

# **TOWN OF ST. JOHNSVILLE**

**MONTGOMERY COUNTY**

**NEW YORK STATE**

## **LAND USE LAW**

April 2010

TOWN OF ST. JOHNSVILLE

Montgomery County, New York

**LAND USE LAW**

The attached Land Use Law, including Schedule "A" and Appendix "A" was adopted by the Town Board of the Town of St. Johnsville on April 8, 2010.

**Note to Land Use Officer/ Code Enforcement Officer**

Due to the nature of this document and the way districts exist in a virtual world as defined by the written word, an onsite inspection of all proposed uses is warranted before any permits are issued. Care must be taken to assure that any new development or proposed use is in keeping with the intent of this law, as defined in this document, as well as the letter of this law.

**Town of St. Johnsville**  
**Montgomery County, New York**

**Town Board 2010**

Supervisor..... Dominick Stagliano  
Councilman..... Ronald Hezel  
Councilwoman..... Susan Handy  
Councilman..... William Farber  
Councilman..... Ronald Millington

**Planning Board**

Chairman..... Dean Handy  
Member..... Paul Flanders  
Member..... Melanie Shuster  
Member..... Melinda Sweet

Special thanks to James McGowen and James King  
(former planning board members) for their input in  
creating this document.

Attorney- Norman Mastromoro  
Town Clerk – Lynn Stever

TOWN OF ST. JOHNSVILLE  
LAND USE LAW

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TOWN OF St. JOHNSVILLE  
MONTGOMERY COUNTY, NEW YORK

A LAW regulating and restricting the location, construction, alteration and use of buildings and land in the Town of St. Johnsville, Montgomery County, New York, pursuant to the Zoning provisions of ARTICLE 16 of the Town Law of the State of New York.

THE TOWN OF ST. JOHNSVILLE TOWN BOARD, by virtue of the power and authority vested in it by law, does hereby ordain and enact as follows:

**ARTICLE I - TITLE**

SECTION 1 - This law shall be known and may be cited as "The Town of St. Johnsville Land Use Law".

**ARTICLE II - PURPOSES & SEPARABILITY**

SECTION 2 - This law is enacted for the following purposes:

1. -To encourage the most appropriate use of land throughout the Town;
2. -To preserve the best agricultural land for agricultural purposes and protect the towns agricultural base;
3. -To provide for planned, sustainable growth in all classifications of land use;
4. -To encourage aesthetically pleasing residential development;
5. -To promote health and general welfare;
6. -To prevent overcrowding of land;
7. -To provide adequate light and air;
8. -To avoid undue concentration of population;
9. -To secure safety from fire, flood, panic and other dangers;
10. -To avoid the pollution of air and water;
11. -To insure the gradual elimination of non-conforming uses;
12. -To simplify and streamline the process of applying for permits, conforming to regulations, and granting variances:

While allowing for individual expression, creativity, and preference.

**Severability:** Should any section or provision of this law or as amended hereafter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the law as a whole or any part thereof other than the part so declared to be invalid.



## **ARTICLE III - DEFINITIONS**

### **SECTION 3 - General**

For the purpose of this law certain words or terms used herein shall be interpreted or defined as follows:

Words used in the present tense shall include the future. The singular number includes the plural, and the plural the singular. The word "person" includes a corporation as well as an individual.

The word "building" includes the word "plot" or "parcel". The word "used" or "occupied" as applied to any land or building shall be construed to include the words "built, arranged or designed to be used or occupied".

### **SECTION 4 - Definitions**

**ACCESSORY BUILDING:** An unattached building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.

**ACCESSORY USE:** A use customary incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

**ADULT ORIENTED BUSINESS:** Whenever used in this law, the words "Adult Oriented Business" or "Adult Oriented Businesses" apply to the following types of establishments, and any others which exclude or restrict minors by reason of age:

**ADULT BOOKSTORE OR VIDEO STORE:** An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, other periodicals, films, slides or video tapes and which establishment excludes or restricts minors by reason of age.

**ADULT ENTERTAINMENT CABARET:** A public or private nightclub, bar, restaurant, or similar establishment which presents topless or bottomless dancers, strippers, male or female impersonators, exotic dancers, or other similar entertainment, and which establishment excludes or restricts minors by reason of age.

**ADULT MOTEL:** A motel which excludes or restricts minors by reason of age, and which makes available to its patrons in their rooms films, slide shows or videotapes, which if presented in a public movie theatre would exclude or restrict minors by reason of age.

**ADULT THEATRE:** A theatre that customarily presents motion pictures, films, videotapes or slide shows, and that excludes or restricts minors by reason of age.

**MASSAGE ESTABLISHMENT:** Any establishment having a fixed place of business where massages are administered, including but not limited to massage parlors, sauna baths and steam baths, and which excludes or restricts minors by reason of age. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist or massage therapist, licensed masseuse or masseur, or barbershops or beauty salons in which massages are administered only to the scalp, face, neck or 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.

**PEEP SHOW:** A theatre which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, and which excludes or restricts minors by reason of age.

**ALLEY:** A minor way which is used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

**ANIMAL HOSPITAL/VETERINARY CLINIC:** A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

**APPLICANT:** The legal, real property contract vendee, or beneficial owner or owners of a lot or of any land included in the proposed development. Also, the holder of an option or contract to purchase, or any other person having enforceable proprietary interest in such land.

**AREA, BUILDING:** The total ground area of a principal building and accessory buildings, exclusive of uncovered porches, parapets, steps and terraces.

**BASEMENT:** A space of full story height partly below grade and having at least half of its clear floor-to-ceiling height above the average grade, and which is not designed or used primarily for year-round living accommodations.

**BED AND BREAKFAST:** An establishment in a private dwelling that supplies temporary accommodations to overnight guest for a fee. Meals may or may not be provided. Tourist homes and inns are included here.

**BOUNDARY:** Perimeter delineation of a property

a. Temporary boundary:

Includes but is not limited to:

1. Fences of all type but stone walls
2. Hedgerows with immature trees
3. Vegetative differences or crop delineations
4. Any other readily movable barrier

**BOARDING OR ROOMING HOUSE:** Any dwelling in which more than three persons, either individually or as families are housed or lodges, except those engaged in farm work, for hire with or without meals, and/or any dwelling with ten or less sleeping rooms in which more than three persons, either individually or as families, are housed or lodged, except those engaged in farm work, for hire or otherwise, without separate kitchen facilities, with or without meals. If there are more than ten sleeping rooms, such buildings shall be considered hotels.

**BUFFER ZONE:** Open spaces, landscaped areas, fences, walls, berms or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances.

**BUILDING:** Any roofed structure intended for the shelter, housing or enclosure of persons, animals or property. When a building is divided into separate parts extending from the ground up, each part so divided is deemed a separate building.

**BUILDING LINE:** A line established by law, usually parallel with a property line, beyond which a structure may not extend.

**BUILDING, FLOOR AREA:** The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, including basement areas devoted to residential use and the area of bays, dormers, roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**CELLAR:** That space of a building which has more than half of its height, measured from floor to ceiling, below the average grade.

**COMMUNITY PARK OR PLAYGROUND:** Land managed by the public and set aside for public use which may or may not have developed recreational facilities, such as playground, tennis courts, horse and bike trails, baseball fields, picnic areas, swimming pools and/or lavatories.

**DRIVEWAYS AND PASSAGE WAYS:** Private access routes which directly service a parking area; or serving parking spaces not directly serving more than two (2) dwelling units, and not providing a route for through traffic. Minimum driveway widths shall be as follows:

PARKING ANGLE	DRIVEWAY WIDTH
No parking	18'
Parallel	20'
45° one-way	20'
60° one-way	20'
90° one-way	24'

**DWELLING, ONE-FAMILY:** A detached building, other than a trailer or other temporary structure designed for exclusive year-round occupancy by one family only.

**DWELLING, TWO-FAMILY:** A detached building, other than a trailer or other temporary structure, designed for exclusive year-round occupancy by two families living independently of each other.

**DWELLING, MULTIPLE FAMILY:** A building or group of buildings, designed for year-round occupancy by more than two families, including apartment houses and group houses, but excluding hotels and rooming houses.

**DWELLING UNIT:** One or more rooms with provision for living, sanitary, and sleeping facilities arranged for the use of one family.

**FAMILY:** Any number of persons or recognized relationships maintaining a common household, including domestic help.

**FARM:** A parcel or tract of land which is used for growing agricultural products, horticulture products, raising livestock, raising fruits and/or vegetables or agriculture production. For the purposes of Section 9, paragraph (A) an "agricultural operation" shall not include any farm having less than \$10,000.00 gross sales in the year preceding the date on which the owner applies for a building permit to erect a mobile home

as an accessory use. In addition the occupant of a mobile home as an accessory use must be a full-time employee of or partner in the "agricultural operation" whose total documented compensation from such employment in agriculture is not less than \$10,000 a year in wages.

**FARM PRODUCTS PLANT:** Any operation which starts with a farm product, including but not limited to vegetables, fruits, milk, beef, pork, lamb, chicken, eggs, turkey etc. and whose end product packages that product in a form suitable for retail market distribution. This definition includes but is not limited to dairies, cheese plants, vegetable/fruit canneries, slaughterhouses etc.

**FARM STAND:** The sale of agricultural products that are produced on the premises.

**FRONT:** That part of a parcel of land or building abutting or facing the Principal Street or road. In the case of corner lots on two intersecting streets or road the parcel will be considered to have two front yards, one side yard and one rear yard at minimum.

**GARAGE, PRIVATE:** A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a non-resident of the premises.

**GARAGE, PUBLIC:** A building or part thereof for the storage, hiring, selling, greasing, washing, servicing, or repair of motor-driven vehicles, operated for gain.

**GASOLINE STATION:** Any area of land, including structures thereon, that is used or designed to be used for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for lubricating, washing, cleaning, or otherwise servicing motor vehicles, not including the painting or major repair thereof. The term "Gasoline Station" shall be deemed to include filling station and service station.

**GREENSPACE:** Area of land with vegetative cover.

**HISTORIC BUILDING OR SITE:** A building or area which has historic and special public value because of notable architectural or other features relating to the cultural, historic, or artistic heritage of the community.

**HOME OCCUPATION:** An occupation or profession which is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; and is carried on by a member of the family residing in the dwelling unit; and is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and which conforms to the following additional conditions.

1. The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.

2. No more than **three persons** outside the family shall be employed in the home occupation.

3. There shall be no exterior display, nor any exterior sign except a business sign, no exterior storage or materials and no other exterior indication of the home occupation or variation from the residential character of the principal building. The Business Sign shall comply with Section 34 of this law.

4. No **excessively** offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.

A home occupation includes, but is not limited to art studio; dress-making; barber shop or beauty parlor; professional office of physician; dentist, lawyer, engineering, architect, accountant, small engine / appliance repair, woodworking , craft establishment, or musical instruction limited to a single pupil at a time.

**HOSPITAL:** A building or structure for the diagnosis and medical or surgical care of human ailments.

**HOTEL:** Facility offering transient lodging accommodations to the general public and providing additional service such as restaurants, meeting rooms and recreational facilities. the word "hotel" includes the words "motel", "motel court" , "inn", "tourist court", or similar names excluding rooming houses and Bed and Breakfast establishments.

**JUNK YARD:** A lot, land or structure, or part thereof, used for the collecting, storage and sale of waste paper, rages, scrap metal or discarding material; or for the collecting, dismantling, storage and salvaging of machinery or vehicles, and for the sale of the parts thereof; or for the storing or abandonment of two or more unlicensed or unregistered motor vehicles for 30 days or more.

**KENNEL:** A structure used for the harboring for hire of four or more dogs or cats, more than six months old.

**LAUNDERETTE:** A business premises serviced by municipal sewerage or a NYSDOH approved system, equipped with individual clothes washing or cleaning machines for use by retail customers, exclusive of laundry facilities provided in an apartment, fraternity, sorority, residential hotel or club.

**LIGHT ASSEMBLY PLANT:** A use engaged in the creation, predominately from previously prepared materials, of finished products or part, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing.

**LIVING AREA:** The sum of the gross horizontal area of the several floors of a building, including areas below grade devoted to residential use. All dimensions shall be measured between exterior faces of walls.

**LOADING SPACE:** A paved area designed for the parking, loading and unloading of delivery vehicles.

**LOT:** A parcel of land considered as a unit, occupied or capable of being occupied by a building or use and accessory buildings or uses, or by a group of buildings united by a common use or interest; and including such open spaces as are required by this law, and having its principal frontage on a public street or an officially approved place.

**LOT AREA:** The total horizontal area included within lot lines. no part of the area within a public right-of-way may be included in the computation of lot area.

**LOT, CORNER:** A lot located at the intersection of and fronting on two or more intersecting streets, and having an interior angle at the corner of intersection of less than 135 degrees.

**LOT, COVERAGE:** That portion of the lot that is covered by buildings.

**LOT, INTERIOR:** A lot other than a corner lot.

**LOT, THROUGH:** A lot having frontage on two approximately parallel, or converging streets other than a corner lot.

**LOT, DEPTH:** The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

**LOT, WIDTH:** The distance between side lot lines measured parallel to the front lot line at a distance from the front lot line equal to the front yard specified for the district, except as noted in Section 16.

**MINERAL:** any naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of this law, peat and topsoil shall be considered minerals.

**MINING:** the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction products, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

**MINOR:** A person less than seventeen (17) years of age.

**MOBILE HOME:** A movable single dwelling unit equipped with a chassis designed for and providing housekeeping facilities for year-round occupancy including plumbing, heating, electrical, cooking and refrigeration systems and equipment.

**MOBILE HOME PARK:** A parcel of land which has been planned and improved for the placement of two or more mobile homes for non-transient use.

**MODULAR HOME:** A prefabricated dwelling unit capable of being delivered to a site in several sections and is indistinguishable in appearance from conventionally built homes.

**NAMEPLATE:** A plaque or sign for non business purposes bearing the name of the owner of the residence and no larger than eight (8) square feet.

**NON-CONFORMING USE:** A structure or land lawfully occupied by a use that does not conform to the regulations of the district in which it is located.

**NURSING OR CONVALESCENT HOME OR HOME FOR THE AGED:** A building used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished, or for the accommodation and care of persons of advanced age.



**OPEN SPACE:** Any parcel or area of land or water essentially unimproved by buildings.

**PARCEL:** A contiguous plot of ground owned by one individual, two or more individuals in common, or corporation not necessarily on one deed or with one tax number.

**PARKING SPACE:** The area required for parking one automobile which in this law is held to be an area at least nine feet wide and 20 feet long, exclusive of passageways and driveways thereto.

**PERMANENT FOUNDATION:** Concrete or stone walls which support the bottom floor and exterior walls of a building and extending below the ground deeper than the average annual frost level, or a reinforced concrete base below the bottom floor of a building of sufficient thickness and having a suitable subway to resist shifting and heaving from changes in temperature and moisture conditions in the ground beneath the building.

**PERSONAL SERVICE SHOPS:** Establishments providing services or entertainment, as opposed to products, to the general public including, but not limited to: cleaning and garment services, beauty shops, photography shops, shoe repair, barber shops, funeral services, clothing rental, reduction salons and tanning parlors.

**PERSONAL WIRELESS SERVICES:** shall mean any person, firm, corporation, or governmental agency, duly licensed/authorized to furnish the public, under governmental regulation, commercial mobile services, wireless telecommunication services, and common carrier wireless exchange access services, including cellular radiotelephone, specialized mobile radio system and personal communication services, which are regulated by the Federal Communications Commissions in accordance with the Communication Act of 1934 (47U.S.C. Sections 151-613 (1988) as it may hereinafter be amended from time to time.

**PERSONAL WIRELESS SERVICE FACILITY:** Is a facility for the provision of Personal Wireless Services. A Personal Wireless Service Facility includes an Antenna, Equipment Mounting Structure, and accessory buildings and equipment. For purposes of this Land use law, a Personal Wireless Service Facility shall not be included within the definition of a "Public Utility Facility" as specified in this Land use law.

**PROFESSIONAL OFFICE:** Offices for a person or persons whose vocation or occupation requires advanced training in a liberal art or science and whose service usually involves non-manual work.

**PUBLIC BUILDING:** Any town, county, state or federally owned building(s) or land including but not limited to: town halls and highway department garages.

**PUBLIC UTILITY:** Shall mean any person, firm, corporation or governmental agency, duly authorized to furnish the public, under governmental regulation electricity, gas, water sewage treatment, steam, cable television, or related communication service. This definition shall not bestow any special status or standing not already provided by State or Federal Law.

**PUBLIC UTILITY FACILITY:** A facility other than a Personal Wireless Service Facility for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or governmental agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewage collection, or such service to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar equipment, but shall not include office or administrative buildings.

**RESIDENCE:** A structure or portion thereof used as a dwelling unit.

**RESTAURANT:** A building or portion of a building wherein food and beverages are available for on-site or off-site consumption.

**RETAIL FARM MARKET:** The sale of agricultural products either produced on or off the premises.

**RETAIL STORE:** Any building or permanent structure or portion thereof in which one or more services or one or more articles of merchandise are sold at retail including department stores.

**SHED:** An accessory building which is no larger than **240 sq ft.**

**SIGN:** Any devise affixed to or painted or represented directly or indirectly upon a building, structure or land and which directs attention to an object, product, place, activity, person, institution, organization or business, but not including any flag, badge or insignia of any government or government agency, school, or religious group or of any civic, charitable, religious, patriotic, fraternal or similar organization, nor any official traffic control devise. Each display surface shall be considered to be a "sign".

**SIGN, ADVERTISING:** A sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere than upon the premises where such sign is located, or to which it is affixed, only incidentally on the premises, it at all.

**SIGN, BUSINESS:** A sign which directs attention to a business or profession conducted, or a commodity, service, or entertainment sold or offered upon the premises where such sign is located, or to which it is affixed. A "For Sale" or "For Let" sign relating to the lot on which it is displayed shall be deemed to be a business sign.

**SIGN, FLASHING:** A "flashing sign" is any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color when such sign is in use. For the purpose of this law any revolving, illuminated sign shall be considered a "flashing sign".

**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.

**SITE PLAN REVIEW:** A review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in the law and as authorized by Town Law.

**SPECIAL PERMITTED USE:** A use or property that is basically appropriate to a given zoning district, but which may be incompatible in some locations within the district and therefore is not permitted by right everywhere within such districts. A special permitted use, therefore, is one which is allowable only when facts and conditions specified in the law as those upon which the use is permitted are found to exist.

**STABLE, PRIVATE:** A principal or accessory building in which horses are kept for private use and not for hire or sale.

**STABLE, PUBLIC:** A principal or accessory building in which horses are kept for remuneration, hire or sale.

**STORY:** That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF:** That part of a building between a pitched roof and the uppermost full story, and having a floor area at least half as large as the floor below. Space with less than five feet clear headroom shall not be considered as floor area.

**STREET:** A public way which affords the principal means of access to abutting property.

**STRUCTURE:** Any building or other construction, with or without a roof, which requires location on the ground or attachment to something having location on the ground.

**STRUCTURAL ALTERATION:** Any change in the supporting members of a building.

**SUBDIVISION:** The word "subdivision" shall mean any tract of land which is divided into two or more parcels, after the effective date of this act, along an existing or proposed street, highway, easement or right-of-way for sale or for rent as residential lots, residential building plots, business, commercial or industrial lots or building plots, regardless of whether the lots or plots to be sold or offered for sale, or leased for any period of time, are described by metes and bounds or by reference to a map or survey of the property or by any other method of description and regardless of whether the lots or plots are contiguous. A tract of land shall constitute a subdivision upon the sale, rental or offer for sale or lease of the third residential lot or residential building plot.

Determinating factors and subsequent laws, rules and guidelines for Major and Minor subdivision designations are contained in the Town of St. Johnsville Subdivision Law.

1. The word "tract" shall mean any body of land, including contiguous parcels of land, under one ownership or under common control of any group of persons acting in concert as part of a common scheme or plan.
2. "Residential lot" or "residential building plot" shall mean any parcel of land of three acres or less, any point on the boundary line of which is less than one-half mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purposes. Without limiting the generality of the foregoing, the term "residential" shall include temporary, seasonal and permanent residential use.

**THEATER, OUTDOOR:** An open lot or part thereof, with its appurtenant structures and facilities, devoted primarily to the showing of motion pictures or theatrical production on a paid admission basis.

**TOURIST HOME:** A dwelling where transient guests are lodged for hire.

**TOWN HOUSE:** One of several units in a building designed for and occupied exclusively as a residence for not more than one family living independently of any other family, separated from other units by a party

wall or walls, and erected on a lot intended to be held in the form a condominium or in a single and separate ownership from any adjoining units.

**TRAILER:** A mobile unit designed for camping, recreational travel, or vacation use which is equipped with a chassis and provides partial housekeeping facilities such as plumbing, heating, electrical, cooking or refrigeration systems or equipment.

**TRAILER CAMP:** An area occupied or designed for occupancy by two or more trailers.

**TRUCK TERMINAL:** A building or area in which freight brought by truck is assembled and/or stored for routing or reshipment, or in which semi-trailers, including tractor and/or trailer units and other trucks are parked or stored.

**VARIANCE:** Permission to depart from the literal requirements of the land use law.

**VARIANCE, AREA:** A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district =, or a departure from any provision of this law except use.

**VARIANCE, USE:** A variance granted for a use or structure that is not permitted in the zoning district.

**WHOLESALE STORAGE OR WAREHOUSE:** A building or buildings used as a wholesale distribution center.

**YARD, FRONT:** An open unoccupied and unobstructed space on the same lot with a main building, extending the full width of the lot and situated between the front property line and the front line of the main building projected to the side lines of the lot.

**YARD, REAR:** A space on the same lot with a main building, open and unoccupied except for accessory buildings, extending the full width of the lot and situated between the rear line of the main building projected to the side lines of the lot and the rear line of the lot.

**YARD, SIDE:** An open unoccupied space on the same lot with a main building, situated between the side line of the main building and the adjacent side line of the lot extending from the front yard to the rear yard. Any lot line not a front line or rear line shall be deemed a side line.

#### **ARTICLE IV - DISTRICTS AND BOUNDARIES**

## SECTION 5 - Establishment of Districts

For the purpose of this law, the Town of St. Johnsville is divided into the following types of classes of districts:

R	Residential
A	Agricultural
C	Commercial
I	Industrial
RR	Rural

Said districts are bounded and defined as described in this document and exist on a virtual map if not on a literal map. The virtual map as defined by the written word in this document takes precedent over any literal map. A literal map may be constructed to help represent in a visual format what exists on the virtual map but care must be taken to accurately depict what is actually developing on the ground as the virtual map district boundaries can change by definition as development occurs. If a literal map is constructed said map must be updated regularly to properly reflect any such change. An adequate and thorough on site investigation by the CEO/LUO must be undertaken prior to the issuance of permits in order to assure that development is in keeping with the virtual map.

## SECTION 6 - Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

1. The written word and the virtual map so created by said word take precedent in boundary determination.
2. Precedence of hierarchy of districts as defined is as follows:
  - a. Historical Overlay
  - b. Industrial
  - c. Commercial
  - d. Agricultural
  - e. Residential
  - f. Rural
3. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located midway between the main tracks of said railroad line.

4. Where the boundary of a district follows a stream or other body of water, said boundary line shall be deemed to be the center line of such stream or body of water unless otherwise indicated.
5. All district boundaries unless otherwise defined will be construed to follow property lines comprising said district.

## **ARTICLE V - USE REGULATIONS**

The principal permitted uses of each zoning district are permitted as of right. All special permitted uses require both special permit review and site plan review. Uses not listed for a specific zoning district are prohibited from that district and would therefore require a use variance.

### **SECTION 7 - General Regulations**

A. Appearance – All classifications of use are subject to general appearance standards. General appearance standards criteria includes but is not limited to the following:

1. Excessive exposed miscellaneous items including but not limited to:
  - a. Used building materials
  - b. Old Tires
  - c. Used appliances
  - d. Junk vehicles or machinery
  - e. Used household items
  - f. Etc
2. Properly maintained grounds including but not limited to:
  - a. Lawn Mowing
  - b. Building upkeep
  - c. Vegetation maintenance
  - d. Run off control
  - e. Etc

B. Garage/ lawn sales etc:

- a. No “perpetual” garage/lawn sales
- b. 7 day maximum in length
- c. All items offered for sale must be removed at end of 7 days. Simply covering items does not comply.
- c. No more than two sales per year per location

## SECTION 8 – R Residential District

**INTENT:** Primary use of this district is residential. The quality of the living experience in this district should always be paramount in all decisions rendered as to variances and special use permits. However, it may be necessary at times to issue variances and special use permits as to enhance the quality of life for individuals living within this district or to address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

A residential district will be construed to exist in any area of the town where housing density exceeds 10 houses per 1000 ft of lineal road frontage (both sides of road count) or 1 house per contiguous acre in densities of 5 houses or more. If planned project creates a situation where either of the above scenarios will be met, all residential criteria must be fulfilled for project to be approved.

In the Residential District no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

**(A) Principal Permitted Uses:**

1. One Family Dwelling
2. Two Family Dwelling
3. Accessory Use and Building
4. Home Occupation
5. Community Park or Playground

**(B) Uses Permitted as a Special Permit by the Planning Board:**

1. Multi Family Dwellings
2. Nursing, Convalescent or Home for the Aged
3. Church



4. Parish House, Convent
5. Townhouses
6. Bed and Breakfast Establishment
7. Public Building
8. Golf Course or Country Club
10. Farm and Accessory Use or Building

#### SECTION 9 - A-Agricultural District

INTENT: Primary use of this district is agricultural. Given the economic and intrinsic value of high quality agricultural land, and the community's desire to protect it for agricultural use, development potential within this district is and should be extremely limited. The quality of the living experience and the ability of the farmers actively involved in production agriculture to employ methods and technologies deemed necessary to enhance yield and or profitability should always be paramount in all decisions rendered as to variances and special use permits. The farmers' right to farm takes precedent in this district. However, it may be necessary at times to issue variances and special use permits as to enhance the quality of life for individuals living within this district or address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

All Class I and Class II soils (as defined by USDA Soil Conservation Service) within the town of St. Johnsville will be considered as A-Agricultural District unless proven otherwise by on site inspection . All land currently being actively farmed (within the last 5 yrs) will also be considered A- Agricultural District. Actively farmed is construed to mean capable of or currently growing any agricultural crop including but not limited to corn, hay, soybeans , small grains, vegetables, etc. Woodland and non-tillable pasture is not included in this definition. Parcels with distinct, existent, non temporary boundaries and an area of less than 3 acres are also exempt from this definition.

In the A Agricultural District no building or premises shall be used and no building shall be erected or altered except for one of more of the following uses:

:

(A) Principal Permitted Uses:

1. Farm and Accessory Buildings and Uses
2. Farmer owned secondary businesses including but not limited to:
  - a. Seed sales
  - b. Fertilizer /Chemical Sales (Not Manufacture of)
  - c. Farm Equipment repair / Welding
  - d. Roadside Produce Stands
  - e. Sawmill (portable only)
  - f. Boarding Stables
  - g. Bio Fuel Production (for own use)
  - h. Grain or hay storage facility
3. Accessory use and building
4. Mobile home as part of a farm operation
5. Nursery/Horticulture (tree farms or timber excluded)
6. Home Occupation
7. One family dwelling (subject to site plan review)

(B) Uses Permitted as a Special Permit by the Planning Board:

1. Commercial Recreation
2. Bed and Breakfast Establishment
3. Personal Wireless Service Facility
4. Public Utility Facility
5. Farm Products Plant
6. Radio, TV Transmitter or Receiving Tower w/ building
7. Radio, TV Transmitter or Receiving Tower w/o building

8. Commercial wind power generation towers
9. Tree farms or timber
10. Commercial Sawmill

All construction or other land use in this district shall absolutely minimize the impact or removal of acreage from active agricultural production. Cause must be given as to any excessive removal of, or blatant disregard for preserving intact, agricultural land suitable for agricultural production. Failure to do so will result in a denial of permit. (See section 66 diagram 1) (page 73)

#### SECTION 10 - RR-Rural

INTENT: Primary use of this district is mixed agricultural/residential. Due to the nature of the land itself this district does not lend itself well to intensive agricultural practices yet is valuable in its own right for esthetic, environmental, and recreational activities. The quality of the living experience in rural districts can be enhanced by the ability of the land owner to own a larger piece of real estate to use for a variety of uses. However, it may be necessary at times to issue variances and special use permits as to enhance the quality of life for individuals living within this district or address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

All land Class III and below (as defined by USDA Soil Conservation Service) will be considered RR-Rural unless currently actively being farmed. Actively farmed is construed to mean capable of or currently growing any agricultural crop including but not limited to corn, hay, soybeans , small grains, vegetables, etc. Woodland and non-tillable pasture is included in the RR- Rural definition.

In the RR - Rural district no building or premises shall be used and no building shall be erected or altered except for one of more of the following uses:

(A) Principal Permitted Uses:

1. Farm and Accessory Buildings and Uses
2. Farmer owned secondary businesses including but not limited to:
  - a. Seed sales
  - b. Fertilizer / Chemical Sales (Not Manufacture of)
  - c. Equipment Sales
  - d. Farm Equipment repair / Welding
  - e. Roadside Produce Stands
  - f. Sawmill
  - g. Boarding Stables
  - h. Bio Fuel Production ( for own use)
3. One family Dwelling
4. Accessory use and building
5. Mobile home as part of a farm operation
6. Nursery/Horticulture
7. Home Occupation
8. Hobby Farm

(B) Uses Permitted as a Special Permit by the Planning Board:

1. Commercial Recreation
2. Bed and Breakfast Establishment
3. Golf Course or Country Club
4. Personal Wireless Service Facility
5. Public Utility Facility
6. Farm Products Plant
7. Radio, TV Transmitter or Receiving Tower w/ building
8. Radio, TV Transmitter or Receiving Tower w/o building

## SECTION 11 C- Commercial District

**INTENT:** Primary use of this district is commercial. The commercial enterprises' right to conduct business according to generally accepted business practices takes precedent in this district. However, it may be necessary at times to issue variances and special use permits as to enhance the quality of, or provide access to, certain businesses necessary or advantageous to the community as a whole. or address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

The commercial district will consist primarily of the Route 5 corridor. A span of 1000 ft north of RT 5, and 1000 ft south of RT 5 or to the edge of the CSX rail property whichever is shorter will comprise the Commercial district.

In the C-1 Commercial District no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

(A) Principal Permitted Uses:

1. Retail Store
2. Personal Service Shop
3. Custom Work Shop
4. Funeral Home
5. Fire Station or Municipal Building
6. Radio, Television or Household Appliance Sales or Service
7. Carwash
8. Antique Shop
9. Animal/Veterinary Hospital
10. Feed, Lumber, Seed or Fertilizer Building
11. Retail Bakery

12. Laundry or Dry Cleaning Plant
13. Cabinet, Electrical, Heating, Plumbing or Air Conditioner
14. One Family Dwelling
15. Community Park or Playground
16. Accessory Use or Building
17. Historic Building or Site
18. Home Occupation
19. Farm and Accessory Use or Building
20. Hardware
21. Professional Office, Studio
22. Bank
23. Restaurant
24. Hotel
25. Public Garage
26. Public Utility Facility
27. Automobile, Boat, Farm Implement Sales or Rental
28. Historic Building or Site
29. Professional Offices
30. Self Storage Facility

(B) Uses Permitted (but not limited to) as a Special Permit by the Planning Board:

1. Gasoline Station
2. Fuel Sales and Storage

3. Indoor Storage of non-liquid, non-gaseous fuel
4. Bowling Alley
5. Multi Family Dwelling
6. Two Family Dwelling
6. Adult Oriented Business / Theatre
7. Tavern
8. Gaming Establishment
10. Community Park or Playground
11. Wholesale Storage/Warehouse
12. Light Assembly Plant
13. Manufacture of Electronic Devices or Instruments
14. Printing or Publishing Plant
15. Tool, die, pattern, machine shop
16. Manufacture or processing of dairy or food products
17. Research & Development Center
18. Cold Storage Plant

SECTION 12 - - I-Industrial

The Industrial District will consist of all land west of Bridge Street situated between the CSX Rail line and the Mohawk River. We are aware that this area contains some very valuable agricultural land. However, in keeping with the highest and best use principal, this land would better serve the community as an industrial district with the following conditions:

1. Must create significant employment opportunities.
2. Must minimize acreage used for project. Just cause must be given for land taken out of agricultural production. All remaining land not used in project should be made available for agricultural use.

INTENT: Primary use of this district is industrial. The industrial enterprises' right to conduct business according to generally accepted business practices takes precedent in this district. However, given the proximity to the river front this does not allow for careless disregard of issues pertaining to, but not limited to, environmental, esthetic, traffic, and strain on existing infrastructure. All care must be taken to assure that any facilities planned for this district create significant employment opportunities and are as aesthetically pleasing as possible.

However, it may be necessary at times to issue variances and special use permits as to enhance the quality of, or provide access to, certain industries necessary or advantageous to the community as a whole, or address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

In the Industrial District no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

(A) Principal Permitted Uses:

1. Wholesale Storage or Warehouse
2. Light Assembly Plant
3. Manufacturing or assembly of electronic devices or instruments
4. Printing or publishing plant



5. Tool, die, pattern or machine shop
6. Manufacture or processing dairy or other food products
7. Distribution Center
8. Research and development center
9. Transportation services, including automobile and truck  
rentals and public garages
10. Cold Storage Plant
11. Farm and accessory use or building
12. Customary accessory use or building
13. Manufacturing or processing of dairy or other food products
14. Bio fuel Facility

(B) Uses Permitted as Special Permit by the Planning Board:

1. Manufacture of textile products or leather goods
2. Manufacture or fabrication of metal, concrete, stone, plastic  
paint, fiber or wood products
3. Truck Terminal
4. Bulk Storage of inflammable liquids
5. Public Utility Facility
6. Marina
7. Campground
8. Residences of any kind
9. Recreational Facilities

## SECTION 13 - N-P-Natural Products

**INTENT:** Due to certain inherent characteristics of Natural Product type industries creation of a district or overlay is not feasible. However this does not mean they are unregulated . Neither does it allow for careless disregard of issues pertaining to, but not limited to, environmental, esthetic, traffic, and strain on existing infrastructure. Given the nature of these businesses to greatly alter large tracts of land, and to substantially affect the surrounding area, great care and extreme diligence must be used in granting any permits for new enterprises of this type. However, it may be necessary at times to issue variances and special use permits as to enhance the quality of, or provide access to, certain industries necessary or advantageous to the community as a whole, or address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

All current and future N-P facilities are therefore subject to all applicable rules and laws. Any facility should at a minimum meet the following criteria:

- a. Not utilize Class I or Class II soils
- b. Minimize impact on any surrounding districts especially residential.
- c. Demonstrate long term positive impact on town
- d. Not be in a residential district or Historic overlay

All activity in this industry is allowed only by special use permit and Site plan review.

(A) Special permit :

1. Earth, sand, gravel or mineral excavation
2. Bituminous concrete mixing plant
3. Ready-mix concrete plant
4. Concrete products manufacture, including blocks, staves,  
pipe beams and structure, and construction equipment
5. Agricultural lime manufacture
6. Inorganic fertilizer manufacture

7. Accessory use or building
8. Farm and accessory building
9. Rock quarry operation

## SECTION 14 - H-Historic Overlay

**INTENT:** In order to preserve our heritage and provide for a unique educational experience a historical overlay was formed. The Historic Overlay encompasses all land situate between Rt 5 and the CSX railroad starting with all property of the Nellis Tavern Parcel and continues east to the town line. North of Rt 5 the historic overlay starts at the Easterly boundary of La Coppola Building Supplies and extends east to the town line a depth of 1000 Ft. All structures and enterprises allowed for in this area should be "in keeping" with the historical genre of the area. However, it may be necessary at times to issue variances and special use permits as to enhance the quality of, or provide access to, certain businesses necessary or advantageous to the historical district as a whole, or address unforeseeable situations for a particular parcel. This may especially be germane to areas where two districts meet. Care should be taken to address each special situation carefully with respect for landowner's individual rights.

A Historic overlay takes precedent over underlying districts.

In any H Historic Overlay no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

- (A) Principal Permitted Uses:
1. Historic building or site
  2. One family Dwelling
  3. Community Park or Playground
  4. Bed and Breakfast Establishment
  5. Farm and Accessory use or building

6. Accessory uses or building

7. Museum

**(B) Uses Permitted as a Special Permit by the Planning Board:**

1. Antique Store
2. General Store
3. Gift Shop
4. Retail Shop
5. Restaurant
6. Professional Office, Studio
7. Home Occupation

**ARTICLE VI - AREA AND HEIGHT REGULATIONS  
LOTS, YARD AND BUILDINGS**

SECTION 15 -Regulations in Schedule A

Regulations governing lot area and lot width; front, side and rear yards; building coverage and building height are specified in Schedule A and in the additional regulations of Article VI, and supplementary regulations of Article VII. Schedule A accompanies, and is hereby made a part of this law.

SECTION 15 - Area Regulations

1. Lots of Less Than required Dimensions

(a) Any lot with an area or a width less than that required in the district in which said lot is located may be used for any permitted principal use in the district, provided that all other regulations prescribed for the district shall be complied with, and further provided that said lot was held under separate ownership at the time of the adoption of this law and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimension requirements.

6. In the event that compliance with the yard and coverage requirements of the district would result in a residential structure of less width than 24 feet, the Board of Appeals shall determine and fix yard and coverage requirements for said lot to permit its reasonable utilization for a permitted use.

2. Reduction of Lot Area The minimum yards and open spaces, including lot area per family, requiring by this law shall not be encroached upon or considered as yard or open space requirements for any other building, no shall any lot be reduced below the district requirements or this law.

3. Corner Lots On a corner lot in any district where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on each such street. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his application for a permit. The Board of Appeals shall determine the yards and building width of a corner lot facing an intersecting street, and of record at the time of the passage of

this law, if the yard requirements would result in a residential structure less than twenty-four (24) feet wide.

4. Visibility at Street Corners On a corner lot in any district where a front yard is required, no fence, hedge, wall or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines. Intersections with county or state road shall be in accordance with corresponding transportation department regulations and restrictions imposed by this law.
5. Front Yard Exceptions The minimum front yard of all principal buildings and structures hereafter constructed within a Residential District shall conform with Schedule A; and in addition shall be not less than the average front yard of all principal buildings in the block for a distance of 300 feet on each side of such building. A vacant lot within the 300 foot distance shall be considered as having the minimum front yard required in the district for the purpose of computing such average front yard.
6. Transition Yard Requirements
  - (a) Where two districts abut on the same street between two intersecting streets, and the front yard requirements of one district are less than those of the other district, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the district boundary line in the less restricted district a front yard equal in depth to the average of the required depth in the two districts.
  - (b) Where the side or rear year of a lot in a Residential District abuts a side or rear yard of a lot in a Commercial District, there shall be provided along such abutting line or lines in the Commercial District a side or rear yard equal in depth to that required in the more restricted district; and in addition, a planing buffer at least 10 feet wide, having evergreen vegetative screening and/or opaque fencing at least 8 feet high may be required by the Town Planning Board in an easement in any Commercial District.
7. Projecting Architectural Features, Terraces, Porches, Fire Escapes
  - (a) The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves and other architectural features,

provided, however, that such features shall not project more than two feet into any required yard.

(b) A paved terrace shall not be considered as part of a building in the determination of yard size or lot coverage, provided that such terrace is without a roof and without walls, parapets, or other form of enclosure exceeding six feet in height.

(c) In determining the percentage of building coverage or the size of yards for the purpose of this law, enclosed porches, or porches open at the side but roofed, shall be considered a part of the building.

(d) An open fire escape may extend into any required yard no more than four feet six inches, provided such fire escape shall not be closer than 4 feet at any point to any lot line.

(e) Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard a distance not to exceed six feet.

8. Walls, Fences and Hedges The yard requirements of this law shall not prohibit any necessary retaining wall nor any fence, wall or hedge permitted by the Town Law, provided that it complies with visibility at street corners as provided in this Article.

#### SECTION 17 - Height Regulations

1. Chimneys, Spires, etc. The height limitations of this law shall not apply to belfries, church spires, cupolas, and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks or other storage tanks/silos and necessary mechanical appurtenances usually carried above the roof level; not to flag poles, monuments, transmission towers and cables, non commercial radio and television antennae or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose for which they are intended, and are subject to planning board review and approval. No advertising devise of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations. Agricultural structures are exempt from height regulations except for minimum distance to a residence. All farm structures must be 1.5 times the height away from any residence. **All non agricultural structures over 100 feet high are subject to site plan review and require a special use permit.**

2. On Through Lots On through lots 120 feet or less in depth, the height of a building may be measured from the grade of either street. On through lots more than 120 feet deep, the height regulations and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than 120 feet from that street.

## **ARTICLE VII - SITE PLAN APPROVAL AND SPECIAL PERMITS**

### **SECTION 18 - Purpose and Authorization**

The purpose of site plan approval and special permit approval is to ensure compliance with the objectives of this law, thereby promoting the public health, safety and general welfare.

This section of the St. Johnsville Land Use Law is enacted under the authority of Section 274-a of the Town Law of the State of New York to protect the health, safety, convenience and general welfare of the inhabitants of the Town. This Section regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development proposals to eliminate or minimize potential problems and nuisances.

The power to approve, approve with conditions, or deny site plans and special permits as required by this article is rested in the planning board. All site plan and special permit applications shall comply with the adopted, current requirements and procedures of the planning board.

### **SECTION 19 - Developments Requiring Site Plan Review**

All non agricultural projects in an Agricultural district require site plan review. In addition all special permits require site plan review. Site plan review and special permit review should be conducted jointly by the planning board.

### **SECTION 20 - Procedure**

A. Prior to the submission of a formal site plan, a pre-submission conference may be held wherein the applicant shall meet in person with the Code Enforcement Officer to discuss the proposed site plan so that the necessary subsequent steps may be undertaken with a clear understanding of the Town's requirements in matters relating to the development of the site.



B. Within six (6) months following the pre-submission conference, five (5) copies of the site plan and any related information shall be submitted to the Code Enforcement Officer, accompanied by a fee in accordance with the schedule of fees of the Town of St Johnsville, payable to the Town Clerk. If the application is not submitted within this six-month period, another pre-submission conference may be required. An Environmental Assessment Form, as required by the State Environmental Quality Review Act, shall also be submitted with the application.

C. The Code Enforcement Officer shall certify on each site plan or amendment whether or not the application is complete in accordance with the requirements of this section, and whether the plan meets the requirements of all land use law provisions other than those of this section, such as setbacks, number of parking spaces, etc. The Code Enforcement Officer shall act to certify the application or return it to the applicant for completion or revision within ten (10) days of submission by the applicant.

D. Following certification of a complete application, the Code Enforcement Officer shall forward the application to the Planning Board no later than ten (10) days prior to its next meeting.

E. The Planning Board may, at its discretion, hold a public hearing on the application. Said hearing shall be held within sixty-two (62) days of submission to the Planning Board of said complete application. The Planning Board shall give notice of the hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing. In addition, the applicant shall give notice in writing by certified mail, return receipt required to all property owners of the land immediately adjacent to, extending five hundred feet (500') therefrom, and directly opposite thereto, extending five hundred feet (500') from the street frontage of the land in said application. The applicant shall mail these notices at least ten (10) days in advance of the hearing and furnish the Planning Board with such Post Office receipts as have been received as of the date of such hearing.

F. The Planning Board shall make a determination of significance of the proposed site plan according to SEQR. The time limitations of paragraph H of this section shall not apply until the conclusion of the SEQR process.

G. Whenever any Site Plan involved real property in an area described in Section 239-m of the General Municipal Law, said Site Plan shall be referred to the County Planning Board, which Board shall report its recommendations to the Town Planning Board. Failure of the County

Planning Board to report within thirty (30) days may be construed to be approval.

The concurring vote a majority plus one of the Town Planning Board shall be necessary to override County Planning Board recommendations of approval with modification or disapproval. In the event that the County Planning Board recommends modifications or disapproval of a referred matter and the Town Planning Board acts to the contrary, the Town Planning Board shall file a report of its final action with the County Planning Board within seven (7) days after final action.

H. The Planning Board shall, within 62 days of the public hearing, if one is held, or within 62 days of the receipt of a complete site plan application either:

1. Approve the site plan if the Board finds that the plan meets the requirements of this law and any other applicable rules and regulations; or

2. Condition approval of the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be set forth in writing by the Board; or

3. Disapprove the site plan, the reasons for such action to be set forth in writing by the Board.

Failure to act by the Planning Board within the required time shall be deemed approval. Should the Planning Board need an additional amount of time to consider the application, then they may do so with the consent of the applicant. Said agreement shall be recorded in the minutes

I. Review of amendments to an approved site plan shall be acted upon in the same manner as the review of an original plan.

#### SECTION 21 - Enforcement

A. The Planning Board may require the posting of a bond or other similar performance guarantee to ensure compliance with the plan and stated conditions of approval. The Code Enforcement Officer may suspend any permit or license when work is not performed as required.

B. Any Special Permit issued under this section shall lapse within one year if a substantial use thereof has not commenced, except for good cause. The time required to pursue and await determination of a judicial appeal pursuant to Chapter 274-b of the Town Law shall be included within the one-year time limit.

C. The Planning Board may adopt additional detailed design guidelines and performance standards, as it deems necessary by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing shall be advertised once in a newspaper of general local circulation, at least seven (7) days prior to the hearing. Such standards and guidelines shall not become effective until adopted by the Town Board following a public hearing.

D. No topsoil, tree, shrubs or other vegetation shall be removed from the site until a site plan has been approved for the property in question.

## SECTION 22 - Submission Requirements (Does not apply to agricultural structures and single family residences)

A. The site plan shall include the following data, details and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan except in accordance with Section 21, B, below.

B. The Planning Board may waive any of the requirements of Section 21, C or D or parts thereof, prior to the submission of a formal site plan, when such requirements are not material to the project under review.

C. Site plans shall be prepared by a surveyor, registered professional engineer, architect, or landscape architect at a scale of one inch (1") equals twenty feet (20') or less, on standard 24" x 36" sheets, with continuation on 8 1/2 x 11" sheets as necessary for written information.

D. Items required for submission include:

1. Name of the project, boundaries, location maps showing site's location in the town, date, north arrow and scale of the plan. This title block shall be located in the lower right hand corner of the Site Plan.
2. Name and address of the owner of record, developer, and seal of the engineer, architect, surveyor or landscape architect.
3. Name and address of all owners of record of abutting parcels and those within five hundred feet (500') of the property line.

4. All existing lot lines, easements, and rights-of-way. Include areas in acres or square feet, abutting land uses, and the location and size of structures within five hundred feet (500') of the site.

5. The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and shown all exterior entrances, and all anticipated future additional and alterations.

6. The location of all present and proposed public and private way, parking areas, driveways, sidewalks, ramps, curbs, fences, paths, landscaping and walls. Location, type and screening details for all waste disposal containers shall also be shown.

7. The location, height, intensity and bulk type (e.g. fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.

8. The location, height, size, materials and design of all proposed signage.

9. The location of all present and proposed utility systems including:

- a. Sewage or septic systems
- b. Water supply system
- c. Telephone, cable and electrical systems
- d. Storm drainage system including existing and proposed drainage lines, culverts, catch basins, headwalls, end walls, hydrants, manholes, and drainage swales

The Planning Board may also require soil logs, soil profile analysis (deep hole test pits), percolation tests and storm water run-off calculations for large developments or developments in environmentally sensitive areas.

10. Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable. There shall be pre and post drainage

calculations for the site done by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site. The use of ponds, dry wells, etc. shall be used, but all sites shall have zero increase in runoff so as not to disturb neighboring properties.

11. Existing and proposed topography at five foot (5') contour intervals. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the 100-year floodplain, the area will be shown, and base flood elevations given. Indicate areas within site where ground removal or filling is required, and give its approximate volume in cubic yards.

12. A landscape plan showing all existing natural land features, trees, forest cover and water sources, and all proposed changes to these features, including size and type of plant material, and erosion control measure. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains, and drainage retention areas.

13. Zoning district boundaries within two hundred feet (200') of the site's perimeter shall be drawn and identified on the plan.

14. Traffic flow patterns within the site, entrances and exits, loading and unloading area, curb cuts on the site and within two hundred feet (200') of the site.

The Planning Board may require a detailed traffic study for large developments or for those in heavy traffic areas to include:

- a. The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic level;
- b. The projected traffic flow pattern including vehicular movements at all major intersections likely to be affected by the proposed use of the site;
- c. The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.

15. For new construction or alterations to any existing building, a table containing the following information must be included:

- a. Area of building to be used for a particular use such as retain operation, office, storage, etc.
- b. Maximum number of employees;
- c. Maximum seating capacity , where applicable;
- d. Number of parking spaces existing and required for the intended use
- e. Dimensions, materials, and designs of all structures

16. Elevation plans at a scale of 1/4" = 1' for all exterior facades of the proposed structures) and/or existing facades, plus addition(s) showing design features and indicating the type and color of materials to be used.

E. An Environmental Assessment Form (either a short or long form, depending upon the nature of the proposal) shall be submitted with the site plan to insure compliance with the New York State Environmental Quality Review Act (6 NYCRR 617), to identify the potential environmental, social, and economic impacts of the project.

#### SECTION 23 - Standards for Review

The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Pursuant to Section 20, Paragraph C, detailed design guidelines and performance standards may be adopted by the Planning Board to guide decisions with respect to these objectives, and to help ensure consistency in the review of all applications.

A. Land Classification

If project in consideration is to be located on agricultural land as defined on page 25 , on site inspection to determine impact on remaining portion of property must be carried out by LUO/CEO and or planning board. ( See Section 66, diagram 1)

A. Legal

Conformance with the provisions of the Local Laws and Laws of the Town, the Town Law of New York State, and all applicable rules and regulations of State and Federal agencies.

B. Traffic

Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.

C. Parking

Provision for off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic.

D. Public Services

Reasonable demands placed on public services and infrastructure.

E. Pollution Control

Adequacy of methods of sewage and refuse disposal and the protection from pollution of both surface waters and groundwater. This includes minimizing soil erosion both during and after construction.

F. Nuisances

Protection of abutting properties and town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, storm water runoff, etc.

G. Existing Vegetation

Minimize the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees.

H. Amenities

The applicant's efforts to integrate the proposed development into existing landscape through design features, such as vegetative buffers, roadside plantings, and the retention of open space and agricultural land.

I. Town Character

The building setbacks, area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding landscape and the natural landscape.

SECTION 24 - Consultant Review

In its review, the Planning Board may consult with the Town Building Inspector, Fire Commissioners, Highway Superintendent and other local and county officials, and its design private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation, the State Department of Environmental Conservation, and the NYS Department of Health. If a consultant is retained by the board, the developer shall agree to pay his/her fees. An estimate of his/her fees shall be provided at the beginning of the project. The developer will be required to pay one-third at this time, another third at the time of the public hearing and a final third before a decision is rendered by the Board.

SECTION 25 - Additional Requirements

The Planning Board may require such additional provisions and conditions that appear necessary for advancement of the public environment. Such shall include but shall not be limited to the following:

A. REIMBURSABLE COSTS: Reasonable costs incurred by the Planning Board for private consultation fees or other extra ordinary expense in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the fee required in the Town Schedule of Fees for site plan review.

B. PERFORMANCE GUARANTEE: No Certificate of Occupancy shall be issued until all improvements shown on the final site plan are installed or a performance guarantee, a letter of credit or a certificate of deposit has been posted for improvements not yet completed. Such performance guarantee, letter of credit or certificate of deposit shall be posted in accordance with procedures specified within Section 277 of the Town Law relating to subdivisions. Other requirements relating to performance guarantees may be established from time to time by the Town Board. The amount and sufficiency of such performance guarantee shall be established by the Planning Board after consultation with the Building Inspector, Attorney(s) for the Town and the Planning Board's designated consultants, or other competent persons.



C. INSPECTION OF IMPROVEMENTS: The Code Enforcement Office shall be responsible for the overall inspection of site improvements, including coordination with the Town's private consultants, as may be appropriate on multi-family residential, commercial and industrial projects.

## SECTION 26 - Appeals

APPEALS: Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning review of a site plan may bring a proceeding to review in a manner provided by Article Seventy-Eight of the Civil Practice Laws and Rules in a court of record.

## SECTION 27 - Special Permits

On application and after public notice and hearing by the Planning Board, said board may authorize, by resolution, the issuance of a special permit only for those uses in a district where this law requires such a permit. In authorizing the issuance of a special permit, the Planning Board shall take into consideration the public health, safety, and general welfare and shall prescribe appropriate conditions and safeguard to insure the accomplishment of the following objectives, unless otherwise provided all special permits shall be valid for a period as determined by the Planning Board.

### OBJECTIVES:

1. That all proposed structures, equipment, or material shall be readily accessible for fire and police protection.
2. That the proposed use is of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
3. That, in addition to the above, in the case of any use located in, or directly adjacent to a residential district:
  - a. The location size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access street 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 or incongruous with, the said residential

district or conflict with the normal traffic or the neighborhood and use of adjacent land and buildings or diminish the value thereof.

- b. The location and height of buildings and structures, the location, nature, and height of walls and fences, and the nature and extent of screening and landscaping on the site shall be such that the use will not hinder or discourage the appropriate development

**B. PROCEDURE:**

Since all special permits require site plan review, the procedure for a special permit shall be the same as specified for a site plan review, Section 17-25 except that a public hearing is mandatory. Site plan and special permit review should be conducted jointly to save time, effort, and repetition of information.

**C. CONDITIONS AND SAFEGUARDS:**

In authorizing the issuance of a special permit it shall be the duty of the Planning Board to attach such conditions and safeguards as may be required in order that the results of its action may, to the maximum extent possible, further the general objectives of this law. The Planning Board may require that special permitted uses be periodically renewed. Such renewal shall be granted allowing due public notice and hearings, and may be withheld only upon determination that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been, or are no longer being complied with.

In such cases, a period of 60 days will be granted the applicant for full compliance prior to the revoking of the said permit. Any use for which a special permit may be granted shall be deemed to be a conforming use in the district in which such use is located providing that:

- a. The provision in this law under which such exception was issued is still in effect.
- b. Such exception was issued in conformity with the provisions of this law.
- c. Such use shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.

D. APPEALS:

Any person or personal, jointly or severally aggrieved by any decision of the Planning Board concerning review of a special permit may bring a proceeding to review in a manner provided by Article Seventy-Eight of the Civil Practice Laws and rules in a court of record.

**ARTICLE VIII - SUPPLEMENTARY REGULATIONS**

**SECTION 28 - Access to Improved Street**

In any district, a lot to be used for building purposes shall have direct frontage on a improved street, or highway, or on a street in a subdivision plot approved by the Planning Board.

**SECTION 29 - Lots in Two Districts**

Where a district boundary line divides a lot in one ownership at the time of adoption of said district line, the regulation for either district may be used up to 100 feet into the other district provided the lot has the minimum required frontage on a street.

**SECTION 30 - Drive-In Food Services**

Any drive-in food service building shall be located 60 feet or more from any public right-of-way. Such businesses, where persons are served in automobiles, shall not be closer than 200 feet to a Residential District. Arrangements of ingress and egress of vehicles, lights, fences and screening shall be approved by the Planning Board in such a way as not to interfere with uses in the Residential District.

**SECTION 31 - Accessory Building: Number, Height and Location**

1. Number: On any lot intended or used primarily for residential purposes, an accessory building such as private garage for use in connection with the principal dwelling is permitted.
2. Height: Maximum height of accessory buildings shall be 25 feet, except that there shall be no height limitation on barns, silos and other farm structures.
3. Location: Accessory private garage buildings in Residential Districts which are not attached to a principal building may

be erected within the rear yard accordance with the following requirements:

(a) Rear Yard: Five feet from side or rear property line, except when abutting an alley, then 10 feet,

(b) Side Yard: Street side of corner lot - same as for principal building.

(c) Not closer to a principal or accessory building than 10 feet

(d) In any district, accessory buildings other than private garages shall comply with front and side yard requirements for the principal building to which they are accessory and shall be not closer to any rear property line than 10 feet.

4. Attached Accessory Building in Residence District: When an accessory building is attached to the principal building, it shall comply in all respects with the requirements of this law applicable to the principal building.

5. Maximum lot coverage is to include all principal and accessory structures

#### SECTION 32 - Mineral Extraction

In the N-P-Natural Products district, the mining of more than one thousand tons or seven hundred fifty cubic yards, whichever is less, of minerals from the earth within twelve successive calendar months shall require a New York State Department of Environmental Conservation (DEC) permit and approval. Local review by the planning board is not authorized. The Town Board will be sent a copy of the applicant's proposal and may make suggestions on ingress, egress and hours of operation, but final decisions are that of the DEC.

In the R-Residential, RR-Rural, A-Agricultural, C-Commercial, I-Industrial, and H-Historic Districts the mining of more than five hundred tons or three hundred seventy five cubic yards, whichever is less, of minerals from the earth within any twelve successive calendar months is prohibited.

## SECTION 33 - Junkyards

All junkyards, wrecking yards, or places for the collection of recoverable materials or inoperable equipment shall conform to the following requirements:

- A. All such yards, enclosures or areas used for such collection or storage shall be enclosed by a opaque fence, designed to obstruct view from outside, which is at least eight feet in height and entirely surrounds such yard or area.
- B. Materials shall not be collected or stored on a hillside of greater than 10 percent slope, on a floodplain, or within 100 feet of any stream bed.
- C. Materials stored and collected shall not be stacked or piled to a height greater than the closest eight-foot fence.
- D. Operation of junkyard is conditional upon the granting of an annual operating license from the Town Board in accordance with Section 136 of the General Municipal Law and this Section of this Law.
- E. The outdoor storage of two or more unregistered motor vehicles no longer intended or in condition for legal use, or major portions of such vehicles and/or a comparable quantity of inoperable machines, implements, or appliances, or two or more unregistered travel trailers or camping vehicles shall require licensing as a junkyard. The outdoor storage of one or more inhabitable mobile homes shall require licensing as a junkyard unless structures are in use for permitted nonresidential or accessory auxiliary uses.
- F. Inoperable agricultural equipment or machinery stored on an operating farm for further restoration or for use as a source of spare parts for other equipment in use on the farm shall not be subject to the above provisions of this Section but care should be taken as to not create an eyesore. LUO/CEO reserves right of judgment in this instance.

## SECTION 34 - Signs

Signs shall comply with the following regulations:

1. In R-1 and R-M Residential and H Historic, non-illuminated and non-advertising signs are permitted as follows:

- (a) One business sign, not to exceed an aggregate of twenty-four (24) square feet of sign area, showing the name or permitted home occupation of the occupant of the premises.
  - (b) One sign not to exceed an aggregate of twenty-four (24) square feet of sign area, during and pertaining to the sale, lease or rental, of the land or building.
  - (c) One temporary sign not to exceed an aggregate of twenty-four (24) square feet of sign area, during and pertaining to construction, repairs, or alterations to the property.
  - (d) Institutional or religious announcement sign, not to exceed sixty-four (64) aggregate feet in area.
  - (e) The above signs can be located in any required yard provided that the sign is setback at least fifteen (15) feet from the road right-of-way.
  - (f) Two farm product signs, each not exceeding sixty-four (64) aggregate feet in area, may be displayed on the property, but only when such products are on sale.
2. In A-Agricultural, C- Commercial, I-Industrial and N-P-Natural Products Districts, non-flashing, non-advertising signs are permitted as follows:

(a) A business sign or signs directing attention to a business or profession conducted, or a commodity, service or entertainment offered or sold on the premises shall be permitted. Such sign can be two sided with a maximum of thirty-two (32) square feet on each side. The size of the sign may increase if the road frontage, on which the sign is displayed, is over five hundred (500) feet. For each additional five hundred (500) feet of road frontage, the sign may increase twenty-five (25) square feet on each side with a maximum total of one hundred (100) square feet on each side. No such sign shall project into or over the public right-of-way. In the case of a retail store or other group of related buildings, in addition to the general sign, each individual unit may display an identification sign affixed flat against the building. Said sign may be a maximum of ten (10) percent of the vertical square feet of the side of the building it is attached to.

(b) If illuminated, the source of light shall not be visible.

(c) Non-illuminated real estate signs, not over sixteen (16) square feet in aggregate area, advertising the sale, rental or lease of the premises on which they are located are permitted, but not in any required yard.

3. For N-P-Natural Products Businesses advertising signs are permitted as follows:
- (a) Such sign shall be a maximum of 250 square feet.
  - (b) Only one advertising sign per lot is allowed.
  - (c) If illuminated, the source of light shall not be visible.

### SECTION 35 - Permanent Building Foundations

All dwellings, including One-family, Two-Family, Multiple-Family, Board or Rooming Houses, Mobile Homes, and Modular homes shall be placed upon a permanent foundation, except for mobile homes located within a mobile home court and temporary mobile homes permitted by special permit by the Planning Board.

### SECTION 36 - Vision Clearance at Intersections

No obstructions to vision, such as shrubbery, brush, trees, earth, or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center lines and a line drawn between points along such lines 20 feet distance from their point of intersection.

### SECTION 37 - Landscaping Requirements

- A. Where any permitted non-residential land use, multiple-family development or mobile home park abuts an existing residential parcel or vacant parcel where residential development could occur, a strip of land at least 20 feet wide shall be maintained as a landscaped area in the front, side and/or rear yard which adjoin these uses.
- B. Required landscaping shall be installed and maintained in a healthy growing condition and shall take the form of any or all of the following: shade trees, deciduous shrubs, evergreens, well-kept grassed areas or ground cover. In any case, all such landscaping shall be a minimum of four (4) feet in height.

## SECTION 38 - Corner and Through Lots

Front yard setbacks and minimum road frontages are required on both road fronts. The two remaining yards shall be designate by the applicant as to which will be the rear yard and which will be the side yard.

## SECTION 39 - Flag Lots

- A. The access strip of land shall be a minimum of 50 feet wide .
- B. The minimum lot area, lot width and lot depth requirements shall be met exclusively of the land contained in the access strip.
- C. Minimum front, side and rear setback requirements shall be met, excluding the narrow access strip.
- D. No more than one flag lot shall be served by a single access strip.
- E. Access strips shall be a minimum distance apart of at least the minimum lot width in the zoning district.
- F. Access strip shall not be a right-of-way, but shall be owned in fee title by the owner of the flag parcel.
- G. No more than 10 percent of the lots in a new residential subdivision approved after the date of the adoption of these zoning revisions shall be flag lots.

## SECTION 40 - Environmental Quality Review

The State Environmental Quality Review 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 are hereby adopted by reference.

## SECTION 41 - Dish Antennae

- A. All dish antennae over 36 inches shall be located in either the side or rear yards, unless the owner can prove his/her only "window of reception" is in the front yard. In the event that no "window of reception" is available on the ground, such antennae may be placed on the roof of the dwelling structure.



- B. The location and design of dish antennae shall minimize the visual impact on adjacent property as determined by the Code Enforcement Officer, appealable to the Zoning Board of Appeals.

## SECTION 42 - Exterior Lighting

In no case shall any exterior lighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots.

## SECTION 43 - Mobile Homes

Individual mobile homes shall be subject to all the regulations pertaining to detached, one-family dwellings, in addition to the following standards:

- A. The mobile home shall be provided with anchors or tie-downs at least at the corners, attached to concrete footing installed below the frost line or embedded in concrete runners or a concrete slab or a suitable substitute as deemed acceptable by the Building Inspector.
- B. The mobile home will be provided with skirts or screen the space between the mobile home and the stand. Such skirts shall be made of concrete block or a permanent material similar to that used in the mobile home and providing a finished exterior appearance, and shall be installed within four months from date of issuance of permit for the mobile home.
- C. Any construction or storage space, additional rooms or enclosed patios or carports shall have a finished exterior appearance. No exposed building paper, wallboard or other impermanent and unfinished material will be permitted.
- D. The mobile home shall bear the seal required by the State of New York or an equivalent acceptable to the State of New York.
- E. No additions shall be made to a mobile home except a canopy and/or porch open on three sides, or an addition made by the mobile home manufacturer and/or built in conformance with New York State uniform Fire Prevention and Building Code Regulations.
- F. All mobile homes installed in the Town shall meet current US Department of Housing and Urban Development (HUD) standards

and shall have a seal by HUD designating and verifying the age of the mobile home.

- G. All mobile homes installed in the town shall be less than ten years old.

#### SECTION 44 - Public Utility Facility Personal Wireless Service Facility

Public utility substations and similar structures, shall comply with the following:

- A. Facility shall be surrounded by a fence set back from property lines in conformance with district regulations for front, side and rear yards.
- B. Landscaped area at least 20 feet wide shall be maintained in front, side and rear yards.
- C. There shall be no equipment visible from surrounding property.
- D. Public Utility Services' line poles and attendant lines will be allowed, as necessary, in all districts.

#### SECTION 45 - Swimming Pools

- A. Accessory to Single Family Dwellings

Swimming pools, whether permanent or portable, having depth of at least two (2) feet, shall meet the front, rear, and side setback requirements.

- B. Accessory to Residential Developments

Swimming pools accessory to residential developments, whether clustered single-family dwellings, seasonal dwelling, bungalow colonies, camps or multi-family dwelling, shall be of permanent construction and shall be located not closer than 10 feet to any lot line and closer than 10 feet to any dwelling unit and shall meet the setback of the existing house.

- C. Non-Residential

Swimming pools that are part of non-residential uses, whether commercial or non-commercial, such as hotels, motels, clubs, campgrounds, day-use recreational facilities or institution, shall

be of permanent construction and shall be located not closer than the setback requirements for the district in which it is located.

D. Fencing

Fencing of swimming pools shall comply with the New York State Uniform Fire Prevention and Building Construction Code requirements.

SECTION 45.1 Adult Oriented Businesses Overlay

- A. Adult Oriented Businesses have secondary effects that can have a significant impact on the neighborhood and community in which they are located, particularly when concentrated in any one area. The special regulations deemed necessary to regulate these secondary effects are set forth below. The primary purpose of these regulations is to preserve the community character and quality of life in the Town of St. Johnsville. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the contact of any communicative materials, or to deny access by adults to Adult Oriented Businesses.
- B. No Adult Oriented Business shall be located within one thousand (1000) feet of the property line of the parcel of land upon which any residence is located.
- C. No Adult Oriented Business shall be located within one thousand (1,000) feet of the property line of the parcel of land upon which any school, child care facility, church or other place of religious worship, public or private park, playground or playing field, bike path, cemetery, youth center or library, is located.
- D. No Adult Oriented Business shall be located within one thousand (1000) feet of the Town of St. Johnsville municipal boundary.
- E. No Adult Oriented Business shall be located on the same parcel as another Adult Oriented Business, or within one thousand (1000) feet of the property line of the parcel of land upon which any other Adult Oriented Business is located.
- F. Any building or structure in which an Adult Oriented Business is located may have one exterior sign limited to text to identify the name and purpose of said business, and conforming to all sign regulations in Article VIII Section 34 of this law. In addition, no

interior sign, display or advertising of any kind shall be visible from the exterior of such building.

## **ARTICLE IX - OFF STREET PARKING AND LOADING**

### **SECTION 46 - Automobile Parking Facilities**

Where one or more motor or other vehicle recurrently parks by reason of the use and occupancy of the premises, there shall be provided on or in convenient connection therewith adequate garage or vehicular parking spaces for the number and in proportion to the vehicular parking spaces for the number and in proportion to the size of the vehicles which so park, the minimum to be not less than one hundred eighty square feet per automobile, in addition to driveway and backing and turning space. The recurrent parking of any such vehicle shall be evidence of the failure to provide adequate and suitable garage or parking source on or in convenient connection with such premises.

Parking requirements for certain uses are specified in Schedule B. For uses not specified, the Board of Appeals shall establish parking requirements, after recommendation of the Planning Board.

For any building having more than one use, parking shall be required for each use.

### **SECTION 47 - Off-Street Loading Facilities**

Off-street loading facilities shall be provided for each commercial or industrial establishment hereafter erected or substantially altered and shall be so arranged as not to interfere with pedestrian or motor traffic on the public street or highway.

Loading space requirements for certain uses are specified in Schedule B. For uses not specified, the Board of Appeals shall establish loading requirements, after recommendation of the Planning Board.

Loading requirements apply to each separate occupancy and are exclusive of driveways, aisles and other necessary circulation areas.

## SCHEDULE B - OFF-STREET PARKING & LOADING

PARKING	SPACES REQUIRED
1. Dwelling	2 spaces for each dwelling unit or 1 1/2 space per dwelling w/3+ units
2. Rooming house, Tourist home, Hotel, motel	1 space for each guest room
3. Administrative, Professional, utility, Governmental office or Eleemosynary (charitable Institution)	1 space for each 400 square ft of floor space
4. Funeral Home	10 spaces, plus space for all employees and resident personnel
5. Church	1 space for each 3 seating spaces in main assembly room
6. Elementary School	2 spaces for each classroom
7. High School	4 spaces for each classroom
8. Theater or other place	1 space for each 2 seating spaces of assembly plus one for each employee
9. Hospital	3 spaces for each bed
10. Nursing or convalescent Home	1 space or each 4 beds plus one for each staff member (max. shift)

- |  |   |
|--|---|
| 11. Retail store or bank                                       | 3 spaces for each 300 square feet of floor space devoted to customer use                |
| 12. Clubs or Restaurants<br><br>max.                           | 1 space for each two customers seats plus 1 for each employee based on working shift    |
| 13. Bowling Alley  | 5 spaces for each alley plus one for each employee, max. shift                          |
| 14. Wholesale, storage, freight square terminal or utility use | 1 space for each 1,000 feet of gross floor area   |
| 15. Industrial   | 1 space for each two employees for manufacturing use based on the maximum working shift |
| 16. Home Occupation patient                                    | 1 space for each client or  |

**OFF-STREET LOADING USE**

**SPACES REQUIRED**

- |                                    |   |
|------------------------------------|---|
| 1. All commercial use<br><br>floor | 1 space for five thousand (5,000) SF or more gross area, plus 1 space for each additional six thousand (6,000) SF gross floor area      |
| 2. All industrial use              | 1 space for five thousand (5,000)SF or more gross floor area, plus 1 space for each additional six thousand (6,000) SF gross floor area |
| 3. Institution                     | 1 space for five thousand (5,000)SF or more gross floor area, plus 1 space for each additional six thousand (6,000) SF gross floor area |

4. Hospital

1 space for five thousand (5,000)SF or more gross floor area, plus 1 space for each additional six thousand (6,000) SF gross floor area

5. Hotel

1 space for five thousand (5,000)SF or more gross floor area, plus 1 space for each additional six thousand (6,000) SF gross floor area

## ARTICLE X - NON-CONFORMING USES

### SECTION 48 - Continuation of Non-Conforming Uses

The lawful use of any land or building existing at the time of adoption of this Law may be continued although such use does not conform with the provisions of this Law. Any such building may be reconstructed or structurally altered and the non-conforming use thereby changed, provided the following conditions prevail:

### SECTION 49 - Non-Conforming Uses of Buildings

1. Reconstruction or Alteration A non-conforming building may not be reconstructed or altered during its life to exceed fifty (50) percent of its fair value, unless such building is changed from a non-conforming use to a conforming use as defined by this Law, except that a mobile home which is a pre-existing non-conforming use may be replaced with a new or larger mobile home, provided that such exchange is made within 30 days, and the owner has obtained a building permit to make the exchange.
2. Restoration A building, non-conforming as to use, which has been damaged by fire or other causes to the extent of seventy-five (75) percent of its fair value, and has not been repaired or reconstructed for the same non-conforming use within a period of twelve (12) months, shall not be repaired or reconstructed except in conformance with the regulations of the District in which such building is located.
3. Discontinuance When a non-conforming use has been discontinued for a period of twelve (12) months, any future use of such building shall conform with the regulation for the District in which it is located.
4. Changes A non-conforming use may not be changed to another non-conforming use under the provisions of this Section.
5. Completion of Building Any building lawfully under construction at the time of enactment of this Law may be completed.



## SECTION 50 - Non-Conforming Use of Land

The non-conforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of adoption of this Law. A non-conforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such non-conforming use at the time of adoption of this Law. If a non-conforming use of land is discontinued for a period of twelve (12) consecutive months, it shall not be renewed, and any subsequent use of the land shall conform to the regulations of the district in which the land is located.

## **ARTICLE XI - ADMINISTRATION**

### SECTION 51 - Enforcement

This law shall be enforced by the Enforcement Officer designated by the Town Board. The Enforcement Officer shall in no case grant any building permit where the proposed erection, alteration, relocation, or use would be in violation of any provision of this Law. The Enforcement Officer shall make inspections of buildings or premises necessary to carry out his duties. No permit or certificate of occupancy required hereunder shall be issued by the Enforcement Officer except in compliance with the provisions of this Law or as directed by the Board of Appeals under the provisions of ARTICLE XII.

### SECTION 52 - Building Permit

1. No building shall hereafter be erected, relocated or altered as to outside dimensions or so as to permit a change in its use and no excavation for any building shall be begun unless and until a permit therefore has been issued by the Enforcement Officer.
2. No such permit shall be issued until there has been filed with the Enforcement Officer a sketch or plot plan showing the actual dimensions and angles of the lot to be built upon, the exact size and location of the building or accessory buildings to be erected, relocated or altered and such other information of this law. Each application shall state the purpose for which the structure of land is to be used and a general description of the type of construction. A working drawing of any proposed building shall be filed with the application for a building permit.

3. The Enforcement Officer shall act upon all applications for building permits within a reasonable time not to exceed 10 days, and shall, within such period, issue or refuse to issue such permits. Notice of refusal to issue any permit shall be given to the owner or to his authorized representative in writing, and shall state the reason for said refusal. The fee for any such permit shall be determined by the Town Board from time to time.

4. Permits will not be necessary to minor repairs, patios, sheds, porches, painting, plumbing, above ground swimming pools, corncribs, new roofs and other small buildings, provided they conform to the present use of the land or buildings, as provided for in this Law. All in ground swimming pools shall require a building permit.

5. A building permit shall be issued for a period of one year and may be renewed for two additional years. If the improvements described in the application for a building permit have not been completed within three years from the date that the permit is issued, the owner shall apply to the Zoning Board of Appeals to continue the permit in force.

6. No building permit shall be issued for lots in an approved subdivision except as provided for in the subdivision regulations.

#### SECTION 53 - Certificate of Occupancy

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 occupancy shall has been issued by the Enforcement Officer. Under such rules as may be established by the Board of Appeals, a temporary certificate of occupancy for not more than 30 days for a part of a building may be issued by the Enforcement Officer. For previously existing construction, the Enforcement Officer may, on request, issue such certificate if he determines that the use of the building in question meets the requirements of the law.

A certificate of occupancy shall be issued only if the proposed use and construction of the building or land conforms to the provisions of this law and to the plot plan, purpose and description of which the permit was issued. The Enforcement Officer shall make or cause to have made and inspection of each building or lot for which a certificate of occupancy has been applied before issuing such certificate. Such inspection shall be made within ten (10) days from the date of application, Saturday, Sundays and legal holidays excepted.

The Enforcement Officer shall deny a certificate of occupancy if any violation of the State or County Health regulations is discovered. The issuance of a Certificate of Occupancy shall not be construed as a representation by the Town that the premises comply with such health Regulations, but solely that no violations have been found.

#### SECTION 54 - Violations

1. Any person, firm or corporation who commits an offense against, disobeys, neglects or refuses to comply with or resists the proper enforcement of any of the provisions of these regulations shall, upon conviction, be deemed guilty of a violation, punishable by a fine of \$350.00, or by imprisonment not exceeding twenty (20) days, or by both such fine and imprisonment. Each week an offense is continued shall be deemed a separate violation of these regulations.

2. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained; or any building, structure or land is used; or any land is divided into lots, blocks, or sites, In violation of this Law, the Town Board or the Code Enforcement Officer may institute an action or proceeding in the Town Justice Court or In the County Court, Montgomery County, to prevent such unlawful conduct; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about subject premises. In any such action by the Town Board or the Code Enforcement Officer, any person found to have violated the law shall be liable to the Town.

### **ARTICLE XII - ZONING BOARD OF APPEALS**

#### SECTION 55 - Creation, Appointment and Organization

A Land Use Board of Appeals is hereby created. Said Board shall consist of five members appointed by the Town board. The Town Board shall also designate the Chairman. The Zoning Board of Appeals shall prescribe rules for the conduct of its affairs.

## SECTION 56 - Powers and Duties

The Zoning Board of Appeals shall have all the powers and duties prescribed as by statute and by this Law, which are more particularly specified as follows:

1. Interpretation: Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
2. Appeals for Variances: The Zoning Board of Appeals shall hear requests for variances. Not all requests for variances need include a denial from the Code Enforcement Officer. New State laws passed in 1993 allow applicants with proposed subdivisions or site plans which lack minimum area, frontage or setback requirements to appeal directly to the Zoning Board of Appeals.
3. Area variances: Area variances may be granted where setback, frontage, lot size, density or yard requirements of this law cannot be reasonably met. In making decisions, 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 Zoning Board of Appeals 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 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 deems necessary and adequate and yet at the same time which will preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Use Variance: Use variances may be granted by the ZBA for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulation.

No such variance shall be granted by a Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have cause unnecessary hardship. The applicant shall demonstrate to the Zoning Board of Appeals that:

- a. Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established 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 of 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.

5. Procedure:

- a. All applications for variances shall be in writing on forms established by the Zoning Board of Appeals. They are available from the Code Enforcement Officer;

- b. Every application shall refer to the specific provision of the law involved and establish the details of why the variance should be granted;

- c. Upon receipt of the completed application, the Zoning Board of Appeals shall:

- 1) Schedule a public hearing within 62 days;

2) Arrange publication of notice of public hearing in the Town's official newspaper;

3) Notify the applicant of the date of the public hearing at least 15 days in advance of such hearing;

4) All use variances submitted to the Zoning Board of Appeals shall be referred to the Planning Board for review as to the conformance with the objectives of the Comprehensive Plan. No decision shall be made by the Zoning Board of Appeals until such Planning Board review has been completed and a report issued. If the Planning Board fails to issue its report within 30 days, the Zoning Board of Appeals shall assume that a favorable report has been issued;

5) Refer application to the County Planning Board as required by General Municipal Law Section 239, if required;

6) Determine whether a Draft Environmental Impact Statement should be required.

d. The applicant shall notify by certified mail, return receipt required, all landowners within 500 feet of the applicant's parcel.

e. Within 62 days of the close of the Public Hearing, the Zoning Board of Appeals shall render a decision. If the matter was referred to the County Planning Board, a copy of the Zoning Board of Appeals' findings and decision must be sent to the County Planning Board.

f. Every decision of the Zoning Board of Appeals shall be by resolution, each of which will contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the Town Clerk by case number under one or another of the following headings: Interpretations, Use Variances and Variance Variances; together will all documents pertaining thereto. The Zoning Board of Appeals shall notify the Town Board of each variance granted under the provisions of this law.

## **ARTICLE XIII - AMENDMENTS**

### **SECTION 57 - Amendments, How Initiated**

The Town Board may, from time to time, on its own motion, amend, supplement, repeal or change the regulations or district boundaries established by this law.

Whenever the owners of fifty (50) percent or more of the frontage in any district or part thereof included in such change shall present a petition duly signed and acknowledged the Town Board requesting an amendment, supplement or change of the regulations prescribed for such district or part thereof, it shall be the duty of the Town Board to vote upon said petition within ninety (90) days after the filing of the same by the petitioners with the Town Clerk.

The Planning Board may, by resolution, propose an amendment to the Town Board suggesting a change or repeal of specific portions of the regulation. Within ninety (90) days from the time such resolution is filed with the Town Clerk it shall be the duty of the Board to vote on such proposed amendment.

### **SECTION 58 - Referral of Amendments to Town Planning Board**

All proposed amendments, supplements or change originating by petition, or by motion of the Town Board, shall be referred to the Town Planning Board for a report and recommendation thereon. The Town Planning Board shall submit its report within forty-five (45) days after receiving referral. Failure of the Planning Board to report within the required time may be deemed to be approval of the proposed amendment.

### **SECTION 59 - Hearing on Proposed Amendment**

Before any amendment, supplement or change in the regulations or district boundaries, there shall be a public notice and hearing thereon as provided by law. The notice of hearing shall be published in the official newspaper at least ten (10) days prior to the hearing. Such hearing may be held by the Town Board, by a committee of the Board, or by the Planning Board on request of the Town Board.

## SECTION 60 - Adoption of Amendment

After the public hearing, and referral to and report by the Planning Board, a majority vote of the members of the Town Board shall be required to amend the Land use law except as described in Section 61 Protect Petition.

## SECTION 61 - Protect Petition

If a protect against a proposed amendment, supplement or change is presented to the Town Board, duly signed and acknowledged by the owners of twenty (20) percent or more of the area of the land included in such proposed change, or by the owners of twenty (20) percent or more of the land immediately adjacent extending one hundred (100) feet therefrom, or by the owner of twenty (20) percent or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of three fourths of the Town Board.

## **ARTICLE XIV - MISCELLANEOUS**

### SECTION 62 - Periodic Review of Land use law

From time to time, at intervals of not more than three (3) years, the Planning Board shall re-examine the provisions of this 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 the general welfare.

### SECTION 63 - Validity

The validity of any section or provision of this law shall not invalidate any other section or provision thereof.

### SECTION 64 - Interpretation

In their interpretation and application, the provisions of this law shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare. Whenever the requirements of this law are at variance with the requirements of any other lawfully adopted rules, regulations or laws, the more restrictive, or that imposing the high standard shall govern.

### SECTION 65 - When Effective

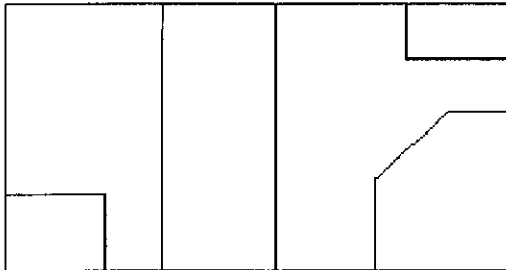
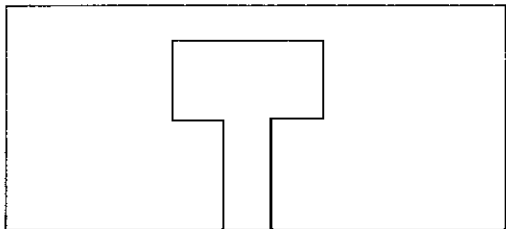
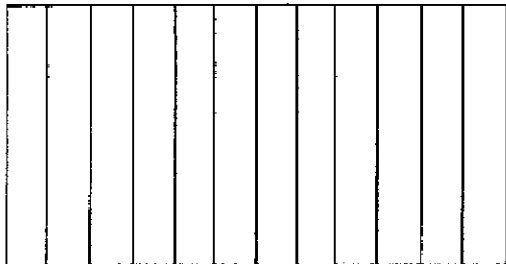
This law shall take effect in accord with Section 264 of the Town Law.



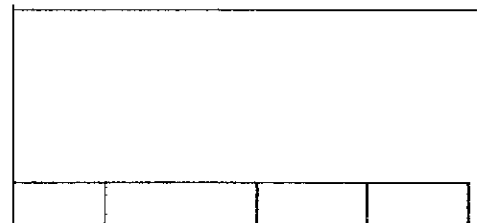
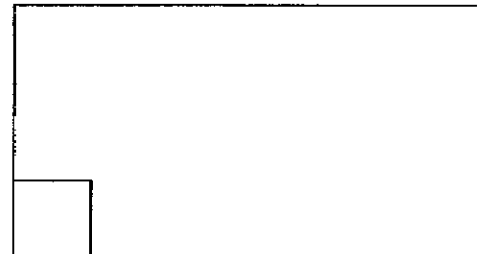
SECTION 66 – Diagrams

Diagram 1- Agricultural Land Preference

UNDESIRABLE SUBDIVISIONS for Agricultural Land  
These configurations do not maximize usable agricultural land left after proposed subdivision and should be avoided.



DESIRABLE SUBDIVISIONS for Agricultural Land  
These configurations maximize usable agricultural land left after proposed subdivision.



If any A-Agricultural District land is sold, developed, or taken out of production for any reason, no more than 10% of original parcel can be developed. The remaining 90% must be used or made available for agricultural use.(industrial district exempt) All A –Agricultural land must at a minimum be clipped or mowed yearly so as to prevent brush and or trees from growing rendering the land useless for agricultural practices. (Industrial district not exempt)

# Section 67- Schedule A- Land Use Chart

Districts	Principle Permitted Uses	Special Permit Permitted Uses	Minimum Area Feet or Acres	Minimum Lot Size Width	Minimum Living Area	Max Height Stories...Feet	Yard Dimensions Minimum in Ft		
							Front	Side	Rear
R- Residential	refer to page 24	refer to page 24	1.5 acre	150	900	3...45	50	20	50**
A- Agricultural	refer to page 26	refer to page 26	1 acre *	150	900	3...45	50	15	40**
C- Commercial	refer to page 29	refer to page 30	1 acre	150	900	4...55	40	15	30**
I- Industrial	refer to page 32	refer to page 33	2 acre	200		5...60	50	40	75**
RR- Rural	refer to page 28	refer to page 28	1 acre	150	900	3...45	50	15	30**
N-P Natural Products	refer to page 34	refer to page 34	2 acre	200		4...60	100	100	100

\* In Agricultural district maximum allowed lot acreage for single family residence is 2.00 acres.

\*\* If back of non-residential building has no points of entry (excluding windows) and property abuts vacant non residential property this minimum can be waived at the discretion of the CEO/LUO to a minimum not less than 5 ft. if an on site inspection warrants such action and just cause is given for such action.

# Appendices and Amendments

The following sections may contain their own list of definitions. These definitions refer to subsequent section only and take precedent over any other given definition in this document. In the event no definition is given, Section 4 of the general document will be used.

Town of St. Johnsville

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Land Use Law

April 2010

# Appendix A

## THIS SECTION ADDRESSES THE REGULATING AND SITING OF TELECOMMUNICATIONS TOWERS, ANTENNAE AND RELATED FACILITIES

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Section 3. Severability.

Section 4. Definitions.

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Telecommunications Towers.

Section 6. Special Use Permit Application and Other Requirements

Section 7. Location of Telecommunications Towers.

Section 8. Shared use of Telecommunications Tower(s).

Section 9. Height of a Telecommunications Tower

Section 10. Visibility of a Telecommunications Tower

Section 11. Security of Telecommunications Towers

Section 12. Signage

Section 13. Lot Size and Setbacks

Section 14. Retention of Expert Assistance and Reimbursement by Applicant

Section 15. Exceptions from a Special Use Permit for a Telecommunications Tower.

Section 16. Public Hearing Required

Section 17. Acting on an Application for a Special Use Permit for a  
Telecommunications Tower.

- Section 18. Recertification of a Special Use Permit for a Telecommunications Tower.
- Section 19. Extent and Parameters of Special Use Permit for a Telecommunications Tower.
- Section 20. Application Fee.
- Section 21. Performance Security
- Section 22. Reservation of Authority to Inspect Telecommunications Towers
- Section 23. Annual NIER Certification.
- Section 24. Liability Insurance
- Section 25. Indemnity.
- Section 26. Fines
- Section 27. Default and/or Revocation.
- Section 28. Circumstances Resulting in the Removal of a Telecommunications Tower.
- Section 29. Relief
- Section 30. Periodic Regulatory Review by the Board.
- Section 31. Adherence to State and/or Federal Rules and Regulations.
- Section 32. Conflict with Other Laws
- Section 33. Effective Date.
- Section 34. Authority.

## **Section 1. PURPOSE AND LEGISLATIVE INTENT.**

THE TELECOMMUNICATIONS ACT OF 1996 AFFIRMED THE TOWN OF ST. JOHNSVILLE'S AUTHORITY CONCERNING THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF TELECOMMUNICATIONS TOWERS. THE TOWN BOARD OF THE TOWN OF ST. JOHNSVILLE FINDS THAT TELECOMMUNICATIONS TOWERS AND RELATED FACILITIES MAY POSE A UNIQUE HAZARD TO THE HEALTH, SAFETY, PUBLIC WELFARE AND ENVIRONMENT OF THE TOWN OF ST. JOHNSVILLE AND ITS INHABITANTS. THE TOWN ALSO RECOGNIZES THAT FACILITATING THE DEVELOPMENT OF WIRELESS SERVICE TECHNOLOGY CAN BE AN ECONOMIC DEVELOPMENT ASSET TO THE TOWN AND OF SIGNIFICANT BENEFIT TO THE TOWN AND ITS INHABITANTS. IN ORDER TO INSURE THAT THE PLACEMENT, CONSTRUCTION OR MODIFICATIONS OF TELECOMMUNICATIONS TOWERS AND RELATED FACILITIES IS CONSISTENT WITH THE TOWN'S LAND USE POLICIES, THE TOWN IS ADOPTING A SINGLE, COMPREHENSIVE, TELECOMMUNICATIONS TOWER APPLICATION AND PERMIT PROCESS. THE INTENT OF THIS LAW IS TO MINIMIZE THE NEGATIVE IMPACT OF TELECOMMUNICATIONS TOWERS, ESTABLISH A FAIR AND EFFICIENT PROCESS FOR REVIEW AND APPROVAL OF APPLICATIONS, ASSURE AN INTEGRATED, COMPREHENSIVE REVIEW OF ENVIRONMENTAL IMPACTS OF SUCH FACILITIES, AND PROTECT THE HEALTH, SAFETY AND WELFARE OF TOWN OF ST. JOHNSVILLE.

## **Section 2. Title.**

This Law (Appendix A of the St Johnsville Land Use Law) may be known and cited as the Telecommunications Tower Siting and Special Use Permit Law for the Town of St. Johnsville.

## **Section 3. Severability.**

- A) If any word, phrase, sentence, part, Section, Subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, Section, Subsection, or other portion, or the proscribed Application thereof shall be severable, and the remaining provisions of this Law, and all applications thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any special use permit issued under this law shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon election by the Board

## **Section 4. Definitions.**

For purposes of this Law, and where not inconsistent with the context of a particular Section, the defined terms, phrases, words, abbreviations, and their

derivations shall have the meaning given in this Section (Appendix A). When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility or Structure"** means an accessory facility or structure serving or being used in conjunction with a Telecommunications Tower, and located on the same property or lot as the Telecommunications Tower, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **"Applicant"** means and shall include any individual, corporation, estate, trust partnership, joint stock company, association of two (2) or more persons, limited liability company, or entity submitting an Application to the Town of St Johnsville for a Special Use Permit for a Telecommunications Tower.
3. **"Application"** means the form approved by the Board, together with all necessary and appropriate documentation that an Applicant submits in its request to receive a Special Use Permit for a Telecommunications Tower.
4. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited to radio, television, cellular, paging, personal Telecommunications services (PCS), and microwave Telecommunications.
5. **"Board"** means the Town of St. Johnsville/Planning Board, which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a Telecommunications Tower must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for Telecommunications Towers. The Board may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for Telecommunications Towers.
6. **"Break point"** means the location on a Telecommunications Tower which, in the event of a failure of the Telecommunications Tower, would result in the Telecommunications Tower falling or collapsing within the boundaries of the property on which the Telecommunications Tower is placed.
7. **"Camouflaged Tower"** means any Tower or supporting structure that, due to design, location,



or appearance, partially or completely hides, obscures, conceals, or otherwise disguises the presence of the Tower and one or more Antennas or Antenna arrays affixed thereto.

8. "**Collapse zone**" means the area in which any portion of a Telecommunications Tower could or would fall, collapse or plunge to the ground or into a river or other body of water. The collapse zone shall be no less than the lateral equivalent of the distance from the Break point to the top of the structure plus ten feet, such being not less than one-half (1/2) the height of the structure.
9. "**Collocation**" means the use of the same telecommunications tower or structure to carry two or more antennae for the provision of wireless services by two or more persons or entities.
  10. "**Commercial Impracticability**" or "**Commercially Impracticable**" shall have the meaning in this Law and any Special Use Permit granted hereunder as is defined and applied under the New York Uniform Commercial Code (UCC).
  11. "**Completed Application**" means an Application that contains all information and/or data necessary to enable the Board to evaluate the merits of the Application, and to make an informed decision with respect to the effect and impact of the Telecommunications Tower on the Town in the context of the permitted land use for the particular location requested.
  12. "**County**" means the New York State county in which the Town, Village or City is physically located.
  13. "**Direct-to home satellite services**" or "**Direct Broadcast Service**" or "**DBS**" means only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.
  14. "**EAF**" means the Environmental Assessment Form approved by the New York Department of Environmental Conservation.
  15. "**EPA**" means State and/or Federal Environmental Protection Agency or its duly assigned successor agency.
  16. "**FAA**" means the Federal Aviation Administration, or its duly designated and authorized successor agency.
  17. "**FCC**" means the Federal Telecommunications Commission, or its duly designated and authorized successor agency.
  18. "**Free standing Tower**" means a Tower that is not supported by guy wires and ground anchors or other means of attached or external support.

19. "**Height**" means, when referring to a Tower or structure, the distance measured from the preexisting grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
20. "**NIER**" means Non-Ionizing Electromagnetic Radiation
21. "**Person**" means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or governmental entity.
22. "**Personal Wireless Facility**" - See definition for Telecommunications Tower'.
23. "**Personal Wireless Services**" or "**PWS**" or "**Personal Telecommunications Service**" or "**PCS**" shall have the same meaning as defined and used in the 1996 Telecommunications Act.
24. "**Site**" See definition for Telecommunications Tower.
25. "**Special Use Permit**" means the official document or permit by which an Applicant is allowed to construct and use a Telecommunications Tower as granted or issued by the municipality.
26. "**State**" means the State of New York.
27. "**Telecommunications**" means the transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and Other electronic or electromagnetic systems.
28. "**Telecommunications Tower**" or "**Tower**" or "**Site**" or "**Personal Wireless Facility**" means a structure or location designed, or intended to be used, or used to support Antennas. It includes without limit, free standing Towers, guyed Towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to structures such as a church steeple, silo, water Tower, sign or other similar structures intended to mitigate the visual impact of an Antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal Telecommunications services, or microwave Telecommunications, but excluding those used exclusively for fire, police and other dispatch Telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar Telecommunications that do not exceed height limitations addressed elsewhere in Town regulations.
29. "**Telecommunications Structure**" means a structure used in the provision of services described in the definition of Telecommunications Tower\*.

30. "**Temporary**" means in relation to all aspects and components of this Law, something intended to, or that does, exist for fewer than ninety (90) days.
31. "**Town**" means the Town of St. Johnsville, New York.

### **Section 5. Overall Policy and Desired Goals for Special Use Permits for Telecommunications Towers.**

- A) In order to ensure that the placement, construction, and modification of Telecommunications Towers conforms to the Town's land use code or Law, the Board creates a Special Use Permit for a Telecommunications Tower. As such, the Board adopts an overall policy with respect to a Special Use Permit for a Telecommunications Tower for the express purpose of achieving the following goals:
- 1) implementing an Application process for person(s) seeking a Special Use Permit for a Telecommunications Tower;
  - 2) establishing a policy for examining an application for and issuing a Special Use Permit for a Telecommunications Tower that is both fair and consistent with the current land use code or Law of the Town;
  - 3) establishing reasonable time frames for granting or not granting a Special Use Permit for a Telecommunications Tower, or recertifying or not recertifying, or revoking the Special Use Permit granted under this Law.
  - 4) promoting and encouraging, wherever possible, the sharing and/or collocation of a Telecommunications Tower among service providers;
  - 5) promoting and encouraging, wherever possible, the placement of a Telecommunications Tower in such a manner as to cause minimal disruption to aesthetic considerations of the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such a Telecommunications Tower.

### **Section 6. Special Use Permit Application and Other Requirements**

- A) All Applicants for a Special Use Permit for a Telecommunications Tower shall comply with the requirements set forth in this section.
- B) Any Application for a Special Use Permit for a Telecommunications Tower shall be signed by an officer of the *Applicant* attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall acknowledge the Application and verify that they are aware of the Application and are aware that the Town may deny the Application or issue a permit with conditions. At the discretion of the Board, any raise statement regarding the requirements of this Section may subject the Applicant to denial of the Application without further consideration or opportunity for correction.
- C) Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board as invalid without prejudice to the resubmission by an applicant of an appropriate and complete Application.
- D) The Applicant shall state in writing:
  - 1) that the applicant's proposed Telecommunications Tower will be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, laws, and regulations, including any and all applicable County, State and Federal laws, rules, and regulations;
  - 2) that the construction of the Telecommunications Tower is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in New York State.
- E) No Telecommunications Tower shall be installed or constructed until the site plan is reviewed and approved by the Board. The site plan Application shall include, in addition to the other requirements for the Special Use Permit under applicable Municipal Code, the following additional information:

All applications for the construction or installation of a new Telecommunications Tower shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the State and shall contain the following information. Where this Section calls for certification, such certification shall be by a qualified New York State licensed Professional Engineer acceptable to the Town, unless otherwise noted.

- 1) Name and address of person preparing the report;
- 2) Name and address of the property owner, operator, and Applicant, to include the legal form of the Applicant;
- 3) Postal address and sheet, block, and lot or parcel number of the property;
- 4) Zoning District or designation in which the property is situated;
- 5) Size of the property stated both in square feet and lot line

- dimensions, and a diagram showing the location of all lot lines;
- 6) Location of nearest residential structure;
  - 7) Location of nearest habitable structure;
  - 8) Location of all structures on the property which is the subject of the Application;
  - 9) Location, size and height of all proposed and existing antennae and all appurtenant structures;
  - 10) Type, size and location of all proposed and existing landscaping;
  - 11) The number, type and design of the Telecommunications Tower(s) Antenna(s) proposed and the basis for the calculations of the Telecommunications Tower's capacity to accommodate multiple users;
  - 12) The make, model and manufacturer of the Tower and Antenna(s);
  - 13) A description of the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
  - 14) The frequency, modulation and class of service of radio or other transmitting equipment;
  - 15) Transmission and maximum effective radiated power of the Antenna(s);
  - 16) Direction of maximum lobes and associated radiation of the Antenna(s);
  - 17) Applicant's proposed Tower maintenance and inspection procedures and related system of records;
  - 18) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC, though the certifying engineer need not be approved by the Town;
  - 19) Certification that the proposed Antenna(s) will not cause interference with existing telecommunications devices, though the certifying engineer need not be approved by the Town;
  - 20) A copy of the FCC license applicable to the use of the Telecommunications Tower;
  - 21) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Telecommunications Tower on the proposed site, though the certifying engineer need not be approved by the Town;
  - 22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.
  - 23) Applicant shall disclose in writing any agreement in existence prior to submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunications Tower that it constructs.

F) In the case of a new Telecommunications Tower, the Applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing Telecommunications Tower(s). Copies of written requests and responses for shared use shall be provided to the Board.

- G) Certification by a licensed engineer that the Telecommunications Tower and attachments both are designed and constructed ("As Built") to meet all County, State and Federal structural requirements for loads, including wind and ice loads;
- H) Certification by a licensed engineer that the Telecommunications Tower is designed with a break point that would result in the Telecommunications Tower falling or collapsing within the boundaries of the property on which the Telecommunications Tower is placed;
- I) After construction and prior to receiving a Certificate of Compliance, the Applicant shall have certified by a licensed engineer that the Telecommunications Tower and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J) The Applicant shall submit a completed long form EAF and a completed Visual Environmental Assessment form (visual EAF addendum). The Board may require submission of a more detailed visual analysis based on the results of the Visual EAF. Applicants are encouraged to seek pre-application meetings with the Board to address the scope of the required visual assessment
- K) A Visual Impact Assessment is required and shall include:
- 1) A "Zone of Visibility Map" which shall be provided in order to determine locations where the Tower may be seen.
  - 2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; 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. If requested by the Applicant, the Board, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-submission conference.
  - 3) An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- L) Any and all representations made to the Board, on the record, during the Application process, whether written or verbal, shall be deemed a part of the Application and will be relied upon in that context and in good faith by the Board.
- M) The Applicant shall effectively screen from view its proposed Telecommunications Tower base and all related facilities and structures, subject to Board approval. Concerning screening of the base and facilities, how should it be screened.
- N) All utilities leading to and away from any Telecommunications Tower site shall be installed underground and in compliance with all laws, rules and regulations of the Town, including specifically, but not limited to, the

National Electrical Safety Code. The Board may waive or vary the requirements of underground installation of utilities whenever, in the opinion of the Board, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area.

- O) All Telecommunications Towers and accessory facilities shall be sited so as to have the least practical adverse visual effect on the environment and its character, and the residences in the line of sight of said proposed Telecommunication Tower.
- P) Accessory faculties shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- Q) An access road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent not commercially or physically impracticable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. Usual requirements regarding weight and carrying capacity for emergency vehicles should apply to access roads.
- R) A person who holds a Special Use Permit for a Telecommunications Tower shall construct, operate, maintain, repair, modify or restore the permitted Telecommunications Tower in strict compliance with all current technical, safety and safety-related codes adopted by the Town, the County, the State, or the United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes.
- S) A holder of a Special Use Permit granted under this Law shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or Law, and must maintain the same, in full force and effect, for as long as required by the Town or other appropriate governmental entity or agency.
- T) The Board intends to be the lead agency, pursuant to SEQRA. The Board shall conduct an integrated, comprehensive environmental review of the proposed project in combination with its review of the Application under this Law.
- U) An Applicant shall submit no fewer than eight (8) copies of the entire Completed Application to the Board and a copy of the Application to the legislative body of any adjacent and adjoining municipalities and to the County Planning Agency.
- V) The Applicant shall examine the feasibility of designing a proposed Telecommunications Tower to accommodate future demand for at least two (2) additional commercial applications, e.g. future collocations. The scope of

this examination shall be determined by the Board. The Telecommunications Tower shall be structurally designed to accommodate at least two (2) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Telecommunications Tower is not technologically feasible, or is Commercially Impracticable and creates an unnecessary and unreasonable burden, based upon:

- 1) The number of FCC licenses foreseeable available for the area;
- 2) The kind of Telecommunications Tower site and structure proposed;
- 3) The number of existing and potential licenses without Telecommunications Tower spaces/sites;
- 4) Available space on existing and approved Telecommunications Towers;

#### Section 7. Location of Telecommunications Towers.

- A) Applicants for Telecommunications Towers shall locate, site and erect said Telecommunications Towers or other tall structures in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority.
1. on existing Telecommunications Towers or other tall structures;
  2. collocation on a site with existing Telecommunications Towers or structures.
  - 3 .on municipally-owned properties;
  - 4.on other property in the Town.

If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant or service provider if not granted, or the benefits that might inure, and the beneficiaries of such an alternative site.

An Applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An Application shall address collocation as an option and if such option is not proposed, the applicant must explain why collocation is Commercially or otherwise Impracticable.

Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds mat the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants. Any telecommunications tower shall be sited to have the least practical adverse visual effect on the environment and its character, and the residences in the line of sight of said proposed telecommunication tower.



- B) Upon filing an Application for a Special Use Permit for a Telecommunications Tower, the Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- C) The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has, is, or will be considering, reviewing or planning for Telecommunications Towers in the Town, and all municipalities adjoining or adjacent to the Town, for a two year period from the date of the subject Application.
- D) Notwithstanding that potential sites may be situated in areas described in Subsection (A) of this Section, the Board may disapprove an Application for reasons of non-compatibility, for any of the following reasons.
  - 1) conflict with safety and safety-related codes and requirements;
  - 2) conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws;
  - 3) conflict with the historic nature of a neighborhood or historical district;
  - 4) the use or construction of a Telecommunications Tower which is contrary to an already stated purpose of a specific zoning or land use designation; or
  - 5) the placement and location of a Telecommunications Tower which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers.
  - 6) or otherwise conflict with the provisions of this Law.

**Section 8, Shared use of Telecommunications Tower(s).**

- A) Shared use of existing Telecommunications Towers shall be preferred by the Town, as opposed to the proposed construction of new Telecommunications Towers. Additionally, where such shared use is unavailable, location of Antennas on other pre-existing structures shall be considered and preferred. The Applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four (4) miles of any proposed new tower site, unless the Applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other pre-existing structures as a preferred alternative to new construction.
- B) An Applicant intending to share use of an existing Telecommunications Tower or other tall structure shall be required to document the intent of the existing owner to share use.
- C) With respect to an Application to share the use of an existing Telecommunications Tower that does not increase the height of the Telecommunications Tower, the Board shall waive such requirements of the Application required by this Local Law as may be upon good cause shown. The Applicant is encouraged to seek a pre-Application meeting with the Board to review such a proposed Application and settle the waivers or established provisions which will help to expedite review and

permitting for such Applications. The purpose to such waivers or other alternative procedures shall be to expedite for the Applicant and the Town the review and permitting for the shared use of an existing Telecommunications Tower.

- D) Such shared use shall consist only of the minimum Antenna array technologically required to provide service within the Town, to the extent practicable, unless good cause is shown.

### **Section 9. Height of a Telecommunications Tower**

- A) The Applicant must submit documentation justifying to the Board the total height of any Telecommunications Tower and/or Antenna and the basis therefore. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown.
- B) Telecommunications Towers shall be no higher than the minimum height necessary. Unless waived by the Board upon good cause shown, the presumed maximum height shall be one hundred-forty (140) feet, based on three (3) collocated antenna arrays and ambient tree height of eighty (80) feet.
- C) The maximum height of any Telecommunications Tower and attached Antennas constructed after the effective date of this Law shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, County, State, and/or any federal law and/or regulation.

### **Section 10. Visibility of a Telecommunications Tower**

- A) Telecommunications Towers shall not be artificially lighted or marked, except as required by law.
- B) Telecommunications Towers shall be painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Board, and shall be maintained in accordance with the requirements of this Law. Any portion of said tower within line of sight (above screening) shall be constructed to blend with natural surroundings and shall be maintained in accordance with the requirements of this Law.
- C) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within fifteen-hundred (1,500) feet of all property lines on which the Telecommunications Tower is located;

### **Section 11. Security of Telecommunications Towers**

All Telecommunications Towers and Antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

1. All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and
2. Transmitters and Telecommunications control points must be installed such that they are readily accessible only to persons

authorized by the FCC's licensee to operate or service them.

### **Section 12. Signage**

Telecommunications Towers shall contain a sign no larger than four (4) square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone numbers. The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any Antennas, Antenna supporting structures or Antenna Towers, unless required bylaw.

### **Section 13. Lot Size and Setbacks**

- A) All proposed Communications Towers shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from a Tower or Tower failure, and to preserve the privacy and sanctity of any adjoining properties.
- B) Telecommunications Towers shall be located with a minimum setback from any property line a distance of 400 feet side set-back, 300 feet back property line set-back, 500 feet road and recorded rights-of-way set-back; and in any case the tower shall be set-back from any existing residence a minimum of 600 feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any Accessory structure shall be located so as to comply with the minimum setback requirements for the property on which it is situated.

### **Section 14. Retention of Expert Assistance and Reimbursement by Applicant**

- A) The Board may hire any consultant and/or expert necessary to assist the Board in reviewing and evaluating the Application and any requests for recertification.
- B) An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any Application. The initial deposit shall be \$7,500.00 These funds shall accompany the filing of an Application and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall bill or invoice the Town no less frequently than monthly for its services in reviewing the Application and performing its duties. If at any time during the review process this escrow account shows a negative balance, additional funds must be submitted to the Town before any further action or consideration will be permitted to be taken on the Application. If at the conclusion of the review process the cost of such consultant/expert services is more than the amount escrowed pursuant hereto, the Applicant shall pay the difference to the Town prior to the issuance of any Special Use Permit. In the event that the amount held in escrow by the Town is more than the amount of die actual billing or invoicing, the difference shall be promptly refunded to the Applicant.
- C) The total amount of the funds set forth in Subsection (B) of this Section may vary with the scope and complexity of the project, the completeness

of the Application and other information as may be needed by the Board or its consultant/expert to complete the necessary review and analysis. Additional funds, as required, shall be paid by the Applicant. The initial amount of the escrow deposit shall be established at a pre-Application meeting with the Town. Notice of the hiring of a consultant/expert shall be given to the Applicant at or before this meeting.

**Section 15. Exceptions from a Special Use Permit for a Telecommunications Tower.**

- A) No person shall be permitted to site, place, build, construct or modify, or prepare any site for the placement or use of, a Telecommunications Tower as of the effective date of this Law without having first obtained a Special Use Permit for a Telecommunications Tower. Notwithstanding anything to the contrary in this Section, no Special Use Permit shall be required for those exceptions noted in the definition of Telecommunications Tower.
- B) New construction, including routine maintenance on an existing Telecommunications Tower, shall comply with the requirements of this Law.
- C) All Telecommunications Towers existing on or before the effective date of this Law shall be allowed to continue their usage as they presently exist, provided however, that any modification to existing Towers must comply with this Law.

**Section 16. Public Hearing Required**

- A) Prior to the approval of any Application for a Special Use Permit for a Telecommunications Tower, a public hearing shall be held by the Board, notice of which shall be published in the official newspaper of the Town no less than two weeks prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the Applicant, at least three (3) weeks prior to the date of said public hearing, shall be required to provide names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the parcel on which the proposed new Telecommunications Tower is proposed to be located.
- B) The Board shall schedule the public hearing referred to in Subsection (A) of this Section once it finds the Application is complete. The Board, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

**Section 17. Acting on an Application for a Special Use Permit for a Telecommunications Tower.**

- A) The Board will undertake a review of an Application pursuant to this law in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The Board may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C) Except for necessary building permits, and subsequent Certificates of

Compliance, no additional permits or approvals from the Town, shall be required for Telecommunications Towers or facilities covered by this Law.

- D) After formally considering the Application, the Board may approve and issue, or deny a Special Use Permit. It's decision shall be in writing and shall be based on substantial evidence upon a record. The burden of proof for the grant of the permit shall always be upon the Applicant.
- E) If the Board approves the Special Use Permit for a Telecommunications Tower, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Board's action, and the Special Use Permit shall be issued within thirty (30) days after such approval.
- F) If the Board denies the Special Use Permit for a Telecommunications Tower, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Board's action.
- G) The Town's decision on an Application for a Special Use Permit for a Telecommunications Tower shall be supported by substantial evidence contained in a written record.

**Section 18. Recertification of a Special Use Permit for a Telecommunications Tower.**

- A) At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date and all subsequent fifth anniversaries of the original granting of a Special Use Permit for a Telecommunications Tower, the holder of a Special Use Permit for such Tower shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:
  - 1) the name of the holder of the Special Use Permit for the Telecommunications Tower.
  - 2) if applicable, the number or title of the Special Use Permit;
  - 3) the date of the original granting of the Special Use Permit;
  - 4) whether the Telecommunications Tower has been moved, re-located, rebuilt, repaired, or otherwise modified since the issuance of the Special Use Permit;
  - 5) if the Telecommunications Tower has been moved, re-located, rebuilt, repaired, or otherwise modified, then whether the Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by;
  - 6) any requests for waivers or relief of any kind whatsoever from the requirements of this Law and any requirements for a Special Use Permit; and
  - 7) that the Telecommunications Tower is in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules and regulations.
- B) If after such review, the Board determines that the permitted Telecommunications Tower is in compliance with the Special Use Permit and all applicable codes, laws and rules, then the Board shall issue a recertification Special Use Permit for the Telecommunications Tower, which may include any new provisions that are mutually agreed upon, or required by the force of law or regulation.

- C) If the Board does not complete its review, as noted in Subsection (B) of this Section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent fifth anniversaries, then the Applicant for the permitted Telecommunications Tower shall receive an extension of the Special Use Permit for up to six (6) months, in order for the Board to complete its review as noted in Subsection (B) of this Section.
- D) If the holder of a Special Use Permit for a Telecommunications Tower does not submit a request for recertification of such Special Use Permit within the timeframe noted in Subsection (A) of this Section, then such Special Use Permit and any authorizations granted there under shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a recertification request for the existing Special Use Permit for a Telecommunications Tower to be extended for up to six (6) months in order to allow the Board adequate time to review the recertification request.

**Section 19. Extent and Parameters of Special Use Permit for a Telecommunications Tower.**

The extent and parameters of a Special Use Permit for a Telecommunications Tower shall be as follows:

- 1) such Special Use Permit shall be non-exclusive;
- 2) such Special Use Permit shall not be assignable or transferable without the express written consent of the Board, and such consent shall not be unreasonably withheld;
- 3) such Special Use Permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit for a Telecommunications Tower, or for a material violation of this Law.

**Section 20. Application Fee.**

- A) At the time that a person submits an Application for a Special Use Permit for a new Telecommunications Tower, such person shall pay an application fee to the Town of St. Johnsville \$5,000. If the Application is for a Special Use Permit for collocating on an existing Telecommunications Tower, the fee shall be \$2,000.
- B) An Application fee is not required in order to recertify a Special Use Permit for a Telecommunications Tower, unless there has been a modification of the Telecommunications Tower since the date of the issuance of the existing Special Use Permit. In the case of any modification, Subsection (A) shall apply.

**Section 21. Performance Security**

The Applicant and the owner of record of any proposed Telecommunications Tower property site shall be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount deemed sufficient by the Board to assure the

faithful performance of the terms and conditions of this Law and any Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until the removal of the Telecommunications Tower, and any necessary site restoration is completed.

## **Section 22. Reservation of Authority to Inspect**

### **Telecommunications Towers**

- A) In order to verify that the holder of a Special Use Permit for a Telecommunications Tower and any and all lessees, renters, and/or licensees of a Telecommunications Tower place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and land use codes or other applicable requirements, the Board may inspect all meets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.
- B) The Town shall pay for all of its costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this Law are found to exist, in which case the holder, lessee or licensee shall reimburse the Town for the cost of the inspection.
- C) Payment of such reimbursement shall be made to the Town within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this Law, said reimbursement payment must still be paid to the Town and the reimbursement shall be placed in an escrow account established by the Town specifically for this purpose, pending the final decision on appeal.

## **Section 23. Annual NIER Certification.**

The holder of the Special Use Permit shall, annually, certify to the Town the NIER levels at the site are within the threshold levels adopted by the FCC. (The certifying engineer need not be approved by the Town.)

## **Section 24. Liability Insurance.**

- A) A holder of a Special Use Permit for a Telecommunications Tower shall secure and at all times maintain public liability insurance, property damage insurance, and umbrella insurance coverage for the duration of the Special Use Permit in amounts as set forth below.
  - 1) Commercial General Liability: \$ 1,000,000.00 each occurrence/\$2,000,000 aggregate.
  - 2) Umbrella liability: \$10,000,000.00
  - 3) Automobile Coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

4) Workers Compensation and Disability: Statutory amounts.

- B) The Commercial General Liability insurance policy shall specifically include the Town and its officials, employees and agents as additional insured's.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- F) Before construction of a permitted Telecommunications Tower is initiated, but in no case later than fifteen (15) days after the grant of the Special Use Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

**Section 25. Indemnity.**

- A) Any Special Use Permit issued pursuant to this Law shall contain a provision with respect to indemnity. Such provision shall require the holder of the Special Use Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of or are caused by, the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a Telecommunications Tower within the Town. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B) Notwithstanding the requirements noted in Subsection (A) of this Section, an indemnity provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for a Telecommunications Tower.

**Section 26. Fines**

- A) In the event of a violation of this Law or any Special Use Permit issued pursuant to this Law, the Board may impose and collect, and the holder of the Special Use Permit for a Telecommunications Tower shall pay to the Town, fines or penalties as set forth in Section 268 of the Town Law of the State of New York.
- B) Notwithstanding anything in this Law, the holder of the Special Use Permit for a Telecommunications Tower may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Law or any Section of this Law. An attempt to do so shall subject the holder of the Special Use Permit to termination and



revocation of the Special Use Permit. The Town may also seek injunctive relief to prevent the continued violation of this Law.

**Section 27. Default and/or Revocation.**

- A) When any permitted Telecommunications Tower is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with either the Town's land use code, or the provisions of this Law or of the Special Use Permit, then the Board shall notify the holder of the Special Use Permit for a Telecommunications Tower of the specific inconsistent, non-compliant or violative use or situation. Such notice shall indicate that the Telecommunications Tower, and any appurtenant or related facilities located at the permitted site, is in violation of or non-compliance with the requirements of this Law or the Special Use Permit, and that the holder of the Special Use Permit is in default of its Special Use Permit, and that the facilities must be returned to consistent, compliant use and status within seven (7) days of the date of the postmark of the Notice, or of the date of personal service of the Notice, whichever is applicable. Notwithstanding anything to the contrary in this Subsection or any other Section of this Law, if the situation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, in the sole determination of the Board, the Board may, at its sole discretion, order the violative or non-compliant situation remedied within twenty-four (24) hours.
- B) If within the seven (7) day period set forth in Section 26(A) the affected and non-compliant Telecommunications Tower is not brought into compliance with either the land use code, or the provisions of this Law, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected Telecommunications Tower into compliance, then the Board may revoke such Special Use Permit for a Telecommunications Tower, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

**Section 28. Circumstances Resulting in the Removal of a Telecommunications Tower.**

- A) Under the following circumstances, the Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of a Telecommunications Tower.
- 1) a permitted Telecommunications Tower has been abandoned for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, which in this case means not used for the intended and permitted purpose for such a period, except for situations caused by the commonly recognized definition of force majeure or Acts of God of an extraordinary and catastrophic nature and effect;
  - 2) a permitted Telecommunications Tower falls into such a state of

- disrepair that it creates a health or safety hazard;
- 3) a Telecommunications Tower has been located, constructed, or modified on property located within the Town without having obtained the required Special Use Permit, or other necessary authorization;
- B) If the Board makes such a determination as noted in Subsection (A) of this Section, then the Board shall notify the holder of the Special Use Permit for the Telecommunications Tower within forty-eight (48) hours that said Telecommunications Tower must and shall be removed, unless the Board approves an Interim Temporary Use Agreement/Permit, such as to enable the sale of the Telecommunications Tower.
- C) If a Telecommunications Tower is not removed voluntarily within ninety (90) days after the permit holder has received notice, or substantial progress has not been made to remove the Telecommunications Tower within ninety (90) days of said notice, then the Board may order officials or representatives of the Town to remove the Telecommunications Tower at the sole expense of the owner or permit holder, or the Town, at its discretion, may take possession of the Telecommunications Tower.
- D) If, pursuant to Subsection (C) of this Section, officials, employees, or representatives of the Town remove, or cause to be removed, a Telecommunications Tower, and the owner of the Telecommunications Tower does not claim the property and remove it within ten (10) days, then the Town may take whatever steps are available under State law to declare the Telecommunications Tower abandoned, and sell the facility and its components.
- E) If the Board approves an Interim Temporary Use Agreement/Permit for the Telecommunications Tower, such Agreement/Permit shall be for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or relocation of the affected Telecommunications Tower shall be developed by the holder of the permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed within the ninety (90) day time frame, then the Town may take possession of and dispose of the affected Telecommunications Tower in the manner noted in Subsection (C) of this Section.
- F) In the event a Telecommunications Tower is no longer used for the purpose specified in the Application, or the Telecommunications Tower ceases operations for a period of one hundred and eighty (180) days in any three hundred and sixty five (365) day period, the holder of the Special use Permit, or its successors or assigns, shall dismantle and remove such Telecommunications Tower, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, including removal of the concrete caisson two feet below the existing grade level and removal of the debris from the premises, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Board. However,

if the owner of the property upon which the Telecommunications Tower is located wishes to retain any access roadway to the Telecommunications Tower, the owner may do so with the approval of the Board.

- G) a financial Security Bond of \$75,000 with the Town as the assignee will be required to guarantee the removal of the tower. At each five year recertification period, the Board reserves the right to review and increase the Security Bond amount. Failure to renew the security bond shall result in the Special Use Permit being revoked. A five year bond is required, with proof of bond and proof of renewal at time of five year recertification date.

### **Section 29. Relief**

Any Applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Board at a pre-Application meeting, provided that the relief or exemption is contained in the original Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption, and its lack of significant effect on the Town or its residents or other service providers, is solely on the Applicant to prove to the satisfaction of the Board. The Applicant shall bear all costs of the Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the specific written permission of the Board, and such permission shall not be unreasonably withheld.

### **Section 30. Periodic Regulatory Review by the Board.**

- A) The Board may at any time conduct a review and examination of this entire Law.
- B) If after such a periodic review and examination of this Law, the Board determines that one or more provisions of this Law should be amended, repealed, revised, clarified, or deleted, then the Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Board may repeal this entire Law at any time.
- C) Notwithstanding the provisions of Subsections (A) and (B) of this Section, the Board may at any time, and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this Law.

### **Section 31. Adherence to State and/or Federal Rules and Regulations.**

- A) To the extent that the holder of a Special Use Permit for a Telecommunications Tower has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical

and RF emission standards.

- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for a Telecommunications Tower, then the holder of such a Special Use Permit shall conform the permitted Telecommunications Tower to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

**Section 32. Conflict with Other Laws**

Where this Law differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, the more restrictive or protective of the Town and the public shall apply.

**Section 33. Effective Date.**

This Law shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

**Section 34. Authority.**

This Local Law is enacted pursuant to the Municipal Home Rule Law. This Local Law shall supersede the provisions of Town law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law, or any other applicable statute.