

TOWN OF WAWAYANDA ZONING LAW

Town of Wawayanda, NY

Adopted - May 7, 2009



Wawayanda Zoning Code

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ARTICLE 1 TITLE, SCOPE, EFFECTIVE DATE AND PURPOSES

1.1 Enactment

There is hereby established a zoning plan for the Town of Wawayanda, which plan is set forth in the text and map that constitute this Zoning Law.

1.2 Intent

It is the legislative intent of this zoning law to provide for the orderly and desirable development and use of land in accord with the recommendations of the 2006 Town of Wawayanda Comprehensive Plan. This chapter provides specifications, procedures, and a precise plan designed to guide new development while improving, conserving, or facilitating desirable change in existing portions of the Town. This Chapter is enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, Section 10, et. seq. and Article 16 of the Town Law of the State of New York. This chapter will serve the purpose of protection and promoting the general welfare which is intended to include the following:

- A. The facilitation of the efficient and adequate provisions of public facilities and services.
- B. To conserve the natural resources and rural character of the Town by encouraging development in the most appropriate location of the Town.
- C. To stimulate economic development to produce a more balanced, self-sustaining community with a broad tax base.
- D. To encourage agriculture and the preservation of open space, and to avoid regulating agricultural uses in a manner that unreasonably restricts or regulates farm structures or farming practices.
- E. The prevention and reduction of traffic congestion and the provision of safe and adequate traffic access to uses generating large volumes of traffic.
- F. The preservation of historic and natural features and the accommodation of new development in such a way as to maintain and enhance the desirable aesthetic qualities of the Town.
- G. To provide land use regulation that enables the town to grow in appropriate areas while preserving its most natural, historic, architectural and cultural features.
- H. The protection of water resources available to residents of the town, principally aquifers and their recharge areas.
- I. The assurance of adequate sites for residence, industry and commerce.
- J. To enhance the town's active and passive recreational resources, including non-vehicular access to existing recreational spaces as well as the encouragement of the provision of trails and linking of open spaces in the layout of new subdivisions.

- K. The enhancement of the appearance of the Town of Wawayanda as a whole, including its open space and exurban environment.
- L. To integrate different types of housing and different kinds of land uses in order to encourage social and economic interaction and pedestrian activity.
- M. To regulate building density in order to concentrate population in appropriate locations and to limit expansion of infrastructure in areas where increased growth is not encouraged by the plan.
- N. The encouragement of flexibility in the design and development of land in such a way as to produce the most appropriate use of lands, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open lands.
- O. To further the policies, goals and recommendations of the Town of Wawayanda Comprehensive Plan.

1.3 Applicability - Compliance Required

No land use activity as listed below shall be commenced or carried out, except in full compliance with this law. All other applicable permit(s) or approval(s) must have been issued by the appropriate Board, stating that the proposed building, structure, use of land or structure, or development activity complies with the provisions of this law:

- A. Erection, re-erection, demolition, or movement of a building or structure;
- B. Change of the exterior structural dimensions of a building or structure;
- C. Change in use of land, buildings or structures through the establishment of a new use, or through the expansion, conversion, enlargement or relocation of an existing use;
- D. Establishment of or change in the dimensions of a parking area for nonresidential or multi-family residential uses;
- E. Placement of a sign as regulated in Article 4, section 4.18 of this law; or
- F. Conversion of a seasonal use to a year-round use, including residential use.

1.4 Exemptions

A site plan or Special Use Permit shall not be required for the following (however, a permit may be required):

- A. Permitted signs listed in Article 4, section 4-18.5 of this law;
- B. Fences or walls complying with Article 3, section 3.11 (f) of this law;

- C. Interior alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure (e.g., roofing, window replacement, siding and roofing replacement, etc.);
- D. Minor accessories such as posts, sidewalks, driveways, flagpoles, playground equipment, sheds, above ground swimming pools 2 feet in depth or less (as per Town Code Section 54.4-B), etc.; patios and landscaping improvements, fences and walls complying with Section 3.11;
- E. The sale of products grown or raised on the land and the construction, alteration and maintenance of agricultural fences, roads, drainage systems and farm ponds;
- F. Each individual property location may have a maximum of 5 garage, yard, porch sales during any one calendar year. Each sale shall last a maximum of three consecutive days;
- G. Agricultural uses;
- H. Non-commercial outdoor recreation uses, except those that involve substantial physical improvements;
- I. Any activity for which a permit has been obtained pursuant to a prior zoning law, or which did not require a permit under the prior zoning law and for which substantial on-site work had been completed prior to the effective date of this Chapter;
- J. Construction of a new on-site sewage disposal system, or the replacement or major modification of any on-site sewage disposal system;
- K. A single family dwelling, except in the MC and TC Zones
- L. Uses listed in the bulk tables permitted without site plan approval

ARTICLE 2 WORD USAGE AND DEFINITIONS

Word Usage

- A. Unless otherwise listed below, the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set for the in the latest edition of Webster’s New Collegiate Dictionary. Terms of law shall have the meaning as set forth in the latest edition of Black’s Law Dictionary.
- B. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the singular include the plural; words used in the plural include the singular; the word “herein means in this chapter; the word “requirements” means the minimum requirements necessary for the purposes set forth in Article I; and the words “this chapter” shall mean this local law and the schedules and maps included herein as enacted or subsequently amended.
- C. The word “Person” as used in this chapter shall be defined to include, but not limited to, an individual, a partnership, a joint venture, a corporation, an unincorporated association, a firm or any other form or entity, contractors, subcontractors, or journeymen.
- D. The word “lot” includes the word “plot”.
- E. The term “occupied” or “used” as applied to any land or building, shall be construed to include the words “intended,” arranged,” or “designed to be occupied or used.”
- F. “Shall” is always mandatory, except when applied to public officials, in which event “shall”, is directory.
- G. Those terms related to building and land use that have not been defined herein shall have the meaning give to them under the New York State Uniform Fire Prevention and Building Codes.

DEFINITIONS

ACCESSORY APARTMENT: A dwelling unit, with its own cooking, sanitary, and sleeping facilities, which is part of a single-family dwelling or residential accessory structure and subordinate to the primary dwelling in terms of size, location, and appearance and is located on the same lot and which meets the criteria specified in section 4.4 of this Chapter. Either the accessory apartment or primary single-family dwelling must be owner-occupied.

ACCESSORY USES / STRUCTURES : All uses that are customarily incidental to and subordinate to a particular principal use or structure on the same lot; this includes but is not limited to garages, water towers, barns, silos, produce storage, packing warehouses, storage buildings, maintenance, storage, and repair of machinery, outdoor displays of merchandise, satellite stations/antennas, seasonal roadside stands, signs, and swimming pools. Accessory uses /Structures must be permitted within the zoning district in which it is located.

ADEQUATE COVERAGE: Wireless communication coverage is considered to be adequate within the service area of the Town of Wawayanda if the minimum standards set forth by the Federal Communication Commission to permit the applicant to operate a personal wireless communication service within the area are met.

ADULT BOOKSTORE: An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, publications, tapes or films that are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or anatomical genital areas.

ADULT CABARET:

- (a) An establishment devoted to adult entertainment either with or without a liquor license, presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to sexual activities or anatomical genital areas.
- (b) A cabaret that features topless dancers, go-go dancers, strippers, male or female impersonators or similar entertainers for observation by patrons.

ADULT VIDEO STORE: An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes or other films for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined above.

ADULT THEATER: An establishment which regularly features live performances, films, motion pictures, videocassettes, DVDs, slides or similar photographic reproductions characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas as defined herein. An adult theater shall also include drive-in theaters and establishments where such materials or performances are viewed from one or more individual enclosures or booths.

AGRICULTURAL DATA STATEMENT: An identification of farm operations within an agricultural district located within five hundred (500) feet of the boundary of property upon which a subdivision is proposed, as provided in Section 305-a of the Agriculture and Markets Law of the State of New York. An “Agricultural Data Statement” shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred (500) feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.

AGRICULTURAL DISTRICT: A district created under Section 305 of the Agriculture and Markets Law with the intent to provide for the protection and enhancement of agricultural land as a viable segment of the local economy and environmental resource of major importance.

AGRICULTURE: An enterprise in which activities include the cultivation of food, fiber or horticultural crops or the raising of livestock or poultry, in accordance with the New York State Agriculture and Markets Law.

AGRICULTURE, EQUIPMENT REPAIR: Land whose primary purpose is the storage, maintenance, and repair of machinery related to agricultural uses.

AGRICULTURE, NURSERIES AND GREENHOUSES (WITHOUT RETAIL): Land used for the cultivation of trees, shrubs and/or other plants are propagated for a period of at least six months and/or where flowers and vegetables of an annual variety are germinated before transplanting. This use does not include retail.

AGRICULTURE RESEARCH/DEVELOPMENT LABORATORIES: Land and/or structures used for experimentation in pure or applied research, design, development and production of prototype machines or of new products specifically related to agricultural uses, wherein products are not manufactured for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed, and wherein there is no outside display of any materials or products.

AGRICULTURE, ON-FARM FOOD PROCESSING ACTIVITIES WITH WHOLESALE AND RETAIL TRADE AREAS: A facility used for the cooking, dehydrating, refining, bottling, canning, or other treatment of agricultural products which prepares the naturally grown product for consumer use. May include wholesale and retail as secondary uses.

AGRICULTURE, RETAIL SALE OF FARM, NURSERY, AND RELATED PRODUCTS: An establishment whose primary purpose is the retail sale of farm, nursery, and related products, including but not limited to fruits, vegetables, and plants (includes farmers markets, farm stands, and seasonal roadside stands not in conjunction with a working farm).

AGRICULTURE, TOURISM ACTIVITIES ON ONGOING FARM OPERATION: Land and/or structures utilized for agriculture-related tourism for visitors or residents, with the purpose of providing additional revenue to the primary establishment. This includes but is not limited to farm stands, wineries, and pick-your-own operations.

AGRICULTURE, WAREHOUSING/WHOLESALING FARM/NURSERY PRODUCTS: Land and/or structures utilized for the storage of agricultural goods, wares, and merchandise whether for the owner or for others, and/or an establishment or place of business primarily engaged in selling and/or distributing agriculture-related merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

AGRICULTURAL STRUCTURES: Structures originally intended primarily or exclusively for support of an agricultural function, and exemplified by, but not restricted to, barns, silos, water towers, windmills, and greenhouses. In an effort to preserve these structures and provide income to the owner when farming is no longer possible, compatible non-agricultural uses are allowed by Special Use Permit.

ALTERATION: In regards to a structure, a change to or rearrangement of the structural parts or exterior appearance, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

ALTERNATIVE TOWER STRUCTURE: Man-made trees, clock towers, bell steeples, light poles and similar alternative-designs including structures that camouflage or conceal the presence of antennas or towers.

ANIMAL HOSPITALS: A facility for the medical or surgical care and treatment of animals, including veterinary clinics.

ANNUAL MEMBERSHIP CLUBS: A nonprofit organization established for the purpose of offering services of a community or recreational nature to its membership

ANTENNAS: A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation radio, television, wireless and microwave communications.

AMATEUR RADIO SERVICE: A federally licensed radio-communication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in a radio technique solely with a personal aim and without pecuniary interest particularly with respect to providing emergency communications. (As per Code of Federal Regulations, Title 47, Part 97)

APPLICANT: Any person, corporation or other entity applying for a building permit, certificate of occupancy, Special Use Permit, site plan, sign permit or subdivision approval, variance or zoning amendment.

AUTO BODY SHOPS: See VEHICLE SERVICES.

AUTOMOTIVE SERVICE STATIONS: See VEHICLE SERVICES.

AWNING: A roof-like covering of metal, fabric, or similar material attached to a frame and attached to or supported entirely by a building.

BASEMENT: That space of a building that is partly below grade, which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.

BED AND BREAKFAST: An owner-occupied dwelling used for renting accommodations to transient, fee-paying guests and providing not more than one meal (breakfast) daily to lodging guests only.

BUFFER AREA: The ground area of a lot which shall be left in its natural state or planted, as may be required by code and/or district regulations or the Planning Board (or Town Board, if applicable) as part of site plan review.

BUILDING: Any structure having a roof supported by such things as columns, posts, piers or walls and intended for the shelter, business, housing or enclosing of persons, animals, property or other materials, including any combination of materials forming any construction. The term “building” shall include the term “structure,” as well as the following:

- (1) Signs.
- (2) Walls and retaining walls.
- (3) Radio, television and microwave antennas, except for such antennas installed on the roof of a building and extending not more than 10 feet above the highest level of the roof of such building.
- (4) Pergolas, porches, decks, outdoor bins and other similar structures.
- (5) Fixed awnings.
- (6) Swimming pools.
- (7) Transmission towers.
- (8) A structure requiring a subsurface support or base, such as a footing or sleeve for a flagpole or sign.

BUILDING HEIGHT: The vertical distance measured from the average elevation of the proposed finished grade to the highest point of the roof (for flat roofs), to the decline of mansard roofs, or to the mean height between eaves and ridge for gable, hip, and gambrel roofs.

BUILDING INSPECTOR: The Town official authorized to administer and enforce the Building Code. See also CODE ENFORCEMENT OFFICER.

CAMP, SUMMER: A tract of land to be used for seasonal or temporary occupancy from May 15 – October 15, primarily for children offering sports, handcrafts and other outdoor-oriented recreational activities. Summer camps may include tents or similar rustic structures along with accessory buildings and facilities such as recreational areas, dining halls, kitchen facilities, and indoor gymnasiums.

CAMPGROUND: An area or RV Park for users of tents, recreational vehicles, travel trailers and similar vehicles to reside, park, rent or lease on a temporary basis for vacation or recreational purposes. Campgrounds may include accessory building and facilities such as recreational areas, dining halls, kitchen facilities, indoor gymnasiums, and group meeting facilities.

CEMETERY: A place used for burials, whether in the ground or in mausoleums, provided that no new cemetery shall result in in-ground burials within a one-hundred-year-floodplain area or the construction of any mausoleum structure of greater than 500 square feet in size any closer than 100 feet from the perimeter of the cemetery.

CENTRAL WATER AND SEWER: Communal sewage disposal and water supply systems approved by the Town Board and any other agencies having jurisdiction.

CHANGE OF USE: When there is a change of use from one use category to another use category described in the table of uses of this law; when a use has exceeded the scope of its original permit; or when a use requires a new permit from any governmental agency. A change of ownership or tenancy shall not be considered a change of use. When a change of use occurs, a new site plan review is required and should concentrate on ensuring that signage, lighting, and where appropriate landscaping and sidewalk standards are met and adequate water, sewer and parking are provided.

CHAPTER: Chapter 195 of the Town Code, which consists of the Town's zoning law and regulations.

CLUSTER SUBDIVISION OR CLUSTER DEVELOPMENT – See Conservation Subdivision.

CODE (or alternatively Town Code): The Code of the Town of Wawayanda, which is the codification of local laws, ordinances and regulations of the Town of Wawayanda.

CODE ENFORCEMENT OFFICER: The individual who is appointed by the Town Board and authorized by this Chapter for purposes of administering and enforcing the provisions of this Chapter. The Code Enforcement Officer may also be the Building Inspector.

COLOCATION: The siting and/or mounting of multiple communication facilities used by the same provider, or by two or more competing providers, on the same property and/or antenna support structure or a communication tower.

CONTRACTOR YARD: A lot or piece of land on which vehicles, tools and equipment used in construction by contractors are parked and/or stored. This term also includes contractor's office and storage buildings located on site.

COMMUNITY SYSTEM: A sewer or septic system, water system, or both, which provides sanitary sewer or septic service and/or water to a particular development or area and which is owned and operated by a private organization, entity or corporation and not by the Town or other governmental entity. Also see PUBLIC SYSTEM.

COMPREHENSIVE PLAN: The Comprehensive Plan of the Town of Wawayanda as amended, revised and/or updated from time to time.

CONSERVATION SUBDIVISION: See Subdivision, Conservation. See also Residential Cluster Development.

CONVALESCENT HOMES: See NURSING AND SENIOR CARE FACILITIES.

CURB CUT: A driveway or other entranceway to a public highway requiring a break in the curblin e or shoulder.

DAY-CARE CENTER: Daytime care or instruction of three or more individuals, away from their own homes for more than three but less than 24 hours per day on a regular basis, by an individual, association, corporation, institution or agency whether or not for compensation or reward.

DISTRICT: See ZONING DISTRICT.

DWELLING, MULTI-FAMILY: A building or portion thereof containing more than two dwelling units but intended for single ownership. Single ownership is not intended to preclude cooperative or condominium ownership.

DWELLING, ONE-FAMILY: A detached building designed or occupied exclusively by one family and having two side yards, with at least 960 square feet of living area, erected on a permanent foundation, with/without basement.

DWELLING, ONE UNIT IN NONRESIDENTIAL BUILDING (MIXED USE): A dwelling residing in a building whose primary use is non-residential, such as an apartment above a retail store.

DWELLING, TWO-FAMILY: A building designed as a single structure, containing two separate living units, each of which is designed to be occupied as a separate permanent residence for one family.

DWELLING UNIT: A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrances, or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. The rental units/rooms in a boardinghouse, dormitory, motel, inn, nursing home or other similar building shall not be deemed to constitute dwelling units.

ESSENTIAL SERVICES: Services provided by public and private utilities, including underground, surface, or overhead gas, electrical, steam, water, sanitary sewerage, stormwater drainage, and communication systems and accessories thereto, such as poles, towers, wires, mains, drains, vaults, culverts, laterals, sewers, pipes, catch basins, water storage tanks, conduits, cables, fire alarm boxes, police call boxes, traffic signals, pumps, lift stations and hydrants, along with normal accessory activities. "Public utility" and "Private utility" are defined to mean a corporation or other entity, whether public or private, whose purpose is to generate and/or distribute gas, electricity, steam, water, sanitary sewerage, stormwater, drainage, communication or similar service and accessories thereto for use by the public, whether or not such corporation or entity is regulated by the New York Public Service Commission.

FAMILY: Any number of persons related by blood, marriage or adoption, or any number of persons who are not so related, living together as a single nonprofit housekeeping unit, using all rooms and housekeeping facilities in common and having such meals as they may eat at home generally prepared and eaten together.

FARM MACHINERY: Farm tractors and implements such as hay rakes, and plows or other mechanized equipment relating to agriculture production.

FARMERS' MARKETS: See AGRICULTURE, RETAIL SALE OF FARM, NURSERY, AND RELATED PRODUCTS and AGRICULTURE, TOURISM ACTIVITIES ON ONGOING FARM OPERATION

FLAG LOT: A lot so shaped and designed that the main portion of the lot is set back from the public street or road on which it fronts, is situated behind one or more lots and is connected to such frontage road or street only by means of a relatively narrow strip of land.

FLEA MARKET / AUCTION: An open area or structure where individual sellers or groups of sellers offer goods for sale or auction to the public on a commercial basis.

FLOOR AREA, GROSS: The sum of the area of all floors of a building as measured from the exterior walls.

FORESTRY, COMMERCIAL: The cutting and removal (harvesting) of living trees in excess of 12" in diameter, on 10 acres of land or more, 10 trees per acre or more in any one year.

GARAGE, PRIVATE: An enclosed 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 nonresident of the premises. Garage space is not classified as living area even when part of a dwelling. Detached garages for residences are accessory structures under this Code.

GROUP CARE FACILITY: A non-institutional home set up in theory, appearance, size, and structure to bear the general character of a family unit in a relatively permanent household, headed by at least one supervisory individual and to be occupied by six to 12 persons, which is operated or sponsored by a public social service or nonprofit agency, subject to the approval of the NYS Department of Social Services or its successor agency.

HABITABLE SPACE: Space occupied by one or more persons living, sleeping, eating or cooking. Restaurants for employees and occupants, kitchens serving them and kitchenettes shall not be deemed to be habitable space.

HAZARDOUS: Any material or substance defined by the United States Environmental Protection Agency (USEPA) as hazardous or toxic due to its characteristics, including but not limited to direct or indirect toxicity, radioactivity, explosiveness, and flammability, or other characteristics as the USEPA or its successors may revise from time to time.

HEALTH FACILITIES: A facility or institution principally engaged in providing services for human health maintenance, including a hospital, nursing home, assisted living facility, physical rehabilitation center, medical clinic or medical laboratory.

HOME OCCUPATION, MINIMAL IMPACT: An activity carried out for gain by a resident and conducted as an accessory use in the resident's dwelling unit or on the site of the residence as defined in 4.3-1.

HOME OCCUPATION, OTHER: An activity carried out for gain by a resident and conducted as an accessory use in the resident's dwelling unit or on the site of the residence. This use category contains all home occupations that do not qualify as minimal impact.

HOSPITAL: See HEALTH FACILITIES

HOTEL: A building in which lodging is provided in guest units and offered to the public for compensation and in which ingress and egress to and from all rooms are made through an inside lobby or office, supervised by a person in charge at all hours. The guest unit shall consist of a room arranged or designed to be available for use as sleeping quarters for transient guests on a daily or weekly fee basis. The term “hotel” does not include bed-and-breakfast establishments.

HOUSING FOR MIGRATORY WORKERS: A building or portion thereof containing dwelling units for transient individuals employed seasonally to perform manual labor associated with planting, harvesting or other agricultural operations.

INDUSTRIAL PARK: A tract of land providing for more than one industrial use, as defined under “light manufacturing,” designed, maintained and operated as unit in single ownership or control and sharing certain facilities in common, such as driveways, parking areas, drainage, utilities and screening.

INDUSTRIAL USES: Uses involving manufacturing or processing involving changing the nature, size, or shape of substances of raw materials, or recombining raw materials. Industrial uses may involve the use of chemical applications, heat, pressure or other mechanical processing methods.

JUNKYARD: An area of land with or without buildings used for or occupied by a deposit, collection or storage, outside a completely enclosed building, of used or discarded materials, such as waste paper, rags or scrap metal, or used building materials, house furnishings, machinery, or parts thereof, with or without dismantling, processing, salvage, sale or use or disposition of same.

KENNEL: A use of property or structure that involves the housing of five (5) or more dogs. A kennel that is used solely for the keeping of dogs for the residents located on the same property or for breeding purposes where no more than one dog is bred at any one time is considered a private kennel. A kennel that is used for the keeping or housing of dogs for a fee or for non-profit humane purposes (with or without attendant commercial services such as grooming, breeding or veterinary care or adoption services) is considered a commercial kennel and are regulated by section 5.7 this Chapter.

LIGHT MANUFACTURING: Manufacturing or industrial uses of processing, fabrication, or assembly that are of a nonpolluting nature, particularly in regard to reservoir and groundwater resources, and in regard to ambient air quality, noise and light pollution. This use category includes printing, technology manufacturing, research and development laboratories, testing, repair and packaging of components, devises and equipment systems.

LOT: A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or for building development.

- A. CONFORMING -- A lot having not less than minimum area and dimensions required by this chapter for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of state law to be adequate as a condition of the issuance of a building permit for a building on such land.
- B. NONCONFORMING -- A lot of record that does not comply with the area, frontage, shape or locational provisions of this law for the land use area in which it is located but was not in violation of the applicable requirements when it was created and that said lot was lawfully created. Any lot created subsequent to the establishment of the Town of Wawayanda subdivision regulations must have been approved by the Town of Wawayanda Planning Board in order to be considered a lot of record.

LOT AREA: An area of land, the size of which is determined by the limits of the lot lines bounding said area and is usually expressed in terms of square feet or acres.

LOT, CORNER: A lot at the junction of, or abutting on, two or more intersecting streets where the interior angle of intersection does not exceed 135°. A lot abutting a curved street shall be deemed a corner lot if the tangents to the curve at the points of intersection of the side lot lines with the street lines intersect at an interior angle of less than 135°.

LOT COVERAGE: The percentage of the plot or lot area covered by the building area and all impervious coverage. Parking areas, regardless of how surfaced, shall be considered impervious.

LOT, FLAG: See Flag Lot.

LOT FRONTAGE: Portion of the lot which abuts the street line.

LOT LINE, REAR: The lot line generally opposite the street line.

LOT WIDTH: The shortest distance between side lot lines measured at the front yard setback line, or building line, as applicable.

MINING: The extraction or removal of minerals from the ground for sale or exchange or for commercial, industrial, or municipal use. This definition shall not apply to:

- A. The excavation or grading of an area necessary to prepare a site for construction in accordance with an approved building permit, site plan or subdivision plan, provided that the excavation takes place within the project site, does not involve the sale or exchange of mineral resources to off-site locations and is an integral part of the involved project activities.
- B. Excavations or grading undertaken to enhance the agricultural use of lands or to provide for structures or other improvements that benefit or are necessary for ongoing or imminent agricultural activities. This exemption applies only to excavations where the mineral removal and subsequent reclamation enhances the agricultural usability or productivity of the land.

MOBILE HOME: A factory manufactured structure, regardless of manufacture date, transportable in one or more sections, that is built on a permanent chassis and designed to be used as a dwelling unit when affixed to a permanent foundation or placed on a concrete slab and connected to the required utilities. This definition does not include a modular home, travel trailer or any self propelled recreational vehicle.

MOBILE HOME PARK: An area of land under single ownership that has been planned and improved for the placement of two or more mobile homes for dwelling purposes.

MODULAR HOME: Factory-manufactured housing, subject to the requirements and regulations of the New York State Uniform Fire Prevention and Building Code, in which prefabricated components assembled at the plant are sent to a housing site in two or more pieces, depending on the size and style of said housing, to be joined together to form a complete house on a permanent foundation treated the same as stick-built homes for the purposes of single family dwellings

MOTEL: A building or group of buildings, whether detached or in 3 or more connected units, containing living and sleeping accommodations used primarily for transient occupancy and which has individual entrances, from outside the building, to serve each guest unit. The guest unit shall consist of a room arranged or designed to be available for use as sleeping quarters for transient guests on a daily or weekly fee basis. The term “motel” includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations, but does not include boardinghouses.

NONCONFORMING STRUCTURE: A structure that does not satisfy the dimensional requirements of this law for the area in which it is located, but which was not in violation of applicable requirements when constructed and was lawfully erected pursuant to applicable permits and approvals.

NONCONFORMING USE: Any use lawfully existing prior to and at the time of the adoption or amendment of this chapter or any preceding zoning law or ordinance, which use is not permitted or does not conform to the permitted use provisions for the area in which it is located.

NONHABITABLE SPACE: Space used as bathroom, toilet room, laundry, dressing, locker, storage, utility, heater or boiler rooms, closets and other spaces for service and maintenance of the building and those spaces used for access and vertical travel between stories.

NURSERY: A place where trees, shrubs, vines, and/or flower and vegetable plants are propagated or grown for a period of at least six months and/or where flowers and vegetables of an annual variety are germinated before being offered for sale and transplanting.

NURSING AND SENIOR CARE FACILITIES: Any dwelling where persons are housed or lodged and furnished with meals and nursing care for hire. Also see SENIOR HOUSING/LIFE CARE.

NURSING HOME: See NURSING AND SENIOR CARE FACILITIES and SENIOR HOUSING/LIFE CARE.

OFFICES: Establishments used for the organizational or administrative aspects of a trade, or used in the conduct of a profession or business, and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices of sales representatives, architects, engineers, physicians, dentists, attorneys, insurance brokers, real estate brokers and persons with similar occupations.

OPEN SPACE: The area or areas of land set aside in subdivisions for conservation or preservation without any further development.

ORDER TO REMEDY: A written document issued by the Building Inspector / Code Enforcement Officer which orders that a particular violation or violations of this Zoning Law be remedied within a specified time.

OUTDOOR STORAGE: The storage of building supplies, raw materials, finished products, machinery and equipment outside the principal building and as permitted within certain nonresidential districts.

PERMITTED USE: A specific main use of a building, structure, lot or land, or part thereof, that is allowed without a site plan or special use permit required. However, a building permit may be required.

PLANNED RESIDENTIAL DEVELOPMENT: Land, under unified control, to be planned and developed as a whole in a functionally integrated or a definitively programmed series of development operations or phases. May include principal and accessory structures and those uses substantially related to the character and purposes of the planned development.

PLANNING BOARD: The Planning Board of the Town of Wawayanda, the administrative board of the Town authorized to review and approve subdivisions, special use permits, site plans and other delegated responsibilities set forth in the Town Code.

PLOT PLAN: A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions and submitted with an application for a Special Use Permit or a variance.

PRINCIPAL STRUCTURE: A building or structure on a lot, which is used to conduct the main or principal use of the lot in which it is located.

PUBLIC/SEMI-PUBLIC FACILITY: Any one or more of the following uses, including grounds and accessory buildings necessary for their use:

- A. Religious institutions or places of worship
- B. Schools
- C. Public Libraries
- D. Community centers
- E. Government buildings
- F. Day-care facilities operated outside a home
- G. Fire and/or ambulance stations, emergency response facilities, public safety buildings
- H. Nursery schools
- I. Group Homes
- J. Membership clubs or organizations where meeting spaces are provided.

PUBLIC SYSTEM: (also Public Sewer or Public Water): The facilities owned and operated by the Town or other governmental entity that provides sewer and/or water services to a particular area of the Town.

RECREATION, INDOOR: An indoor facility involving courts, arenas or halls designed to accommodate sports and recreational activities, such as but not limited to billiards, bowling, theaters, dance and concert halls, gymnasiums, health spas, skating rinks, indoor shooting ranges, tennis courts, swimming pools, and team sports.

RECREATION, OUTDOOR: An outdoor facility involving courts, playing fields, or arenas designed to accommodate sports and recreational activities, such as but not limited to gymnasiums, health spas, skating rinks, down-hill or cross-country ski trails, outdoor shooting ranges, tennis courts, swimming pools, team sports, or golf courses; this use category includes annual membership clubs, riding academies, and resorts.

RECREATIONAL VEHICLE: A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, or travel use which either has its own motive power or is mounted on or drawn by another vehicle. No such vehicle shall be wider than eight feet.

RECYCLING FACILITY: A commercial establishment organized to collect, process and sell reusable domestic and, commercial and industrial waste, including waste motor oil.

RESIDENTIAL CLUSTER DEVELOPMENT (See SUBDIVISION, CONSERVATION): A residential subdivision in which the permissible number of dwelling units that would result in a given district under conventional applications of the subdivision regulations is allowed to be constructed on a smaller portion of the land included in the subdivision. Such flexibility of design and development of land shall be used to encourage the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities and to preserve the natural and scenic qualities of open lands under authority of §278 of the Town Law.

RESEARCH, DESIGN AND DEVELOPMENT LABORATORY: A building for experimentation in pure or applied research, design, development and production of prototype machines or of new products, and uses accessory thereto, wherein products are not manufactured for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed, and wherein there is no outside display of any materials or products.

RESTAURANT, FAST FOOD: A business enterprise primarily engaged in the sale of quickly prepared food and beverages selected by patrons from a limited line of prepared specialized items such as hamburgers, chicken, pizza, tacos, ice cream and hot dogs, for takeout and/or on-premises consumption (in the latter case, where orders are placed at a counter as opposed to table service via a waiter/waitress, in a facility where the floor area available for dining is less than ½ of the gross floor area, and a major portion of the sales to the public is at a drive-in or stand-up type counter). The term “fast food restaurant” shall not include bakeries, delicatessens, or similar types of retail establishments.

RESTAURANT OR BAR, NON-FAST FOOD: Any premises where food and/or beverages are commercially sold for on-premises consumption to patrons seated at tables or counters and where table service is provided. Any facility without table service providing parking lot service to cars where the food is to be eaten outside of the structure and/or off the premises shall not be considered a restaurant for the purposes of this chapter and shall be deemed to be a drive-in or fast food restaurant.

RETAIL, LARGE-PRODUCT: Establishments where goods are sold primarily at retail, but are large-scale, where the display of such merchandise cannot necessarily be displayed within a structure, and which requires a large amount of floor space. This includes equipment/heavy equipment, boats, machinery and farm machinery, and motor vehicle sales.

RETAIL, GENERAL: Stores and shops where goods are sold primarily at retail. Such sales are primarily made directly to the consumer and include, but are not limited to, goods such as food and beverages; florists; shoes and clothing; hardware; paint and wallpaper; carpeting; hobby and crafts; books; furniture; antiques; art supplies; music; pharmacies; jewelry; photographic supplies; pets; gifts; stationery; sporting goods; fabrics; optical goods; launderette/Laundromat and appliances, but excluding lumber yards, restaurants, and fast-food restaurants. Outside storage or display of goods for such is permitted only with site plan approval by the Planning Board. General retail in the over 30,000 square feet category also includes shopping centers.

SCHOOL, PRIVATE: An institution, not owned by a public agency, which offers to its students formal education and is chartered by the Board of Regents of the University of the State of New York.

SCHOOL, PUBLIC: An institution under the jurisdiction of a school district or other public agency and legally constituted by the State of New York to offer free formal education to residents of the district.

SCREENING: The blocking, shielding or concealment of views, vistas, and noise through a proper and well-designed scheme of planting trees, shrubs, hedges, or vines or the installation of a fence approved by the Planning Board.

SEASONAL ROADSIDE STAND: See AGRICULTURE, RETAIL SALE OF FARM, NURSERY, AND RELATED PRODUCTS

SENIOR HOUSING/LIFE CARE: A residential complex containing multifamily dwellings designed for and principally occupied by senior citizens, age 55 or older. Such facilities may include a congregate meals program in a common dining area, or nursing homes, rest homes, and convalescent houses that include individual dwelling units for the elderly as an integral part of the facility.

SEQRA: The State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, and its implementing regulations codified in 6 NYCRR Part 617.

SERVICES, BUSINESS: Establishments primarily engaged in providing services rendered to a business establishment or individual on a fee or contract basis including actuarial, advertising, credit reporting, janitorial, office or business equipment rental or leasing, photofinishing, telecommunications, window cleaning, blueprinting and photocopying, and other such services.

SERVICES, PERSONAL: Establishments primarily engaged in providing services involving the care of a person or personal apparel, such as a beauty parlor, barber shop, health and fitness center, tailor or custom cleaning services. This use category includes funeral homes and studios (art, music, dance, etc.).

SITE PLAN: A plan, rendering, drawing, or map prepared to the specifications and containing necessary elements, as set forth in Article 3, Section 3.3 of this law, which shows the arrangement, layout, and design of the proposed use of a single parcel of land as shown on said plan including, but not limited to, building locations, roads, parking areas, and other site features that may be reasonably required in order to make an informed determination pursuant to this chapter requiring review and approval by the Planning Board (or the Zoning Board of Appeals, if applicable for certain uses).

SKETCH PLAN: A map, drawing or plan, at least drawn to approximate scale showing the boundaries of the parcel or site proposed to be subdivided or developed and the general proposal including lot layout, building locations, parking areas, roads and significant existing features.

SPECIAL USE: A use that, because of its unique characteristics, requires individual consideration through a review process by the Planning Board (or Zoning Board of Appeals for certain uses) as established by § 274-b of the Town Law of the State of New York. Such a use may require the meeting of certain conditions and safeguards as well as site plan approval before being permitted.

STOP WORK ORDER: A written document issued by the Building Inspector / Code Enforcement Officer which orders the cessation of a particular activity such as construction or the use of land due to a violation of this Zoning Law.

SUBDIVISION: The division of a parcel of land into two or more lots.

SUBDIVISION, CONSERVATION: A subdivision of land that divides land into not more than the number of lots which would be allowed on a conventional subdivision but where the Planning Board is authorized to reduce or modify the otherwise required minimum size of each lot in order to conserve open space and provide for a more flexible development. A Conservation Subdivision, which is sometimes referred to as a cluster subdivision or cluster development, is authorized only pursuant to the procedures, requirements and standards set forth in Article 5 Section 18 and Chapter 162 ?? of the Town Code.

SUBDIVISION, CONVENTIONAL: A subdivision of land, authorized pursuant to Chapter 162 of the Town Code, where each lot in the subdivision must meet the minimum lots and area dimensional requirements applicable for the Zoning District where the subdivision is located.

TOWN: The Town of Wawayanda, Orange County, New York.

TOWN BOARD: The Town Board of the Town of Wawayanda, the legislative body of the Town.

TOWN CODE: See CODE.

TRAILER: See TRAVEL TRAILER

TRANSFER / TRANSLOAD: An area of land upon which is located, permanently or temporarily, structures, machinery and/or other devices where any solid waste, refuse, leaves, trash, trees or soil is taken from a collection vehicle and placed either upon the land, into any other transportation unit or into any other device for future movement to another location.

TRAVEL TRAILER: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle.

USE: The purpose for which any premises may be arranged, designed, intended, maintained or occupied, or any occupation, activity or operation conducted or intended to be conducted on a premises.

USE, ACCESSORY: A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

VARIANCE: Written authority to deviate from any regulations of this Law. See Article 9 for further details.

VEHICLE SERVICES: Any establishment involving automotive repair, services, or operations; this includes automotive service stations, auto body shops, bus and truck terminals, and car washes.

VIOLATION: Non-compliance with any provision of the Zoning Law or the terms and conditions of any permit, variance or approval issued under this Zoning Law.

WAREHOUSE, STORAGE AND DISTRIBUTION FACILITIES: A building, or part of a building, for storing or distribution of goods, wares, and merchandise whether for the owner or for others, and whether it is a public or private warehouse.

WASTE, CONSTRUCTION/DEMOLITION: Building materials and rubble resulting from construction, Remodeling, repair, and demolition operations.

WASTE, DOMESTIC: Wastes originating from bathrooms, kitchens, showers, toilets, or other sanitary facilities, public or private, regardless of the degree of treatment.

WASTE, INDUSTRIAL: Any material resulting from a production or manufacturing operation having no net economic value to the source producing it.

WETLAND: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

WIRELESS COMMUNICATIONS FACILITY: Any site containing equipment used in connection with the commercial operation of wireless communications services, as defined herein, and as the term “personal wireless services facility” is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332 (c)(7)(C), or as hereafter amended to transmit and/or receive frequencies, including, but not limited to, antennas, monopoles, equipment, appurtenances and structures.

WIRELESS COMMUNICATIONS FACILITY, MAJOR: Any wireless communications facility that is not a minor wireless communications facility, including but not limited to any facilities including any wireless communications towers, as hereinafter defined.

WIRELESS COMMUNICATIONS FACILITY, MINOR: Any wireless communications facility situated on the same property as an existing wireless communications facility designed for collocation and previously approved under this chapter, or on or in an existing building or other structure; and where the equipment consists of a combination of antennas, or other receiving device, necessary in number to facilitate the provision of wireless communication services from such location, provided that minor installation comprises antennas, or transmitting and receiving devices which are not more than 15 feet in height, which are mounted on supports affixed to an existing structure, and operates with all significant equipment accessory thereto (other than the aforementioned antennas and transmitting or receiving devices, supports and connecting cables), installed in the interior space appurtenant to such existing building, tower, or structure, or located upon a structure the total combined height of which is less than 100 ft from the preconstruction average-finished grades.

WIRELESS COMMUNICATIONS SERVICES: The provision of personal wireless communications services, including, but not limited to, those more commonly referred to as cellular telephone service, regulated by the Federal Communications Commission in accordance with the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 332 (c)(7)(C), or as hereafter amended.

WIRELESS COMMUNICATIONS TOWERS: Any freestanding structure including lattice structures or framework and freestanding self-supported vertical pole (commonly known as monopole) on which any equipment is located in connection with the provision of wireless communications services.

YARD: A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided however, that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitation and requirements limiting obstruction of visibility.

YARD, FRONT: A yard extending between side lot lines across the front of a lot adjoining a public street. In the case of through lots or corner lots, unless the prevailing front yard pattern on adjoining lots indicates otherwise, front yards shall be provided on all frontages.

YARD, REAR: A yard extending across the rear of the lot between inner side yard lines. In the case of through lots, there will be no rear yard, but only front and side yards.

YARD, SIDE: A yard extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line, to the point on the lot farthest from the intersection of the lot line involved with the public street. In the case of through lots, side yards shall extend from the rear lines of required front yards. In the case of corner lots, one of the yards remaining after the designation of front yards shall be considered the side yard, and the other the rear yard.

ZONING DISTRICT – The designated area or areas of the Town established by this Chapter and the accompanying Zoning Map for which the allowable uses, minimum lot size and are requirements together with other requirements are uniform.

ZONING LAW – The local law, or laws, adopted by the Town Board which set forth the zoning regulations of the Town, as amended from time to time, which are codified in Chapter 195 of the Town Code.

ARTICLE 3 ZONING DISTRICTS AND ZONING MAP

3.1 Zoning Districts

A. The Town of Wawayanda is hereby divided into the following Zoning Districts:

AP	Agricultural Preservation
AB	Agricultural Business
AR	Agricultural Residential
SR	Suburban Residential
RH	Rural Highway
H	Hamlet
TC	Town Commercial
MC 1	Mixed Commercial
MC 2	Mixed Commercial

The aforesaid Districts are described below and are shown on the Zoning District Map, which is annexed hereto and made a part of this Chapter. The Zoning Districts are subject to regulations contained in this Chapter. The uses applicable to each District are set forth in the Schedule of Uses attached to this Chapter as Schedule A. Uses that are not explicitly allowed by issuance of a Special Use Permit and/or Site Plan approval are prohibited.

3.2 Zoning Map

The boundaries of the land use districts are hereby established on a map entitled "Town of Wawayanda Zoning Map," adopted by the Town Board as part of this Chapter. An unofficial photo-reduction of this map is attached hereto for reference purposes only as Schedule B. If changes are made in district boundaries or other matter portrayed on the Zoning Map, such changes shall be noted by the Town Clerk on the official Zoning Map promptly after the amendment has been approved by the Town Board.

3.3 Interpretation of District Boundaries

3.3-1 Location of Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center lines of streets or highways shall be construed to follow such center lines.
- B. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
- C. Boundaries indicated as following shorelines of streams, lakes and reservoirs shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.

- D. Boundaries indicated as parallel to or extensions of features indicated in Subsection (A) through (C) above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.

3.4 Lots in more than one District

- A. Where a district boundary line divides a lot of record at the time such line is established, the Planning Board may allow the extension of activities permitted in one district to the other as a special use. This is to permit more flexibility in the use of large parcels.
- B. When the specific location of a zoning district boundary line cannot be ascertained, the Building Inspector / Code Enforcement Officer shall request the planning board to render an interpretation which shall then be used as the basis for applying zoning standards,

3.5 Schedule of District Regulations

The restrictions and controls intended to regulate development in each district are set forth in the following Schedule of District Regulations which is then supplemented by other sections of this chapter and other laws of the Town of Wawayanda. Any use identified, as a principal permitted use shall be permitted as a matter of right upon application to the Building Inspector, provided the proposed use is in compliance with these regulations. Special uses are also subject to site plan review and, specifically, Planning Board approval as prerequisites to the Building Inspector / Code Enforcement Officer issuing a permit for their establishment. Site plan review shall also be required for new nonresidential uses, nonagricultural changes of use and such other uses as the Town Board may from time to time designate by local law. Accessory uses are permitted to accompany or precede principal permitted and special uses and permits for these uses shall be issued directly by the Building Inspector.

3.6 Applicability of regulations: prohibited uses.

- A. Whenever any owner or occupant of any property in the Town of Wawayanda shall, for any purpose, establish a new use, commercially clear, excavate or grade land in excess of one acre, make permanent structural improvements to a property, erect a new building, add to or enlarge any existing land use or building, such owner or occupant shall first comply with the requirements of this chapter and obtain any approvals and permits required hereunder, unless specifically exempted from such requirements by this chapter. An approval shall be required whenever a change in land use occurs, regardless of whether or not any new construction is involved hereunder, excepting agricultural activities and single-family home construction.
- B. If a proposed use is not specifically listed in any category of uses or within any zoning district on the Schedule of District Regulations, the Planning Board shall refer it to the ZBA for a formal determination as to whether or not the use is permitted in a given district and if the use is permitted, it shall then deem the application as a permitted use. If permitted, the ZBA will send the applicant back to the Planning Board for Site Plan Approval.

- C. Any use which is noxious, offensive or objectionable, by reason of the emission of smoke, dust, gas, odor or other form of air pollution or by reason of the deposit, discharge or dispersal of liquid or solid wastes in any form in a manner or amount as to cause permanent damage to the soil and stream or to adversely affect the surrounding area or by reason of the creation of noise, vibration, electromagnetic or other disturbance or by reason of illumination by artificial light or where light reflection emanates, or which involves any dangerous fire, explosive, radioactive or other hazard or which causes injury, annoyance or disturbance to any of the surrounding properties or to their owners and occupants and any other process or use which is unwholesome and noisome and may be dangerous or prejudicial to health, safety or general welfare is prohibited. Further, except as may herein be provided, the following uses and activities are expressly prohibited:
- (1) Dumps. No dump or deposit of rubbish, or garbage or tires where vermin, flies or mosquitoes may breed, from which offensive odors may be emitted or where a smoldering fire may burn shall be permitted except for municipal transfer stations. See § 152-1 of the Town Code.
 - (2) Junkyards as defined herein.
 - (3) Construction and demolition (C & D) dumps.
 - (4) Commercial stripping of topsoil. To strip or otherwise remove topsoil for sale or for other use other than on the premises from which the same shall be taken shall be prohibited, except in connection with the construction or alteration of a building on such premises and excavating or grading incidental thereto, and then only with a special use permit from the Planning Board. Commercial stripping of topsoil shall not be construed to apply to the sale of sod but shall apply to the stripping of soil within the black dirt region.
 - (5) Permanent installation or use of any mechanical, electrical or other sound-amplifier device. To install or use any mechanical, electrical or other sound-amplifier device or similar device for magnifying sound whereby the sound is audible beyond the premises on which it is installed or located shall be prohibited. This prohibition shall not apply to or infringe on the right of freedom of speech or of worship, inhibit the announcement of necessary public information nor limit the use of a public address system in a summer colony or camp for the purpose of making announcements, provided that the same is reasonable and necessary.
 - (6) Artificial lights as traffic hazards. No artificial lights or reflecting devices shall be located or otherwise displayed where such lights or devices interfere with, compete for attention with or may be mistaken for traffic signals or divert the attention of operators of motor vehicles or otherwise create traffic hazards.
 - (7) Blinking and flashing signs. Except for traffic signals regulated and approved by the appropriate state, county or Town transportation agency, blinking and/or flashing signs are prohibited.

3.7 HEIGHT RESTRICTIONS

- A. **General Application.** No building or structure shall exceed in building height the number of feet permitted as a maximum on the Schedule of District Regulations for the District where such building or structure is located.
- B. **Permitted exceptions.** Height limitations stipulated elsewhere in this chapter shall not apply to church spires, belfries, cupolas, domes, monuments, water towers, chimneys, smokestacks, flagpoles, farm buildings or similar non-inhabited structures under 100 feet in height. Radio and transmission towers shall be subject to the requirements of section 5.4. of this Chapter. Non-inhabited Structures over 100 feet in height may be permitted as special uses provided they are sufficiently set back from adjoining properties to avoid any safety hazard connected therewith and meet all state and federal air safety and electronic communication standards. Other height exceptions may be granted as special uses where fire fighting capacity will not be threatened and buffers and set backs are also proportionally greater.

3.8 CORNER LOTS AND THROUGH LOTS

Wherever a side or rear yard is adjacent to a street, the front yard setback shall apply to such side or rear yard. Corner lots shall be deemed to have two front yards, one side yard, and one rear yard.

3.9 PROJECTIONS INTO REQUIRED SETBACKS

The following projections into required setback areas may be permitted:

- A. Decks, porches and steps: six feet into any required setback area.
- B. Awnings or movable canopies: six feet into any required setback area.
- C. Cornices, eaves, and other similar architectural features: four feet into any required setback area.

3.10 YARD REGULATIONS

- A. Side yard exception. Where the side wall of a building is not parallel with the side lot line or is irregular, the side yard may be varied at the discretion of the Planning Board. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any point than 1/2 the otherwise required minimum width.
- B. Front yard exception. When an unimproved lot is situated adjacent to or between improved lots already having a principal building within the required front yard, the front yard for the unimproved lot may be reduced to the average depth of the front yards for the two nearest adjoining improved lots, but not less than 20 feet from the property line.

- C. Provision of yard or other open space. No yard or other open space provided about any buildings for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- D. Waterfront yards. Any yard, which borders on a New York State Department of Environmental Conservation classified lake, stream or body of water shall be not less than 100 feet in depth except for boathouses and docks.

3.11 ACCESSORY STRUCTURE AND USE STANDARDS

3.11-1 The location, limitation and coverage of residential accessory buildings shall be as follows:

- A. No accessory building permitted by this chapter shall be placed in any required side or front yard except as provided in this article.
- B. The aggregate ground area covered by any accessory buildings in any rear yard shall not exceed 50% of the rear yard area.
- C. Accessory structures on residential lots not attached to a principal structure shall:
 - (1) Be located not less than 10 feet from any side or rear lot line.
 - (2) Be no closer to the street than any principal structure on the lot, except in the case of farm buildings. Accessory buildings to principal structures located more than 250 feet from front lot line shall also be exempt. Accessory structures may, in these situations, be located in front of residences but not in required front yard areas.
- D. Storage trailers, railroad cars, bulk containers or retired mobile home units and recreational vehicles shall not be used for purposes of accessory structures in connection with any nonagricultural use.
- E. Swimming pools shall comply with the applicable sections of the New York State Uniform Fire Prevention and Building Code, as amended.
- F. Fences (Including Hedges) and Walls.
 - (1) Except as otherwise approved by the Planning Board as part of a site plan, fences and walls:
 - (a) Shall not exceed six feet in height when erected in required side or rear yards and shall not exceed four feet in height when erected in the required front yard;
 - (b) The setback requirements in this Chapter shall not apply to retaining walls or fences less than or equal to six feet high in any side or rear yard, except where corner clearances are required for traffic safety, and shall not exceed four feet in any front yard.

- (c) The setback requirements of this Chapter shall not apply to any front yard fences or walls less than four feet high, except that customary agricultural wire, board, or split rail fencing which does not obstruct visibility may be higher
- (d) Shall conform to corner lot requirements contained herein; and
- (e) Shall be measured from the ground level at the base of the fence or wall, excepting that where there is a retaining wall the height shall be measured from the average of the ground levels at each end of the retaining wall.

(2) All retaining walls over four feet high shall be designed by a New York State licensed Design Professional and obtain a building permit from the Building Inspector.

(3) Fences and walls shall be set back a minimum of 12' from the edge of the pavement, but must be located out of the Town's R.O.W.

G. Accessory Uses/Structures in Residential Properties.

- (1) Accessory uses/Structures to single-family, two-family and multi-family detached dwelling shall not exceed 25 feet by 50 feet in area with a maximum wall height of 12 feet.

3.11-2 Accessory structures to commercial or industrial uses shall require site plan and or special use approval from the Town of Wawayanda Planning Board.

ARTICLE 4 GENERAL SUPPLEMENTARY REGULATIONS

This Article addresses general standards applicable in all zoning districts as well as specific requirements for particular types of uses.

4.1 Parking, loading, access and traffic standards

A. Off-street parking, loading and unloading facilities shall be provided as necessary in connection with every use. One-family and two-family residential uses shall be provided with two off-street parking spaces per dwelling unit. Parking needs with respect to all other uses shall be determined in conjunction with site plan review. The amount of parking required shall be based on the following factors:

- (1) Industry studies of parking needs for the type of use proposed or actual case-study comparisons for projects of similar character. The Planning Board may require the developer or applicant to gather and submit such data in support of its proposed parking provisions. The National Parking Association and the Urban Land Institute are examples of such industry sources.
- (2) The characteristics of the proposed customers, residents, occupants or visitors to a given facility. Housing for the elderly would, for example, require fewer spaces per dwelling unit than time-shared recreational units, though the number of dwelling units might be the same.
- (3) The expected occupancy rates, traffic levels and numbers of employees in connection with any enterprise and the degree to which these directly relate to parking requirements.
- (4) Recommendations, if any, from other public agencies or information sources which suggest, based on experience, the appropriate amount of parking in connection with a given use.
- (5) The likelihood that parking will be shared with adjoining facilities, the impact of daily peak visitation or use periods on demand and the hours of operation as compared to other neighborhood activities.
- (6) Where industry standards are inadequate for the particular use or site involved or such standards are unavailable, the following standards shall be applied by the Planning Board or the Building Inspector, as the case may be:

Use	Number of Spaces
Home occupations	1 per 100 square feet of floor area devoted to use
Hotels/motels	1 per rental room
Industrial uses	1 per 400 square feet of floor area
Commercial uses	1 per 250 square feet of floor area
Places of public assembly	1 per 5 seats
Offices	1 per 300 square feet of floor area
Restaurants	1 per 50 square feet of floor area
Senior housing	1.5 per dwelling unit
Multi-family	1.5 per dwelling unit, plus 20% additional visitor parking
Vehicle service establishments	4 plus 1 per employee

- (7) If the Planning Board approves fewer than the number of spaces set forth in Subsection A(6) above, an alternative plan shall be prepared by the applicant and an area on the site set aside or reserved for future parking. The set-aside area shall be landscaped.
- B. The minimum parking space size shall be 9 feet by 19 feet.
- C. Any lighting used to illuminate any off-street parking shall be so arranged as to reflect the light away from adjoining premises and public rights-of-way.
- D. All parking areas which are designed to accommodate 12 or more vehicles shall be landscaped using materials of sufficient growth and height to aesthetically balance the impact of the open paved area and provide effective stormwater control (see § 195-20). The following are guideline standards the Planning Board may apply:
 - (1) No more than 12 parking spaces should be allowed in a continuous row uninterrupted by landscaping. This requirement may be waived at the discretion of the Planning Board to achieve a superior design.
 - (2) No parking areas should be designed such that a vehicle might directly back out onto a public highway or through road within the development. Traffic flows through a parking area should be minimized and limited to connections from one lot to another and to the public highway or through road.
 - (3) Where appropriate, parking areas should generally be located in the rear or side of any use, with the principal building situated near the front lot line as permitted by the Schedule of District Regulations. However, limited parking may be allowed in the front, providing landscaping and set back requirements are met. This is for the purpose of maintaining the continuity of the building line along any highway and avoiding the effective merger of parking areas along a highway into one mass of pavement where entrances and exits become difficult to identify.
- E. Any building erected, converted or enlarged for commercial, office, manufacturing, wholesale, institutional or similar uses shall, in addition to the off-street parking space required above, provide adequate off-street areas for loading and unloading of vehicles. Public rights-of-way shall, under no circumstance, be used for loading or unloading of materials. The minimum size loading space shall be 60 feet in depth and 12 feet in width, with an overhead clearance of 14 feet.
- F. Access to and from all nonresidential off-street parking, loading and vehicle service areas along public rights-of-way shall consist of well defined separate or common entrances and exits and shall comply with the following provisions:
 - (1) Access drives shall not open upon any public right-of-way within 80 feet of the nearest Right-of-way line of any intersecting public street or highway or where the sight distance in either direction would be less than 200 feet. Access drives onto state highways shall be subject to New York Department of Transportation standards.

- (2) There shall be no more than one entrance and one exit to any business or commercial use parking area on any one highway unless safety or other considerations should demand it. Each entrance and exit shall be clearly defined with curbing, fencing or vegetative screening so as to prevent access to the area from other than the defined entrance and exits. In no case shall one entrance and exit be located within 80 feet of any other on the same property or adjoining property along the same public right-of-way. Previously developed nonconforming lots, however, may be exempted from this requirement.
 - (3) All access drives shall be subject to the requirement of obtaining a road occupancy or street encroachment permit from the Town of Wawayanda Highway Superintendent, the Orange County Department of Public Works or the New York State Department of Transportation, as the case may be, and approval of any permits hereunder may be conditioned upon the application for and/or receipt of such permits from these authorities.
 - (4) No use shall be permitted which requires year-round access from a Town Highway which has been designated by the Town of Wawayanda Town Board as a low volume or minimum maintenance seasonal highway pursuant to § 205-a of the New York State Highway Law.
- G. All nonresidential parking and loading areas and parallel circulation and service lanes shall be separated from the paving edge of a public thoroughfare or adjoining property lines by a planting strip at least 20 feet in depth landscaped according to standards provided herein for such landscaping.
- H. Traffic impact study.
- (1) The Planning Board, at its discretion, may require a traffic impact study with any site plan or special use application. Traffic studies may be based on the Institute of Transportation Engineers trip generation rate or other acceptable industry standards.
 - (2) The study shall examine existing and projected traffic flows before and after development and generally follow the guidelines set forth for such studies by the Institute of Transportation Engineers. Its purpose shall be to ensure that proposed developments do not adversely affect the transportation network and to identify any traffic problems associated with access to the site from the network. It shall identify solutions to potential problems and any improvements needed. The scope of the study shall be approved in advance by the Planning Board with the final product incorporated in the SEQR submission.
- I. The Planning Board, in the course of site plan/special use review, may require sidewalks as an element of a site development plan, when sidewalks are found to serve the needs of the community and health, safety and welfare of the public.

4.2 FLOODPLAIN DEVELOPMENT STANDARDS.

There is hereby created a special zoning district, the boundaries of which shall be congruent with those areas identified as special flood hazard areas on the flood hazard boundary maps for the Town of Wawayanda, as issued by the Federal Insurance Administration or its successor. This district shall be an overlay zone, within which the normal provisions of the zoning districts as mapped on the Official Zoning Map shall apply, except that no development shall be permitted which does not comply with the provisions of the Town of Wawayanda Flood Damage Prevention Law of 1987, Chapter 92 of the Town of Wawayanda Code, as amended.

4.3 HOME OCCUPATIONS

Home occupations are defined as any occupation or business activity that occurs within structures or on property where the primary land use is residential and where the occupation, business or commercial activity is clearly incidental to such residential use. Such uses may include, but not be limited to, professional occupations, antique and craft shops, artisan activities, personal service shops and other related types of businesses.

4.3-1 All home occupations, as defined above, that comply with the following requirements are considered minimal impact home occupations and are allowed accessory uses to a residential dwelling pursuant to a Permit issued by the Building Department:

- A. No employees working on the premises other than family members residing thereon;
- B. No additional parking required;
- C. No outside storage of equipment, vehicles or materials used in the business other than an automobile for personal transportation;
- D. No regular traffic to the site for other than mail services, occasional deliveries and client/customer visits. Such mails services, deliveries or client/customer visits shall occur no more than three (3) times per week.
- E. No more than one sign, non-illuminated, and not to exceed two (2) square feet in area, shall be allowed.

4.3-2 All home occupations, as defined above, that comply with the following requirements are allowed accessory uses to a residential dwelling but only pursuant to a Special Use Permit issued by the Planning Board:

- A. The off-premises impact of noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare shall be no greater than that produced by a typical single-family residence in the neighborhood.
- B. Traffic generated shall not be in greater volume than would normally be expected in the neighborhood.

- C. Parking shall be provided off-street and shall not be located within the front setback area unless it is screened from public roads and no more than a total of 6 parking spaces shall be allowed for both the residence and the home occupation.
 - D. One non-illuminated identification sign no larger than two (2) square feet in size may be attached to the principal structure.
 - E. In cases where the principal structure is obscured from the frontage road or street, or the structure is set back more than 50 feet from the property line, a non-illuminated ground sign not to exceed two (2) square feet may be placed ten feet from the front boundary line of the property.
 - F. No more than three employees or co-owners in addition to the inhabitants of the residence are employed or works at the home occupation site.
 - G. Less than 35% or 1000 square feet, whichever is less, of the gross area of the residence is devoted to the home occupation or, if located in a barn, garage or other outbuilding, the total area of the home occupation is less than 2500 square feet.
 - H. The external appearance of the residential dwelling and/or accessory structure shall not be altered in any manner that changes its residential appearance.
 - I. The home occupation shall be compatible with the surrounding neighborhood, shall not attract undue attention to the occupation or business, shall not adversely affect the appearance, character or environmental conditions of such neighborhood, and shall not adversely affect adjacent residential properties.
 - J. The general criteria applicable for all Special Use Permits as set forth in Article 7 below are met.
- 4.3-3** No home occupation, having once been permitted or otherwise legally established, shall be added to, expanded, enlarged or otherwise increased or materially changed in character without complying with this Chapter. Such permit or establishment shall not, under any circumstances, be a basis for establishment of a principal commercial or business use.
- 4.3-4** Once the principal residential use is abandoned or the residence is unoccupied for residential purposes, the home occupation use shall automatically cease.

4.4 Accessory Apartments

The Town of Wawayanda recognizes the need to provide additional dwelling units on residential lots for family as well as to provide affordable housing. As such, apartments accessory to a single-family dwelling are allowed with certain limitations in order to ensure it being always accessory or subordinate to the principle single-family residence and non-intrusive to a residential area. Accessory apartments are only permitted with Special Use Permit from the Planning Board. An accessory apartment may be located in an accessory structure or a principal structure provided that the following conditions are met. A minimum of two (2) acres with private well and septic in the AR, AB, AP, Hamlet and SR Zones.

A. In Single-Family dwellings.

- (1) Only one accessory apartment shall be allowed in any single-family dwelling and only one accessory apartment shall be allowed on any single-family residential lot.
- (2) The total square-footage of the accessory apartment shall not exceed 50% of the total square-footage of the single-family dwelling. In no case shall the total square-footage of the accessory apartment exceed a maximum of 600 square feet or be less than a minimum of 300 square feet.
- (3) A one (1) bedroom unit is allowed in single family dwellings as an accessory apartment on a minimum of two (2) acres with private well and septic .
- (4) Adequate water, sewer and off street parking must be provided and approved to the satisfaction of the Town Engineer.
- (5) Either the accessory apartment or single- family dwelling must be owner-occupied.
- (6) Accessory apartments must meet New York State Uniform Fire Prevention and Building Codes.
- (7) All accessory apartments in single family dwellings are subject to an annual inspection by the Building Inspector / Code Enforcement Officer together with an annual inspection fee.

B. In Accessory Structure to Single-Family Dwelling

- (1) Only one accessory apartment shall be allowed in any accessory structure and only one accessory apartment shall be allowed on any single-family residential lot.
- (2) The total square-footage of the accessory apartment shall not exceed 600 square feet or be less than a minimum of 300 square feet.
- (3) A one (1) bedroom unit is allowed in accessory structures as an accessory apartment on a minimum of two (2) acres with private well and septic .
- (4) Adequate water, sewer and off street parking must be provided and approved to the satisfaction of the Town Engineer.
- (5) Either the accessory apartment or the single-family dwelling must be owner-occupied.
- (6) A mobile home, manufactured home or trailer shall not be used as an accessory structure.
- (7) Accessory apartments must meet New York State Uniform Fire Prevention and Building Codes.

- (8) All accessory apartments in accessory structures, in single family dwellings, are subject to an annual inspection by the Building Inspector / Code Enforcement Officer together with an annual inspection fee.

4.5 GENERAL COMMERCIAL AND INDUSTRIAL STANDARD

Wherever commercial, manufacturing or other nonresidential uses or improvements and changes to such uses, with the exception of agricultural activities and home occupations, are proposed, the following performance standards shall apply. The Building Inspector / Code Enforcement Officer shall ensure these standards are met prior to issuing certificates of occupancy for such uses and may require the applicant(s) to provide documentation of compliance.

- A. Where a commercial or manufacturing use is contiguous to an existing residential use in any district (including those situated on the opposite side of a highway) or any approved residential lot in a residential district, the Planning Board may require that the minimum front, side and rear yards be increased by up to 50%. The Board may also require, for purposes of separating incompatible activities or shielding the residence from negative impacts, that a buffer consisting of a solid fence of wood and/or a twenty-foot wide dense evergreen planting not less than six feet high be maintained, unless the properties are in the same ownership or the full width of the yard is already wooded. See also the landscaping standards contained herein.
- B. All activities involving the manufacturing, production, storage, transfer or disposal of Inflammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Fire-fighting and fire suppression equipment and devices shall be provided pursuant to the Fire Code of New York State. Burning of waste materials in open fires is prohibited. Details of the potential hazards and planned safety and accident response actions shall be provided by the applicant and the Planning Board may require greater front, side and rear yards and/or fencing.
- C. No activities shall be permitted which emit dangerous radioactivity or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.
- D. Noise shall not exceed an intensity of 65 decibels as measured 100 feet from the boundaries of the lot where such use is situated.
- E. No vibration shall be permitted on a regular or continuing basis which is detectable without instruments at the property line.
- F. Lighting.
 - (1) All lighting shall be designed so as to avoid unnecessary or unsafe spillover of light and glare onto operators of motor vehicles, pedestrians and land uses in proximity to the light source.
 - (2) Maximum Illumination Permitted at Property line shall be .5 footcandles.

- (3) Generally there will be a maximum limit of 5 footcandles of light at any location on the site.
 - (4) No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or other sources, so as to be visible at the property line on a regular or continuing basis, shall be permitted.
- G. No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted on a regular or continuing basis which can cause any damage to health, animals, vegetation, or other forms of property, or which can cause any excessive soiling.
- H. All activities involving the possible contamination of surface or groundwater shall be provided with adequate safety devices to prevent such contamination. Details of the potential hazards (including the groundwater characteristics of the area in which the use is proposed) and planned safety devices and contamination response actions shall be provided by the developer.
- I. Whenever a vehicle and equipment sales, mechanical and body repair use is proposed, the following additional performance standards shall apply:
- (1) All mechanical and body repair work shall be performed within buildings.
 - (2) All automobile or vehicle parts, new or used, shall be stored within buildings.
 - (3) Vehicles which are temporarily on the property awaiting to be repaired, shall be stored in an area which meets the minimum yard and buffer requirements applicable for the district and the use.
- J. The visual impacts of tanks, cupolas, vents, etc., and outdoor storage shall be considered during the site plan/special use review process. The Planning Board shall assure that adverse visual impacts are adequately mitigated. The facade of buildings and structures in industrial uses shall be compatible with adjacent development and shall be fully landscaped in accordance with the requirements that are contained herein.

4.6 LANDSCAPING, SCREENING, RIDGE DEVELOPMENT AND BUFFER REGULATIONS.

- A. **Purpose.** The following standards are intended to enhance the appearance and natural beauty of the Town and to protect property values through preservation and planting of vegetation, screening and landscaping material. Specifically, these standards are intended to enhance the appearance of major travel corridors and business areas; to reduce excessive heat, glare and accumulation of dust; to provide privacy from noise and visual intrusion; and to prevent the erosion of the soil, excessive stormwater runoff and the consequent depletion of the groundwater table and the pollution of water bodies.

B. General requirements. The following provisions shall apply to any use in all zoning districts:

- (1) All lots shall be graded and seeded and all other applicable requirements of these landscaping regulations imposed by the Planning Board shall be fully met prior to the Building Inspector / Code Enforcement Officer granting a certificate of occupancy for a new building or use subject to these regulations. An irrevocable letter of credit or cash bond shall be posted in an amount sufficient to cover the cost of such grading and seeding when the applicant cannot perform this work due to seasonal impracticalities.
- (2) Landscaping, trees and plants required by these regulations shall be planted in a growing condition according to accepted horticultural practices and they shall be maintained in a healthy growing condition. Any landscaping, trees and plants which are in a condition that does not fulfill the intent of these regulations shall be replaced by the property owner during the next planting season. An irrevocable letter of credit or cash bond shall be posted in an amount sufficient to cover the cost of such landscaping when the applicant cannot perform this work due to seasonal impracticalities.
- (3) A screening fence or wall required by these regulations shall be maintained by the property owner in good condition throughout the period of the use of the lot subject to the following conditions: Any land that is or has been designated or required to be a screening area, buffer area or paved area pursuant to an approval by the Town Board, Planning Board or Zoning Board of Appeals of any grant of an application for a change of zone, variance, special permit, subdivision of site plan approval or which is required by ordinance or local law must be maintained by the owner of the property or any of the owners, successors in the interest or assignees.
- (4) Where required by the Planning Board, all landscaping, trees and planting material adjacent to parking areas, loading areas or driveways shall be protected by barriers, curbs or other means from damage by vehicles and from stormwater runoff.
- (5) The preservation of mature shade trees, ridgelines, vegetation and unique site features, such as stone walls, shall be required to the maximum practical extent. These, however, may be used to meet requirements of this section provided the Building Inspector / Code Enforcement Officer or Planning Board, as the case may be, determines the purpose of this section is achieved.
- (6) Where lot size and shape or existing structures make it infeasible to comply with the requirements for a front landscaped area or landscaped parking area, the Planning Board may approve planters, plant boxes or pots containing trees, shrubs and/or flowers to comply with the intent of these regulations.

(7) Buffer area.

- (a) A buffer area shall be required along all boundaries of a non-residentially zoned or utilized lot abutting any lot in a residential district. The regulations shall also apply when the non-residentially zoned lot and the lot in the residential district are separated by a road. Such buffer area shall be located within the boundaries of the subject property or owned or controlled by the same property. The minimum width of buffer areas shall be as follows:

- [1] Hamlet District: 10 feet.
- [2] Town Commercial District: 20 feet.
- [3] Highway Commercial District: 30 feet.
- [4] Mixed Commercial District: 50 feet.
- [5] Any district other than a residential district adjoining land owned or maintained by New York State, Orange County or the Town of Wawayanda that has current or potential use as park land: 25 feet.

- (b) The buffer area nearest the residential district shall be planted with shrubs, trees and other plantings acceptable to the Planning Board and having a uniform height of not less than five feet above the ground at the time of planting and set a distance suitable for the proper maturation of such planting and shall be properly maintained to afford an effective screen between the two districts. A landscaped earthen berm, wall or fence of location, height, design and materials approved by the Planning Board may be required for any portion of the required planting and/or buffer area. Where the existing topography and/or landscaping provides adequate screening, the Planning Board may accept the existing planting and/or buffer area as the required planting. The Planning Board may also require an increase or permit a decrease in these requirements if the Board believes that said variation will better accomplish the objectives of this section.

- C. **Front landscaped area.** A front landscaped area shall be required for all uses in all zoning districts. The required landscaped area shall be covered with grass and other appropriate trees and shrubs unless maintained in the existing natural cover.

(1) Nonresidential uses.

- (a) As a minimum, for all nonresidential uses one shade tree having a minimum caliper of two and a half inches measured four feet from the base shall be planted within the front landscaped area for each 40 feet or fractions thereof of lot frontage.
- (b) In the Hamlet District, a landscaped strip shall be provided a minimum depth of 10 feet contiguous to the front lot line of the property.

(c) In districts other than the Hamlet District, a landscaped strip shall be provided a minimum depth of 20 feet contiguous to the front lot line of the property.

(2) Residential uses. A landscaped area at least five feet wide abutting the front of the principal building shall be provided unless the existing natural vegetation is maintained between the building and the road to an equal depth. The purpose of the landscaping is to enhance the appearance of the use on the lot but not necessarily to screen the use from view.

D. **Landscaped parking area.** In addition to front yard landscape areas and buffer area requirements, parking areas shall comply with the following minimum standards:

(1) All uses required to provide 20 or more off-street parking spaces shall have at least 10 square feet of interior landscaping within the paved portion of the parking area for each parking space and at least one tree with a minimum two-and-one-half-inch caliper for every 10 parking spaces or fraction thereof.

(2) Each separate landscaped area shall contain a minimum of 100 square feet, shall be planted with grass or shrubs and shall include at least one tree of not less than two-and-one-half-inch caliper.

(3) A landscaped area shall be provided along the perimeter of any parking area except that portion of the parking area which provides access.

E. **Planning.** The Planning Board may require a landscape plan be prepared as part of any site plan/special use or site plan application. Such a plan may also be required whenever any nonresidential use is proposed in any district so as to buffer parking areas and buildings from the highway, each other and other uses. Where it is determined that a proposed use would not have a significant impact on the natural environment, adjoining landowners or the view from a public highway, these requirements may be appropriately modified by the Planning Board. The landscape plan, if required, shall specify locations of all mature shade trees or other species of six-inch caliper or greater and indicate existing vegetation to be removed or preserved. It shall demonstrate how building materials, colors, and textures will be blended with the natural and man-made landscape. It shall also include visual depictions of the proposed landscape from the perspective of persons who will view the site from the highway or adjoining properties. Specific locations, varieties, sizes, winter hardiness, and schedules for all proposed plantings shall, too, be provided as part of the plan. The Planning Board, in reviewing a landscape plan, may employ the assistance of design professionals. The Planning Board shall also specifically consider the following before approving, approving with modifications or disapproving the special use:

(1) The plan should promote attractive development, preserve existing vegetation to the maximum extent possible, enhance the appearance of the property and complement the character of the surrounding area.

(2) The plan should use landscaping to delineate or define vehicular and pedestrian ways and open space.

- (3) The plant material selected should be of complementary character to buildings, structures and native plant species and be of sufficient size and quality to accomplish its intended purposes.
- (4) The plan should effectively buffer the activity from adjoining land uses as may be necessary and soften the impact of other site development as contrasted with the natural environment.
- (5) The plan should be realistic in terms of maintenance and use materials which, as a minimum, are winter hardy to Zone 4.

4.7 WATER SUPPLY PROTECTION.

A. Purpose and intent. The purpose and intent of this section is to assist in the preservation of public health, general welfare, and safety of the residents of the Town of Wawayanda and to facilitate the adequate provision of water through the elimination or prevention of groundwater contamination in the vicinity of well(s) that supply public water.

B. Scope and applicability.

- (1) Two different zoning districts are hereby created to overlay other existing zones as shown on the Zoning Map. One will protect the area immediately surrounding the water supply itself. This will be known as the Water Supply Protection Overlay Zone (W-1). The other will protect the larger watershed area feeding the water supply source. This will be known as the Watershed Protection Overlay Zone (W-2). Any uses not permitted in the underlying zones shall not be permitted in either overlay zone. Any uses permitted in the underlying zones shall also be permitted in the overlay zones, except where the overlay zones prohibit or impose greater or additional restrictions and requirements. In any cases where conflicts arise between these requirements and any other existing regulations, the more restrictive regulations shall apply. Any proposed use or any alteration, reconstruction, or structural change of a nonconforming use or activity wholly or partially within either of the overlay zones shall, to the extent such activities are subject to specific additional requirements of this section, be required to secure site plan/special use approval by the Planning Board prior to the issuance of a building permit or a certificate of occupancy by the Building Inspector. Special use approval shall also be obtained from the Planning Board for any proposed use or activity that removes 1,000 gallons per day or more from the aquifer within the W-1 Overlay Zone. Applicants proposing a use in either overlay zone that requires site plan/special use approval shall include the following in a site plan:

- (a) Map(s), plan(s), and a narrative report completed by an engineer licensed to practice in the State of New York which details the location of the premises and all features of the system necessary for the satisfactory conveyance, storage, distribution, use and disposal of stormwater, process wastes, wastewater, petroleum, hazardous substances and wastes, solid waste, and incidental wastes.
- (b) A description of the means of water supply. For uses involving withdrawal of groundwater, an estimate of the total daily withdrawal rate.

- (c) A complete list, including an estimate of the volume in pounds dry weight and liquid gallons, of all petroleum, chemicals, pesticides, fuels and other hazardous substances/wastes to be used, generated, and stored on the premises.
 - (d) A description of proposed measures as required herein to protect all storage containers, or facilities associated with such materials, from vandalism, accidental damage, corrosion and leakage.
 - (e) A description of the procedures for containing and cleaning up a spill of hazardous substances/waste and notifying the Town of Wawayanda and other appropriate local and state officials of a spill, leak, or other discharge.
 - (f) A description of proposed storage facilities for hazardous wastes and provisions for the disposal of these wastes by licensed waste haulers.
- (2) The Planning Board, in reviewing the proposed site plan/special use application, shall ensure, as an additional review criteria, that it affords adequate protection to prevent contamination and depletion of the groundwater resources within the overlay zones. In making such determination, the Planning Board shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality and quantity which would result if the control measures failed. In addition, the proposed use must comply with all requirements and standards for the proposed use in the overlay zones. The Planning Board may also require changes or additions to the site plan as a condition of approval to safeguard groundwater resources. No building permit and no certificate of occupancy shall be issued unless and until such conditions have been fully met or performed. All improvements to the site shall be completed in strict conformance with the site plan as approved.
- C. Water supply protection overlay zones. There are hereby established within the Town of Wawayanda, two water supply protection overlay zones. These zones are delineated on a map entitled Official Zoning Map of the Town of Wawayanda. These zones are described as follows:
- (1) Water Supply Protection Overlay Zone (W-1 Overlay Zone). This zone generally consists of the consolidated or unconsolidated groundwater aquifer dedicated to municipal water supply and the immediate, contiguous areas which drain directly into the aquifer area.
 - (2) Watershed Protection Overlay Zone (W-2 Overlay Zone). This zone generally consists of the remaining land that contributes surface water runoff to the aquifer and the W-1 Overlay Zone.
- D. Definitions. The following special definitions shall apply to activities in either of the overlay zones.

ANIMAL UNIT -- One slaughter or feeder cow, 1.43 dairy cows, or 0.4 swine.

AQUIFER -- A geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield adequate quantities of groundwater to wells.

BULK STORAGE -- Materials stored in large quantities which are usually dispensed in smaller units for use or consumption.

CONTAMINATION -- The degradation of natural water quality as a result of human activities to the extent that its usefulness is impaired.

DEICING CHLORIDE SALT -- Any bulk quantities of chloride compounds and other deicing compounds intended for application to roads, including mixtures of sand and chloride compounds in any proportion where the chloride compounds constitute over 8% of the mixture. Bulk quantity of chloride compounds means any quantity, but does not include any chloride compounds in a solid form which are packaged in waterproof bags or containers which do not exceed 100 pounds each.

DISPOSAL -- The discharge, deposit, injection, dumping, spilling, leaking, or release by any other means of a substance to the surface or subsurface of the ground, surface waters, or groundwater.

FERTILIZERS -- Any commercially produced mixture generally containing phosphorous, nitrogen, and potassium which is applied to the ground to increase nutrients from plants.

HAZARDOUS SUBSTANCE -- Any substance listed as a hazardous substance in 6 NYCRR Part 597, Hazardous Substance List, or a mixture thereof. In general, a hazardous substance means any substance which: (1) Because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed; (2) Poses a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; or (3) Because of its toxicity or concentration within biological chains, presents a demonstrated threat to biological life cycles when released into the environment.

HAZARDOUS WASTE -- A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous wastes include but are not limited to petroleum products, organic chemical solvents, heavy metal sludges, acids with a pH less than or equal to 2.0, alkalies with a pH greater than or equal to 12.5, radioactive substances, pathological or infectious wastes, or any material exhibiting the characteristics of ignitability, corrosivity, reactivity, or EP toxicity.

HERBICIDES -- Any substance or mixture of substances intended for prevention, destroying, repelling, or mitigating any weed, and those substances defined pursuant to Environmental Conservation Law § 33-0101.

IMPERVIOUS SURFACE -- Any man-made material, such as pavement used in parking lots or driveways or any building or other structure on a lot, that does not allow surface water to penetrate into the soil.

INFILTRATION BASIN -- An impoundment made by excavation or embankment construction to contain water and allow the downward movement of water into the soil.

ON-SITE CONSUMPTION -- The use of petroleum to heat or cool a residential or nonresidential structure, to operate machinery necessary for agricultural activities, or for processing or manufacturing activities. On-site consumption does not include the sale or distribution of petroleum for or into vehicles, except vehicles used only on-site.

PESTICIDE -- Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and those substances defined pursuant to Environmental Conservation Law § 17-0105.

RADIOACTIVE MATERIAL -- Any material in any form that emits radiation spontaneously, excluding those radioactive materials or devices containing radioactive materials which are exempt from licensing and regulatory control pursuant to regulations of the New York State Department of Labor or the United States Nuclear Regulatory Commission.

SECONDARY CONTAINMENT -- A structure which prevents any materials that have spilled or leaked from primary containment structures, such as piping, tanks or other containers, from reaching the land surface, subsurface, or a water body.

SEPTAGE -- The contents of a septic tank, cesspool, or other individual wastewater treatment work which receives domestic sewage wastes.

SLUDGE -- The solid, semisolid, or liquid waste generated from a waste processing facility, but does not include the liquid stream of effluent.

SOLID WASTE -- Any garbage, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air-pollution control facility and other discarded materials including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining (other than earthen materials) and agricultural operations, and from community activities.

SPILL -- Any discharge of a substance from the containers employed in storage, transfer, processing, or use.

SURFACE WATER BODY -- Those water bodies which are identified as drainage features (perennial stream or river, intermittent stream, canals, ditches, etc.) lakes, ponds reservoirs, springs, or wetlands on United States Geological Survey or New York State Department of Transportation 7.5 -minute topographic maps, United States Department of Agriculture soil survey maps, or wetlands maps by the New York State Department of Environmental Conservation.

UNDERGROUND STORAGE -- Storage within a tank or other container which is completely covered with earth or other backfill material.

WASTEWATER -- Aqueous-carried waste including, but not limited to, solid waste, hazardous waste, incinerator ash and residue, septage, garbage, refuse, sludge, chemical waste, infectious waste, biological material, radioactive materials, heat and commercial, industrial, municipal, and agricultural waste.

E. Prohibited uses. The following activities shall all be prohibited within the overlay zones so as to safeguard groundwater resources which serve as the Town's drinking water supply:

(1) Uses prohibited in W-1 Overlay Zones.

- (a) Establishment and/or operation of any solid waste management facility or hazardous waste treatment, storage, or disposal facility, including but not limited to: solid waste storage area or facility; transfer station; rail-haul or barge-haul facility; raw waste landfill; sanitary landfill; solid waste landfill; ash landfill; construction and demolition debris landfill; disposal facility; solid waste incinerator; refuse-derived fuel processing or manufacturing facility; pyrolysis facility; construction and debris processing facility; land application facility; composting facility; used oil storage, reprocessing, and refining facility; recyclables handling and recovery facility; waste tire storage facility; junkyard; salvage yard; impoundment yard; dump; radiological waste facility; pathological or medical waste facility; or hazardous waste treatment, storage or disposal facility.
- (b) Surface land application of septage, sludge, or human excreta.
- (c) Disposal of any solid waste, petroleum, radioactive material, hazardous substance, hazardous waste into or onto land or a surface water body.
- (d) Establishment of any of the following: coal tar plant; cemetery; fuel oil distributor; gasoline station; oil and gas drilling and production; pesticide stores; pest control business; road and maintenance depot.
- (e) Outdoor uncovered stockpiling or bulk storage of manure, coal, deicing chloride salts, or artificial fertilizers.
- (f) Commercial use, storage and application of pesticides, herbicides, fungicides, and fertilizers.
- (g) Disposal of snow-containing deicing salts/chemicals removed from streets, roads, and parking areas and that has been transported from areas outside of the Water Supply Protection Overlay Zone.
- (h) Construction of commercial pipelines or piping systems that carry petroleum or liquid hazardous substances or waste.
- (i) Construction of on-site wastewater disposal systems capable of surface or subsurface discharges of 1,000 gallons or more per day or other wastewater treatment facilities with disposal of primary or secondary effluent within the Water Supply Protection Overlay Zone.
- (j) Underground storage of petroleum products, hazardous substances, hazardous waste, pesticides and fertilizers.

- (k) Outdoor, aboveground storage of petroleum products, hazardous substances, hazardous waste and pesticides.
 - (l) New mining operations from which earth materials are removed for sale, exchange, or other use except for excavation and grading operations which are conducted solely in aid of on-site construction or farming.
- (2) Uses prohibited in W-2 Overlay Zones.
- (a) Disposal of snow containing deicing salts/chemicals removed from streets, roads, and parking areas to the area within 100 feet of streams and watercourses.
 - (b) Disposal of any solid waste, petroleum, radioactive material, hazardous substance, hazardous waste, or nonsewage wastewater into or onto land or a surface water body. Uses which commonly dispose of solid waste, petroleum, hazardous substances, hazardous waste, or nonsewage wastewater into or onto land or a surface water body include but are not limited to: appliance/small engine repair shops; auto repair and body shops; boat service, repair, and washing establishments; chemical/biological laboratories; chemical processing/manufacturing plants; cleaning services (dry cleaning, laundromat, commercial laundry); electric/electronic/communications equipment manufacturers; furniture manufacturers/strippers/painters; jewelry and metal platers; machine shops; metal manufacturers/fabricators/finishers; petroleum product refiners and manufacturers; photo processors and printers; and wood preserving/treating establishments.
 - (c) Surface land application of septage, sludge, or human excreta.
 - (d) Disposal of any solid waste, petroleum, radioactive material, hazardous substance, hazardous waste, or nonsewage wastewater into or onto land or a surface water body. Normal maintenance of stormwater management facilities is exempt.
 - (e) Outdoor uncovered stockpiling or bulk storage of coal, deicing chloride compounds (unless bagged), or artificial fertilizers.

F. Lot coverage.

- (1) The minimum lot size for lots in the W-1 Overlay Zone that are to be served by on-site wastewater treatment systems (septic systems) shall be 80,000 square feet.

- (2) The total allowable impervious surface area for lots in the W-1 Overlay Zone shall not exceed the following percentages:

Lot Size (square feet)	Lot Size (acres)	Maximum Impervious Surface Area of Lot
7,500 - 14,999	0.15 - 0.34	50%
15,000 - 29,999	0.34 - 0.69	45%
30,000 - 79,999	0.69 - 1.84	40%
greater than 79,999	greater than 1.84	35%

G. Stormwater runoff. Proposed uses within either the W-1 Overlay Zones or the W-2 Overlay Zones shall meet the following standards for stormwater runoff:

- (1) There shall be no exceeding of predevelopment peak flow rate for the one-hundred-year-return-frequency storm.
- (2) The off-site impacts of erosion and sedimentation from the proposed use shall not be any greater during and following land disturbance activities under predevelopment conditions.
- (3) All stormwater runoff from new impervious surface areas shall be discharged using infiltration basins, pits, trenches or impoundments in accordance with the design criteria for these stormwater management techniques as described in Chapter 6 of the NYSDEC manual "Reducing the Impacts of Stormwater Runoff from New Development," as amended or superseded. For commercial/industrial parking lots which produce significant loads of grit and oil, oil/grit separators (water quality inlets) are required to remove sediment and hydrocarbons which would clog soils and lead to failure of the infiltration structure.
- (4) The applicant shall prepare or have prepared a stormwater management and erosion control plan using the outline presented in Chapter 4 of the NYS DEC manual "Reducing the Impacts of Stormwater Runoff from New Development," as amended or superseded.
- (5) Dry wells, infiltration trenches, and infiltration basins shall be used to dispose of stormwater only where other methods may not be feasible, as determined by the Planning Board, due to physical constraints of the site. No such infiltration systems for disposal of stormwater shall be located within 1,000 feet of a public water supply well.
- (6) Surface infiltration trenches must have grass buffers and dry wells and subsurface infiltration trenches must have oil, grease and sediment traps (water quality inlets) to capture excess loads of sediment, grease, oils, and settleable solids and other objectionable materials including floatable organic materials before stormwater is allowed to enter the infiltration system.

- (7) Dry wells shall be equipped with an accessible cap and underground infiltration trenches shall be equipped with observation well(s). All caps to dry wells and observation wells shall be locked or constructed to prevent vandalism.
 - (8) There must be a vertical separation distance of at least four feet between the bottom of the infiltration system and the season high-water table or bedrock. The required separation distance must be verified by test pits/soil borings under the direction of a professional engineer licensed to practice in the State of New York.
 - (9) The following activities shall be exempt from the stormwater management and erosion control plan requirements: agricultural activities (including household gardening and timber harvesting) that are not part of a development project; development of less than five single-family or duplex residential dwelling units and their accessory structures in an existing subdivision; development of one single-family or duplex residential dwelling unit not in an existing subdivision; industrial and/or commercial development projects which result in an impervious surface of less than 10,000 square feet; and any maintenance, alteration, use, or improvement of an existing structure which will not change the quality, rate, volume, or location of stormwater discharge or contribute to erosion and sedimentation.
- H. Underground petroleum storage. New facilities for the underground storage of petroleum products, including those for on-site consumption, shall be prohibited in W-1 Overlay Zones. Replacement underground petroleum storage facilities shall be permitted if the new storage facilities are of equal or lesser capacity and are installed in accordance with the standards of the New York State Department of Environmental Conservation.
- I. Aboveground petroleum storage. New facilities for the outdoor, aboveground storage of petroleum products, except for petroleum used for on-site consumption, shall be prohibited in W-1 Overlay Zones. Replacement of aboveground petroleum storage facilities for other than on-site consumption/use shall be permitted within W-1 Overlay Zones if the new storage facilities are of equal or lesser capacity and are installed in accordance with the standards of the New York State Department of Environmental Conservation. All facilities shall be equipped with the following:
- (1) Double-walled piping or other form of piping secondary containment and a piping leak detection system;
 - (2) Cathodic protection for any steel/iron underground piping;
 - (3) A dike, berm or other secondary containment structure composed of impermeable material which is designed to contain at least 120% of the volume of the largest tank enclosed by the containment structure;
 - (4) Visual gauges to monitor fluid levels and/or high level alarms to warn of an imminent overflow and spill prevention valves;
 - (5) Tank labels; and
 - (6) Security against unauthorized entry into storage areas.

J. Indoor petroleum storage. Indoor storage facilities for petroleum in W-1 Overlay Zones, except for on-site consumption in residences, household uses (operating lawn-care equipment, recreational vehicles, etc.) and storage in original, sealed containers for purposes of resale, shall meet all applicable New York State Department of Environmental Conservation rules and regulations for petroleum bulk storage and the following design requirements:

- (1) Petroleum shall be stored in product-tight closed containers, containers equipped with a lid, or still tanks;
- (2) All storage areas shall be equipped with a secondary containment structure built of impervious material which is designed to contain at least 120% of the volume of the largest container enclosed by the containment structure;
- (3) No storage areas shall be located in proximity to floor drains;
- (4) Storage areas shall be secured against unauthorized entry;
- (5) The tank or containers shall be mounted/stored on a concrete floor or pad;
- (6) For tanks, visual gauges installed to monitor fluid levels and/or high level alarms to warn of an imminent overflow;
- (7) For tanks, spill prevention valves; and
- (8) Tank/container labels.

K. Hazardous substance storage. Proposed uses in W-1 Overlay Zones must meet the following standards for hazardous substance, pesticide, herbicide, and fertilizer storage:

- (1) Outdoor, aboveground storage of hazardous substances is prohibited.
- (2) Indoor storage areas for quantities of hazardous substances, pesticides, herbicides, and fertilizers that total more than 250 pounds or 50 gallons liquid shall meet all applicable federal and state requirements and the following requirements and standards [storage in original, sealed containers for the purpose of resale shall be exempt from Subsection K(2)(c) and (d)]: (a) All products shall be stored in product-tight containers with a lid; (b) Each container shall be clearly labeled; (c) Drip pans shall be located under the spigots of drums or containers stored in a horizontal position; (d) All storage areas shall be equipped with a pad and a dike, berm or other secondary containment structure built of impervious material which is designed to contain at least 120% of the volume of the largest container enclosed by the containment structure; (e) No storage areas shall be located adjacent to floor drains; (f) Absorbent material shall be kept on hand for emergency cleanups and containments; and (g) Storage areas shall be secured against unauthorized entry.
- (3) An accurate log or inventory of hazardous substances on-site shall be maintained.

- (4) A spill control plan shall be prepared and posted in a conspicuous location. The plans shall contain a description of operational procedures, a description of potential spill sources, the names and telephone numbers of persons responsible for responding to the spill, the procedures for containing and cleaning up the spill, the procedure for notifying the Town and other appropriate local and state officials.
- L. Floor drains. All floor drains for a proposed use within W-1 Overlay Zones shall be connected to an oil and grit separating tank that is connected to the sanitary sewer system. Floor drains which are connected to the sanitary sewer must meet discharge limits and permit requirements established by the Wastewater Treatment Plant or NYSDEC criteria for subsurface disposal systems. Discharge of floor drains to the ground surface, subsurface, or watercourse, is prohibited.
- M. Hazardous waste storage and disposal. Proposed uses in W-1 Overlay Zones must meet the following standards for temporary storage and proper disposal of hazardous waste:
- (1) The owner or applicant of a facility generating hazardous waste shall demonstrate the availability and feasibility of temporary indoor storage methods which are in accordance with all applicable local, state, federal laws, and the requirements of this article for hazardous waste to be produced in quantities greater than those associated with normal household or agricultural use.
 - (2) The owner or applicant shall demonstrate that wastes will be properly handled and stored until disposed of at a licensed hazardous waste treatment, storage, or disposal facility by a licensed waste hauler.
 - (3) Temporarily accumulated hazardous waste will be in accordance with all applicable local, state, federal regulations.
 - (4) An accurate log or inventory of hazardous wastes stored on-site shall be maintained, including a description of the waste contained in container, the date of waste generation, the date of removal by a licensed waste hauler, and the name and address of the licensed waste hauler.
 - (5) A spill control plan shall be prepared and posted in a conspicuous location. The plans shall contain a description of operational procedures, a description of potential spill sources, the names and telephone numbers of persons responsible for responding to the spill, the procedures for containing and cleaning up the spill, the procedure for notifying the Town and other appropriate local and state officials.
- N. Pesticide/fertilizer storage and application. The outdoor uncovered stockpiling or bulk storage of manure is prohibited within 100 feet of a surface water body in a W-1 Overlay Zone or within 1000 feet of a public water supply well in a W-1 Overlay Zone. In addition, the underground or outdoor, aboveground storage of pesticides and/or fertilizers is also prohibited within W-1 Overlay Zones. The following standards shall apply to proposed uses regarding the storage, application, and disposal of pesticides and/or fertilizers within W-1 Overlay Zones:

- (1) Areas utilized for the stockpiling or bulk storage of manure and associated agricultural waste from commercial agricultural establishments in W-1 Overlay Zones shall be constructed and maintained in accordance with best management practices such that seepage, leachate, or runoff from stockpiling or storage of animal waste does not cause or contribute to the contravention of a water quality standard.
 - (2) Commercial agricultural storage and use of fertilizers and the land application of manure within W-1 Overlay Zones shall be in conformance to the degree practicable with best management practices as recommended by NYSDEC, Cornell Cooperative Extension and Orange County Soil and Water Conservation District.
 - (3) Storage, use, and/or application of pesticides within W-1 Overlay Zones must be in accordance with proper certification from the New York State Department of Environmental Conservation.
- O. Site inspections. The Town Building Inspector / Code Enforcement Officer is authorized to perform periodic inspections of facilities within W-1 Overlay Zones to ensure that these facilities are in compliance with the requirements and standards of this article. The owner or the owner's designee shall grant the Codes Enforcement Officer access to the site at a mutually agreeable time within 72 hours of notice of inspection.

4.8 AGRICULTURAL BUFFER

Wherever agricultural uses and other new uses unrelated to the agricultural operations abut, buffers shall be provided to reduce the exposure of these abutting uses to odors, noise, and other potential nuisances related to the agricultural operation. Provision of buffers shall be the responsibility of the proponent of the non-agricultural use, unless such use predates the agricultural use. Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features and should be considered and utilized by the Planning Board when lots are created or subdivided nearby agricultural properties or uses and by the lot owner for the location of a new dwelling on a lot.

4.9 AGRICULTURAL DATA STATEMENT

Any application for a Special Use Permit, Use Variance, Site Plan or subdivision approval requiring municipal review and approval by the Planning Board or Zoning Board of Appeals that would occur on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement as defined in Chapter 12. The Planning Board or Zoning Board of Appeals shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

4.10 REQUIRED DISCLOSURE

Owing to the predominant agricultural character of the Town of Wawayanda, and considering the increasing migration of residents from communities outside of the region, it is necessary to communicate the importance of ongoing farm operations in the Town in order to minimize potential conflicts between property owners. In the case of any proposed residential development within any district in the Town, the Planning Board shall require the applicant to issue a disclosure to potential purchasers of lots or dwelling units as follows:

“It is the policy of the State of New York and the Town of Wawayanda to conserve, protect, and encourage the development and improvement of Agricultural Land for the production of food and other products and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district and that farming activities are the main land use occurring within the district. Such farming activities may include but not be limited to the following activities:

1. That farming does not only occur between 8:00 a.m. and 5:00 p.m. and is dependent on mother nature. Residents should be aware of noise from agricultural machinery being operated in nearby fields on both early morning and evening hours and noise from crop drying fans which are run 24 hours a day during the harvesting season.
2. That the roads leading to and from the subdivision area frequently traveled by farmers and their slow-moving farm vehicles and equipment.
3. That farm neighbors very often spray their crops with pesticides in accordance with accepted practices regulated by the New York State Department of Environmental Conservation.
4. That existing agricultural operations may create both unavoidable odors and unsightliness commonly associated with farming operations in this area.
5. That there are dangers of letting children and pets roam into any adjacent field which is private property.
6. That residences for seasonal farm laborers are an accessory use to farming activities in the agricultural zones.
7. Be advised of the possible nuisance of blowing dust and black dirt caused by windstorms in the area.”

This disclosure shall be required as a note on a subdivision plat or site plan, and may also be required to be made through other means reasonably calculated to inform a prospective purchaser, such as by posting or letter of notification. Section 6.3-3 may also be applied to any commercial development within the jurisdiction of the Planning Board that abuts agricultural land, at the discretion of the Planning Board.

4.11 EROSION AND SEDIMENTATION CONTROL

Any land use proposal shall comply with the Town Code of the Town of Wawayanda regarding the requirements for stormwater runoff and erosion and sedimentation control, as the same may be set forth in Chapter 154 and elsewhere in the Town Code of the Town of Wawayanda.

4.12 FLAG LOTS. FLAG LOTS IN SUBDIVISION OF LAND

A flag lot is defined for purposes of this Chapter as a lot so shaped and designed that the main portion of the lot is set back from the public street or road on which it fronts, is situated behind one or more lots and is connected to such frontage road or street only by means of a relatively narrow strip of land. The following requirements apply to flag lots:

- A. Each flag lot must have a minimum frontage of 50 feet on an improved public road that provides adequate and physically practical access from the lot to the public road.
- B. Except for the allowable reduction of minimum road frontage requirements as set forth in Bulk Tables for applicable zones, flag lots must meet all other requirements for a lot in the applicable Zoning District. For purposes of determining front yard setbacks, the front yard shall be calculated from where the lot meets minimum lot width requirements and the setback shall be measured from the closest rear yard property line of the abutting parcel or parcels.
- C. All flag lots must have safe access for fire, police, and emergency vehicles.

4.13 PRIVATE ROAD.

Private roads are allowed with planning board approval and in accordance with Chapter 158 Street Specification of Town Code.

- (1) Private roads shall not serve more than 6 single family residences
- (2) Private roads must have an access and maintenance agreement in a form approved by the planning board attorney
- (3) All lots on private roads must meet setbacks and lot area for the applicable zones which they are located.
- (4) Setbacks are to be measured from Right of Way Lines.
- (5) Corner lots shall have 2 front yards.

4.14 UNREGISTERED VEHICLES

No more than one unregistered vehicle shall be maintained outside of a fully enclosed structure on any residential lot.

4.15 STORAGE OF COMMERCIAL VEHICLES

No more than one commercial vehicle or heavy construction equipment, ie. bulldozer, loader etc, over 18,000 pounds shall be parked or stored on any residential lot, except as part of any construction occurring on site. Outdoor storage of more than one commercial vehicle is allowed by special use permit in the AB, AP and AR Zones. The outdoor storage of agricultural vehicles and equipment used for agricultural purposes on the property where such are stored shall be permitted in all districts. Commercial vehicles or auxiliary engines may not be left running in residential zones.

4.16 STORAGE OF RECREATIONAL VEHICLES

Outdoor storage of up to two recreational vehicles and/or boats of any size is permitted on residential lots provided that such vehicle or boat is not stored between the street line and the front yard setback or within any side or rear yard setbacks except when stored in a driveway. The outdoor storage of one recreational vehicle or boat of more than 20 feet in length is permitted on any residential lot provided that such vehicle or boat is not stored between the street line and the front yard setback or within any side or rear yard setbacks except when stored in a driveway.

4.17 TRAVEL TRAILERS

No travel trailer shall be parked or located overnight within the town except:

- A. On private property in conformance with this section;
- B. In a campground, as provided in Section 5.1; or
- C. On the premises of a travel trailer sales or rental establishment.

4.17-2 A travel trailer may be parked or located overnight on the property of its owner, provided that it complies with applicable setback requirements and is sited in a manner that minimizes its visibility from a public highway (normally in the rear or side yard behind the front face of the principal building). A travel trailer shall not block access by emergency vehicles, shall not be used as living quarters except as provided in subsections 4.17-4 and 4.17-5 below, and shall not be hooked up to any utilities on a permanent basis.

4.17-3 Notwithstanding any inconsistent provision of this section, use of a mobile home or office trailer is permitted by contractors as an office during building construction upon issuance of a permit by the Building Inspector / Code Enforcement Officer and upon payment of any required permit fees.

4.17-4 For existing residential uses which have been damaged by fire or other natural disasters, a temporary mobile home may be located on the lot during construction of a replacement structure, upon issuance of a permit by the Building Inspector, not to exceed two years. The mobile home must be removed upon completion of the new home and issuance of a Certificate of Occupancy.

4.17-5 A family guest may park and sleep in a travel trailer on the lot of the family visited, provided that the travel trailer is located in accordance with the requirements of subsection 4.16 above. Such use shall not exceed 30 consecutive days or 45 days in total during any calendar year.

4.18 SIGNS

4.18-1 Purpose.

The purpose of this chapter is to establish the regulation of signs and certain commercial lighting in the Town of Wawayanda. All signs not specifically permitted by this chapter are prohibited.

4.18-2 Definitions.

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

BILLBOARD - A freestanding sign larger than forty-eight (48) square feet advertising an off-premises business or activity.

CHANGEABLE COPY SIGNS - Signs either permanent or temporary, whose messages can be easily changed manually.

CONSTRUCTION SIGN - A temporary non-illuminated sign denoting either the architect, engineer and/or contractors on premises where construction, repair or renovation is in progress.

DIRECTLY ILLUMINATED SIGN - A sign designed to give forth any artificial light directly or designed to reflect such light deriving from any source which is intended to cause such light or reflection.

FREESTANDING SIGN - Any sign which is supported by one (1) or more uprights, poles or braces in or upon the ground.

INDIRECTLY ILLUMINATED SIGN - A sign illuminated with a light so shielded that no direct rays there from are visible elsewhere than on the plot where such illumination occurs; any sign illuminated with an artificial light which is separated from or is not an intrinsic part of the sign itself.

MESSAGE CENTER SIGN - A sign whose message can be changed automatically by mechanical or electronic means.

OFF-PREMISES SIGN - A sign, as defined in this section, located on another lot which is separate and distinct from the lot which is being described or advertised in the sign.

PORTABLE SIGN - A sign which can be carried, transported, moved, mounted temporarily or permanently on wheels or otherwise erected.

PUBLIC SERVICE SIGN - A sign which gives the public necessary or desirable information as opposed to a sign which primarily advertises a commercial business.

PROJECTING SIGN - Any sign other than a wall sign which projects from and is supported by a wall of a building.

ROOF SIGN - A sign erected upon or above a roof or parapet of a building or structure.

SIGN - Any letter, word, model, banner, insignia, trade flag, device, decorated section of awning or representation used as or which is in the nature of an advertisement attraction or directive, visible to the public from outside the building; any structure or part thereof or any device attached to a structure which shall display or include any letters, wording, model, insignia, etc., which is used in the nature of an announcement. A "sign" includes a billboard, but does not include the flag of any nation or governmental agency.

SIGN AREA

- A. When a sign is on a plate or framed or outlined, all of the area of such plate or the area enclosed by such frame or outline shall be included in the "sign area." The "sign area" shall not include any supporting structure or bracing, or supports if they are not used for advertising purposes.
- B. When a sign consists only of letters, designs or figures that are engraved, painted or projected or in any manner affixed on a wall or awning or window, the total "sign area" of such sign shall be deemed the area within the smallest quadrangle or a triangle which encompasses all the letters and symbols.
- C. Each separate face of a sign shall be counted as part of the "sign area" except that only one (1) side of signs with faces placed back to back is considered to determine the area. When the two (2) sides are of different sizes, the larger shall determine the area.

SIGN HEIGHT - The measurement of a sign from average grade level to the highest point of the sign and/or the structure to which the sign is attached.

SIGN STRUCTURE - A structure which supports or is capable of supporting a sign.

SUBDIVISION IDENTIFICATION SIGN - A non-illuminated sign identifying a subdivision.

TEMPORARY SIGN - A sign that is temporary in nature, such as a poster, banner, promotional device, changeable copy sign or other sign of similar nature, which is permitted for a period of not longer than thirty (30) days in any calendar year.

UNDER CANOPY SIGNS - Signs attached to the ceilings of covered walkways.

WALL SIGN - A sign which is a part of a building wall or otherwise attached to a building wall. A "wall sign" shall be parallel to the face of the building and shall not project beyond the wall or roofline of the building.

4.18-3 General Standards

No sign or other outdoor devices for the purpose of advertising of any kind may be erected or established in the town except in conformance with the standards in this section or elsewhere in this chapter.

- A. All signs, subject to permit approval, require a building permit and shall comply with applicable regulations of this chapter and Chapter 54, Building Construction, Maintenance and Fire Protection).
- B. No permanent or temporary sign shall be erected or placed at or near the intersection of any streets in such a manner as to cause a traffic hazard at the intersection or at any location where, by reason of the position, shape or color of the sign, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device or which makes use of the words "stop," "look," "drive-in" or "left" or any other words, phrase, symbol or character in such a manner as to interfere with, mislead or confuse traffic.
- C. All signs shall be set back a minimum of ten (10) feet from any property line and placed so as not to interfere with clear vision for vehicular traffic.
- D. The size of a sign shall refer to the overall area occupied by the total sign and includes the face area of each display surface and any spaces between parts thereof.
- E. The provisions of this section shall not apply to safety signs, road signs, historical markers or highway directional signs erected by municipal or public agencies.
- F. Illumination of signs shall not be intermittent or of varying intensity and may not produce glare beyond the limits of the property lines. This does not include message centers.
- G. Signs with moving parts are prohibited except public service signs, such as time and temperature, approved by the Building Inspector / Code Enforcement Officer.
- H. Signs projecting into a public right-of-way shall have a clearance of not less than ten (10) feet above the sidewalk or surrounding ground. No signs shall be permitted above any public driveway or thoroughfare.

4-18.4 Prohibited Signs And Lighting

The following signs and lighting are prohibited in all districts:

- A. Any sign which is not specifically included under the types of signs permitted in district regulations or in this chapter.
- B. Signs that are abandoned or which are advertising for a place that is out of business. This does not apply to seasonal types of businesses.
- C. Signs that are not in good repair.

- D. Signs not securely affixed to a substantial building or structure.
- E. Signs or lights which attempt or appear to attempt to regulate, warn or direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device.
- F. Lights which are not effectively shielded to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway or adjacent properties or which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle or which otherwise interfere with any driver's operation of a motor vehicle.
- G. Flashing lights which outline any part of a building such as a gable, roof, side wall or corner.
- H. Signs with flashing or undulating lights. This does not include message center signs.
- I. Signs in windows exceeding thirty-three percent (33%) of the window space.
- J. Signs placed on rights-of-way, public property or utility poles.
- L. Signs advertising businesses that do not yet have all required municipal approvals.

4-18.5 Permitted Signs

The following signs are permitted in any use district without a sign permit:

- A. Construction signs. One (1) temporary non-illuminated sign denoting the architect, engineer and/or contractors on premises where construction, repair or renovation is in progress.
 - (1) Signs shall be non-illuminated, not exceeding six (6) square feet in a residential area and thirty- two (32) square feet in other areas.
 - (2) Signs shall not exceed eight (8) feet in height.
 - (3) Signs shall not remain on the property for more than twelve (12) months. If further time is needed, application for a permit must be made to the Building Inspector.
- B. Real estate signs. Such signs shall be for the sole purpose of advertising the sale, lease or rental of the premises upon which such sign is located. In no case may they be placed on utility poles.
 - (1) Real estate signs shall be limited to one (1) sign for each residential parcel or two (2) for multiple road frontage lots or one (1) for every five hundred (500) feet of road frontage.
 - (2) Real estate signs shall be set back a minimum of ten (10) feet from any property line on a non-corner lot and thirty-five (25) feet from any property line on a corner lot.
 - (3) No real estate sign shall be placed higher than six (6) feet above ground in a residential zone nor eight (8) feet above ground in a nonresidential zone.

(4) No real estate sign shall remain on the premises in excess of twelve (12) months without a permit. If further time is needed, an application for a permit must be made to the Building Inspector.

(5) All real estate signs shall be non-illuminated.

(6) No real estate sign shall exceed six (6) square feet for residential property or thirty-two (32) square feet for nonresidential property.

C. Political campaign signs.

D. Signs advertising the sale of agricultural or seasonal products, or the name of the Agricultural Business.

(1) Said signs are to be non-illuminated.

(2) The area of all such signs on a lot shall not exceed thirty-two (32) square feet.

(3) All signs advertising the sale of agricultural or seasonal products at a seasonal roadside stand shall be removed at the conclusion of the growing season.

4-18.6 Signs Subject To Permit Approval.

Permitted signs in all districts which require a sign permit approval and fee as provided herein are:

A. Civic and religious signs. Signs or bulletin boards customarily incidental to places of worship, libraries, colleges, other educational institutions, hospitals, nursing homes, sanitariums, membership clubs and camps, social clubs and other organizations shall be permitted.

(1) Civic and religious signs must meet all sign requirements for the zoning districts they are in and meet the requirements of this section. Where there are conflicting size limitations, the smaller size will control. Where there are conflicting setback requirements, the larger requirement will control.

(2) Civic and religious signs or bulletin boards shall not exceed thirty-two (32) square feet in area and eight (8) feet in height.

(3) Civic and religious signs shall be located only on the premises of such organizations, except that religious institutions shall be allowed two (2) off-premises directional signs.

(4) Civic and religious signs shall require a ten-foot setback from any property line.

B. Temporary signs. All signs of a temporary nature such as posters, banners, promotional devices, changeable copy signs and other signs of similar nature shall be permitted as follows:

(1) Temporary signs are permitted for a period not to exceed thirty (30) days per calendar year.

- (2) The Building Inspector / Code Enforcement Officer may, at his discretion, grant an extension of the original thirty-day period upon written request by the applicant showing reasonable cause for the extension. In no event will the Building Inspector / Code Enforcement Officer grant an extension of greater than sixty (60) additional days.
- (3) Temporary signs shall not exceed thirty-two (32) square feet in area nor eight (8) feet in height.
- (4) The minimum permitted setback for any temporary sign is ten (10) feet from any property line on a non-corner lot and thirty-five (25) feet from any property line on a corner lot. No interference to visibility at an intersection by placement of a sign is permitted.

C. Subdivision identification signs.

(1) Temporary.

- (a) Not more than two (2) temporary non-illuminated subdivision identification signs located on the premises shall be permitted for a subdivision.
- (b) Each temporary subdivision identification sign shall not exceed thirty-two (32) square feet.
- (c) Signs shall be at least twenty-five (25) feet from the nearest street line.
- (d) No interference with visibility at any intersection by placement of any such sign is permitted.
- (e) Temporary subdivision identification signs must be removed upon completion of the subdivision.

(2) Permanent.

- (a) One (1) permanent subdivision identification sign is allowed at each entrance to a subdivision.
- (b) Each permanent subdivision identification sign shall not exceed thirty-two (32) square feet.
- (c) Said signs shall not exceed eight (8) feet in height.
- (d) All permanent subdivision identification signs shall be at least twenty-five (25) feet from the nearest street line.
- (e) No interference to visibility at any intersection by placement of a permanent subdivision identification sign is permitted.
- (f) Off-premises subdivision signs are not permitted.

D. Signs for home occupations.

- (1) One (1) non-illuminated sign advertising a permitted customary home occupation or professional office shall be permitted as follows:
 - (a) Such sign shall not exceed two (2) square feet in area.
 - (b) Said sign shall be placed not less than ten (10) feet behind the front property line.
 - (c) No interference to visibility at any intersection or driveway by placement of a sign is permitted.
- (2) The Building Inspector / Code Enforcement Officer may permit signs to be artificially illuminated upon finding such that illumination is essential to the permitted use which the sign advertises or the general public welfare.

E. Signs permitted in TC, MC, RH, and AB Districts.

- (1) Not more than (1) one wall sign shall be permitted for each tenant on each building wall fronting on a public street or parking area. Maximum of (2) two signs per tenant or business. The total wall signage shall not exceed an area equal to (5) five square feet of sign area for each linear foot of building frontage, or one hundred and fifty (150) square feet whichever is lesser. In no instance shall any one sign exceed one hundred fifty (150) square feet.
- (2) Whenever a building is located more than thirty-five (35) feet back from the street line, one (1) freestanding sign shall also be permitted, which freestanding sign shall comply with the following criteria:
 - (a) Said sign shall not be located closer than ten (10) feet to any building or property line.
- (3) Sign height shall not exceed the height limitation for building height of the district in which it is located or maximum height of (45) feet, whichever is less.
- (4) For any motor vehicle fuel station, not more than one (1) pole sign erected on the premises for the purpose of advertising the brand of gasoline sold at such service station will be permitted:
 - (a) Such pole sign shall not exceed thirty-two (32) square feet in AB and RH Districts or sixty-four (64) square feet in the TC and MC District.
 - (b) Such signs shall be located a minimum of ten (10) feet from all property lines.
 - (c) In addition to the brand sign, fuel stations are permitted one (1) gas price sign not to exceed twelve (12) square feet. This does not include the state required price signs on top of the individual pumps.

- (5) Where large numbers of directions or advertisement signs are justified, a sign plaza shall be established wherein all such signs shall be consolidated and confined within a single frame or as a combination of sign panels. The size, shape, color, manner of display, lettering and placement of any such sign shall be subject to approval by the Planning Board, or Town Board, where applicable. Any such sign plaza shall be subject to all applicable state and county and town regulations.
- (6) All illuminated signs must shut off by 11:00 p.m. unless the business remains open past this hour, in which case they shall be shut off no later than one (1) hour after the close of business.

F. Signs permitted in Hamlet Districts.

- (1) Not more than one (1) such sign shall be permitted for each tenant on each building wall fronting on a public street or parking area.
- (2) The aggregate area in square feet of all signs on any building wall shall not exceed one (1) square foot for each one (1) foot of length of such building wall.
- (3) One (1) freestanding sign shall also be permitted as follows:
 - (a) It shall not be located closer than ten (10) feet to any property line.
 - (b) It shall not exceed sixteen (16) square feet.
 - (c) Sign height shall not exceed seven (7) feet, and the structure, including any base or stand, shall not exceed nine (9) feet.
- (4) In lieu of a freestanding sign, the property owner may request that one (1) projecting sign be permitted on the property. Said request shall be made to the Building Inspector / Code Enforcement Officer or individual in charge of sign permits and will be discretionary. In determining whether or not to issue a projecting sign, the issuing official shall consider the potential effect of such sign on the health, safety or welfare of the general public.
 - (a) Said sign shall not project more than five (5) feet from any building wall.
 - (b) Said sign shall not exceed twelve (12) square feet in area.

4-18.7 NONCONFORMING SIGNS.

In the event that a sign was erected prior to the effective date of this chapter and does not conform to the provisions and standards set forth herein, the following will apply:

- A. The requisite permit, as provided herein, shall be granted for every such sign or other advertising structure, provided that said sign is properly repaired and maintained and otherwise is in conformance with this chapter.

- B. Nonconforming signs which are structurally altered or relocated or which undergo major repair on or after the effective date of this chapter shall be required to comply with all provisions of this chapter.

4-18.8 REMOVAL.

- A. Any sign existing on or after the effective date of this chapter which no longer advertises an existing business on the premises or product sold or service provided on the premises upon which such sign is located shall be removed within thirty (30) days of written notice as provided herein. The Code Enforcement Officer, upon determining that such sign exists, shall notify the owner of the premises, in writing, to remove said sign within thirty (30) days from the date of such notice. Upon failure to comply with such notice within the prescribed time, the Building Inspector / Code Enforcement Officer is hereby authorized to remove or cause removal of such sign and shall assess all costs and expenses incurred in said removal against the land or building on which such sign is located.
- B. If the Building Inspector / Code Enforcement Officer shall determine that any sign is prohibited, unsafe or insecure or is a menace to the public, he shall give written notice to the named owner of the sign and the named owner of the land upon which the sign is erected, who shall remove or repair said sign within thirty (30) days from the date of said notice. If said sign is not removed or repaired so as to comply with this chapter within the prescribed time period, it shall be deemed to be in violation of this chapter.

4-18.9 PERMIT APPLICATION; ISSUANCE; FEES.

- A. Applications for a sign permit.
 - (1) All applications for sign permits shall be made to the Building Inspector / Code Enforcement Officer or municipal officer designated to receive such applications, in writing upon forms provided if any, and shall contain at least the following information:
 - (a) The name, address and telephone number of the applicant.
 - (b) The location of the building, structure and/or land to which or upon which the sign is to be erected.
 - (c) A detailed drawing or blueprint showing a description of the construction details of the sign and showing the lettering and/or pictorial matter composing the sign and position of lighting (if any) or other extraneous devices; and a location plan showing the position of the sign on any building or land and its position in relation to nearby buildings or structures and to any private or public street or highway. Upon request of the officer in charge of issuing the permit, the application or representative shall meet such officer at the premises for which the sign permit is sought to identify the proposed location for such sign.
 - (d) Written notarized consent of the owner of the building, structure and land to which or upon which the sign is to be erected in the event that the applicant is not the owner thereof.

(e) All electrical work must be inspected by a registered electrical inspector.

(f) The official shall, within forty-five (45) days, approve of the receipt of the application, approve with conditions or disapprove said application.

(2) Fees. All applicable fees for sign permits are payable at the time of application.

- B. Issuance of sign permit. The applicant, upon receiving sign permit approval, shall file with the Building Inspector / Code Enforcement Officer approved site plans, detailed construction drawings, specifications and other data which may be required for construction of said sign. If the proposed sign is in compliance with all requirements of this chapter and all other requirements of the Town of Wawayanda, the Building Inspector / Code Enforcement Officer or designated official shall then, within thirty (30) days, issue a permit for erection of the proposed sign. During construction and upon completion of construction, the Building Inspector / Code Enforcement Officer shall make an inspection to ensure compliance with approved plans.

4-18.10 PENALTIES FOR OFFENSES.

- A. The Building Inspector / Code Enforcement Officer or other authorized official of the Town of Wawayanda shall give notice of any violation of this chapter by personal service or mailing by regular United States Post Office mailing of the notice of violation to the sign permit applicant, if any, and to the property owner. When application exists, notice of the violation shall be given to the property owner. If a violation is not remedied within 30 days after personal service or mail service thereof, it shall be deemed to be a violation punishable pursuant to this chapter. Each day of continuing violation shall constitute and be a separate violation of this chapter.
- B. Each and every violation of this chapter shall be punishable, upon conviction, by a fine not to exceed the sum of two hundred fifty dollars (\$250.) or imprisonment for not more than fifteen (15) days, or both. In addition to the foregoing, when security has been posted, as required pursuant to this chapter, conviction of a violation shall result in forfeiture of the security. Notwithstanding the penalties set forth herein, the Town of Wawayanda shall have the right to seek injunctive relief directing the person or party in violation to cure such violation.

ARTICLE 5 SUPPLEMENTARY REGULATIONS APPLICABLE TO PARTICULAR USES

5.1 CAMPGROUNDS (INCLUDING TRAVEL TRAILER PARKS)

5.1-1 LOCATION

A campground shall be located on a level, forested site with seasonal secondary road access.

5.1-2 COMPONENTS

A campground shall include designated camping sites, common service areas, and common open space including land used for recreation.

5.1-3 DENSITY

The overall density of a campground shall not exceed one camping site per 7,500 square feet of gross area of the campground.

5.1-4 CAMPING SITES

Each camping site shall have a total area of not less than 5,000 square feet, with a minimum dimension of 50 feet. No camping site shall accommodate more than one self-propelled four-wheeled vehicle. No camping site shall be located closer than 200 feet from the roadbed of a public highway, shoreline, or lot line. Each camping site shall have a level, well-drained cleared area that will provide for the practical placement on and removal from the site of a standard size passenger automobile and travel trailer or tent.

5.1-5 OPEN SPACE

A campground shall include usable common open space in an amount not less than 1,000 square feet per camping site. Such usable common open space may be in one or more locations, but the number of locations shall not exceed one for each ten camping sites. All usable common open space shall be accessible from all camping sites and shall be of such a character as to be attractive and useful for active or passive recreation. No more than 40 percent of such open space shall be within 100 feet of the roadbed of a public highway. Streets within the campground shall not be counted as usable open space.

5.1-6 RECREATIONAL FACILITIES

Any recreational facilities shall be set back 200 feet from all lot lines and shall be effectively screened along lot lines as required by the Planning Board.

5.1-7 UTILITIES AND SERVICE FACILITIES

- A. A campground shall be provided with potable cold water taps at the rate of not less than one tap per ten camping sites, each tap located conveniently to the served sites with provision made to prevent excess water from creating a muddy or similarly undesirable situation.

- B. Separate toilet facilities for males and females shall be provided not nearer than 50 feet nor further than 200 feet from any camping site.
- C. Waste from all buildings and campsites shall be discharged into a sewage disposal system meeting the standards of the NYS Public Health Law.
- D. Sites designed for travel trailers with indoor plumbing shall have appropriate hookups at each site in lieu of complying with Subsections A and B above.

5.1-8 ACCESS AND CIRCULATION PLAN

- A. Each campground shall have graveled or paved access to a public highway.
- B. Where a campground has more than 30 camping sites, two public highway access points shall be provided, but in no instance shall the number of entry and exit points exceed four. Such access points shall allow for safe and convenient movement into and out of the campground and shall minimize interference with the free movement of traffic on the adjacent public highway. All entrances and exits shall be of sufficient width to allow turning movements of vehicles with travel trailers attached.
- C. Each campground shall have clearly defined and convenient access to all camping sites and other facilities within the campground. The street system shall be so designed to permit safe and convenient vehicular circulation within the campground. Streets shall be adapted to the topography and shall have suitable alignment and gradient for traffic safety. All streets shall intersect at right angles. All streets shall have the following minimum widths:
 - 1. One-way traffic movement: 12 feet
 - 2. Two-way traffic movement: 20 feet

5.1-9 LANDSCAPING AND SCREENING

- A. Native ground cover, shrubs, and trees shall be provided or retained in those areas not used for camping sites, buildings, walkways, roads, active recreation areas, or parking areas.
- B. Landscaping, by preservation of existing vegetation or by planting of native species of vegetation, shall be provided to ameliorate or screen objectionable views of and within the campground at all seasons of the year. Views which shall be screened include sanitary facilities and garbage storage and collection areas. In addition, the campground itself shall be substantially screened with native vegetation at all seasons of the year from any public highway or water body or water course regularly trafficked by the public or adjacent property zoned for residential use.

5.1-10 LENGTH OF OCCUPANCY

No individual, tent, or travel trailer, shall be occupied for more than 180 days within any calendar year. The campground operator shall keep an accurate register of all occupants, in accordance with State regulations.

5.2 MOBILE HOME REGULATIONS

Mobile homes and manufactured homes are only allowed in the Town in mobile home parks approved pursuant to section 5.2-1 and 5.2-2 as housing for farm workers on an established, working farm in the Agricultural zoning districts (AP, AB, AR). Mobile homes are not otherwise allowed on individual parcels as a single-family dwelling in any zoning district.

5.2-1 Design Criteria

Mobile homes shall comply with the following design criteria (except as provided in Subsection H):

- A. Mobile homes, and any deck or other addition, shall be mounted on a permanent concrete slab base or footing at least four inches thick, with skirting provided.
- B. Mobile homes shall be finished with a natural or artificial materials that, because of their color and texture, have the appearance of clapboards, wood shingles or other traditional house siding and blend in with the landscape to enhance or maintain the attractive visual character of the neighborhood.
- C. Two off-street parking spaces shall be provided for each mobile home in accordance with the requirements of Section 4.1.
- D. Mobile homes shall have shingled, peaked roofs with a minimum pitch of 4:12.
- E. Mobile homes shall comply with currently applicable federal and state building standards.
- F. Mobile homes shall have a minimum size of 720 square feet and a minimum width of 12 feet.
- G. No evidence of a mobile home's trailer hitch or wheels shall be visible once it has been installed.
- H. One or more of the criteria in Section 5.21 may be waived where the applicant demonstrates that:
 - 1. The mobile home will be effectively screened year-round, or
 - 2. The installation of the proposed mobile home will not detract from the existing visual character of the neighborhood.

5.2-2 MOBILE HOME PARKS

Mobile home parks (also known as courts) shall be subject to the requirements of the Town of Wawayanda Mobile Home Court Law, Chapter 114 of the Town Code. Such use shall require a Special Use Permit and in addition to the aforesaid Chapter 114, the following shall apply to mobile home parks:

- A. The location of the park shall be one suitable for such use as determined by the Planning Board, considering reports offered by the Board's consultants, with proper drainage and provisions for stormwater control such that the peak flow rate of water leaving the site after development shall not be greater than prior to development.
- B. There shall be documentation of the availability and adequate capacity of all utility providers to service the park. Off-site or centralized water facilities shall be provided.
- C. The park shall be designed to provide maximum open space consistent with the minimum mobile home lot size requirements of the Mobile home Court Law and offer buffering of individual mobile homes from each other and from adjoining lot owners. It shall be landscaped so as to develop and maintain a high quality aesthetic environment and neighborhood character for prospective new and existing residents.
- D. Adequate provisions shall be made for outside storage space and these shall not in any way interfere with emergency access.
- E. Adequate provisions shall be made to control potential nuisance situations such as accumulation of unused materials or vehicles.
- F. Recreational facilities sufficient to accommodate the number of dwellings proposed shall be provided. A minimum of 10% of the land area of the park or one-half acre, whichever is less, shall be devoted to this purpose and completed prior to the issuance of the first permit.
- G. There shall be adequate groundwater supplies to support the proposed water system without causing a detrimental impact on adjoining water supplies and evidence of this shall be provided and professionally reviewed.
- H. The management and operations plan for the park shall provide for maintenance of all common facilities and ensure the purposes and requirements of this chapter are met. It shall also provide for limitation of occupancy to mobile homes meeting U.S. Department of Housing and Urban Development regulations under the Manufactured Housing Act.
- I. Mixed-use residential developments where in mobile homes and other one-family detached dwellings are both provided shall be encouraged where the other criteria contained herein can be met. All other one-family detached developments, however, shall comply with the requirements of this Chapter and Chapter the Town Code regarding subdivision regulation, if applicable.

5.3 MINING

- A. Mining operations, including the quarrying operations for sand, gravel, or other materials, including the removal of the product from the earth and its washing, screening, crushing, processing, weighing and loading for transportation, fuel storage, power generation and repair facilities shall be permissible subject to special use permit approval in the Town's AP, AB, TC and MC Districts. The following Special Use Permit conditions shall apply for all mining operations:

- (1) Ingress and egress to Town roads shall be reviewed by the Town.
 - (2) Routing of mineral transport vehicles on Town roads shall be reviewed by the Town.
 - (3) Fees for the Special Use Permit and site plan approval shall be payable in accordance with the standard schedule of fees of the Town (see Chapter 90, Fees).
- B. The New York State department of Environmental Conservation (DEC) is the entity responsible for administering the permits for mining applications made to the state. It is the Town's intent to provide input on the conditions that should be included in DEC mining permits issued for operations located within the Town and to assist in the enforcement of any resulting DEC mining permit conditions, as permitted by the state statute. The following procedure shall apply for the approval of special use permits for mining operations requiring a DEC permit, not previously approved:
- (1) The Supervisor of the Town, upon receipt of a complete application for a mining permit from the DEC or for a special use permit from the Building Inspector / Code Enforcement Officer, shall forward said application to the Planning Board within 10 days following receipt.
 - (2) Recommendations of the Planning Board. The Planning Board shall, within 30 days of the receipt of an application, provide the DEC with recommendations on conditions to be included in the state mining permit, within the following categories:
 - a. Ingress, egress and the routing of mineral transport vehicles on roadways reviewed by the Town.
 - b. Appropriate setbacks from property boundaries or public rights-of-way.
 - c. The need for man-made or natural barriers designed to restrict access and the type, length, height and locations thereof.
 - d. The control of dust.
 - e. Hours of operation.
 - (3) Upon receipt of the resulting DEC mining permit, the applicant shall submit to the Planning Board a copy of the permit and all information provided to the DEC in support of the application. The Planning Board shall accept the information as a complete special use permit/site plan application, once the applicable Town application fees have been received. The Planning Board shall then incorporate into the Town special use permit any conditions imposed by the DEC as part of the State mining permit, and conditions relating to:
 - a. Ingress, egress and the routing of mineral transport vehicles on roadways controlled by the Town.
 - b. Appropriate setbacks from property boundaries or public road rights-of-way.
 - c. The need for man-made or natural barriers designed to restrict access and the type, length, height and location thereof.
 - d. The control of dust.
 - e. Hours of operation.

- f. Enforcement of reclamation requirements contained in the mine's approved reclamation plan.

5.4 WIRELESS COMMUNICATION FACILITIES

A. Legislative Intent. The legislative intent is:

1. To establish clear standards for the siting of wireless communication facilities, buildings and structures, equipment, communication towers, antenna towers and monopoles.
2. To promote the health, safety, and general welfare of the residents of Wawayanda through the establishment of minimum standards to reduce the adverse visual effects of communication facilities, including but not limited to, transmission towers and antennas, through the use of advanced technology, careful design, siting, and screening and buffering.
3. To protect residential areas and land uses and property values from potential adverse impacts of towers and antennas.
4. To minimize the total number of communication facilities and communication towers throughout the community.
5. To encourage the joint use of new and existing communication tower sites as a primary option rather than construction of additional single-use communication towers while recognizing that collocation on higher towers is not always preferable to less visible, less obtrusive towers; thereby minimizing the use of existing communication towers or alternative antenna host sites, while not unreasonably limiting competition among communication providers or unreasonably limiting reception of receive-only antenna.
6. To require users of communication towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is shown to be minimal.
7. To require users of communication towers and antennas to configure them in a way that minimizes adverse visual, aesthetic and community character intrusion impacts caused by the installation and view of communication towers and antennas, through careful design, siting, landscape screening and buffering, sufficient setbacks to reduce visual impacts to adjacent properties, and innovative camouflaging techniques such as alternative tower structures, thereby protecting the physical appearance of the community and preserving its scenic and natural beauty.
8. To avoid potential damage to adjacent properties from communication towers through careful engineering and appropriate siting of communication towers.
9. To enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently by facilitating the siting of personal wireless communication facilities.

B. Compliance with the SEQRA. The Planning Board shall comply with the provisions of the SEQRA. An application for approval of a major wireless communications facility shall constitute a Type 1 action under SEQRA.

- C. Restrictions on use. No wireless communications facilities except those approved prior to the effective date of these regulations, shall be used, located, constructed or maintained on any lot, structure or land area unless in conformity with these regulations. No wireless communications facilities may hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a wireless communications facility unless in conformity with these regulations.
1. All communication facilities shall at all times be in conformance with the rules and regulations of any governmental entity having jurisdiction over such communication facilities and uses, antenna and/or supporting structures and towers, including, without limitation, the Federal Communications Commission and Federal Aviation Administration (hereinafter referred to as “FCC” and “FAA”).
 2. All communication facilities shall be operated and maintained by FCC licensee only.
 3. All communication facilities shall be shown to be necessary provide coverage to an area of Town with currently lacks adequate coverage and that any related communication tower or antenna is proposed at the minimum height and aesthetic intrusion possible to provide adequate coverage. The applicant seeking to locate a communication facility in the Town of Wawayanda shall demonstrate the need for new or additional antennas or communication towers.
 4. All communication facilities, in proposed for placement on a lot that is within or abuts a residential district, shall prove that adequate coverage cannot be achieved by siting the facility on a lot which is not or does not abut a residential district.
 5. All communication facilities shall be constructed and maintained in conformance with all building, electrical, fire prevention and other applicable codes.
- D. Major wireless communications facilities.
1. Approved zoning districts.
 - a. Major wireless communications facilities shall be permitted as Special Use Permit uses in the AP, AR, SR, AB, and MC Districts requiring approval from the Planning Board.
 - b. If it can be demonstrated by the applicant that there is not a site in the above-referenced zoning districts which would provide wireless communications capacity consistent with federal regulations, the Planning Board may determine that a major wireless communications facility may be permitted as a Special Use Permit use in an RH, TC District in accordance with the provisions hereinafter set forth.

2. Conditions precedent to granting site plan or Special Use Permit approval.
 - a. A service coverage map and report shall be provided. The service coverage map shall be show and describe all existing and proposed areas of service coverage relating to the proposed communications facility. The service coverage map shall locate all existing sites in the Town and in bordering communities that contain communications towers or related facilities. A detailed report shall accompany the service coverage map and shall indicate why the proposed communications tower, equipment and facility are necessary. The report shall identify locations within the proposed project site service coverage area that are not, and could not be, served by either existing facilities, by collocation, utilization of alternative technology or an alternative tower structure.
 - b. A long-range communications facilities plan shall be provided, evidencing that the proposed location of the communication facility and supporting buildings and equipment has been planned to the result in the fewest number of communications transmissions tower locations within the Town. The Plan shall indicate how the applicant intends to provide service throughout the Town, and how the applicant plans to coordinate with all other providers of wireless communication services in the Town. The Plan shall address the applicant's planned and possible location of additional tower sites, additional antennas, related service area coverage, and alternative long-range plan scenarios that illustrate the potential effects of multiple towers and tower height, community intrusion impacts and visual and aesthetic impacts.
 - c. Documentation, sufficient to demonstrate that the proposed communication tower height and bulk are the minimum height and bulk necessary, to provide licensed communication services to locations within the Town which the applicant is not able to serve with existing facilities in the project site area, shall be provided, including evidence that visual, aesthetic and community character intrusion impacts have been minimized to the greatest extent practicable.
 - d. Demonstration that shared use is impracticable. The Planning Board may issue a permit for a major wireless communications facility only when the applicant demonstrates that shared use of an existing structure or site is impractical. An applicant shall be required to present a report inventorying all existing structures within one-half mile of the proposed site that are at an elevation which renders them potential sites. The report shall describe opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate that the applicant used its best efforts to secure permission for shared use from the owner of each existing facility as well as documentation of the physical, technical and/or financial reason why shared usage is not practical in each case. The applicant's written request and the property owner's written responses for shared use shall be provided.

- e. Commitment for future shared use. New wireless communications towers shall be designed to accommodate future shared demand for reception and transmitting facilities. The applicant shall submit to the Town Board and Planning Board an irrevocable letter of intent committing to the owner of the proposed new tower and its successors in interest, to permit shared uses of the proposed tower by other telecommunications providers in the future. This letter shall also be filed with the Building Inspector / Code Enforcement Officer prior to issuance of a building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the site plan approval following a hearing and opportunity to be heard. The letter shall commit the new tower owner and its successors in interest to the following:
 - 1. To notify all carriers licensed to provide telecommunications services within the Town of its application and that it will entertain requests for collocation.
 - 2. To respond within 90 days to a request for information from a potential shared-use applicant.
 - 3. To use best efforts and negotiate in good faith concerning future requests for shared use of the tower by other telecommunications providers.
 - 4. To allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation, and all of the costs of adapting the tower of equipment to accommodate a shared user without causing electromagnetic interference.
 - 5. A written certification shall be submitted, prepared by a qualified engineer and/or health physicist which calculates the maximum amount of nonionizing electromagnetic radiation (NIER) which will be emitted from the proposed wireless communications facility and demonstrates that any such emissions from the facility will be within the threshold levels adopted by the Federal Communications Commission, as of the day of application and as part of certification required herein.

E. Additional required information

- 1. Procedural. The following procedural information shall be required:
 - a. Visual impact assessment
 - 1. A viewshed analysis in order to determine locations where the tower and appurtenant facilities may be visible.
 - 2. Graphic representation of before and after views from key viewpoints located inside and outside of the Town including, but not limited to state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public residential developments and from any other location where the site is visible to a large number of visitors or travelers.
 - 3. Assessment of alternative tower designs and color schemes, as described in Subsection F(2), below.
 - 4. Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

- b. Tower design. A report regarding alternative tower designs which includes lattice and monopole structures and other designs to minimize visual impacts. The Board may request a review of the tower design by a qualified engineer in order to evaluate the need for, and the design of, any new and potential alternatives. All designs to be considered shall be required to include, at a minimum, the following characteristics:
 - 1. Towers shall be designed to accommodate future shared use by other wireless communications providers;
 - 2. Unless specifically required by other regulations, a tower shall have a finish (either painted or unpainted) that minimizes its degree of impact;
 - 3. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to company name, phone numbers, banners and streamers;
 - 4. Any new tower shall be securely mounted to withstand damage from earthquakes and the wind and ice loads for the place of installation in accordance with New York State Uniform Fire Prevention and Building Code;
 - 5. The height of any new tower shall be the minimum height necessary, considering shared use, to meet the minimum requirements of the Federal Communications Commission for coverage of the service area encompassing the Town of Wawayanda;
- c. Fully engineered site plan. A site plan showing, at a minimum, all existing roads, buildings, tower(s), guy wire and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.
- d. Engineer's report.
 - 1. A report by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities and, if a monopole or tower is required or the electrical engineer is not qualified to certify the structural soundness of the installation, a New York State licensed engineer specializing in structural engineering. The report shall contain the following information:
 - [a] Name(s) and address(es) of person(s) preparing the report;
 - [b] Name(s) and address(es) of the property owner, operator and applicant;
 - [c] Postal address and section, block and lot number of the property;
 - [d] Zoning district in which the property is situated;
 - [e] Approximate size of the property and the approximate location of all lot lines;
 - [f] Approximate location of nearest residential structure;
 - [g] Approximate location of nearest occupiable structure;
 - [h] Approximate location of nearest day care center, school, camp or recreational park;
 - [i] Approximate location of all structures on the property which is the subject of the application;
 - [j] Approximate location, size and height of all proposed and existing antennae and all appurtenant structures;

- [k] Type, size and location of all proposed and existing landscaping;
- [l] The number, type and design of the antenna(e) proposed and the basis for calculations of capacity;
- [m] The make, model and manufacture of the antenna(e);
- [n] A description of the proposed antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height above grade, materials, color, grounding and lighting;
- [o] The frequency, modulation and class of service of radio equipment;
- [p] Transmission and maximum effective radiated power of the antenna(e);
- [q] Certification that the proposed antenna(e) will not cause interference with existing communication devices;

- [r] Elevation drawings depicting the front, side and rear of the property, illustrating the proposed antenna, mounting device and structure, if any, on which the antenna(e) is mounted;
- [s] A map depicting and listing all existing sites in the Town and bordering communities containing transmitting antenna(e) used by the operator, owner of applicant; and
- [t] All applications, communications and permits submitted to and issued by the Federal Aviation Administration.

2. The Planning Board may, in a proper case, waive one or more of the forgoing requirements set forth in this section and may require additional reports or evidence that it deems necessary to ensure the health, safety and welfare of the community are adequately addressed.

e. Intermunicipal notification. In order to keep neighboring municipalities informed, and to facilitate the consideration of shared use of existing tall structures in a neighboring municipality, and to assist the continued development of communication for emergency services, the applicant shall provide the following additional notice of the application:

- 1. Notification in writing to the municipal clerk of any adjoining municipality within one mile of a proposed site or a greater distance if determined by the Board to be impacted by a proposed new telecommunications tower.
- 2. Notification in writing by certified mail of all landowners within 500 feet of the property line of the parcel on which a new tower is proposed.

2. Location, lot size and setbacks. Lot size and setbacks. Any proposed wireless communications towers and its accessory structures shall be located on a single parcel and shall comply with setback requirements as identified below.

a. Distance from public facilities. In order to protect the health, safety and welfare of children who may be injured by falling ice or debris, all wireless communication towers shall be a distance of not less than 500 feet from the nearest school, day-care center, camp, public park or playground, or residence and/or dwelling unit.

- b. Lot size of major wireless communications facilities sites shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased, the entire area required shall be leased from a single parcel.
- c. Wireless communications towers shall be located with a minimum setback from any property line equal to the height of the tower in any zoning district, except, however, if the applicant can demonstrate that the fall zone for the structure can be safely accommodated on a smaller size parcel or with reduced setbacks to no less than the minimum bulk requirements in the underlying Zoning District, the Planning Board shall have the discretion to reduce the size accordingly. The applicant must demonstrate that there is adequate protection to adjoining properties from the dangers of falling ice or debris through either an easement or other safeguards. The Planning Board shall make findings of fact justifying a reduction and shall impose such additional conditions that the Board may deem appropriate to protect the health, safety and welfare. Accessory structures shall comply with the minimum setback requirements in the underlying district.
- d. Additional setbacks may be required by the Planning Board to contain on-site substantially all ice fall or debris from tower failure and preserve the privacy of any adjoining residential and public properties.

3. Vegetative screening and fencing.

- a. Landscaping. All communication facilities shall provide landscaping as follows:
 - 1. All communications towers shall be located and designed to have the least possible adverse visual and aesthetic effect on the environment.
 - 2. The area surrounding the installation, other than the area necessary to maintain a clear line of sight to the signal source, shall be landscaped and maintained with trees, shrubs, and ground cover to maximize screening and visual buffer with meets or exceeds the above requirements may be substituted or enhanced for said requirements.
 - 3. Screening and buffering, utilizing trees of a height and density established by the Planning Board that will, over time, reduce visual impacts resulting from the installation of said facility, shall be provided.
 - 4. The outside security fencing shall be screened with evergreen shrubs, trees or climbing evergreen material on the fencing.
 - 5. The base of any communication tower and any accessory structure shall be effectively screened using primarily vegetative screening, including a continuous evergreen screen planted in a natural setting and consisting of native plant species. Existing vegetation shall be preserved to the maximum extent practicable. Additional planting shall be required, as necessary, to screen and buffer all structures from nearby properties or important viewsheds of scenic areas. All landscaping shall be properly maintained to ensure continued screening and buffering.

- b. Security and safety fencing. Security and safety fencing shall be located around all communication towers, equipment and related facilities to restrict unauthorized access. Access to all structures shall be through a locked gate or principal building. Fencing shall be designed to minimize visual and aesthetic impacts and shall be equipped with appropriate anti-climbing devices. Failure to maintain said security and safety fencing in an appropriate manner shall be grounds for immediate revocation of all permits and certificates of use by the Building Inspector. In addition:
1. All communication towers, antenna towers or monopoles, and other supporting structures shall be made inaccessible to non-authorized persons, particularly children, and shall be constructed or shielded in such a manner that they cannot be climbed.
 2. All transmitter controls that could cause the transmitter to deviate from its authorized operating parameters shall be designed and installed in such a manner that they are readily accessible only to persons authorized by the licensee to operate or service them.
 3. All transmitters used with in-building radiation systems shall be designed in such a manner that, in the event an unauthorized person does gain access, that person cannot cause the transmitter to deviate from its authorized operating parameters in such a way as to cause interference to other stations.
 4. All transmitters (other than hand-carried or pack-carried mobile transmitters) and control points shall be equipped with a visual means of indicating when the control circuitry has been put in a condition that should cause the transmitter to radiate.
 5. All transmitters shall be designed in such a manner that they can be turned off independently of any remote control circuits.
- c. Coloring and marking. Unless otherwise required by the FAA or FCC, all communication facilities, including antenna and communication towers, shall be colored, camouflaged and/or shielded to blend with surrounding areas, provided such coloring, camouflage and/or shielding do not inhibit their effectiveness. The painting or marking of such facilities shall have a finish or coloring which will minimize visual and aesthetic impacts. Towers and all appendages shall generally have a galvanized finish and shall be painted gray or blue gray, or some other finish or color that is shown to be visually unobtrusive.
- d. Signals and lights. No communication tower, antenna tower or monopole shall include any signals, lights or illumination unless required by the FAA or other applicable authority. The applicant shall provide evidence mandating any requirement for lighting. If lighting is required, said lighting shall be shown to cause the least disturbance to surrounding properties and views. Any lighting necessary for accessory structures or buildings shall be minimized and shall be properly shielded to prevent light emission and glare onto adjacent properties.

- e. Signage. No signs, including advertising signs, shall be permitted on any antenna, communication tower, antenna tower or monopole, or antenna support structure except as follows:

- [1] Signs specifically required by a federal, state, or local agency.

- [2] Each site shall include a sign containing the name of the owner and operator of any antenna present, including an emergency phone number. In addition, any door having access to a roof-mounted antenna and all entrances to the fenced enclosure shall be similarly signed.

- [3] Any signage permitted above shall comply with the sign regulations of the Town Code.

- 4. Undergrounding of electrical power and noise suppression. All electrical power supply to service the on-site buildings and appurtenances supporting the tower antenna operations shall be installed underground. Noise suppression shall be utilized in the structural design and construction of the tower support buildings and appurtenances.

- 5. Access parking.

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

- b. Parking. Parking shall be provided on-site in an amount determined by the Board based upon recommendation from the applicant. No parking shall be located in any required front yard.

- F. Minor wireless communications facilities.

At all times, the shared use within existing tall structures (for example, multistory buildings, church steeples, farm silos, etc.) and upon existing approved towers shall be preferred to the construction of major wireless communications facilities including new wireless communications towers and/or monopoles. Minor wireless communications facilities areas are a permitted use in the AP, AR, SR, AB, H, and MC zoning districts within the Town of Wawayanda.

- 1. Minor wireless communications facilities permitted upon issuing of a building permit only. An application to collocate a wire communications facility upon an existing wireless communications facility designed for collocation, may be approved by the Building Inspector / Code Enforcement Officer after referral and consultation with the Town Engineer by issuance of a building permit incorporating the regulatory requirements of this Chapter.

2. Minor wireless communications facilities permitted upon site plan approval. An application for any other minor wireless communications facility shall be subject to site plan review by the Planning Board. The Planning Board may require the applicant to submit any of the items required for submission in major wireless communications facilities applications as part of the site plan review process.
 - a. An application for site plan approval of a minor telecommunications facility shall include the following:
 - [1] A completed site plan application form;
 - [2] Consent from the owner of the existing facility to allow shared use;
 - [3] A site plan. The site plan shall show all existing and proposed structures and improvements including antennae, road, buildings, guy wires and anchors, parking and landscaping and shall include grading plans for new facilities and roads. Any methods used to conceal the modification to the existing facility, shall be indicated on the site plan;
 - [4] An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure, will not hamper existing emergency networks and explaining what modifications, if any, will be required in order to certify the above.
 - [5] A copy of the applicant's Federal Communications Commission (FCC) license.
 - [6] The Planning Board may waive any of the above requirements if it is demonstrated by the applicant that under the facts and circumstances the submission of such documentation would cause an unnecessary and undue hardship.
 - b. The Planning Board may add any other documentation, reports or evidence that it deems necessary to ensure the health, safety, and welfare of the community is adequately addressed.

G. Required to be imposed on all approvals.

1. Removal.

- a. Any antenna, communication facility, communication tower, antenna tower or monopole, including any supporting structure and related appurtenances, or part thereof, that is not used for a period of six months in any twelve-month period, shall be removed and the site restored by, and at the expense of, the owner of the property or the operator of said facility.
- b. An extension of an additional six months may be granted by the Building Inspector / Code Enforcement Officer upon a written request, including proof as determined reasonable by the Building Inspector / Code Enforcement Officer that the owner is actively engaged in the marketing of the property for sale or rent.
- c. In the event the tower is not removed and the site restored as herein required, the Town, after notice and opportunity to be heard, may cause the same to be removed and the site restored as the expense of the property owner collectible in the same manner as a real property tax.

2. Operational certification. Within 45 days of initial operation or modification of a wireless communication facility, the owner or operator shall submit to the Building Inspector / Code Enforcement Officer a written certification by a professional engineer that the operation facility is in compliance with the application submitted, any conditions imposed, and all other provisions of this chapter as a condition to continue operating past the forty-five-day period. The Town may confirm and periodically reconfirm compliance as necessary to insure that the provisions of this chapter, including NIER level thresholds, as set forth by the FCC are in compliance. The owner/operator of the facility shall supply all necessary documentation to permit the Town to make such a determination regarding compliance is restored.
3. Reimbursement of review expenses. All costs and expenses incurred by the Planning Board in connection with its review and approval of an application for a wireless communication facility shall be reimbursed to the Town by the applicant prior to final approval.
4. Existing installations.
 - a. The current operator of any communication facility or communication tower, antenna or monopole, existing at the time that these regulations take effect, shall be permitted to remain in operation, provided the operator submits proof within six months of the enactment of these regulations that a valid building permit was issued for the facility and that the facility complies with current emission standards as recommended by the FCC.
 - b. Any legal nonconforming communication facility or communication tower shall be permitted to remain until such time as said use and facility is altered, at which time the compliance herein shall be brought in.
 - c. Any facility for which emission and security compliance documentation is not received shall cease operation within six months of the enactment of these regulations and shall be immediately removed thereafter

5.4 – 1 AMATEUR RADIO AND SUPPORT STRUCTURES

INTENT AND PURPOSE

This section is intended 1) to provide reasonable accommodation for Amateur Radio Antenna and Amateur Radio Antenna Support Structures in the Town of Wawayanda and 2) to constitute minimum practicable regulation to accomplish the Town’s legitimate purposes consistent with the state and federal laws including Federal Communication Commission regulations pertaining to Amateur Radio Services, as noted in PRB-1 (1985), as amended and reconsidered. Legitimate purposes include but are not limited to preserving residential areas as livable neighborhoods and preserving public health, safety and welfare.

A. General Requirements

1. Prior to construct of any Amateur Radio Antenna and/or Amateur Radio Antenna Support Structure, the applicant must first obtain a Special Use Permit and Site Plan approval for the Wawayanda Planning Board, and thereafter a building permit from the Building Inspector / Code Enforcement Officer.

2. Amateur Radio Antenna and/or Amateur Radio Antenna Support Structure are permitted in all zoning districts as long as they are in compliance with the provisions of this section. In addition unobtrusive wire antenna(e) not supported by a structure(s) that is (are) otherwise not in compliance with the provisions of this section are permitted in all zoning districts and are exempt from these provision to the extent that they do not interfere with public utilities or can be otherwise deemed unsafe in any respects.
3. All applicants must be licensed by the Federal Communications Commission (FCC) and must be in compliance at all times with the FCC regulation pertaining to Amateur Radio Service.
4. Location: The proposed Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall be so located and installed as to be safe and to create minimum impact to the surrounding properties.
5. The Planning Board may attach reasonable conditions of approval pursuant to the intent and purpose set forth in this Section, including measures that would help reduce the impact of such Amateur Radio Antennae and/or Amateur Radio Antenna Support Structures on the surrounding properties including but not limited to appropriate landscaping.
6. The total height of the Amateur Radio Antennae and/or Amateur Radio Antenna Support Structures shall not exceed fifty (50) feet unless the applicant can demonstrate that satisfactory communication cannot be achieved due to frequency of operation or surrounding obstructions. The total height of the Amateur Radio Antenna and/or Antenna Support Structure shall be measured from mean grade to the highest point of the Antenna, the Antenna Support Structure or combination thereof. For roof-mounted Antenna and/or Antenna Support Structures, the mean grade is established grade adjoining the exterior walls of the structure upon which the antenna or support structure is affixed. For ground-mounted Amateur Radio Antennas and/or Antenna Support Structures, the mean grade is measured at the established grade adjoining such antenna and/or support structure.
7. No more than one (1) Amateur Radio Antennae and/or Amateur Radio Antenna Support Structure requiring a permit under this Section shall be permitted on a single lot.
8. No roof-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall be fixed to the side of a structure that faces a street. Roof-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures may be allowed on the roof as long as such antennas are not entirely on the front half of the roof facing a street.
9. Ground-mounted Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures shall not be allowed in the front yard, the side or rear yard setbacks.
10. Climbable ground-mounted Amateur Radio Antenna and Antenna Support Structures shall be completely enclosed by a fence at least five (5) feet and no more than seven (7) feet in height or shall have appropriate anti-climb devices attached up to a height of five (5) feet or more.

11. Antenna and/or Antenna Support Structures requiring a permit under this section shall provide a copy of the manufacturer's specifications for construction, assembly and erection and a certification from the owner and/or licensee that such specifications have been followed in erecting the subject structure. In the event of unavailability of manufacturer's specifications, certification by a licensed professional engineer must be filed with the Town confirming the structural stability and soundness of the antenna and/or support structure. If neither the manufacturer's specifications nor the certification can be made available, the antenna and/or support structure shall be set back a distance of at least 100% of its total height from the property line.
12. All Ground-mounted Amateur Radio Antenna and/or Antenna Support Structures shall be structurally sound enough and so designed and installed as to withstand a minimum wind speed of at least ninety (90) miles per hour.
13. Structural stability and soundness: The applicant shall demonstrate structural stability and soundness of the proposed Amateur Radio Antennae and/or Amateur Radio Antenna Support Structures at his own expense. This can be achieved through either of the following:
 - b. Providing a copy of the manufacturer's specification on assembly, construction and erection, and a certification that such specification has been followed.
 - c. A certification by a licensed professional engineer confirming the structural stability and soundness of the proposed Amateur Radio Antenna and/or Amateur Antenna Support Structures.
14. Upon the FCC-licensed operator's cessation of ownership or leasehold rights in the subject antenna support structures, or upon the loss of his or her Federal amateur radio license (whichever shall occur earlier), the operator shall forthwith safely remove all Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures within 90-days at no expense to the Town.
15. In the event said operator shall fail to remove the Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures, within 90-days, it shall be the duty, responsibility and obligation of the owner of the subject lot upon which any or all of such Amateur Radio Antenna and/or Amateur Radio Antenna Support Structures are located, to remove such structures forthwith at no expense to the Town.
16. Nothing set forth herein shall exempt or excuse anyone from compliance with requirements of applicable provision of the New York State Building Code.

5.4 – 2 WIND ENERGY CONVERSION SYSTEMS REGULATIONS

A. Intent and Purpose

The Town of Wawayanda recognizes that wind energy is a potentially abundant, renewable and nonpolluting energy resource of the Town and that the conversion of wind energy to electricity could reduce dependence on nonrenewable energy resources and decrease air and water pollution that result from the use of conventional energy sources.

The purpose of these regulations for Wind Energy Conversion Systems (WECS) is to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town.

B. Definitions and Interpretation of Terms

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

AMBIENT NOISE: Amount of noise in the natural background at any given time.

EAF: The Environmental Assessment Form as defined in NYCRR Part 617.

FLICKER OR SHADOW FLICKER: The motion of the shadow of wind turbine blades as they rotate.

WIND ENERGY CONVERSION SYSTEM (WECS): Any mechanism designed for the purpose of converting wind energy into electrical energy. A WECS may include one or more wind turbines, towers, associated control or conversion electronics, transformers, and/or other maintenance or control facilities or other components used in the system. A WECS may be a Commercial Wind Energy Conversion System, a Residential Wind Energy Conversion System or an Industrial Wind Energy Conversion System.

WECS, RESIDENTIAL: A WECS that provides electrical or mechanical power to an individual residence and can be either the primary or secondary source of energy. Sale or credit of excess electricity to the utility grid is permitted as a tertiary use.

WECS, COMMERCIAL: A WECS that provides electrical or mechanical power to an individual home occupation, farm, or other single commercial enterprise, and can be either the primary or secondary source of energy. Sale or credit of excess electricity to the utility grid is permitted as a tertiary use.

WECS, INDUSTRIAL: A WECS or series of WECSs in a facility, whose primary purpose is to generate electricity that is fed into a power grid for sale.

WECS, HEIGHT: The total height of a structure from natural grade to the tip of the blade at extreme vertical position.

C. General Regulations

- (1) WECS of any kind are only allowed in the following zoning districts:
AP,AR,SR,AB,RH,TC,MC1,MC2. WECS shall be permitted on lots of two acres or more.
- (2) Prior to construction of any WECS, the applicant must first obtain a Special Use Permit and Site Plan approval from the Town of Wawayanda Planning Board, and thereafter a Building Permit from the Building Inspector / Code Enforcement Officer.
- (3) Applicants for the proposed development of a WECS facility shall submit with the application a plan showing the information required for site plan approval as set forth in the Town's Zoning Code. In addition, the plan must contain (either on the plan itself or as a separate submission) information as described herein:

D. Regulations For Residential WECS & Commercial WECS

The purpose of this Section is to provide standards for small wind energy conversion systems designed for home, farm and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. Applications for approval of Residential WECS and Commercial WECS must adhere to the following standards:

1. The minimum lot size is two (2) acres.
2. The total height shall be no more than 45 feet.
3. The minimum set back shall be a distance equal to 110 % of the WECS height from all adjacent property lines. Additionally no portion of the WECS system, including guy wire anchors, may extend closer than ten (10) feet to the property line. The use of guy wires is disfavored.
4. The WECS shall maintain a circular clear zone that has a radius which is equivalent to 110 % of the WECS height. The clear zone shall be maintained free of any occupied structures, tanks containing combustible/ flammable liquids and above ground utilities/ electrical lines.
5. WECS shall not exceed 60 dBA, as measured at the property line. The level, however, may be exceeded during short term events such as utility outages and/or severe wind storms.
6. Any climbing apparatus must be located at least twelve (12) feet above the ground, and the tower must be designed to prevent climbing within the first twelve (12) feet. It may be recommended that the tower be enclosed with an appropriate fence.
7. WECS shall not be artificially lighted with accent lighting.
8. No tower should have any sign, writing, or picture placed or painted on the tower, rotor, generator or tail vane that may be construed as advertising.
9. Only one WECS shall be allowed per lot.
10. The WECS shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.

11. The WECS shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that the system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
12. At least one sign shall be posted on the tower at a height of five (5) feet warning of electrical shock or high voltage and harm from revolving machinery.
13. A map showing all utility lines, both above and below ground, within a radius equal to the proposed tower height, including blades.
14. The map must also denote surrounding land use and all structures within five hundred (500) feet of WECS location.
15. Dimensional representation of the various structural components of the tower construction, including the base and footing.
16. Design data indicating the basis of design, including manufacturer's dimensional drawings and installation and operation instructions.
17. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and NYS Building Code.
18. Certification by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind/load requirements for structures as established by the NYS Building Code.
19. Shadow flicker and ice and blade throw may need to be mitigated if neighboring residences are within one thousand (1,000) feet of WECS.
20. The Planning Board may determine that not all of the above requirements are necessary for a particular proposed project. However, they may determine that additional requirements must be met for a particular proposed project.
21. Any WECS which has not been in active and continuous for a period of (12) twelve months shall be removed from the premises to a place of safe and legal disposal. Additionally, all structures, guy cables, guy anchors and/or enclosures accessory to such WECS shall also be remove. The site shall be restored to a natural conditional. Such removal shall be completed at the owner's expense within six (6) months of cessation of active and continuous use. Failure to remove the WECS in accordance with these regulations shall be a violation of this chapter.

E. Application Process for Industrial WECS

Applicants for approval of Industrial WECS must submit a plan containing, at a minimum, the following:

1. A map showing all existing lot lines, easements, right of ways and proposed road access including provisions for paving, if any, proposed transmission lines and accessory facilities, and location of all existing and proposed utility systems to the facility.
2. A map showing existing and proposed topography at five-foot contour intervals.

3. A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures.
4. Photography assessing the visibility of the WECS from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground site facilities as they would appear from distances within a three (3) mile radius of such WECS. Pictures from specific locations may be required by the Planning Board and all pictures shall be no smaller than 5" by 7". Proposed mitigation measures for visual impacts of the WECS should also be submitted. In addition, the applicant should submit a digital elevation model-based project visibility map showing the impact of visibility of the project from other locations, to a distance radius of three (3) miles from the WECS. The base map used shall be a published topographic map showing natural and constructed features.
5. Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any WECS facility and justification for any clearing required.
6. Proposed safety measure to mitigate WECS failure.
7. Elevation map showing the WEC's height and design including: a cross-section of the structure and components; hardware compliance with applicable structural standards; and the WECS's abilities in terms of producing energy.
8. If any license, approval, permit, certification or any type of registration or similar type of endorsement is required from any other agency, the applicant shall notify the Planning Board of such requirement and the Board shall coordinate the review as deemed appropriate.
9. Noise analysis: A Noise Analysis shall be furnished which shall include the following:
 - (a) A description and map of the project's noise-producing features, including the range of noise levels expected, manufacture's noise design and field testing date, both audible (dB(A), and low frequency (deep bass vibration), and the tonal and frequency characteristics expected from the proposed structure.
 - (b) A description and map of the noise sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities within 1500 feet of the WECS and/or other sensitive receptor points that may be identified by the Planning Board.
 - (c) A survey and report that analyzes the preexisting ambient noise (including seasonal variation) and the effects of the WECS when added to the ambient noise.

- (d) A description of the project's proposed noise-control features and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with the requirements of this chapter.
10. Engineer's report, prepared by a professional engineer licensed in New York State, that provides information regarding the following potential risks. The results of the engineer's report shall be used to determine the adequacy of setbacks from the property line to mitigate any effects from potential ice throw, tower failure, or blade throw.
- (a) Ice throw calculations: A report that calculates the maximum distance that ice from the turbine blades could be thrown, and the potential risk assessment for inhabitants and structures. (The basis of the calculation and all assumptions must be disclosed).
 - (b) Blade throw calculations: A report that calculates the maximum distance that pieces of the turbine blades could be thrown, and the potential risk assessment for inhabitants and structures. (The basis of the calculation and all assumptions must be disclosed).
 - (c) Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand, and the potential risk assessment for inhabitants and structures, (including all assumptions).
 - (d) Certification by a licensed New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures **or** as established by the New York State Building Code.
11. Lighting plan: The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
12. Shadow Flicker Study: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and other structures and describe measures that shall be taken to eliminate or mitigate the problem.
13. A decommissioning and site restoration plan.
14. FAA notification: A copy of written notification to the Federal Aviation Administration.

15. Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
16. Notification to microwave communications link operators, if the WECS is located within two miles of any microwave communications link.
17. Other information: Such additional information as may be reasonably required by the Town Engineer, Planning Board Attorney or Planning Board for an adequate assessment of the proposed project.
18. State Environment Quality Review Act (SEQRA): A Long Form EAF for the SEQRA review is required to be presented initially to the Town Planning Board for review. The Planning Board will determine whether the application is a Type I or Unlisted Action for purposes of SEQRA and will proceed with the SEQRA review in accordance with such determination.
19. The Planning Board may determine that not all of the above requirements are necessary for a particular proposed project. Any requirements the Planning Board determines are not necessary must be fully documented with the reasons clearly noted.

F. General Regulations for Industrial WECS

1. Placement: Setbacks, Ice and Blade Throw, Shadow Casting and Flicker: Setbacks from adjacent property lines, right-of-ways, easements, public ways or power lines (not to include individual residential feed lines) shall be one and one half (1.5) times the maximum WECS height or one and one half (1.5) times the maximum calculated ice or blade throw distance to the maximum point of impact, whichever is greater. Such calculation shall be determined by a licensed professional engineer at the applicant's expense. In areas subject to shadow casting and flicker, WECS facilities shall be no closer than fifteen hundred (1,500) feet from an occupied building. Individuals living within one half (1/2) mile of any WECS must be advised in advance of construction of the potential for flicker/shadow and the time of day when that would occur. The WECS shall be designed such that the project shall minimize shadow flicker onto adjacent existing residences and businesses. Mitigation measures, which may include landscaping, shall be incorporated into any Special Use Permit and Site Plan approval. The required shadow flicker study shall identify areas where shadow flicker may interfere with residences and businesses and describe measures that shall be taken to eliminate or minimize the problem.
2. Noise Level Limit: Individual WECS facilities shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed the average night time ambient noise levels, measured at the boundaries of all the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of Special Use Permit application.
3. Guy Wires and Anchors: All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point ten (10) feet above the ground.

4. Lighting: No WECS shall be lighted artificially unless such lighting is required by a state or federal agency. Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration (FAA) shall be subject to on-site field testing before the Planning Board, as a prerequisite to that Board's approval.
5. Scenic View Shed Impact: No WECS shall be installed in any location where the Planning Board determines the WECS to be detrimental to the general neighborhood character. No individual WECS shall be installed in any location that would substantially detract from or block the view of a portion of a scenic view, as viewed from any public road, right-of-way, publicly owned land or privately owned land within the Town of Wawayanda or that extends from the Town of Wawayanda. Placement of support buildings must be placed behind ridges or vegetation, if possible, to screen visibility. Clear cutting will not be allowed.
6. Broadcast Interference:
 - (a) No WECS shall be installed in any location along the major access of an existing microwave communication link where its operation is likely to produce electromagnetic interference in the link's operation.
 - (b) No WECS shall be installed in any location where its proximity to existing fixed broadcast transmission or reception antenna (including residential reception antenna) for radio, television, wireless phone, or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
 - (c) The recipient of the Special Use Permit must correct any unforeseen interference to the satisfaction of the Town's Building Inspector / Code Enforcement Officer within sixty (60) days of any complaint.
7. Specifications:
 - (a) Maximum Height Limit: The maximum height of a WECS shall be no greater than 100'.
 - (b) Tower Output Limit: Maximum .3 megawatt - maximum operating output.
8. Color: WECSs color will be determined by the Town of Wawayanda Planning Board unless an agency of the State or Federal government mandates otherwise.
9. Structure: Solid tube as per manufacturer's engineered specifications.
10. Design and Specification: Detailed design and specifications will be required during the review of the application for Site Plan approval and Special Use Permit.
11. Ice Buildup Sensors: Ice buildup sensors shall be required for industrial and commercial WECSs.
12. Transmission Lines: All power transmission lines from the WECS electricity generation facilities shall be underground.

13. Blade to Ground Distance: The lowest portion of the blade may not be closer than 30 feet to the ground.

14. Notice and Safety Considerations:

- (a) Signs:
- (b) Caution Signs: Caution signs shall be placed at the setback limits warning of ice and blade throws. Signs shall be placed in accordance with the approved site plan and contain emergency telephone numbers.
- (c) Fencing: Access to the WECS shall be limited by means of a fence eight (8) feet high with minimum six (6) inches of security wire on top surrounding the tower base with a locking gate monitored by a security device and tower climbing apparatus to no lower than fifteen (15) feet from the ground, or a locked door to internal stairs if so equipped.
- (d) Limit Tip Speed: No WECS facilities will be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding, and excessive pressure on the tower structure, rotor blades, or turbine components.
- (e) Emergency Shutdown Procedures: Emergency shutdown procedures shall be filed with the Town's Code Enforcement Officer.

15. Operating Considerations:

- (a) Removal if Not Operational: Any WECS which has not been in active service for a period of twelve (12) months shall be removed from the premises to a place of safe and legal disposal. Additionally, all structures, guy cables, guy anchors and/or enclosures accessory to such WECS shall also be removed. The site shall be restored to a natural condition to a minimum depth of three (3) feet or as otherwise instructed by the Town's Code Enforcement Officer or as required by the Planning Board. Such removal shall be completed within eighteen (18) months of cessation of active use and at the owner's expense.
- (b) Landscaping: Upon completion of installation, the site shall be returned as close as possible to its natural state.
- (c) Building and Grounds Maintenance: Any damaged or unused parts shall be removed from the premises within thirty (30) days. All maintenance equipment, spare parts, oil, etc., shall also be removed within thirty (30) days. All tools and materials related to WECS operations must be removed from the site or stored while the site is active or inactive.

- (d) Ownership Changes: If the ownership of a WECS operating under a Special Use Permit and Site Plan approval changes, the Special Use Permit and Site Plan shall remain in force. All conditions of the Site Plan and Special Use Permit, including performance and maintenance guarantees such as a letter of credit, or continuing certification requirements of the original owner will continue to be obligations of the succeeding owner. However, the change in ownership shall be registered with the Town's Building Inspector / Code Enforcement Officer. The Town of Wawayanda will retain the performance and maintenance guarantees throughout the property transfer. The letter of credit will not be returned to the previous owner, unless replaced by a comparable letter of credit or cash in form and content satisfactory to the Attorney for the Town.
- (e) WECS Modification: Any and all modifications, additions or deletions to WECSs that operate under a Special Use Permit and Site Plan approval, whether structural or not, shall be made only with specific approval by the Town's Planning Board, except that such approval shall not be required for repairs which become necessary in the normal course of use of such WECS or become necessary as a result of natural forces, such as wind or ice.

16. Certification:

- (a) Inspection:
- (b) An inspection report prepared by a professional engineer licensed in the State of New York will be required at the time of installation and every three (3) years thereafter. The inspection report will be for the structure and the electronics and will be given to the Town's Building Inspector / Code Enforcement Officer.
- (c) National and State Standards: The applicant shall show that all applicable manufacturers', New York State, and U.S. standards for the construction, operation, and maintenance of the proposed WECS are being complied with. WECSs shall be built, operated, and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI) or any successor organization. The applicant for a WECS Special Use Permit and Site Plan approval shall furnish evidence from a professional engineer licensed to practice in the State of New York that such WECS is in compliance with the standards.
- (d) Wind Speed/Wind Load: Certification is required from a professional engineer licensed by the State of New York, or manufacturer's certification, stating the WECS design is sufficient to withstand wind-load requirements for structures as established by the Building Code of New York State and will shut down when wind speeds exceed manufacturer's maximum acceptable speed specifications.

17. The regulations set forth above may be modified by the Planning Board for Industrial WECS at the Planning Board's sole discretion.

F. Liability/Indemnity

1. Insurance - Liability: Prior to issuance of a building permit for a WECS, the applicant shall provide the Town, in the form of an insurance policy or a certificate of coverage issued by an insurance company for liability insurance in an amount to be determined by the Town Board and the Attorney for the Town, in consultation with the Town's insurer. This policy or certificate shall be to cover damage or injury which might result from the failure of a tower or any other part(s) of the WECS generation and transmission facility or for any other damage caused by the construction, maintenance or operation of the WECS. In addition, prior to construction of any WECS, the owner of such WECS must provide cash or a letter of credit, in amounts and form satisfactory to the Town Engineer and the Attorney for the Town, to guarantee the proper performance and maintenance of the WEC for three years after construction is completed.
2. Performance Guarantee (Removal):
 - (a) The owner of a WECS, after such application has been approved and before a building permit is issued, shall submit a letter of credit or other acceptable surety sufficient to ensure the removal of the WECS. The letter of credit or other surety must be acceptable to the Town Engineer and Attorney for the Town before a building permit is issued. Said letter of credit or other surety shall be forfeited if removal is not completed by the deadline as previously specified in this article. This estimate will be reviewed and updated every two (2) years by the Town Engineer and the owner of a WECS must increase the amount of such guarantee if required by the Town Engineer.
 - (b) If transmission services from a WECS are to be discontinued for a period exceeding twelve (12) months, the owner of such WECS shall notify the Town's Building Inspector / Code Enforcement Officer within thirty (30) days of the date of such discontinuance.
 - (c) Any WECS which has not been in active and continuous service for a period of twelve (12) months shall be removed from the premises to a place of safe and legal disposal. Additionally, all structures, guy cables, guy anchors and/or enclosures accessory to such WECS shall also be removed. The site shall be restored to a natural condition. Such removal shall be completed at the owner's expense within six (6) months of cessation of active and continuous use of such WECS or forfeit the surety posted by the owner. Failure to notify and/or remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter and the cost of removing the WECS and accessory structures shall be placed as a lien on the property owner's tax bill.

- (d) Environmental Contamination: A performance guarantee in the form of a letter of credit or cash will be required to deal with DEC requirements. The owner of a WECS, after such application has been approved and before a building permit is issued, shall submit the maximum amount letter of credit or acceptable surety necessary to ensure the cleanup of any contamination in accord with DEC requirements. The Town Engineer and Town Attorney shall review the letter of credit or other surety and determine if it is adequate and satisfactory before a building permit is issued.
- (e) Continuing Obligations: All requirements detailed above shall remain in force for the life of the Special Use Permit.

F. Violations and Enforcement

Any person, firm, corporation, association or entity who commits an offense against, disobeys, neglects or refuses to comply with or resists the enforcement of any of the provisions of this chapter, upon conviction, shall be deemed guilty of a violation, punishable by a fine of not more than five hundred dollars (\$500.00) or by imprisonment not exceeding fifteen (15) days, or both such fine and imprisonment. Each week an offense is continued shall be deemed a separate violation of this law and duly punishable as such. In addition to the penalties provided herein, the Town Board may also maintain an action or proceedings in the name of the Town of Wawayanda in any court of competent jurisdiction to compel compliance with, or to restrain by injunction any violations of this section, and for damages, including without limitation, the legal cost and expenses of such action, which includes attorney's fees.

5.5 FORESTRY.

All commercial forestry operations shall require a Special Use permit approval by the Planning Board. Approval of commercial forestry operations shall require the following:

- A. In addition to any site plan requirements that the Planning Board shall determine are required under (Article VII), the application for permit shall also include the following:
 - (1) The name and address of the harvester (logger) or purchaser.
 - (2) The location of the planned harvest operation and showing the location of the work areas, including loading areas, haul roads, landings and stream crossing.
 - (3) The approximate acreage to be cut and the approximate dates upon which such harvesting activity will occur.
 - (4) A description of the type of harvesting activity: Diameter-limit cutting (the minimum diameter and height measurement shall be designated), thinning or selection cutting, in which case the method of selections shall be explained.
 - (5) A copy of a contract with the logger or proposed contract with a prospective logger. If not available at the time of filing of the registration statement, the contract must be filed prior to the commencement of logging operations.
 - (6) A statement of the steps to be taken:
 - (a) To mitigate and control environmental damage;
 - (b) For reclamation to limit subsequent environmental damage, including soil erosion control and the protection of streams; and

- (c) To assure that culverts and Town roads are protected from damage caused by the logging operation and from the transportation of timber, including compliance with truck weight limitations.
- B. Exemption of lands harvested under approved management plans. Lands enrolled with the State Department of Environmental Conservation under the provisions of the Forest Tax Law provisions of the Real Property Law, and lands otherwise harvested and managed in conformity with a forest management plan approved by the State Department of Environmental Conservation, shall be exempted from the bonding requirements of Subsection F below.
- C. Standards and limitations for commercial forestry operations. No harvesting, cutting or removal of products shall take place between the hours of 7:00 p.m. and 7:00 a.m. or at any time on Sundays or legal holidays.
 - (1) All commercial forestry operations shall be managed and conducted in accordance with the New York Timber Harvesting Guidelines, which shall be enforceable hereunder as standards for forestry operations in the Town of Wawayanda.
 - (2) Buffer strips shall be retained at least twenty-five-feet wide along streams, and at least twenty-five-feet wide along public roads, public rights-of-way, scenic trails open to the public, lakefront areas, public buildings, adjacent residences and parks. Within the buffer strips a basal area of 75 square feet per acre shall be maintained.
 - (3) No landings shall be located within buffer strips abutting streams, scenic trails, lakefront areas and public buildings. No landing or other operations shall be located within 50 feet of a residential building. Utility line maintenance shall be excluded from the prohibition of cutting trees within the buffer strip.
- D. Clear-cutting as a method of harvesting forest products is prohibited unless clearly justified by the requirements of sound forest management.
- E. Upon approval by the Planning Board, the permit shall be valid for a maximum period of five years.
- F. Security. As a part of a condition of the permit, a certified check or irrevocable letter of credit shall be posted with the Town Clerk by the owner or logger in the amount of \$100 per acre of land in order to assure compliance with the provisions of this section. Upon completion of such harvesting activities and the compliance with all provisions of this section, the Town Building Inspector / Code Enforcement Officer and / or Highway Superintendant shall inspect the site to assure that appropriate erosion control has been implemented and Town Roads and infrastructure have not been damaged. Upon such notification, security shall be returned. In the case of noncompliance with this section, the Town Board shall utilize such security, and in the event that such security is insufficient, the Town may put a lien on the property or such portion thereof that may be necessary to ameliorate noncompliance.

5.6 ADULT USES

- A. Purpose. In the development and execution of this section, it is recognized that there are some adult uses which, because it is their very nature, are recognized as having serious objectionable characteristics. The objectionable characteristics of these uses are further heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. Try to ensure that these adverse effects will not contribute to the blighting or downgrading of surrounding neighborhoods or land uses, increase crime or police calls, increase the quantity of transients in residential and commercial areas, cause a deterioration in the quality of life in residential

neighborhoods, increase the accessibility of adult-oriented material and entertainment to minors, and encourage residents and businesses to locate elsewhere.

B. Regulated uses; restrictions.

- 1) Regulated uses include all adult uses, which include, but are not limited to, the following:
 - a. Adult bookstores
 - b. Adult cabaret
 - c. Adult video store
 - d. Adult theaters

C. Definitions. As used in this section, the following terms shall have the meanings indicated:

SPECIFIED ANATOMICAL AREAS:

1. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately about the top of the areola; or
2. Human male genitals in a discernable turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse, or sodomy; or
3. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

RESTRICTION ON LOCATION:

1. No adult use shall be located within a 500 foot radius of any residential zoning district.
2. No adult use shall be located within a 1,000-foot radius of the property of any church, synagogue, mosque or other place of religious worship.
3. No adult use shall be located within a 1,000-foot radius of any school, park-, civic- or youth-oriented center, playground or playing field.
4. No adult use shall be located within a 500 -foot radius of the property of another adult use.

D. Exterior display prohibited. No adult use shall be conducted in any manner that allows the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way. This provision shall apply to any display, decoration, sign, show window or other opening.

5.7 ANIMAL HUSBANDRY, ANIMAL HOSPITALS AND COMMERCIAL AGRICULTURE.

The following additional standards must be met in conducting animal husbandry and commercial agricultural operations:

A. Commercial agriculture.

- (1) Non-animal agriculture operations, such as the raising of field, greenhouse, nursery and garden crops, sod and vineyard and orchard farming shall be permitted in all zoning districts.
- (2) The keeping, breeding and raising of livestock shall be permitted on lots equal to or greater than two acres but less than or equal to 7 acres, provided that the following provisions are met. This section shall not prevent the keeping of ordinary household pets such as dogs and

cats in compliance with Section C below and animal control regulations of the Town Code. Keeping of livestock on lots of less than two acres in size may be permitted as a special use.

Number of Animals

Species	Permitted
Dairy and beef cows, horses; and other domestic animals of similar size	1 for the first 2 acres, plus 1 for each additional 1 acre up to 7 acres
Sheep goats, swine and other domestic animals of similar size	1 for the first 2 acres, plus 1 for each additional ½ acre up to 7 acres
Poultry, rabbits and other domestic animals of a similar size	
From 2 to 4.9 acres	Maximum of 50
From 5 to 7 1/2 acres	Maximum of 150

- (3) The keeping, breeding and raising of livestock, poultry and similar animals shall be permitted on lots greater than 7 acres and shall not be subject to the requirements of Subsection A(2) above.
- (4) The storage of manure or other odor- or dust producing substances shall be adequately screened from the view of adjacent properties and located not less than 75 feet from any side or rear lot lines for lots equal to or greater than two acres but less than or equal to 7 acres. The storage of manure or other odor- or dust-producing substances in nonagricultural districts shall be set back 150 feet from any side or rear lot lines for lots greater than 7 acres.
- (5) Barns and structures for the housing of livestock on lots smaller than 7 acres shall be set back the minimum distance required for accessory structures. Poultry, rabbits and other animals of similar size shall be housed in structures that shall be set back the minimum distance required for accessory structures. State right-to farm provisions shall apply in all other instances.

B. Stables and riding academies.

- (1) The minimum area required for the commercial stabling of horses on any lot shall be 7 acres. There shall be no storage or use of manure or other dust producing substances within a distance of 100 feet from any lot line. Riding trails may be no closer than 50 feet to any lot line, nor shall any riding trail cross a public way, road, street or highway unless by prior approval of the Planning Board. All lighting shall be so located as not to be visible at the source from any adjoining property. The use of existing barns and structures is to be encouraged, such existing buildings will be exempt from applicable setback requirements.
- (2) Provisions shall be made for removal or handling of manure in such a manner that does not pollute ground or surface water or create a public nuisance.
- (3) Public events, demonstrations, horse shows, rodeos or competitive events held in connection with riding academies or stables shall be permitted, providing that adequate sanitations facilities, sufficient parking and crowd control measures are provided as determined by the Town Board.
- (4) The applicant shall be permitted to regularly maintain no more than 10 horses over six month old on the premises for the first 7 acres of contiguous property owned by the applicant. The keeping of an additional one horse over six months old shall be permitted for each additional ½ acre of contiguous property in excess of 7 acres owned by the applicant.

- (5) In reviewing any application for a stable or riding academy, the Planning Board shall consider the drainage, percolation and topography of the proposed site and its proximity to public or private water supplies.
 - (6) In granting any special use permit pursuant to this section, the Planning Board shall consider the frequency of events, hours during which events may be permitted, the maximum number of people that may be expected to attend such events, provisions for crowd and traffic control and intrusiveness of noise upon neighboring residences, including the nature of and decibel level of sound amplifications systems.
 - (7) The location of commercial stables and riding academies pursuant to this section shall be permitted pursuant to a special use permit in the following zones: AP, AB, AR, SR, RH, TC, and MC.
- C. Animal hospitals or veterinary clinics and commercial or not-for-profit kennels shall, where permitted, be subject to the following standards:
- (1) The minimum lot size for a commercial or a not-for-profit dog kennel shall be ten acres.
 - (2) No kennel, runway or exercise pen shall be located within 300 feet of any lot or street line.
 - (3) For animal hospitals and veterinary clinics, all facilities other than exercise pens and runways shall be maintained in enclosed structures which shall be of soundproof construction and so maintained as to produce no dust or odors at the property line.
 - (4) All facilities shall be permanently screened from all surrounding properties.
 - (5) In issuing the special use permit, the Planning Board shall stipulate the maximum number and type of animals to be boarded, harbored or trained.

5.8 HOUSING FOR MIGRATORY WORKERS.

- A. All such premises shall be constructed and operated in conformance with applicable state and federal regulations.
- B. Accessory tenant housing and dormitory accommodations may be located on lands that are considered part of the same farming operation at which the tenant/migrant labor is employed, but said structures shall be regulated as a principal building in accordance with the bulk standards provided for migratory housing in the applicable zoning district.

5.9 SUMMER RECREATION CAMPS.

- A. Camps shall provide a minimum of 10,000 square feet per cabin site and the same for the principal building.
- B. No tent activity area or recreational facility shall be located nearer than 100 feet from any public road and 100 feet from any adjoining property line.
- C. Buildings and sleeping quarters (except tents) shall be set back a distance of 20 feet from each other; and tents shall be set a minimum of 10 feet apart
- D. Cabins or cottages designed for one-family occupancy only shall be permitted.
- E. Accessory recreational facilities shall be set back 200 feet from all lot lines and shall be effectively screened along lot lines as required by the Planning Board.

- F. If floodlighting is used, exterior lighting shall be restricted to that essential for the safety and convenience of the users of the premises, and the source of such illumination shall be shielded from the view of all surrounding streets and lots.
- G. The Planning Board may permit the use of outdoor public address systems, provided that no more sound shall carry beyond the limits of the camp site than would be inherent in the ordinary residential use of the property.
- H. All structures and uses shall be effectively screened along lot lines, as required by the Planning Board.
- I. All provisions of the sanitary code or such other regulations of the County Health Department pertaining to camps and their sanitary facilities must be met.

5.10 HOTELS, MOTELS AND RESORTS.

Hotel, motel and resort establishments, where permitted, shall require special use review by the Planning Board and be subject to the following standards:

- A. A site to be used for a motel, hotel or resort establishment shall include an office and lobby and may include accessory uses as follows: restaurants, coffee shop or cafeteria providing food and drink, amusement and sports facilities such as a swimming pool, children's playground, tennis or other game sports and game or recreational rooms.
- B. Lot area shall be a minimum of two acres plus one acre for each 15 rooms beyond the first 20 on lots without central water and sewer, and a minimum of one acre plus one-half acre for each 15 rooms beyond the first 20, provided the site can support such density and also accommodate accessory structures and uses, parking, storm water, septic and water facilities and any other requirements. The lot shall also have not less than 200 feet frontage on a Town, county, state or federal highway.
- C. Point of ingress and egress shall be limited to a total of two on any street. All off-street parking areas shall be at least 25 feet from all property lines and parking areas serving a restaurant, cafeteria or coffee shop shall be at least 20 feet from all motel dormitory units.
- D. Individual hotel, motel and resort rooms shall not contain kitchen facilities of any nature, and shall not be used as apartments for nontransient tenants or other single-room occupancy residential uses.
- E. No hotel, motel or resort use shall be permitted which is intended to accommodate activities of a health care, rehabilitative or medical nature. Such as facilities shall be considered separate uses and limited to those zoning districts where specifically permitted by listing on the Schedule of District Regulations.
- F. The exterior treatment, including colors, textures and materials, of all structures within a hotel or motel development shall be muted and blend into the surrounding landscape or adjacent land uses.

- G. Lighting throughout the area shall not exceed 1.5 footcandles (average reflective method) at ground level except in the case of recreational facilities, which may be illuminated in excess of that standard, provided that opaque screening is utilized to entirely block the reflected glare of the area from adjacent uses.

5.11 HOSPITALS, NURSING HOMES AND SENIOR LIFE CARE.

- A. Hospitals, nursing homes and other senior life-care facilities are permitted as specified on the Use Table. Senior life-care facilities shall be defined as any premises containing sleeping rooms, with or without kitchens, or living units used by persons who are lodged and furnished with optional meals, health care or other supportive services connected with the activities of daily living; including nursing homes, assisted and independent living projects and other similar uses primarily intended for the elderly or infirm; and not including group homes, hospitals, clinics or alcohol and drug rehabilitation facilities. These facilities may receive, at the discretion of the Planning Board, up to a 25% density bonus but be subject all other applicable multifamily dwelling standards.
- B. Hospitals providing community general hospital care, including outpatient mental health services, are permitted on lots with the minimum area and lot width specified for the applicable zoning district, provided that all other requirements are in full compliance with these regulations.
- C. In addition to approval of a Special Use Permit for a hospital, nursing home or convalescent home, the Planning Board may also allow in separate facilities upon the same or an abutting lot offices and facilities for administration, doctors' offices, dispensaries or other like uses that are clearly accessory to the principal use, provided that such facilities shall observe the setbacks for the principal use from any property line other than property lines which adjoin another such hospital. Such facilities need not be in the same ownership.
- D. A parking plan shall be submitted for approval together with the special use permit that ensures the adequacy of parking facilities for all in-patient, out-patient, and staff needs.

5.12 NURSERY SCHOOLS AND CHILD DAY-CARE CENTERS.

- A. A buffer landscape strip shall be required to protect play yards from dust, dirt and noise as well as to screen and protect adjacent properties from any site-generated noise. A minimum 20 foot landscaped strip shall be densely planted with shrubs and trees to create an opaque screen. No plantings shall cause an interference with required lines of sight for entry and exit drives.
- B. Outdoor play areas shall be provided with a minimum space of 40 square feet per child. Play areas shall include turf grass areas and space for play equipment and circulation. Play areas shall not exceed 10% in slope.
- C. Fencing not less than four feet high and not greater than six feet high shall be required in addition to a landscape strip, unless it can be demonstrated to the satisfaction of the Planning Board not to be necessary for the protection of health and safety. Only a day-care center that is on a local road may apply for the waiver.
- D. Such use shall require certification from appropriate state agencies.

5.13 AUTOMOTIVE SERVICE STATIONS AND AUTO BODY SHOPS.

- A. Strict compliance with New York State standards shall be required in the design and construction of devices for storing and handling gasoline and other products to keep the hazards of fire and explosion involving the same to a minimum.
- B. The minimum required lot area for such use shall be 30,000 square feet, with a minimum lot width and road frontage of 150 feet.
- C. There shall be safe and adequate sight distance in each direction along the highway on which the property has access, and the use of property shall not otherwise create a traffic hazard.
- D. Pumps and other devices, shall be located at least 40 feet from any property line. Signs shall be located at least 20 feet from any property line.
- E. No major repair work shall be performed out-of-doors.
- F. All automobile parts, dismantled vehicles and similar articles shall be stored within a building, except as provided for in Paragraph H of this section.
- G. The illuminated part of and lettering which are customarily part of or affixed to gasoline pumps shall not be deemed signs.
- H. No more than five wrecked, partially dismantled or unlicensed vehicles shall be kept on the premises, and all such vehicles shall be kept within a building or concealed behind a board fence at least six feet high.
- I. No dead storage or parking of vehicles shall be permitted, except vehicles awaiting immediate service or repair or those vehicles impounded at the direction of the police.
- J. A minimum 25 foot landscape buffer shall be provided on side and rear yards.
- K. For auto body shops, said shop shall be licensed by the applicable regulating agency. A copy of said license shall be filed as part of the Special Use Permit application.

5.14 BED-AND-BREAKFASTS.

- A. Bed-and-breakfasts shall be on a minimum lot area of two acres for the first four guest rooms.
- B. One additional guest room may be provided for every additional ¼ acre up to a maximum of 12 guest rooms.
- C. The owner shall demonstrate that there are adequate sewer and water supply facilities to serve the guests to be accommodated.
- D. No bed-and-breakfast facility shall lodge persons for more than two weeks at a time.

5.15 OUTDOOR DISPLAY AND STORAGE OF MERCHANDISE

- A. Yard sales. Individual private family yard sales are a permitted use in all zoning districts. They shall require permits from the Town Clerk and be subject to the following specific regulations and requirements:
- 1) Each individual property location may have a maximum of five yard sales during any one calendar year. Each sale shall last a maximum of three consecutive days.
 - 2) All items shall be placed and offered for sale within the confines of the property described in the permit.
 - 3) Yard sales are meant to allow individuals to offer for sale accumulated normal household items or arts and crafts, and the buying and selling of commercial or surplus material shall be considered a commercial operation and shall be prohibited unless otherwise specifically permitted herein.
- B. Flea markets and tent sales. Business owners, churches, schools and other commercial or nonprofit organizations within all districts may conduct flea markets and tent sales provided no more than three such sales shall be conducted per calendar year and each sale is limited to four days length. A flea market is hereby defined for these purposes as an occasional or periodic market held in an open area or structure where individual sellers or groups of sellers offer goods for sale to the public on a commercial basis. The enterprise shall not be conducted within required yards, on public rights-of-way or without otherwise complying with the requirements of this chapter pertaining to parking, lighting, noise and signage. Exhibition licenses shall be required for this purpose in accord with Chapter 46 of the Town of Wawayanda Code.
- C. Seasonal roadside stands. Temporary seasonal roadside produce stands used to sell garden or farm produce that are not accessory to an agricultural use on the same parcel shall be permitted within all zoning districts as an accessory use in conjunction with any other agricultural use operated on the same parcel, provided these activities only take place between March 1 and December 31 and are limited to 500 square feet or less in display area. No permanent structures shall be permitted in connection with such uses. The enterprise shall also not be conducted within required yards, on public rights-of-way or without otherwise complying with the requirements of this chapter pertaining to parking, lighting or signage.
- D. Other temporary or permanent outdoor commercial display and storage. Unless otherwise permitted by this chapter there shall be no temporary or permanent outdoor commercial display and storage of merchandise for the sale, including used motor vehicles, except as a special use. The Planning Board shall consider the following in reviewing such applications:
- 1) The location and size of the proposed use.
 - 2) The nature and intensity of the operations involved.
 - 3) The size of the site in relation to the use and its location with respect to highways or streets giving access to the same.
 - 4) Whether such use will discourage the appropriate development and use of adjacent land or buildings or impair the value thereof.
 - 5) Whether there are any characteristics of such use that will be objectionable to occupants of nearby properties.
 - 6) The electric lighting and advertising that will be involved in such use.
 - 7) Any other pertinent information that may be necessary to determine if such proposed special use meets the requirements of this chapter and the public convenience, welfare and safety.

- 8) Auto mobile- or equipment-related uses involving outdoor display or storage of automobiles or equipment on a commercial basis shall be limited to districts where such uses are otherwise permitted.

5.16 INSTITUTIONS.

Institutional and charitable organizations other than specific institutional uses otherwise identified in this section are permitted by special permit of the Planning Board. The Planning Board recognizes the broad range of community benefits and enrichment contributed by uses of this class. Due to the wide range of possible uses and their potential for disruption of community services and incompatible conditions within established neighborhoods, the Planning Board solely reserves the authority to grant such special permits for construction or conversion of existing uses to institutional or charitable organizations.

- A. The Planning Board shall require in any application for a special use permit hereunder that a complete description of the proposed use and occupancy of the lands or building be submitted and be made conditional on the granting of such permit.
- B. The Planning Board shall require that the applicant submit a prospectus as to the operation of such facilities, setting forth fully the extent of public services required in support of such use, including but no limited to maintenance of access from the nearest state highway or county road, educational services, including any capital construction, recreation requirements, fire protection (including evidence of insurability), police services (grounds security, etc.), evidence of liability insurance and rating and municipal administration. If it shall appear that, by virtue of any lawful tax exemption entitlement, the proposed use will create undue fiscal demands upon the Town, the Planning Board may require alternative arrangements for provisions of such services at the applicant's expense or the payment of reasonable fees in lieu thereof.
- C. In the case of institutions and charitable organizations which provide accommodations for participants thereof for periods in excess of 24 hours, the Planning Board shall require that records of such participants be maintained in the same manner as set forth in the New York Rules for Innkeepers.
- D. In granting such special permit, in addition to the conditions authorized by this section, the Planning Board shall limit the intensity and use of structures or buildings to the extent that such structures or buildings are used for conventional uses permitted in the district where located. Such limitation shall include in detail the scope of operations submitted by the applicant as may be modified by the Planning Board in the interest of the public health and safety. All accessory uses to institutional and charitable organizations shall comply with the provisions of this chapter for area, setbacks, access and supplementary regulations.

5.17 MULTIFAMILY RESIDENTIAL USES.

- A. Multifamily dwelling projects shall be considered major subdivisions. This major subdivision classification shall apply to all subdivisions of property in connection with the development, regardless of whether or not the same are connected with building development, and the approvals required shall be requested and acted upon concurrently as one subdivision. Application for preliminary approval of multifamily dwelling projects, accordingly, will be made to the Town in the manner provided under the Town Land Subdivision Law. The subdivider shall also submit all information required by such regulations plus the following additional data;

- (1) An application for approval on a form to be supplied by the Town or, in the absence of such form, by a letter or brief from the developer or his or her representative indicating how the development will specifically comply with or meet the criteria set forth herein.
 - (2) A proposed plot plan showing the approximate (generally within five feet) locations of all buildings and improvements including parking areas, planting strips (if any), signs, storm drainage facilities, water supply, sewage treatment and collection systems and the specific areas provided as open space in connection with the requirements of this chapter. Building layouts, floor plans and profiles shall also be provided indicating building dimensions, numbers, and sizes of units, common ownership or use areas (apart from the open space referenced below), lighting and such other information as shall be required to determine compliance with the design standards contained herein and any other building standards which may be applicable in the Town of Wawayanda. Setbacks from property lines, improvements and other buildings shall also be indicated.
 - (3) A schedule or plan and proposed agreement(s) either with the Town or a property owners' association for the purpose of dedicating, in perpetuity, the use and/or ownership of the recreation area and open space required by this chapter to the prospective dwelling owners or occupants. Such agreement may be incorporated in the applicant's proposed covenants and restrictions, but shall in any event, provide to the satisfaction of the Town that maintenance and use of the property, regardless of ownership, be restricted to either activities intended for the sole benefit of the occupants of the particular project proposed, or permanent open space as hereinafter provided.
- B. The Planning Board shall act on the preliminary development plan and special use application concurrently provided an environmental assessment is also conducted pursuant to the New York State Environmental Quality Review Act. No building permit shall be issued to the applicant, however, until all conditions attached to the approval of any preliminary development plan, shall have been satisfied and nothing herein shall be construed as permitting the issuance of a building permit prior to preliminary approval and the filing of financial guarantee as required. This requirement notwithstanding, the building permit application shall be made with the development plan and shall, if granted, be valid for a period equal to that for preliminary development plan approval. If the preliminary development plan shall be rejected no building permit shall be granted.
- C. Following preliminary plan approval, the developer shall provide for the installation of required or proposed improvements including but not limited to streets, parking areas, storm drainage facilities, recreational facilities and lighting. Building improvements shall similarly be completed or guaranteed prior to the applicant's request for final development plan approval. No certificate of occupancy (where the same is required) shall, however, be issued until such time as final development plan approval shall have been granted in accordance with the procedures and requirements of this chapter and buildings have been completed and inspected by the Town Building Inspector.
- D. Complete final building plans shall also be submitted as part of the final development plan application.
- E. No person shall sell, transfer, lease or agree or enter into an agreement to sell or lease any land and/or buildings or interests in the individual dwelling units to be created, or erect any building thereon except in accord with the provisions of this chapter, unless and until final development plan approval shall have been granted (unless the improvements shall have been guaranteed), and the plan has been recorded in the Office of the Orange County Clerk.

- F. Multifamily dwelling density shall be granted a 100% density bonus above the number of dwelling units per acre which would be permitted within the district if the parcel on which the units are to be constructed were to be developed for one-family residential use. Density shall be calculated by taking the total acreage of the development and deducting the following acreages: land contained within public rights-of-way; land contained within the rights-of-way of existing or proposed private streets (where formal rights-of-way are not involved, the width shall be assumed to be 50 feet); land contained within the boundaries of easements previously granted to public utility corporations providing electrical or telephone service; all wetlands, floodplains, slopes of 25% or greater grade, water bodies and other undevelopable areas (unless such areas are used for some active recreational purpose such as trails or employed for some other development purpose such as a stormwater detention area); and dividing by the number of proposed units.
- G. All areas of a multifamily development not conveyed to individual owners, and not occupied by buildings and required or proposed improvements shall remain as permanent open space or be dedicated to recreation area to be used for the sole benefit and enjoyment of the residents of the particular units being proposed. No less than 50% of the tract shall be used for this purpose and fees in lieu of dedication may not be substituted for such space. Such open space shall be subject to the following regulations:
- (1) No less than 50% of the open space to be provided (25% of the total tract) shall be dedicated to recreational area for the sole benefit and enjoyment of the residents of the particular units proposed. Recreation areas (as distinct from other open space) shall be immediately adjacent (part of the same parcel and contiguous) to the proposed units and freely and safely accessible to all residents of the development. They shall not be used to fulfill open space requirements or provide recreational areas for residents of other units, excepting as provided for in Subsection G(2) below. They shall be usable for active recreational activities and shall not include wetlands, quarries, slopes over 15% in grade, water bodies or acreage used for improvements such as storm drainage facilities or sewage effluent disposal areas.
 - (2) Land designated as open space shall be permanently maintained as such and not be separately sold, used to meet open space or recreation area requirements for other developments, subdivided or developed excepting that a holding zone may be reserved for future development pursuant to density and other zoning requirements as they presently exist, provided such lands are specifically defined and indicated as "reserved for future development" on all development plans. Such lands shall not be included in calculating permitted density for the proposed development. These provisions, however shall not be construed as granting or reserving to the developer any rights or privileges to develop on the basis of a preapproved plan if density or other zoning requirements shall have been modified to preclude such development.
 - (3) Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas may be owned, preserved and maintained by dedication to a property owners' association which assumes full responsibility for maintenance of the open space and/or deed-restricted private ownership which shall prevent development of the open space, provide for its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project. This is intended to allow the owner/developer to retain ownership and use of a portion of the property (for hunting, fishing, etc.) provided the permanence of the open

space is guaranteed.

- (4) Whichever maintenance mechanism(s) is used, the developer shall provide, to the satisfaction of the Town Attorney and prior to the granting of any final development plan approval, for the perpetual maintenance of the open space and also the use and enjoyment of the recreation area by residents of the units being approved. No lots shall be sold nor shall any building be occupied until and unless such arrangements or agreements have been finalized and recorded.
 - (5) Developments of 50 units or more shall provide 1/2 acre of playground area per 50 units unless restricted to adult occupancy only.
- H. All multifamily developments shall be served with central sewage facilities and water supplies. Effluent disposal areas shall also be subject to the setback requirements applicable to other multifamily buildings and structures as a minimum.
- I. The following design criteria shall apply to multifamily developments;
- (1) There shall be no more than 15 dwellings in each multifamily building.
 - (2) No structure shall be constructed within 50 feet of the edge of any access road to or through the development or within 10 feet of the edge of any parking area. No buildings shall be located within 100 feet of any pond, reservoir, lake or watercourse that is part of a water supply system.
 - (3) Access roads through the development shall comply with minor street requirements as specified in this chapter and no parking space shall be designed such that a vehicle would be backing or driving out onto a through road. Instead, there shall be a defined entrance and exit to and from each parking area.
 - (4) Access and egress from the proposed development shall be to a public road and a traffic engineering study shall be an integral part of the site plan application. Such entrances and exits shall be at least 100 feet from any intersection and shall meet ASHTO Standards. No multifamily development shall be served by more than one entrance and one exit from any public highway, unless topography or other physical circumstances would preclude the use of a single entrance in a safe manner.
 - (5) Parking spaces of two per unit shall be provided plus, for every two units intended for rental or other transient occupancy, one additional space to accommodate parking needs during sales and other peak visitation periods.
 - (6) No more than 60 parking spaces shall be provided in one lot, nor more than 15 in a continuous row without being interrupted by landscaping. All off-street parking shall be adequately lighted and so arranged as to direct lighting away from residences.
 - (7) No structure shall be erected within a distance equal to its own height of any other structure.
 - (8) All multifamily structures shall be a minimum of 100 feet from any of the exterior property or boundary lines of the particular project involved and 75 feet from any public right-of-way.
 - (9) Where a property line is not wooded, a planting strip of 50 feet in width shall be required to buffer adjoining property owners and ensure privacy. Similar buffering of areas adjoining county and state highways shall be required. A landscaping plan shall also be prepared and submitted to the Planning Board for approval.

- (10) Multifamily developments shall be subject to the stormwater management requirements of this chapter. Facilities shall be designed to accommodate storms of a twenty-five-year average frequency unless a more stringent standard shall be recommended by the Town Engineer. The general performance standard shall be that the amount of uncontrolled stormwater leaving the site along any property line after development shall not exceed that estimated for the site prior to development. In instances where stormwater facilities are impractical for engineering reasons, the Board may modify this standard as it applies to a particular project but shall provide for the maximum practical reduction in flow that can be achieved under the circumstances.
 - (11) All electrical and other utilities shall be placed underground and buried to a depth determined by the Town Engineer as sufficient for safety purposes.
 - (12) In addition to the standards for landscaping set forth herein, the ground and vicinity of buildings shall be provided with decorative landscape materials subject to approval by the Planning Board.
 - (13) Exterior lighting along walks and near buildings shall be provided utilizing architectural grade equipment and shall not create glare on adjoining units or adjoining properties.
 - (14) Walks shall be provided throughout the development area to ensure that roads shall not be required for pedestrian circulation.
 - (15) The Fire Inspector of the fire district in which the development is proposed shall review the development for adequate access for emergency vehicles.
- J. Maintenance of a multifamily project shall be vested in an association or other legal entity organized prior to the offering of the first unit for occupancy, or a manager, who may be the developer, or a person designated by the developer before the developer offers a unit for occupancy, or the owners or occupants of units themselves if the total number of owners or occupants within the development is not more than five. If the developer shall opt to manage the project or designate a manager, the preliminary application shall include financial statements, a description of previous management experience and other data sufficient for the Planning Board to ascertain the financial responsibility of the manager.
- K. The association or manager, as the case may be, shall be responsible for maintenance, repair and replacement of the common areas of the development including buildings and, if applicable, the furniture, fixtures and equipment within the units. The project instruments shall specify the expenses that the maintenance organization may incur and collect from purchasers as a maintenance fee and secure maintenance of the project and enforcement of applicable covenants and restrictions in perpetuity. The Planning Board may require that a certified public accountant review such financial data to determine proposed fees are, in fact, adequate to secure maintenance on a continuing basis.
- L. The developer shall, in filing a preliminary development plan, provide a narrative description of how responsibility for maintenance and care of the units and common areas will be assured and a pro forma operating budget for the maintenance organization including a breakdown of the common expense to be borne by the maintenance organization and a separation of long-term maintenance costs from ongoing routine maintenance costs. There shall also be provided a narrative description of how the developer proposes to assure maintenance of the units and common facilities during any sales program. The Planning Board may require additional temporary facilities to accommodate service demands. Copies of all applicable instruments shall be provided, for purposes of determining that long-term arrangements for maintenance of common facilities have, in fact, been made by the developer.

- M. Any developer who proposes to construct multifamily dwellings and convey the common elements of said multifamily dwelling project, including recreation areas, to an association of purchasers of units therein shall submit a maintenance bond or other performance guarantee acceptable to the Town Board and Town Attorney ensuring long-term maintenance and repair of said common elements. Such maintenance bond or other guarantee shall;
- (1) Be for a period of not less than 15 years from the date of the final approval of said multifamily dwelling-transient use by the Town;
 - (2) Be in an amount equal to the amount collected or to be collected for long-term maintenance (as indicated in the budget referenced above) by the developer or other responsible parties from each purchaser during the first year after sales to such purchases begin, multiplied by the total number of expected purchasers.
- N. If the development shall be subject to the New York State statutes governing the sale of real property used for multifamily occupancy, the developer shall certify as to his or her compliance with said statutes. To the extent the provisions of such statutes conflict with this subsection, such certification shall suffice as to conformance with these requirements.
- O. Conversions of existing structures to multifamily dwelling use, regardless of whether such conversions involve structural alterations, shall be considered subdivisions and, moreover, be subject to the provisions of this chapter. Motels and hotels, however, shall not be converted to multifamily residential use. If the proposed project does involve structural alterations, the preliminary development plan shall include a certification of a registered architect or engineer to the effect that the existing building is structurally sound and that the proposed conversion will not impair structural soundness. However, the conversion of an existing one-family detached dwelling or single-family semidetached dwelling into not more than three residential units shall be exempt from these requirements, unless such units are intended to be a condominium. This shall not, however, exempt an owner from any requirements of the State Building Code or the Town Zoning Law as they may pertain to such activities.

5.18 RESIDENTIAL SUBDIVISIONS

A. Conservation subdivisions.

- (1) Authority. Pursuant to the powers granted under § 278 of the Town Law and the Municipal Home Rule Law, the Town Board hereby authorizes the Planning Board to vary the zoning requirements of this chapter simultaneously with the approval of any proposed residential development or subdivision plat within the Town in order to create a conservation subdivision in furtherance of the purposes and objectives set forth herein and subject to the requirements, standards, and procedures set forth in this section and Chapter 162 of the Town Code (Subdivision of Land).
- (2) Purposes. The purpose of conservation subdivisions is to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open land.

(3) Applicability/Location

- a) Conservation subdivisions are applicable only in the Agricultural Residential, Agricultural Business, Agricultural Preservation, and the Suburban Residential Zoning Districts of the Town.
- b) An applicant for subdivision approval may propose or the Planning Board, in its discretion, may require the submission of a Conservation Subdivision plat where the Planning Board finds that a Conservation Subdivision is appropriate.
- c) In order for the Planning Board to require a Conservation Subdivision without the applicant's consent, the Planning Board must find that a Conservation Subdivision is appropriate for the particular parcel of land in question and its location based upon the following criteria:
 - 1. The purpose for Conservation Subdivisions as set forth in subsection 2 above will be furthered;
 - 2. The open space to be preserved via a Conservation Subdivision will not be as effectively preserved by any other method;
 - 3. The open space to be preserved via a Conservation Subdivision is of value to the community and will preserve or enhance the rural character of the Town;
 - 4. The site features and constraints will allow for a feasible clustered or conservation lot layout; and
 - 5. The soils and water supply are sufficient to allow on-site septic systems and water wells to service each lot in the Conservation Subdivision lot layout or there is public sewer and water available.

(4) Density Standards

- a) Overall Density. The maximum number of lots permissible in a Conservation Subdivision shall in no case exceed the maximum number of lots permissible in a Conventional Subdivision for the same parcel of land if the parcel was subdivided via a Conventional Subdivision where the lots conform to the minimum lot size, density, and other requirements otherwise applicable to the District or Districts in which such parcel of land is located.
- b) Density Calculation. The applicant shall submit a sketch plan for a Conventional Subdivision conforming to the minimum lot size, requirements and standards otherwise applicable to the District or Districts in which the subdivision is located in order to establish the number of dwelling units permitted in a Conservation Subdivision. Said sketch plan must show that each lot meets the minimum lot size and area requirements for the Zoning District in which is located and that each lot shown can be developed as a viable single-family residential lot. Except as specified herein, all development standards and controls normally applicable to Conventional Subdivisions shall also be applicable to Conservation Subdivisions. Thus, areas of land needed for roads, infrastructure as well as site constraints that limit the number of lots in a conventional subdivision shall be taken into account in determining the number of lots allowable in a Conservation Subdivision. The area of lands which may be required for parks, playgrounds or recreation areas in a Conservation Subdivision, if any, or a fee in lieu of such parks, playground or recreation areas shall in no case exceed the area of such lands that may be required in a Conventional Subdivision. However, the area of lands which would be required, in a Conventional Subdivision, for parks, playgrounds or recreation lands pursuant to the Town's

Subdivision Regulations (Chapter 162 of the Town Code) shall be excluded in determining the number of lots permitted in a Conservation Subdivision.

(5) Development Standards.

a) Lot Sizes and Layout: The intent of this section is to allow flexibility of design that allows for enhancement of rural character and conservation of open space. Lots should vary in size and shape and should utilize existing land features in configuration of the lots.

1) Minimum Lot Size. The minimum lot size allowed in a Conservation Subdivision shall be no less than 1/3-acre and at least 50% of the total number of lots in the subdivision shall be 1/2-acre or more.

(6) Open Space Requirements

a) Amount of Open Space Required: The size of the Open Space shall be determined on a case-by-case basis with the final determination to be made by the Planning Board in its discretion upon review of the subdivision application. The portion of the subdivision tract to be set aside for Open Space conservation shall be of such minimum dimensions and size as to be functional for its intended purpose, taking into consideration environmental, density and other site specific factors. There shall be a minimum of 50% of the parcel preserved as Open Space.

b) Location: Open Space areas shall be convenient to the dwelling units they are intended to serve and shall be sited with sensitivity to surrounding land features and development. Open Space areas shall be integrated wherever possible into a connected Open Space system within the development as well as outside the development. Open Space areas should form a contiguous system with other Open Space areas in the vicinity of the subdivision development to the maximum extent practicable.

c) Use of Open Space Areas: Open Space areas may include features and improvements for active and/or passive recreation provided that such features do not materially detract from the purpose for preservation of the Open Space. As a general principle, Open Space areas should be left in their natural state. Accepted conservation management techniques may be employed to maintain its natural state and allow for passive recreational opportunities such as, but not limited to, hiking trails, cross-country skiing or snow shoeing trails, picnic areas, etc. Where appropriate, active recreational facilities may be included in the Open Space areas. In addition, farming activities are allowed to continue on Open Space areas pursuant to an agricultural easement or other suitable arrangements. Where active agricultural lands are set aside in a Conservation Subdivision, such lands may remain in active agricultural use.

d) Deed Restrictions: Any lands set aside for Open Space purposes shall contain appropriate easements, deed covenants, conditions and restrictions approved by the Planning Board and/or the Town Attorney ensuring that:

- 1) The Open Space area or areas will not be further subdivided or developed in the future;
- 2) The designation of the Open Space will continue in perpetuity for the purposes specified;
- 3) Appropriate provisions are made for the continual maintenance, management and use of the Open Space with the purpose in preserving the Open Space;
- 4) The delegation of authority for management of the Open Space area is appropriately placed in the owner or owners of the Open Space area;

- 5) The Open Space area will not be able to be converted or used for a for-profit commercial enterprise except for agricultural uses;
 - 6) The easements, deed covenants, conditions and restrictions shall be recorded against the parcel with reference to such recording made in each deed of conveyance of each lot and shall be enforceable by the Town.
- e) Open Space Ownership: The type of ownership of the land set aside for Open Space shall be selected by the applicant subject to the approval of the Planning Board. An acceptable type of ownership may include, but is not necessarily limited to, the following:
- 1) Land preservation or conservation organizations or trusts;
 - 2) Public agencies or governmental bodies;
 - 3) The Town, subject to acceptance by the Town Board;
 - 4) The owner or owners of an individual lot or lots in the subdivision;
 - 5) Homeowner associations with the following requirements:
 - a) The homeowners association must be established prior to the conveyance of any lot or parcel within the proposed subdivision;
 - b) Membership must be mandatory for each lot owner and each lot owner must have an equal voting right within the association;
 - c) The association's organizational documents must be submitted to, and approved by the Planning Board and/or its attorney, as part of the subdivision approval process and must also be approved by the Office of the Attorney General of New York State if required by applicable laws, rules or regulations;
 - d) An estimate of the association annual budget must take into account insurance, property taxes, and maintenance of the Open Space areas as well as other shared common areas or facilities such as access roads, recreational areas;
 - e) The association must be able to adjust the homeowners fees or assessments on an annual basis and be able to collect and enforce the payment of annual fees or assessments;
 - f) The association cannot be dissolved without a vote of the association membership and without the conveyance of the Open Space and common facilities to an entity acceptable by the Planning Board; and
 - g) The deed conveying title to each individual lot in the subdivision must include reference to the fact that conveyance is subject to and includes membership in a homeowners association pursuant to deed covenants either set forth in each deed or recorded against the entire subdivision. Both grantors and grantees should sign deeds of conveyance to ensure purchasers or grantees are aware of the homeowner association requirements, obligations and fees, if any.
- f) Process in Determining Design. In order to effectively create a Conservation Subdivision, the applicant, in consultation with the Planning Board should:
- 1) Identify the area or areas of the parcel to be subdivided which are to be conserved as Open Space and the area or areas which are to be utilized for development;
 - 2) Locate the house sites;

- 3) Align streets, trails and infrastructure; and
 - 4) Draw in lot lines.
- g) Exception to or waiver of requirements or standards: The Planning Board may permit minor deviations to, or waive, certain Open Space requirements or standards when it determines that:
- 1) The objectives underlying the Open Space standards and requirements can still be met with such deviations or waivers; and/or
 - 2) Because of peculiarities in the tract of land proposed for subdivision or the development proposed, it would be unreasonable to require strict adherence to such requirements or standards.
- h) The setting aside of Open Space, forested land, or active agricultural land in a conservation subdivision shall in no case preclude the Planning Board from requiring the dedication of an area or areas for parks, playgrounds or recreation lands within the subdivision pursuant to the Town of Wawayanda Subdivision Regulations or other provisions of the Town Code.
- (7) Procedure. Notwithstanding any requirements established in this Section, the proposed plat of a Conservation Subdivision shall be subject to the application procedures established in the Town of Wawayanda Subdivision Regulations and shall be subject to public review at the public hearing or hearings held pursuant to those regulations.

5.19 PROVISION OF WATER AND SEWER OR SEPTIC SYSTEMS

A. Water.

- (1) There shall be an adequate potable water supply for each of the lots in a proposed subdivision and such water supply, whether by individual wells, public or community systems, shall not adversely affect water supply or wells for properties in the surrounding area. For each subdivision that proposes more than 5 lots, the applicant must provide the Planning Board with a water report or study, certified by a New York State licensed engineering professional establishing:
 - a. There is adequate capacity for potable water to service the proposed lots for their intended use; and
 - b. The service of water to each of the proposed lots will not adversely affect the existing wells or future water supply for other properties in the surrounding area.
- (2) If a subdivision is to be serviced by individual wells for each lot, each such well shall be adequately spaced from septic systems and other wells on the lot and adjacent lots pursuant to applicable Orange County Department of Health regulations.
- (3) If a Community System is proposed, the water supply and distribution system together with the provisions for repair, maintenance, upgrades, and fees from homeowners shall be approved by the Planning Board and Town Board pursuant to requirements specified by the Town Board prior to final subdivision approval.

- (4) If connection to a Public System is proposed, the applicant shall establish adequate capacity to service the subdivision without adversely affecting capacity service to existing users of the Public System. Improvements for connection and/or capacity shall be paid for by the applicant.
- (5) Any major subdivision shall receive approval of the water supply by the Orange County Department of Health pursuant to the applicable County regulations.

B. Septic/Sewer Systems.

- (1) Individual systems. If individual septic systems are proposed for each lot, each lot shall have suitable soils and be of sufficient size to be able to accommodate each such system and meet required spacing from water wells and setback requirements. Percolation and deep hole tests shall be performed for each lot as part of a preliminary plat application.
- (2) Public Sewer Systems. If a Public Sewer System is available, the applicant shall demonstrate that adequate capacity exists to service the proposed subdivision or to propose improvements to increase capacity to service the system. Such improvements shall be paid for by the applicant. Any such report on capacity or proposed improvements must be approved by the Town Board.
- (3) Community Systems. If a Community System is proposed as part of the subdivision, the preliminary design and specifications of the facilities and improvements comprising such Community System must be submitted as part of the preliminary plat and referred to the Town Board for its approval. In order for the subdivision to proceed, the Town Board must approve the Community System whether or not it is intended to be offered for dedication to the Town. The Town Board, in its sole discretion, may either approve the system as a private Community System, require that the facilities comprising the Community System be dedicated to the Town on such terms and at such time it specifies, or deny approval of the Community System. In either case where the Community System is approved, the Town Board shall have the authority to require a performance and maintenance bond in the amounts and terms it specifies as well as to specify or approve the annual funding and fees that will be required from the homeowners whether or not a special district is to be created pursuant to Articles 12 or 12-a of the Town Law. In the case where the Town Board denies approval of the Community System, the subdivision shall be denied. The applicant shall be responsible for reimbursing the Town for any engineering, technical, or legal consultants it deems necessary to review the Community System proposal.

5.20 SUBDIVISION DENSITY.

- (1) The maximum density of any subdivision shall be based upon a minimum lot size as follows:
 - a. Agricultural Preservation Zoning District: 4 acres – with or without Community or Public sewer and water Systems;
 - b. Agricultural Business Zoning District: 2 acres - with or without Community or Public sewer and water Systems;
 - c. Agricultural Residential Zoning District: 2 acres - with or without Community or Public sewer and water Systems;
 - d. Suburban Residential Zoning District: 2 acres without Community or Public sewer and water Systems; 1 acre with Community or Public sewer and water Systems.

- (2) The above sub-section shall prevail over any other provision in this Chapter or Chapter 162, including but not limited to any contrary or conflicting provision contained in the Schedule of Zoning District Regulations.

5.21 PLANNED ACTIVE ADULT COMMUNITY (PAC). [Added 8-4-2005 by L.L. No. 3-2005]

- A. Intent. The purpose of this use is to provide a variety of alternative living environments, including the design and development of multifaceted living environments for active adult age-restricted housing, including dwellings set aside for moderate-income households.
- B. Objectives. The specific objectives of this section are:
- (1) A maximum choice in the types of housing, lot sizes, and community and active recreation facilities available to present and future active adults and seniors.
 - (2) The convenient location of residential communities in close proximity to existing commercial centers or, where none are in close proximity, a finding that sufficient commercial space shall be provided on the site to meet the demands of the PAC development.
 - (3) The creative use of land and related physical development that allows an orderly transition from rural to urban areas.
 - (4) An efficient use of land resulting in a small network of utilities, streets and pedestrian paths, thereby lowering energy consumption, reducing vehicular miles traveled, and preserving areas in their natural state.
 - (5) The efficient and economical use of municipal water and municipal sanitary sewer services to achieve the residential densities necessary to support a variety of alternative housing types.
 - (6) To provide, within the boundary of the development, appropriate social, recreation and other facilities that will contribute to the independence and meaningful activity of senior citizens.
 - (7) To provide appropriate sites for the development of such housing in locations convenient to social and medical facilities, retail shops, public transportation and other necessary services.
 - (8) To provide for the safety and convenience of residents through site design and housing unit design requirements that consider:
 - (a) The special needs of senior citizens; and
 - (b) The physical characteristics of the development site.
 - (9) To regulate the nature and density of PAC housing developments, their site layout and design, and their relationship to adjoining uses, so as to provide ample outdoor living and open space for residents and to minimize detrimental effects on the surrounding neighborhood and environment.

C. General provisions.

- (1) Minimum size. A PAC shall be located on a parcel or contiguous parcels of land with a minimum gross lot area of 15 acres. The maximum lot area shall be 100 acres.
- (2) Zoning district. A PAC is a permitted use allowed in the Inclusionary Housing (IH) floating zone created by amendment of the Town's official Zoning Map through exercise by the Town Board of the procedures set forth in 5.21.
- (3) Utilities. A PAC shall be located in areas served or planned to be served by municipal water and municipal sanitary sewer service, but shall not be located in the Mixed Commercial (MC) Zone.
- (4) No building, structure, premises or part thereof shall be used or occupied, and no building or structure shall be erected, enlarged, converted or altered except as provided herein.

D. Uses allowed and density. The following uses are permitted:

- (1) Multifamily flats at a residential density that does not exceed 12 dwelling units per acre.
- (2) Townhome dwellings at a residential density that does not exceed eight units per acre.
- (3) One-family detached or semi-detached dwellings at a residential density that does not exceed four (4) units per acre.
- (4) Permitted accessory uses shall include administrative, social and recreational buildings, clubhouse, structures and areas. Recreational facilities may include, but are not limited to, swimming pools, tennis courts, open field areas, passive sitting areas, picnic facilities, walking trails, off-street parking and private garage facilities, fences and walls and utility and maintenance structures. Commercial uses are optional but should be encouraged to reduce vehicular traffic. Commercial uses shall include retail uses that serve the day-to-day needs of the immediate neighborhood such as neighborhood grocery stores (not to exceed 10,000 square feet), eating and drinking establishments, including outdoor cafes but excluding drive-in restaurants, fast-food restaurants and franchise architecture. Personal services such as barbershops, hair salons, tailors, shoe repair, laundries and cleaning establishments, offices, including business, professional and medical; banks and/or fully enclosed ATM machines, but excluding drive-throughs, and accommodations such as bed-and-breakfasts or small inns. The minimum amount of commercial space within a PAC shall be 2% of the gross area of the gross floor area of all principal residential buildings and the maximum shall be no more than 20% of same; provided, however, that the Planning Board may require the construction of commercial space as a condition of the site plan approval where it determines that the proposed development is not readily accessible to hamlet, town center, or regional commercial centers.

E. Streetscape standards.

Streets shall be designed to serve as a public space that encourages social interaction and that balances the needs of all users, including pedestrians, bicyclists and vehicular traffic. The following streetscape specifications shall apply:

- (a) Planting strips. Sidewalks shall be separated from street curbs by a planting strip not less than two feet wide.
- (b) Shade trees.

- [1] Shade trees shall be provided along each side of all streets, public or private, existing or proposed. In locations where healthy and mature shade trees currently exist, the requirements for new trees may be waived or modified by the Planning Board.
- [2] Shade trees shall have a minimum caliper of two inches measured at a height of four feet from the ground at time of planting, and shall be spaced a maximum of 40 feet on center, with exact spacing to be evaluated on a site-specific basis by the Planning Board as part of site-specific review.

F. Street lighting.

- (a) Street lighting shall be provided on both sides of all streets at intervals of no greater than 75 feet on center and at intersections.
- (b) Street lighting shall be pedestrian scale. Lighting posts and fixtures shall be of a consistent architectural style and shall complement the predominant architectural theme of proposed buildings.

G. Site standards.

- (1) Maximum lot coverage: shall not exceed 60% for the entire project.
- (2) Minimum lot depth: 100 feet.
- (3) Maximum building height. A minimum of two stories and a maximum of four stories is permitted, except as specified below. No building height shall exceed 35 feet, except that buildings comprised of multifamily flats shall not exceed 45 feet. Multifamily flat buildings may be permitted a maximum building height of 45 feet or four stories (not including parking in a basement level) where the Planning Board finds and determines: a) that the additional height would result in a layout that results in less impervious surface disturbance when compared with an arrangement of the same unit count with a lesser building height; b) that there will be adequate fire protection available; c) that there are no visual impacts; and d) that the additional height is consistent with the character of the surrounding community.
- (4) Maximum number of units per building. In designing buildings associated with a PAC, the applicant is encouraged to provide a variety of building types with differing unit counts in order to discourage a monotonous building pattern. Buildings containing townhomes shall consist of no more than six dwelling units, and the length of the building shall not exceed 180 feet. No multifamily flat building shall consist of more than 32 dwelling units, and the total length of the building shall not exceed 200 feet.
- (6) Open space. A minimum of 50 square feet per unit of usable outdoor open space shall be provided. Such space shall consist of both active and passive recreation amenities such as patio areas, pool areas (not including changing rooms or other enclosed spaces), shaded sitting areas, walking or jogging trails. Open space areas shall be permanently maintained so that their use and enjoyment as open space are not diminished or destroyed. Such areas

- may be owned, preserved and maintained by dedication to a homeowners association which assumes full responsibility for maintenance of the open space and/or deed-restricted private ownership which shall prevent development of the open space, provide its maintenance and protect the rights of owners or occupants of dwelling units to use and enjoy, in perpetuity, such portion of the open space as shall have been dedicated to recreation area for the project.
- (6) Lot size diversity. For projects that include single-family detached and single-family attached dwellings, a variety of lot sizes should be provided to eliminate the appearance of a standardized subdivision and to facilitate housing diversity and choice that meets the projected requirements of people with different housing needs.
 - (a) One-family detached lots shall have a minimum lot area of 5,000 square feet and a maximum lot area of 15,000 square feet.
 - (b) Two-family attached lots shall have a minimum lot area of 3,000 square feet per unit and a maximum lot area of 6,000 square feet per unit.
 - (c) Lot widths shall range from 20 to 80 feet.
 - (7) Build-to line. Each block may be designed with a uniform build-to line that may establish the front yard setback for the lots on the block. The function of the build-to line is to form a distinct street edge and define the border between the public space of the street and the private space of the individual lot. The build-to line may fall between the minimum and maximum front yard setbacks. In areas of existing development where existing buildings fall within the minimum and maximum front yard setbacks, the build-to line may be designed to create the greatest uniformity on the block. In areas of existing development where existing buildings do not fall within the minimum and maximum front yard setbacks, the build-to line may be designed as the closest line within the minimum and maximum front yard setbacks so as to create as much uniformity on the block as possible.
 - (8) Building setback.
 - (a) Building setback, front.
[1] Minimum of zero feet, maximum of 25 feet.
 - (b) Building setback, rear, shall be a minimum of 30 feet.
 - (9) Accessory buildings: minimum of five feet rear setback, except that rear-loaded garages and carports shall be excluded from this requirement.
 - (10) For buildings on individual lots, building setback, side: 20% of the lot width; side setbacks may be allocated to one side only, with zero feet on the other side for single-family attached dwellings.
 - (11) Building mass. Any building of 40 feet or more in length shall be visually divided into smaller increments to reduce its apparent size. The mass of these buildings shall be de-emphasized in a variety of ways through architectural details such as divisions or breaks in materials, window bays, separate entrances and entry treatments, variation in roof lines, awnings, or the use of sections that may project or be recessed up to 10 feet.
 - (12) Front facade. The front facade of the principal building on any lot shall face onto a public street. The front facade shall not be oriented to face directly toward a parking lot.

- (13) Stormwater management. A PAC shall be subject to the stormwater management requirements of this chapter..
- (14) Utilities. All electrical and other utilities shall be placed underground and buried to a depth determined by the utility company as sufficient for safety purposes.
- (15) Parking.
 - (a) Two parking spaces for each townhome, one-family detached dwelling, one-family semi-detached dwelling, and 2 parking spaces for each multifamily flat, shall be required. In addition, the Planning Board shall determine a reasonable number of spaces that shall be made available for guests and visitors, not to exceed one parking space for each five dwelling units. Attached garages and driveways giving access thereto that are accessory to one-family detached and one-family attached dwellings shall be counted toward required parking.
- (16) Lighting. Artificial lighting of grounds shall provide illumination sufficient for the convenience and safety of the residents. Decorative pedestrian scale lighting consistent with the overall architectural theme of the PAC shall be utilized. All lighting fixtures shall be fully shielded and should be spaced approximately four times their height. The height of lighting for pedestrian areas should be 10 to 15 feet and in parking areas it should not exceed 20 feet.

H. Maintenance. Adequate facilities and provisions shall be made for the removal of snow, trash and garbage and for the general maintenance of the community. A suitable maintenance agreement shall be filed with the Town for its record.

I. Unit requirements.

- (1) Unit size. The minimum permitted habitable floor area shall be 600 square feet for efficiency units, 700 square feet for one-bedroom units and 800 square feet for two-bedroom units.
- (2) Kitchen and bathroom. All dwelling units shall be designed for independent living and shall contain full bathroom and kitchen facilities, including but not limited to a sink, refrigerator, stove, range or combined unit in the kitchen and a sink, toilet, bathtub and shower in the bathroom.
- (3) Fifteen percent of all dwelling units shall be handicapped accessible or adaptable as defined by the Building Code of The State of New York.
- (4) Storage. A minimum of 20 square feet of storage area shall be provided for each unit outside of the minimum habitable area. Such storage area shall be in addition to normal closet space.

J. Homeowners association required. All PACs shall be required to create a homeowners association that shall have dominion over the common areas within the development. The developer shall obtain such approval, acceptance, or no action letter as may be required by the State of New York Department of Law, pursuant to the Martin Act (General Business Law, § 352 et seq.) and/or such other laws or regulations as may apply to the offering for sale of common interests in realty. Copies of all submissions and responses, including but not limited to articles of incorporation and bylaws for such homeowners association, shall be supplied to the Town for its record. The rules, regulations, policies and procedures of the homeowners association shall ensure compliance with the Fair Housing Act's exemption for housing for older persons [42 USC Section 3607 (b)(1)] and the federal regulations promulgated pursuant thereto (24 CFR Section 100.300-100.308).

K. Architectural design standards.

- (1) Buildings shall relate in scale and design features to other buildings in the PAC through a common design theme.
- (2) Buildings on corner lots shall be considered more significant since they have two front faces exposed to the street. Special architectural responses are encouraged on corner buildings.
- (3) Buildings shall avoid long, monotonous, uninterrupted walls or rooflines. Offsets and breaks in building walls and rooflines are encouraged on townhomes or buildings comprised of multifamily flats.
- (4) The front facade of a building shall be architecturally emphasized through window placement, entrance treatment and details. Buildings with more than one facade facing a street shall provide more than one front facade treatment.
- (5) All sides of a building shall be architecturally compatible with regard to style, materials, color and details.
- (6) Any detached garage(s) shall be architecturally compatible with regard to style, materials, color and details.
- (7) Mechanical equipment, trash and recycling enclosures, and other service areas shall be located to the side or rear of any residential building and shall be screened from the public right-of-way and adjacent properties by walls, fencing, and/or evergreen landscaping at a height deemed appropriate by the Planning Board.
- (8) Roof design should be appropriate to the building's architecture. Architectural embellishments that add visual interest to roofs, such as dormers, chimneys, cupolas, and other similar elements, are encouraged and are exempt from the maximum height requirement.
- (9) Window placement and proportions shall be architecturally compatible with the style, materials, colors and detail of buildings.
- (10) Blank walls shall be discouraged. Appropriate landscaping is encouraged to soften the appearance.

- (11) Front entrances and doors should be defined by architectural elements such as porches, lintels, pediments, and other elements and should be architecturally compatible with the style, materials, colors and details of the building as whole.
- (12) All air-conditioning units, utility and mechanical equipment shall be unobtrusively located, architecturally integrated, and screened from the public right-of-way. Such devices shall not be located in any front yard area unless screened to the satisfaction of the Planning Board.
- (13) All materials, colors and architectural details used on the exterior of the building shall be compatible with the building's style.
- (14) Each one-family attached and one-family detached residence shall be provided with a private side or rear outdoor area. This shall be accomplished by means of a privacy wall, hedge and/or some combination of same, which shall provide adequate privacy from neighboring dwelling units.

5.22 PROCEDURE FOR ESTABLISHMENT OF PLANNED ADULT COMMUNITY (PAC) FLOATING ZONING DISTRICT.

- A. Application. Application for the establishment of the (PAC) floating Zone shall be made, in writing, to the Town Board. Application shall be made by the owner(s) of the land(s) to be included in the district or by a person or persons possessing written contract or option rights to purchase the lands. In the event that an application is made by a person or persons holding rights to purchase the lands, the application shall be accompanied by a statement signed by all owners of such land indicating concurrence. Upon submission of a complete application, the Town Board shall refer the application to the Planning Board for recommendation.
- B. Application materials. The applicant shall submit a preliminary subdivision or preliminary site plan for a use that is allowed in the (PAC) floating zone in sufficient quantity as determined by the Town Board. The application, to be complete, shall consist, at a minimum, of the following:
- (1) Metes and bounds description of the proposed district.
 - (2) A survey of the parcel prepared and certified by a licensed land surveyor.
 - (3) An existing conditions map, drawn to scale, including:
 - (a) The name and address of the owner of record and applicant, if different.
 - (b) The name of the person or firm preparing the map.
 - (c) The date, North arrow and scale.
 - (d) The names, addresses and Tax Map parcel numbers of owners of all parcels within 500 feet of the subject property, and mailing labels for all property owners of parcels within 500 feet of the subject parcel(s).
 - (e) The acreage of the parcel.
 - (f) The boundaries of the parcel.
 - (g) The location and width of existing and proposed state, county or Town roads and rights-of-way abutting or within 200 feet of the parcel.
 - (h) The location and outline of existing structures on the parcel and within 100 feet of the property line.
 - (i) The location of any existing storm or sanitary sewers, culverts, waterlines, hydrants, catch basins, manholes, etc., as well as other underground or aboveground utilities within or adjacent to the parcel.
 - (j) The existing zoning and location of zoning boundaries.
 - (4) A development suitability map, drawn to scale, including:
 - (a) The location and outline of existing water bodies, streams, marshes or wetlands, including their regulatory buffers, and their respective classification as determined by the appropriate governmental regulatory body.
 - (b) The boundaries of FEMA one-hundred-year floodplains or any areas subject to stormwater overflows.
 - (c) Slopes greater than 15%.
 - (d) Prime farmland soils, including the soil type based upon the USDA Soil Conservation Survey.

- (e) Hydric soils, including the soil type.
- (f) The location and outline of existing vegetation.
- (g) Freestanding trees with a caliper of six inches' diameter or greater measured four feet above the ground located within the parcel.
- (h) Existing contours at an interval of two feet and extending no less than 100 feet onto adjoining property.
- (i) The identification of any other significant natural feature, including, but not limited to, known areas of cultural, historic or archeological significance.

(5) A preliminary plan, drawn to scale, showing the following:

- (a) The approximate location and dimensions of principal and accessory buildings on the site. The number of proposed dwelling units by housing type and size shall be provided on the plan, plus a calculation of the density, in dwelling units per acre.
- (b) The approximate location and dimensions of vehicular traffic circulation features of the site, including proposed roads, internal drives, parking and loading areas and proposed access to the site.
- (c) The approximate location and nature of pedestrian circulation systems, open space and outdoor recreation areas on the site.
- (d) A general plan for the proposed on-site water supply distribution system, including its point of connection to the existing water supply system.
- (e) A general plan for the collection and disposal of sanitary wastes from the site, including its point of connection to the existing sanitary collection system.
- (f) A general stormwater drainage plan and how it is to be connected to the drainage systems of adjoining land.
- (g) A preliminary site grading plan at intervals of two feet or less.
- (h) Preliminary identification of areas that will be disturbed and areas which will remain undisturbed by project implementation.

(6) A vicinity map showing the proposed use in relation to adjoining uses, transit service, retail stores, community facilities, social service facilities, medical facilities and pharmacy and religious institutions within 1/2 mile of the project site.

(7) Preliminary floor plans and building elevations.

(8) A long environmental assessment form, Part 1.

C. Initial review by the Planning Board.

- (1) The Planning Board shall make a recommendation on the application and shall report its Findings to the Town Board on the merits of the preliminary plans. A favorable recommendation shall not constitute or imply an approval of any sort, nor shall it constitute a decision upon the action under the State Environmental Quality Review Act.

- (2) In making its recommendations to the Town Board, the Planning Board shall consider, together with the intent and objectives of the use that would be sought, whether the proposed district and development meet the following criteria:
 - (a) The site shall be served by both municipal water and municipal sanitary sewer facilities, and said facilities shall be adequate to accommodate the additional demand placed upon them by the proposed development.
 - (b) The site shall be well-drained, and stormwater generated by development of the site shall not place an undue burden on existing facilities or contribute to downstream flooding.
 - (c) The site shall be located in an area suitable for residential purposes and shall be reasonably free of objectionable conditions, such as odors, noise, dust, air pollution, high traffic volumes, incompatible land uses and other environmental constraints.
 - (d) The site shall be located such that access to the site can be obtained from a public street that is improved to acceptable standards and sight distances and can be developed at the site entry/exit and at intersections in the vicinity of the site.
 - (e) The development of the site shall not produce undue adverse effects on the surrounding neighborhood.
 - (f) The plan should generally comply with any supplementary use and development standards set forth in this chapter for the particular use(s) proposed.

D. Town Board review.

- (1) Upon receipt of a recommendation from the Planning Board, the Town Board shall schedule and hold a public hearing. Alternatively, the Town Board may reject the Application.
- (2) Following completion of the public hearing, the Town Board may act to approve, approve with modification or conditions, or disapprove the rezoning application in the exercise of its sole legislative discretion. Approval shall result in amendment of the Zoning Map established by this chapter.
- (3) The preliminary site or subdivision plan that is submitted and evaluated as an element of the application for the zone amendment shall be formally reviewed and acted upon by the Planning Board after the zone amendment is adopted. Uses that are allowed in the (PAC) floating Zoning District are subject to supplemental standards set forth in this zoning local law. The Planning Board shall determine that the site plan and/or subdivision plan conforms to these supplemental standards.
- (4) Time limit on validity of rezoning. Any rezoning permitted by this section shall be null and void and the zoning of the parcel shall revert back to its original zoning classification by a ministerial redesignation on the official Zoning Map by the Town Clerk, when directed by the Town Board, unless actual construction, pursuant to a valid building permit, is commenced within three years from the date of adoption of the rezoning. Applicants may petition the Town Board to extend rezoning approval prior to the expiration of the three years, limited to one additional extension not to exceed two years.

- E. Plan approval required. Following rezoning to create a (PAC) floating Zone, site plan and/or subdivision plan review and approval by the Planning Board, pursuant to the general and specific supplemental use and development standards and procedures set forth in the zoning law and the Town Subdivision Regulations, shall be required prior to the issuance of a building permit for development of any property in a (PAC) floating Zone.

ARTICLE 6 NONCONFORMING USES

6.1 RIGHTS TO CONTINUE NONCONFORMING USES.

- A. A use, building, lot or structure lawfully in existence as of the effective date of this Chapter, as amended, and nonconforming with it or any subsequent amendment may be continued, except as otherwise provided herein with respect to specific uses. Upon request, the Building Inspector / Code Enforcement Officer may issue certificates of nonconformance to owners or operators of bona fide nonconforming uses, buildings or structures who desire confirmation of their rights hereunder.
- B. It is the purpose of this Article to limit the injurious impact of nonconforming uses, buildings, lots and structures on other adjacent properties within a particular district and the community as a whole, while recognizing that alterations, continuations and extensions of nonconforming uses, buildings or structures may not be contrary to the public interest or the general purpose of this Chapter when failure to allow such alteration, continuation or extension would itself lead to neighborhood or district deterioration.
- C. It is further the purpose of this Article to set forth those standards which are to be applied by the Town in determining the reasonableness of proposals to alter, continue or extend a nonconforming use and to establish when Town review and approval shall be required for such actions.
- D. The protections extended by this Article to existing nonconforming uses, buildings, lots or structures, commonly known as grandfathering, shall not extend to any nonconforming activity not lawfully established or occurring subsequent to the effective date of this Chapter, as amended.
- E. A structure, in lawful existence prior to the adoption or subsequent amendment of this Chapter which by adoption or amendment of this Chapter is made nonconforming, may be used for any allowable use listed for the zoning district in which the structure and property is located provided that such structure shall not be enlarged or altered so as to increase its nonconformity in terms of dimensional or area requirements.
- F. No nonconforming structure shall be moved or otherwise relocated so as to occupy a different area of the lot or land than was occupied by the structure at the time of the adoption or subsequent amendment of this Chapter unless a new location would be more conforming in terms of minimum dimensional or area requirements of this Chapter or subsequent amendment thereto.

6.2 NORMAL MAINTENANCE AND REPAIRS.

- A. Normal maintenance and repair activities, such as painting, replacing a roof or fixing gutters, shall be permitted. Also permitted are alterations, such as adding or removing windows, and interior renovations that do not structurally alter buildings, add living areas or result in extended or increased nonconforming use of a building, lot or structure.

6.3 RESTORATION, RECONSTRUCTION OR REESTABLISHMENT.

- A. If within the same footprint and equal intensity and use, any nonconforming use, building or structure is damaged, it may be restored or reconstructed within 18 months of the date of the damage, with an extension in time allowable where proven necessary to the Building Inspector.
- B. A nonconforming use, building or structure may be reestablished within a period of 12 months after it has been discontinued or vacated, with an extension of 12 months allowable where proven necessary to the Planning Board.
- C. A nonconforming use, building or structure shall be considered abandoned under the following circumstances:
 - (1) The intent of the owner to discontinue the use is made obvious by the posting of signs, boarding up of windows, failure to pay taxes or assessments or other measures which demonstrate the enterprise is going out of business or the use is otherwise ending.
 - (2) The building has not been occupied for 12 months or more; or
 - (3) The nonconforming use has been replaced by a conforming use or changed to another use under permit from the Town; or
 - (4) The equipment and furnishings used in furtherance of the nonconforming use have been removed from the premises.

6.4 CHANGES AND ADDITIONS.

Excepting for activities provided for in section 6.3 above and accessory uses, all changes and additions to nonconforming uses shall be considered special uses, and permits for alterations, changes in use or additions shall be granted only after a determination by the Planning Board that the following conditions have been or will be, satisfied.

- A. There shall be no expansion in the amount of land area outside a nonconforming facility that is used for storage of materials, supplies and/or products, excepting with respect to those types of uses outlined below.
- B. Where the nonconforming activity is one which necessarily results in the storage of large quantities of material, supplies or products outside (such as a lumberyard), the Planning Board may require dense evergreen screening sufficient to shield all such materials from the view of adjacent landowners and/or the traveling public.
- C. No addition, change or expansion of a nonconforming use shall further violate setback and/or height regulations of the district in which it is located in any material way. Moreover, no change of use shall be to one of less restrictive classification, as determined by the Zoning Board. A nonconforming retail enterprise could be converted to a barber shop, for example, but not to an industrial use.

- D. There shall be no increase in the peak amount of stormwater runoff for the site over what existed as of the date of the enactment of this chapter. The U.S.D.A. Natural Resource Conservation Service, a professional engineer or other appropriate professional may be relied upon to recommend appropriate measures to control stormwater runoff. Such measures shall be attached as conditions of approval by the Planning Board.
- E. Should the use proposed for expansion or extension be one which is specifically prohibited as a new use in the Town or is determined by the Planning Board to be one similar to such a use or of such a nature as to impose health, safety or welfare concerns which cannot be satisfied by the imposition of the conditions permitted under this Chapter, the requested expansion or extension shall be denied.

6.5 USE OF EXISTING NONCONFORMING LOTS OF RECORD.

If a lot of record which duly existed prior to the adoption of this Chapter, or any applicable amendment thereto, fails to meet applicable density, set back or lot size standards as set forth herein, the lot may be developed with any compatible use listed for the zoning district in which such nonconforming lot is located provided that such lot has sufficient width, depth, and area to undertake development that will meet the minimum yard setbacks and other dimensional requirements that were effective at the time when the lot of record was created and that all other provisions of this Chapter or other laws or regulations, which may be applicable, are met. Lots that pre-exist zoning are subject to 1969 zoning set backs. The provisions of this section shall apply to any additions or site improvements on such lots after the date of the adoption of this Zoning Law.

ARTICLE 7 SPECIAL USE AND SITE PLAN REVIEW PROCEDURES

7.1 STATUTORY AUTHORITY; APPLICABILITY.

- A. The Town of Wawayanda Planning Board is authorized, in accordance with §§ 274-a and 274-b of the New York State Town Law, to review and approve, approve with modifications or disapprove special uses and site plans connected therewith.
- B. Site plan review shall be required for all special use permits, new nonresidential uses, nonagricultural changes of use, additions or alterations to above stated uses and such other uses as the Town Board may from time to time designate by local law, unless specifically exempt by Section 1.4.
- C. The following procedures shall apply.

7.2 PRELIMINARY SITE PLAN.

An applicant for a special use permit may submit a preliminary site plan for review and advice by the Planning Board. Such a preliminary site plan should provide locations and dimensions of the proposed use in relation to the property boundaries and adjacent uses. It should also indicate all accesses and improvements both existing and proposed and any site features which could have a bearing on the project including the general topography and existing ground cover. This preliminary plan shall be used by the Planning Board as a basis for advising the applicant regarding information it shall require on the site plan before it conducts a public hearing or takes any action with respect to the plan. The Planning Board shall give no approval or disapproval regarding any preliminary site plan but may use it to schedule a public hearing if sufficient data is available, determine if any provisions of this article should be waived or begin its review of the application under the New York State Environmental Quality Review Act (SEQR).EN

7.3 APPLICATION AND SITE PLAN REQUIRED.

The Planning Board shall be under no obligation to schedule a public hearing or take any action with respect to a special use permit application until a complete formal application has been made on forms provided by the Board and a detailed site plan providing the following information has been submitted:

- A. The location of all existing watercourses, wooded areas, rights-of-way, roads, structures or any other significant man-made or natural feature, if such feature has an effect upon the use of said property.
- B. The location, use and floor or ground area of each proposed building, structure or any other land use, including sewage disposal and water supply systems.
- C. The location of all significant landscaping and ground cover features, both existing and proposed, including detailed planting plans and a visual depiction or rendering of the final appearance of the property after all landscaping and other physical improvements are completed.
- D. The location, dimensions and capacity of any proposed roads, off-street parking areas or loading berths, including typical cross-sections for all paving or regrading involved.
- E. The location and treatment of proposed entrances and exits to public rights-of-way, including traffic signals, channelizations, acceleration and deceleration lanes, widenings or any other measure having an impact on traffic safety conditions.

- F. The location and identification of proposed open spaces, parks or other recreation areas.
- G. The location and design of buffer areas and screening devices to be maintained.
- H. The location of trails, walkways and all other areas proposed to be devoted to pedestrian use.
- I. The location of public and private utilities, including maintenance facilities.
- J. The specific locations of all signs existing and proposed, including a visual depiction of the latter.
- K. Preliminary architectural plans for the proposed buildings or structures, indicating typical floor plans, elevations, height and general design or architectural styling.
- L. A completed SEQR environmental assessment.
- M. Any other information required by the Planning Board which is clearly necessary to ascertain compliance with the provisions of this chapter and limited to such information.
- N. Stormwater pollution prevention plan: A stormwater pollution prevention plan consistent with the requirements of the Town Code of the Town of Wawayanda.. The SWPPP shall meet the performance and design criteria and standards contained in the applicable chapters or sections of the Town Code of the Town of Wawayanda. . The site plan shall not be approved unless it is determined to be consistent with the provisions of the applicable chapters or sections of the Town Code of the Town of Wawayanda dealing with stormwater pollution prevention plans.

7.4 WAIVERS.

The Town of Wawayanda Planning Board shall, pursuant to § 274-a(5) of the Town Law, have the right to waive, when reasonable, any of the requirements of this article for the approval, approval with modifications or disapproval of special use permits and site plans submitted for approval. This waiver authority may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare or are inappropriate to a particular site plan. Any such waiver shall be subject to the following conditions:

- A. No waiver shall result in allowing a use not permitted within the applicable zoning district.
- B. No waiver shall be given with respect to standards outside the scope of this article which would otherwise require a variance from the Zoning Board of Appeals.
- C. Waivers shall be limited to those situations where the full application of the requirements contained herein would generate unnecessary data and create unnecessary costs with regard to deciding the matter at hand, due to the scope or nature of the project involved. The proposed enclosure of a deck or a simple change of use with no significant structural modifications in the case of a commercial property, for example, might not require typical cross-sections for proposed regrading or water supply data.

- D. An applicant for site plan approval who desires to seek a waiver of certain of the above-referenced requirements pertaining to such applications shall submit a preliminary site plan as provided above. The Planning Board shall review the preliminary site plan, advise the applicant as to potential problems and concerns and determine if any additional site plan information is required. The Planning Board shall consider such site plan as adequate when, in its judgment, the information submitted is sufficient to make a determination of compliance with the development standards contained herein and the intent of site plan review criteria found below.
- E. Nothing herein shall authorize the Planning Board to waive state environmental quality review requirements.

7.5 HEARING AND DECISION.

The Planning Board shall fix a time, within 62 days from the day an application for a special use permit or site plan approval is determined to be complete by the Planning Board, for the hearing of any matter referred to under this section. It shall give public notice of such hearing at least five days prior to it in a newspaper of general circulation in the Town and decide upon the application within 62 days after such hearing. It shall not, however, grant approval before a decision has been made with respect to environmental impacts pursuant to SEQRA. The decision of the Planning Board shall be filed in the office of the Town Clerk and a copy thereof mailed to the applicant within five business days after such decision is rendered.

7.6 CONDITIONS.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit or site plan. Upon approval of said permit and/or plan, any such conditions shall be met prior to the actual issuance of permits by the Town. These conditions may include requirements of the applicant to provide parkland or to provide fees in lieu thereof pursuant to § 274-a(6) of the New York State Town Law.

7.7 REFERRALS.

The Planning Board is authorized to refer special use permit applications and site plans to other agencies, groups or professionals employed or used by the Town for review and comment and to charge the applicant fees for any reasonable expenses connected therewith. The Board shall, in particular, ensure that the requirements of § 239-m of the General Municipal Law regarding review by the Orange County Planning Department are met. It shall also comply with all requirements of the New York State Environmental Quality Review Act.

7.8 APPEALS.

Any person aggrieved by any decision of the Planning Board or any officer, department, board or bureau of the Town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules.

7.9 EFFECT OF SITE PLAN APPROVAL.

The site plan as approved by the Planning Board shall be binding upon the applicant. Any changes from the approved plan shall require resubmission and reapproval by the Planning Board. The site plan shall remain effective, as an authorization to establish the use, for a maximum of five years from the date of approval unless the Planning Board shall have granted an extension in writing. Absent such an extension, the site plan use shall be deemed to have expired.

7.10 RENEWAL OF PERMITS.

The Planning Board may require, at the time it is initially granted, that any special use approval be renewed periodically. A special use which has been discontinued for a period of two or more years shall also be deemed to have lapsed. Such renewal shall be granted following public notice and hearing and may be withheld only upon a determination that the conditions attached to any previous approval have not been met. A period of 62 days shall be granted the applicant in such cases to make remedies and bring the use into full compliance with the terms of the special use approval. Should the applicant fail to make such remedies, the special use approval shall be revoked and the use immediately discontinued.

7.11 SPECIAL USE REVIEW CRITERIA.

The Planning Board, in reviewing the site plan, shall consider its conformity to the Town of Wawayanda Master Plan and the various other plans, laws and ordinances of the Town. Conservation features, aesthetics, landscaping and impact on surrounding development as well as on the entire Town shall also be part of the Planning Board review. The Board, in acting upon the site plan, shall also be approving, approving with modifications or disapproving the special use permit application connected therewith. Traffic flow, circulation and parking shall be reviewed to ensure the safety of the public and of the users of the facility and to ensure that there is no unreasonable interference with traffic on surrounding streets. The Board shall further consider the following:

- A. Building design and location. Building design and location should be suitable for the use intended and compatible with natural and man-made surroundings. New buildings, for example, should generally be placed along the edges and not in the middle of open fields. They should also be sited so as to not protrude above treetops or the ridgelines of hills seen from public places and busy highways. Building color, materials and design should be adapted to surroundings as opposed to adaptation of the site to the building or the building to an arbitrary national franchise concept.

- B. Large commercial buildings. Commercial facades of more than 100 feet in length should incorporate recesses and projections, such as windows, awnings and arcades, along 20% of the facade length. Variations in roof lines should be added to reduce the massive scale of these structures and add interest. All facades of such a building that are visible from adjoining streets or properties should exhibit features comparable in character to the front so as to better integrate with the community. Where such facades face adjacent residential uses, earthen berms planted with evergreen trees should be provided. Loading docks and accessory facilities should be incorporated in the building design and screened with materials comparable in quality to the principal structure. Sidewalks should be provided along the full length of any facade with a customer entrance and integrated into a system of internal landscape-defined pedestrian walkways breaking up all parking areas.

- C. Lighting and signage. Improvements made to the property should not detract from the character of the neighborhood by producing excessive lighting or unnecessary sign proliferation. Recessed lighting and landscaped ground signs are preferred.
- D. Parking and accessory buildings. Parking areas should generally be placed in the rear or side whenever possible and provide for connections with adjoining lots. Accessory buildings should also be located in the rear with access from rear alleys. If placement in the rear is not possible, parking lots should be located to the side with screening from the street.
- E. Drainage systems. Storm drainage, flooding and erosion and sedimentation controls should be employed to prevent injury to persons, water damage to property and siltation to streams and other water bodies.
- F. Driveway and road construction. Whenever feasible, existing roads onto or across properties should be retained and reused instead of building new, so as to maximize the use of present features such as stone walls and tree borders and avoid unnecessary destruction of landscape and tree canopy. Developers building new driveways or roads through wooded areas should reduce removal of tree canopy by restricting clearing and pavement width to the minimum required for safely accommodating anticipated traffic flows.
- G. Construction on slopes. The crossing of steep slopes with roads and driveways should be minimized and building which does take place on slopes should be multistoried with entrances at different levels as opposed to regrading the site flat.
- H. Tree borders. New driveways onto principal thoroughfares should be minimized for both traffic safety and aesthetic purposes and interior access drives which preserve tree borders along highways should be used as an alternative. Developers who preserve tree borders should be permitted to recover density on the interior of their property through use of clustering.
- I. Development at intersections. Building sites at prominent intersections of new developments should be reserved for equally prominent buildings or features which will appropriately terminate the street vistas. All street corners should be defined with buildings, trees or sidewalks.
- J. Streets and sidewalks. Cul-de-sac and dead-end streets should be discouraged in favor of roads and drives which connect to existing streets on both ends. Streets within residentially developed areas should be accompanied by on-street parking and a sidewalk on at least one side of the street. Sidewalks should also be provided in connection with new commercial development adjacent to residential areas and pedestrian access should be encouraged.
- K. Setbacks. New buildings on a street should conform to the dominant setback line and be aligned parallel to the street so as to create a defined edge to the public space.
- L. Adjacent properties. The proposed use should not have a detrimental impact on adjacent properties or the health, safety and welfare of the residents of the Town of Wawayanda.

- M. Conditioned approval. If the proposed use is one judged to present detrimental impacts with respect to noise, lighting, surface runoff, emissions or other similar factors the Planning Board shall determine whether an approval could be conditioned in such a manner as to eliminate or substantially reduce those impacts.
- N. Community impacts. The Planning Board shall consider whether the use will have a positive or negative effect on the environment, job creation, the economy, housing availability or open space preservation. The granting of an approval should not cause an undue economic burden on community facilities or services, including but not limited to highways, sewage treatment facilities, water supplies and fire-fighting capabilities. The applicant shall be responsible for providing such improvements or additional services as may be required to adequately serve the proposed use and any approval shall be so conditioned. The Town shall be authorized to demand fees in support of such services where they cannot be directly provided by the applicant. This shall specifically apply, but not be limited to, additional fees to support fire-district expenses.
- O. Hamlet areas. The hamlet areas of Wawayanda, specifically Ridgebury, Slate Hill and old New Hampton, are an important and integral part of the Town's culture and heritage. The hamlets represent historic, compact, developed areas within the largely rural regions of the Town. The character and quality of Wawayanda would be permanently diminished if these small settlements were to disappear from the landscape. New development should be integrated into the hamlet centers in such a way that it improves upon the positive aesthetic aspects of the hamlet centers and ensures that these centers will be preserved. New buildings and additions to existing buildings should blend into the existing hamlet landscape to the maximum extent practical. In considering an application for a special use within the Town Commercial and Hamlet Districts, the Planning Board shall consider the following:
- (1) The architectural style of buildings (particularly where there are structures of historic or architectural significance within view of the site).
 - (2) A building's scale, proportion and massing. Scale deals with the relationship of each building to other buildings in the area. Proportion deals with the relationship of height to the width of the building and with the relationship of each part to the whole. Massing deals with the volume created by sections of a building.
 - (3) Rhythm of openings. The rhythm of openings refers to the number and spacings of windows and doors in a facade.
 - (4) Building materials and architectural details. The use of similar materials and textures will help a new building or restoration fit into the existing neighborhood.
 - (5) Exterior lighting (including the number, height and design of the lighting fixtures and the amount of light).
 - (6) Fences and walls, landscaping and paving materials to be used on the site.

- (7) Lot coverage. The maximum percent of lot to be occupied in hamlet areas may be increased by 10%, provided that the additional coverage shall not be allowed in any required front yard.
- (8) The mix of uses. No residential uses shall be located on a floor below a nonresidential use and residential uses shall have separate access from the nonresidential uses.
- (9) New construction. New construction shall be permitted, provided that it has sensitively maintained the existing character of adjacent and surrounding historic structures. This may be exhibited through architectural style and character, arrangement, texture, materials, details and ornamentation and the overall bulk and massing proposed.
- (10) Parking. Off-street parking shall be wholly provided in the rear and/or one side yard, behind the front building line, and shall be screened from adjoining properties in accordance with the landscaping provisions hereof.

ARTICLE 8 ADMINISTRATION AND ENFORCEMENT

8.1 BUILDING INSPECTOR.

The Town Board shall provide for the services of a Building Inspector / Code Enforcement Officer to simultaneously enforce the provisions of this chapter and the Uniform Fire Prevention and Building Code Enforcement Law. Such Building Inspector / Code Enforcement Officer shall examine all applications for permits, issue permits and/or certificates of occupancy for construction and uses which are in accordance with the requirements of this chapter, record and file all applications for permits with accompanying plans and documents and make such reports as may be required. Permits requiring site plan review and special use approval, however, shall only be issued with approval of the Town of Wawayanda Planning Board. Likewise, permits requiring variances of this chapter shall only be issued with approval of the Town of Wawayanda Zoning Board of Appeals.

8.2 PERMIT REQUIREMENTS.

- A. No person shall construct, erect, alter, convert or use any building or structure, or part thereof, nor change the use of any land, subsequent to the adoption of this chapter, until a building permit and/or certificate of occupancy has been issued by the Building Inspector. Applications for such permits shall be made to the Building Inspector / Code Enforcement Officer prior to any construction activity and/or change in the use of land. The officer shall review such applications and act upon them according to the requirements of this chapter, taking no action, however, until the Planning Board and/or Zoning Board of Appeals has first taken action, should the approval of either Board be required. A building permit shall authorize the applicant to proceed with construction proposed.
- B. Prior to use of the structure or the change in use of the land, a certificate of occupancy shall be required and shall be issued by the officer, provided all construction has been in accord with the building permit granted and/or the proposed use is in compliance with this chapter. The Building Inspector / Code Enforcement Officer shall be authorized to make such inspections as he deems necessary to ensure that construction does, in fact, comply with this chapter.
- C. The Building Inspector / Code Enforcement Officer shall ensure that all water supply and sewage disposal facilities proposed in connection with any building permit or certificate of occupancy application shall conform with New York State Department of Health guidelines.
- D. It shall be the duty of the Building Inspector / Code Enforcement Officer to issue a building permit, provided that he is satisfied that the structure, building, sign and the proposed use conform with all requirements of this chapter, and that all other reviews and actions, if any, called for in this chapter have been complied with and all necessary approvals secured therefor.
- E. When the Building Inspector / Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he shall refuse to issue a building permit or certificate of occupancy, as the case may be, and the applicant may appeal to the Zoning Board of Appeals.
- F. A building permit or certificate of occupancy may be revoked by the Building Inspector / Code Enforcement Officer upon a finding that information provided in the application was inaccurate or invalid or that the construction or use has proceeded in a manner not consistent with the permit(s) granted.

- G. No change of use shall be made in any building, structure or premises now or hereafter erected or altered that is not consistent with the requirements of this chapter. Any person desiring to change the use of his premises shall apply to the Building Inspector / Code Enforcement Officer for a Certificate of Occupancy. No owner, tenant or other person shall use or occupy any building or structure or premises thereafter erected or altered, the use of which shall be changed after the passage of this chapter, without first procuring a certificate of occupancy; provided, however, that a certificate of occupancy, once granted, shall continue in effect so long as there is no change of use, regardless of change in tenants or occupants.
- H. Though compliance with the development and use standards of this chapter will still be required, the following activities shall not demand permits, except as may be required by the New York State Uniform Fire Prevention and Building Code:
- (1) Aboveground swimming pools of two feet or less in depth.
 - (2) Structures not regulated by the New York State Uniform Fire Prevention and Building Code.
 - (3) Patios and landscape improvements.
 - (4) All nonstructural accessory uses of a residential or temporary nature (30 days or less).
- I. All applications shall be made on forms as shall be developed and periodically updated by the Building Inspector. Applications shall include plot plans and such other information as is required to determine compliance with the requirements of this chapter.
- J. A building permit shall expire after 24 months if the applicant fails to complete the improvements as approved. An extension of 12 months may be approved by the Building Inspector / Code Enforcement Officer for good cause (such as seasonal weather conditions)
- K. Site plan approval or Special use permits shall expire after 60 months if the applicant fails to obtain a building permit within 60 months. An extension may be granted by the planning board.
- L. Accessory building permits shall not be issued in advance of permits for principal permitted or special uses or without an existing principal use in place and being operated on an on-going basis. Passive uses such as forestry shall not qualify for this purpose. Accessory uses permitted under such circumstances shall be limited to those with the tangible and primary purpose of serving the principal use.
- M. The Building Inspector / Code Enforcement Officer may issue a certificate of occupancy and/or compliance to any legally existing use, provided the owner thereof so certifies and the officer's investigations do not indicate otherwise.
- N. No permits shall be issued for any new uses where there are unremedied existing violations.

8.3 STATE ENVIRONMENTAL QUALITY REVIEW ACT COMPLIANCE.

All actions taken with respect to this chapter shall comply with the New York State Environmental Quality Review Act (SEQRA) and applicants shall be responsible for providing such data as may be required to determine the significance of any environmental impacts associated with such actions.

8.4 PENALTIES FOR OFFENSES.

- A. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Inspector / Code Enforcement Officer, who shall properly record such complaint and immediately investigate. Nothing herein shall, however, restrict the right of the Building Inspector / Code Enforcement Officer to act on a violation absent a complaint.
- B. Should any building or structure be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land be used in violation of this chapter, the Town Board or the Building Inspector, in addition to other remedies, may institute an appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use 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 such premises.
- C. Any person, having been served with a notice of violation, who shall fail to comply with such notice within the time fixed by the Building Inspector / Code Enforcement Officer for compliance shall be punishable by a fine of not more than \$250. or imprisonment not to exceed 15 days, or both. Each day that a violation continues shall be deemed a separate offense, and the person who continues in violation shall be subject to a fine of not more than \$250. for each separate offense. Incarceration may not be included beyond 15 days for a continuing violation.
- D. The Building Inspector / Code Enforcement Officer or his or her designated representative, as the case may be, is hereby authorized to issue appearance tickets pursuant to the Criminal Procedure Law in the enforcement of this or any related laws of the Town of Wawayanda.

8.5 FEES.

The Town Board shall, by resolution, establish and periodically update a schedule of uniform fees, charges and expenses associated with the administration and enforcement of this chapter. Such schedule may provide for the assessment to applicants of professional costs incurred in the processing and/or review of the applications and to assure compliance with the provisions of applicable laws, ordinances and regulations covering building construction made pursuant to this chapter.

8.6 SITE DEVELOPMENT INSPECTION FEES.

Site development inspection fees paid to the Town prior to signing of the maps by the Planning Board Chair for final approval shall be derived in the following manner:

- A. Construction cost estimates for all improvements shall be prepared by the applicant and reviewed by the Planning Board.
- B. For public improvements, 4% of the amount of the estimated cost for required public improvements shall be deposited for engineering inspection fees and 1% of the amount shall be deposited for environmental compliance inspections.
- C. For nonpublic improvements, 3% of the amount of the estimated cost of nonpublic improvements shall be deposited for engineering inspections and 1 % of the amount shall be deposited for environmental compliance inspections.
- D. The amounts required to be paid hereunder shall be deemed to be initial deposits and the applicant shall be responsible for any additional reasonable and necessary expenses incurred by the Town.

8.7 GRANDFATHERING CLAUSE

The new zoning density, area and lot dimension requirements imposed by this local law shall not apply to the following: Any proposed subdivision or site plan which has duly received preliminary approval from the Town of Wawayanda Planning Board prior to the date of enactment of this chapter.

All such proposed subdivisions or site plans that may be approved under the provisions of this chapter shall have four (4) years from the date of enactment of this chapter to obtain final approval.

ARTICLE 9 ZONING BOARD OF APPEALS

ESTABLISHMENT AND MEMBERSHIP.

- A. There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law. Said Board shall consist of five members of staggered five-year terms, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.

- B. The Town Board shall also supersede the New York State Town Law pursuant to the Municipal Home Rule Law and, during the annual reorganization meeting of Town Board, appoint an alternate member of the Zoning Board of Appeals to serve for a term of one year or until a successor is appointed. Such alternate member shall attend meetings and act in the capacity of a full member whenever regular members cannot attend or must excuse themselves due to conflicts of interest. Alternate members shall not participate in the Board's deliberation of any matter in which they are not called upon to act in replacement of a full member.

9.2 POWERS AND DUTIES.

- A. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official(s) charged with the enforcement of this chapter and to that end shall have all powers of the administrative official(s) from whose order, requirement, decision, interpretation or determination the appeal is taken.

- B. Use variances.
 - (1) The Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this chapter, shall have the power to grant use variances, as defined herein.

 - (2) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable regulations and restrictions of this chapter have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that;
 - (a) He or she cannot realize a reasonable return, provided lack of return is substantial as demonstrated by competent financial evidence;

 - (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

- (c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (d) The alleged hardship has not been self-created.
- (3) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Area variances.

- (1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officials charged with the enforcement of this chapter, to grant area variances as defined herein.
- (2) In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board 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 the granting of the area variance;
 - (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (c) Whether the requested area variance is substantial;
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - (f) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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

9.3 PROCEDURES.

- A. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson, or in his or her absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses.
- B. Meeting of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- C. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five business days and shall be a public record. Every decision of the Board of Appeals shall be made by resolution and include findings establishing the basis of the decision.
- D. The Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. It shall also have authority to refer matters to the Town Planning Board for review and recommendation prior to making a decision.
- E. Except as otherwise provided herein, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative officials charged with the enforcement of this chapter. The concurring vote of three members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- F. Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative officials charged with the enforcement of this chapter by filing with such administrative official and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- G. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative office, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

- H. The Board of Appeals shall fix a reasonable time, no more than 62 days following application, for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. The hearing shall be conducted in accordance with rules of the Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures and allow for rehearings on the unanimous vote of the members present.
- I. The Board of Appeals shall decide upon the appeal within 62 days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Board.
- J. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- K. At least five days before such hearing, the Board of Appeals shall mail notices thereof to the parties, to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal, and to the Orange County Planning Department, as required by § 239-m of the General Municipal Law. No Board of Appeals decision shall be made except in conformance with such 239-m procedures including requirements for an affirmative vote of no less than four members of the Board if it shall determine to approve an application which the county has recommended it disapprove or modify.

ARTICLE 10 AMENDMENTS

10.1 INITIATION

The Town Board, from time to time, may amend this Chapter, including the official Zoning Map, as provided in this Article upon its own motion or petition by one or more property owners, or by resolution of the Planning Board or Zoning Board of Appeals that requests a specific amendment of this Chapter. A property owner may apply for amendment to this Chapter by filing seven complete sets of an application with the Town Clerk. The application shall include a petition requesting the Town Board to amend a particular provision or provisions of this Chapter and/or the Zoning Map, a description of requested amendment, identification and description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of 500 feet of the exterior boundaries thereof and the applicable filing fee. In the case of a requested amendment that does not apply to an amendment of the Zoning Map or otherwise affecting specific properties, no properties need be identified as affected.

10.2 REVIEW BY PLANNING AGENCIES

As an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town and County planning agencies as required by this Article and by the laws of New York State.

10.2-1 Referral to Town Planning Board

The Town Board shall refer each requested amendment, no matter how initiated, to the Planning Board for a recommendation. No action shall be taken on the requested amendment referred to the Planning Board until its recommendation has been received by the Town Board, or 30 days have elapsed after such referral has been made, unless the Planning Board and Town Board agree to an extension beyond the 30-day requirement for the Planning Board's review and recommendation. The Town Board shall consider the Planning Board's recommendation but need not follow it.

10.2-2 Referral to County Planning

- A. Any proposed amendment affecting real property within 500 feet of the boundary of the Town of Wawayanda or an active farm in an Agricultural District, the boundary of any existing or proposed County or State park or other recreational area, the right-of-way of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, or the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated shall be referred to the Orange County Planning Department before final action is taken pursuant to section 239-m of the General Municipal Law.
- B. No action shall be taken on proposals referred to the County Planning Department until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed amendment, unless the County Planning Department and the Town Board agree to an extension beyond the 30-day requirement for the County Planning Department's review.

10.3 PUBLIC HEARING AND NOTICE

No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard on the proposed amendment. The Town Board shall set, by resolution at a duly called meeting, the time and place for a public hearing on proposed amendments, and shall cause public notice to be published, posted and circulated as set forth below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for the costs of publication and circulation of notice.

10.3-1 Publication of Notice in Newspaper

Notice of the time and place of the public hearing shall be published at least 10 days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.

10.3-2 Notice to Adjacent Municipalities

Written notice of any proposed amendment affecting property lying within 500 feet of an adjacent town shall be served in person or by mail upon the Clerk of such municipality at least 10 days prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon, but shall not have the right to review by a court.

10.3-3 Notice to Adjacent Property Owners

Where a proposed amendment involves a rezoning of a particular parcel or parcels of property, written notice of any proposed amendment affecting such property shall be mailed to the owners of parcels of property adjacent to the property that is subject of the proposed rezoning.

10.4 Adoption

The Town Board may adopt amendments to this Chapter by a majority vote of its membership, except in the case of local protest or disapproval by the County Planning Board as noted below.

10.4-1 County Disapproval

A majority-plus-one vote of all Town Board members shall be required to pass any proposal which receives a recommendation of disapproval from the County Planning because of the referral process specified in section 10.2-2 above, along with a resolution setting forth the reasons for such contrary action.

10.4-2 Consideration of Town Comprehensive Plan

The Town Board in deliberating on whether to adopt a proposed amendment to this Chapter, including but not limited to, a proposed rezoning of a parcel or parcels of property or any modification to the Zoning Map, shall consider the proposed amendment in relation to the Comprehensive Plan and shall only adopt the proposed amendment if it is consistent and in accordance with the Comprehensive Plan.

10.5 EFFECTIVE DATE

Unless the amendment provides for a different effective date, each amendment adopted by the Town Board shall take effect when filed with the Secretary of State of the State of New York pursuant to the Municipal Home Rule Law of the State of New York.

10.6 RIGHT TO COMPLETE PROJECT INCONSISTENT WITH AMENDMENT

Where a project for which a permit or approval has been lawfully issued, but no certificate of occupancy has been awarded, would be rendered nonconforming by an amendment of this Chapter, such project shall have the right to be completed and to be awarded a certificate of compliance pursuant to the provisions in effect when the project permit was issued only if, in the case of a project primarily involving a building, the foundation has been completed prior to the effective date of the amendment, and, in the case of a project not primarily involving a building, a substantial amount of construction has been completed prior to the effective date of the amendment.