

Table of Contents
 Town of Dunkirk
 Chapter XX – Zoning

Part I - Scope and Application 2

 Article I - Title and Purpose.....2

Part II - Zoning Districts and Requirements..... 4

 Article II - Zoning Districts Established.....4

 Article III - R-1 Single Family Residential District5

 Article IV - R-2 General Residential District.....8

 Article V- AR-1 Agriculture/General Residential District..... 11

 Article VI - C-1 -Tourism Commercial District 14

 Article VII - C-2 Highway Business District 17

 Article VIII- CR Commercial Residential District20

 Article IX- M High-Tech/Industrial District23

 Article X- SBO - Scenic Byway Overlay District25

Part III- Regulations Applying to all Districts 27

 Article XI - Non-Conforming Uses27

 Article XII- Site Plan Review29

 Article XIII -Special Permits34

 Article XIV- Planned Unit Developments37

 Article XV - Clustering Provisions41

 Article XVI - Sign Regulations44

 Article XVII - Adult Entertainment Facilities.....50

 Article XVIII - Flood Damage Prevention Regulations51

 Article XIX - Parking, Stacking and Loading Requirements.....62

 Article XX - Landscaping Requirements69

 Article XXI - Supplemental Regulations72

Part IV -Administration and Enforcement..... 88

 Article XXII- Exceptions and Modifications88

 Article XXIII -Administration89

 Article XXIV - Amendments.....100

 Article XXV- Definitions101

Part I - Scope and Application

Article I - Title and Purpose

§ 1 Purpose

The purpose of this Zoning Law is to provide for the orderly growth in the Town of Dunkirk in accordance with the recently completed Chadwick Bay Region Comprehensive Plan. The Zoning Law offers guidance on the use, height and bulk of uses; areas have been designated for residential, commercial and industrial growth. This protects the overall character of the Town, develops cohesive "neighborhoods" and minimizes conflicts among land uses. The Zoning Law is developed to:

- 1) secure safety from fire, flood and other dangers;
- 2) provide adequate light, air and outdoor uses to include public, common and private open space areas;
- 3) prevent overcrowding of land and ensure structure and land use arrangements are aesthetically harmonious to surrounding areas and structures;
- 4) avoid undue concentration of population or sparse, uncoordinated development;
- 5) facilitate the adequate provision of transportation, water, sewer, school, parks and other public services;
- 6) protect the character and values of residential, institutional, public, business, commercial and industrial uses and to ensure their orderly and beneficial development;
- 7) regulate the location of buildings and intensity of uses in relation to streets to ensure minimal interference with and by traffic movements, reduce congestion on Town streets and improve public safety;
- 8) preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only;
- 9) accommodate solar energy systems and equipment and access to necessary sunlight;
- 10) promote the health, safety and general welfare of the general public.

§ 2 Title

This law shall be known as "The Town of Dunkirk Zoning Law" for the Town of Dunkirk in the County of Chautauqua, State of New York.

This Zoning Law has been made with consideration, among other things, for the character of each district and its suitability for specific uses, conserving the property values and the direction of building development, enhancing the value of land and encouraging the most appropriate use of land throughout the Town of Dunkirk.

§ 3 Effective Date

This Chapter shall take effect on the date of official adoption by the Town Board: APRIL 14, 1998. This local law shall apply on its effective date to all uses which have not commenced and structures which have not been constructed regardless of the status of permits or certificates of occupancy issued pursuant to the New York State Uniform Fire Prevention and Building Code.

§ 4 Compliance Required

No building, structure or land shall hereafter be used and no building, structure or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations herein specified for the district in which it is located, except as hereinafter provided.

The provisions of this Chapter shall not annul, or in any way interfere with, existing deed or plat restrictions, easements or other agreements between persons, codes, laws, rules, regulations or permits previously adopted or issued, except those ordinances or sections which are contrary to, or in conflict with, this Chapter.

Wherever this Chapter imposes greater restrictions upon the use of structures or land, the height or bulk of buildings or requires larger land or building areas, yards or other open spaces than are otherwise required or imposed by deed or plat restrictions or laws, this Chapter shall control; other regulations shall control where they impose greater restrictions than this Chapter and for that purpose, it shall not annul, modify or impair the provisions of any existing deed or plat restrictions, easements or other agreements.

in interpreting and applying the provisions of this Chapter, its provisions shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, prosperity and general welfare. Except as specifically provided, it is not intended by the adoption of this Chapter to repeal, abrogate or annul any existing provisions of any law previously adopted relating to the use of structures and land and the design, erection, alteration or maintenance of structures.

Titles and headings have been inserted for convenience of reference and are not intended to define or limit the scope of or otherwise affect any provision in this Chapter.

§ 5 Repeal Existing Chapter

Unless otherwise provided in this Chapter, the Town of Dunkirk Zoning Law adopted May 11, 1977 and the corresponding zoning map, together with all subsequent amendments, are repealed on the effective date of this Chapter.

§ 6 Severability

If any portion of this Chapter is for any reason held to be unconstitutional or otherwise unenforceable, such determination shall not affect the validity of the remaining portions of this Chapter. The enacting body declares that it would have, and does approve and enact each subsection, subdivision, paragraph, sentence, clause and phrase, irrespective of the fact that any one or more portions be held unconstitutional or otherwise unenforceable.

Part II - Zoning Districts and Requirements

Article II - Zoning Districts Established

§ 7 Establishment of Districts

For purpose of this Chapter, the Town of Dunkirk is hereby divided into the following new classes of districts:

- R-1 Single Family Residential District
- R-2 General Residential District
- AR-1 Agriculture/General Residential District
- C-1 Tourism Commercial
- C-2 Highway Business District
- CR Commercial Residential
- M High-Tech/Industrial District

§ 8 Zoning Map

The boundaries of the zoning districts are hereby established on a map entitled "Zoning Map of the Town of Dunkirk" which map accompanies and is hereby declared to be a part of this chapter and as amended.

§ 9 District Boundaries

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

- 1) where the designation on the zoning map indicates a boundary approximately upon a road, the center line of the road shall be construed to be the boundary;
- 2) where the designation on the zoning map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary;
- 3) distances shown on the zoning map are perpendicular distances from road center lines measured to the district boundary, which boundaries in all cases where distances are given are parallel to the road center line;
- 4) in other cases, the district boundary shall be determined by the use of the scale of the zoning map.

Where a district boundary divides a lot of record at the time such boundary is adopted, the district requirements of the greater portion of the lot will become the requirements of the entire lot.

§ 10 Contiguous Parcels

When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one lot for such use.

Article III - R-1 Single Family Residential District

§ 11 Purpose

The R-1 District is designed to provide for the development of neighborhoods that are occupied primarily by single family residences. The areas designated R-1 District will result in neighborhoods traditionally organized with single family houses fronting the street and accessory structures located in the rear yard. Those lakefront properties with a property line adjoining the Lake Erie shoreline have yard and area requirements that vary from other residential properties in the R-1 district in order to protect water quality, the integrity of the Lake Erie shoreline, any unique habitats that exist, and minimize potential damage to properties from severe weather and wave conditions that exist.

§ 12 Permitted Uses and Structures

The following are permitted uses:

- (1) Single family dwelling
- (2) Small-scale (Tier) 1 solar energy systems

§ 13 Accessory Uses

The following are the accessory uses, building and structures permitted in the R-1 District provided that such accessory uses and buildings shall not be constructed until the main building has been constructed:

- (1) No more than one (1) commercial vehicle over one (1) ton capacity shall be parked over night.
- (2) Signs subject to the provisions of Article XVI – Sign Restrictions.
- (3) Satellite television receiving antennas subject to the provisions of Article XXI – Supplemental Regulations.
- (4) Fences, walls and hedges subject to the provisions of Article XXI - Supplemental Regulations.
- (5) Outdoor storage of trailers (camper, boat, utility, etc.), cars, and other recreational vehicles shall be limited to those currently licensed/registered and owned by occupant of premises for personal use.
- (6) Personal carport/garage, storage, or utility shed.
- (7) Pool house, swimming pool (private).

§ 14 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII - Site Plan Review:

- (1) Park (public)

- (2) Cemetery
- (3) Public and semipublic facilities
- (4) Essential facility
- (5) Wind energy facility (Ref: local law # 3 of 2010)
- (6) Home occupation

§ 15 Special Use Permits

The following uses are allowed only by special use permit requiring a hearing by the Zoning Board of Appeals and are subject to site plan review as outlined in Article XII:

- (1) Public safety facility
- (2) Religious institution
- (3) Private clubs, clubhouses, athletic recreation facility, golf course
- (4) Bed and breakfast, lodging house

§ 16 Lot, Area and Yard Requirements

The following lot, area and yard requirements apply to **non-lakefront properties** in the R-1 District:

Lot Requirements

Minimum Lot Frontage 120 feet

Area Requirements

Minimum Lot Area 1 acre
 Maximum Building Coverage 20%
 Maximum Lot Coverage 35%

Yard Requirements

Minimum Front Yard Depth 50 feet
 Minimum Side Yard 25 feet each side (with exception of existing footprints)
 Minimum Rear Yard 75 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be one hundred twenty (120) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

The following lot, area and yard requirements apply to **lakefront properties** in the R-1 District:

Lot Requirements

Minimum Lot Frontage 120 feet

Area Requirements

Minimum Lot Area 1 acre

Maximum Building Coverage 20%

Maximum Lot Coverage 35%

Yard Requirements

Minimum Front Yard (Roadside) 35 feet or consistent of setback of adjacent neighbors

Minimum Side Yard 25 feet each side

Minimum Rear Yard (Lakeside) 50 feet or distance permitted by USACOE or NYSDEC

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be one hundred twenty (120) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 17 Buildings

The following requirements apply to buildings constructed in the R-1 District:

Height

Maximum Building Height 2 stories not to exceed 35 feet

Floor Area

Minimum Floor Area One Story Dwelling 900 sq. feet

Minimum Floor Area Two Story Dwelling 800 square feet main floor

Accessory Building (maximum floor area) 1200 sq. feet

§ 18 RESERVED

SEE ZONE R-1 GRAPHIC

Article IV - R-2 General Residential District

§ 19 Purpose

The R-2 District is designed to provide for the development of neighborhoods that include a mixture of single, two and multi-family housing and complementary services. Limited types of commercial uses are allowed in the zone to ensure the residential character is protected and enhanced.

§ 20 Permitted Uses and Structures

The following are permitted uses;

- (1) Single family dwelling
- (2) Two-family dwelling
- (3) Agricultural Operations
- (4) Wildlife sanctuaries
- (5) Small-scale (Tier) 1 solar energy systems

§ 21 Accessory Uses

The following are the accessory uses, building and structures permitted in the R-2 District.

- (1) No more than one (1) commercial vehicle over one (1) ton capacity shall be parked overnight.
- (2) Signs subject to the provisions of Article XVI - Sign Restrictions.
- (3) Satellite television receiving antennas subject to the provisions of Article XXI Supplemental Regulations.
- (4) Fences, walls and hedges subject to the provisions of Article XXI - Supplemental Regulations.
- (5) Outdoor storage of trailers (camper, boat, utility, etc.), cars, and other recreational vehicles shall be limited to those currently licensed/registered and owned by occupant of premises for personal use.
- (6) Personal carport/garage, storage, or utility shed.
- (7) Pool house, swimming pool (private).

§ 22 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII – Site Plan Review:

- (1) Multi-family dwelling
- (2) Townhouses, condominiums
- (3) Assisted living

- (4) Group homes
- (5) Nursing home
- (6) Park (public)
- (7) Cemetery
- (8) Public and semi-public facilities
- (9) Essential facility
- (10) Daycare center
- (11) Greenhouse
- (12) Wind energy facility
- (13) Accessory apartment (dwelling unit)
- (14) Home occupation

§ 23 Special Use Permits

The following uses are allowed only by special use permit requiring a hearing and are subject to site plan review as outlined in Article XII- Site Plan Review:

- (1) Public safety facility
- (2) Religious institution
- (3) Private clubs, clubhouses, athletic recreation facility, golf course
- (4) Bed and breakfast, lodging house

§ 24 Lot, Area and Yard Requirements

The following lot, area and yard requirements apply to the R-2 District:

Minimum Lot Frontage

Single Family	120 feet
Two-Family	120 feet
Multiple Family	150 feet

Minimum land area of a lot shall not apply to prevent the construction of a one-family dwelling on a lot existing prior to April 14, 1998 and provided it's not adjoined at the side by other unoccupied land in the same common ownership shown on existing filed subdivision map and having an area of not less than nine thousand (9,000) square feet and a width at the front building line of not less than ninety (90) feet.

Area Requirements

Minimum Lot Area	1 acre
Maximum Building Coverage	35%
Maximum Lot Coverage	50%

Yard Requirements

Minimum Front Yard Depth	35 feet
Minimum Side Yard	25 feet
Minimum Rear Yard	25 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be ninety (90) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 25 Buildings

The following requirements apply to buildings constructed in the R-2 District:

Maximum Building Height

Single Family	2 stories not to exceed 35 feet
Two-Family	3 stories not to exceed 40 feet
Multiple Family	3 stories not to exceed 40 feet

Minimum Floor Area

One Story Dwelling	800 square feet
Two Story Dwelling	720 square feet main floor
Other Dwellings	500 square feet per unit
Accessory Building (maximum floor area)	1200 sq. feet

§ 26 RESERVED

SEE ZONE R-2 GRAPHIC

Article V- AR-1 Agriculture/General Residential District

§ 27 Purpose

The intent of this District is to promote and encourage continued agricultural use, to protect the rural character of the Town, and help preserve valuable agricultural lands. Residential development, including a mixture of single- and two-family housing, is encouraged as well provided that development of such does not negatively impact agricultural operations as the first and foremost use for this District. Subdivision of lands should utilize conservation subdivision, clustering, or other such methods to protect sensitive resources and agriculture.

§ 28 Permitted Uses and Structures

The following are permitted uses:

- (1) Single family dwelling
- (2) Two family dwelling
- (3) Agricultural operations
- (4) Wildlife sanctuaries
- (5) Small-scale (Tier 1) solar energy systems
- (6) Commercial-scale (Tier 2) solar energy systems
- (7) Seasonal work housing
- (8) Pole barns or other enclosed structures for use for storage or in connection with an agricultural operation but not for commercial nonagricultural businesses. Such structures shall not contain living space nor be used for residential space.

§ 29 Accessory Uses

The following are the accessory uses, building and structures permitted in the AR-1 District.

- (1) No more than one (1) commercial vehicle over one (1) ton capacity, except when involved in an agricultural operation, shall be parked over night.
- (2) Signs subject to the provisions of Article XVI – Sign Restrictions.
- (3) Satellite television receiving antennas subject to the provisions of Article XXI – Supplemental Regulations.
- (4) Fences, walls and hedges subject to the provisions of Article XXI - Supplemental Regulations.
- (5) Outdoor storage of trailers (camper, boat, utility, etc.), cars, and other recreational vehicles shall be limited to those currently licensed/registered and owned by occupant of premises for personal use.
- (6) Personal carport/garage, storage, or utility shed.

- (7) Seasonal roadside farm stands for the sale of farm products produced on premises.

§ 30 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII – Site plan Review:

- (1) Multi-family dwelling
- (2) Assisted living; group home; nursing home
- (3) Park (public)
- (4) Public safety facility
- (5) Religious institution
- (6) Public and semipublic facility
- (7) Essential facility
- (8) Daycare center
- (9) Greenhouse
- (10) Bed and breakfast
- (11) Veterinary Facility
- (12) Wind energy facility (Ref: local law# 3 2010)

§ 31 Special Use Permits

The following are special permitted uses subject to the conditions outlined Article XIII Special Permits:

- (1) Commercial kennels, grooming and related animal care (non-medical)
- (2) Extraction of sand, gravel and other materials
- (3) Quarry
- (4) Lumber yards
- (5) Small-scale (Tier 1) solar energy systems
- (6) Commercial-scale (Tier 2) solar energy systems
- (7) Agribusiness or agritourism
- (8) Private clubs, club houses, athletic-recreational facilities; golf course
- (9) Brewery, distillery, & winery, including tasting rooms and sit-down dining

§ 32 Lot, Area and Yard Requirements

The following lot, area and yard requirements apply to the AR-1 District: **Lot Requirements**

Minimum Lot Frontage 300 feet

Area Requirements

Minimum Lot Area 3 acres

Maximum Building Coverage 35%

Maximum Lot Coverage 50%

Yard Requirements

Minimum Front Yard Depth 35 feet

Minimum Side Yard 25 feet

Minimum Rear Yard 75 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be one hundred twenty (120) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 33 Buildings

The following requirements apply to buildings constructed in the AR-1 District

Maximum Building Height

All uses 40 feet

Minimum Floor Area

One Story Dwelling 900 square feet

Two Story Dwelling 720 square feet

Other Dwellings 500 square feet per unit

Accessory Building (maximum floor area) 1,200 sq. feet

§ 34 RESERVED

SEE ZONE AR-1 GRAPHIC

Article VI - C-1 -Tourism Commercial District

§ 35 Purpose

The purpose of the C-1 District is designed to provide for the development of commercial areas within the Town to serve residents as well as provide businesses attractive to visitors in order to stimulate economic development. Site and building design of commercial uses shall incorporate elements that complement or improve the character of the surrounding area in terms of building facades, pedestrian amenities, landscaping, lighting, appropriately-scale signage, access management, etc.

§ 36 Permitted Uses and Structures

The following are permitted uses in the C-1 District:

- (1) Single family dwelling
- (2) Small-scale (Tier 1) solar energy systems
- (3) Commercial-scale (Tier 2) solar energy systems

§ 37 Accessory Uses

The following are the accessory uses, building and structures permitted in the C-1 District:

- (1) Enclosed structures for storage of products, equipment, materials, merchandise or vehicles incidental or accessory to the principal use. Outdoor storage (non-retail sales) shall be screened.
- (2) Carport, garage, storage or utility shed
- (3) Signs subject to the provisions of Article XVI – Sign Restrictions.
- (4) Satellite television receiving antennas subject to the provisions of Article XXI – Supplemental Regulations.
- (5) Fences, walls and hedges subject to the provisions of Article XXI - Supplemental Regulations.
- (6) Pool house, swimming pool (private).
- (7) Private parking garages for employee/business use.

§ 38 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII – Site plan Review:

- (1) Assisted living
- (2) Nursing home
- (3) Park (public)
- (4) Public safety facility
- (5) Religious institution

- (6) Cemetery
- (7) Funeral home
- (8) Private schools (Nursery-12)
- (9) Public and semipublic facilities
- (10) Essential facility
- (11) Hospital, medical clinic, sanitarium
- (12) Private clubs, club houses, athletic and recreational facilities, golf course
- (13) Daycare center
- (14) Greenhouse
- (15) Bar
- (16) Restaurant, Dine-In
- (17) Bed and breakfast, lodging house
- (18) Financial institution
- (19) General business office
- (20) Dance, art, music, photo studio
- (21) General retail and personal service
- (22) Professional offices

§ 39 Special Use Permits

The following are special permitted uses subject to the conditions outlined in Article XIII - Special Permits:

- (1) Library
- (2) Commercial kennels, grooming and related animal care (non-medical)
- (3) Restaurant, Drive-thru
- (4) Equipment sales and rental
- (5) Wholesale distribution warehouse and mini warehouse
- (6) Veterinary Facility
- (7) General Contractors
- (8) Small Scale Shopping Center
- (9) Brewery, distillery, & winery, including tasting rooms and sit-down dining

§ 40 Lot, Area and Yard Requirements

The following lot requirements apply to the C-1 District:

Lot Requirements - RESIDENTIAL

Minimum Lot Frontage 120 feet

Area and Yard Requirements

All buildings intended for residential use shall comply with the area and yard requirements of the AR-1 district.

Lot Requirements – NON-RESIDENTIAL

Minimum Lot Frontage 40 feet

Area Requirements

Minimum Lot Area 4,000 square feet

Maximum Building Coverage 50%

Maximum Lot Coverage 80%

Yard Requirements

Minimum Front Yard Depth Average front yard depth of building(s) within 100 feet or 5 feet whichever is less but in no case more than one (1) foot larger than either of the front yard depths of buildings on the two adjacent lots.

Minimum Side Yard 0 feet (abutting non-residential district)
OR
Same as the minimum side yard for abutting district (if residential district)

Minimum Rear Yard 10 feet (abutting non-residential district)
OR
Same as the minimum rear yard for abutting district (if residential district)

§ 41 Buildings

The following requirements apply to buildings constructed in the C-1 District:

Maximum Building Height

Non-residential uses 40 feet

Residential uses Comply with R-2 District

Floor Area

Non-residential uses	30% FLOOR AREA RATIO MAX.
Two-story non-residential use	720 square feet
Residential uses	Comply with R-2 District

§ 42 RESERVED SEE ZONE C-1 GRAPHIC

Article VII - C-2 Highway Business District

§ 43 Purpose

The C-2 District is established to encourage uses that are primarily accommodated and orientated to the automobile. Uses in this District shall incorporate building and site design elements that complement or improve the character of the surrounding area while minimizing potential environmental impacts. Though car-oriented, uses should employ access management techniques to limit expansive parking or driveways where feasible as well as pedestrian facilities and connections.

§ 44 Permitted Uses and Structures

The following are permitted uses:

- (1) Forestry, nursery, orchards
- (2) Library
- (3) Small-scale (Tier 1) solar energy systems
- (4) Commercial-scale (Tier 2) solar energy systems

§ 45 Accessory Uses

The following are the accessory uses, building and structures permitted in the C-2 District:

- (1) Enclosed structures for storage of products, equipment, materials, merchandise or vehicles incidental or accessory to the principal use. Outdoor storage (non-retail sales) shall be screened.
- (2) Signs subject to the provisions of Article XVI – Sign Restrictions.
- (3) Satellite television receiving antennas subject to the provisions of Article XXI – Supplemental Regulations.
- (4) Fences, walls and hedges subject to the provisions of Article XXI - Supplemental Regulations.
- (5) Private parking garages for employee/business use

§ 46 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII- Site Plan Review:

- (1) Assisted living

- (2) Nursing home
- (3) Park (public)
- (4) Public safety facility
- (5) Religious institution
- (6) Cemetery
- (7) Funeral home
- (8) Private schools
- (9) Public and semi-public facilities
- (10) Essential facility
- (11) Vehicle parking and storage facility
- (12) Hospital, medical clinic, sanitarium
- (13) Private clubs, club houses, athletic and recreational facilities, golf courses
- (14) Daycare center
- (15) Veterinary Facility
- (16) Brewery, distillery, & winery, including tasting rooms and sit-down dining
- (17) Bar
- (18) Restaurant, Dine-In
- (19) Bed and breakfast, lodging house
- (20) Hotel, motel, motor court
- (21) Financial institution
- (22) General business office
- (23) Contractors
- (24) Dance, art, music, photo studio
- (25) Large Shopping center
- (26) General retail and personal services

§ 47 Special Use Permits

The following are special permitted uses subject to the conditions outlined in Article XIII - Special Permits:

- (1) Commercial kennels, grooming and related animal care (non-medical)

- (2) Restaurant with drive-thru
- (3) Equipment sales, rental and service
- (4) Recreational vehicle, recreational mobile home, and boat sales
- (5) Motor vehicle service station
- (6) Automobile sales (new and used)
- (7) Lumber yards
- (8) Wholesale distribution warehouse and mini warehouse
- (9) Veterinary Facility
- (10) Medical marijuana dispensary

§ 48 Lot, Area and Yard Requirements

The following lot requirements apply to the C-2 District:

Lot Requirements

Minimum Lot Frontage 50 feet

Area Requirements

Minimum Lot Area 5,000 square feet

Maximum Building Coverage ????

Maximum Lot Coverage 80%

Yard Requirements

Minimum Front Yard Depth Average front yard depth of building(s) within 100 feet or 5 feet whichever is less but in no case more than 1 foot larger than either of the front yard depths on buildings on the two adjacent lots

Minimum Side Yard 0 feet (abutting non-residential district)
OR
Same as the minimum side yard for abutting district (if residential district)

Minimum Rear Yard 10 feet (abutting non-residential district)
OR
Same as the minimum rear yard for abutting district (if residential district)

§ 49 Buildings

Maximum Building Height

Non-residential uses	40 feet
Residential uses	Comply with R-2 District
Floor Area	
Non-residential uses	30% FLOOR AREA RATIO MAX.
Two-story non-residential use	720 square feet
Residential uses	Comply with R-2 District

§ 50 RESERVED

SEE ZONE C-2 GRAPHIC

Article VIII- CR Commercial Residential District

§51 Purpose

The purpose of the C-R District is to promote a mix of uses that include residential, retail and service uses which are catered to and support residents and visitors. Uses within this District shall be developed in such a manner to protect and enhance the adjacent local neighborhood(s) by encouraging aesthetically appealing building and site design that conforms to, rather than detracting from, adjacent buildings and uses, including pedestrian-scale features, landscaping, appropriate selection of building materials, and other such elements. Access management strategies shall be incorporated to provide safe ingress and egress and provide facilities for pedestrians and vehicles alike - strip-style design and development is prohibited.

§52 Permitted Uses and Structures

The following are permitted uses:

- (1) Single family dwelling
- (2) Two family dwelling
- (3) Forestry, nursery, orchards
- (4) Wildlife sanctuaries
- (5) Small-scale (Tier 1) solar energy systems
- (6) Commercial-scale (Tier 2) solar energy systems

§ 53 Accessory Uses

The following are the accessory uses, building and structures permitted in the C-R District:

- (1) Carport, garage, storage or utility shed
- (2) Trailer (camp, boat, utility)
- (3) Pool house, swimming pool (private)

§ 54 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII- Site Plan Review:

- (1) Assisted living
- (2) Nursing home
- (3) Park (public)
- (4) Public safety facility
- (5) Religious institution
- (6) Cemetery
- (7) Funeral home
- (8) Private schools
- (9) Public and semi-public facilities
- (10) Essential facility
- (11) Vehicle parking and storage facility
- (12) Hospital, medical clinic, sanitarium
- (13) Private clubs, club houses, athletic and recreational facilities, golf courses
- (14) Daycare center
- (15) Veterinary Facility
- (16) Brewery, distillery, or winery
- (17) Bar
- (18) Restaurant
- (19) Bed and breakfast, lodging house
- (20) Hotel, motel, motor court
- (21) Financial institution
- (22) General business office
- (23) Dance, art, music, photo studio
- (24) Shopping center
- (25) General retail and personal services
- (26) Greenhouse

§ 55 Special Permitted Uses

The following uses are permitted only by a special use permit requiring a hearing and site plan review.

- (1) Library
- (2) Commercial kennels, grooming and related animal care (non-medical)
- (3) Restaurant
- (4) Equipment sales, rental and service
- (5) Wholesale distribution warehouse and mini warehouse

§ 56 Lot, Area and Yard Requirements

Lot Requirements

Minimum Lot Frontage 120 feet

Area Requirements

Minimum Lot Area 21,780 square feet (with water or sewer)

Maximum Building Coverage 35%

Maximum Lot Coverage 50%

Yard Requirements

Minimum Front Yard Depth Average front yard depth of building(s) within 100 feet or 5 feet whichever is less but in no case more than 1 foot larger than either of the front yard depths on buildings on the two adjacent lots

Minimum Side Yard 25 feet (abutting residence on each side)
12.5 feet (abutting commercial on each side)
25 feet (abutting commercial or residential on only one side)

Minimum Rear Yard 25 feet

§ 57 Buildings

Maximum Building Height

Single-family/two-story 35 feet

Two-family/three-story 40 feet

Commercial uses 40 feet

§ 58 RESERVED

SEE ZONE M-1 GRAPHIC

Article IX- M High-Tech/Industrial District

§ 59 Purpose

This District is intended to encourage a range of industrial and high-tech businesses along with associated administrative offices primarily for heavy commercial and industrial uses. The activities of these types of businesses should not constitute a significant fire hazard, emit smoke, cause glare, create excessive noise, odor or dust or in any other way constitute a nuisance to be detrimental to neighboring properties. It is generally understood that business operations within this District may be more intensive in nature and operate at atypical hours; therefore, adequate buffering, screening, and other such measures are to be utilized to minimize environmental and aesthetic impacts in the Town of Dunkirk.

§ 60 Permitted Uses and Structures

The following are permitted uses:

- (1) Public Safety Facility
- (2) Executive or administrative offices
- (3) Engineering, architectural and design services
- (4) Computer programming and other software services
- (5) Small-scale (Tier 1) solar energy systems
- (6) Commercial-scale (Tier 2) solar energy systems

§ 61 Accessory Uses

The following are the accessory uses, building and structures permitted in the M District:

- (1) Enclosed structures for storage of products, equipment, materials, merchandise or vehicles incidental or accessory to the principal use. Outdoor storage (non-retail sales) shall be screened.
- (2) Signs subject to the provisions of Article XVI – Sign Restrictions.
- (3) Satellite television receiving antennas subject to the provisions of Article XXI – Supplemental Regulations.
- (4) Fences, walls and hedges subject to the provisions of Article XXI - Supplemental Regulations.
- (5) Private parking garages for employee/business use.

§ 62 Site Plan Review

The following uses are permitted subject to site plan review as outlined in Article XII- Site Plan Review:

- (1) Park (public)
- (2) Essential facility

- (3) Contractors Yards
- (4) Equipment sales, rental and service
- (5) Light Manufacturing
- (6) Laboratories and related facilities for research, experimentation, testing and product development when conducted entirely within a building
- (7) Office buildings for general purposes
- (8) Research and development and light manufacturing support by research and development.
- (9) Educational facilities

§ 63 Special Use Permits

The following uses are permitted only by a special use permit requiring a hearing and site plan review.

- (1) Recreational vehicle, mobile home and boat sales
- (2) Motor vehicle service station
- (3) Automobile sales; used and new
- (4) Heavy Manufacturing
- (5) Extraction of sand, gravel and other materials
- (6) Lumber Yards
- (7) Wholesale distribution, warehouse and mini warehouse
- (8) Utility-scale (Tier 3) solar energy systems
- (9) Tier 2-Utily Battery Energy Storage Systems
- (10) Adult bookstore, theater, exotic dancing

§ 64 Lot, Area and Yard Requirements

Lot Requirements

Minimum Lot Frontage 100 feet

Area Requirements

Minimum Lot Area 10,000 square feet

Maximum Lot Coverage 80%

Yard Requirements

Minimum Front Yard Depth 50 feet

Minimum Side Yard	25 feet (abutting non-residential)
	50 feet (abutting residential uses or districts)
Minimum Rear Yard	25 feet

§ 65 Buildings

Maximum Building Height	40 feet
Maximum Floor Area	30%

§ 66 RESERVED

SEE ZONE X-X GRAPHIC

Article X- SBO - Scenic Byway Overlay District

§67 Purpose

The SBO - Scenic Byway Overlay District is intended to protect the high scenic value of the Great Lakes Seaway Trail to preserve and enhance its value and to assure the exclusion of incompatible uses. The SBO District implements the policies of local community plans, County or regional plans, and the Great Lakes Seaway Trail Corridor Management Plan. The Seaway Trail has been identified as an important scenic and visual resource and should be protected. The SBO District is developed as a waterfront protection zone that recognizes the significance of beaches, bluffs, erosion control, shoreline protection and the overall scenic quality of the corridor.

§ 68 Application

This overlay applies to all properties and uses with property frontage along the Great Lakes Seaway Trail; in any underlying district where the overlay district applies, limitations and standards contained in this Article shall apply. In the event of conflicting provisions of such a combined district, the requirements of the Overlay District shall take precedence over the requirements of the underlying zone. Uses permitted in the Overlay district, must in each instance, be in compliance with those uses permitted by the applicable underlying district regulations and any other district regulations.

§ 69 Uses Permitted

All uses permitted, with the exception of single family residential, in the underlying zone are subject to the review and approval of the Town Board as required in this Chapter and will be evaluated against regulations of this Chapter. Single family residential uses are subject to the provisions of the Development Standards of this Article.

§ 70 Corridor Standards

The following Corridor Standards shall apply:

- 1) the natural and aesthetic aspect of the site shall be retained and incorporated into all development plans;

- 2) water courses, wetlands and wildlife habitats shall be maintained and protected where feasible;
- 3) developments shall be of a design which acts to preserve scenic vistas and viewpoints and to minimize any detrimental impact to open views and vistas;
- 4) all architectural elements shall be of a design, color and material that blends and enhances the surrounding scenic viewshed and the existing architectural scheme.

§ 71 Roadway Design Standards

The following Roadway Design Standards shall apply:

- 1) streets and highways shall be designed in a manner which acts to minimize the adverse visual and physical impacts the roadway will have on the scenic corridor;
- 2) scenic turnouts shall be provided at appropriate vistas or viewpoint locations;
- 3) pedestrian and bicycle trails shall be included in conformity with the Region's Comprehensive Plan and Local Waterfront Revitalization Program;
- 4) all roadways which cross major drainage courses shall be grade separated from trails and greenbelts established in conjunction with these features in such a manner as to permit unencumbered use of the trails and greenbelts;
- 5) access points and curb cuts shall be limited along the scenic highway.

§ 72 Lighting Standards

The following Lighting Standards shall apply:

- 1) lighting within the Overlay District shall adhere to the lighting regulations of the underlying zone;
- 2) all lighting shall be designed and located in a manner which does not disturb the scenic value or other public interests included within the scenic corridor.

§ 73 Utility Standards

The following Utility Standards shall apply:

- 1) where practical, all new utilities, including the linkage between main line and structures, shall be underground.

§ 74 Grading Standards

The following Grading Standards shall apply:

- 1) siting and location of roads, buildings and other structures shall be engineered to minimize grading and to retain existing landforms and characteristics in a natural state;
- 2) development projects shall be designed to utilize the natural grade rather than graded building pads;
- 3) where natural grade and cut/fill slopes meet, there shall be a gradual transition from the graded slope to the natural configuration consistent with the topography of within the area.

§ 75 Vegetation Standards

The following Vegetation Standards shall apply:

- 1) landscape plans shall attempt to incorporate existing on-site trees and shrubbery into the landscaping scheme;
- 2) erosion retardant vegetation shall be utilized on all cut/fill slopes; such vegetation should be compatible with the surrounding natural vegetation;
- 3) native plant material should be utilized to the greatest extent possible;
- 4) tree species to be planted within a given corridor should be consistent with other tree species within the area.

§ 76 Signage Standards

The following Signage Standards shall apply:

- 1) all signs shall conform to the regulations of this Chapter;
- 2) all signs shall be located in a manner which does not disturb the scenic value or other public interests included within the scenic corridor.

Part III- Regulations Applying to all Districts

Article XI - Non-Conforming Uses

§ 77 Purpose

Within the districts established by this Chapter or any subsequent amendments, there exists lots, structures, uses of land and characteristics of use which were lawful before this Zoning Law was enacted, but which would now be prohibited, regulated or restricted under terms of this Chapter including future amendments. The regulations are established to create cohesive neighborhood characters and the eventual elimination of non-conforming uses is desired. Regulations for the continuance, change in use, repairs and alterations, restoration, enlargements and extensions, discontinuance and non-conformance due to reclassification of zoning districts are established to:

- 1) permit these non-conformities to continue, but to minimize any adverse effect on the adjoining properties and development;
- 2) regulate their maintenance and repair;
- 3) restrict their rebuilding if substantially destroyed;
- 4) require their permanent discontinuance if not operated for certain periods of time;
- 5) require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the Region's Comprehensive Plan and Zoning Law.

§ 78 Continuation of Existing Uses

Except as provided in this Article, any use of land or a building or structure or part thereof existing at the time that this Chapter or any amendment hereto become effective may be continued as provided in this Article although such building or structure or use does not conform to the provisions of the district in which it is situated.

§ 79 Change of Use

A nonconforming use shall not be changed to another use, except:

- 1) in any R District, a nonconforming use may be changed to a use of a more restricted classification, including a conforming use.
- 2) In any C District or M District, a nonconforming use may be changed to a use in the same use group or a use of a more restricted classification, including a conforming use. This provision shall not apply to a nonconforming residential use.
- 3) In any M District, a nonconforming residential use may be changed to a conforming use,
- 4) Once changed to a conforming use or to a more restricted use, no use there after shall revert to a less restricted use.

§ 80 Repairs and Alterations

Normal maintenance of a building or other structure containing a nonconforming use shall be permitted, including nonstructural repairs and incidental alterations not extending the nonconforming use. No structural alterations shall be made in a building or other structure containing a nonconforming use except

- 1) when required by law;
- 2) to restore to a safe condition any building or structure declared unsafe by the Zoning Enforcement Officer;
- 3) to permit enlargements as provided in this Article.

§ 81 Restoration

No nonconforming building or other structure which has been damaged or destroyed by any means where the cost of repairs exceeds fifty percent (50%) or more of its fair sales value immediately prior to damage shall be rebuilt or repaired except in conformance with the regulations of this Chapter. In any reconstruction of a nonconforming building or structure, neither the floor area nor the cubical content shall be increased from the original,

In the event the Zoning Enforcement Officer estimate of the extent of damage or fair sales value is not acceptable to the applicant for the building permit to repair or reconstruct such building or structure, the extent of damage or fair sales value shall be determined by a board of three (3) arbitrators, one (1) of whom shall be named by the Town Board, one (1) by the applicant and one (1) by the first two (2) arbitrators named, in the event that the first two (2) arbitrators cannot agree upon a third member within

60 calendar days, the third arbitrator shall be named by the Town Board. A decision in which at least two

(2) arbitrators concur shall be deemed the official decision.

Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use of a nonconforming structure must be made within six (6) months of the occurrence, and the repair,

replacement or reconstruction must be completed within six (6) months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated and non-conforming structures shall be brought into conformance.

§ 82 Enlargements and Extensions

A nonconforming use shall not be enlarged or extended, except as follows. In any CorM District, any nonconforming use, other than dwellings, may be enlarged to an extent not exceeding twenty-five percent (25%), of the gross floor area devoted to such nonconforming use. In no case shall such enlargement extend beyond the lot occupied by such nonconforming use. When the total of all enlargements equals twenty-five percent (25%) of the gross floor area existing at the time such use became a nonconforming use, no further enlargement shall be permitted.

§ 83 Discontinuance

When a non-conforming use has been discontinued for a period of not less than six (6) months, the use shall not thereafter be reestablished and the future use shall be in conformity with the provisions of this Chapter.

Discontinuance of the active and continuous operation of a nonconforming use, or a part or a portion of the operation of the nonconforming use for a period of twelve consecutive months is construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations, if actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, then the abandonment shall be construed and considered to be completed within a period of less than six (6) months, and all rights to re-establish or continue such nonconforming use shall terminate.

§ 84 Prior Approved Construction

Nothing in this Article shall prevent the construction of a building for which a building permit has been issued for a building made nonconforming by this Chapter or subsequent amendments, provided that such building permit shall be void unless construction of such building shall have been diligently begun within six (6) months of the date of such permit and shall be completed within eighteen (18) months from the date such building was made nonconforming.

Article XII- Site Plan Review

§ 85 Purpose

Future development in the Town will influence the quality of life for all residents in Dunkirk. To ensure development conforms to the Town's Comprehensive Plan, the following procedures for site plan approval have been established.

§ 86 Required Site Plan Review

Unless otherwise provided and as regulated by the Town of Dunkirk Subdivision Law, site plan review and site plan approval shall be required for all uses, buildings and structures that require site plan review and approval as outlined in this Chapter. The Town Board shall act upon site plans following review and recommendations from the Planning Board and a public hearing. Fees outlined and adopted

by the Town will apply to all site plan reviews. Unless otherwise provided and as regulated by the Town's Subdivision Law, in all multi-family, commercial, industrial, open space, cluster and planned unit developments, as well as in any project requiring a zoning district amendment, a site plan approval shall be required:

- 1) for all new construction of structures other than one and two family units;
- 2) the erection or enlargement (over 20 percent of total floor space) of all buildings except one and two-family structures;
- 3) any change in use or intensity of use which will significantly impact the characteristics of the site, in the assessment of the Town Zoning Enforcement Officer and after careful review of this Chapter, in terms of parking, loading, access, drainage, utilities, traffic or other environmental impact for any commercial, industrial or multi-family use;
- 4) any use or structure in a flood hazard area;
- 5) all special permit, variance or rezoning applications.

§ 87 Procedure for Review and Approval

- 1) Sketch Plan/Pre-Application. Prior to submittal of a formal site plan and application, it is recommended that the applicant exercise their option to an informal preapplication conference with the Zoning Enforcement Officer at a minimum and may also involve the Chair of Planning Board/Zoning Board or a representative, a representative from the Town Board, any consultants or other parties as deemed necessary for the purpose of discussing the proposed project and identifying any concerns prior to incurring design costs. The Town Board may request the applicant submit a sketch plan as well. Consultant fees shall be reimbursed in accordance with Article XXIII.
- 2) Application Submittal. The application and appropriate fees for site plan review shall be submitted to the Zoning Enforcement Officer. The content of the site plan application package (application, plans, and any supporting information as noted in §88) shall be reviewed by the Zoning Enforcement Officer prior to filing and distribution to staff, the Planning Board and Town Board to ensure completeness. If the application is deemed incomplete, the package shall be returned to the applicant. For complete applications, the applicant shall submit ten (10) copies of all plans and supplementary information; additional copies may be requested for additional review agencies.
 - a. Distribution by the Zoning Enforcement Officer will include:
 - i. Highway Superintendent;
 - ii. Fire Department;
 - iii. Police Department;
 - iv. Planning Board - one per member;
 - v. Town Board - one per member;

- vi. Other review Agencies, as required or requested by the Planning Board (e.g. outside consultants). Consultant fees shall be reimbursed in accordance with Article XXIII.
 - b. Review agencies shall submit a report to the Planning Board seven (7) calendar days prior to the scheduled Planning Board meeting.
- 3) Planning Board Action. The site plan and supporting information shall be reviewed to ensure the plan is in conformance with this Chapter, the approved development plan, if one exists, and all other applicable laws. Within thirty (30) of calendar days of its receipt of a complete application for site plan approval, the Planning Board shall review the application, site plan and supporting data and, at a regular meeting of the Board, after determining that all requirements have been met, shall make a recommendation on the site plan to the Town Board to:
 - a. approve or;
 - b. approve with modifications or conditions or;
 - c. disapprove.
- 4) Town Board Action. The Town Board, upon receipt of the recommendations of the Planning Board on the site plan shall:
 - a. Environmental Review. Undertake a review as required under the State Environmental Quality Review Act (SEQRA), initially identifying the action and determining if a coordinated review is as necessary in accordance with SEQRA regulations. If chosen, the Town Board will declare its intent to act as Lead Agency and notify the other involved and interested agencies.
 - b. Public Hearing. Within sixty-two (62) of calendar days of its receipt of a complete application for site plan approval or renewal, the Town Board shall hold a public hearing; this time period may be extended by mutual consent of the applicant and Town Board.
 - c. County Referral. Notify County Planning as required under § 239-m of the General Municipal Law.
 - d. Determination. The Town Board's action shall be in the form of a written report of approval or disapproval of the site plan, giving due consideration to the Planning Board's recommendation(s). In approving the site plan, conditions limiting the use and the occupancy of the land or proposed buildings consistent with the Intent and purposes of this Chapter and other applicable laws may be imposed on the development. If the site plan is denied approval, the Town Board shall state its reasons for disapproval. Approval of any site plan shall remain in effect for a period of not more than twelve (12) months unless a successful application for a building permit has been made within that period. One six (6) month extension may be granted to obtain the building permit.
 - e. Performance Bond as Condition of Approval. For all commercial and industrial uses, the Town Board shall require, as a condition of site plan approval, the property owner to file a performance bond in such amount and form as determined by the Zoning

Enforcement Officer and Highway Superintendent to ensure that the proposed development is built in compliance with the approved plans.

§ 88 Submission of Site Plan and Additional Information

The site plan should include the following information, as deemed appropriate by the Zoning Enforcement Officer. The Zoning Enforcement Officer may waive requirements set forth in this section as deemed appropriate. The plan shall be prepared by a licensed engineer, architect, landscape architect or surveyor as appropriate:

- 1) application form, notes and other required written information;
- 2) title of drawings, including the name of the development, name, telephone number and address of applicant and the name of the person who prepared the drawing;
- 3) key plan, north point, professional stamp, scale (1" = 20' or other appropriate scale) and date;
- 4) zoning, land use and ownership of surrounding and adjacent properties, including all structures on adjacent and surrounding properties;
- 5) a boundary survey of the proposed development, plotted to scale and existing topographic features including contours, spot elevations, large trees, buildings, structures, streets, property lines, utility easements, rights of way and land use;
- 6) layout, number and dimensions of lots;
- 7) all lot dimensions including, but not limited to, lot frontage, lot area, building coverage, lot coverage, front yard, side yard, rear yard, building heights and floor area ratio, where applicable;
- 8) all improvement dimensions, including, but not limited to, access roads, snow removal/storage areas, parking areas, walkways, buildings, etc.;
- 9) existing and proposed streets, sidewalks and pedestrian paths immediately adjoining and within the proposed site and the names of all proposed streets;
- 10) location and dimensions of all parking, loading and stacking areas with access drive;
- 11) paving, including typical cross sections and profiles of proposed streets, pedestrian walkways and bike ways;
- 12) location, proposed use, height, building elevations, floor plans and finished floor elevations of all structures;
- 13) colors, materials, dimensions, access and rooftop plans of all structures;
- 14) location and proposed development of all open spaces, including parks, playgrounds, etc.;
- 15) existing and proposed watercourses, direction of flow and the impact on the watershed;

- 16) drainage plan showing existing and finished grades, stormwater management plan and the impact on the watershed;
- 17) water supply plan, including existing and proposed location of fire hydrants;
- 18) sewage disposal method;
- 19) landscape plan indicating location, type and size of existing trees and vegetation, identifying those to be preserved or removed as well as the location, type and size of trees, vegetation and amenities to be provided;
- 20) location, design and illumination field of lighting, fences and walls;
- 21) location and dimension of all signs as required in this Chapter;
- 22) garbage screening and enclosures;
- 23) methods of barrier free access;
- 24) applicable pollution control;
- 25) size and location of hazardous storage areas;
- 26) location of bus stops and shelters;
- 27) proposed easements, restrictions, covenants and provisions for home owners associations and common ownerships;
- 28) estimated construction schedule and phasing plan for buildings, earth work and landscaping;
- 29) Tentative budgeting and financing sources.

§ 89 Additional Information Requirements

In addition to the required site plan and supporting data indicated in Article XII - Site Plan Review, the Planning Board or Town Board may request, of a property owner or their agent, additional supporting data or plans deemed necessary and relevant to carry out its responsibility for site plan review and provided in this Chapter.

§ 90 Criteria for Review and Recommendations

In considering and acting upon site plan reviews and approvals, the Town Board shall consider the public health, safety, welfare and comfort & convenience of the public in general, the residents of the proposed development and the residents of the immediate surrounding area. The Town Board may prescribe such appropriate conditions and safeguards as may be required in order that the results of its action shall, to the maximum extent possible, further the following:

- 1) Compatibility - the character of proposed use is compatible with the surrounding neighborhood and in harmony with the Town's Comprehensive Plan and Subdivision Law.
- 2) Vehicular Access - the number of proposed access points are not excessive; all access points are adequate in width, grade alignment and visibility; access points are not located too close

to intersections or places of public assembly; and similar safety considerations are reviewed for all site plan approvals.

- 3) Parking - adequate off-street parking, queuing and loading spaces are provided to minimize the number of cars parked or standing on public roads.
- 4) Pedestrian Circulation - the interior circulation system is adequate to provide safe Accessibility to all parking areas and ensure adequate separation of pedestrian and vehicular traffic.
- 5) Landscaping and Screening - all parking, storage, loading and service areas on properties adjacent to residential areas are reasonably screened and the general landscaping of the site reflects the character of the neighborhood and surrounding area.
- 6) Natural Features - the proposed use is compatible with geologic, hydrologic and soil conditions of the site and adjacent areas and the existing natural scenic features are preserved to the greatest possible extent.
- 7) Public Facilities - the public facilities that service the proposed use, including water, sanitary sewer, drainage, roads and related facilities, parks and open space are adequate for the intended level of use.

§ 91 RESERVED

§ 92 RESERVED

§ 93 Site Plan Revisions

Property owners wishing to make any changes in an approved site plan shall submit a revised site plan to the Town Board for review and approval.

§ 94 RESERVED

Article XIII -Special Permits

§ 95 Purpose

Uses which require special permit approval have a special character that makes their establishment as a permitted or accessory use without prior review impractical and undesirable. This review shall be for the purpose of determining that each proposed use is, and will continue to be, compatible with surrounding existing and planned uses.

Unless otherwise provided, the special uses outlined in the zoning districts of this law shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards outlined in this Chapter. All such uses possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

§ 96 Application Procedure

The procedure outlined below allows the Town Board the opportunity to include special conditions as may be necessary to ensure the harmonious integration and compatibility of uses in the neighborhood and with surrounding areas. The Town Board shall act upon special permits following review and

recommendations from the Planning Board and a public hearing. The following applies to all special permitted use applications in the Town of Dunkirk:

- 1) A site plan for the proposed development of a site for a special permitted use shall be submitted with an application for a special permitted use. The plan shall show all requirements outlined for site plan approval in Article XII - Site Plan Review of this Chapter.
- 2) The application and appropriate fees shall be submitted to the Zoning Enforcement Officer. The applicant shall submit ten (10) of copies of all plans and supplementary information to the Zoning Enforcement Officer; additional copies may be requested for additional review agencies. Distribution by the Zoning Enforcement Officer will include:
 - 1) Highway Superintendent;
 - 2) Fire Department;
 - 3) Police Department;
 - 4) Planning Board;
 - 5) Zoning Enforcement Officer;
 - 6) Town Board- one per member;
 - 7) Other review Agencies, as required (e.g. County Planning Department).

Review agencies shall submit a report to the Planning Board seven (7) calendar days prior to the scheduled Planning Board meeting. The Planning Board shall review the application, site plan and supporting data and, at a regular meeting of the Board, after determining that all requirements have been met, shall make a recommendation to the Town Board to:

- 1) approve or;
- 2) approve with modifications or conditions or;
- 3) disapprove;

the special permit. The Town Board shall act upon the special permit giving due consideration to the Planning Board's recommendation.

- 3) Applications for special permits shall be acted upon by the Town Board following a public hearing.
- 4) Special permitted uses are subject to conditions set forth in Article XIII -Special Permits.

§ 97 Findings

In approving a special permit, the Town Board in the Town of Dunkirk must make the following findings:

- 1) The proposed use, building, structure or development is consistent with the intent of each land use zone, the Region's Comprehensive Plan and additional plans completed and adopted by the Town of Dunkirk.

2) Special permits may be authorized by the Town Board only upon satisfaction, in each instance, of the following conditions being considered:

- a) the general character, height and use of a structure or structures;
- b) the provision of surrounding open space and the treatment of the grounds;
- c) the structural integrity of the building;
- d) the provision of automobile parking or storage;
- e) the street capacity and uses as, in the opinion of the Town Board, may be necessary to safeguard public health, comfort and convenience to limit air pollution.

3) The proposed use or structure will not be detrimental to the public health, safety and welfare of the community.

§ 98 Additional Requirements

1) General Screening Requirements for special permitted uses include:

- a) Open storage areas, exposed machinery and outdoor areas used for the storage and collection of solid waste, shall be visually screened from roads and surrounding land uses. Suitable types of screening include opaque and semi-opaque fences of a height necessary to screen the intended use. Where planted hedges are proposed, plant species, size and layout should be developed to provide an effective screen within three years of the time of installation. Native and naturalized trees and shrubs shall be planted wherever possible.
- b) In locations where potential health or safety hazards may arise, such as solid waste storage/collection areas, a solid wooden fence, a minimum of six feet in height may be required to deter children and animals from entering the premises.
- c) Where new fencing would create a continuous surface greater than ten feet in length, the visual expanse of bare fence shall be minimized with plant grouping consisting of trees and shrubs as outlined Article XX- Landscaping Requirements.

2) Lighting

- a) Exterior lighting proposed for the site shall be planned, erected and maintained so the light is confined to the property and will not cast direct light or glare upon adjacent properties or public roads. The light source shall not be higher than 20 feet and shall not be directed onto adjacent properties or public roads. High intensity lighting shall not be permitted.

3) Drainage

- a) Surface water run-off shall be minimized and detained on site as long as possible and practical to facilitate ground water recharge. When available, municipal storm water sewers may be employed to handle excess run-off.
- b) if storm water can not be channeled into municipal storm water sewers, storm water run-off shall be detained on-site. In no case shall increased run-off due to development activity be directed onto

adjacent property. Techniques for delaying surface storm water run-off shall be developed to affect no additional run-off rate as a result of storms with a twenty-five year or less recurrence frequency.

c) The natural state of watercourses, swales or rights of way shall be maintained as much as possible. All drainage facilities shall be designed for a 100 year storm minimum. The Town Board may require facilities sized for more intensive storms should development conditions in the vicinity of the site warrant a greater degree of protection.

4) Erosion and Sediment Control

Where significant soil erosion or sediment deposition may occur as a result of the disturbance of the land, the Town Board may require that application for special permit be accompanied by an erosion and sediment control plan conforming to the standards and practices contained in the USDA Soil Conservation Service Engineering Field Manual (ESM) and the New York Guidelines for Urban Erosion and Sediment Control, or other erosion and sediment control manual recognized by the Highway Superintendent and the Town Board.

5) Adult Entertainment Uses

All adult entertainment uses shall require review and issuance of a special permit pursuant to the regulations outlined in this Article.

§ 99 Expiration

A special permit shall be deemed to authorize only one (1) special use and shall expire if the special permitted use shall cease for more than six (6) months.

Article XIV- Planned Unit Developments

§ 100 Purpose

Provision for the Planned Unit Development (PUD) District is included herein to permit the establishment of areas in which diverse uses may be brought together in a unified plan of development; this would include a mixture of commercial, office, residential and retail uses. This flexibility will lead to more creative design of development than what is currently allowed in the conventional zoning districts.

The PUD is further intended to promote:

- 1) the most appropriate use of the land;
- 2) a more efficient and economical arrangement of streets, utilities, buildings and open space;
- 3) the utilization of topography and other natural features to the best advantage of both aesthetic and conservation practices;
- 4) integration of all aspects all into one cohesive and compatible unit.

In Planned Development Districts, land and buildings may be used for any lawful purposes as determined by the Town Board subject to the following limitations and procedures.

§ 101 Uses

No uses, buildings or structures shall be allowed which are not in accordance with the Planned Unit Development approved scheme and the Town's Comprehensive Plan.

§ 102 Location

The Planned Unit Development District shall be applicable to any area of the Town of Dunkirk where the applicant can demonstrate that the characteristics of the development will satisfy the intent and objectives of this Article.

Where a Planned Unit Development is deemed appropriate, the rezoning of land to a Planned Unit Development District will replace all uses and dimensional specifications contained elsewhere in this Chapter.

§ 103 Minimum Area

Planned Unit Developments shall comprise not less than ten (10) acres. Public roads shall be permitted to divide such acreage provided that a minimum of 1 acre of contiguous land area must exist in any portion.

§ 104 Open Space

A minimum of 25% of the site shall be used as open space, including walkways, plazas, landscaped areas and recreation areas. Parking areas and vehicle access facilities shall not be considered in calculating open space and lands considered "undevelopable" due to the presence of wetlands, floodplains, steep slopes, or other constraints shall not encompass more than 25% of the calculation of open space.

§105 Common Areas

Common property in a Planned Unit Development is a parcel or parcels of land, together with improvements, the use of which is shared by the owners or occupants of the individual building sites. The landowner shall provide for and establish an organization for the ownership and maintenance of any common property. Such organization shall not be dissolved nor shall it dispose of any common property by sale or otherwise, with the exception that such land may be dedicated to the Town of Dunkirk for public use; the Town can refuse the dedication of land if deemed appropriate.

§106 Site and Structure Requirements

The Town Board shall approve a Planned Unit Development District only if it finds that the planned unit development will satisfy standards of this Chapter including the following:

- 1) The Planned Unit Development is an efficient and unified treatment of the development possibilities on the project site while remaining consistent with the Town's Comprehensive Plan. The Planned Unit Development shall make provisions for the preservation of natural or protected features such as streams and shorelines, ponds, wetlands, lakes, trees, grasses, wooded cover and rough terrain.
- 2) The Planned Unit Development must be compatible with the surrounding area. The development shall not unduly burden existing Town facilities and services.
- 3) The developer shall ensure that sufficient financing and capability are available to complete the project as presented.
- 4) The developer shall provide all necessary water and sewer facilities, storm drainage, highway access, paved service streets, parking and loading facilities, off-street lighting and

make reasonable provisions for utility service connections with adjoining properties and other ownerships.

- 5) The right of way and pavement widths for internal roads serving all development shall be adequate and sufficient in size, location and design to accommodate the maximum traffic, parking and loading needs of the development. There shall be adequate access for fire fighting equipment, police and other emergency vehicles. Such pavement shall meet all applicable Town standards.
- 6) All electric, telephone, cable television and similar equipment shall be installed underground in accordance with the New York State Public Service Commission Standards.
- 7) The gross residential density, measured over the entire tract, but exclusive of any land to be occupied by non-residential uses or public or quasi-public institutional or recreational facilities open to the general public, shall not exceed the density set forth in the underlying district or consistent with the comprehensive plan. Bonus density may be considered for outstanding development as deemed appropriate by the Town Board.
- 8) Permitted Uses. The following uses shall be allowed in a PUD provided that they do not adversely affect surrounding development and that they are in accordance with the purpose, intent, and objectives of this chapter.
 - i. Dwelling units in detached, semidetached, attached, clustered or multistoried structures or combinations thereof.
 - ii. Commercial uses, where such uses are scaled primarily to serve residents of the PUD, such as retail sales, personal services, and professional offices.
 - iii. Public and private institutional facilities
 - iv. Recreational facilities
 - v. Light industrial uses

§ 107 Application Procedure

The developer shall submit a preliminary plan of the proposed Planned Unit Development with the rezoning application. The preliminary plan shall be to scale and shall clearly illustrate the following:

- 1) various types of land uses required and the areas covered by each;
- 2) outline of the interior road system and all existing and proposed public or private right of ways and easements;
- 3) delineation of the various residential areas, if any, indicating the number and size of dwelling units by each housing type plus a calculation of the residential density;
- 4) area, location and degree of development of common open space with a statement of how the property will be maintained;

- 5) interior drainage system and how it is proposed to be connected to the drainage systems of adjoining areas;
- 6) if the Planned Unit Development is to be phased, a general indication of how the phasing is to proceed;
- 7) evidence, in the applicant's own behalf, demonstrating the developers competence to carry out the plan to completion and the developers awareness of the scope of such project, both physical and financial;
- 8) site plan in conformance with Article XII- Site Plan Review.

§ 108 Planning Board Recommendation

The Planning Board shall review the preliminary site plan and application package and, within thirty (30) calendar days of submission, shall submit it to the Town Board along with its recommendations that the Planned Unit Development be approved, modified or disapproved.

If, in any such evaluation, the Planning Board finds that any submission requirements, regulations, standards or criteria prescribed by this Chapter are inapplicable because of unusual conditions of the Planned Unit Development, or the nature and quality of the proposed design, it may recommend to the Town Board that adjustments in such regulations, standards or criteria be made.

A report to the Town Board shall include the following findings:

- 1) The proposal conforms to the Town’s Comprehensive Plan;
- 2) The development project meets the intent and objectives of the Planned Unit Development District;
- 3) The proposal is conceptually sound in that it meets community needs in the:
 - a. layout of the proposed roadway system, land use configuration, open space and drainage systems;
 - b. scale and relationship of the elements of the plan;
 - c. the proposed uses are of such location, size and character that, in general, they will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties;
- 4) There are adequate public facilities, services and utilities available or proposed to be made available to serve the development.

Should a recommendation be made to the Town Board to deny the Planned Unit Development, the Planning Board shall issue a statement which contains the reasons for the unfavorable recommendation. The Planning Board may also recommend further study of the preliminary site plan and re-submission after revisions or re-design.

§109 Rezoning Process

- 1) Application for establishment of a Planned Unit Development District shall be made to the Town Board. The Town Board shall refer the application to the Planning Board for consideration;

- 2) The Town Board shall hold a public hearing on the proposal, with public notice, as provided by law in the case of an amendment to this Chapter;
- 3) The Town Board may then amend this Chapter so as to define the boundaries of the Planned Unit Development District, but such action shall have the effect only of granting permission for development of the specific proposal, in accordance with this Chapter, within the area so designated with the specifications, plans and elevations submitted.
- 4) The Town Board shall hold a public hearing within sixty two (62) calendar days receipt of the application. Approval of the Planned Unit Development shall be noted on the Town's Zoning Map.

§ 110 Final Site Plan

The final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the Planning Board or Town Board. The final site plan shall conform to all requirements of Article XII - Site Plan Review. The rezoning shall not become effective until final site plan approval has been secured.

The application for final site plan approval shall be made within 12 (twelve) months from the date of the Town Board approval of the rezoning.

No construction or site improvement work may commence until final site plan approval has been granted. No building permits shall be issued for construction within a Planned Unit Development District until improvements are installed or performance bonds or other security is posted with the same procedures outlined in Article XII - Site Plan Review.

Article XV - Clustering Provisions

§ 111 Purpose

This Article provides for flexibility for residential development of unique or underutilized parcels of land. The application of this Article to future housing development will lead to more creative design solutions to ensure the character of the community is protected. The purpose of the cluster development is to:

- 1) permit a procedure for development which will result in improved living and working environments;
- 2) promote more flexible subdivision layout without increasing densities;
- 3) encourage a variety of types of residential dwellings;
- 4) encourage ingenuity and originality to subdivision and site design;
- 5) preserve open space to serve recreational, scenic, sensitive natural resources, and public service purposes;

§ 112 Authority

- A. The Town Board of the Town of Dunkirk is authorized to modify applicable provisions of this Chapter simultaneously with the approval of any plat within the Town subject to the conditions in this Article in accordance with §278 of New York State Town Law. Cluster housing shall be

permitted within all zoning districts as defined in this Chapter. The Town Board may require the use of the cluster concept when one or more of the following conditions exist:

- (1) Important ground or surface waters, wetlands, floodplains, steep slopes, unique or locally important natural or historical areas exist on the parcel.
- (2) The number or length of new roads or driveways obtaining access from existing roads will be reduced.
- (3) Agricultural soils of state or local importance exist on the parcel.
- (4) An active agricultural operation or cropland exists on the parcel.
- (5) Preservation of important views or community open space will be ensured.
- (6) The land to be developed is contiguous to a recreational area(s), parkland or permanently protected open space or has the potential to be converted to such uses.
- (7) The specific goals and policy recommendations of the Master Plan will be accomplished.
- (8) Significant environmental impacts identified through the State Environmental Quality Review Act (SEQR) may be mitigated.

§113 Clustering Requirements

The minimum development area for cluster housing shall apply to land areas of at least ten (10) acres.

§ 114 Density Transfer

- A. In each zone allowing cluster development, the lot requirements may be reduced from the lot requirements established in this Chapter as deemed acceptable to the Town Board. All such lot reductions shall be compensated for by an equivalent amount of land in cluster open space to be preserved and maintained for its scenic value, recreation or conservation purposes.
- B. In the approval of a cluster subdivision, in no case shall the maximum density specified for the applicable zone be increased, nor shall the other applicable regulations or use limitations for the zone be changed or modified.
- C. Nothing shall prevent the Town Board from requiring that ten (10) percent of the entire cluster housing subdivision be set aside or otherwise permanently dedicated for park and recreation purposes and provisions for maintenance of said area shall be established to the satisfaction of the Town Board. Under certain conditions, the Town Board may require the payment of a recreational fee per dwelling unit rather than the dedication of park land. In either instance, the park space or fee shall be in addition to the private land assembled in common as the result of the clustering process referred to in these regulations.
- D. The land set aside shall be provided in such a manner that the area is usable for recreation, continued agricultural use, or other such similar open space uses/activities. "Usable" land is otherwise developable but may contain no more than 20 percent of land that can otherwise not be developed due to feature restrictions, i.e., wetlands or floodplains. Where recreational and

Commented [JS1]: Clustering is a mechanism for promoting good use of land and preservation of sensitive resources. At the very least it should apply to any R or AG districts, but really it could apply everywhere...

Commented [JS2]: Provided the density (number) of dwellings proposed is not increased from a typical subdivision, I don't think there's a need for a minimum land area for this.

Commented [JS3]: This term is misleading for this section – clustering isn't density transfer, that is a different, though similar mechanism. Really this section is outlining the requirements for clustering (113 above).

Commented [JS4]: The intent here is we don't want the unusable land to be set aside and protected just because it can't be developed upon. Land set aside needs to be usable, but it can incorporate some sensitive/undevelopable lands, though to a much lesser extent. Flexibility.

other such uses are proposed, they shall be accessible to all residents of the subdivision or, where the land has been dedicated to the Town, to the general public.

E. Siting Guidelines. Within a cluster development, lots shall be laid out so that dwelling units will be located in a manner that carries out the goals of the Town's Master Plan and consistent with the purpose of this Chapter. The following siting guidelines are to be considered, when applicable, on a case-by-case basis by the Town Board:

- (1) On the least fertile soils for agricultural uses, and in a manner which maximizes the usable area remaining for such agricultural uses;
- (2) Within any woodland contained in the parcel, or along the far edges of the open fields (to reduce impact upon agriculture, to provide summer shade and shelter from winter wind and to enable new construction to be visually absorbed by natural landscape features);
- (3) To provide permanent protection for significant natural, historic or cultural features identified on the site;
- (4) To minimize the number of driveways with access to existing roads;
- (5) In such a manner that the common boundary between the house lots and any active farmland is minimized in length (to reduce potential conflicts);
- (6) In locations least likely to block or interrupt scenic vistas as seen from the public roadway(s) or other public vantage points;
- (7) In locations where the greatest number of units could be designed to take maximum advantage of solar heating opportunities; and
- (8) In cluster developments exceeding 20 dwelling units, the Planning Board shall consider the layout of smaller groupings, each having some open space immediately surrounding it, so that large concentrations of units with little or no differentiation can be avoided, and so that cluster development will be more compatible with the neighborhood in which it is located.

Commented [JS5]: Any other additional siting guidelines desired?

§115 Review Criteria

Cluster development shall be allowed only if evidence is presented to the Town Board which establishes:

- 1) that the proposed development will be in harmony with the general purpose, goals, objectives of the Town's Comprehensive Plan, this Chapter and Subdivision Regulations;
- 2) that the proposed building or use complies with all applicable regulations of this Chapter except as modified pursuant to the authority of this Article;
- 3) that the proposed building or use will not have a substantial impact upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare of Town residents;
- 4) that the proposed development will be served adequately by essential public facilities and services such as highways, roads, parking, sidewalks/trails, police and fire protection, drainage structures, refuse disposal, water & sewers and schools;
- 5) that the proposed development will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance.

§116 Open Space Requirements

At least 25% of the total acreage is to be devoted to common, permanent open space. The open space shall be reserved and maintained as a natural area, active agricultural land, landscaped park or recreational space. This 25% is exclusive of the 10% dedication of land for park and recreation purposes or recreational fees paid to the Town.

If cluster open space is not dedicated to the Town, the land shall be protected by legal arrangements, satisfactory to the Town Board, sufficient to assure its maintenance and preservation for whatever purpose intended. Covenants or other legal arrangements shall specify:

- 1) ownership of the cluster open space;
- 2) method of maintenance;
- 3) responsibility for maintenance;
- 4) maintenance taxes and insurance;
- 5) compulsory membership and compulsory assessment provisions;
- 6) guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Town Board;
- 7) any additional specifications deemed necessary by the Town Board.

All cluster open space shall be considered taxable unless deeded to the Town of Dunkirk.

§117 Lot, Area, Yard and Building Requirements

The lot/building requirements will be determined in conjunction with site plan review of the development.

SEE TYPICAL DEVELOPMENT ILLUSTRATIONS GRAPHIC

Article XVI - Sign Regulations

§ 118 Purpose

The purpose of this Article is to provide standards for the regulations of the height, size, location and appearance of signs to:

- 1) protect and enhance property values and neighborhood character;
- 2) protect public and private investment in buildings and open spaces;
- 3) preserve and improve the appearance of the Town of Dunkirk as a place to live and work and as an attraction to visitors;
- 4) encourage sound signing practices to aid business and provide information to the public;
- 5) prevent excessive and confusing sign displays;
- 6) reduce hazards to motorists and pedestrians;

Commented [JS6]: Eden example provided in earlier meetings:
[LF1213293.pdf \(ecode360.com\)](#)

- 7) protect the public health, safety and general welfare.

The regulations outlined shall apply to signs in all districts in the Town of Dunkirk.

§ 119 Exceptions

For the purposes of this law, the term "sign" does not include:

- 1) signs erected and maintained pursuant to any governmental function;
- 2) integral, decorative or architectural features of building, except letters or trademarks;
- 3) signs, not exceeding eight (8) square feet per face, directing and guiding traffic and parking on private property and bearing no advertising. The location shall be approved as a part of a site plan or special permit;
- 4) signs, not exceeding one (1) square foot per face advertising the cost of gasoline when attached to a gasoline dispenser or service island canopy;
- 5) directional signage erected by the Town of Dunkirk.

§ 120 General Provisions

Signs are an accessory use only; signs are not permitted as a principal use in any sign in the Town of Dunkirk. Sign shall be erected or maintained in accordance with the following:

- 1) Illumination - Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and no sign, other than that part used to report time, temperature, stock market and/or news reports, shall be illuminated by or contain flashing, intermittent, rotating or moving light or lights. In no event shall any illuminated sign or lighting device be placed so as to permit the beams and illumination to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance – full cut-off luminaries are recommended and may be required at the discretion of the Town Board. The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced. Overhead wires or exposed wires on a sign or its supporting members are prohibited.
- 2) Signs on Public Property - No private sign shall be placed in any street right of way or on other public property. No sign shall be allowed in the triangle formed from measuring back on both streets from an intersection right of way a minimum of nine (9) feet or more as determined by the Town Board in accordance with any applicable standards, including, but not limited to the American Association of State Highway and Transportation Officials (AASHTO) and a height of 3 ½ feet above grade.
- 3) Roof Signs - No signs, except such direction devices as may be required by the Federal Aeronautical Authorities, shall be placed, inscribed or supported upon or above the height part of the facade line.
- 4) Traffic Safety - No sign shall create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices.

5) Maintenance of Signs - Every sign shall at all times be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Town Zoning Enforcement Officer shall require compliance with all standards of this chapter. If the sign does not comply with adequate safety standards, the sign shall be removed at the property owner's expense.

No person shall maintain, or permit to be maintained on any premise owned, occupied or controlled by them, any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises. Where applicable, signs shall be supported by structures that are designed to resist wind pressures, dead and lateral loads in accordance with NYS Building Code; supports shall be reviewed as part of sign design.

6) Abandoned Signs - Except as otherwise provided in this Chapter, any sign which is located on property which becomes vacant and unoccupied for a period of six (6) months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises.

7) Unlawful Signs - No person shall erect on any premise owned or controlled by them or use any sign which does not comply with the provisions of this Chapter.

8) Off Site Signs - No off site signs shall be permitted in the Town of Dunkirk.

9) Awning Signs - The area of awning signs shall be included in calculations for allowed signage which shall also include the sides it print/graphics are included. Such signs shall be permitted on first floors only and no more than two awnings are allowed per business.

10) Temporary Signs - All temporary signs, including but not limited to, banners, pennants, spinners, etc., are prohibited in the Town of Dunkirk except as described in this Article.

Commented [JS7]: I don't think this is needed here as it is covered in 122.

11) Distance from Property Line - No attached sign shall extend within a street or road property line unless said line is the building line, in which case, signs may extend over the street or road property line for a distance not exceeding four (4) feet.

12) Freestanding Signs - No freestanding sign larger than eight (8) square feet shall have less than three (3) feet of open space at the bottom that extends the entire length. Bases or support structures for freestanding signs shall be designed to complement the sign and/or the use it is intended to service, utilize durable materials, and shall have a landscaped area at the base to the greatest extent practicable. Maintenance of such areas shall apply so the sign is not obscured and dead or decaying plant material replaced as necessary.

13) Height - No sign shall exceed twenty-five (25) feet in height or extend above the facade of the building to which it is attached.

Commented [JS8]: Roof signs aren't permitted, so is this just intended to refer to ground-mounted, freestanding signs? Either the "to which it is attached" portion needs to be removed or there should just be a maximum height established for everything.

14) Building Advertising - Advertising displayed upon a building or other surface shall be conforming with the regulations of this Article.

15) Non-Conforming Signs - Any non-conforming sign which is portable in nature shall be removed within one hundred eighty (180) calendar days of the effective date of this Chapter. Any non-conforming

Commented [JS9]: This can fall under temporary signs – if so, I don't think this is needed here (See 122).

sign painted, pasted or otherwise applied to a fence, wall or facade of a building shall not be repainted, restored or replaced.

16) Projecting Signs – Signs that are permanently attached to a building and extend more than six inches from the face of such building. The maximum area of such signs are four (4) square feet.

§ 121 Zoning District Sign Restrictions

1) Accessory signs in all zones- In all zones, the following signs shall be considered Accessory to the principal use of the premises on which they are located. Such sign may be illuminated only by a full cut-off, non-flashing light:

- a) A single sign not over two (2) square feet in area attached to a building or detached and located in the front yard for each dwelling unit described as a home occupation located on site.
- b) A single real estate sign not over twelve (12) square feet in area attached to a building or detached and located in front yard relating to sale, rental or lease of premises.
- c) Plaques or markers indicating that a building or property is an historic resource.
- d) One (1) sign indicating the name and address of the occupants of a dwelling, not exceeding two (2) square feet. An address sign shall not be permitted if a sign permitted for the office of a resident professional is in use.
- e) One (1) sign indicating the project name and the names of the architect, engineer, contractor and participation public and private governmental agencies and officials, placed on the premises where construction, repair or renovation is in progress, not exceeding thirty-two (32) square feet in face area, fifteen (15) feet in height nor located less than twenty-five (25) feet from the lot line and seventy-five (75) feet from any dwelling not within the project;
- f) On site directional signage.

2) R-1, R-2 and AR-1 Residential Zones- In all residential zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such signs may be illuminated only by a shielded, non-flashing light:

- a) A single sign not over twenty five (25) square feet in area attached to a building or detached and located in the front yard describing an apartment house or a conforming non-residential building or use.
- b) Vehicles bearing signs more than two (2) square feet in area shall not be permitted to park as a customary operation in a residential area so as to be visible from the street.
- c) One (1) bulletin board not exceeding twenty (20) square feet in area for a church or other institutional use.

3) C-1 and C-2 Zones - The following signs shall be permitted in the C-1 and C-2

Commercial Zones. Special requirements for signage related to adult entertainment shall follow the provision set forth:

Commented [JS10]: Changeable message board? Non-electronic?

a) Attached signs identifying uses or services on the premises, totaling one and one half (1.5) square feet in area for every foot of an occupant's building frontage to a maximum of two hundred (200) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Attached signs may be painted on or affixed to any wall of a building (projecting no more than six (6) inches from the face of such building), or signs composed of individual letters without a background may be located on the edge of a roof or wall on a flat roof or at the line of the eaves on other types of roof, but not projecting above the edge of the facade or wall or line of the eaves. The area of signs composed on individual letters without a background shall be taken as that enclosed by a series of lines joined to form a perimeter bounding all parts of the display. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a full cut-off, non-flashing light. Animated or revolving signs shall be prohibited. Signs projecting more than six (6) inches shall be considered projecting signs and subject to §120-16 above.

b) Detached signs shall not be permitted in the C-1 and C-2 Commercial Zones unless the following provisions are met:

i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed twenty five (25) feet above the ground;

ii) Detached signs shall be set back a minimum of five (5) feet from the street right of way;

iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty-five (25) feet from the street right of way;

iv) No detached signs shall be permitted to create a hazard or obstruction

v) Detached signs shall be limited in display surface area to a maximum of thirty (30) square feet per side of sign, with such sign area to be included within the two hundred (200) square feet overall maximum sign area permitted in the C-1 and C-2 Zones;

vi) Detached signs shall be limited in number to one (1) sign (single or double sided) per lot

vii) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.

4) M Zone- The following signs shall be permitted in the M zone.

a) Attached signs identifying uses or services on the premises, totaling one (1) square feet in area for every foot of an occupant's building frontage to a maximum of two hundred (200) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Attached signs may be painted on or affixed to any wall of a building (projecting no more than six (6) inches from the face of such building), or signs composed of individual letters without a background may be located on the edge of a roof or wall on a flat roof or at the line of the eaves on other types of roof, but not projecting above the edge of the facade or wall or line of the eaves. The area of signs composed on individual letters without a background shall be taken as that enclosed by a series of lines joined to form a perimeter bounding all parts of the display. Such signs shall not face an adjoining lot in a

Commented [JS11]: Ensure this does not conflict with the height regulations in 120-13 above.

residential zone and may be illuminated only by a full cut-off, non-flashing light. Animated or revolving signs shall be prohibited. Signs projecting more than six (6) inches shall be considered projecting signs and subject to §120-16 above.

b) Detached signs shall not be permitted in the M Zone unless the following provisions are met:

- i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed eight (8) feet above the ground;
- ii) Detached signs shall be set back a minimum of five (5) feet from the street right of way;
- iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty-five (25) feet from the street right of way;
- iv) No detached signs shall be permitted to create a hazard or obstruction to vehicular or pedestrian circulation or to interfere with traffic sight lines;
- v) All detached signs shall be fixed in place and of a permanent nature.

Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.

c) A maximum of two (2) signs on each lot identifying the name of the company and product or services rendered shall be allowed. These signs shall not exceed a surface area of one hundred (100) square feet in each sign and shall be located only on the face of the building or free-standing, within fifteen (15) feet of the ground level at the location of the sign. Illuminated signs shall be erected so as not to create a nuisance to abutting properties or safety hazards on adjacent public streets.

§ 122 Temporary or Portable Signs

1) A temporary or portable sign is defined as any movable sign not permanently attached to the ground, a building or other permanent fixture on a parcel of land; banners, pennants and spinners shall be considered temporary or portable signs. A sign on a registered motor vehicle is not defined as a sign within the meaning of this section; however, motor vehicles used solely as a temporary sign shall apply. Temporary or portable signs shall be used for the following purposes only:

- a) new business enterprises;
- b) celebration of the anniversary date of a new business enterprise;
- c) business enterprises which have lost the use of an existing sign by reason of fire or other catastrophe.

2) Temporary and portable signs shall be permitted only in the AR-1, C-1, C-2 and M zones. In no instance will they be permitted to be so located that they will interfere with the sight distance of traffic passing through a heavily traveled intersection, as determined by the Highway Superintendent and Zoning Enforcement Officer.

3) No temporary or portable sign shall be more than five (5) feet by eight (8) feet in size.

Commented [JS12]: Advertising signs?

4) Portable signs shall conform to the front yard setback requirement in as much as the signs shall not be allowed to encroach on the public sidewalk or the Town street right of way. Signs shall in no instance be placed within the public right of way so as to interfere with the sight distance at a heavily traveled intersection or with the free passage of pedestrians on the public sidewalk.

5) No permanent, temporary or portable sign shall be illuminated by flashing lights of any kind or color.

6) Temporary signs shall not be used for a period of time exceeding 30 days in a 90-day period.

§ 123 Window Signs

No signs erected or maintained on the window of a building shall occupy more than thirty percent (30%) of the area of said window.

§ 124 Political Signs

Temporary signs in support of a political party or candidate are permitted in all zones in the Town of Dunkirk. Signs may be erected up to three (3) weeks prior to the election and must be removed within seven (7) calendar days following the election. No political sign shall exceed thirty-two (32) square feet in size. No political signs shall be permitted in the public right of way or easements. A penalty for removal of signs that do not conform with these regulations may be imposed on the property owner.

Article XVII - Adult Entertainment Facilities

§ 125 Purpose

The operation of adult entertainment facilities may have serious operational characteristics and damaging effects upon their surroundings as a result of their siting and concentration within the facilities. Special regulations pertaining to these uses are necessary to ensure adverse effects will not contribute to the blighting/downgrading of the surrounding neighborhood. These regulations will help ensure that adverse effects on the public health, safety, morals, comfort, convenience and general welfare are mitigated.

The development and proliferation of adult entertainment facilities without .regulation as to siting and concentration may result in the deterioration of residential and business neighborhoods. If placed near schools and other youth related facilities, adult entertainment facilities may adversely effect upon the welfare and morals of minors residing within the Town of Dunkirk.

§ 126 Location of Adult Entertainment Facilities

The following provisions shall apply to the location of adult entertainment facilities:

- 1) adult entertainment facilities shall be permitted in C-2 Commercial Zones upon approval of a special permit;
- 2) no adult entertainment facilities shall be permitted within five hundred feet of any area zoned for residential use;
- 3) no adult entertainment use shall be permitted within one thousand feet of the following:

- a) a school;
- b) a religious institution;
- c) a public park or public recreation facility.

§ 127 Additional Sign Requirements

The following provisions shall apply to signs erected or maintained in connection with an "adult book store" or an "adult motion picture theater":

- 1) No off site signs shall be permitted.

§ 128 Public Display of Certain Matter Prohibited

Materials offered for sale from "adult news-racks" shall not be displayed or exhibited in a manner which exposes to the public view any pictures or illustrations depicting any "specified sexual activity" or any "specified anatomical area". Materials offered for sale or viewing at any adult entertainment facility shall not be displayed or exhibited in a manner which exposes any depiction of any "specified sexual activity" or any "specified anatomical area" to the view of persons outside the building or off the premises on which such store or theater is located.

§ 129 Restrictions Cumulative

The restrictions set forth in this Chapter are in addition to any other applicable provision of this Chapter. In the event of any conflict between any such provisions, the more restrictive shall apply.

Article XVIII - Flood Damage Prevention Regulations

§ 130 Purpose

Floodplain damage prevention regulations are established to regulate and standardize the protection of people and property from the hazards of development of the floodplain of Canadaway Creek and its tributaries. It is the purpose of this Article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- 1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- 2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- 3) control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood damages;
- 4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- 5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands and;
- 6) qualify and maintain for participation in the National Flood insurance Program. The objectives of this Article include:

- 1) protect the public health, safety and welfare of individuals potentially affected by flood hazards;
- 2) reduce the costs incurred by the community at large from inappropriate an unsuitable development located in the floodplain;
- 3) minimize the need for rescue and relief efforts associated with flooding;
- 4) minimize prolonged business interruptions;
- 5) minimize damage to public facilities and utilities;
- 6) help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- 7) provide that developers are notified that property is in an area of special flood hazard and;
- 8) ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

The flood damage prevention regulations also implement the regulations of the National Flood Insurance Program and Related Regulations that are administered by the Federal Emergency Management Agency (FEMA). The floodplain management regulations are established to implement the policies of the safety element of the comprehensive plan regarding flood hazards associated with Canadaway Creek and its tributaries.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations; in no circumstances is development allowed in the floodway as defined by the Federal Emergency Management Agency. Larger floods will occur on rare occasions. Flood heights may be increased by person made or natural causes.

These regulations do not imply that land outside the areas of special flood hazards, or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town, any officer or employee, or the Federal Insurance Administration, for any flood damages that result from reliance on these regulations or any administrative decision lawfully made.

§ 131 General Provisions

The flood damage prevention regulations shall apply to all areas and lots within the 100 year flood boundary (all marked Zone A") designation on the map entitled Flood Insurance Rate Map - Town of Dunkirk, New York- Chautauqua County dated November 1989 as they exist now or may be amended, on file in the Building Department. These regulations are not intended to supersede the regulations of FEMA and as the FEMA regulations are changed or amended, these regulations will continue to conform with their restrictions.

These regulations shall be in addition to other regulations established by this Chapter. In the event of a conflict in regulations, the flood damage prevention regulations shall apply.

No structure shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this Chapter and any other applicable regulations. Any infraction of the provisions of this Chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with

conditions of the permit, shall constitute a violation. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, shall be subject to the penalties outlined in this Chapter. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Dunkirk from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this Chapter for which the developer and/or owner has not applied for and received an approved variance will be declared non-compliant and notification sent to the Federal Emergency Management Agency.

§ 132 Floodplain Administration

The Zoning Enforcement Officer in the Town of Dunkirk is appointed to administer and implement these regulations. The duties and responsibilities of the Zoning Enforcement Officer shall include, but not be limited to:

- 1) review all development permit applications to determine that the requirements of this local law have been satisfied;
- 2) review all development permit applications to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required;
- 3) review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purpose of this Chapter, "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose;
 - a) if there is no adverse effect, then the permit shall be granted consistent with the provisions of this local law;
 - b) if there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit;
- 4) review all development permits for compliance with the provisions of this Article;
- 5) obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source;
- 6) obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar of all new or substantially improved structures, and whether or not the structure contains a basement or cellar;
- 7) for all new or substantially improved flood-proofed structures:
 - a) obtain and record the actual elevation, in relation to mean sea level, to which the structure has been flood-proofed;
 - b) maintain the flood-proofing certificates required in this Article;
- 8) make interpretations, when needed, as to the exact location of the boundaries of the areas included in the 100 year flood area;

- 9) maintain, for public inspection, the certificates of elevation and construction and other information and records required pursuant to the National Flood Insurance Program and the Town's flood damage prevention regulations;
- 10) maintain for public inspection all records pertaining to the provisions of this local law including variances, when granted, and certificates of compliance;
- 11) notify adjacent communities and the NYS Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director of the Federal Emergency Management Agency;
- 12) require that maintenance is provided within the altered or relocated portion of any watercourse so that the flood carrying capacity is not diminished;
- 13) make periodic inspections, in conjunction with the developer's licensed engineer, at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of either the permit or approved variance.

When FEMA has designated areas of special flood hazard but has neither produced water surface elevation data (designated zone A or Z on the FEMA maps) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source. When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative sources, such as historical data, to establish flood elevations within the areas of special flood hazard.

§ 133 Permit Review Required

The applicant shall provide the following information, as appropriate. Additional information may be required on the permit application form:

- 1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in zones A1-A30, AE, AH or Zone A identified on the FEMA maps. Upon completion of the lowest floor, the permittee shall submit to the local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- 2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved non-residential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- 3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in this Article.
- 4) A certificate from a licensed professional engineer or architect that any non-residential floodproofed structure will meet the floodproofing criteria in this Article.
- 5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate the altered or relocated segment will provide equal or greater conveyance than the

original stream segment. The applicant must submit any maps, computations or other material required by FEMA to revise the documents enumerated in this Article, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The Applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.

6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.

7) In zone A identified on the FEMA maps, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed development (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either fifty (50) lots or five (5) acres.

The following provisions shall apply to the review and approval for projects on lands to which this Article is applicable:

1) The review and approval by the Zoning Enforcement Officer shall be required prior to the issuance or approval of the special permit by the Zoning Board of Appeals or site plan approval by the Planning Board. Information necessary to determine compliance with the Flood Damage Prevention Regulations together with any information, plans, diagrams, etc. for the requested permit shall be submitted to the Zoning Enforcement Officer for review and approval;

2) The following activities shall require the review and approval of the Zoning Enforcement Officer when located in the floodplain:

- a) construction, enlargement, alteration, repair, improvement or moving any building or structure;
- b) any person made change to an improved or unimproved real estate, including, but not limited to: constructing buildings or other structures, mining, dredging, filling grading, paving, excavation or drilling;
- c) placement of manufactured home on improved or unimproved real estate;
- d) subdivision of any property;
- e) establishment of a manufactured home development or mobile home park;

3) A licensed civil engineer shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with the accepted standards of practice. A licensed civil engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level;

4) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop work order by the Zoning Enforcement Officer. Disregard of a stop work order shall be subject to the penalties outlined in this Chapter;

5) All floodplain development found non-compliant with the provisions of this law and/or the conditions of the approved permit shall be subject to the issuance of a stop work order by the Zoning

Enforcement Officer. Disregard of a stop work order shall be subject to the penalties described in this Chapter.

§ 134 Application to Historic Structures

The Zoning Enforcement Officer may waive requirements for minimum floor elevations, flood proofing or other provisions of this Article for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or designated as landmarks by the State of New York or Town of Dunkirk.

§ 135 General Development Standards and Requirements

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in this Article.

Subdivision Proposals

The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

-) Proposals shall be consistent with the need to minimize flood damage;
- 2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and,
- 3) Adequate drainage shall be provided to reduce exposure to flood damage. Encroachments
 - 1) Within FEMA map zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless;
 - i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location, or,
 - ii) the Town agrees to apply to the Federal emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town for all the costs related to the final map revision.
 - 2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
 - i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,
 - ii) the Town agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all

necessary data, analyses and mapping and reimburses the Town for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town for all costs related to the final map revisions.

Anchoring

New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

Construction Materials and Methods

- 1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- 2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- 3) For enclosed areas below the lowest floor of a structure within FEMA map zones A1-A30, AE or AH, and also FEMA map zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - Q a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - ii) the bottom of all such openings no higher than one foot above the lowest adjacent finished grade.
- 4) Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas sub- grade on all sides are considered basements and are not permitted.

Utilities

- 1) Machinery and equipment servicing a building must either be elevated to or above the base flood level or designed to prevent water from entering or accumulating within the components during a flood. This includes heating, ventilating, and air conditioning equipment, hot water heaters, appliances, elevator lift machinery, and electrical junction and circuit breaker boxes. When located below the base flood elevation, a professional engineer's or architect's certification of the design is required;
- 2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- 3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings

below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,

4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Residential Structures

The following standards, apply to structures located in areas of special flood hazard as indicated.

- 1) Within FEMA map zones A1-A30, AE and AH and also FEMA map zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above the base flood level.
- 2) Within FEMA map zone A, when no base flood elevation data are available, new and substantially improved structures shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- 3) Within FEMA map zone AO, new and substantially improved structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Town's Flood Insurance Rate Map enumerated in this Article (at least two feet if no depth number is specified)
- 4) Within FEMA map zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

Non-Residential Structures

The following standards apply to new and substantially improved commercial, industrial and other non-residential structures, in addition to the requirements in this Article:

- 1) Within FEMA map zones A1-A30, AE and AH, and also FEMA map zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure, together with attendant utility and sanitary facilities, shall either:
 - i) have the lowest floor, including basement or cellar, elevated to or above the base flood elevation; or
 - ii) be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- 2) Within FEMA map zone AO, new construction and substantial improvements of non-residential structures shall:
 - i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Town's FIRM (at least two feet if no depth number is specified), or

ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in this Article.

3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Article, including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

4) Within FEMA map zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

5) Within FEMA map zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

Manufactured Homes and Recreational Vehicles

These standards apply in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

1) Recreational vehicles placed on sites within FEMA map zones A1-A30, AE and AH shall either:

i) be on site fewer than 180 consecutive days,

ii) be fully licensed and ready for highway use, or

iii) meet the requirements for manufactured homes in this Article. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is

attached to the site only by quick disconnect type utilities and security devices

and has no permanently attached additions.

2) A manufactured home that is placed or substantially improved in FEMA map zones A1- A30, AE and AH that is on a site either:

i) outside of an existing manufactured home park or subdivision as herein defined;

ii) in a new manufactured home park or subdivision as herein defined;

iii) in an expansion to an existing manufactured home park or subdivision as herein defined; or

iv) in an existing manufactured home park or subdivision as herein defined on which

a manufactured home has incurred substantial damage as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Elevation on piers consisting of dry stacked blocks is

prohibited. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.

3) A manufactured home to be placed or substantially improved in FEMA map zones A1- A30, AE and AH in an existing manufactured home park or subdivision that is not to be placed on a site on which a manufactured home has incurred substantial damage shall be:

- i) elevated in a manner such as required in this Article; or
- ii) elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the lowest adjacent grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement, elevation on piers consisting of dry stacked blocks is prohibited.

4) Within FEMA map zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above the lowest adjacent grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement, Elevation on piers consisting of dry stacked blocks is prohibited.

5) Within FEMA map zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in this Article (at least two feet if no depth number is specified). Elevation on piers consisting of dry stacked blocks is prohibited.

Flood Plain Variance Procedure

1) The Zoning Board of Appeals as established by the Town Board shall hear and decide appeals and requests for variances from the requirements of this local law.

2) The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.

3) Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the New York Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

4) In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other areas of this Chapter:

- i) the danger that materials may be swept onto other lands to the injury of others;
- ii) the danger to life and property due to flooding or erosion damage;
- iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- iv) the importance of the services provided by the proposed facility to the Town;

- v) the necessity to the facility of a waterfront location, where applicable;
 - vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - vii) the compatibility of the proposed use with existing and anticipated development;
 - viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
 - xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- 5) Upon consideration of the factors of this Article and the purposes of this local law, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.
- 6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

Conditions for Flood Plain Variances

- 1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xii) in this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- 2) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
- 0 the proposed repair or rehabilitation will not preclude the structure's continued designation as an "Historic structure".
 - ii) the variance is the minimum necessary to preserve the historic character and design of the structure.
- 3) Variances may be issued by the Town for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
- i) the criteria of this Article are met;

- ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- 4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- 5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- 6) Variances shall only be issued upon receiving written justification of:
 - i) a showing of good and sufficient cause;
 - ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- 7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of the Town official that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

SEE TYPICAL FLOOD PLAIN DEVELOPMENT GRAPHIC

Article XIX - Parking, Stacking and Loading Requirements

§ 136 Purpose

Off-street parking, stacking and loading requirements, must meet the standards set forth in this Article. As permitted uses in certain zones, they shall be considered an accessory use when required or provided to serve conforming uses in any zone. The following off-street parking, loading and stacking requirements are established to:

- 1) Relieve congestion and facilitate the movement of vehicular traffic;
- 2) Promote the safety and convenience of pedestrians by locating parking and areas so as to reduce the impact of vehicles;
- 3) Protect adjoining residential uses from negative impacts of on-street parking;
- 4) Promote the general convenience, welfare and prosperity of commercial, service, research, production and industrial development;
- 5) Ensure parking facilities are designed and consider orderly arrangement, topography, landscaping and ingress/egress as part of the overall site design; and
- 6) Provide regulations and standards for development of off-street parking to protect the character of the town of Dunkirk.

§137 General Provisions

- 1) Employee Parking - Whenever parking requirements are based on the number of employees, it shall mean the maximum number of employees on duty in the premises at one time or any two (2) successive shifts.

- 2) Net Floor Area - The net floor area is defined as the total floor area less permanent concourses, stair halls, lobbies, elevator shafts, areas permanently devoted to warehousing and rooms housing equipment servicing the entire building.
- 3) Fractional Requirements - When units of measurements used in computing the number of required off-street parking, loading and stacking spaces result in the requirement of the fractional space, the nearest whole number of off-street parking spaces shall be required.
- 4) Permanent off-street automobile storage, parking or standing space shall be provided as set forth below at the time of the erection of any building or structure, at the time any building or structure is enlarged or increased in capacity by adding dwelling units, guest rooms, seats or floor area or before conversion from one zoning use or occupancy to another. Such space shall be deemed to be reduced or encroached upon in any manner. No required front yard or portion thereof in any residential district or for any other residential uses in other districts shall be utilized to provide parking space required in this Chapter.
- 5) If the vehicle storage space or standing space required by this Chapter cannot be reasonably provided on the same lot on which the principal use is conducted, the Town Board may permit such space to be provided on other off-street property, provided that such space lies within four hundred (400) feet of the main entrance to such principal use. Such vehicle parking space shall be deemed to be required open space associated with the permitted use and shall not thereafter be reduced or encroached upon in any manner.
- 6) Vehicle parking or storage space maintained in connection with an existing and continuing principal building, structure or land use on the effective date of this Chapter shall be continued and may not be counted as serving a new building, structure, addition or land use, nor shall any required parking space be substituted for an off-street loading and unloading space or any required loading and unloading space be substituted for a parking space.

§ 138 Residential Districts

- 1) Location - If the required off-street parking space cannot reasonably be provided on the same lot as the principal building, such parking space may be provided on other property located not more than three hundred (300) feet as measured along the nearest pedestrian route.
- 2) Front Yard Parking - Permanent front yard parking areas for residential uses are prohibited; parking in the driveway accessing a garage or designated parking area in compliance with this Chapter is allowed. No front yard area shall be used for parking except on a driveway.

§ 139 Commercial and Industrial Districts

- 1) Off-street parking, stacking and loading improvements:
 - a) Will not increase the congestion on adjoining residential streets in such a way as to promote a traffic hazard or a nuisance to adjoining resident
 - b) Will be properly screened, lighted and designed so as to prevent nuisance to adjoining residents
 - c) Will be landscaped as required by this chapter
 - d) Will be used for the purpose of passenger automobiles or commercial vehicles only
 - e) No commercial repairs, sales or services shall be conducted
 - f) Shall be located not less than ten (10) feet from any adjacent residential lot line

SEE TYPICAL PARKING LOT GRAPHIC

§ 140 Special Parking Restrictions

- 1) Civic Uses and Places of Assembly - Parking areas serving churches, clubs, community centers and other public facilities within or adjacent to a residential district shall be located within the side and rear yards. Driveways may be located within the front yard. Driveways and parking areas shall be located not less than ten (10) feet from any adjacent residential lot lines.
- 2) Motor Vehicle Service Station - Unenclosed parking of motor vehicles at gasoline service stations shall be limited to four (4) vehicles, and no vehicle shall remain so parked in excess of twenty-four (24) hours. Unenclosed overnight parking of motor vehicles at automobile washing establishments is prohibited.
- 3) No more than one (1) commercial vehicle shall be permitted in any residential zone.

§ 141 Parking Incentives

In order to facilitate and encourage low impact development, a reduction in pavement, and proper access management, the Town Board may grant an applicant/owner an incentive such as, but not limited to, an adjustment in permissible density, development area/coverage, height, or open space otherwise required in the applicable zoning district; the Town Board reserves the authority to determine the adequacy of the methods/amenities to be accepted and the particular incentive to be provided to an owner/applicant. Continued maintenance and use of the amenity(ies) is required as a condition of any incentive granted. Where mitigation is required as part of the environmental review process that incorporate any of the amenities noted below, incentives shall not be granted.

- 1) Shared driveway/access between two uses or lots (shared use agreements may be needed) resulting in no more than one (1) driveway per use.
- 2) Cross access driveways, thereby resulting in no more than one (1) access driveways (shared use agreements may be needed).
- 3) Significant reductions in stormwater management or more than 50% of any parking area utilizing "green infrastructure" techniques such as, but not limited to, vegetated swales, permeable pavers, bioretention facilities or constructed wetlands, grey water systems for recycle and on-site use, or rain gardens.
- 4) Provisions for parking spaces for compact cars, electric vehicle charging stations, or other vehicle fuel-reduction measures.
- 5) A dedicated bus/transit stop and shelter
- 6) Internal circulation systems to minimize access onto main thoroughfares

§ 142 Exceptions

The requirements of this Article may be reduced to the extent that the applicant can demonstrate that less parking is required for one of the following reasons. Where modifications in the required number of parking spaces pursuant to this section is made, the Town Board shall impose any such condition(s) as it deems necessary and shall make findings supporting their decision.

- 1) Unique use times - uses operate at times other than "normal" business hours and, thus, could make arrangements with surrounding landowners to utilize their parking facilities through a formal agreement (i.e., shared or joint parking).
- 2) Overlap coverage - adjacent uses may operate at different times and could, thus, develop a shared parking facility.
- 3) The regulation is excessive for proposed development, as applied to individual landowner, and the applicant/owner can show that a reduction in parking is feasible. Applicant/owner shall indicate areas of the property that could be utilized for expanded parking in the event it is needed, temporary or permanent.
- 4) The new development is within five-hundred (500) feet of a public parking facility.
- 5) Applicant can document that a notable percentage of their customers will be transported to and from their premises in buses, bikes, walking or other forms of alternative transportation.
- 6) Applicant provides a transportation management plan documenting off-peak work hours, preferential parking, financial incentives, or some other manner for reducing parking demand.

§ 143 Off-street Parking Requirements

In all zones, the following minimum off-street parking requirements shall be provided and maintained in the case of new construction, alterations which increase the number of required parking units and changes in use that require a site plan review, special use permit, rezoning or variance;

- 1) Amusement facilities (including, but not limited to: recreation centers and facilities, skating rinks): One (1) parking space for every five (5) customers computed on the basis of maximum servicing capacity at any one (1) time, plus one (1) additional space for every two (2) regularly employed on the premises.
- 2) Auditoriums, theaters, gymnasiums and other places of public assembly: One (1) parking space for each five (5) seats.
- 3) Automobile Repair Shops: Two (2) parking spaces per bay with a minimum of six (6) parking spaces.
- 4) Automobile (new and used) facilities: Two (2) parking spaces for each employee.
- 5) Barber Shops/Beauty Parlor: Two parking spaces per barber or beauty chair.
- 6) Boarding or rooming houses: One (1) space for each sleeping room occupied by roomers or boarders, plus one (1) parking space for each dwelling unit on the premises and plus one (1) additional space for every two (2) persons regularly employed on the premises.
- 7) Bowling Alleys: Two (2) parking spaces per alley.
- 8) Church: One parking space for each five (5) fixed seats. If no fixed seats, one (1) parking space for each twenty-five (25) square feet of net floor area.
- 9) Civic Center: parking or storage space for all vehicles used directly in the operation of such establishment, plus four (4) parking spaces for the first one thousand (1000) square feet of total floor area and one (1) additional space for every additional one hundred-fifty (150) square feet of floor area.
- 10) Clubhouses and permanent meeting places of veterans, business, civic, fraternal, labor and other similar organizations: One (1) space for every fifty (50) square feet of net floor area in the auditorium, assembly hall and dining room of such building, plus one (1) space for every two (2) persons regularly employed on the premises.

- 11) Colleges and Universities: One (1) space for every five (5) seats occupied at maximum capacity in the assembly hall, auditorium stadium or gymnasium of greatest capacity on the campus. If the institution has no assembly hall, auditorium, stadium or gymnasium, one (1) parking space shall be provided for each person regularly employed at such institution, plus five (5) additional spaces for each classroom.
- 12) Convenience Store: One space for every one hundred-fifty (150) square feet of gross floor area. Dancing Studios: One (1) parking space per seventy-five (75) feet of net floor area devoted to the activity.
- 13) Dormitories: One (1) parking space for every two (2) beds computed on the basis of the maximum bed capacity of the structure. This requirement is in addition to the parking requirement for colleges and universities.
- 14) Dwelling (single and two family, townhouse, row house, condominium): Two (2) spaces per dwelling unit.
- 15) Dwelling (multiple family): One and one half (1.5) spaces per dwelling unit.
- 16) Dwelling (senior): One (1) parking space per dwelling unit.
- 17) Dry Cleaning: One (1) space for each three hundred (300) square feet of gross floor area.
- 18) Funeral Homes: One space for each one hundred (100) square feet of gross floor area.
- 19) Health Spas and Swimming Pools: One (1) parking space per fifty (50) square feet of net floor area and pool area devoted to activity.
- 20) Hospitals: One (1) parking space for each patient bed.
- 21) Hotels: One (1) parking space for each guest room plus one (1) space per six (6) seats for the restaurant or bar area.
- 22) Industrial plants, wholesale distribution, laboratories, etc.: One (1) parking space per employee for two consecutive shifts.
- 23) Laundromats (self-service): One (1) space for each two hundred (200) square feet of gross floor area used by the general public.
- 24) Libraries: One (1) space for each one thousand (1000) square feet of gross floor area.
- 25) Medical and Dental Offices/Clinics: One (1) space for each employee plus one (1) space for each examining room.
- 26) Miniature Golf: One (1) parking space for each hole.
- 27) Museums: One (1) space for each one thousand (1000) square feet of gross floor area.
- 28) Offices (General): One (1) parking space for each four hundred (400) square feet of net floor area.
- 29) Private Clubs: One space per three (3) seats and one (1) parking space per one hundred fifty (150) square feet for customer area or takeout services.
- 30) Public and Semi-Public Buildings: One (1) parking space per two hundred (200) square feet of net floor area. If devoted to uses other than office, one (1) parking space per five (5) seats.
- 31) Restaurant Bar and Banquet Hall: One space per three (3) seats and one (1) space per one hundred-fifty (150) square feet for customer area or takeout services.
- 32) Retail Stores: One (1) parking space for each two hundred-fifty (250) square feet of sales floor area.
- 33) Nursing Homes: One (1) parking space for each five (5) beds plus one (1) parking space for each employee.
- 34) Schools (nursery and primary): One (1) space for each teacher, employee and administrator.

- 35) Schools (secondary): One (1) parking space for each ten (10) seats used for purposes of instruction. If no fixed seats, one (1) parking space for each one hundred (100) square feet used for purposes of instruction.
- 36) Shelters: One (1) parking space for every two (2) employees.
- 37) Shopping Centers: Six (6) parking spaces for each one thousand (1000) square feet of net floor area.
- 38) Taverns, Bars: One (1) space for every fifty (50) square feet of total floor area. Tennis Clubs: Three (3) parking spaces per court.
- 39) Tourist Home, motel: One (1) parking space for each sleeping room.

§ 144 Stacking Requirements

In addition to minimum parking requirements established in this Chapter, the following stacking areas are required. The size of a stacking space shall be twenty (20) feet in length by nine (9) feet in width.

- 1) Car Wash (Coin Operated): Two (2) spaces per stall
- 2) Car Wash (Rapid): Ten (10) spaces per stall
- 3) Drive in Bank: Five (5) spaces per lane
- 4) Drive in Oil Change and Quick Lube Facility: Three (3) spaces per bay
- 5) Drive in Facilities (General): Five (5) spaces per booth, customer facility or service window

§ 145 Loading Requirements

On the same premises with every building or structure or part thereof hereafter erected and occupied for the purpose of business, trade or industry, there shall be provided and maintained adequate space for the parking of commercial vehicles while loading and unloading *off* the street or public alley. Such space shall have access to a public alley or, if there is no alley, to a street. Off-street loading and unloading space shall be in addition to and not considered as meeting a part of the requirements for off-street parking space. Off-street loading and unloading space shall not be used or designed, intended or constructed to be used in a manner to obstruct or interfere with the free use of any street, alley or adjoining property. *Off-* street loading and unloading space shall be provided as set forth in this Article at the time of the erection of any building or structure and/or at the time any building or structure is enlarged or increased in capacity.

Off-street loading shall be provided and maintained as long as such building is occupied or unless equivalent facilities are provided in conformance with the regulations of this Article. Space required and allocated for any off-street loading facility shall not be used to satisfy the space requirements for off-street parking or stacking. An off-street loading space shall not be used for repairing or servicing of motor vehicles.

- 1) Location of Facility - All required loading facilities shall be related to the building and provide for loading and off-loading of delivery and other service vehicles and shall be so arranged that they may be used without blocking or otherwise interfering with the use of access ways, parking or stacking facilities, public streets or sidewalks. A required loading space shall not face or be visible from the frontage street and shall not be located in a required front yard or a required side or rear yard if adjoining a residential district.

- 2) Access Driveway - Each required off-street loading space shall be designed for vehicular access by means of a driveway, or driveways, to a public street in a manner which will least interfere with adjacent traffic movements and interior circulation.
- 3) Minimum Size Criteria - Off-street loading space shall be at least twenty (20) feet in length by twelve (12) feet wide. The area shall be exclusive of the maneuvering space and each loading facility shall have a vertical clearance of at least fourteen (14) feet.
- 4) Required Loading Facilities - The following off-street loading facilities shall be provided as required:

Use	Square Feet	Required Number
Retail Stores and Services	under 5,000	1 bay
	5,001 - 40,000	2 bays
	40,001 - 50,000	3 bays
	50,001 +	4 bays
Wholesale and industrial Operations	under 40,000	1 bay
	40,001 - 100,000	2 bays
	100,001 +	3 bays
Office Buildings, Hotels	100,000 +	1 bay
Hospitals and Nursing Homes		2 bays (1 of which is for emergency vehicles)

§ 146 Design Guidelines

- 1) Each space shall be provided access to a public street through a drive or aisle of not less than ten (10) feet wide.
- 2) Dimensions- Parking shall be designed in dimensions according with the following:

Angle	Stall Length	Stall Width	Aisle Width	Total Width
90	19'00"	9'00"	24'00"	62'00"
60	21'00"	10'05"	18'00"	60'00"
45	19'10"	12'09"	13'00"	52'08"
Handicap/accessible parking stall minimum widths (provided in accordance with all applicable regulations)				
90		12' 0"		
60		13' 9"		
45		16' 9"		

- 3) Grading and Paving - Parking, stacking and loading areas and access shall be graded and drained so that surface water shall not be allowed to flow onto adjacent properties.

- 4) Maintenance - Parking, stacking and loading areas shall be arranged, marked and maintained as shown on the final approved site plan in order to provide for orderly and safe parking, storing and loading of vehicles. The Town Board may also require structural or landscape features including, but not limited to, bumper guards, curbs, walls or fencing, landscaping or berming, to ensure protection of property and persons and privacy screening for adjacent land uses with visual, noise and air standards. Landscaping, buffering, and/or screening shall be required for parking, loading, or stacking areas for commercial or industrial uses abutting residential uses.
- 5) Illumination - Parking, stacking and loading areas shall be illuminated only to the extent necessary to ensure public safety. Illumination shall not be used for the purpose of advertising or attracting attention to the principal use. Lighting fixtures shall be designed, sized and located so as not to cast direct rays of excessive brightness upon adjoining premises or cause glare hazardous to pedestrians or person using adjacent public streets – full cut off luminaires are recommended and may be required at the discretion of the Planning Board.
- 6) Pedestrian Walkways - Walkways will be provided to link parking areas and buildings on the site to ensure pedestrian safety. Special consideration will be given when drive-thrus are incorporated in the design to ensure safety for pedestrians as vehicles are moving.
- 7) Driveways to Parking Areas - Entrance and exit driveways serving parking facilities drive in businesses and other parking areas shall be provided in location, size and number so as to minimize interference with uses on adjacent properties and the flow of traffic on adjacent streets.

GRAPHIC

Article XX - Landscaping Requirements

§ 147 Purpose

Landscaping requirements in the Town of Dunkirk are established to:

- 1) promote the public health, safety and welfare of all residents in the Town of Dunkirk by requiring all non-residential developments to landscape their lands, including parking areas;
- 2) establish minimum landscaping standards and criteria for all non-residential developments;
- 3) minimize the unnecessary clearing and disturbing of land to ensure protection of natural, existing flora and replace native flora that has been removed;
- 4) reduce the effects of wind and air turbulence, heat, noise and the glare of lighting;
- 5) provide unpaved areas of a development and regulate the amount of impervious surface to ensure absorption of storm water;
- 6) prevent soil erosion;
- 7) provide shaded areas in developments;
- 8) protect property values and character of neighborhoods in the Town of Dunkirk;

9) ensure the development of new parking areas have minimal visual effects on the neighborhood.

§ 148 Applicability

All non-residential uses and residential uses requiring site plan approval or a special permit are subject to the provisions of this Article. All planting strips, yards, setbacks and other required open space area shall be landscaped in accordance with a landscaping plan, prepared by a landscape architect, architect or engineer, approved by the Town.

§ 149 Maintenance

All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning. All required fences and walls shall be maintained and, when necessary, repaired or replaced,

SEE LANDSCAPING STANDARDS GRAPHIC

§ 150 Guidelines

Prior to the issuance of zoning permits, site plan approval, special permits, etc., ten (10) copies of the Landscaping Plan shall be submitted to the Town of Dunkirk as part of the application package. The following guidelines shall be used in developing the landscaping plan:

- 1) Plants selected shall be suited to the climate and region as well as the geologic and topographic conditions of the site. Protection and preservation of native plant materials and natural areas is encouraged by the Town of Dunkirk.
- 2) Water intensive ornamental plant materials shall not exceed 10% of the total landscaped area.
- 3) Decorative water features should use re-circulating water, when possible;
- 4) Landscaping shall provide privacy and screening for adjacent land uses, with visual, noise and air quality factors considered.

§ 151 Landscaping Plans and Additional Information

Landscaping plans shall be drawn to scale, including dimensions and distances, and shall clearly delineate:

- 1) plant materials, including trees, shrubs, ground cover, turf and other vegetation, shall be shown clearly on the plan. In addition, plants shall be labeled by botanical name, common name, caliper or container size, spacing and quantities in each group;
- 2) property lines and street names;
- 3) streets, driveways, walkways and other paved area;
- 4) pools, ponds, water features, lighting fixtures, fences and retaining walls;

- 5) existing and proposed buildings and structures, including elevation, if applicable;
- 6) natural features, including, but not limited to, rock outcroppings, existing plant materials that will be preserved;
- 7) tree staking, plant installation, soil preparation details and all other applicable planting and installation details;
- 8) calculation of the total landscaped area;
- 9) designation of recreation areas, if applicable.

SEE LANDSCAPING STANDARDS GRAPHIC

§ 152 Landscaping Plan Standards - General

For purposes of this section, the landscaped area shall include the area required or permitted, under this section, to be devoted to landscaping and environmental improvement, which may include existing and new vegetation, berms, lighting, street furnishings and ornamental features which are integrated with the vegetation. The following standards shall be observed for all projects subject to this Article:

- 1) a minimum ground area of not less than twelve (12) percent of the total lot area shall be landscaped;
- 2) a landscaped area shall have a minimum width of five (5) feet excluding curbs, retaining walls or similar enclosing structures;
- 3) landscaping materials shall be contained so as not to spill or intrude into the public right of way;
- 4) all trees shall be staked and all planting areas mulched;
- 5) the use of synthetic vegetation (turf, plastic plants, etc.) shall not be allowed for any required landscaping;
- 6) the minimum size for a shrub shall be 30" in height and the minimum size for a tree shall be a 2" caliper.

§ 153 Landscaping Plan Standards - Residential

The following standards shall be observed in residential projects that are subject to this Article:

- 1) nursery grown trees of at least 2" caliper size shall be selectively sited throughout all common open areas to naturalize the site. The number shall be determined by requiring one (1) tree for every forty (40) feet of perimeter of the lot,

§ 154 Landscaping Plan Standards - Parking Lots and Areas

The following standards shall apply to all parking lots and parking areas subject to the provisions of this Article:

- 1) A minimum on one (1) landscaped area with a minimum size of one hundred seventy-one (171) square feet (approximately 9' by 19') shall be provided for every nine (9) parking spaces.

2) The following standards shall apply to the screening of parking lots, parking areas and other open storage areas subject to this Article:

a) Parking lots and parking areas shall be screened from public streets, alleys, paths and private streets by dense landscaping having a minimum height of three (3) feet. An earth berm may be credited toward the height required. At all intersections and driveways, screening shall be restricted to a maximum height of two (2) feet and trees shall be maintained to a clearance of seven (7) feet above ground to ensure sight lines remain unobstructed.

SEE LANDSCAPING STANDARDS GRAPHIC

b) Parking lots and parking areas shall be screened from abutting lots with a minimum height of five (5) feet. An earth berm may be credited toward the required height. At all intersections and driveways, screening shall be restricted to a maximum height of two (2) feet and trees shall be maintained to a clearance of seven (7) feet above ground to ensure sight lines remain unobstructed.

c) Equipment and open storage areas shall be screened from public streets, alley, paths, private streets and abutting lots to a minimum height of six (6) feet.

Article XXI - Supplemental Regulations

§ 155 Purpose

The supplemental regulations contained in this Article address uses that are allowed, allowed following site plan review or as a special permitted use in various zoning districts. These regulations consider the unique characteristics of each use and the potential impacts they may have on the community and its residents.

§ 156 Accessory Buildings

Unless otherwise specified, all accessory buildings shall observe the same yard requirements as principal buildings except for the following:

- 1) In all Residential Districts, accessory buildings lying wholly within a rear yard may extend not closer than five (5) feet to the side and rear lot line.
- 2) In Commercial and Industrial Districts, accessory buildings lying wholly within a rear yard shall be a minimum of five (5) feet from side or rear lot lines, except those accessory buildings used for business or individual purposes shall be a minimum of twenty-five (25) feet from any Residential District boundary.
- 3) In any district, the distance between the main building and the accessory building shall be a minimum of ten (10) feet.
- 4) There shall be no more than 2 accessory buildings allowed in any Residential District.

§ 157 Cesspools and Septic Tanks

All septic tank installations shall otherwise conform to the requirements of the Chautauqua County Health Department.

§ 158 Corner Visibility

Within the triangle formed by two (2) intersecting street lines and a line joining points on such street lines thirty (30) feet from the intersection, no fence, wall, hedge or dense foliage shall be erected, planted or maintained between the heights of two (2) feet and ten (10) feet. Open type fences less than ten percent (10%) solid may be three and one half (3 1/2) feet in height.

§ 159 Drive-In Businesses

Plans for the erection or structural alteration of drive-in (drive-thru/drive-through) establishments, as herein defined, shall be submitted to the Town Board for approval. The Town Board may require such changes therein in relation to yards, driveways, driveway entrances and exits and the location and height of buildings and enclosures as it may deem best suited to ensure safety, to minimize traffic hazards or difficulties and to safeguard adjacent properties. The Town Board shall utilize the following criteria when reviewing such facilities and identifying appropriate site/design changes:

- 1) Traffic flow – drive-in aisles shall be separate from internal circulation routes necessary for ingress or egress and shall have an appropriate amount of stacking space to avoid queuing into internal circulation routes, driveways, or any public thoroughfares. Traffic analysis may be requested as necessary.
- 2) Facility siting – side or rear only, no frontage drive-in facilities are permitted to maintain visual aesthetics along public thoroughfares
- 3) Buffering – drive-in areas shall be buffered and screened from adjacent residential or mixed-use uses with landscaping and/or fencing to effectively minimize noise, odors and light from headlights and display boards. Screening materials shall be of an adequate height, density, and type as determined by the Town Board, but shall not block visibility from ingress or egress aisles.
- 4) Noise - Any drive-in speaker system shall emit no more than fifty (50) decibels (dBa) and at no time shall any speaker system be audible above daytime ambient noise levels beyond the property lines of the site. The system shall be designed to compensate for ambient noise levels in the immediate area.

§ 160 Dwelling Units

- 1) Cellar Occupancy - Cellar occupancy is prohibited. It shall be unlawful to occupy all or part of any cellar for sleeping purposes.
- 2) Basement Occupancy - Any basement area used for living purposes shall have not fewer than two (2) means of egress, at least one (1) of which shall be a door giving access to an open area whose service is at least eight (8) inches below the level of the basement floor. Each basement room used for living purposes shall have a window area, opening to the outside, equal to not less than one-tenth (1/10) of the floor area of such room.
- 3) Slope of Yards- No building containing dwelling units shall henceforth be constructed, nor shall any existing building be altered so as to contain dwelling units, unless the surface grade of the front yard at the front wall of such building is more than one (1) foot above the established grade of the sidewalk. Where a sidewalk grade has not been established, the surface grade of the front of the front wall of the dwelling shall not be less than one (1) foot above the center line of the street measured at the midpoint between the side lot lines of the lot. Where there is unusual difficulty in meeting this provision, the

Zoning Enforcement Officer may accept a substitute gradient, providing that no minus gradient it's established within fifteen (15) feet of the front wall or within six (6) feet of either side of the rear wall of the dwelling.

4) Access Roads - Any access road or driveway serving a multifamily dwelling shall conform to the requirements for a minor road, as defined in the subdivision regulations of the Town of Dunkirk.

§ 161 Fencing and Walls

The Town Board may require fences, vegetation or other appropriate material in non-residential districts where they abut residential districts to assure privacy for adjacent land uses with visual, noise or air quality factors considered. The following shall apply to all fences and walls in the Town of Dunkirk:

- 1) The height of all fences or walls shall be measured from the average finished grade of the lot.
- 2) No fence or wall in a residential district shall exceed six (6) feet in height.
- 3) A fence of twelve (12) feet shall be allowed to enclose a tennis court.
- 4) In residential districts, fences not more than sixty percent (60%) solid may be located in any front yard or in any yard with street frontage.
- 5) In no event shall fences or walls in non-residential districts abutting residential districts exceed six (6) feet in height.
- 6) Within a non-industrial district, no fence or wall, other than a necessary retaining wall, over three (3) feet in height shall extend into the front yard of any lot.
- 7) All solid fences shall be so installed so that the better side shall face outward.
- 8) At all street intersections, no obstruction to vision (other than an existing building, post, column or tree) exceeding thirty (30) inches in height shall be erected or maintained on any lot within the triangle formed by the street lines on such lot and a line drawn between points along such street lines thirty (30) feet distant from their point of intersection.
- 9) No fences, walls or hedges of a height greater than four (4) feet shall be erected, placed or maintained between the waters of Lake Erie and the nearest point of the principal building located on the premises. Any fence erected shall be constructed of materials that permit a reasonable amount of light and air to pass through. The finished side of the fence shall face the neighbors. This restriction shall apply to all real property located in the Town of Dunkirk that abuts the waters of shoreline of Lake Erie regardless of the zoning district in which it is located.
- 10) Fences and all supporting structures must be entirely on the property of the party erecting the fence.

§ 162 Hotel

Hotels, motor courts or motels, where allowable under this Chapter, shall conform to the following requirements. No rental structure or part thereof shall be placed closer to any street or road line than one hundred (100) feet, closer to any other property line than fifty (50) feet or closer to any other residential district boundary than two hundred (200) feet,

§ 163 Junk Vehicles

Junk vehicles shall be stored out of the sight of adjacent properties and roadways to the greatest extent possible. Sustained progress in restoring a junk automobile to operational condition shall be allowed under the following conditions and said vehicle shall not constitute a junk vehicle:

- 1) a maximum of one (1) restoration on any single parcel;
- 2) the entire restoration shall take a reasonable time to accomplish;
- 3) such vehicles shall be located so as to create the least nuisance possible;
- 4) noise associated with the restoration shall be limited to reasonable hours;
- 5) restoration shall be for personal use and not for profit.

The number of junk vehicles that may be allowed to be maintained outdoors shall be one (1); more than one (1) will constitute a junkyard and is subject to the restrictions outlined in this Chapter.

§ 164 Junkyards

Junkyards and dumps are prohibited in the Town of Dunkirk.

§ 165 Manufactured Homes

The following shall apply in addition to all other regulations of the Town. No manufactured (mobile) home shall be parked and/or occupied in any district outside an approved mobile home park for more than forty-eight (48) hours except upon a special permit issued by the Town Board. Such permit shall be issued for a period not to exceed thirty (30) calendar days and shall not be renewable within the same calendar year.

All mobile homes used as offices or referred to as "mobile offices" shall be prohibited in the Town of Dunkirk. This shall not include construction field offices required on site for specific projects completed in the Town of Dunkirk. These field offices, however, shall be removed from the construction site within 7 (seven) days of project completion.

§ 166 Mobile Home Parks

The following shall apply in addition to all other regulations of the Town of Dunkirk regarding mobile home parks:

- 1) Permit - It is unlawful within the Town of Dunkirk for any person or persons to construct or operate a mobile home park without first securing a written permit from the Town of Dunkirk and complying with the regulations of this Chapter.
- 2) Application - Any applicant for a mobile home park license shall state that as agent or owner, shall be responsible for the proper maintenance and upkeep of the proposed park and shall furnish the following information:
 - a) boundaries of plot area;
 - b) entrances, exits and walkways;
 - c) trailer sites or lots;
 - d) method and plan of sewage disposal;

- e) method and plan of garbage disposal;
 - f) water supply;
 - g) electric lighting;
 - h) owners' and operators' name and address.
- 3) Park Plan -The park plan shall include the following:
- a) in the AR-1 zone, a mobile home park shall have an area of not less than five (5) acres
 - b) in the AR-1 zone, no mobile home lot or office or service building shall be closer to a street, road or other property line than one hundred (100) feet;
 - c) in all other zones where mobile home parks are allowed, no mobile home or trailer lot, office or service building shall be closer to any street or road line than one hundred (100) feet or closer to any other property line than fifty (50) feet.
 - d) Location of on-site office(s) for management of the park.
- 4) Additional Requirements - Wherever located, a mobile home park shall conform to the following additional requirements:
- a) the park shall be located on a well-drained site suitable for the purpose, with an adequate entrance road at least twenty-two (22) feet wide;
 - b) individual mobile home lots shall have an area of not less than three thousand (3000) square feet with a minimum width of forty (40) feet and a minimum depth of seventy-five (75) feet;
 - c) the total number of mobile home lots shall not exceed twelve (12) per gross acre;
 - d) the park shall be adequately buffered with landscaping, as approved by the Town Board but no less than 10 feet in depth, along any property line to provide an adequate level of screening, especially where adjacent to other residential uses to account for the higher density attributed to the park design and layout, while maintaining required line of sight at intersections/thoroughfares;
 - e) each mobile home shall have an entrance platform to conform with the overall plan;
 - f) each mobile home park shall provide sanitary services and conveniences including water supply, sewage disposal, lighting, garbage disposal and incinerator, according to the regulations in this Article;
 - g) A dedicated parking space on a durable surface for at least one vehicle for each mobile home shall be provided;
 - h) Space for overflow parking within the park shall be provided;
 - i) Each mobile home foundation shall be skirted with a durable material and adequately maintained;
 - j) Within the management office of the park, there shall be a bound book containing the records of the names of all persons accommodated at the park with their home address, vehicle license number, and contact information, said records being made available for inspection by the Code Enforcement Officer or any police officer (any applicable privacy regulations shall be enforced and protected);
 - k) Additions shall be limited to awnings or other similar weather protective structure(s).
- 5) Water Supply - A sufficient supply of water obtained from the Town of Dunkirk water system shall be provided to each mobile home.
- 6) Sewage and Refuse Disposal - Waste from showers, toilets and laundries shall be connected to the Town of Dunkirk wastewater system in a manner approved by the Highway

Superintendent. All kitchen sinks, washbasins, lavatories, bath and showers in the mobile home located in any mobile home park shall empty into the Town of Dunkirk sanitary sewer system.

§ 167 Motor Vehicle Use Areas - General

Any portion of a lot, with the exception of one and two family homes, used for open off-street parking or reserve space for open sales, service or storage areas for motor vehicles, contractor's equipment or boats, shall be deemed to be a motor vehicle use area. No building, dispenser, motor vehicle or any other equipment or storage shall be closer than twenty-five (25) feet of a Residential District, nor twenty (20) feet of a street line. New motor vehicle use areas or alterations of existing motor vehicle use areas shall be subject to the following requirements:

- 1) Surfacing - Every motor vehicle use area and access driveway shall be surfaced with a durable and dustless material and shall be so graded and drained as to dispose of surface water accumulations.
- 2) Lighting - Any fixture used to illuminate any motor vehicle use area shall be arranged so as to direct the light away from the street and from adjoining lots in any Residential District.
- 3) Screening - Every motor vehicle use area, except off-street parking areas for less than five (5) vehicles, shall be screened from any adjoining lot in any Residential District by a landscaped buffer of no less than five (5) feet in width. Such buffer shall be landscaped and maintained by the owner.
- 4) Access - No entrance or exit to a motor vehicle use area shall be permitted within thirty (30) feet of any intersecting street lines and, except for permitted residential off-street parking areas in the Residential Districts, no entrance or exit shall be permitted within ten (10) feet of a lot in any Residential District.
- 5) Restriction - No motor vehicle use area shall be used for auto wrecking or for storage of wrecked, partially dismantled or equipment, or motor vehicles which do not qualify for New York State motor vehicle registration.

§ 168 Motor Vehicle Service Stations and Garages

- 1) No motor vehicle service station or garage shall have a vehicular entrance closer than two hundred (200) feet to an entrance to a church, school, theater, hospital, public park, playground or fire station. Such measurement shall be taken as the shortest distance between such entrances across the street if the entrances are on the same side of the street or within the same square block.
- 2) All motor vehicle service stations shall be so arranged and all gasoline dispensers shall be so placed as to require all servicing on the premises and outside the public way; no gasoline dispenser shall be placed closer to any side property line than fifty (50) feet.
- 3) No inoperative motor vehicles shall be kept on the premises of motor vehicle service stations for longer than two (2) weeks unless enclosed or fenced in an area not visible from off the property.
- 4) All waste material will be stored within a structure or enclosed within fencing so as not to be visible from off the property.

§ 169 Quarries, Gravel Pits, Topsoil Removal, Major Excavations, Grading/Filling

- 1) A quarry for the removal of stone in bulk without crushing, a sand or gravel pit and topsoil removal may be authorized by the Town Board provided that:
 - a) No excavation, blasting or stock piling of materials shall be located within three hundred (300) feet of any public road or other property line.
 - b) No power-activated sorting machinery or equipment shall be located within six hundred (600) feet of any public road or other property line and all such machinery shall be equipped with satisfactory dust elimination devices.
 - c) All excavation slopes in excess of 1:1 or 2:1 shall be adequately fenced as determined by the Zoning Enforcement Officer.
 - d) Extension of an existing nonconforming operations shall not be permitted.
 - e) Major excavating, grading or filling, as defined herein, shall not be permitted in any district except when done by a duly constituted public body.

§ 170 Shopping Centers

The Town Board may authorize the issuance of a permit or permits for the construction of a shopping center in applicable zones provided the center conforms to the following requirements:

- 1) Plan - The proposed development shall be in accordance with a site plan submitted to the Town of Dunkirk and approved by the Town Board. It shall not be required that the entire development be in a single ownership, built or financed by a single party if satisfactory evidence is shown that all parties financially or otherwise concerned in the development are legally bound to conform to the submitted site plan.
- 2) Vehicular Access - All vehicular entrances and exits upon public roads shall be approved by the proper highway authority and the Highway Superintendent.
- 3) Shopping centers shall utilize the following design standards:
 - i. Retail development shall be arranged in a shopping center layout, with large-scale stores complemented by ancillary small-scale stores.
 - ii. Professional office and office buildings shall be arranged in campus-style layouts.
 - iii. Driveway openings and curb cuts shall be aligned with existing curb cuts where practicable, in order to reduce the potential addition of traffic lights and conflicting turning movements.
 - iv. Continuous sidewalks, off-street transit stops (where routes exist or are planned) and bike racks close to business entrances shall be provided for properties public roadways.
 - v. Signage shall be provided in accordance with this chapter.
 - vi. Buffering and transitions:
 1. Trash/dumpster areas shall be screened by wood fences or landscaping, or a combination thereof.
 - vii. Buffer plantings or opaque fences, preferably wood fences, shall be provided between commercial uses and adjoining residential uses or zones, as well as along frontages with arterial roads. In order to provide shade, parking lots with

21 or more spaces shall have plantings at one tree per 10 off-street spaces. Such trees shall be spread throughout the parking lot, rather than clustered only along the edges.

§ 171 Satellite Television Receiving Antennas

Satellite television receiving antennas are allowed in any zoning district as an accessory use to any permitted use provided:

- 1) No more than one satellite television receiving antenna is allowed per residential unit up to a maximum of 2 (two);
- 2) In all zoning districts, except residential districts, the roof-mounted satellite television receiving antenna can be no more than ten (10) feet in diameter and must be accompanied by drawings stamped by a licensed engineer indicating wind load imposed, roof structure design or re-design of roof structure to carry added wind/weight load;
- 3) In residential districts, ground mounted satellite antennas are allowed only in rear yards and shall not be greater than 12 feet in height. Its perimeter shall adhere to all setback requirements set forth in this Chapter;
- 4) In residential districts, roof top mounted satellite antennas larger than 18" shall be prohibited;
- 5) In commercial and industrial districts, satellite antennas shall not be more than twenty-five (25) feet above grade. Ground mounted systems in commercial districts shall be screened with appropriate fencing or landscaping indicated in Article XX - Landscaping Requirements.

§ 172 Solar efficiency

To promote and protect the use of solar efficiency in the Town of Dunkirk, the following shall apply:

- 1) The placement of structures or modification of existing structures containing solar structures shall be by Special Use Permit. If no protection from adjacent development is sought for a system, then no permit shall be required for the installation unless the floor space is increased. Consideration will be given to locating the structures the furthest distance from adjoining properties, on the southern exposure, which is reasonably possible. This distance shall be a minimum of 100 feet and may be required to more if the slope so dictates.
- 2) The placement of structures, trees, towers, etc. which have the potential of blocking the sun from adjacent solar collectors establish by Special Use Permit shall only be allowed by Special Use Permit. The placement of said potential obstruction shall be such that it least interferes with the adjacent solar collectors while still allowing reasonable use of the land.
- 3) If protection is sought, owners of all properties within 200 feet of the property on which the solar collector is to be placed will be notified, in writing, of the intent to place a system in the neighborhood and the possible effects this could have on future development. The date, time and location of any public hearings shall be included in the notification.

§ 173 Storage

- 1) Visual impacts/screening. To provide visual protection from the storage of equipment and materials, all such storage in any District shall be within completely enclosed buildings or, if left open to the sky, shall be effectively screened from public view. Screening shall be of sufficient height and density to completely hide the storage from public view. In certain cases, fencing may be necessary to supplement landscaping. All screening shall be maintained in such manner as to present a neat and orderly appearance at all times.
- 2) Stand-alone storage structure. A structure used for storage on lots with no primary structure(s) shall be subject to the following standards:
 - a. No more than one (1) stand-alone storage structure is permitted on a lot.
 - b. A site plan shall be required for any structure over 1,000 square feet, subject to Article XII.
 - c. The structure shall be located on the lot in accordance with the setback and dimensional requirements of the District it is located in plus an additional 50 feet in the front yard setback to account for the construction of a future primary dwelling. Applicant shall indicate on the site plan where a primary dwelling may be located to ensure adequate spacing and placement behind or to the rear of such dwelling.
 - d. The structure shall be non-habitable (no kitchen, dining, bathroom or sleeping quarters) by humans or animals. Electrical service (one meter) is allowed.
 - e. Structure shall not be used for commercial purposes.
 - f. Storage (cargo) containers are not permitted.
 - g. All materials, equipment, etc. shall be stored inside the structure or otherwise subject to screening and setbacks.

§ 174 Swimming Pools

A private swimming pool installed or maintained as an accessory use in a residential district, shall meet the following requirements:

- 1) The pool shall be used only as an accessory use to a dwelling or to a special permit use in a residence district for the private use of the owner or occupant of such dwelling or building and their family, guests or employees.
- 2) All pools shall be completely enclosed by a security fence not less than four (4) feet in height and have a maximum vertical clearance to grade of two inches, with all gates or doors opening through such enclosure equipped with self closing and self latching devices designed to keep, and capable of keeping, such gates or doors securely closed at all times when not in actual use of a type approved by the Zoning Enforcement Officer.
 - a) Where a picket-type fence is provided, horizontal openings between pickets shall not exceed four (4) inches.
 - b) Where a chin-link fence is provided, the openings between links shall not exceed 2 3/8 inches.
 - c) Such fence will not be required if:
 - i) buildings more than four (4) feet in height;

ii) walls or a fence approved by the Zoning Enforcement Officer not less than four (4) feet in height with a self locking gate; or

iii) any combination of the same;

stand as a continuous barrier between the pool and any approach by land to the pool.

3) All swimming pools wherein the water level and/or sidewalls are four (4) feet or more above ground level shall not require the installation of a fence. However, if any such pool has a side deck with stairs, solitary stairs, a ladder attached to a slide or other recreational device, a solitary ladder any other means of access to the water, such stairs, ladder or other means of access shall be installed so as to allow their removal when the pool is not in use, thereby preventing access to the pool. All such stairs, ladders or other means of access, after removal from the pool, shall be stored in a place to prevent unauthorized use of the pool.

4) All provisions for fences as outlined in Article XXI - Supplemental Regulations are applicable.

5) Such pool shall be maintained in a manner sufficient to meet the bacterial standards established by the provision of the New York State Sanitary Code relating to public swimming pools,

6) Pools equipped with an integral filtration system and filter pumps or other mechanical devices which shall be so located and constructed so as not to interfere with the peace, comfort and repose of the occupant of any adjoining property.

§ 175 Telecommunications Towers

The Town of Dunkirk recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often these facilities require the construction of a communication Tower and/or similar facilities. The intent of this Section is to regulate the location, construction, and modification of these facilities in accordance with sound land use planning by:

1) Minimizing adverse visual effects of Towers and/or similar facilities through careful design, siting, and vegetative screening and/or buffering,

2) Avoiding potential damage to adjacent properties from Tower failure or falling debris through engineering and careful siting of Tower structures.

3) Maximizing use of any new and/or existing Tower or existing building and/or structure to reduce the number of Towers and/or similar facilities needed in the Town.

4) Providing for the general health, safety and welfare of the Town in and by the regulation of these facilities as such regulation is permitted under applicable Federal and/or State law.

5) Accommodating and allowing wireless service providers to meet their service objectives insofar as can be accommodated consistent with these regulations and/or other applicable Federal or State law.

Telecommunication Facility Permit Required

No Telecommunication Facility shall be sited, located, constructed, erected, or modified without the issuance of a permit as prescribed in this Section'.

The Zoning Board of Appeals may waive any provision of this Section for Telecommunication Facilities whose total height above ground does not exceed 60 feet.

Zoning Districts and Bulk Requirements

1) Municipal or Government owned property and Light Industrial area-Site plan application per Town of Dunkirk Zoning Law Requirements "and this Section. If the tower is to be set back in any of these districts less than the height of the proposed tower to any residential district, then the application will require a Tower Special Permit per this Section and site plan approval. All Towers shall be set back a minimum of 500 feet from any residential dwelling, school or historic structure.

2) Agricultural, Residential, Conservation, and Highway Commercial Zoning Districts: Site plan review and a Tower Special Permit as forth in this Section.

The tower must be set back a minimum of the height of the tower from any residential zoned property or any front yard line and be a minimum of 500 feet from any residential dwelling, school or historic structure.

Towers exceeding 175 feet in height shall be treated as Type I Actions under the State Environmental Quality Review Act (SEQRA).

Towers shall not be allowed on any other districts except as specifically set forth herein.

General Standards

1) No permit or renewal thereof or modification of the conditions of a current permit relating to a Telecommunication Facility shall be authorized by the Zoning Board of Appeals unless it finds that such Telecommunication Facility

a) is necessary to meet current or expected demands for the services supported by the Telecommunications Facility;

b) Conforms with all applicable regulations promulgated by the Federal Communications Commission and/or any other applicable State or Federal regulatory agency.

c) Is designed and constructed in a manner which minimizes its visual impact. d) Complies with all other requirements of the Zoning Law of the Town.

e) Is the most appropriate site within the immediate area for the location of a Telecommunication Facility. It is preferred that Telecommunication Facilities be located on industrial, business, or municipal property and/or co-located.

All applicants are required to provide a report which establishes to the satisfaction of the Zoning Board of Appeals that the applicant is required to provide service to locations which it is not able to serve through existing facilities which are located either within or outside of the Town, showing the specific locations and/or areas the applicant is seeking to serve.

The report shall set forth an inventory of existing facilities and/or structures within or outside the Town which might be utilized or modified in order to provide coverage to the locations applicant is seeking to

serve and include a report on the possibilities and opportunities for a co-location as an alternative to a new site.

The applicant must demonstrate that the proposed facility cannot be accommodated on any such existing facility or structure either within or outside of the Town, due to one or more of the following reasons:

- 1) The proposed equipment would exceed the existing and reasonable potential structural capacity of existing facilities or structures within or outside of the Town considering existing and planned use for those facilities or structures.
- 2) The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be mitigated or prevented.
- 3) Said existing facilities or structures do not have space on which the proposed equipment can be placed so it can function effectively and reasonably and/or the applicant has not been able, following good faith efforts, to reach an agreement with the owner or owners of such facilities or structures.
- 4) Other reasons which make it impracticable to locate or place the proposed equipment on said facilities or structures.

Co-Located Antennas Preferred

The shared use of existing Telecommunication Facilities or other structures shall be preferred to the construction of new such facilities. Any application for a Telecommunication Facility Permit or renewal thereof or modification of the conditions of a current Telecommunication Facility Permit shall include proof that reasonable efforts have been made to co-locate with an existing Telecommunication Facility or upon an existing structure. The application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures of height exceeding 75% of the height of the proposed Tower within a one mile radius from the proposed site if the application is for cellular telephone or personal communication use, or a five mile radius for other services and for cellular telephone or personal communication use and outlining opportunities for shared use as an alternative to the proposed location. The application must demonstrate that the proposed Telecommunication Facility cannot be accommodated on all sites in the inventory due to one or more of the reasons set forth in this Section.

Special Permit or Telecommunication Facilities Towers/Antennas

All applicants for Special User Permits for Telecommunication Facilities Towers and/or Antennas shall make a written application to the Zoning Board of Appeals of the Town. This application shall include:

- 1) Tower Special Permit application form, supplied by the Town.
- 2) Long form Environmental Assessment form (EAF), including but not limited to a Visual EAF Addendum.
- 3) Applicable Fees;
- 4) Site plan in form and content acceptable to the Town, prepared to scale and in sufficient detail and accuracy, showing on a minimum:

- a) The exact location of the proposed Tower, together with guy wires, guy acres, if applicable.
 - b) The maximum height of the proposed Tower;
 - c) A detail of Tower type (monopoles, guyed, free-standing, or other);
 - d) The color or colors of the Tower;
 - e) The location, type, and intensity of any lighting on the Tower;
 - f) The property boundaries; (A copy of a property survey must also be provided.)
 - g) Proof of the landowner's consent if the applicant will not own the property; (A copy of a lease agreement must also be provided if the applicant will not own the property.)
 - h) The location of all structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the Tower;
 - Q Names and addresses of adjacent land owners;
 - j) The location, nature and extent of any proposed fencing, landscaping, or screening;
 - k) The location and nature of proposed utility easements and/or access roads, if applicable;
 - l) Building elevations of accessory structures or immediately adjacent buildings.
- 5) Before and after propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage contrasted with the proposed signal coverage resulting from the proposed Telecommunications Facility.
- 6) A search ring prepared by a qualified radio frequency engineer and overlaid on an appropriate background map demonstrating the area within which the Telecommunications Facility needs to be located in order to provide proper signal strength and coverage to the target area or cell. The applicant must be prepared to explain to the Board why it selected the proposed site, discuss the availability or lack of availability of a suitable within the search ring, which would have allowed for co-located Antennas and to what the extent the applicant explored locating the proposed Tower in a more intensive use district. Correspondence with other Telecommunication companies concerning co-location is part of this requirement.
- 7) The applicant must submit a copy of its policy regarding co-location of the proposed Tower with other potential applications. Such policy should allow co-location if new Antennas and/or equipment do not or will not exceed structural loading requirements, interfere with Tower space use, or pose any technical or radio frequency interference with existing equipment.
- 8) A report prepared by a New York State licensed professional engineer, which in the case of a Tower describes its height and design, including a cross section of the structure, demonstrates the Towers compliance with applicable structural standards and describes the Towers capacity including the number and type of Antennas it can accommodate. In the case of an Antenna or Antennas mounted on an existing structure, the report shall indicate the existing structures suitability to accept the Antenna and proposed method of affixing the Antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.

9) An agreement by the applicant in writing to remove the Telecommunication Facility if such Facility becomes technically obsolete or ceases to be used for its originally intended purpose for 12 consecutive months.

10) The applicant, at the time of obtaining a Special Use Permit, if one is obtained, must provide a financial security bond with the Town as assignee in an amount fixed by the Zoning Board of Appeals, but not less than \$100,000.00.

11) The Town reserves the right upon review of the application to request reasonable, additional, visual, and aesthetic information it deems appropriate on a case by case basis and as it may pertain to a residential zone, historic district, agricultural use, or other special situation.

Upon receipt of the application materials as set forth in the Section above, the Zoning Board of Appeals shall refer the application to the Planning Board. The Planning Board shall review the site plan and recommend changes, if any, to the Zoning Board of Appeals. The Zoning Board of Appeals shall consider the application and approve or deny same in accordance with the procedures and standards set forth in this Section of the Zoning Law.

The Zoning Board of Appeals shall determine the application for a Telecommunications Tower Special Use Permit in accordance with their requirements established for determining a Special Use Permit under the Town's Zoning Law. Any and all grants of a Special Use Permit for a Telecommunications Facility under this Section shall be non-assignable and non-transferable and shall not run with the land, notwithstanding anything in the General Zoning Laws of the Town to the contrary.

Telecommunications Facilities Special Use Permit Standards

The following criteria will be considered by the Town prior to the approval/denial of a request for a Special Use Permit for a Telecommunications Facility. The criteria list that may be used as a basis to impose reasonable conditions upon the applicant:

SITING PREFERENCES: The Town may express a preference that the proposed Telecommunications Facility be located in a higher intensity use district or on higher intensity use property. As a general guideline, the Town's preference from most favorable to least favorable districts shall be as follows:

- 1) Property with existing structure suitable for co-location;
- 2) Municipal or government owned property;
- 3) Light Industrial;
- 4) Highway Commercial; and
- 5) Agricultural/Conservation and Residential.

AESTHETICS: Telecommunication Facilities shall be located and buffered to the maximum extent practicable and technologically feasible to help insure capability with surrounding land uses. In order to minimize any adverse aesthetic impact on neighboring residents to the extent possible, the Zoning Board of Appeals may impose conditions on the applicant, including the following:

- 1) Tower height, location and design are matters of primary public concern. The Town may require monopoles or guyed Tower instead of a free-standing Tower.

- 2) The Town may require reasonable landscaping consisting of trees or shrubs to historical sites and/or districts by the greater of 500 feet or 5 times the height of the Facility. The Zoning Board of Appeals may modify this condition if the Facility is attached to an existing structure or for other satisfactory reasons supported by expert testimony.
- 3) All Telecommunications Facilities shall be separated from residential dwellings, schools, houses of worship, places of public assembly and designated historical sites and/or districts by the greater of 500 feet or 5 times the height of the Facility. The Zoning Board of Appeals may modify this condition if the Facility is attached to an existing structure or for other satisfactory reasons supported by expert testimony.
- 4) Towers shall be designed and sited so as to avoid whenever possible application of FAA lighting and painting requirements. The Towers shall not be artificially lighted except as required by the Federal Aviation Administration or the Town. The Towers shall be of a non-reflective finish, color subject to Town approval unless otherwise required by the FAA. Any lighting which may be required by the FAA shall not consist of strobe lights unless specifically mandated by FAA.
- 5) All Permits shall include a fall zone surrounding any support, which fall zone must have a radius of at least equal to the height of such support Tower and any Antenna attached thereto. The entire fall zone may not include public roads, must be on private property, either owned or leased by the applicant, or for which the applicant has obtained an easement. It may not contain any structure other than those associated with the Telecommunication Facilities and may not be located within any set back area established by this Section. If the Facility is attached to an existing structure, fall zone requirements may be modified by the Zoning Board of Appeals.
- 6) No Tower or device or Facility shall contain any signs or advertising. The Town may, however, require appropriate signage indicating ownership of the facility and telephone number to call in case of emergency.
- 7) Towers and auxiliary structures shall be surrounded by a fence or wall at least 8 feet in height of a design approved by the Board so as to make intrusion difficult. Barbed wire is not to be used in a residential area or on public property unless specifically permitted by the Board. There shall be no permanent climbing pegs within 15 feet of the ground on any Tower or facility.
- 8) All other uses ancillary to the Telecommunications Facility and associated equipment are prohibited unless otherwise permitted in zone.
- 9) The Town may impose as a condition on the applicant that the Antennas be operated only at FCC designated frequencies on power levels and/or EPA technical exposure limits and that the applicant provide competent documentation to support the maximum allowable frequencies, power levels, and exposure limits will not be exceeded.

Telecommunications Facilities Maintenance

All Telecommunications Facilities, both predating and otherwise, this Section shall fulfill the requirements of this section. The Town Code Enforcement Officer and/or Building Inspector is empowered to enforce these regulations.

- 1) The sufficiency of the bond for removal shall be confirmed at least every five (5) years by an analysis of the cost of removal and property restoration performed by a licensed New York State professional engineer with the results to be communicated to the Town. If the bond amount in force is insufficient to cover the cost of removal, it shall be immediately increased to cover such amount.
- 2) The Facility shall be inspected at least every two years for structural integrity by a New York State licensed professional engineer, and a copy of the inspection report submitted to the Town.
- 3) All Telecommunications Facilities shall be maintained in good order and repair and all such work shall comply with all applicable code requirement of any governmental body issuing such rules and/or regulations.
- 4) Any additional Antennas, reception or transmission devices or other similar receiving or transmitting device proposed for attachment to an existing facility shall require review in accordance with this Section. The intent of this requirement is to insure the structural integrity, visual aesthetic and land use compatibility of communication towers upon which additional Antennas, reception or transmission devices are to be installed.
- 5) No outside storage of vehicles, materials or waste shall be allowed except for the limited periods when the facility is undergoing construction, repair, or maintenance.

Exemptions

Towers and Antennas may be repaired and maintained without restriction. Antennas used solely for residential household, television and radio reception are exempt from the provisions of this Section, provided they do not exceed 30 feet in height. Other Antennas or devices exempt under FCC rule or regulation.

Violations/Penalties

In the event of any violation of this Section or any permit issued hereunder, the Town may seek enforcement under any available authority, including, but not limited to, the penalties outlined in this Zoning Law.

Any applicant upon receipt of a Special Use Permit for Telecommunication Facilities that substantially does not meet any of the requirements and/or conditions of that permit, shall have its permit revoked and the Telecommunications Facilities removed within ninety (90) calendar days of notification by the Town of such violation.

Miscellaneous

In the event of any conflicts or inconsistencies between this Section and any other Local Law of the Town Zoning Law or other Local Law, Zoning Law, Rule or Regulation, this Section is meant to regulate Telecommunication Facilities and is not generally applicable unless otherwise specifically referenced in this Section.

Part IV -Administration and Enforcement

Article XXII- Exceptions and Modifications

§176 Purpose

Because each property is unique and possesses different characteristics, modifications will sometimes be allowed. These exceptions and modifications are granted on an individual basis if the land owner or use meets the requirements set forth in this Article.

§ 177 Exceptions to Yard Requirements

- 1) Rear Yard Exceptions for Through Lots- On a through lot where the rear lot line coincides with a street line, a front yard equivalent shall be provided. The rear yard depth requirements in the district regulations shall not apply on that portion of a through lot where the front yard equivalent is required.
- 2) Side Yard Exceptions for Corner Lots - On a corner lot where the rear lot line coincides with a side lot line of an adjoining lot, the required width of the exterior side yard shall be a minimum of twenty-five (25) feet; the required width of the interior side yard shall be a minimum of five (5) feet.

§ 178 Exceptions to Area Requirements

Any lot separately owned and recorded on the Tax Map of the Town of Dunkirk at the time of enactment of this law which has a frontage of less than the prescribed number of feet permitted in an applicable district may be used as a building lot if it has sufficient area to permit the required setbacks within such district.

§ 179 Exceptions to Height Limitations

The following are exceptions to height restrictions in the Town of Dunkirk:

- 1) chimneys, flues, spires and belfries;
- 2) flagpoles, radio or television antennas, masts or aerials - located on a building and extending not more than twenty (20) feet above the roof of such building;
- 3) elevator or stair bulkheads - provided that such structures do not occupy more than ten percent (10%) of the roof area;
- 4) solar energy systems not more than one half (1/2) story above the roof of such building;
- 5) windmills;
- 6) water towers and tanks;
- 7) observation towers;
- 8) clock towers

Article XXIII -Administration

- 1) Zoning Enforcement Officer

The provisions of this Chapter shall be administered and enforced by the Zoning Enforcement Officer appointed by the Town Board who shall have the power to make inspections of building or premises necessary to carry out their duties in the enforcement of this Chapter. The Duties of the Zoning Enforcement Officer shall include:

- a) keep records of all applications for permits;

b) keep record of all permits issued with a notation of all special conditions involved. c) file and safely keep copies of all plans submitted and the same shall form a part

of the records of their office and shall be available for use of the Town Board and other officials.

d) no permit shall be issued for a permit for the construction of any building or use of any property unless such building or use conforms to all other ordinances in the Town of Dunkirk.

2) Zoning Permits

a) It shall be unlawful to commence the excavation for or the construction of any building or structure, including accessory buildings, or to commence the moving or alteration of any building or structure, including accessory buildings, until the Zoning Enforcement officer has issued a permit for such work.

b) In applying to the Zoning Enforcement Officer for a zoning permit, the applicant shall submit specifications and a dimensioned plan to scale indicating the shape, size, height and location in exact relation to all property lines and to street or road lines of all buildings or structures to be erected, altered or moved and of any building or structure on the lot. This plan shall be accompanied by a written statement from a qualified engineer or other satisfactory evidence to the effect that the line of the building street or road has been accurately located and staked on the ground. The applicant shall also state the existing or intended occupancy and use of all such buildings and land and supply other information as may be required by the Zoning Enforcement Officer to ensure that the provisions of their Chapter are being observed. If the proposed excavations or construction or alterations or moving as set forth in the application are in conformity with the provisions of this chapter and other ordinances of the Town of Dunkirk then in force, the Zoning Enforcement Officer shall issue a permit for such excavation, construction, alteration or moving.

c) if a zoning permit is refused or if additional approvals are required, the Zoning Enforcement officer shall state such refusal, in writing, with the cause and shall immediately mail notice of such refusal or indication that additional approvals are required to the applicant at the address indicated on the application.

d) The issuance of a permit shall in no case be construed as waiving any provision of this Chapter.

e) A zoning permit shall become void twelve (12) months from the date of issuance unless substantial progress has been made by that date on the project described therein, provided, however, that the building permit may be renewed for an additional six (6) months upon application therefore without the payment of an additional fee.

3) Site Plan Review

The Town Board is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter.

a) Application -Application for Site Plan Review shall be made to the Town Board on a form provided by the Zoning Enforcement Officer and shall be accompanied by a fee as set by the Town Board.

b) Staff Review - A sketch plan conference should be held between the Zoning Enforcement Officer and the applicant prior to the preparation and submission of a formal site plan to the Town Board.

Preparing a sketch plan offers an opportunity for the applicant to determine the issues and satisfy staff that the site plan is in conformance with the Zoning Law. The conference also enables the Zoning Enforcement Officer to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required on the site plan. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant should submit a preliminary sketch of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the sketch plan conference to avoid possible future delays. The preliminary sketch plan should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans.

c) Preliminary/Final Site Plan - As required in this Chapter, an application for site plan approval shall be made, in writing, to the Town Board and shall be accompanied by a preliminary site plan as outlined in Article XII - Site Plan Review. The plan shall be reviewed by the Town Board who shall approve, approve with conditions or disapprove the preliminary site plan. As part of the approval process, within thirty (30) calendar days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Town Planning Board for review. The Planning Board shall make recommendations to the Town Board within thirty (30) calendar days. This time period may be extended by mutual consent of the applicant, the Planning Board and the Town Board.

A final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the staff or Town Board. The final site plan shall conform to all requirements of Article XII - Site Plan Review. The application for final site plan approval shall be made within six (6) months from the date of the preliminary approval. An extension may be granted if agreed to by both the applicant and Town Board.

d) Public Hearing - After reviewing the preliminary site plan and recommendations from other involved Town or County agencies, the Town Board may hold a public hearing. Notices of the public hearing shall be mailed at least five (5) calendar days prior to the date of the hearing to adjacent property owners within two hundred (200) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) calendar days before the hearing.

e) Town Board Action - Within sixty two (62) calendar days of receipt of the complete application for final site plan approval, the Town Board shall hold its public hearing. Following the hearing, they shall render a decision of approval, conditional approval or disapproval.

i) Approval- Upon approval, the Town Board shall endorse its approval on a copy of the site plan and shall immediately file it with a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant.

ii) Conditional Approval- The Town Board may conditionally approve the site plan. Upon adequate demonstration by the applicant that all conditions have been met, the Town Board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant

iii) Disapproval- Upon disapproval of the site plan, the decision of the Town Board shall immediately be filed with the Town Clerk and a copy mailed to the applicant

f) Reimbursable Costs - Costs incurred by the Town Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.

4) Use and Area Variance Review

The Zoning Board of Appeals is authorized to review and approve, approve with conditions or disapprove area and use variances prepared in accordance with the standards outlined in this Chapter.

a) Application - Application for variances shall be made to the Zoning Board of Appeals on a form provided by the Zoning Enforcement Officer and shall be accompanied by a fee as set by the Town Board.

b) Staff Review - A staff review shall be held between staff and the applicant prior to the preparation and submission of a formal application to the Zoning Board of Appeals. Preliminary consultation offers an opportunity for the applicant to determine the issues and satisfy staff that the application is complete and in conformance with the Region's Comprehensive Plan and Zoning Law. The conference also enables staff to review the basic variance requested, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required for the application. The project's status under the State Environmental Quality Review Act will be determined at this time. The applicant shall submit a preliminary application of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the preliminary review to avoid possible future delays. The preliminary application should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans. A description of the variance sought shall also be outlined in the application.

c) Preliminary Review - As required in this Chapter, an application for variance approval shall be made, in writing, to the Chairperson of the Zoning Appeals through the Zoning Enforcement Officer and shall be accompanied by a preliminary application. As part of the approval process, within thirty (30) calendar days of receipt of the complete application for a variance, staff shall refer the project to the Town Planning Board for review. The Planning Board shall make recommendations to the Zoning Board of Appeals within thirty (30) calendar days. This time period may be extended by mutual consent of the applicant, the Planning Board and the Zoning Board of Appeals.

d) Public Hearing - After reviewing the preliminary site plan application and recommendations from other involved Town or County agencies, the Zoning Board of Appeals shall hold a public hearing. Notices of the public hearing shall be mailed at least five (5) calendar days prior to the date of the hearing to adjacent property owners within two hundred (200) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) calendar days before the hearing.

e) Final Review - A final review shall incorporate any revisions or other features recommended by the staff or the Zoning Board of Appeals. The application for final approval shall be made within six (6) months from the date of the preliminary review.

f) Zoning Board of Appeals Action - Within sixty two (62) calendar days of receipt of the complete application for final approval of the variance, the Zoning Board of Appeals shall hold a public hearing. After the public hearing, they shall render a decision of approval, conditional approval or disapproval.

i) Approval- Upon approval, the Zoning Board of Appeals shall endorse its approval on a copy of the variance application and shall immediately file it with a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant.

ii) Conditional Approval- The Zoning Board of Appeals may conditionally approve the variance. Upon adequate demonstration by the applicant that all conditions have been or shall be met, the Zoning Board of Appeals shall endorse its approval on a copy of the application and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant.

iii) Disapproval- Upon disapproval of the variance, the decision of the

Zoning Board of Appeals shall immediately be filed with the Town Clerk and a copy mailed to the applicant

g) Reimbursable Costs - Costs incurred by the Zoning Board of Appeals for consultation fees or other extraordinary expense in connection with the review of a proposed variance shall be charged to the applicant.

h) Appeals - Procedures relative to appeal for administrative review, variance or application for a variance shall include:

Q Any person or persons jointly or severely aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of the Town may apply to the Supreme Court for relief by a proceeding under Article 78 of the CPLR. The process must be instituted within thirty (30) calendar days after filing of a decision in the office of the Town Clerk.

ii) Costs shall not be allowed against the Zoning Board of Appeals unless

it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

iii) An appeal stays all proceeding in furtherance of the action appealed from, unless the Zoning Enforcement Officer from whom the appeal is taken certifies to the Zoning Board of Appeals after the notice of appeal shall have been filed with them that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer and on due cause shown.

5) Special Permit Review

The Town Board is authorized to review and approve, approve with conditions or disapprove special permit applications prepared in accordance with such standards outlined in this Chapter.

a) Application -Application for Special Permits shall be made to the Town Board on a form provided by the Zoning Enforcement Officer and shall be accompanied by a fee as set by the Town Board.

b) Staff Review - A sketch plan conference shall be held between staff and the applicant prior to the preparation and submission of a formal special permit application to the Town Board. Preparing a sketch plan offers an opportunity for the applicant to determine the issues and satisfy staff that the special permit is in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required on the site plan. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary sketch of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the sketch plan conference to avoid possible future delays. The preliminary sketch plan should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans.

c) Preliminary Special Permit and Site Plan - As required in this Chapter, an application for special permits shall be made, in writing, to the Town Board and shall be accompanied by a preliminary site plan as outlined in Article XIII -Special Permits. The permit application and plan shall be reviewed by the Town Board who shall approve, approve with conditions or disapprove the preliminary special permit application.

As part of the approval process, within thirty (30) calendar days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Town Planning Board for review. The Planning Board shall make recommendations to the Town Board within thirty (30) calendar days. This time period may be extended by mutual consent of the applicant, the Planning Board and the Town Board.

d) Public Hearing - After reviewing the preliminary site plan and recommendations from other involved Town or County agencies, the Town Board shall hold a public hearing. Notices of the public hearing shall be mailed at least five (5) calendar days prior to the date of the hearing to adjacent property owners within two hundred (200) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least ten (10) calendar days before the hearing.

e) Final Special Permit and Site Plan - A final site plan for the special permit application shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the staff or the Town Board. The final site plan shall conform to all requirements of Article XII - Site Plan Review. The application for final special permit approval shall be made within six (6) months from the date of the preliminary approval.

f) Town Board - Within sixty two (62) calendar days of receipt of the complete application for final special permit approval, the Town Board shall hold a public hearing. Following the public hearing, they shall render a decision of approval, conditional approval or disapproval.

i) Approval- Upon approval, the Town Board shall endorse its approval on a copy of the site plan and shall immediately file it with a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant.

ii) Conditional Approval- The Town Board may conditionally approve the special permit. Upon adequate demonstration by the applicant that all conditions have been met, the Town Board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant.

iii) Disapproval- Upon disapproval of the special permit, the decision of the Town Board shall immediately be filed with the Town Clerk and a copy mailed to the applicant

g) Reimbursable Costs - Costs incurred by the Town Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.

6) Reference to Chautauqua County Planning Board

In accordance with the policy and procedures provided for by Chapter 24, Article 12-B, §§239-1 and 239-m of the General Municipal Law, any proposed site plan, variance or special permit affecting real property within five hundred (500) feet of the boundary of the Town of Dunkirk or from the boundary of any existing or proposed county or state park or other recreational areas or from the right

of way of any existing or proposed county or state parkway, throughway, expressway, road or highway or from the existing or proposed right of way of any stream or drainage channel owned by the County or for which the County has established channel lines or from the existing or proposed boundary of any state owned land on which a public building or institution is situated shall be referred to the County Planning Board.

The term "proposed" shall be deemed to include only those recreation areas, parkways, throughways, expressways, roads or highways which are shown on a County Plan of Chautauqua County adopted pursuant to § 239-d, Subdivision 2 of the General Municipal law or adopted as an Official Map of Chautauqua County pursuant to § 239-g of the General Municipal Law.

If the Chautauqua County Planning Board fails to report within thirty (30) calendar days after receipt of a full statement of such referred material, the Town Board or Zoning Board of Appeals may act without such report.

If the Chautauqua County Planning Board disapproves the proposal or recommends modifications thereof, the Town Board or Zoning Board of Appeals shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one (1) of all the members thereof and after the adoption of a resolution setting forth the reasons for the contrary action.

§ 182 Planning Board

1) Establishment - The Town of Dunkirk has established the Town of Dunkirk Planning Board. Efforts will be made to ensure qualified members of the Planning Board represent a variety of ethnic, professional and civic groups in the Town of Dunkirk.

2) Membership

a) The Planning Board shall consist of five members, none of whom shall hold any other public office in the Town of Dunkirk or be members of the Town Board.

b) The members of the Planning Board shall be appointed by the Town Board.

Terms of membership shall be five (5) years.

c) Members of the Planning Board, appointed in accordance with the provisions of this Chapter as then in effect and in office when this Chapter takes effect, shall continue to serve for the balance of the terms for which they were originally appointed and until their successors have been appointed and qualified.

d) The Town Board may adopt attendance and training requirements for members of the Planning Board. These requirements shall be adhered to by all members of the Town of Dunkirk Planning Board.

Members of the Planning Board shall be required to attend training courses of no less than three hours per calendar year.

3) Powers and Duties

a) The Planning Board shall have full power and authority to make such investigations, maps and reports and recommendations relating to the planning and development of the Town or other matters as referred to said Board by the Town Board or governing body having the authority.

- b) Matters referred to the Board by the Town Board shall be placed on the agenda for consideration and action at the first meeting of the Board after such reference.
- c) The Planning Board shall have the power and authority to employ experts and a staff and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all, the appropriation, if any, that may be made for such Board.
- d) The Planning Board shall have the power to act on any matter on which the Planning Board is required or authorized to act by the provisions of the Town of Dunkirk ordinances, by general law or any actions of the Town Board.
- 4) Quorum - A majority of the members of the Board shall constitute a quorum for the transaction of business.
- 5) Meeting Schedule - All meetings of the Planning Board shall be held at the call of the Chairperson and at such other times as such Board may determine. All meetings shall be open to the public.
- 6) Annual Meetings - The Planning Board shall hold its annual organization meeting at the regular meeting in January of each year. At the organization meeting, a chairperson shall be elected by a majority of the members present. A recording secretary shall also be appointed at this meeting.
- 7) Duties of the Chairperson
 - a) At all special meetings, only such business as shall have been specified in the call for such special meetings shall be considered. No official business shall be conducted at special meetings in the absence of a quorum.
 - b) The chairperson shall preside at all meetings of the Board and shall have a vote upon all questions brought before the Board.
 - c) The chairperson shall sign all documents and correspondence of the Board.
 - d) In the event of the absence or illness of the chairperson, a temporary chairperson shall preside and shall exercise all the authority vested in the chairperson. This temporary chairperson shall be the person on the board with the greatest longevity on the Board. A resolution shall be passed appointing the person as the temporary chairperson of the Planning Board.
- 8) Duties of the Recording Secretary
 - a) The secretary shall be responsible for keeping minutes of all proceedings of the Board and shall see to the proper and correct filing of all books, papers and recommendations placed in their care. The secretary shall relay to the Town Board, and all actions of the Planning Board, as required by the Zoning Law, along with the reasons for such action as expressed by the members of the Planning Board.
 - b) The secretary shall be responsible for calling special meetings of the Board upon receiving a request from the chairperson or a written request by a majority of the Board to call a special meeting. Special meetings shall be called by giving a written notice of said meeting to each Board Member; the purpose of the meeting shall be outlined in the written notice. Said notice shall be mailed to the members of the Board and be postmarked at least 48 hours, excluding Saturdays, Sundays and holidays,

prior to the time of the meeting. Special meeting of the Board, as ordered by the Town Board, shall be the only exception to this ruling.

9) Rules of Order

- a) Roberts Rules of Order shall be the parliamentary guide for all meetings of the Board. Said rules of order shall consist of roll call, public participation (discretion of the chairperson at the onset of the meeting), approval of minutes, communications, old business, new business, report of committees or assigned delegates and miscellaneous matters.
- b) Any member of the Board shall be allowed to call an aye or nay vote. Any member of the Planning Board who believes they have a conflict of interest on any matter on the Planning Board agenda shall voluntarily excuse themselves from discussion and voting on the matter.
- c) All resolutions brought before the Board shall be submitted to the secretary, in writing, and all communications to the Board or its officers shall be filed with the secretary.
- d) No committees or designated representatives of the Board shall exercise any authority except under the specific direction of the Board.

10) Miscellaneous

- a) No rule of the Board shall be suspended except by a majority of the members present.
- b) Any member of the Planning Board may, at any reasonable time, examine the records of the secretary of the Board.
- c) Amendments to these rules or laws may be made at any regular meeting by the unanimous consent of the entire Board or by a majority vote of the members present and voting at a regular meeting.

§ 183 Zoning Board of Appeals

- 1) Establishment - A Zoning Board of Appeals is hereby established in accordance with §267 of the Town Law.
- 2) Membership
 - a) The Zoning Board of Appeals shall consist of five (5) members.
 - b) The Town Board of the Town shall appoint the members of the Zoning Board of Appeals: each to be appointed for five (5) years. No person who is a member of the Town Board or a Town Justice shall be eligible for membership on such Board.
 - c) The Town Board shall have the power to remove any member of the Board for cause after a public hearing.
 - d) Vacancies shall be filled for the unexpired term of the member whose place has become vacant.
- 3) Powers and Duties -The Zoning Board of Appeals of the Town of Dunkirk shall have all powers as may be conferred upon it by this Chapter and also all the powers set forth in

§267 of the Town Law of the State of New York as the same may be amended from time to time. These duties shall include, but not be limited to:

a) Interpretation - Upon appeal from a decision by an administrative official, the Zoning Board of Appeals shall decide any question involving interpretation of any provisions of this local law. Such appeal shall be initiated within sixty (60) calendar days of the adverse decision.

b) Variances - On an appeal from an order, requirement, decision or determination of any administrative official charged with the enforcement of this local law, where it is alleged by the appellant that there are practical difficulties or unnecessary hardships in the way of carrying out the strict application of any provision of this local law, the Zoning Board of Appeals may grant a variance in the strict application of such provision, in accordance with the following:

i) Use Variance- Before the Zoning Board of Appeals may grant a use variance, unnecessary hardship must be established based upon all of the following criteria:

the applicant can not realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

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

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

the alleged hardship has not been self-created.

ii) Area Variance - Area variances may be considered where setback, frontage, lot size, density or yard requirements of this local law cannot be reasonably met. The Zoning Board of Appeals may grant an area variance on the ground of practical difficulty, such practical difficulty to be determined by consideration of the following:

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;

whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

whether the requested area variance is substantial;

whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and;

whether the alleged difficulty was self-created, which

consideration shall be relevant to the decision to the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

iii) Conditions- No variance under the above provisions shall be authorized by the Zoning Board of Appeals unless it finds that such variance:

Will be in harmony with the general purposes and intent of this law, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with it and the size of the site in respect to streets giving access;

Will not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures to protect adjacent properties;

Will not create a hazard to health, safety or general welfare;

Will not alter the essential character of or be detrimental to the neighborhood;

is the minimum necessary to afford relief.

4) Quorum - A majority of the members of the Zoning Board of Appeals shall constitute a quorum.

5) Meeting Schedule - All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. All meetings of such Board shall be open to the public.

6) Annual Meetings - The Zoning Board of Appeals shall hold its annual organization meeting at the regular meeting in January of each year. A recording secretary shall also be appointed at this meeting.

7) Chairperson - The Town Board shall appoint the Chairperson of the Zoning Board of Appeals.

8) Minutes

a) 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.

b) The Zoning Board of Appeals shall also keep records of the examination and other official actions. Every rule, regulation, every amendment or repeal and every order, requirement, decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Zoning Enforcement Officer and shall become public record.

9) Interpretation of Permitted Uses- When a use is not specifically listed as a "Permitted Use", "Permitted Use with Site Plan Review" or "Permitted Use with Special Permit" within any zoning district, it shall be assumed to be a prohibited use unless it is determined, in a written decision by the Zoning Board of Appeals, that said use is similar to permitted uses, meets the intent specified in the Zoning Law and is not inherently a nuisance, menace or danger to the health, safety or welfare of the residents of the municipality.

10) Oaths- The Chairperson or, in his absence, the Temporary Chairperson may administer oaths and compel the attendance of witnesses.

§ 184 Penalties for Violation

1) Complaints of Violations - Whenever a violation of this local law occurs, any person may file a complaint, in writing. All such complaints must be filed with the Zoning Enforcement Officer who shall properly record such complaint and immediately investigate and report to the Town Board.

2) Penalties for Violation - Any person who violates any provision of this local law, or any regulation adopted, is guilty of an offense punishable by a fine not exceeding two hundred fifty dollars (\$250.00) and/or imprisonment for period not to exceed fifteen (15) calendar days, or both.

Whenever such persons shall have been notified by the Town Board of the Town of Dunkirk, New York, or its duly authorized official, or the Zoning Enforcement Officer or by service or summons in a prosecution or in any other way that they are committing such violation of this Chapter, each week that they shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty.

The Town of Dunkirk can pursue each violation as a civil remedy for injunction or as criminal prosecution; each shall be mutually exclusive remedies.

Such fines or penalties shall be collected as like fines or penalties are now by law collected.

Article XXIV - Amendments

§ 185 Purpose

The regulations, restrictions and boundaries established by this Chapter may, from time to time, be amended, supplemented, changed or repealed to meet the growing and changing needs of the Town of Dunkirk. This Article outlines the procedure to make these amendments.

§ 186 Authorization

The Town Board may, subject to the provisions and restrictions contained in this Article, from time to time on its own motion, on petition or on recommendation of the Planning Board, by amendment, supplement, repeal or change the regulations and provisions of this law. All such changes to this law shall be made in accordance with applicable law. Any proposed change shall be submitted to the Planning Board for report and recommendation prior to any action by the Town Board. If the Planning Board recommends against the enactment of any proposed change, it shall become effective only by a majority vote of the Town Board.

§ 187 Submissions

In the case of a proposed amendment, the Town Board shall require the petitioner to submit a development plan showing the extent, location and character of proposed structures and uses. The Town Board may require that the development plan be modified to meet municipal or public concerns. No building permit or zoning permit shall be issued for any property within the area described by said amendment, except in accordance with the approved development plan including any conditions and limitations imposed by the Planning Board or Town Board.

§ 188 Procedure

- 1) Filing of petition - A petition to amend, change or supplement the text of this local law or any zoning district, as designated on the zoning map shall be filed with the Clerk on forms obtained from the Zoning Enforcement Officer and transmitted to Town Board. The project's status under the State Environmental Quality Review Act shall be determined at this time.
- 2) Referral to Planning Board - Each proposed amendment, except those initiated by the Town Planning Board, shall be referred to the Town Planning Board for an advisory report prior to the public hearing held by the Town Board.
- 3) Public Hearing - The Town Board shall hold a public hearing for the proposed amendment. Notices of the public hearing shall be mailed at least five (5) calendar days prior to the date of the hearing to adjacent property owners within two hundred (200) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least ten (10) calendar days before the hearing.
- 4) The Town Board shall hold a public hearing on the rezoning application within sixty two (62) calendar days of receipt of the application.
- 5) Reference to Chautauqua County Planning Board -All amendments to this Chapter which would change the district classification or the regulations applying to real property within five hundred

(500) feet of the boundary of the Town of Dunkirk or from the boundary of any existing or proposed county or state park or other recreational areas or from the right of way of any existing or proposed county or state parkway, throughway, expressway, road or highway or from the existing or proposed right of way of any stream or drainage channel owned by the County or for which the County has established channel lines or from the existing or proposed boundary of any state owned land on which a public building or institution is situated shall be referred to the County Planning Board.

The term "proposed" shall be deemed to include only those recreation areas, parkways, throughways, expressways, roads or highways which are shown on a County Plan of Chautauqua County adopted pursuant to § 239-d, Subdivision 2 of the General Municipal law or adopted as an Official Map of Chautauqua County pursuant to § 239-g of the General Municipal Law.

If the Chautauqua County Planning Board fails to report within thirty (30) calendar days after receipt of a full statement of such referred material, the Town Board may act without such report.

If the Chautauqua County Planning Board disapproves the proposal or recommends modifications thereof, the Town Board shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one (1) of all the members thereof and after the adoption of a resolution setting forth the reasons for the contrary action.

Article XXV- Definitions

§ 189 Usage

Except where specifically defined, all words used in this Chapter shall carry their customary meanings. The following rules shall apply to the text of this Chapter;

- 1) words in the present tense include the future;
- 2) words in the singular include the plural and the plural the singular;
- 3) the word "shall" is intended to be mandatory;
- 4) the word "lot" shall include the word "plot" or "parcel";
- 5) the word "person" shall include an individual, firm or corporation;
- 6) the words "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied";
- 7) a building or structure includes any part;
- 8) the word "and" indicates that all connected items, conditions, provisions or events shall apply;
- 9) the word "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
- 10) the words "either...or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.

Any question as to the precise meaning of any word used in this law may be appealed to the Zoning Board of Appeals and clarified under their powers of interpretation.

§ 190 Definitions

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

Accessory Use - A use customarily incidental and subordinate to the main use or building and located on the same lot. In no case shall such accessory use dominate, in area, extent or purpose, the principal lawful use or building.

Accessory Building - A subordinate building located on the same lot with the main building, occupied by or devoted to an accessory use. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Accessory Storage Building - A subordinate storage building located on the same lot with the main building, occupied by or devoted to storage (pool houses, work shop, shed, etc.).

Accessory Use of Building - A use customarily incidental to the use of a building for dwelling purposes, not occupying more than twenty five percent (25%) of the total above ground floor area of the main building thereof, and including:

- 1) The office or studio of a physician or surgeon, dentist, artist, musician, lawyer, architect, engineer, teacher or other such professional person residing on the premises, provided that there is no advertising display visible from the street other than a small professional nameplate. The above shall not be interpreted to include the office or place of business of a mortician.
- 2) Customary home occupations such as millinery and dressmaking, provided that there is no display of goods visible from the street, there is no exterior advertising, other than an unlighted sign not over two (2) square feet in area, and that such occupation is conducted in the main building by a person or persons residing therein. Customary home occupations shall not be construed to include those which require the presence of the customer on the premises for the performance of the occupation or those which require the presence in the home of machinery or equipment normally associated with commercial or industrial activities.

Adult Book/Video/Media Store - An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined below, or an establishment with a segment or section devoted to the sale or display of such material.

Adult Entertainment Facilities - Means and refers to "adult news-racks", "adult book stores" and "adult motion picture theaters".

Adult Motion Picture Video Theater- An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by persons within the use.

Specified Sexual Activities-

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;

(3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Specified Anatomical Areas -

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the areola;

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Adult Newsrack- Any coin operated machine or device which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the "specified sexual activities" or "specified anatomical areas" defined in this Article.

Agriculture- The production of crops or plants or vines or trees (excluding forestry operations).

Agribusiness - Business that provides products and services directly to consumers and where a majority of the goods sold are grown or produced on-premises.

Agritourism - Agribusiness that conducts activities by and for the enjoyment or education of the public, which primarily promotes the sale, marketing, production, harvesting or use of the products of the farm to enhance the public's understanding and awareness of farming and farm life.

Alley - A public way having a right-of-way width of twenty (20) feet or less.

Ancillary Use - Uses clearly subordinate to the primary or principal use on a lot.

Antenna -A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services (PCS), and microwave communications.

Area, Land - When referring to the required area per dwelling unit, net land area, the area exclusive of street and other public open space.

Area, Total Floor - The sum of the areas of the several floors of a building, including areas used for human occupancy in basement, attics and penthouses, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches or attics not used for human occupancy or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of this Chapter or any such floor space intended and designed for accessory heating and ventilating equipment. It shall include the horizontal area of each floor level devoted to stairwells and elevator shafts.

Autobody Repair Station - A business premises designed and used for the repair or refinishing of motor vehicles including painting and body work.

Automatic Coin Laundry and/or Dry Cleaner - A business premises equipped with individual clothes washing and/or cleaning machines for the principal use of retail customers.

Automobile Repair Station - A service station with at least one (1) dispenser island or providing repair services including, but not limited to, tuneups, engine repair, brake work, muffler replacement, tire repair or similar activities.

Automobile or Trailer Sales Area - An open area, other than a street or public place, used for the display, barter, purchase, sale or rental of new or used motor vehicles or trailers and where no repair work is done, except minor incidental repair of vehicles to be displayed, sold or rented on the premises.

Automobile Service Station - See Automobile Repair Station.

Automobile Wash - An establishment for the washing of motor vehicles as a principal use.

Automobile Wrecking- The dismantling or wrecking of used automobiles or the storage, sale or dumping of dismantled, partially dismantled or wrecked vehicles or their parts.

Base Flood - The flood having a one percent chance of being equaled or exceeded in any given area (also called the 100 year flood). (Applicable to Flood Damage Prevention Regulations Only)

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 - A house, or portion, where short-term lodging rooms and breakfast are provided. The operator of the bed and breakfast shall live on the premises or in adjacent premises.

Billboard or Signboard -Any structure, or portion, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes other than the name and occupation of the user of such premises or the nature of the business conducted on the such premises or the products primarily sold or manufactured, or any such structure or portion, the area of which, devoted to advertising purposes, exceeds one hundred (100) square feet.

Block - The length of a street between two (2) street intersections.

Boarding or Rooming House- A dwelling, other than a hotel or lodging house, where meals or housing accommodations for four (4) or more persons are provided. This definition shall not be construed to affect local and state licensing provisions.

Boat - An inland vessel not including kayaks, canoes or row boats.

Building - Any structure having a roof supported by columns or walls. When such a structure is divided into separate parts by one (1) or more un-pierced walls extending from the ground up, each such part shall be deemed to be a separate building, except as regards requirements for side yards as before provided. Garages attached with an un-pierced wall shall not be deemed as a separate building.

Building, Alteration of - Any change in supporting members of a building, except such changes as may be required for its safety, any addition to a building, any change in use from one district classification to another, or removal of a building from one location to another.

Building, Floor Area - The sum of the gross horizontal area of the several floors, including the basement of a building and its accessory buildings on the same lot and including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Building, Height of - The vertical distance measured from the mean of the highest and lowest exposed part of the foundation to the highest point of the roof.

Building, Principal - A building including covered porches, in which is conducted the principal use of the lot on which it is situated, in any residence district, any dwelling shall be deemed the principal building on the lot on which the same is situated.

Bulk Storage - The storage of chemicals, petroleum products and other materials in containers for subsequent resale to distributors or retail dealers or outlets.

Cabin, Hunting and Fishing - A structure with accommodations for living and sleeping designed for seasonal occupancy and having a floor area of less than four hundred (400) square feet.

Camp Trailer - A vehicle designed to be towed by an automobile that includes, but is not limited to, sleeping and eating facilities.

Carnival - An amusement show, usually traveling from place to place, having side-shows, ferris wheels, merry-go-rounds, etc..

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

Cemetery - Land used or intended to be used for the disposition and memorialization of dead human beings and dedicated for cemetery purposes, including columbarium, crematories, mausoleums and mortuaries when operated with, and within, the boundary of such cemetery.

Center Line of Street or Road - A line midway between and parallel to two (2) street or property lines or as otherwise defined by the Planning Board.

Church or Other Place of Worship- See Religious Institution.

Circus - An exhibition of wild animals and acrobatic feats, together with side shows and vending concessions.

Clinic, Dental - A structure designed for the practice of dentistry, in which nonresident patients are treated.

Clinic, Medical - A structure designed for the practice of medicine, in which nonresident patients are treated.

Club, Private - A social organization whose premises are restricted to its members and their guests.

Clubhouse - A building to house a club or social organization not conducted for profit and which is not adjunct to, or operated by, or in connection with, the public tavern, cafe or other public place.

Cluster Development -A form of development for residential development that permits a reduction in lot area requirements, provided there is no increase in the number of lots permitted under a conventional development and the resultant land area is devoted to open space.

Co-Located Antennas - Telecommunications facilities which utilize existing Towers, buildings, or other structures for placement of antennas and do not require construction of a new Tower.

Commercial Use -Activity carried out for monetary gain.

Convenience Store -A small shop or store (less than 5,000 square feet) offering for sale prepackaged food products, household items and other goods commonly associated with the same; such use shall not include gas islands or service.

Commercial Vehicle - All trucks, vans, construction equipment and limousines, bearing commercial license plates which are in excess of four (4) tons' net weight.

Court - An unoccupied open space, other than a yard. An outer "court" is one that extends to the street or to the front or rear yard. An inner "court" is any other "court".

Development- Any person made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, minimizing, dredging, filling, grading, paving, excavation or drilling operations. (Applicable to Flood Damage Prevention Regulations Only)

Drive-In Business - Includes drive-in outdoor theaters, 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 as defined.

Dump - See Junkyards.

Dwelling -A building, or portion, designed or used exclusively as the residence or sleeping place of one (1) or more persons. The word dwelling shall not include boarding houses or rooming houses, tourist homes, motels, hotels or other structures designed for transient residence.

Dwelling Unit - One (1) or more rooms designed for occupancy for cooking, living and sleeping purposes.

Dwelling, Single Family - A building containing one (1) dwelling unit and designed or used exclusively for occupancy by one (1) family.

Dwelling, Two Family - A building containing two (2) dwelling units and designed or used exclusively for occupancy by two (2) families living independently of each other or two (2) one family dwellings having a party wail in common.

Dwelling, Multi Family - A building, or portion, containing three (3) or more dwelling units and designed or used for occupancy by three (3) or more families living independently of each other.

Dwelling, Condominium, Row House or Townhouse - A dwelling accommodating or designed to accommodate a single family in a single dwelling unit, the walls on two (2) sides of which may be in common with the walls of adjoining dwellings and are party and/or lot line walls.

Dwelling, Two Family Attached - A building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouse, row or group homes.

Dwelling, Semi-detached - A detached building containing two (2) dwelling units separated by a party wall and/or lot line, each having one (1) side yard.

Educational Institution-An accredited college or university giving general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, social or athletic activities, when located on the institution's land that is not detached from land where classroom facilities are maintained.

Essential Facilities - The operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment, storage and transmission facilities, pumping stations or similar facilities.

Exotic Cabaret - An establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers and where the sale of beer or intoxicating liquor for consumption on the premises is permitted.

Factory -A building or group of buildings, usually with equipment, where goods are manufactured.

Fair - An occasional or periodic competitive exhibition of farm products and livestock, usually accompanied by amusement features and for which an admission fee is charged.

Fall Down Zone- The radius around a Tower within which all portions of the Tower and Antennas would fall in the event of a structural failure of the Tower.

Family

- 1) One (1), two (2) or three (3) persons occupying a dwelling unit;
- 2) Four (4) or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.
- 3) It shall be presumptive evidence that four (4) or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family.
- 4) In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:
 - a) the group is one which in theory, size, appearance, structure and function resembles a traditional family unit;
 - b) the occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family;
 - c) the group shares expenses for food, rent or ownership costs, utilities and other

household expenses;

d) the group is permanent and stable. Evidence of such permanency and stability

may include:

i) the presence of minor dependent children regularly residing in the household who are enrolled in a local school;

ii) members of the household having the same address for the purposes of voter registration, driver's license, motor vehicle registration and filing of taxes;

iii) members of the household are employed in the area;

iv) the household has been living together as a unit for a year or more

whether in the current dwelling unit or other dwelling units;

v) common ownership of the furniture and appliances among the members of the household; and

vi) the group is not transient or temporary in nature;

e) any other factor reasonably related to whether or not the group is the functional

equivalent of a family.

Farm - Any parcel of land containing at least five (5) acres which is used in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used. It excludes fur farms, commercial stables and dog kennels.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1) the overflow of floodwater;

2) the unusual and rapid accumulation or runoff of surface waters from any source;

3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which result in flooding as defined in this definition.

(Applicable to Flood Damage Prevention Regulations Only).

Flood Insurance Rate Map - The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of special flood hazards, the floodway and the risk premium zones applicable to the community. (Applicable to Flood Damage Prevention Regulations Only)

Floodplain or Flood-Prone Area - Any land area susceptible to being inundated by water from any source. (Applicable to Flood Damage Prevention Regulations Only)

Floor Area- See Area, Total Floor.

Floor Area Ratio- The total floor area of a building divided by the area of the lot which it occupies.

Fraternity or Sorority House - A dwelling maintained exclusively for members of the fraternity or sorority enrolled in, or employed by, an academic college or university.

Freight Terminal - Land and buildings used as a relay station for the transfer of a load from one vehicle to another or one party to another. The terminal cannot be used for permanent or long-term accessory storage for principal land uses at other locations. The terminal facility may include storage areas for trucks and buildings or areas of the repair of trucks associated with the terminal.

Funeral Home - A building or part thereof used for human funeral services. Such building may contain space and facilities for a) embalming and the performance of other services used in preparation of the dead for burial; b) the performance of autopsies and other surgical procedures; c) the storage of caskets, funeral urns and other related funeral supplies; and d) the storage of funeral vehicles, but shall not include facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.

Garage, Private - A detached accessory building or portion of a main building, used by the occupants of the premises, used exclusively for the parking or temporary storage of motor vehicles,

Garage, Public - A structure, or portion, other than a private garage, used for the parking or temporary storage of vehicles or trailers.

Gasoline Station - Any premises where gasoline and other petroleum products are sold. This use will also include premises where light maintenance activities such as engine tune ups, lubrication, minor repairs or carburetor cleaning are conducted.

Grade, Established - The elevation of the center line of the streets as officially established by the Highway Superintendent.

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

Gross leasable Area - The total floor area for which the tenant pays rent and which is designed for the tenant's occupancy and exclusive use.

Home Occupation - An occupation for gain or support conducted only by members of a family residing in the premises and conducted entirely within the dwelling provided that no article is sold or offered for sale, except as such may be produced by members of the immediate family on the premises. Customary home occupation shall not be construed to include those which require the presence of the customer on the premises for the performance of the occupation, or those which require the presence in the home of noxious machinery or equipment normally associated with commercial or industrial activities. Home occupations may include, but not be limited to, the office of a resident member of a learned profession, real estate, insurance sales, offices of brokers, musicians, dressmakers, hair dressers and tailors.

Hospital - An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanatorium and shall be limited to the treatment or other care of humans.

Hospital, Animal or Veterinary Clinic - An establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment and shall exclude the treatment or other care of humans.

Hotel - A dwelling containing twelve (12) or more sleeping rooms in which lodging is provided and offered to the public for compensation. This definition shall not be construed to affect local or state licensing provisions.

Industry- Includes the entire range of economic activity, and, as applied to specifics, i.e., manufacturing, wholesale, retail, services, etc., shall have the meaning set forth in the Standard Industrial Classification Manual, published by the Executive Office of the President, Bureau of Management and Budget- 1988.

Junkyard - The outdoor storage or deposit of any of the following:

- 1) Two or more junk vehicles;
- 2) Two or more abandoned mobile homes or recreational camping vehicles;
- 3) Two or more abandoned all-terrain vehicles or snowmobiles (as defined in the New York State Vehicle and Traffic Law);
- 4) Five or more inoperable appliances including, but not limited to, lawn and garden machines, washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions,
- 5) Five and more inoperable pieces of equipment;
- 6) Collection and storage of any second-hand or used material which, taken together, equal in bulk volume of 2000 cubic feet or more;
- 7) Any combination of the above that totals five items.

This definition shall not be construed to include the on-premise storage and maintenance of motor vehicles, machinery and equipment used in the business of farming, logging or contracting. This definition shall not be construed to include the indoor parking and storage of motor vehicles in connection with a New York State licensed new and/or used car business or a bona fide motor vehicle repair business and the parking of no more than ten vehicles in the process of waiting for repairs.

Junk Storage Area - The area of any parcel of land intended to be used for the placement or storage of junk.

Junk Vehicle -Any motor vehicle, whether automobile, bus, trailer, truck, tractor, motor home, motorcycle, mini-bike or snowmobile, or any other device originally intended for travel on the public highways, which meets any of the following conditions:

- 1) Its registration has expired and;
- 2) It is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled or;
- 3) It is not in any condition for legal use upon the public highway.

With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk vehicle.

Kenel - Any establishment, including cages, dog runs and structures, wherein more than three (3) dogs which are over six (6) months old are harbored.

Lodging House - A dwelling, other than a hotel, where housing accommodations for five (5) or more persons are provided for hire for less than a week at one (1) time. This definition shall not be construed to affect local or state licensing provisions.

Lowest Floor-The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistance enclosure, useable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Article. (Applicable to Flood Damage Prevention Regulations Only)

Lot - A designated parcel or tract of land established by plat, subdivision or as otherwise permitted by law, to be used, developed or built upon as a unit.

Lot Area - The total area within the lot lines of a lot, excluding any road rights of way.

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

Lot Depth -The mean horizontal distance between the front and rear lot lines.

Lot Frontage - The length of the front lot line measured at the road line.

Lot Frontage on Circular Roads - The length of the line measured by a line 15 feet back from and parallel to the chord of the lot frontage; the chord of the lot frontage is the straight line joining the two (2) points where the side lot lines intersect the front lot line.

Interior Lot - A lot other than a corner lot.

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

Lot of Record - A lot for which a valid conveyance has been recorded in the Office of the County Clerk prior to the effective date of the Town of Dunkirk Subdivision Law of the Town of Dunkirk Town Code, or is either part of a subdivision plat approved by the Planning Board and filed in the County Clerk's office, or was exempt from the Town of Dunkirk Subdivision Regulations at the time of recording with the County Clerk.

Lot Width - The distance between the side lot lines measured along the front building line as determined by the front yard requirement prescribed by this chapter.

Through Lot - An interior lot having frontage on two parallel or approximately parallel streets.

Manufactured Home - A dwelling unit fabricated in an off site manufacturing facility for installation or assembly at the building site, bearing a label certifying it is built in compliance with and include an insignia issued by the State Fire Prevention and Building Code Council as required in 9 NYCRR 1212.

Marina - A commercial facility for storing, servicing, fuelling, berthing and/or securing of pleasure vehicles,

Maximum Building Coverage - The maximum percentage of a lot to be covered by buildings.

Maximum Lot Coverage - The maximum percentage of a lot to be covered by buildings, structures, accessory uses and impervious materials.

Mean Sea Level - For the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) to which base flood elevations on the flood insurance rate are referenced. (Applicable to Flood Damage Prevention Regulations Only)

Medical Offices - Offices and related spaces of a single business establishment for use as professional services as provided by medical practitioners.

Metes and Bounds - A method of describing the boundaries of land by directions and distances from a known point of reference.

Mobile Home - A structure, transportable in one or more sections, which is at least 8 feet in width and 32 feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home shall be construed to remain a mobile home, subject to all regulations applying, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. This definition SHALL NOT BE CONSTRUED to include factory manufactured homes known as "modular homes" bearing an insignia issued by the State Fire Prevention and Building Code Council as required in

9NYCRR 1212.

Mobile Home Park - Land on which are located, or which is maintained or used by two or more mobile homes.

Mobile Home Site - An area of land in a mobile home park intended for the exclusive occupancy of a single mobile home.

Motel or Motor Court - Shall mean a public inn containing not less than eight (8) rental units with provisions for, but not limited to:

- Automobile parking space to accommodate not less than one (1) car per unit and;
- Separate toilet facilities and hot and cold running water for each rental unit

Motor Freight Terminal - Any premises used by a motor freight company regulated by the Public Utility Commission of New York and/or the Interstate Commerce Commission as a carrier of goods, which is the origin and/or destination point of goods being transported for the purpose of storing, transferring, loading and unloading such goods.

Motor Vehicle Service Station - Any area of land, including structures, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating, washing or other wise servicing motor vehicles, but not including the painting, body and fender work, or the dismantling or replacing of engines.

Museum - A building, place or institution devoted to the acquisition, conservation, study and exhibition of objects having scientific, historical or artistic value.

Nonconforming - A lot of record, structure or use of land which lawfully existed prior to the enactment of this Chapter or conformed to the regulations of the district in which it was located prior to the amendment of this Chapter or which does not conform to the regulations of the district in which it is located following the enactment or amendment of this Chapter.

Nursery School - A school designed to provide daytime care or instruction for two (2) or more children from two (2) to five (5) years of age inclusive and operative on regular basis.

Nursing or Convalescent Home - An establishment which provides full time convalescent or chronic care or both for three or more individuals who are not related by blood or marriage to the operator and who, by reason of chronic illness or infirmity, are unable to care for themselves. No care for the acutely ill, or surgical or obstetrical services, shall be provided in such a home. A hospital or sanatorium shall not be construed to be included in this definition.

Occupancy - The utilization of a building, structure or land.

Occupancy, Seasonal - Occupancy for a period not exceeding four (4) months.

One Hundred Year Flood or 100-year Flood -A flood which has one percent annual probability of being equaled or exceeded. The 100 year flood is identical to the "base flood" which will be the term used throughout this Chapter.

Open Space- An unoccupied space open to the sky, required by the terms of this law.

Parking Area, Private- An unroofed, off-street area used as a private garage.

Parking Area, Public - An unroofed, off-street area used for the temporary storage of self-propelled vehicles and available for public use, whether free, for compensation or as an accommodation for clients or customers.

Paved - Use of blacktop, asphalt, concrete or other similar substance to create a smooth surface, including bituminous penetration, but not the use of dirt, slag or crushed stone.

Pet Shop - A retail establishment that sells animals or household pets that are customarily kept for personal enjoyment within the home. Household pets shall include, but not be limited to, domestic dogs, domestic cats, domestic tropical birds, rodents, fish and fowl.

Plat -A map of a subdivided tract of land showing the boundaries and location of individual properties and roads.

Planned Unit Development - A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces and other site features and improvements.

Porch, Open - A porch open on three (3) sides except for wire screening. A porch shall not be considered open if enclosed by either permanent or detachable glass sash. A structure having a driveway running to it, under it or through it shall not be considered to be an open porch.

Professional Office - Offices and related spaces of a single business establishment for use as professional services as provided by medical practitioners, attorneys, architects, engineers, real estate, insurance sales, offices of brokers, musicians, dressmakers, hair dressers, tailors and similar professions.

Private Club - See Club, Private.

Public and Semi-Public Facility - Any one or more of the following uses including grounds and accessory buildings necessary for their use: playgrounds and recreational areas, public cemeteries, schools, public libraries, fire, civic buildings, public meeting halls and community centers.

Quarry, Sand Pit, Gravel Pit, Topsoil Stripping -A lot or land, or part, used for the purpose of extracting stone, sand, gravel or topsoil for sale as an industrial operation, and exclusive of the process of grading preparatory to the construction of a building or highway construction.

Religious Institution - A church, synagogue or temple and minor accessory uses, but not including parish houses.

Riding Academy - Any establishment where horses are kept for riding or stabling for compensation or incidental to the operation of any club, association, ranch or similar establishment.

Road - See Street.

Roadside Stand -A stall or booth for business which shall be limited to the sale of farm products.

Rooming House - See Boarding or Rooming House.

Sanitarium, Sanatorium -A private hospital, whether or not such a facility is operated for profit.

Satellite Television Receiving Station - An accessory structure capable of receiving or sending, for the sole benefit of the principal user, radio or television signals from a transmitter/receiver, or transmitter relay located in planetary orbit.

School -Any place of instruction in any branch of knowledge.

School, Elementary - Any school having regular sessions with regularly employed instructors who teach those subjects that are fundamental and essential in general education, under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, or a private corporation meeting the requirements of the state.

School, Secondary - Same as elementary school, except education provided.

School, Vocational - Any schools having regular sessions with regularly employed instructors who, as a principal activity, provide training in a trade or vocation and teach those subjects that are fundamental and essential in elementary or secondary education, under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, or a corporation meeting the requirements of the state.

Setback - The distance between a lot line, road line or the mean high water line of a body of water and a particular development feature of a lot such as a building, structure, on site sewage system component or parking area.

Shelter - A facility which, in addition to providing food and shelter to a defined population, provides guidance or counseling services. Such services are a primary function of the facility.

Shopping Center - A grouping of retail business and service uses on a single site with common parking facilities.

Sign - Any material, structure or device, or part, composed of lettered or pictorial matter which is located out of doors, or on the exterior of any building, or indoors as a window sign, displaying an advertisement, announcement, notice or name, and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any person or business or cause when such is placed in view of the general public. Signs will include, but not be limited to, business signs, real estate signs, home occupation signs, political signs, pennants, etc..

Site- Any area of land to be used, developed or built upon as a unit.

Special Use Permit - A permit for special uses which requires review and approval of the Planning Board prior to the issuance of a special permit by the Planning Board or a zoning permit by the Zoning Enforcement Officer.

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

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

Start of Construction - Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair reconstruction, placement or other improvement was within one hundred eighty (180) calendar days of the permit date. The actual start means either the first placement of permanent construction of a structure on the site, such as the putting of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include:

- 1) the installation of streets and/or walkways
- 2) the excavation for a basement, footings, piers or foundations
- 3) the erection of temporary forms
- 4) the installation on the property of accessory buildings such as garages or sheds, not occupied as dwelling units or not part of the main structure {Applicable to Flood Damage Prevention Regulations Only}

Story - That portion of a building, including a basement, between the surface of any floor and the surface of the floor next above; also, any portion of a building used for human occupancy between the topmost floor and the roof.

Half Story - That part of a building between a pitched roof and the uppermost full story, having a ceiling height of seven (7) feet or more for not exceeding one half (1/2) the floor area of such full story. For purposes of side yard determination, a basement shall be counted as a half story.

Street - A public way established by or maintained under public authority, a private way open for public use and a private way plotted or laid out for ultimate public use, whether or not constructed.

Street Line - The right of way line of a street as indicated by dedication or by deed of record.

Structure - Anything constructed or erected which requires permanent location on the ground or attachment to something having such location.

Structure, Principal - A structure through which the principal use of the lot on which it is located is conducted.

Structure, Accessory - See Building, Accessory.

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 improvement 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 include:

- 1) any project for improvement of a structure to comply with existing state/local health, sanitary/safety code specifications solely necessary to assure safe living conditions
- 2) any alteration of a structure listed on the National Register of Historic Places (Applicable to Flood Damage Prevention Regulations Only)

Swimming Pool - Any body of water (excluding natural bodies of water fed by rivers, streams or brooks) or receptacle for water having a depth at any point greater than two (2) feet used or intended to be used for swimming or bathing and constructed, installed or maintained in or on the ground outside any building,

Telecommunication Facilities - Towers and/or Antennas and accessory structures together used in connection with the provision of cellular telephone service, personal communication services (PCS),

paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

Theater - A building or part of a building devoted to presenting entertainment on a paid admission basis.

Tower - A structure designed to support Antennas, it includes without limitation free-standing Towers, guyed Towers, monopoles, and similar structures which do, or do not, employ camouflage technology.

Transient Guest - A guest of a bed and breakfast whose stay is temporary and does not exceed thirty (30) calendar days.

Trade, Vocational or Industrial School - School conducted as a commercial enterprise for teaching barbering or hairdressing or for teaching industrial skills in which machinery is employed as a means of instruction.

Trailer- A vehicle not over seventy (70) square feet in floor area used for the hauling of cargo.

Trailer, Boat- A vehicle designed exclusively for the transportation of one (1) boat.

Trailer, Camp - A vehicle or portable structure not over one hundred fifty (150) square feet in floor area equipped by not regularly used for sleeping, but without sanitary facilities.

Use, Principal - The primary or predominant use of any lot.

Yard -An open space on the same lot with a building or structure.

Yard, Front - An open space extending the full width of the lot between a main front building line and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of the main front building line.

Yard, Rear - An open space extending the full width of the lot between the rearmost main building and the rear lot line, unoccupied and unobstructed by buildings or structures from the ground upward,

except as before specified, the depth of which shall be the least distance between the rear lot line and the rear of such main building.

Yard, Side - An open space extending from the front yard to the rear yard between a main building and the side lot line, unoccupied and unobstructed by buildings or structures from the ground upward. The required width of a side yard shall be measured horizontally from the nearest part of the main building. An interior side yard is any side yard not on the street side of a corner lot.

Zoning Permit - A permit issued that indicates a lot, structure or use of land has been developed in conformity with this law and/or complies with the provisions of this Chapter.