

**ARTICLE II            ENFORCEMENT, ADMINISTRATION AND AMENDMENTS**

**SECTION 201        ZONING ENFORCEMENT OFFICER**

A.    Enforcement

No board, agency, officer or employee of the Town shall issue, grant, or approve, any permit, license, certificate, or other authorization for any construction, reconstruction, alteration, enlargement, or moving of any building or structure or for any use of land, building or structure that is not in full compliance with the provisions of this Local Law, except as permitted under Section 209. Any such permit, license, certificate, or other authorization issued, granted or approved in violation of the provisions of this Local Law, shall be null and void and of no effect.

Unless otherwise provided herein, the Zoning Enforcement Officer, or other person designated by the Town Board for such purpose, shall enforce the provisions of this Local Law, together with any rules and regulations which are made in furtherance thereof. For such purposes he/she, or such other designated person, may from time to time and at reasonable hours, enter and inspect any building, structure or premises. The Zoning Enforcement Officer may also perform any other act or duty necessary for the proper enforcement thereof.

B.    Records and Reports

1.    The Zoning Enforcement Officer shall keep a permanent record of all applications for zoning permits and certificates of compliance, including all pertinent maps and plans.
2.    The Zoning Enforcement Officer shall also keep a permanent record of all violations of this Local Law whether reported by private citizens or by any board, agency, officer or employee of the Town, and such record shall show the disposition of all such violations.
3.    The Zoning Enforcement Officer shall make a written quarterly report to the Town Board indicating the number of type of zoning permits and certificates of compliance issued, together with a listing of all reported violations of this Local Law during the previous quarter, including the nature of any disposition and actions being pursued on continuing violations.

**SECTION 202        FEES FOR PERMITS, AMENDMENTS, VARIANCES AND  
                              SPECIAL USE PERMITS**

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Fees may be charged for permits issued and processing of applications for amendments, interpretations, variances, special use permits and various other administrative activities. Such fees shall be set by resolution of the Town Board and may be obtained from the Town Clerk.

**SECTION 203 ZONING PERMIT**

- A. No principal or accessory building or structure shall be constructed, altered, rebuilt, enlarged or moved or excavation made therefore, or work begun thereon, or a home occupation operated until a permit therefore has been issued by the Zoning Enforcement Officer or any other person designated by the Town Board for such purpose.
- B. Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed thereon, as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be required to determine and provide for the enforcement of this Local Law. Applications, together with a layout sketch, shall be submitted to the Zoning Enforcement Officer. Then the zoning permit is issued or denied, such issuance or denial shall be noted on each application by the person issuing or denying said permit. One copy shall be returned to the applicant, one copy filed with the Town Clerk, and one copy kept with the Zoning Enforcement Officer's records.
- C. The Zoning Enforcement Officer shall issue a zoning permit only after the site plan, if required, has been approved and all required variances and special use permits have been obtained.
- D. The Zoning Enforcement Officer shall then be notified when the site is prepared for installation of the foundation of a building or structure, and he shall inspect the site to check the location thereof.
- E. If the construction is not commenced within six (6) months after a zoning permit is issued, such permit shall be null and void.
- F. A zoning permit shall also be null and void if construction is not substantially completed within a period of one year from the date said permit is issued. The Zoning Enforcement Officer may grant two six month extensions of a zoning permit for good cause shown.
- G. The zoning permit shall be located at the construction site in a place readily

visible to the public.

**SECTION 204 CERTIFICATE OF COMPLIANCE**

No land shall be used or occupied and no principal or accessory building or structure hereafter constructed, altered, rebuilt, enlarged or moved shall be used or changed in use until a Certificate of Compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Local Law.

**SECTION 205 VIOLATION AND PENALTY**

- A. It shall be unlawful for any person, firm or corporation to construct, alter, rebuild, enlarge, move, use or occupy any building or structure or portion thereof in violation of any provision of this Local Law or amendment hereto, or to fail in any manner to comply with a notice, directive or order of the Zoning Enforcement Officer, or to construct, alter, rebuild, enlarge, move, use or occupy any building or structure or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.
- B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.
- C. It shall be unlawful for any owner, builder, architect, tenant, contractor, sub-contractor, construction superintendent or their agents, or for any other person taking part or assisting in the construction, alteration, rebuilding, moving, enlargement or use of any building or structure to violate any of the applicable provisions of this Local Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.
- D. Where the Zoning Enforcement Officer finds a violation of the provision of this Zoning Law, he/she shall serve a written Order-Notice upon the owner by registered mail to remedy such condition. Such written notice shall include the provisions of law violated, the corrective action to be taken, the penalties and remedies which may be involved by the Town for noncompliance and time for compliance.
- E. Any violation of this Section and/or this Zoning Law shall be deemed an offense punishable by a fine and/or imprisonment as set forth in Section 268 of NYS Town Law. Each and every week such violation continues shall be deemed a separate and distinct violation.
- F. The Zoning Enforcement Officer may, with permission of the Town Board,

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institute court action to enforce any violation of the provisions of this Local Law.

- G. In addition to the remedies described in paragraph 205(E) above, the Town of Bethany may seek an injunction to restrain, correct or abate any violation of this Local Law and/or maintain an action at law for damages sustained as a result of any violation of this Local Law. Damages may include but not be limited to legal fees and court costs expended or incurred by the Town as a result of legal proceedings brought hereunder.

**SECTION 206 COMPLAINT OF VIOLATION**

Whenever a violation of this Local Law occurs, any person may file a complaint in regard thereto. All complaints must be in writing, signed by complainant, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint and immediately investigate it. When the Zoning Enforcement Officer finds such violation, he/she shall serve the written Order-Notice described in Section 205(D) above and submit the results of his/her investigation in writing to the Town Board for appropriate action.

**SECTION 207 PROCEDURE FOR AMENDMENT**

- A. The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement, or repeal any regulations or provisions of this Local Law after official notice has been given and a public hearing held by the Town Board as required by law.
- B. Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, filed with the Town Clerk and accompanied by any fees required.
- C. Every such proposed amendment shall be referred to the Planning Board for its report and recommendations prior to any such public hearing by the Town Board.
- D. Prior to adoption by the Town Board, a proposed amendment shall be referred to the County Planning Board when required by the provisions of Section 239 of the General Municipal Law.

**SECTION 208 PLANNING BOARD**

- A. Organization

The Planning Board shall consist of seven (7) members appointed by the Town

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

B. Powers and Duties

1. Site Plan Review

Review of site plans in accordance with NYS Town Law Section 274-a set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless otherwise required by this Local Law (i.e., special use permit) or customary farm operations as defined by subdivision 11 of Section 301 of NYS Agriculture and Markets Law. [Amended by LL No. 1 of 2008.]

2. Review ZBA Appeals (Interpretations and Variances)

Review ZBA appeals including interpretations, area and use variance applications referred to the Planning Board in accordance with Section 209 and at its discretion make a recommendation to the Zoning Board of Appeals.

3. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows:

a. The Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:

- i. Temporary uses incidental to a construction project.
- ii. Temporary real estate sales office incidental to a subdivision.
- iii. Other similar temporary incidental uses which:

(a) Do not have a detrimental effect upon the lawful use

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of land and activities normally permitted in the district in question, and

- (b) Contribute materially to the welfare and well-being of the Town.
- b. Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.
- c. Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings.

1. Notice and Public Hearing

The Planning Board shall notify all property owners within the Town of Bethany which own land that is either contiguous or directly across from the involved property. Such notice shall be sent by regular mail, at least ten (10) days before the meeting. In those instances when the Planning Board holds an optional public hearing (see following paragraph) on a site plan review, this notice to contiguous property owners is not required.

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

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Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The applicant shall submit to the Town Clerk ten (10) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

- a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
- b. Layout sketch showing proposed lots, blocks, building locations and land use area.
- c. Traffic circulation, parking and loading spaces, and pedestrian walks.
- d. Landscaping plans including site grading, landscape design, open space and buffer zone.
- e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- f. Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
- g. Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
- h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- j. description of proposed measures to control runoff and drainage

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from the site and when required by NYS DEC and/or SEQR process, a Stormwater Management and Erosion Control Plan.

- k. a description of the proposed generation, storage and/or disposal of hazardous materials and/or hazardous wastes on-site, including estimates of amounts involved and provisions for transport, storage and environmental protection.
- l. Together with any other permits or applications made to other governmental agencies and any additional information requested by the Planning Board.

3. Site Plan Review Criteria

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

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



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4. Area Variances

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

5. Modifications and Conditions

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

6. Waiver of Requirements

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

7. Reservation of Parkland on Site Plans Containing Residential Units

- a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or this Local Law, a park or parks suitably located for playground or other recreational purposes.

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- b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.
  - c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this Section, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.
  - d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.
8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that

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proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

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

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Section are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the developer. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

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

**SECTION 209 ZONING BOARD OF APPEALS**

A. Organization

The Zoning Board of Appeals shall consist of seven (7) members appointed by the Town Board as provided for in Section 267 of the Town Law. The Town

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Board shall designate the chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as acting chairperson.

B. Meetings, Minutes and Records

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

C. Filing Requirements

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

D. Hearing Appeals

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

E. Time of Appeal

1. Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

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2. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer, from whom the appeal is taken, certifies to the Board of Appeals, after notice of appeal shall have been filed with the Zoning Enforcement Officer, that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause eminent peril to life or property, in which case proceedings shall not be stayed otherwise then by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Hearing An Appeal

1. A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Town of a notice of such hearing at least five (5) days prior to the date thereof. When required by the provisions of Section 239m of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.
2. At least thirty (30) days before the date of the public hearing unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for every appeal (including interpretations, use and area variances). The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.
3. The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property located within five hundred (500) feet of the property which is the subject of the application at least ten (10) days before the date of the hearing.

G. Time of Decision

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

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H. Filing of Decision and Notice

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

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

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

2. Use Variances

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Local Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

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3. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
4. Area Variances
  - a. The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Local Law.
  - b. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
  - c. 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;
  - d. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - e. Whether the requested area variance is substantial;
  - f. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
  - g. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

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J. Imposition of Conditions

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

K. Solar Access

Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Local Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

L. Rehearing

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

**SECTION 210 SPECIAL USE PERMITS**

The Town Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of this Local Law if certain standards and conditions are met. Each such use is listed in this Local Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Local Law shall be followed and the Town Board must find that the proposed implementation of such use is not inconsistent with the public welfare.



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A special use permit may be subject to conditions and safeguards imposed by the public welfare. Also, the Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions which have been imposed by the Town Board in issuing such special use permit and other applicable provisions of this Local Law.

A. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Four (4) copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk, Planning Board and the Town Board. One (1) copy shall be retained by the Zoning Enforcement Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Local Law.

B. Area Variance

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

C. Notice and Public Hearing

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

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D. Conditions

The Town Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed special use permit plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Zoning Enforcement Officer.

E. Waiver of Requirements

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

F. Decisions

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

G. Abandonment of Special Use Permit

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

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H. Standards Applicable for all Special Use Permits

The Town Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other relevant concerns, applicable standards and/or conditions contained elsewhere in this Local Law.

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

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10. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.
11. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Local Law unrelated to the use which is the subject of the requested special use permit, as determined by the Town Board.
12. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
13. In addition to the general standards for special permits as set forth herein, the Town Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Local Law.
14. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e., mining.