

ARTICLE I - ENACTING CLAUSE, TITLE  
PURPOSES & APPLICATION

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

**SECTION 101 ENACTING CLAUSE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Bethany hereby adopts and enacts Local Law No. 1 of 1985, as follows:

**SECTION 102 TITLE**

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

**SECTION 103 PURPOSES**

This Local Law is adopted for the following reasons:

To secure safety from fire, floods, and other dangers, and to promote the public health and welfare, including, so far as conditions may permit, provision for adequate light, air and convenience of access, made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it might be put, to the end that such regulations may promote public health, safety and welfare and the most appropriate use for which the land of each district may be adapted; and to conserve the value of buildings and enhance the value of land throughout the town.

To regulate and restrict the location of trades and industries and the location of buildings designed for specific uses, and, for said purposes, to divide the Town of Bethany into districts, prescribing for each such district the trades and industries which may be included therein or subjected to special regulations and the uses for which buildings may not be erected or enlarged. These regulations are designed to promote the public health, safety and general welfare and are made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan.

To provide for the preservation of places, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value.

**SECTION 104 APPLICATION OF REGULATION**

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purposes except in conformity with this Local Law. No building, structure or premises shall be

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used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purposes of any kind, that is noxious or offensive by reason of the emission of odor, dust, smoke, fumes, gas, chemical or nuclear waste, radiation, noise or vibration, or which results in seepage into, spillage into or contamination of the land or water by dumping, storage, disposal, or recycling of refuse, waste materials, toxic or hazardous materials, corrosive or caustic materials, explosive and radioactive materials or like substances, or that is otherwise dangerous to comfort, peace, enjoyment, health or safety of the community, or tends to its disturbance, inconvenience, discomfort or annoyance.

In interpreting and applying this Local Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals, convenience and general welfare. This Local Law shall not be deemed to affect in any manner whatsoever any easements, covenants, or other agreements between parties, provided, however that where this Local Law imposes a greater reconstruction, establishment, moving alterations to or enlargement of buildings than imposed by other ordinances, local laws, rules, regulations, licenses, certificates or other authorizations, or by easement, or covenants or agreements, then the provisions of this Local Law shall prevail.

This Local Law shall not apply to existing uses which are nonconforming uses as defined herein.

Nothing herein contained shall require any change in plans or construction of a building for which a building permit has been issued. A certificate of compliance may also be issued for such building to the effect that it is a nonconforming use.

All buildings under construction at the time this Local Law is adopted shall conform to the Zoning Law or Zoning Ordinance in effect at the time construction was commenced.

**SECTION 105      VALIDITY**

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

**SECTION 106      DEFINITIONS**

As used in this Local Law, the following words shall have these meanings: (please refer to Section 610 for additional definitions relating to adult uses).

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

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building.

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

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

**ADULT USES:** The definitions associated with adult uses are contained in Section 610.

**AGRICULTURE:** Includes the cultivation of the soil for food products or other useful or valuable growths of the field or garden, tillage or husbandry, and shall also include dairying and the raising of livestock, poultry and furbearing animals, where the same is carried on as a business or gainful operation.

**AGRICULTURAL BASED BUSINESS:** Shall mean a business which is primarily engaged in supplying farms with direct services such as equipment repair and service, transportation services, soil preparation, crop services, veterinary and other animal services.

**AGRICULTURAL OR FARM OPERATIONS:** The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation and timber processing. Such farm operation may consist of one (1) or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other. [LL No. 1 of 2008]

**ALTERATION:** A change or rearrangement in the structural parts of a building or structure or a change in location, enlargement, or addition thereto, but not including repairs and modification of equipment located therein.

**ANIMAL WASTE STORAGE FACILITY:** Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

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

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

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

**ARTERIAL HIGHWAY:** A highway which collects and distributes traffic to and from minor highways. For the purposes of this Zoning Law the following highways shall be considered arterial highways within the Town: NYS Routes #20 and #63.

**BED AND BREAKFAST:** An owner-occupied one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two (2) weeks. Meals may or may not be provided.

**BUFFER STRIP:** A continuous strip of trees and/or shrubs not less than ten (10) feet in depth and not less than six (6) feet in height, densely planted to provide a physical screen preventing the visual access from one use to another and to reduce the escape and/or intrusion of litter, fumes, dust, smoke, noise or other noxious or objectionable elements. This requirement may be modified by the Planning Board as provided for in Section 301 (B) (6).

**BUILDING:** Any structure having a roof supported by columns or by walls, intended for the shelter, housing or enclosure of persons, personal property, animals or equipment. The word "building" shall not include "mobile home" or "recreational vehicles".

**BUILDING ACCESSORY:** A building subordinate to the main building on the lot and used for purposes customarily incidental to that of said main building.

**BUILDING AREA:** The sum of the gross horizontal area of the floors of a building and its accessory buildings on the same lot, but excluding attics and basement floor areas not devoted to residential use, but including the area of porches.

**BUILDING HEIGHT:** The vertical distance measured from the average elevation of the

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proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING LINE:** A line parallel to the front, side or rear lot line, transacting that point of the building which is closest to it and parallel to the said lot line. The point of the building described above includes porches, but not steps.

**BUILDING, PRINCIPAL:** A building or buildings in which is conducted the main or principal use of the lot on which said building is situated.

**CAMPGROUND:** Land on which is located one or more cabins, trailers, shelters, houseboats or other accommodation for seasonal or temporary living purposes, excluding mobile homes.

**CERTIFICATE OF COMPLIANCE:** A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and any adjustments thereto granted by the Board of Appeals.

**CERTIFICATE OF OCCUPANCY:** A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

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

Child day care does not refer to care provided in:

1. A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
2. A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;
3. A facility providing day service under an operating certificate issued by the NYS Department of Social Services;

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4. A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
5. A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

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

**CHURCH:** Any structure used for worship or religious instruction including social and administrative rooms accessory thereto.

**CLUB:** An organization established pursuant to the New York Not-For-Profit Corporation Law for a social, educational or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit.

**CLUSTER DEVELOPMENT:** A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

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

**COMMUNITY CENTER:** Meeting hall, place of assembly, museum, art gallery, library, not operated primarily for profit and open to the public.

**COMMUNITY RESIDENCE:** A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14)

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individuals and provides client supervision on a twenty-four (24) hour basis. For the purposes of this Zoning Law an approved community residence as defined herein is considered a one (1) family dwelling.

**COVERAGE, BUILDING:** That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

**DOG CONTROL:** All matters relative to the control of dogs are in Local Law entitled "dog Control Law of the Town of Bethany"; Local Law No. 2 of the year 2002.

**DOG KENNEL:** ~~A structure used for the boarding of more than three (3) dogs that are more than six (6) months old.~~ All matters relative to dog kennels are in the Local Law entitled "Dog Control Law of the Town of Bethany"; Local Law No. 2 of the year 2002.

**DRIVE-IN BUSINESS:** A drive-in business includes drive-in restaurants, refreshment stands, banks and the like where patrons enter the premises and are served or entertained in automobiles. Deposit and pick-up services shall not be considered drive-in businesses.

**DUMP (SANITARY LANDFILL):** Land used for the disposal by abandonment, dumping, burning or other means, and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind. Dumps are prohibited in the Town of Bethany.

**DWELLING UNIT:** Building, or part thereof, used as living quarters for one (1) family. The terms "one-family dwelling", "two-family dwelling", or "multiple dwelling" shall not include a motel, hotel, boarding house, tourist home, mobile home, recreational vehicle, or similar structure but shall include earth sheltered dwellings.

**DWELLING, ONE-FAMILY:** Detached building designed for and used as living quarters by one family, including a community residence as provided for in the NYS Mental Hygiene Law.

**DWELLING, TWO-FAMILY:** Building designed for and used as living quarters by two (2) families living independently of each other.

**DWELLING, MULTI-FAMILY:** Building designed for and used as living quarters by three (3) or more families living independently of each other.

**DWELLING, PRIVATE:** A dwelling occupied by the owner.

**EAF:** Environmental Assessment Form used in the implementation of the SEQRA as

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that term is defined in Part 617 of Title 6 of the New York Codes Rules and Regulations.  
[LL No. 1 of 2008]

**ELECTROMAGNETIC INTERFERENCE (EMI):** The interference to communication systems created by scattering of electromagnetic signals. [LL No. 1 of 2008]

**FAMILY:** One (1) or more persons living, sleeping, cooking and eating on the same premises as a single housekeeping unit, provided that unless all members are related by blood, marriage, adoption, guardianship or foster care arrangement, no such single housekeeping unit shall contain more than three members.

**FAMILY DAY CARE HOME:** Shall mean day care of not more than six (6) children provided in an individual's own home. For the purposes of this Zoning Law a Family Day Care Home shall be considered an accessory use to a family dwelling unit and no zoning permit shall be required, unless new construction and/or building alterations are proposed.

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

**FARM:** Any parcel of land which is used for gain in the raising of agricultural products, livestock, poultry, furbearing animals and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used. The term "farm" shall exclude Dog kennels.

**GARAGE, PRIVATE:** An enclosed space for the storage of one (1) or more motor vehicles, provided that no business, occupation or service is conducted for profit thereat and that no space therein for more than one (1) car is leased to a non-resident of the premises.

**GASOLINE STATION:** Building or land used for sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubricating, washing or servicing motor vehicles.

**GASOLINE STATION - MARKET:** A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market or food market.

**GROUP FAMILY DAY CARE:** Shall mean care provided for not more than fourteen (14) children away from their own homes for more than three (3) hours but less than twenty-four (24) hours per day in a licensed group family day care home which is



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operated for such purposes for compensation or otherwise. For the purposes of this Zoning Law a Group Family Day Care Home shall be considered an accessory use to a family dwelling unit and no zoning permit shall be required, unless new construction and/or building alterations are proposed.

**HABITABLE FLOOR AREA:** Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

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

1. The occupation or profession is carried on wholly within the principal building or within a building or other structure accessory thereto.
2. No more than two (2) persons outside the immediate family are employed in the home occupation.
3. There is no exterior display, no exterior sign, larger than six (6) square feet, no exterior storage of materials and no exterior indication of the home occupation or variations of the residential character of the principal building.
4. No offensive noise, vibration, smoke, dust, odors, heat or glare is produced, nor does the home occupation result in:
  - a. Dissemination of noise, vibration, odor, dust, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted;
  - b. Hazard of fire explosion or other physical hazard to any person, building or vegetation;
  - c. Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
5. All home occupations require the issuance of a zoning permit as set forth in Section 203. In particular, a home occupation may include, but is not limited to,

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the following: art studio, dressmaking, barber shops and beauty parlors (when limited to two work stations), cook, day nursery, draftsman, electrical/radio/television repair, furniture refinisher, family-type home, laundering, musician, photographer, professional office of a physician, dentist, lawyer, engineer, architect, surveyor or accountant within a dwelling occupied by the same, upholsterer, teaching or tutoring, real estate offices.

6. However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, gasoline station, machine shop, welding and fabrication shop, commercial stables and dog kennels, restaurant or a business primarily involved in the retail sale of goods or merchandized manufactured or produced off-site.

**HOSPITAL, ANIMAL:** An establishment for the medical and/or surgical care of sick or injured animals.

**INDOOR RECREATION:** Includes, but is not limited to, health club, bowling alley, tennis court, table tennis, pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor recreation.

**JUNK:** Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or abandoned, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material, tires, lumber, pallets or other wood debris.

**JUNKYARD:** Outside storage or deposit, whether in connection with another business or not, where one or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles and/or material defined as junk by this Zoning Law which, taken together equal in volume more than one hundred (100) cubic feet. In addition, a junkyard shall include any land or structure used for collecting, storage or sale of waste paper, rags, scrap metal, pallets, other discarded material, or ten or more used and unmounted tires other than within a fully enclosed building, other than tires used for agricultural purposes (i.e. bunker silo) and other than those used for generally accepted agricultural purposes (i.e. bunker silo). The following conditions do not constitute a junkyard: 1) storage of a single motor vehicle for use on a seasonal basis (i.e. a winter car) provided such vehicle is intact, located in other than the front yard, and has a NYS Motor Vehicle Inspection sticker which was issued within the previous twelve months; and 2) a single motor

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vehicle offered for sale for a total period of time, consecutive or nonconsecutive, not to exceed thirty (30) days.

LOT: Land occupied or which may be occupied by a building and its accessory uses, together with required open space, having not less than minimum area, width and depth required for a lot in the district in which such land is situated; and having frontage on a street, or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a building permit.

LOT OF RECORD: Any lot shown upon or described in a deed or subdivision map on record at the Genesee County Clerk's Office.

LOT AREA: Total area within property lines, excluding any part thereof lying within the boundaries of a road right-of-way or proposed road right-of-way.

LOT, CORNER: A lot located at the junction of and fronting on two or more intersecting streets or roads. (Also see definition of "Lot Line Front").

LOT, DEPTH: Mean horizontal distance from the road right-of way line of the lot to its opposite rear line measured at right angles to the building line.

LOT WIDTH: The horizontal distance between the side lot lines, measured at right angles to the lot depth.

LOT LINE, FRONT: In the case of a lot abutting upon only one road, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one road, each road line shall be considered a front lot line.

LOT LINE, REAR: The lot line which is generally opposite the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

LOT LINE, SIDE: The property line or lines extending from the front lot line to the rear-lot line.

MOBILE HOME: A structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles.

MOBILE HOME PARK: A parcel of land under single ownership which has been improved for the rental or lease of two (2) or more lots with the provision of services for

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mobile homes.

**MOTEL:** A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient motor vehicle travelers and providing for accessory off-street parking facilities. The word "Motel" includes buildings designated as tourist courts, motor lodges, auto courts and by similar terms.

**MOTOR VEHICLE REPAIR SHOP:** Any building or land used for gain, wholly or partially, engaged in the business of repair or diagnosing motor vehicle malfunctions or repairing bodies, fenders, or other components, damaged by accidents or otherwise.

**MUNICIPAL SOLID WASTE PROCESSING FACILITY:** A facility for processing municipal solid waste which may include the following operations and/or material as defined in 6 NYCRR Part 360: commercial waste, composting facility, construction and demolition debris, construction and demolition processing facility, garbage, household waste, household hazardous waste, processing facility, recyclables, recyclables handling and recovery facility, refuse-derived fuel processing facility, resource recovery facility, and/or transfer station. For the purposes of this Local Law a municipal Solid Waste Processing Facility shall not include any of the following operations and/or materials as defined in 6 NYCRR Part 360: asbestos waste, ash residue, disposal facility, energy recovery incinerator, hazardous waste, incineration, industrial waste, infectious waste, landfill, sludge and/or solid waste incinerator.

**NONCONFORMING USE:** A building, structure or use of land legally existing at the time of effective date of this Zoning Law and which does not conform to the use regulations of the district or zone in which it is situated.

**NURSING HOME:** A building other than a hospital where persons, except insane, feeble-minded, drug or alcohol patients, are lodged, furnished with meals and nursing care for hire.

**OUTDOOR RECREATION:** Includes, but is not limited to, golf courses; golf driving range; trap, skeet, and archery range; swimming pool; skating rink; tennis court; recreation stadium; baseball and softball fields; skiing facility; hunting preserve; and similar places of outdoor recreation.

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

**PARKING SPACE:** One off-street parking space available for parking of one motor vehicle and having an area of not less than one hundred eighty (180) square feet exclusive of passageways and driveways appurtenant thereto and giving access

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thereto.

**PERSON:** Any person, firm, partnership, corporation, association or legal representative acting individually or jointly.

**PLANNING BOARD:** The officially designated Town of Bethany Planning Board as established by the Town Board in accordance with Section 271 of the Town Law.

**POND:** An earthen structure greater than one-eighth (1/8) of an acre, natural or constructed, to hold water.

**PORCH:** A roofed entrance to an exterior doorway. The word "Porch" includes "breezeway", "patio" and "terrace" when covered with a roof.

**PRIMARY USE:** The main or principal use for which a building or lot is to be used.

**QUARRY:** A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale, as an individual operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a zoning permit has been made.

**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. The basic entities include: travel trailer, camping trailer, truck camper, and motor home.

**RECREATIONAL VEHICLE PARK:** A parcel of land under single ownership which has been improved for the rental or lease of two or more recreational vehicle sites with the provision or adequate services therefore.

**RESIDENCE:** See DWELLING UNIT; DWELLING, ONE-FAMILY; DWELLING, TWO-FAMILY; DWELLING, MULTI-FAMILY AND DWELLING-PRIVATE. [LL No. 1 of 2008]

**RESIDENTIAL CARE FACILITY:** A residential facility operated by either a public or private agency and regulated by the NYS Department of Social Services, exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent children, homes or shelters for unmarried mothers, residential programs for victims of domestic violence, or adult care facilities.

**RESTAURANT:** A building or portion thereof where food and beverage, whether or not alcoholic, are sold to the public for consumption on the premises.

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**RETAIL USES AND SERVICES:** Enclosed store for sale of retail goods, and/or personal service shop. It shall exclude any drive-in business, free-standing retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, recreational vehicle and mobile home sales and service.

**ROAD:** A public or private way which affords the principal means of access to abutting properties. The word "road" includes the words "street" and "highway".

**ROAD RIGHT OF WAY:** That line delineating the extent of road rights on a lot.

**SCHOOL:** Parochial, private and public school, college or university and accessory uses, and shall exclude commercially operated schools of beauty culture, business, dancing, driving, music and similar establishments.

**SCHOOL-AGE CHILD CARE PROGRAM:** Care provided on a regular basis to more than six school-age children under thirteen (13) years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six (6) hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

**SELF-SERVICE STORAGE FACILITY:** A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self-service storage facility.

**SEQRA:** The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617. [LL No. 1 of 2008]

**SHADOW FLICKER:** The alternating pattern of sun and shade caused by wind tower blades casting shadow. [LL No. 1 of 2008]

**SIGN:** Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

1. **COMMERCIAL SIGN** - A sign which directs attention to a business or profession

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conducted or to products sold upon the same lot.

2. DIRECTIONAL SIGN - A sign limited to providing information on the location of an activity, business or event.
3. LIMITED PURPOSE SIGN - A content neutral sign including real estate for sale signs, real estate for rent signs, yard sale signs, garage sale signs, open house signs; community, civic, political, charitable, social, or educational message signs. Such sign shall be treated as a temporary sign.
4. NON-COMMERCIAL SIGN - A sign which identifies a mobile home park, school, church, cemetery, public park or building, or volunteer fire department facility.
5. OFF-PREMISE COMMERCIAL SIGN - A commercial sign which directs attention to an business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot.
6. PORTABLE SIGN - A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.
7. TEMPORARY SIGN - A sign related to a single activity or event having a duration of no more than sixty (60) days.

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

**SITE PLAN:** A plan of a lot or subdivision on which is shown location of all existing and proposed buildings, structures, uses, roads, rights-of-way boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

**SITE:** The parcel of land on which something is located (or is to be located), the physical position in relation to the surroundings. [LL No. 1 of 2008]

**SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS"):** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than ten (10) kW and which is intended to primarily reduce on-site consumption of utility power. [LL No. 1 of 2008]

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**SOUND PRESSURE LEVEL:** The measurement of sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures approved by the Town of Bethany Town Board. [LL No. 1 of 2008]

**SPECIAL USE:** A specifically designed use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

**STABLING OF FARM ANIMALS:** A concentration of livestock, poultry or fur bearing animals within a building, structure or other defined area for the purpose of housing or feeding.

**STRUCTURE:** Anything constructed or erected, the use of which requires location on or in the ground, attachment to something on or in the ground. The word "structure" includes, but is not limited to, buildings, mobile homes and gas or liquid storage tanks that are principally above ground.

**STRUCTURE, ACCESSORY:** A structure, not including buildings, subordinate to the main structure on the lot and used for purposes customarily incidental to that of the said main structure.

**SUBDIVISION:** An area of land divided by owners or agents, either by lots or by boundaries into lots or parcels two or more in number for the purpose of conveyance, transfer, improvement or sale of one or more.

**SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either: (1) before the improvements or repair is started, or (2) if the structure has been damaged and is being restored before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or (2) any alteration of a structure listed in the National Register of Historic Places or a State Inventory of Historic Places.

**SWIMMING POOL:** Any body of water or receptacle for water having a depth at any



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point greater than two feet, used or intended to be used for swimming or bathing, and constructed, installed or maintained in or above the ground outside any building.

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

TOTAL HEIGHT: The height of the tower and the furthest vertical extension of the Small WECS. [LL No. 1 of 2008]

TOWN: Shall mean the Town of Bethany, New York.

TOWN BOARD: Shall mean the Town Board of the Town of Bethany, New York.

USE: The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "use" can mean also building, construction, or improvement of the land. The term "permitted use" or its equivalent shall be deemed to include any nonconforming use.

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

UTILITY, PUBLIC: Any person or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television.

WIND ENERGY CONVERSION SYSTEM ("WECS"): A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill"). [LL No. 1 of 2008]

WIND ENERGY FACILITY: Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public utility uses otherwise allowed under this Zoning Law do not include Wind Energy Facilities. [LL No. 1 of 2008]

WIND MEASUREMENT TOWER: A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction. Temporary towers, for no more than a two (2) year period, may be allowed as part of a Small WECS application, where the requested tower meets all height, setback and other requirements of the Zoning Law. [LL No. 1 of 2008]

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**WIND TOWER:** The monopole, freestanding or guyed structure that supports a wind turbine generator, gearbox and rotor blades. [LL No. 1 of 2008]

**YARD:** An open space on the same lot with a building or group of buildings which open space lies between the building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward, except by trees, shrubs, fences, walls or as otherwise specifically authorized in this Zoning Law.

**YARD, FRONT:** A yard extending across the full width of the lot and lying between the road right-of-way and the building line (see Building Line). Front yard set back is measured from the building line to either the front property line or edge of the public right-of-way, whichever is less (See Exception to Front Yard Setback on second page of Zoning Schedule A). [Amended by LL No. 1 of 2004]

**YARD, REAR:** A yard extending across the full width of the lot and lying between the rear line of the lot and the building line (see Building Line).

**YARD, SIDE:** A yard between the side line of the lot and the building line and extending from the front yard to the rear yard, or in the absence of such yards, to the front and rear lot line, as the case may be (see Building Line).

**ZONING BOARD OF APPEALS:** The officially designated Town of Bethany Zoning Board of Appeals as established by the Town Board in accordance with Section 267 of the Town Law.

**ZONING ENFORCEMENT OFFICER:** The Zoning Enforcement Officer of the Town of Bethany as appointed by the Town Board.

**SECTION 107      WORD USAGE**

In the construction of this Local Law, the rules and definitions contained in this Section shall be observed and applied, except where the word usage clearly indicates otherwise. In further amplification and for clarity of interpretation of the context, the following definitions of word use shall apply.

Words used in the present tense shall include the future, and words used in the singular number shall include the plural number, and the plural the singular.

The word "shall" is mandatory and not discretionary.

The word "may" is permissive. The word "lot" shall include the words "piece", "parcel" and "place" and the phrase "used for" shall include the phrases "arranged for", designed

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for" "maintained for", and "occupied for".

All measured distances shall be rounded off to the nearest integral foot.

**SECTION 108      EFFECTIVE DATE AND REPEAL**

This Local Law shall take effect only after it is both filed with the Secretary of State and a summary thereof is published in the Batavia Daily News. The existing Zoning Ordinance of the Town of Bethany, its Junkyard Ordinance, its Trailer Ordinance, Local Law No. 1 of 1982, Local Law No. 2 of 1983, and any other enactments of the Town Board of the Town of Bethany which are inconsistent with the provisions of this Local Law are hereby repealed.