at law for damages sustained as a result of any violation of this Ordinance. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

**SECTION 810 COMPLAINT OF VIOLATION**

Whenever a violation of this Ordinance occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint and immediately investigate it and take appropriate action.

**SECTION 811 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)**

- A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.
- B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one (1) of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified below:

|                              |                         |
|------------------------------|-------------------------|
| Zoning Text Amendments       | Town Board              |
| Zoning District Amendment    | Town Board              |
| Special Permits              | Planning Board          |
| Zoning Permit (if necessary) | Planning Board          |
| Site Plan Review             | Planning Board          |
| Variances                    | Zoning Board of Appeals |

- C. When a project involves two (2) or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

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- D. If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete until a determination of no significance has been made or until a draft environmental impact statement is completed.

**SECTION 812 ENFORCEMENT OF UNSIGHTLY CONDITIONS**

Where a lot is determined by the Zoning Enforcement Officer, on his own initiative or in response to a written complaint, to be unsightly as a result of junk as defined herein including abandoned, discarded or unused vehicles or equipment being located thereon, the lot owner shall be given thirty (30) days to correct the cause of the unsightly conditions by either removal, relocation or adequate visual barriers. Upon application, a Zoning Board of Appeals review shall be initiated and an investigative report filed by the Zoning Enforcement Officer. Should the conditions be determined by the Zoning Board of Appeals after such review to be unsightly, then the corrective measures of removal, relocation, or visual barrier shall be required to be implemented within thirty (30) days after such determination and notice thereof.