



Main Street –Elba, NY early 1900's. Courtesy of the Genesee County History Department

Town Of Elba New York Zoning Laws

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Main Street – Elba, NY 2001. Photo by Debra Mosier.

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TOWN OF ELBA
ZONING LAW

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TOWN OF ELBA

ZONING LAW

ARTICLE I **ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION AND VALIDITY**

SECTION 101 **ENACTING CLAUSE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Elba hereby adopts and enacts as follows:

SECTION 102 **TITLE**

This Zoning Law shall be known as the "Town of Elba Zoning Law".

SECTION 103 **PURPOSES**

This Zoning Law is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

A. To guide the future growth and development of the Town in accordance with a comprehensive land use and population density that represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions; trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.

B. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger, and to prevent over-crowding of the land and undue congestion of the population.

C. To protect and conserve the value of the land throughout the Town and the value of buildings appropriate to the various districts established by this Zoning Law.

D. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town.

E. To bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Zoning Law, and to minimize the conflicts among the uses of land and buildings.

F. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

G. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town.

H. To limit concentrated development to an amount equal to the availability and capacity of public facilities and services.

I. To prevent the pollution of streams and ponds; to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

SECTION 104 APPLICATION OF REGULATIONS

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Zoning Law. No building, land, water, structure, or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community.

In interpreting and applying this Zoning Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This Zoning Law shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this Zoning Law imposes greater restrictions than are imposed by other Zoning Laws, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Zoning Law shall prevail.

This Zoning Law shall not apply to uses which were legal, prior, existing, non-conforming uses as defined herein.

Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.

All buildings under construction at the time of this Zoning Law is adopted shall conform to the Zoning Law in effect at the time construction was commenced for purposes of issuance of the initial Certificate of Compliance. The regulations contained in this Zoning Law shall govern all future activities undertaken in such buildings.

SECTION 105 VALIDITY

The invalidity of any section or provision of this Zoning Law shall not invalidate any other section or provision thereof.

SECTION 106 EFFECTIVE DATE AND REPEAL

This Zoning Law shall take effect only after a summary thereof is published in the

Batavia Daily News. The existing Zoning Ordinance of the Town of Elba, its Local Law Regulating Mobile Home Parks in the Town of Elba, New York, Local Law No. 1 of 1979, and any other enactments of the Town Board of the Town of Elba which are inconsistent with the provisions of this Zoning Law are hereby repealed.

ARTICLE II DEFINITIONS

SECTION 201 INTERPRETATION OF TERMS AND WORDS

For the purposes of this Zoning Law, all words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural construction of the word indicates otherwise. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. The word "shall" is mandatory and directory. The word "may" is permissive. The word "used" includes "designed, intended or arranged to be used".

SECTION 202 DEFINITIONS:

Accessory Structure: A structure the use of which is incidental to the principal use of the main structure and which is located on the same lot.

Accessory Use - Use of building, structure or land customarily incidental and subordinate to principal use or building, and located on the same lot.

Adult Care: The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility: A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses: Business including, but not limited to, an Adult Bookstore, Adult Entertainment, Cabaret, Adult Mini Motion Picture Theater and Adult Motion Picture Theater as those terms are defined in Section 613.

Alterations - As applied to a building or structure, a change or rearrangement in the structure parts, or an enlargement whether by extending on a side, increasing in height or the moving from one location or position to another.

Amusement Game: Any mechanical, electric or electronic device used or designated to

be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device, or juke boxes.

Animal Kennel: Building used for the housing, grooming, breeding, or training of domestic animals, including dogs and cats, that operates for commercial purposes. This definition does not include Animal Shelters.

Animal Shelter: Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

Animal Waste Storage Facility: Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

Antenna - An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

Area Variance: The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Law.

Bed and Breakfast: See Tourist Home

Board of Appeals: The officially designated Town of Elba Board of Appeals as established by the Town Board in accordance with Section 267 of Town Law.

Boarding House: Owner-occupied dwelling wherein more than three (3) non-related, non-transient people are sheltered for profit.

Buffer - A strip of land covered with sufficient permanent evergreen planting (consisting of both trees and shrubs) to provide a continuous physical screen preventing visual access from one use to another and to reduce the noise intensity transferred from one use area to another, subject to approval of the Planning Board.

Building - A structure wholly or partially enclosed within exterior and party walls, and a roof, affording shelter to persons, animals or property. For the purposes of this Zoning Law, a utility trailer or vehicle attached to the ground or otherwise immovable, shall be considered a building.

Building Area - The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

Building Height - The vertical dimensions measured from the average elevation of the finished lot grade at the front of the building to the highest point of roof for flat roofs; to the decline of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

Building Line - A line formed by the intersection of a horizontal plane at average grade level and a vertical plane with the exterior surface of the building on any side. In case of a

cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

Building Primary - A building or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

Campground/Recreational Vehicle Park - A parcel of land used or intended to be used, let, or rented for occupancy by campers or for occupancy by or of three or more recreational vehicles, tents, or movable or temporary dwellings, rooms, or sleeping quarters of any kind.

Certificate of Compliance - A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certification shall acknowledge compliance with all the requirements of this Zoning Law and such adjustments thereto granted by the Board of Appeals.

Child Day Care: Shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or stepparents of such child.

Child day care does not refer to care provided in:

(1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;

(2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;

(3) A facility providing day service under an operating certificate issued by the department;

(4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or

(5) A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center: Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Club House - A building used to house a social, fraternal or service organization or club not organized or conducted for profit and which is not an adjunct to or operated by or in conjunction with a public tavern, cafe, or other place of business.

Club Membership - A group of persons organized in accordance with the Not-For-Profit Law (example-fish and game clubs).

Cluster Development - A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, but maintaining the density limitation imposed by said minimum lot area through the provision of open space as a part of the subdivision plan.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commercial Excavation: A lot or part thereof used for the purpose of excavation, processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into two categories based on the scale and type of operation as follows:

1. Major Excavation: All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations.

2. Minor Excavation: All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavations.

Community Area - An area or space within a mobile home park including fences, walls, and other minor structures, which is designated for joint use of occupants or restricted to non-residential use.

Community Residence - A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24-hour basis. For the purposes of this Zoning Law, an approved community residence as defined herein is considered a one-family dwelling.

Community Structure - A structure within a mobile home park providing laundry, toilet, recreation, parking or other common facilities, including management office and storage buildings.

Convalescent Home, or Extended Care Facility: See "Hospital"

Coverage - That percentage of the plot or lot area covered by the total building area.

Curb Level - The officially established grade of the curb in front of the mid-point of the lot.

Day Treatment Center - A supervised day treatment program operated in compliance with the New York State Mental Hygiene Law.

Dwelling Unit - One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family.

Dwelling, One Family - A dwelling containing one dwelling unit only.

Dwelling, Two Family - A dwelling containing two dwelling units only.

Dwelling, Multi Family - A dwelling containing three or more dwelling units.

Family - One (1) or more persons, related by birth, marriage or other domestic bond, occupying a dwelling unit and living as a single housekeeping unit.

Family Day Care Home: Shall mean a dwelling unit occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling.

Family-Type Home: Adult care established and operated for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Farm - The use of a minimum of ten (10) acres of land for agricultural purposes including tilling of the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry and the necessary accessory uses for packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Fence - An artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials other than temporary uses such as snow fences or rabbit fences.

Floor Area Total - The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the outside face of exterior walls, or from the center line of walls separating two (2) uses. Said areas shall not include areas below the average level of the adjoining ground, garage space, or accessory building space.

Frontage: The extent of a building or a lot along one public street as defined herein.

Game Room: A building or place containing five (5) or more amusement games as defined herein (see Amusement Game).

Garages, Private - A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

Garages, Public - Any garage other than a private garage, operated for gain.

Gasoline Station - Any area of land including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry-cleaning or otherwise cleaning or servicing such motor vehicles or other commercial activities.

Gasoline Station-Market (Convenience Store): A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, or food market, or a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Grade, Established - The elevation of the center line of the streets established by the Town authorities.

Grade, Finished - The completed surfaces of lawns, walks, and roads brought to grades as shown on official plans or designs relating thereto.

Group Family Day Care Home: Shall mean a dwelling unit occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home (as defined in this Section) shall be considered a home occupation.

Habitable Floor Area: Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Home Occupation: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. Home occupations are further classified as being either category II or I, depending upon whether or not non-resident individuals are working on-site and whether more than one customer visit is expected at a time.

In particular, a home occupation may include, but is not limited to, the following: art studio; barber shop/beauty parlors (limited to two work stations); cleaning services; contractors; computer programmer; cook; day nursing; direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman; dressmaker or tailor; electrical/radio/television repair; financial planning and investment services; insurance agent; musician; photographer; professional offices of a physician, dentist, lawyer, accountant, engineer or architect; real estate office; teaching or tutoring (limited to two students at one time); telephone answering; upholsterer; group family day care home; school-age child care and family-type home.

However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and animal kennels, small engine repair shop, restaurants or furniture refinisher involving "dip tanks" or stripping.

Home Occupation I: A home occupation that employs only on-site residents and which expect not more than one customer visiting the site at any given time.

Home Occupation II: Any home occupation which is not considered a Home Occupation I as set forth above.

Hospital, Animal: An establishment for the medical and/or surgical care of injured animals.

Indoor Recreational Facility - A parcel of land and building used or intended to be used for the following types of uses: theater, bowling, roller skating, ice skating, court games, and swimming.

Junk - Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous materials, tires and pallets.

Junkyard - A lot, land or structure, or part thereof, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, baled, packed, disassembled, handled, or abandoned, including: automobile or other vehicle or machinery, wrecking or dismantling yards; house wrecking yards; used lumber yards; places or yards for storage of salvaged house wrecking and structural steel materials and equipment; or where more than two (2) vehicles or old mobile homes no longer intended or capable of occupancy as a residence are held outside of a completely enclosed building, whether for the purpose of resale or sale of used parts therefrom, for the purpose of reclaiming for use some or all the materials therein, or for the purpose of storage or disposing of the same for any other purpose. The term junkyard shall not include pawn shops and establishments for the sale, purchase or storage of used furniture, household equipment and clothing, or for processing of used, discarded or salvaged materials as part of manufacturing operations.

Exceptions:

- (1) New, and/or used motor vehicles, which are operable, qualify for a current New York State Motor Vehicle inspection sticker under Article 5 of the New York Motor Vehicle and Traffic Law, and are offered for sale to the public, may be stored on premises on which new or used car sales may be conducted in accordance with the provisions of these regulations.
- (2) The storage of vehicles subject to seasonal use such as travel trailers and snowmobiles even though such vehicles may be unlicensed during the part of the year they are not in use.
- (3) The storage of agricultural equipment, machinery and vehicles in an Agricultural-Residential A-R District which are a part of farm operations.

Landfill, Sanitary: The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, then compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

Light Industrial: The processing, fabrication, assembly or packaging of previously

prepared or refined materials.

Lot - A parcel or area of land, the dimension and extent of which are determined by the latest official records or by the latest approved map of a subdivision of which the lot is a part.

Lot Area - An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating lot area.

Lot, Corner - A parcel of land at the junction of and fronting on two (2) or more intersecting streets.

Lot Coverage - That percentage of the lot area which is devoted to building area.

Lot Line - A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

Lot Line, Front - In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

Lot, Through - A lot, other than a corner lot, which has frontage on more than one street.

Lot, Zoning - A parcel of land occupied, or to be occupied, by a principal use, or uses, together with permitted accessory uses, yards, and open spaces, having frontage on an officially accepted street and having not less than the minimum area required by these regulations for a lot in the zoning district within said parcel of land is located. A Lot of Record may or may not be a zoning lot.

Lot Depth - The average horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot Width - The horizontal distance between the side lot lines measured at right angles to its depth at the front lot line.

Lot of Record - An area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed as filed in the official records of the County Clerk.

Mobile Home - A portable unit, designed or built to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed without a permanent foundation for year round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. Mobile units arrive at the site where they are to be occupied as dwelling completed, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location of foundation supports, connection to utilities, and the like.

Mobile Home Lot - A designated site within a mobile home park or subdivision for the exclusive use of the occupants of a single mobile home.

Mobile Home Park - A parcel of land under single management which has been planned and improved for the rental or lease of lots and the provision of services for mobile homes for non-transient use.

Mobile Home Pad - That part of an individual mobile home lot which has been reserved for the placement of the mobile home.

Mobile Home Subdivision - A parcel of land developed under single ownership where lots are sold for the use of mobile homes and where such services as water, sewage disposal, recreational facilities and laundry facilities may be provided by the management for a service charge.

Motel/Hotel - A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

Motor Vehicle Repair Shop - A building used for repair and servicing of motor vehicles.

Non-Conforming Building - A building which in its design or location upon a lot does not conform to the regulation of this Zoning Law for the zone in which it is located.

Non-Conforming Lot - A lot of record existing at the date of the passage of this Zoning Law which does not have the current minimum width or contain the minimum area for the zone in which it is located.

Non-Conforming Use - Use of a building or of land that does not conform to the regulation of the zone in which it is located.

Nursery - Any place used commercially as a garden for the open cultivation and growing of trees, shrubs and other plants, including the replanting of said plants grown at places other than the nursery, exclusive of retail sales.

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Office Building: A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers such as a restaurant, coffee shop, newspaper or candy stand.

Outdoor Recreation Facility - A parcel of land used or intended to be used for the following types of uses: golf, tennis, swimming, picnicking, court games, field games, skiing, ice skating, sledding or fish and game club. An outdoor recreation facility shall not include motorized vehicle race tracks or courses.

Outdoor Solid Fuel Burning Device: A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

Owner: Person or persons holding legal or equitable title to the property.

Parking Space, Off-Street Automobile - An off-street area suitable for vehicular parking and having direct access to a road. The minimum area per automobile shall be two hundred (200) square feet with a minimum width of ten (10) feet.

Patio/Deck - An outdoor living space with a floor designed to supplement the residential living area.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

Planning Board - The officially designated Elba Town Planning Board, as established by the Town Board in accordance with Chapter 62 of the Consolidated Laws, Article 16, Sections 271 and 272.

Pond: A manmade body of water other than a swimming pool, greater than two feet in depth.

Primary Use - The main or principal use to which a building or lot is to be used.

Public Utility - Telephone, electric and cable television, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer station; and all other facilities; equipment and structures necessary for conducting a service by a government or a public utility.

Recreational Vehicle - A vehicle type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are:

- A. Travel Trailer - A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and of a body width of no more than eight (8) feet and a body length of no more than thirty-two (32) feet when factory equipped for the road.
- B. Camp Trailer - A vehicular portable unit, mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle.
- C. Truck Camper - A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:
 - (1) Slide-in camper - A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.
 - (2) Chassis-mount camper - A portable unit designed to be affixed to a truck chassis.
- D. Motor Home - A vehicular unit built on a self-propelled motor vehicle chassis.

Recyclables Handling and Recovery Facility: Recyclables handling and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated

recyclables are collected and which is regulated by 6 NYCRR Part 360.

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Restaurant - Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Restaurant-Drive-In - A restaurant at which food is sold for consumption off the premises. For the purposes of this Zoning Law, a restaurant which sells food for both on premises and off-premises consumption shall be considered a drive-in restaurant.

Retail Trade: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Roadside Stand: Structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

Rooming House - A dwelling in which three (3) or more persons, either individually or as families, are housed for hire with or without meals. A lodging house, boarding house or bed and breakfast shall be deemed a rooming house.

Satellite Dish: A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geostationary satellites.

School: Schools shall include parochial, private and public institutions providing New York State approved educational services, including preschool and vocational programs, together with private and public schools and colleges and universities.

School-Age Child Care Program: Care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

Self-Service Storage Facility: A building or group of buildings in a controlled-access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled-access stalls or lockers for the dead storage of customer's goods or wares.

Secondary Use - A subordinate use of a lot or building, the purpose of which is incidental to that of the primary use and which is located on the same lot.

Service Station, Motor Vehicle - See "Gasoline Station".

Sign - Any device, structure, or object for visual communication that is used for the

purpose of bringing the subject thereof to the attention of others, but not including any flag, badge, or insignia of any public, quasi-public, civic, charitable or religious groups.

Sign, Area - The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

Sign, Advertising - An advertising sign directing attention to a business, commodity, service, entertainment, etc. conducted, sold or offered elsewhere than upon the premises where such sign is located.

Sign, Business - A business identification sign containing the name of the business enterprise located on the same premises.

Site Plan - A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, right-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

Skilled Trade Shop: A shop where an individual involved in a skilled building trade including a carpenter, plumber, or electrician that assembles custom fixtures including cabinets or other indoor or outdoor fixtures for installation by him/her at a residential or commercial construction site. No retail sales of materials and/or products directly to the public shall be allowed on site.

Small Engine Repair Shop: The repair, storage and refurbishing of motorized equipment or vehicles for commercial gain (other than automobiles, motorcycles and trucks) including all-terrain vehicles, lawnmowers, lawn tractors, mopeds, or any other item powered under an internal combustion engine or electric cell technology.

Special Use Permit - A specifically designated use that would not be appropriate generally or without restriction through the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would, in the opinion of the Board of Appeals, promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

Stable, Private - An accessory building in which one or more horses or other livestock are kept for private use and not for hire, remuneration, or sale.

Stable, Public - A building in which any horses or other livestock are kept for remuneration, hire or sale.

Stabling of Farm Animals: A concentration of livestock, poultry or fur bearing animals within a building, structure or other defined area for the purpose of housing or feeding.

Street/Road - A public thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

Street/Road Grade - The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the

street grade.

Street/Road Right-of-Way Line - That line determining the limit of the highway rights of the public, either existing or contemplated.

Structure - An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

Swimming Pool - All private or semi-private swimming, bathing, wading pools or tanks of a permanent or semi-permanent nature which have a depth of two (2) feet or more and which are erected or constructed either above, below or partly above and below grade level. All farm ponds which come under other local or state jurisdiction shall be excluded from this Zoning Law.

Swimming Pool, Private - A swimming pool operated as a secondary use to a residential dwelling unit or units, located on an individual residential lot and installed and operated in conformance with Section 609.

Swimming Pool, Public - A public or privately owned pool open to the general public or on a membership basis and having appropriate dressing room facilities, recreation facilities and off-street parking area.

Temporary Use - An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

Use - The specific purposes for which land, water or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

Use Variance: The authorization by the Zoning Board of Appeals for use of land for a purpose which is not allowed or is prohibited by this Zoning Law.

Utility, Public: Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television, or other similar service.

Yard - An open unoccupied space on the lot, plot, or parcel of land on which the building stands, which extends the entire length of the front or rear of interior lot line.

Yard Area, Front - An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of that lot. Setback line shall be synonymous with the rear limit of the required front yard area.

Yard, Rear - A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a rear yard shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

Yard, Side - An open, unoccupied space between the side line of the lot and the nearest

line of the building. It shall extend from the front yard to the rear yard, or in the absence of either, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.

Zoning Enforcement Officer: The Zoning Enforcement Officer of the Town of Elba as appointed by the Town Board.

Zoning Permit: A permit issued by the Zoning Officer, stating that the purpose for which a building, structure or land area is to be used is in conformance with the uses permitted and all other requirements of this Zoning Law.

ARTICLE III ESTABLISHMENT OF ZONING DISTRICTS

SECTION 301 ZONING DISTRICT CLASSIFICATION

The Town of Elba is hereby divided into the following zoning districts and overlay zones:

R	Residential District
A-R	Agricultural-Residential District
B	Business District
FP	Flood Plain Overlay Zone (for information purposes only)
MHO	Mobile Home Overlay Zone
PUD	Planned Unit Development District

SECTION 302 ZONING MAP ESTABLISHED

Said zoning districts are bounded and defined as shown in a map entitled "Zoning Map of the Town of Elba, N.Y.". The official copy of the zoning map is hereby made a part of this Zoning Law and is on file with the Town Clerk.

SECTION 303 INTERPRETATION OF ZONING DISTRICT BOUNDARIES

Where uncertainty exists as to the location of any boundaries shown on the zoning map, the following rules shall apply:

A. Zoning district boundary lines are intended to follow streets, right-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.

B. Where zoning district boundaries are indicated as following approximate streets, right-of-way, or water courses, the center lines thereof shall be construed to be such boundaries.

C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs of other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

E. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

SECTION 304 OVERLAY DISTRICTS

A. In an overlay zoning district, property is placed simultaneously in two districts and the requirements of both districts apply.

B. The requirements of the overlay zone modify those of the basic district.

SECTION 305 **LOTS IN TWO OR MORE DISTRICTS**

Where a zoning district boundary line divides a lot in single ownership at the effective date of this Zoning Law, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions of that extension as protection to neighboring property.

SECTION 306 **EXISTING LOTS OF RECORD**

A single family dwelling, mobile home, and/or customary accessory buildings may be placed on any undeveloped lot of record existing prior to the effective date of this Zoning Law and having a minimum of one hundred (100) feet in width and twenty thousand (20,000) square feet in area. This provision shall apply even though such lot fails to meet the requirements for area, width or yard size, provided that the other requirements of this Zoning Law are met. The minimum yard requirements for single family dwellings on existing lots shall be as follows:

1. Front.....Seventy-five (75) feet
2. Side.....Fifteen (15) feet
3. Rear.....Thirty-five (35) feet

ARTICLE IV GENERAL REGULATIONS

The provisions of this Zoning Law shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations. The dimensions and restrictions set forth in Schedule A are incorporated herein and made a part of this Zoning Law.

SECTION 401 **BUILDINGS, USES AND LOTS**

A. One Principal Building and Use Per Lot - There shall not be more than one (1) principal building and one (1) principal use on any one lot in the Agricultural-Residential A-R, and the Residential - R Districts except as provided for in the following:

- (1) An approved multifamily dwelling project,
- (2) A single family dwelling accompanying a non-residential use, or uses, permitted on a lot in Agricultural-Residential (A-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot, or
- (3) A single family dwelling accompanying a non-residential use, or uses, requiring a Special Use Permit in Agricultural Residential (A-R) and Residential (R.) Districts, if approved by the Planning Board as part of the Special Use Permit Application Process, provided there is only one use of a commercial nature on the lot.

B. Yard and Open Space for Every Building - No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building. Also, no yard or any other

open space on one lot shall be considered as a yard or open space for a building on any other lot.

C. Subdivision of a Lot - Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Zoning Law with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this Zoning Law.

D. Irregularly Shaped Lots - Where a question exists as to the proper application of any of the requirements of this Zoning Law to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provisions of Section 807.

E. Lots Under Water or Subject to Flooding

1. No more than twenty-five (25) percent of the minimum area requirements of a lot may be met by land which is under water or subject to periodic flooding.

2. Land which is under water and is open to use by persons other than the owner shall be excluded from the computation of the minimum area of a lot.

3. Land in the bed of a stream not exceeding five (5) feet in width at mean water level, and land in a pond not exceeding one hundred fifty (150) square feet in area shall not be considered as under water for the purpose of computing lot area.

4. Where any part of a lot is separated by the main body of water, such separate land shall not be included in computing lot area.

F. Required Road Frontage - No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a road, as defined herein, which frontage provides the actual access to such structure, and which road shall have been suitably improved to Town Board standards or a bond posted therefor to the satisfaction of the Town Board or Planning Board, as provided in Section 280a of the Town Law.

G. Parts of Lot Not Counted Toward Area Requirements - No part of such lot less in width than one-half of the minimum requirements for the district in which it is located shall be counted as part of the minimum required lot area.

H. Adjacent Lots - Where two or more adjacent lots are at the time of the effective date of this Zoning Law in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's Office.

I. Yards on Corner Lots - Any yard adjoining a street shall be considered front yard for the purpose of this Zoning Law and shall comply with all the requirements for a front yard in the district in which located. The remaining yards shall be considered side yards.

SECTION 402 **SUPPLEMENTARY YARD REGULATIONS, STRIPPING, AND EXCAVATIONS**

A. Porches - No unroofed structures shall be considered part of a building insofar as yard requirements are concerned. A roofed porch shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

B. Projecting Horizontal Architectural Features - Architectural features, such as window sills, belt courses, porches, railings, chimneys, cornices, eaves or bay windows, shall not project more than four (4) feet into any required yard.

C. Fire Escapes - Open fire escapes may extend into any required yard.

D. Visibility at Intersections - On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting rights-of-way lines and a straight line joining said road lines at points which are forty (40) feet distance from the point of intersection, measured along said rights-of-way lines. This paragraph shall not apply to existing trees, provided that no branches are closer than ten (10) feet to the ground.

E. Buffer Strip - Wherever a buffer strip is required by this Zoning Law, it shall meet the following standards:

1. Be at least ten (10) feet in width along any commercial or industrial lot line abutting a lot in a Residential or Agricultural-Residential District.

2. Be of evergreen planting of such type, height and spacing as, in the judgement of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plans and specifications for such planting shall be filed with the approved plan for the use of the lot.

3. A wall or fence of which the location, height, and design has been approved by the Planning Board, may be substituted for the required planting.

F. Open Space - Business Districts - Where a Business District abuts a Residential or Agricultural-Residential District, there shall be at least fifty (50) feet of open space within the Business District along such abutting line, which open space shall include a buffer strip pursuant to the provisions of Subsection E of this Section.

G. Stripping of Top Soil

1. Topsoil, defined for the purpose of this Zoning Law, as the natural surface covering land to a depth of eight (8) inches, shall not be removed from a premise except as hereinafter provided in this Subsection.

2. The provisions of this Subsection shall not apply to the removal or sale of alluvial deposits or of the materials excavated resultant from the establishment of a farm pond or to the excavation or gravel or other fill except that no gravel or fill shall be excavated less than five hundred (500) feet from any public road.

3. An application for a permit for the removal of topsoil or muck shall state the details of the program for the rehabilitation and reconditioning of the land after stripping.

Such program shall include the details of preparation of the surface of the soil and the fertilization, liming and seeding, or for the covering of not less than five inches of topsoil or five inches of tillable muck conditioned, fertilized and seeded. The application shall be subject to review and approval of the Planning Board as to the sufficiency of the program. No permit shall be issued until the application shall have been reviewed by the Planning Board and approved by such Board as being sufficient to restore the land.

4. No permit shall be authorized or issued for an area in excess of five percent of the gross area of the premises during any one calendar year.

5. Subsequent permits shall not be authorized or issued for any premises unless the provisions of this Subsection and the conditions of any previous application have been fulfilled to the satisfaction of the Planning Board.

6. No permit shall be authorized or issued for the stripping of topsoil, muck or from any premises on which any real property taxes have not been paid.

7. The Planning Board for a premises of 20 acres or less in area, may authorize the removal, in any one calendar year, of topsoil in an amount greater than five percent of the area of the premises, but not to exceed ten percent of the gross area of the premises.

H. Excavation During Construction - In any construction, open excavations shall be limited to a maximum of sixty (60) days, with appropriate fencing, barricades or covering.

SECTION 403 LOCATIONS OF ACCESSORY BUILDINGS, STRUCTURES AND OTHER ENCLOSED STORAGE

A. Accessory Buildings are permitted as follows:

1. One-story accessory building having a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall not be located closer than eight (8) feet to the rear and side lot lines in the rear yard area. Accessory buildings shall not be located in front of the principal building, i.e. the front yard.

2. The location of accessory buildings having a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in compliance with the required yard areas of the respective districts and shall not be located in front of the principal building, i.e. the front yard.

3. Accessory buildings, other than outside solid fuel burning devices, with a total area, as measured on the exterior, of less than 15 sq. ft., such as school bus stations and animal shelters, do not require a zoning permit. School bus stations shall be permitted in the front yard provided they are located a minimum of ten (10) feet from any property line or the edge of any highway right-of-way. All other such accessory buildings shall comply with Section 403. Subsection A, Paragraph 1.

B. Accessory Structures (other than buildings) are permitted as follows:

1. Accessory structures (other than buildings) equal to or less than fifteen (15) feet in height, including satellite dishes with a diameter of forty (40) inches to thirteen (13) feet, shall not be located closer than fifteen (15) feet to the side and/or rear lot line and shall not be located within the minimum required front yard. Satellite dishes less than forty (40) inches in diameter may be located anywhere on a lot and may be installed without the issuance of a zoning permit.

2. Accessory structures (other than buildings) greater than fifteen (15) feet in height, including production model Wind Energy Conservation Systems (windmills), antennas and satellite dishes greater than thirteen (13) feet in diameter, shall be located in compliance with the required yard area of the respective district and shall be located in the rear yard.

C. Other Enclosed Storage Is Permitted As Follows:

Semi-trailers, cargo containers and/or motor vehicles or portions thereof (i.e., truck bodies) may be used for accessory storage purposes related to a permitted principal use in the B District. When used in a B District for a period of more than 60 days, such trailers and/or motor vehicles or portions thereof shall be placed or parked in compliance with the provisions of Subsection A of this Section. Semi-trailers, cargo trailers and/or motor vehicles or portions thereof, shall not be used for storage purposes for longer than 60 days in the A-R, R or MHO Districts. In no instance shall semi-trailers, cargo trailers and/or motor vehicles or portions thereof be placed in such a manner as to interfere with, or pose a hazard to, traffic circulation. Mobile homes shall not be used for storage purposes.

SECTION 404 NONCONFORMING USES, STRUCTURES AND LOTS

A. Lawful Existing Uses or Structures

Except as otherwise provided in this Section, the lawful use of land or structures existing at the effective date of this Zoning Law may be continued, although such use or structure does not conform to the regulations specified in this Zoning Law for the zone in which such land or structure is located, provided, however:

1. That a nonconforming lot shall not be further reduced in size.
2. That a nonconforming building shall not be altered unless such alteration would tend to reduce the degree of nonconformance.
3. That a nonconforming use may not be expanded.
4. No existing conforming use shall be changed to a nonconforming use.

B. Abandonment

A nonconforming use shall be abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

C. Restoration and Repair

Nothing in this Zoning Law shall prevent the restoration and repair or continuation of use of a nonconforming building destroyed or partly destroyed by a disaster, provided that restoration is commenced within eight (8) months after date of destruction and is completed within sixteen (16) months after date of destruction.

D. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

E. Alterations

A nonconforming building may not be structurally altered during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Zoning Law.

F. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein or created thereby.

SECTION 405 **USES NOT PERMITTED**

- A. Uses which are not allowed by this Zoning Law are prohibited.
- B. The internment of bodies on private property is prohibited.

SECTION 406 **MINIMUM ENCLOSED LIVING AREA**

- A. One-family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) of at least nine hundred (900) square feet.
- B. Two-family dwellings shall have a minimum enclosed living area of at least seven hundred twenty (720) square feet for the first unit and the second unit as follows.
- C. Multiple family dwellings shall have a minimum enclosed living area per unit as follows.

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
Efficiency	300
1 bedroom	550
2 bedroom	650
3 bedroom	800
4 bedroom	1,000
5+ bedroom	As determined by Planning Board

SECTION 407 **DWELLING FRONT YARD GRADE**

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise and approved by the Town Highway Superintendent.

SECTION 408 **STABLING FARM ANIMALS**

A. There shall be no stabling of farm animals or storage of manure, fertilizer, or similar odor or dust producing substance within the R District. Such stabling or storage shall be permitted in the A-R or B Districts provided the following restrictions are observed:

1. No such stabling or storage shall take place within 500 feet of an R District.
2. No such stabling or storage shall take place within 100 feet of a lot line.

SECTION 409 **HEIGHT MODIFICATIONS**

A. Height Exceptions

1. District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten percent (10%) of the roof area of the building.

2. District building height regulations shall not apply to radio or television antennas and commercial communications towers..

3. Public and quasi-public buildings, schools, churches and other similar permitted uses may exceed the maximum height specified for the zone district provided that the minimum front, side and rear yard setbacks are increased by two (2) feet for each one (1) foot of such additional height up to a maximum height of fifty (50) feet and provided that on-site fire protection facilities approved by the local fire company are installed.

4. The Planning Board may require avoidance lighting on towers and other structures which exceed district height limits, as it deems necessary to protect the public health and safety.

SECTION 410 **MINIMUM DIMENSIONAL CRITERIA**

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least twenty (20) feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than twenty (20) feet wide) provided a twenty (20) foot minimum width is clearly established for the overall unit.

SECTION 411 **OUTSIDE SOLID FUEL BURNING DEVICES**

Outside solid fuel burning devices shall not be installed within 500 feet of the municipal boundary of the Village of Elba or within 500 feet of an existing residence in the Town of Elba, outside of the Village. When installed outside the required 500-foot buffer, such units shall be installed and operated in accordance with the manufacturers instructions so as to not allow smoke or fumes to enter buildings on surrounding properties.

ARTICLE V **ZONING DISTRICT REGULATIONS**

SECTION 501 **AGRICULTURAL-RESIDENTIAL DISTRICT A-R**

The Agricultural-Residential District is designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A-R District should be aware of such inherent conflicts and that residences are a secondary use.

A. Permitted Uses

The following uses are permitted in the Agricultural-Residential District:

1. Farm and all usual agricultural operations
2. One and two-family dwelling
3. Single mobile home in accordance with the provisions of Section 701
4. Home occupation I (See Section 617)
5. Church and other places of worship, parish house, convent, rectory and parsonage
6. School, public park, playground, library, municipal building and water system and similar public uses.
7. Farm water supply, conservancy and fire protection pond located not less than one hundred (100) feet from any street or property lines
8. Private stable
9. Vegetable storage and packing facilities
10. Roadside stand (see Section 615)
11. Accessory use and building storage and packing facilities

B. Uses Requiring Special Use Permit

The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit:

1. Multi-family dwelling(s)
2. Motel
3. Wind Energy Conversion System-Production Model
4. Outdoor recreation facility
5. Indoor recreation facility
6. Club
7. Airport landing strip
8. Animal Kennel

9. Motor vehicle repair shop (See Section 604)
10. Community center
11. Professional office
12. Nursing home
13. Public utility
14. Public stable
15. Commercial greenhouse
16. Cluster residential development (see Section 608)
17. Temporary mobile home (see Section 701)
18. Animal shelter
19. Adult care facility
20. Animal waste storage facility (see Section 616)
21. Child day care center
22. Self-service storage facility
23. Commercial Excavation (see Section 607)
24. Day treatment center
25. All terrain vehicle, snowmobile, go-kart, motorcycle and motor vehicle race track and course (see Section 612)
26. Commercial communication tower (see Section 614)
27. Home Occupation II (See Section 617)
28. Skilled trade shop (See Section 618)
29. Small engine repair shop (see Section 604)

SECTION 502 RESIDENTIAL DISTRICT - R

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 20,000 square feet. The purpose of this district is to encourage residential growth in areas of the town that have existing concentrations of residential uses. The residential district will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted Uses

The following uses are permitted in the Residential District:

1. One family dwelling
2. Church and other places of worship, parish house, convent, rectory and parsonage
3. School, public park, playground, library, municipal building and water system and similar public use
4. Farm and all usual agricultural operation, excluding stabling of farm animals
5. Roadside stand (see Section 615)
6. Accessory use and building

B. Uses Requiring Special Use Permit

The following uses are permitted in a Residential District upon issuance of a special use permit:

1. Two family dwelling
2. Multi-family dwelling(s)

3. Wind Energy Conversion System-Production Model
4. Home Occupation I and II (See Section 617)
5. Outdoor recreation facility
6. Temporary mobile home (see Section 701)
7. Professional office
8. Community center
9. Nursing home
10. Public utility
11. Adult care facility
12. Child day care facility
13. Day treatment center
14. Cluster residential development (see Section 608)

SECTION 503 **BUSINESS DISTRICT - B**

The Business District is designed to accommodate commercial, service, and light industrial uses.

A. Permitted Uses

The following uses are permitted in the Business District:

1. Retail use and service
2. Restaurant
3. Motel
4. Commercial greenhouse
5. Animal Kennel
6. Professional office
7. Personal service business
7. Wholesale trade
8. Office, bank
9. Adult Uses (see Section 613)

B. Uses Requiring Special Use Permit

The following uses are permitted in the Business District upon the issuance of a special use permit:

1. Drive-in business
2. Motor vehicle repair shop (see Section 604)
3. Small engine repair shop (see Section 604)
3. Gasoline station (see Section 604)
4. Gasoline station-market (see Section 604)
5. Indoor recreation facility
6. Motor vehicle sales
7. Recreational vehicle and mobile home sales and service
8. Public utility
9. Light industrial uses involving the processing, fabrication, assembly or packaging of previously prepared or refined materials (industrial)
10. Warehousing, storage, or distribution establishment (industrial)
11. Machinery and transportation equipment, sales, service, and repair

12. Freight and/or trucking terminal (industrial)
13. Contractor's yard (industrial)
14. Child day care center
15. Recyclables handling and recovery facility
17. Self-service storage facility
18. Commercial communication tower (see Section 614)
19. Small engine repair shop (see Section 604)
(see Section 604)

C. Area Regulations

For the purpose of determining the appropriate area regulations which are shown in Zoning Schedule A, those uses noted as "industrial" shall meet the "industrial" area requirements. All other areas shall be governed by the "commercial" area requirements.

SECTION 504 MOBILE HOME OVERLAY ZONE - MHO

The purpose of the Mobile Home Overlay Zone is to provide a defined area for the development of quality mobile home parks and for permanent installation of single mobile homes on individual lots and in mobile home subdivisions. The Mobile Home Overlay Zone will provide for these additional uses in that portion of the base Agricultural-Residential zone which it overlays.

A. Permitted Uses

The following uses are permitted in the MHO Zone in addition to those permitted in the base Agricultural-Residential Zone:

1. Single mobile homes on individual lots provided the criteria set forth in Section 701 are met.

B. Uses Requiring a Special Use Permit

The following uses are permitted in the MHO Zone upon issuance of a special use permit, in addition to those permitted in the base Agricultural Residential Zone:

1. Mobile home park in compliance with the criteria set forth in Section 702.

SECTION 505 PLANNED UNIT DEVELOPMENT - PUD

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or non-residential uses, and to preserve natural and scenic qualities of the site during the development process.

A. Procedure for Creation of a PUD District

1. The owner of any tract of land in the Town of Elba consisting of a

minimum of five (5) contiguous acres, may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.

2. The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.

3. A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this Section.

B. Procedure for Approval

1. Pre-Application Conference

Before submission of a preliminary application for approval as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his application before entering into any binding commitments or incurring substantial expenses of site plan preparation.

2. Preliminary Plan (Rezoning)

a. Planning Board Review and Approval - A preliminary plan application shall be submitted to the Planning Board at least 15 days prior to a regularly scheduled meeting. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.

b. Submission Requirements - The applicant shall submit four (4) sets of such plans, and drawings. These four (4) sets shall be submitted to the Zoning Enforcement Officer.

The preliminary plans shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Board to make an impartial judgement on the suitability and impact of the proposed PUD on the Town. Such material shall include, but not be limited to, the following:

(1) A mapped preliminary development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of non-residential use within each nonresidential area and the amount of open space.

(2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Town development plan and the effect on this Zoning Law.

(3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price,

the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

(4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

c. Review Considerations - In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by this Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

d. Town Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and forwarding the proposed zone change to the County Planning Board for review, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved to the PUD, such action does not authorize improvements to the rezoned land.

3. Final Plan

a. Ownership - Before final approval of the PUD, the applicant must show evidence of the full legal ownership in the land.

b. Planning Board Review and Approval - Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least fifteen (15) days prior to the next regularly scheduled meeting of the Planning Board. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board.

c. Submission Requirements - The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat.

d. Town Board Review and Approval - The Town Board shall make final approval in accordance with official Town development policies and may impose reasonable conditions relating to that plan.

C. Design Standards

1. Area Requirements

Area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements.

2. Traffic and Circulation

All proposed public roads should meet municipal design and construction specifications.

Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:

- a. Public dedication
- b. Establishment of a Home Owners Association
- c. Retention of responsibilities, control and maintenance by the developer

4. Performance and Maintenance Bonds

Performance and maintenance bonds may be required at the discretion of the Town Board.

SECTION 506 FLOOD PLAIN OVERLAY ZONE - FPO (Information Only)

The Flood Plain Overlay Zone is shown on the zoning map of the Town of Elba for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Elba (Community Number 361120B).

In addition to the Zoning Law, areas within special flood hazard areas are regulated by the Town of Elba's Flood Damage Prevention Local Law which is administered by the Zoning Enforcement Officer or other designee of the Town Board. These requirements are in addition to those contained in the underlying zoning district.

There is hereby established a Flood Plain Overlay Zone (FPO), the boundaries of which are delineated on the Zoning Map. This section provides additional special requirements for areas within the defined Flood Plain Overlay Zone. These requirements are in addition to those contained in the underlying zoning district.

ARTICLE VI SUPPLEMENTARY REGULATIONS

SECTION 601 OFF-STREET PARKING SPACE REQUIREMENTS

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto a road without backing out onto it.

A. Residential Uses

1. One and two-family dwellings: Two (2) parking spaces for every dwelling unit.
2. Multiple family dwelling: Five (5) parking spaces for every three (3) dwelling units.
3. Home occupations: The number of parking spaces required of the existing residential uses (see above), plus three (3) spaces and one (1) space for each 100 (one hundred) square feet of space used for the home occupation.

B. Motel

Three (3) parking spaces, plus one (1) space for every guest room.

C. Places of Public Assembly

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

D. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

E. Commercial

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of commercial area.

F. Restaurant, Eating and Drinking Establishment (other than drive-in)

One (1) parking space for every one hundred (100) square feet of floor area.

G. Industrial, Wholesale, Warehouse, Storage, Freight, and Trucking Uses

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

H. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

SECTION 602 OFF-STREET LOADING SPACE REQUIREMENTS

Every building occupied for the purpose of commercial or industry shall provide adequate space for off-street loading and unloading of vehicles.

SECTION 603 MODIFICATION OF PARKING AND LOADING REQUIREMENTS

The Planning Board may modify requirements for parking and loading spaces.

SECTION 604 GASOLINE STATION, GASOLINE STATION/MARKET, MOTOR VEHICLE REPAIR SHOP, DRIVE-IN BUSINESS AND SMALL ENGINE REPAIR SHOP

A. Gasoline station, gasoline station/market, motor vehicle repair shop, drive-in business and small engine repair shops shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.

2. Lot size shall be at least forty thousand (40,000) square feet.

3. Lot frontage shall be at least two hundred (200) feet.

4. Lot depth shall be at least one hundred fifty (150) feet.

5. Pumps, other service devices, and fuel and oil storage shall be located at least thirty (30) feet from all lot lines.

6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.

7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

SECTION 605 PUBLIC UTILITY FACILITY

Public utility installations shall comply with the following:

A. Such facility shall be surrounded by a fence approved by the Planning Board.

- B. The facility shall be landscaped in a manner approved by the Planning Board.
- C. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
- D. Any other requirements as determined by the Planning Board.

SECTION 606 SIGNS

A. General Standards

Every sign shall be designed, attached, supported, and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.
4. Not prevent free access to any door, window, or fire escape.

Signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.

B. Off-Premise Signs

Off-premise advertising signs are not permitted in any district.

C. Exempt Signs (Require No Permits)

1. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations not exceeding six (6) square feet.

2. Flags and insignia of any government, except when displayed in connection with commercial promotion.

3. On-premise directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or nonilluminated, not exceeding four (4) square feet per face and six (6) feet in height. Business names and advertising messages shall not be allowed.

4. Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.

5. Number and name plates identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.

6. Lawn signs identifying residents, not exceeding one (1) square foot (per

side). Such signs are to be nonilluminated except by a light which is an integral part of a lamp post if used as a support, with no advertising message thereon.

7. Private-owner merchandise sales signs for garage sales and auctions, not exceeding four (4) square feet for a period not exceeding seven (7) days.

8. Temporary nonilluminated "For Sale", "For Rent", real estate signs and signs of similar nature, concerning the premises upon which the sign is located. In a residential or agricultural-residential zoning district, one sign not exceeding four (4) square feet per side and located not less than ten (10) feet from a lot line. In a commercial or industrial zoning district, one sign not exceeding thirty-two (32) squared feet set back at least fifteen (15) feet from all property lines. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises.

9. One (1) sign identifying a farm not exceeding twenty (20) square feet in area and located not less than ten (10) feet from a lot line.

10. One (1) sign identifying a school, church, public park or public building, not exceeding forty (40) square feet in area on any one side and located not less than ten (10) feet from a lot line.

11. Signs necessary for public safety or welfare.

12. Temporary Signs - A sign used on a temporary basis to identify or announce an activity or function such as a construction project and the specialists concerned, elections, sporting events, carnivals, meetings, etc. Such signs shall not exceed sixteen (16) square feet and shall not be located closer than five (5) feet to any lot line. Temporary signs shall be removed within ten (10) days after the activity or function ends.

13. Christmas holiday decorations, including lighting.

14. Signs required by Federal, State, County or Town regulations (i.e. NYS registered motor vehicle shop and NYS inspection stations).

D. Signs Permitted in Residential and Agricultural-Residential Districts

The following signs are permitted in R and A-R Districts upon issuance of a zoning permit.

1. One (1) home occupation sign not exceeding sixteen (16) square feet in area and located no closer than ten (10) feet to any lot line.

2. Two (2) farm product signs not exceeding sixteen (16) square feet in area and located no closer than ten (10) feet to any lot line.

3. One (1) sign identifying a mobile home park, not exceeding twenty (20) square feet in area and not located less than ten (10) feet from any lot line.

4. One (1) sign identifying an apartment complex or nonresidential use allowed by special use permit as listed in Section 501-B and 502-B. The sign shall not exceed twenty (20) square feet in area and shall not be located closer than ten (10) feet to any lot line.

E. Signs Permitted in Business Districts

The following signs are permitted in B Districts upon issuance of a zoning permit.

1. Two (2) on-premise signs, one of which may be free-standing, shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of one hundred (100) square feet or an area equal to ten (10) percent of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one (1) foot from the facade of the building.

2. Free-standing signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size.

a. Each commercial or industrial use may have one free-standing sign. Such free-standing sign shall have an area of not more than twenty-five (25) square feet nor be more than twenty-five (25) feet in height, and located not less than ten (10) feet from any lot line.

b. In a shopping center or industrial park there may be one (1) directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual free-standing sign shall be allowed in a shopping center.

3. Off-premises directional signs not exceeding four (4) square feet in size and limited to two (2) signs per use shall be permitted.

F. Non-Conforming Signs

1. Non-conforming signs shall be removed at the expense of the owner when any use of the property on which the sign is located is discontinued. This shall include both temporary and permanent signs.

2. Non-conforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this Zoning Law. This provision shall not restrict routine maintenance of non-conforming signs involving replacement of electrical parts and repainting.

G. Prohibited Signs

The following types of sign are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger and in any case within not more than 10 days, make such sign conform with the provisions of this chapter or shall remove it. If within ten (10) days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1. Any sign which by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads shall be prohibited.

2. No person shall erect or maintain a sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

3. Signs which make use of words such as "STOP", "LOOK", "DANGER", and other words, phrases, symbols, or character in such a manner as to interfere with, mislead or confuse traffic shall be prohibited.

4. Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind current shall be prohibited.

5. It shall be unlawful for any person to display upon a sign or other exterior advertising structure any obscene, indecent, or immoral matter.

SECTION 607 COMMERCIAL EXCAVATION

Except when incidental to the construction of a building on the same lot, or the construction of a farm pond, the excavation, processing or sale of topsoil, earth, sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, may be permitted as a special permit use in the Agricultural-Residential District upon the approval of a special use permit by the Planning Board.

In its consideration of an application for a permit for a special use permit the Planning Board shall find that such excavation will not endanger the stability of adjacent land or structures or constitute a detriment to public health, safety, convenience, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting a permit the Board shall specify any reasonable requirement including the following:

A. State Permit

The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.

B. Minimum Lot Area

The minimum lot area for any such case shall be ten (10) acres.

C. Minimum Setback Requirements

All buildings shall be located not less than one hundred (100) feet from any street or property line. The toe of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

D. Slope

During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.

E. Drainage

All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing on to public roads to adjacent property or into any stream. Excavation areas shall be planned and graded to avoid spasmodic collection of stagnant water.

F. Dust

All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind blown air pollutants.

G. Roadside Landscape

Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented for the depth of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back over-burden around the perimeter of the excavation site to create a "berm" for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or other property boundaries.

H. Fencing

Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of pit water and slope of pit walls.

I. Topsoil

All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the restoration plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.

J. Erosion

The applicant shall include a plan for the control of soil erosion.

K. Hours of Operation

All operations shall be conducted between the hours of seven o'clock in the morning (7:00 a.m.) and six o'clock in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

L. Required Plans

The applicant shall submit the following three plans:

1. Life of Mine Plan: means the applicant's plan for the ultimate use of the entire site.
2. Mining Plan: means the applicant's proposal for mining, including a graphic and written description of the mine, the affected land and the mining method.
3. Reclamation Plan: means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.

Where feasible, restoration shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator.

M. Performance Bond

A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out. This requirement may be waived if the NYS Department of Environmental Conservation requires a performance bond for the same operation.

N. Duration of Permit

The permit for operation of the excavation area shall be for a period of one year, subject to annual review and recertification by the Planning Board based on a written request for continuance.

If no on-site mining or processing operations are carried out for one year, the site shall be considered abandoned, and, prior to any further excavation or processing, a new permit shall be required.

SECTION 608 **CLUSTER RESIDENTIAL DEVELOPMENT**

Cluster residential development of one-family dwellings may be permitted, as specified in the New York State Cluster Enabling Act, Chapter 963 of the Laws of 1963, in the A-R and R Districts of the Town provided that a special use permit has been issued and the following conditions are observed:

- A. The project shall encompass a minimum land area of ten (10) acres.
- B. The developer shall dedicate to permanent open space no less than twenty-five (25) percent of the total project area.
- C. The developer shall have received informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the

project prior to filling the special use permit application.

D. The requirements of this Zoning Law insofar as overall density, minimum front, side and rear yard areas for the outer boundaries of the entire project, maximum building height and maximum lot coverage are as specified in the zoning schedule of this Zoning Law. All other area requirements of this Zoning Law may be modified by the Planning Board.

SECTION 609 SWIMMING POOLS

A. Permit

Before any swimming pool is erected, constructed or installed upon any property in the Town, a zoning permit shall be obtained. A zoning permit shall be required for any enlargement or other major alteration of any existing swimming pool.

B. Location

Swimming pools and any attached decks and/or patios shall not be located within the front yard area or within the minimum required side or rear yard areas.

C. Fencing

Fencing shall be erected in conformance with the New York State Uniform Fire Prevention and Building Code.

D. Drainage

When draining a swimming pool such activity shall be conducted in a manner which will not be injurious to surrounding properties.

SECTION 610 JUNKYARDS

A. Establishment

No person shall operate, establish, or maintain a junkyard until he has obtained a special use permit in compliance with Section 808.

B. Location Requirements

Said use shall not be located within one hundred (100) feet from any highway right-of-way, body of water or property line; or five hundred (500) feet from any existing dwelling, church, school, hospital, public building, or place of public assembly.

In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

C. Aesthetic Considerations

The Planning Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Planning Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barrier protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.

D. Fencing

Such use shall be completely surrounded with a fence which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than one hundred (100) feet from the right-of-way of a public highway. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage shall be accomplished within the area enclosed by the fence.

Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this Section in whole or in part, the fencing requirements hereunder may be reduced by the Zoning Board of Appeals upon the issuance of an area variance, provided, however, that such natural barrier conforms with the purpose of this Section.

E. Existing Junkyards

All junkyards existing at the time of adoption of this Zoning Law shall be limited to the size, area, and scale of the present use and operation unless a permit is authorized in accordance with these regulations.

SECTION 611 RECREATIONAL VEHICLES AND CAMPGROUNDS AND/OR RECREATIONAL VEHICLE PARKS

A. Recreation Vehicles

1. Recreation vehicles may be occupied as a dwelling only as follows:
 - a. As provided in Subsection 611-B of this Zoning Law.
 - b. For not more than two separate periods, per year, not exceeding two weeks each, one recreational vehicle may be used as temporary lodging while parked on the same lot with a dwelling.
 - c. With a temporary permit, issued by the Planning Board, one recreational vehicle may be used for a period of six (6) months each and subject to the following conditions:
 - (1) Approval shall be granted by the Genesee County Health Department.
 - (2) Any connections must be removed and the recreational

vehicle moved to an approved parking location upon expiration of such permit.

2. One unoccupied recreational vehicle may be stored on a lot and then only in the side or rear yard areas of a lot no closer than five (5) feet from any lot line. When so stored, no connections shall be permitted.

B. Campgrounds/Recreational Vehicle Parks

1. Location

A campground/recreational vehicle park shall be located and maintained only in an A-R District upon issuance of a special use permit and in accordance with the standards set forth in this Zoning Law.

2. Existing Campgrounds/Recreational Vehicle Parks

All existing campgrounds/recreational vehicle parks of record shall be exempt from this Zoning Law, except that they shall comply with this Section whenever they are sold or any addition, expansion or alteration of the use or operation is proposed. Within six (6) months after the adoption of this Zoning Law, the Zoning Enforcement Officer shall notify existing campgrounds/recreational vehicle parks of this provision.

3. Standards and Requirements for the Construction of Campgrounds and/or Recreational Vehicle Parks

Before a special use permit for a campground/recreational vehicle park is issued under Section 808, the Planning Board shall determine that the proposed use is designed and arranged in accordance with the following standards.

(a) Site

The campground/recreational vehicle park shall be located on a well-drained site which is properly graded to insure rapid drainage and be free at all times from stagnant pools of water.

(b) Lots

Each campground/recreational vehicle park shall be marked off into lots. The total number of lots in such campground/recreational vehicle park shall not exceed twelve (12) per gross acre. Each lot shall have a total area of not less than two thousand five hundred (2,500) square feet with a minimum dimension of thirty (30) feet. Only one recreational vehicle or tent shall be permitted to occupy any one lot.

(c) Setbacks

All recreational vehicles or tents shall not be located nearer than a distance of:

- Twenty-five (25) feet from an adjacent property line, except residential property.

- One hundred (100) feet from any adjacent residential property line.

- One hundred (100) feet from the right-of-way of a public street or highway.

- Ten (10) feet from the nearest edge of any roadway located within the park.

(d) Recreational Vehicle/Tent Site

Each residential vehicle/tent site shall have a stand of sufficient size and durability to provide for the placement and removal of recreational vehicles and for the retention of each recreational vehicle in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.

(e) Accessibility

Each campground/recreational vehicle park shall be easily accessible from an existing public road with entrances and exits designed and strategically located for the safe and convenient movement into and out of the campground/recreational vehicle park and with minimum conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing public roads and all entrances and exits shall be of sufficient width to facilitate the turning movements of recreational vehicles.

(f) Street System

(1) Each campground/recreational vehicle park shall have improved streets to provide convenient access to all lots and other important facilities within the campground/recreational vehicle park.

(2) The street system shall be so designed to permit safe and convenient vehicular circulation within the campground/recreational vehicle park.

(3) All streets shall have the following minimum width:

- One-way traffic movement - twelve (12) feet.

- Two-way traffic movement - twenty (20) feet.

(4) Except in cases of emergency, no parking shall be allowed on such streets.

(5) Adequate access shall be provided for each lot. Such access shall have a minimum width of nine (9) feet.

(g) Utilities

All sewer and water facilities provided in each campground/recreational vehicle park shall be in accordance with the regulations of the Genesee County Department of Health and the New York State Department of Environmental Conservation.

(h) Open Space

Each campground/recreational vehicle park designed for twenty (20) or more sites shall provide a common open area suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be at least ten (10) percent of the gross land area of the campground/recreational vehicle park but not less than one (1) acre.

(i) Improvements

Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground/recreational vehicle park.

(j) Management

Every campground/recreational vehicle park shall be managed from an office located on the premises. The management shall maintain the campground/recreational vehicle park in such a manner so as to protect the health, safety and comfort of all persons accommodated in the campground/recreational vehicle park in a clean and attractive manner.

(k) Removal of Wheels

Unless special consent be given by the Planning Board, it shall be unlawful to remove wheels from any recreational vehicle or otherwise permanently affix such recreational vehicle to the ground. Such removal shall be grounds for the revocation of the permit for such campground/recreational vehicle park.

(l) Campground/Recreational Vehicle Park Special Use Permits

(1) Pursuant to Article VIII, the Zoning Enforcement Officer shall inspect at least annually the operation of a campground/recreational vehicle park to make sure it complies with provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

(2) Before receiving a special use permit for a campground/recreational vehicle park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

SECTION 612 **ALL TERRAIN VEHICLES, SNOWMOBILES, GO-KARTS, MOTORCYCLES, AND MOTOR VEHICLE RACE TRACKS AND COURSES**

A. Establishment

No person shall establish or operate a race track or course for all terrain vehicles, snowmobiles, go-karts, motorcycles, dirt bikes, or motor vehicles until he has obtained a special use permit in compliance with Section 808.

B. Definitions

1. Race Track or Course - Shall mean any ground, area, track, or course upon which vehicles are used for conducting races, contests, or demonstrations of skill or stunts, or engine/vehicle testing for the paid or unpaid enjoyment or entertainment of the public or for the gratification of the contestants.

2. Track or Course Operator - Shall mean any person who allows the paid or unpaid use of real property by vehicles.

3. Vehicles - Shall mean all terrain vehicles, snowmobiles, dirt bikes, go-karts, motorcycles, or other vehicles propelled by a force other than human energy.

C. Location Requirements

1. Said use shall not be located within two hundred (200) feet from any highway right-of-way, body of water or property line; or one thousand feet (1,000) from any existing dwelling, church, school, hospital, public building, or place of public assembly.

2. In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, dust, fumes, smoke, odors, traffic, erosion, siltation, or other conditions.

D. Minimum Lot Area

The minimum lot area shall be five (5) acres.

E. Operation of Race Track or Course

1. No person shall operate or permit the operation of a trace track or course in such manner as to cause unreasonably loud or disturbing noises of such a character, intensity, or duration as to be detrimental to the peace, welfare, or good order of the people of the Town of Elba or in such a manner as to cause disturbing, noisy, riotous, or tumultuous conduct within the Town. Loud speakers, announcing devices, horns, and other noise producing devices shall not at any time be operated in such manner as to disturb the occupants of the premises in the vicinity of the race track and shall be so toned down, muffled or subdued that the sound therefrom shall not carry more than 2,500 feet from the perimeter of the track in all directions.

2. No person shall operate or allow to be operated a race track or course in

such a manner as to allow the creation and dispensing through the air to the adjoining areas of the town of noxious odors, fumes, smoke, or dust of such density or concentration as to be detrimental to the health, peace, welfare, and good order of the people of the Town or as to hurt, destroy, or deface the property of the inhabitants of the Town. If any event is being conducted at any time upon a race track when the ground or surface of the track or of the approaches thereto is so dry as to cause dirt or dust to be stirred up either by the racing vehicles or by vehicles transporting spectators to or from the race track or course and to be blown or to drift to adjacent areas, the operator shall sprinkle the track and its approaches with water or other substance so as to settle such dust or dirt.

F. Operation of Vehicles on Race Tracks or Courses Prohibited During Certain Hours

1. No person shall operate and no owner of a vehicle shall permit the operation thereof on a race track or course before the hour of nine o'clock in the morning of any day, except Sunday, when no person shall operate or permit to be operated vehicles on a race track or course within the Town of Elba before the hour of one o'clock in the afternoon.

2. No person shall operate a vehicle on a race track or course after the hour of nine o'clock in the evening on any day, except on Friday and Saturday, when no person shall operate a vehicle on a race track after the hour of eleven in the evening within the Town of Elba.

3. No owner of real property and no race track or course operator shall permit real property owned by him or under his control to be used for operation of a vehicle after the hour of nine o'clock in the evening of any day, except Friday and Saturday when no vehicle shall be permitted to be operated after the hour of eleven o'clock in the evening within the Town of Elba.

G. Operation of Vehicles Without Mufflers Prohibited

1. No person shall operate, allow to be operated, or lease or rent a vehicle for operation on property within the Town of Elba unless it is equipped with an adequate muffler properly maintained to prevent any excessive or unusual noise.

2. No owner of real property and no vehicle track or course operator owning or having control of real property in the Town of Elba shall permit the operation of a vehicle thereon without a muffler in constant operation adequate to prevent any excessive or unusual noise.

H. Duration of Permit

The permit for operation of the race track or course shall be for a period of one (1) year, subject to annual review and recertification by the Planning Board based on a written request for continuance.

SECTION 613 **ADULT USES**

A. Purposes

The Town of Elba conducted a study of the potential secondary affects posed by adult establishments. This study, along with other similar studies, has shown buildings and establishments operated as adult establishments pose secondary effects which may have a detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Elba, this Section is intended to control those secondary affects of adult establishments by restricting such uses to non-residential areas of the Town, and otherwise regulating their operation.

B. Definitions

As used in this Section, the following terms shall have the meanings indicated:

1. Adult Establishment - A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

a. An adult bookstore is a bookstore which has as a substantial portion (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

(1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of a specified sexual activities or a specified anatomical area; or,

(2) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of a specified sexual activities or a specified anatomical areas.

b. An adult eating or drinking establishment is an eating or drinking establishment that regularly features any one or more of the following:

(1) Live performances which are characterized by an emphasis upon the depiction or description of a specified anatomical areas or a specified sexual activities; or,

(2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description

of a specified sexual activities or a specified anatomical areas, and

(3) Employees who as part of their employment regularly expose to patrons a specified anatomical areas, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

c. An adult theater is a theater that regularly features one or more of the following:

(1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of a specified sexual activities or a specified anatomical areas; or,

(2) Live performances which are characterized by an emphasis upon the depiction or description of a specified anatomical areas or a specified sexual activities, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.

e. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

f. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

g. Any other adult commercial establishment is a facility - other than an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult

massage establishment, nude model studio or commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons specified anatomical areas and which is not customarily open to the general public during such features because it excludes minors by reason of age.

For the purpose of defining adult establishments, specified sexual activities are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

Specified anatomical areas are: (i) less than completely and opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a substantial portion of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.

For the purpose of determining whether a bookstore has a substantial portion (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

2. Person - A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

3. Substantial - For the purposes of the Section the term substantial shall mean an amount equal to or greater than 25 percent of the total

C. Restrictions Affecting Adult Uses

Adult uses, including but not limited to adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, and adult entertainment cabaret shall be permitted subject to the following restrictions: (All distance separations shall be measured as specified below):

1. No such adult use shall be located in any zoning district except the

Business (B) District and such use shall require a zoning permit and site plan review.

2. No such adult use shall be located within five hundred (500) feet of a pre-existing school, place of worship, playground, park, or community center. This distance separation shall be measured from the respective property lines.

3. No such adult use shall be located within five hundred (500) feet of a pre-existing residence. This distance separation shall be measured from the residence structure to the property line(s) of the proposed adult use.

4. No such adult uses shall be within one hundred (100) feet of another existing adult use. This distance separation shall be measured from the respective property lines.

D. Prohibition Regarding Public Observation

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

E. Special Use Permit

No use as described in this Section shall be established until the issuance of a special use permit by the Planning Board. Application for such a special use permit shall be in writing to the Planning Board and shall consist of a description of the premises for which the permit is sought, a plain and concise statement of the use which is proposed and such additional information as shall be required by the Planning Board.

SECTION 614 COMMERCIAL COMMUNICATION TOWERS

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of an existing tower and/or structure (i.e., another Commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the A-R and B Districts shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:

The existing structure is not increased in height or otherwise modified so as to

change its visual appearance,

The antenna(s) do not extend above such structure more than twenty (20) feet, and

The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code (or its successor).

4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
5. The applicant must demonstrate that the operation of any new antenna will not interfere with the telecommunications transmissions of other carriers or public safety officials.
6. Any additional structures proposed will be located within any existing fence line so as not to be in direct view from any public right of way or neighboring property.

B. New or Altered Towers and/or Structures

The Planning Board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Section 808 for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site Plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Section 808, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQ); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this Section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased in the sole discretion of the Planning Board, or it may be decreased, again in the sole discretion of the Planning Board, in those instances when the applicant has submitted plans for a tower designed

in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.

2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to those guidelines and criteria listed below that the Planning Board, in its sole discretion, deems appropriate at the pre-submission conference:

1. Assessment of "before and after" views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.

4. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.

6. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

Deciduous or evergreen tree plantings suitable to the local climate and soil conditions may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 601. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

SECTION 615 **ROADSIDE STANDS**

1. Roadside stands may be located in the A-R, R and B Districts.
2. Goods sold shall primarily be home grown.
3. There shall be a front yard setback of at least twenty (20) feet and side yard setbacks of at least twenty-five (25) feet each.
4. Stands shall be of a portable nature and must be removed when not in use.
5. Off-street parking shall be provided for a minimum of three (3) vehicles with additional provisions if traffic warrants.
6. Two signs of not more than twelve (12) square feet each may be permitted, located not less than ten (10) feet from a lot line.

SECTION 616 **ANIMAL WASTE STORAGE FACILITIES**

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation (GCSWCD) or US Natural Resources Conservation Service (NRCS) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD or NRCS then the Planning Board will consider the

potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

SECTION 617 **HOME OCCUPATIONS**

A. Purpose

The purpose of this provision is to allow for home occupations that are compatible with the neighborhoods in which they are located.

Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

B. Process

An applicant shall apply to the Zoning Enforcement Officer for a determination as to whether his/her proposed home occupation is a category I or II. A Home Occupation I shall require the issuance of a zoning permit by the Zoning Enforcement Officer. A Home Occupation II shall require the issuance of a special use permit. Expansion of an existing Home Occupation I use to a Home Occupation II shall require the issuance of a special use permit by the Planning Board.

C. Conditions

The following conditions are intended to insure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3. Individuals not residing in the residence shall not be employed in any Home Occupation I and no more than two (2) nonresident persons shall be employed actually on-site at the residence in a Home Occupation II.
4. Not more than 25% of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (not including accessory buildings and structures) shall not exceed 500 sq. ft.
5. There shall be no exterior advertising of the home occupation, except for a

sign no larger than four (4) square feet for which a permit has been obtained pursuant to the provisions of Section 606.

6. There shall be no exterior storage of materials used in the home occupation.

7. No home occupation shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) home occupation. No residential lot shall contain a home occupation together with a skilled trade shop or any other non-residential use requiring a special use permit.

SECTION 618 SKILLED TRADE SHOP

The purpose of this provision is to allow for residents within the A-R District who are self-employed skilled trades persons to operate a shop for fabrication of fixtures or cabinets for installation by them at their various job sites. It is recognized that operation of such shops without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a skilled trade shop in an A-R District.

B. Conditions

The following conditions are intended to insure both that the skilled trade shop is

secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The skilled trade shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.

2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.

3. No more than one (1) nonresident person shall be employed in the skilled trade shop.

4. Not more than 25% of the floor area (with a maximum of 500 sq. ft.) of the principal dwelling may be used for the skilled trade shop. Occupation of accessory buildings to be utilized shall not exceed 2,000 sq. ft.

5. There shall be no exterior advertising of the skilled trade shop, except for a sign no larger than four (4) square feet for which a permit has been obtained pursuant to the provisions of Section 606.

6. There shall be no exterior storage of materials used or products/fixtures made in the skilled trade shop.

7. No skilled trade shop shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) skilled trade shop. No residential lot shall contain a skilled trade shop together with a home occupation or any other non-residential use requiring a special use permit.

10. The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed skilled trade shop and

neighboring residential uses if the Board determines such condition is a reasonable mitigation factor.

ARTICLE VII **MOBILE HOMES AND MOBILE HOME PARKS**

SECTION 701 **MOBILE HOMES**

A. Mobile Home - Permanent Residence

1. Criteria

A mobile home may be placed and permanently occupied as a one (1) family residence (non-farm, see Subsection B below) on any lot in an A-R District provided it complies with Section 406 (Minimum Enclosed Living Area), Section 410 (Minimum Dimensional Criteria), and the following criteria are met and a zoning permit is issued:

a. The mobile home unit shall comply with the NYS Uniform Code Parts 606 and 1221.1(or its successor) and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. Placement of the mobile home must comply with the minimum area requirements for a one (1) family dwelling in the respective zoning district, including, but not limited to: lot size and width, yard areas, parking and finished grade.

c. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (or its successor) including foundation requirements and skirting, and shall be protected from ground frost heaves.

d. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

B. Mobile Home - Temporary Residence

1. Restrictions

A mobile home may be placed and temporarily occupied as a one (1) family residence on any lot where the appropriate permit(s) (zoning and/or building permit) have been issued for the construction or repair of a residence, for a maximum period of two (2) years under the following circumstances, upon the issuance of either a temporary use permit or

emergency housing permit as required.

a. Home Building - If the owner of a vacant lot in either the A-R District has been issued an active, valid zoning permit by the Town of Elba for the construction of a dwelling on the lot in question (a temporary use permit is required).

b. Fire or Other Disaster - The existing dwelling on the lot has been damaged in such a manner as to make it uninhabitable (an emergency housing permit is required, see Section 803, Subsection C).

2. Criteria

Mobile homes occupied as temporary residences are not required to comply with Section 306 (Minimum Enclosed Living Area) or Section 410 (Minimum Dimensional Criteria); however, the following criteria must met:

a. The mobile home units shall comply with the NYS Uniform Code Parts 606 and 1221.1 (or its successor) and be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. Placement of the mobile home must comply with the minimum yard area requirements (setbacks from property lines) for a one (1) family dwelling in the respective zoning district.

c. The water supply system and wastewater treatment system shall be approved by the Genesee County Health Department.

C. Mobile Home - Replacement of an Existing Unit

1. An existing mobile home which is occupied as a one (1) family dwelling on any lot in any District may be replaced with another mobile home. The proposed replacement unit is not required to comply with Section 306 (Minimum Enclosed Living Area) or Section 410 (Minimum Dimensional Criteria); however, where the replacement unit does not meet Sections 306 and 410 it shall not be smaller than the existing unit (either width or overall size) and the following criteria must be met:

a. The replacement mobile home unit shall be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

b. The location of the replacement mobile home shall not increase the

degree of nonconformity other than unit size or square footage relative to the yard area requirements including setbacks from property lines and other bulk requirements that existed with the current mobile home.

c. The mobile home shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code (or its successor) including foundation requirements and skirting, and shall be protected from ground frost heaves.

d. The water supply system and wastewater treatment system for the mobile home shall be approved by the County Health Department.

SECTION 702 MOBILE HOME PARKS

A mobile home park may be located in a Mobile Home Overlay (MHO) District provided the following criteria are met and a special permit is issued.

A. Standards and Requirements for the Construction of Mobile Home Parks

Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the mobile home park occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to predictable sudden flooding or erosion and shall not be used for any purpose which would expose person or property to hazards.

1. Site, Size, Density and Setback Requirements

a. The minimum size for mobile home parks shall be ten (10) acres.

b. The maximum number of mobile home spaces shall not exceed five (5) per gross acre.

c. Each mobile home park shall set aside ten (10) percent of the total acreage of the site as open space and recreation area.

d. A setback of seventy-five (75) feet shall be observed from the right-of-way of any public road bordering the site to any mobile home in the park.

e. A setback of fifty (50) feet shall be observed from any property line excluding the right-of-way of any public road to any mobile home in the park.

f. The site shall be located and laid out so that no mobile home shall be closer than five hundred (500) feet to any existing single family or two family dwelling.

2. Lot Size, Density and Setback Requirements

a. The minimum lot in a mobile home park shall be eight thousand (8,000) square feet, with a minimum width of seventy (70) feet and a minimum depth of one

hundred (100) feet.

b. A mobile home having a width of 24 feet or more shall be located on a lot having an area of at least ten thousand (10,000) square feet with a minimum width of eighty (80) feet.

c. No mobile home shall be closer than thirty (30) feet to another mobile home or other structure in the park.

d. Each mobile home located in a mobile home park shall have a front yard, a rear yard and two side yards. No side yard or rear yard space shall be less than fifteen (15) feet in depth and no front yard shall be less than twenty-five (25) feet in depth.

e. There shall be a minimum setback of twenty-five (25) feet observed from an abutting park street to any mobile home in the park.

f. Maximum height for buildings shall be thirty-five (35) feet.

3. Site Layout and Design Requirements

The layout and design of the mobile home park shall conform with the following requirements:

a. Streets

(1) All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means. Each mobile home space in a park shall have direct access to a street.

(2) All mobile home parks containing twenty (20) or more mobile home sites shall have access from two points along a single public road, or if bordering on two roads, access can be one for each road, as long as such access points are separated by at least one hundred (100) feet.

(3) Entrances to mobile home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public road. No parking shall be permitted on the entrance street for a distance of one hundred (100) feet from its point of beginning.

(4) The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to five hundred (500) feet and their closed end shall be provided with an adequate turn around sixty-five (65) feet in diameter cul-de-sac.

(5) Each mobile home space in a park shall have direct access to a roadway which roadway meets the minimum standards established by the Town Highway Superintendent or Town Engineer.

(6) Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight (8) percent.

(7) Street intersections should generally be at right angles and in no case shall any angle or intersection be less than seventy-five (75) degrees.

(8) Park entrances and exits shall be so located to provide a minimum of sight distance on the adjacent public road in both directions from the interior road at the point of intersection of not less than three hundred (300) feet.

(b) Parking

(1) Two (2) car parking spaces shall be provided for each mobile home to meet the needs of occupants of the mobile home park and their guests without interference with normal movement of traffic.

(2) At least one parking space shall be situated on each unit, and the remainder may be located in adjacent parking bays along the park streets.

(3) Parking may be in tandem.

(4) Each parking space shall have dimensions of at least ten (10) feet by twenty (20) feet and shall have all weather surfacing.

(c) Storm Water Drainage

(1) All mobile home parks shall be well drained and constructed so as to eliminate the accumulation of standing surface water for extended periods of time. The drainage system shall consist of buried corrugated steel pipe to carry storm water only or a series of well-constructed and properly maintained open ditches to carry surface runoff to off-site drainage channels or on-site drywells.

(2) The drainage system shall be designed to adequately handle at least that storm water generated by the site during a ten (10) year storm as determined by the U.S. Army Corps of Engineers. It must be certified by the Genesee County Soil and Water Conservation District Office that the off-site downstream drainage system is capable of handling the run-off generated by the park during a ten (10) year storm.

(d) Buffer Zone

(1) There shall be provided a buffer area of at least ten (10) feet in width from any property line. Such buffer area shall be primarily clear of obstructions other than trees and other natural landscape and shall not be used for any above ground structures.

(2) All mobile home parks, located adjacent to industrial or commercial land uses, shall be provided with screening such as fences or natural growth along the property boundary line separating the park and such adjacent nonresidential uses.

(e) Recreation Area

(1) Not less than ten (10) percent of the gross site area shall be devoted to recreation facilities, generally provided in a location or locations convenient to all.

(2) Recreation areas may include space for community use facilities, such as indoor recreation areas, swimming pools, hobby and repair shops and service buildings.

(3) Where compliance with Section 702(A)(1)(a) provisions result in undue hardship and/or individual lot areas are substantially above minimum standards and provide for sufficient outdoor recreation, an area variance may be granted by the Zoning Board of Appeals to an extent that an absolute minimum of one hundred (100) s.f. per lot be considered sufficient for the site of a centralized recreation area, and provided that no recreation area shall contain less than five thousand (5,000) s.f.

(f) Landscaping

Mobile home parks shall be landscaped to provide an attractive setting for mobile homes and other improvements, to provide adequate privacy, and pleasant outlooks for living units, to minimize reflected glare, and to afford summer shade. Such landscaping shall include the planting and maintenance of at least the following:

(1) Trees and shrubs at suitable intervals along park streets, within recreation areas, and around park borders.

(2) Special planting to screen objectionable views such as garbage and trash collection stations, nonresidential uses, and any unsightly objects or conditions on adjacent properties.

(3) Lawns on all areas which are not paved or used as sites for mobile homes or buildings.

4. Lot and Mobile Home Requirements

a. Each lot shall front on an approved interior street.

b. Interior lots shall not be permitted to front on more than one street.

c. No more than one (1) mobile home may be placed on any lot.

d. No mobile home shall be located within a park except in an authorized space.

e. All mobile homes shall comply with the current Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of six hundred (600) square feet, exclusive of any porches, additions or other extensions .

f. Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.

g. No addition shall be made to a mobile home except for a canopy and/or porch open on three sides.

h. One (1) accessory building, not to exceed one hundred (100)

square feet in dimension, may be located on each lot.

I. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Departments of Health.

j. All utilities shall be underground.

k. No front yard shall be used for storage.

5. Required Site Improvements

a. Water Supply System - All water supply systems shall be approved by the Genesee County Health Department.

b. Sewerage Disposal and Treatment - All sewerage disposal systems shall be approved by the Genesee County Health Department.

6. Electrical Systems

a. Except as otherwise permitted or required by this standard, all electrical installations in mobile home parks shall be underground, residential distribution designed and constructed in accordance with local electric utility and with the National Electrical Code. The point of the electrical connection for the mobile home shall be within the area of the mobile home stand.

b. The mobile home park secondary electrical distribution system to mobile home lots shall be single phase, 120/240 nominal.

c. For the purpose of this Section, where the park service exceeds two hundred forty (240) volts, transformers and secondary distribution panel boards shall be treated as services.

Mobile home lot feeder circuit conductors shall have adequate capacity for the load supplied, and shall be rated at not less than one hundred (100) amperes at 120/240 volts.

d. Provisions may be made for connecting a mobile home power supply assembly by a permanent wiring method, and the mobile home service equipment may provide for installation for at least one (1) fifty (50) ampere receptacle.

Mobile home service equipment may also be provided with a means for connecting a mobile home accessory building or structure or additional electrical equipment located outside a mobile home by a permanent wiring method.

7. Gas Distribution System

Gas equipment and installations within a mobile home park shall be designed and constructed in accordance with the applicable codes adopted by the local utility. Where the state or other political subdivision does not assume jurisdiction, such installations shall be designed and constructed in accordance with the appropriate provisions of the current

edition of the American National Standard-National Fuel Gas Code.

8. Fuel Oil Distribution System

Distribution systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

9. Bulk Fuel Storage

A mobile home park shall be provided with facilities for the safe and efficient storage of required bulk fuels. Such facilities shall be in accordance with applicable codes and regulations.

10. Lighting

Artificial lighting shall be provided to illuminate walks, driveways and parking spaces for the safe movement of pedestrians and vehicles at night.

11. Service Buildings

a. Each park shall make available community service buildings to house laundry and other sanitary facilities.

b. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot.

c. Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Sanitary Code and/or all applicable Zoning Laws and statutes regulating buildings, electrical installations, and plumbing and sanitation systems enacted or adopted by the Town.

B. Mobile Home Park Maintenance Standards

1. Refuse Disposal

a. The park owner is responsible for provision of refuse pickup and disposal.

b. The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazard, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

c. No refuse or other organic material shall be placed, stored or dumped in other than refuse containers anywhere in the park. The existence of any refuse or rubbish outside a container for more than twenty-four (24) hours shall be a violation of this Zoning Law.

2. Fire Protection

a. Mobile home parks shall be kept free of litter, rubbish and other flammable materials.

b. Fire shall be made only in stoves and other equipment intended for such purposes.

3. Responsibilities of the Park Owner and Management

a. The person to whom a license for a mobile home park is issued shall operate the park in compliance with this Zoning Law and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

b. The park management shall supervise the placement of each mobile home on its mobile home stand and the installation of all utility connections.

c. The owner of a mobile home park shall develop a regular program of park maintenance which shall attend to such items as grass cutting, maintained buffer zones and open drainage ditches, roadway and parking area repairs, cleaning and maintenance of service buildings, and whatever regular maintenance operations are required by the water supply system, sewerage system, and other services provided by the park. This maintenance program shall be presented to the Planning Board at the time the special use permit is applied for under Section 808 of this Zoning Law and, once approved, a copy thereof filed with the Town Clerk and Zoning Enforcement Officer. A copy shall also be furnished to all residents of the park and be posted in conspicuous places throughout the park.

4. Responsibilities of Park Occupants

Park occupants shall comply with all applicable requirements of this Zoning Law and regulations issued hereunder and shall maintain their mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.

5. Temporary Living Units

No occupied travel trailers, recreational vehicles or other form of temporary type living units shall be permitted in a mobile home park except in compliance with Section 611. Unoccupied travel trailers and recreational vehicles shall be stored in areas designated for the storage of such units.

C. Mobile Home Park Special Use Permits

1. Annual Inspection

Pursuant to Section 808, the Zoning Enforcement Officer shall inspect at least annually the operation of a mobile home park to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

2. Compliance With Regulations

Before receiving a special use permit for a mobile home park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

ARTICLE VIII

ADMINISTRATION AND ENFORCEMENT

SECTION 801 ENFORCEMENT

The duty of the administering and enforcing the provisions of this Zoning Law is hereby conferred upon the Zoning Enforcement Officer, who shall have such powers as are conferred upon him by this Zoning Law and as reasonably may be implied. He shall be appointed by the Town Board and shall receive compensation as the Town Board shall determine.

SECTION 802 DUTIES OF THE ZONING ENFORCEMENT OFFICER

A. Inspection and Review. It shall be the duty of the Zoning Enforcement Officer, or his duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Zoning Law. He shall have the right to enter any building or premises during reasonable hours in the course of his duties with the permission of and in the presence of the owner or manager.

B. Violations and Written Orders. Where the Zoning Enforcement Officer, in the course of his duties, determines that any plans, buildings or premises are in violation of the provisions of this Zoning Law, he shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, and may specify the time permitted for such action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal, all as provided by this Zoning Law.

C. 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.

D. Revocation of Certificate of Compliance. On the serving of notice by the Zoning Enforcement Officer to the owner of any violation of any of the provisions of this Zoning Law, the Certificate of Compliance for such buildings or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

E. Records. The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him. Such records shall form a part of the records of his 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. An individual permanent file for each application for a permit provided for by this Zoning Law shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer.

2. Monthly Report. The Zoning Enforcement Officer shall prepare a monthly report for the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him; all permits and certificates issued and denied; and all complaints of violations received and all violations found by him, and the action taken by him consequent thereon. A copy of this monthly report shall also be transmitted by the Zoning Enforcement Officer to the Tax Assessor, Planning Board and Board of Appeals at the same time

it is transmitted to the Town Board.

SECTION 803 CERTIFICATES AND PERMITS

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this Zoning Law.

A. Zoning Permit. The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or structures or part of any building, or the change in the use of any land or building or part thereof, where he shall determine that such plans are not in violation of the provision of this Zoning Law.

B. Temporary Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit. A temporary use permit shall only be effective for a period not to exceed twelve (12) months; such permit may be extended by the Zoning Enforcement Officer not more than once for an additional period not to exceed six (6) months.

C. Emergency Housing. The Zoning Enforcement Officer may grant a non-renewable temporary housing permit for a period of time not exceeding ninety (90) days in conformance with Section 701.B.1.b.

D. Special Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Zoning Law.

E. Certificate of Compliance. The Zoning Enforcement Officer is hereby empowered to issue a certificate of compliance which shall certify that all provisions of this Zoning Law 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. Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Law. Three (3) copies of applications, together, with a layout sketch shall be submitted. The Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Zoning Law and either issue or deny the zoning permit applied for.

B. Issuance of Zoning Permit. The Zoning Enforcement Officer shall issue a zoning permit only after all required variances and special use permits have been obtained.

C. Installation of Foundation. The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.

D. Initiation of Construction. If a zoning permit is not obtained by the applicant within ninety (90) days after final approval, such approval shall be void.

E. Completion of Construction. A permit shall be void if construction is not substantially completed within a period of one year from the date of said permit. The Zoning Board of Appeals may issue a six-month extension of a permit for good cause shown. Two such extensions of a permit will be allowed.

F. Location of Permit. The zoning permit shall be located in a place readily visible to the public during construction activities.

SECTION 805 FEES FOR PERMITS, AMENDMENTS, VARIANCES, AND SPECIAL USE PERMITS

Fees may be charged for permits issued, and processing of applications for amendments, variances, and special use permits. The fee shall be set by 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 or occupied 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 Law.

SECTION 807 BOARD OF APPEALS

A. Organization

The Town Board shall appoint members to the Zoning Board of Appeals as authorized by the provisions of Section 267 of the Town Law. The Town Board shall also designate the Chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as Acting Chairperson. The present Board of Appeals consists of five (5) members, any future changes by the Town Board to the number of members shall comply with the provisions of NYS Town Law Section 267 and/or any other applicable laws.

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 Law. 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, decisions 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 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 239m, a majority plus one vote of the entire ZBA 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

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.

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 imminent 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. Public Hearing Notice and Referrals

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.

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 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.

The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within five hundred (500) feet of the property, 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. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision.

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

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

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:

a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

b. 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;

c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

d. That the alleged hardship has not been self-created.

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

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 Law.

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:

- a. 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;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
- e. 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.

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 Law, 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 Law 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 as 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 Law (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 Law based upon the criteria set forth in Subdivision D.8 of this Section.

3. Review Use Variances

Review 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. Except as otherwise provided in Section 803.C, 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, for incidental nonconforming uses and structures as follows:

- (1) Temporary uses incidental to a construction project.

- (2) Temporary real estate sales office incidental to a subdivision.
 - (3) 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.
- 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 modifications, or disapprove a site plan in connection with any 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 five hundred (500) feet of the property, 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 ten (10) 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.

e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.

f. Preliminary engineering plans, street improvements, exterior lighting schemes, 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. Together with any other 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.

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 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 Law, 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 Park Land 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 Law, 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 Planning 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 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 park land 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 Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQOR process. In those instances where due to the location of the affected property, a site plan review 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. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. 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.

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 Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law 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 Planning Board as set forth in Paragraph 4 of this Subsection.

1. Application

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

2. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, 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 site plan review 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 five hundred (500) feet of the property which is the subject of the application, 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 site plan. Upon its approval of said special use 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 site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, 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. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. 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 addition to any other applicable standards and conditions contained elsewhere in this Zoning Law.

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 land 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.

j. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a 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 Law 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 Law.

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.

9. Annual Review By Zoning Enforcement Officer

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 Law.

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, sub-contractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any building to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this Section and/or this Zoning Law shall be punishable by a fine as set forth in Section 268 of Town Law as amended.

E. The Zoning Enforcement Officer may, with permission of the Town Supervisor, request that the Town Attorney initiate the legal action to enforce provisions of this Zoning Law.

F. In addition to the foregoing remedies, the Town of Elba may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Law and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Law. 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 Zoning Law occurs, any person may file a complaint in regard thereto. The Zoning Enforcement Officer 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 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 as follows:

Zoning text amendments	- Town Board
Zoning district amendment	- Town Board
Special use permits	- Zoning Board of Appeals
Zoning permit (if necessary)	- Planning Board
Variances	- Zoning Board of Appeals

When a project involves two 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.

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.

ARTICLE IX AMENDMENTS

SECTION 901 INITIATING AMENDMENTS

A. Initiating Amendments

The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law.

B. Petitions

Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

C. State Environmental Quality Review (SEQR)

Amendments of the Zoning Law may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action the zone change is according to SEQR regulations. Depending on the size of the zone change and several other factors it may be a TYPE I or an UNLISTED action. To make a decision, the Board should consult Part 617 of Article 8 of Environmental Conservation Law (New York).

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.

SECTION 902 REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD

A. Referral to Town Planning Board

All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its recommendation thereon. The Planning Board shall submit its report prior to the public hearing. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.

B. Referral to County Planning Board

Where required by Section 239m of the General Municipal Law or other applicable statute a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. Failure of the Genesee County Planning Board to report within thirty (30) days may be construed to be approval by the Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

SECTION 903 HEARING ON PROPOSED AMENDMENT

Before adopting any amendments to this Zoning Law the Town Board shall give notice of hearing thereon to such persons and in such manner as is required by Section 264 of the Town Law for the amendment of a Zoning Law and shall hold a hearing thereon pursuant to such notice.

SECTION 904 PETITION PROTESTING AMENDMENT

In case of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred feet therefrom or of that directly opposite thereto, extending one hundred feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Town Board.

SECTION 905 PERIODIC REVIEW BY PLANNING BOARD

From time to time, at intervals of not more than three (3) years, the Planning Board shall re-examine the provisions of the Zoning Law and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

ARTICLE X LEGAL STATUS PROVISIONS

SECTION 1001 PROVISIONS ARE MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this Zoning Law shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular:

A. To promote the purposes set forth in the preamble to this Zoning Law and in the statements of legislative intent for the respective districts or groups of districts.

B. To provide a gradual remedy for existing conditions which are detrimental

thereto.

SECTION 1002 CONFLICT WITH OTHER LAWS

Whenever any provision of this Zoning Law and any other provision of law, whether set forth in this Zoning Law or in any other law, Zoning Law, or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

SECTION 1003 EXISTING ZONING PERMITS

In all cases where:

A. A zoning permit has been lawfully issued on the basis of an application showing complete plans for the proposed construction of a new building or other structure, or for an enlargement of an existing building or other structure which requires construction of foundation, and

B. The adoption of this Zoning Law or for any subsequent amendment thereto, would make the completed building or other structures nonconforming or noncomplying construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or noncomplying building or other structure.

SECTION 1004 EXISTING PRIVATE AGREEMENTS

This Zoning Law is not intended to abrogate or annul any easement, covenant, or any other private agreement.

SECTION 1005 SEPARABILITY CLAUSE

It is hereby declared to be the legislative intent that, if any provision or provisions of this Zoning Law or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the zoning lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this Zoning Law shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

SECTION 1006 REPEALER

The ordinance entitled "The Zoning Ordinance for the Town of Elba", adopted on September 27, 1966 together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

SECTION 1007 **EFFECTIVE DATE**

This Zoning Law was adopted by the Elba Town Board on April 14, 1988 and shall take effect upon its filing with the Secretary of State.

TOWN OF ELBA Zoning Schedule A									
ZONING DISTRICT	PERMITTED USES	MINIMUM LOT SIZE	MINIMUM FRONTAGE (FEET)	MINIMUM YARDS (FEET)			MAX.⁴ HEIGHT (FEET)	MAXIMUM LOT (%) COVERAGE	SITE PLAN REQ.
				FRONT	REAR	SIDE³			
A-R	SINGLE-FAMILY ²	40,000	150	75	50	25	35	20	NO
	TWO-FAMILY ²	40,000	150	75	50	25	35	20	NO
	MULTI-FAMILY ^{1,2}	+4,000	200	75	60	35	35	20	YES
	NON-RESIDENTIAL	80,000	200	75	60	50	35	15	YES⁵
R	SINGLE-FAMILY ²	20,000	100	50	35	15	35	30	NO
	TWO-FAMILY ²	30,000	150	50	35	20	35	30	NO
	MULTI-FAMILY^{1,2}	+4,000	200	60	40	35	35	30	YES
	NON-RESIDENTIAL	40,000	200	60	40	35	35	20	YES⁵
B	COMMERCIAL	40,000	200	75	35	40	35	30	YES
	INDUSTRIAL	100,000	300	75	40	50	35	40	YES
MHO	MOBILE HOME OVERLAY Refer to Section 504								
PUD	PLANNED UNIT DEVELOPMENT Refer to Section 507								
FPO	FLOOD PLAIN OVERLAY Refer to Section 506								
NOTES: ¹ Two Family minimum lot size plus 4,000 sq. ft. per family for each additional family over two. ² Residential accessory buildings and structures refer to Section 403. ³ The side yard at a corner lot adjacent to a street shall be considered as a front yard. ⁴ Building height limit is for those structures which are habitable or will be used for public assembly. ⁵ Agricultural uses (farms) shall be exempt except for animal waste storage facilities.									