

Chapter 110

ZONING

[HISTORY: Adopted by the Town Board of the Town of Benton 1-16-1992 by L.L. No. 1-1992. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention and building construction — See Ch. 30.

Flood damage prevention — See Ch. 35.

ARTICLE I

Title, Purpose and Authority

§ 110-1. Title; legislative intent.

This chapter shall be known as the "Town of Benton Zoning Law." It has been enacted by the Town Board of the Town of Benton pursuant to Article 16 of the Town Law of the State of New York which empowers the Town Board to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, building setbacks and other open space, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and to establish penalties for the violation of such regulations.

§ 110-2. Site plan review authorized.

The Town Board under § 274-a of the Town Law and Article 3 of the Municipal Home Rule Law of the State of New York hereby authorizes the Planning Board of the Town of Benton to review, approve, approve with modification or disapprove site plans prepared to specifications set forth in this chapter.

§ 110-3. Purpose and objectives.

The intent of this chapter is to encourage appropriate and orderly physical development and general welfare; classify, designate and regulate the location and use of buildings, structures, and land for agriculture, residential, commercial, industrial or other uses in appropriate places. Objectives of this chapter are to provide assurance of opportunities for effective utilization of land; provide adequate community and public utility facilities; provide workable relationships of land uses to the transportation system and lessen congestion on the roads; conserve and stabilize the value of property; provide adequate open space for light and air; provide desired levels of population density; and secure safety from fire, flood and other dangers.

§ 110-4. Consideration of other factors.

These regulations have been made with reasonable consideration, among other things, as to the physical character of land and its peculiar suitability for particular uses, and with a view to

conserving and stabilizing the value of land and buildings and encouraging the most appropriate use of land throughout the Town. This chapter has been developed in accordance with the Comprehensive Plan of the Town of Benton.

ARTICLE II
Interpretation

§ 110-5. Word usage and interpretation; conflict with other provisions.

- A. The following rules of construction of language shall apply to the text of this chapter:
- (1) Words used in the present tense include the future tense.
 - (2) Words used in the singular include the plural, and words used in the plural include the singular.
 - (3) Words used in the masculine form shall also include the feminine.
 - (4) The word "lot" includes the word "plot" or "parcel."
 - (5) The word "person" includes an individual, firm or corporation.
 - (6) The word "shall" is always mandatory; the word "may" is always permissive.
 - (7) 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."
 - (8) A "building" or "structure" includes any part thereof.
 - (9) The phrases "to erect," "to construct," and "to build" a building, each have the same meaning and include to excavate for a building and to relocate a building by moving it from one location to another.
- B. This chapter shall be interpreted in such a way wherever possible so that the meaning of the words and phrases and sections herein shall make them valid and legal in their effect.
- C. Whenever the requirements of this chapter are at variance with the requirements of other lawfully adopted rules, regulations or laws, the law with the most restrictive provisions or those imposing the higher standards shall govern.

§ 110-6. Definitions.

- A. The following words or phrases as used in this chapter are defined as follows:

ACCESSORY BUILDING — A building detached from and subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building.

ACCESSORY USE — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

ADULT USE AND ENTERTAINMENT ESTABLISHMENT — A public or private establishment, or any part thereof, which presents any or the following entertainment, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear

pasties or G-strings or both; adult arcades, adult bookstores or adult video stores; adult cabarets; adult motels; adult motion-picture theaters; adult theaters; escort agencies; massage parlors; nude model studios and sexual encounter centers. Adult use and entertainment establishments customarily exclude minors by reason of age and include those businesses defined as follows: [Added 6-8-2005 by L.L. No. 1-2005]

- (1) ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other image-producing devices, which are regularly used to show films, motion pictures, videocassettes, slides or other photographic reproductions, are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.
- (2) ADULT BOOKSTORE or ADULT VIDEO STORE:
 - (a) A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business advertising to the sale or rental, for any form of consideration, of any one or more of the following:
 - [1] Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassettes, digital video discs or video reproductions, slides, compact disks, computer software or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - [2] Instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.
 - (b) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental, for consideration, the specified materials which depict or describe specified sexual activities or specified anatomical areas. For purposes of this definition, "principal business purpose" shall mean 25% or more of any of the following:
 - [1] The number of different titles or kinds of such merchandise.
 - [2] The number of copies or pieces of such merchandise.
 - [3] The amount of floor space devoted to the sale and/or display of such merchandise.
 - [4] The amount of advertising which is devoted to such merchandise, either in print or broadcast media.

- (3) ADULT CABARET — A nightclub, bar, nonalcoholic or juice bar, restaurant or similar commercial establishment which regularly features:
 - (a) Persons who appear nude or in a state of seminudity; or
 - (b) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - (c) Films, motion pictures, videocassettes, digital video discs, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (4) ADULT MOTEL — A hotel, motel or similar commercial establishment which:
 - (a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, DVD's, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and which advertises the availability of sexually oriented type of material by means of a sign visible from a public right-of-way, or by means of off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets, leaflets, radio or television; or
 - (b) Offers sleeping rooms for rent on a regular basis for a period of time that is less than 10 hours; or
 - (c) Allows a tenant or occupant of a room to sublease the room for a period of time that is less than 10 hours.
- (5) ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, digital video discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (6) ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- (7) ESCORT AGENCY — A person or business association who or which furnishes, or offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- (8) MASSAGE PARLOR — Any place where, for any form of consideration or gratuity, massage, hot-oil body rub, alcohol rub or administration of fomentations, electric or magnetic treatments or any other treatment manipulation of the human body occurs as apart of or in connection with specified sexual activities, or where any person providing such treatment, manipulation or service related thereto exposes his or her specified anatomical areas. The definition of "adult use" shall not include the practice of massage in any licensed hospital, nor by a licensed physician, surgeon,

chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

- (9) NUDE MODEL STUDIO - Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.
- (10) SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or exposure of specified anatomical areas, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or is seminude. The definition of "adult use" shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

AGRICULTURAL USE, CUSTOMARY — The raising of agricultural products including livestock, poultry, dairy products, farm crops, fruit and vegetables, and nursery stock, whether for gain or otherwise. The term shall not include livery or boarding stables, manufacturing or processing of agricultural products as a principal use.

ALTERATION — As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

ALTERNATE MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board and an individual appointed by the Town Board to serve on the Town Zoning Board of Appeals when a regular member is unable to participate on an application or matter before the respective board because of an absence or a conflict of interest, as provided herein. [Added 7-12-1999 by L.L. No. 1-1999]

AREA, BUILDING — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of terraces and uncovered steps.

AREA, COMMON — Space reserved for use by any and all residents of a housing development such as halls, stairways and landings in apartment houses.

AREA, LOT — The total area within the property lines excluding external streets.

ATTIC — That space of building which is immediately below and wholly or partly within the roof framing.

AUTOMOBILE SALES AND SERVICE AREA — A premises, including open areas, other than a street or way, and enclosed showrooms, for the display and sale of new or used

automobiles, trucks, trailers, motorcycles and recreational vehicles, and where mechanical repairs may be conducted as an accessory use incidental to the primary sales use.

AUTOMOBILE SERVICE STATION — A building or place of business where gasoline, oil and grease, batteries, tires and/or automobile accessories are supplied and dispensed directly to the public, at retail, and where minor service is rendered.

AUTOMOTIVE REPAIR FACILITY — A building or premises used for the repair of motor vehicles, including painting and the sale of related parts and accessories. A junkyard is not to be construed as an automotive repair facility.

BASEMENT — A story partly below average finished grade, having at least 1/2 of its height measured from floor to ceiling, but no less than four feet, above average finished grade. Special grading, such as berms designed specifically for architectural, landscaping and/or energy conservation purposes, shall be excluded from this definition.

BED-AND-BREAKFAST — A dwelling or part of a dwelling in which at least one, but not more than four, sleeping rooms are offered for pay by the owner/occupant as overnight lodging facilities for the accommodation of transient guests and which shall conform to the New York State Building Code.

BOARDING KENNEL — Any establishment available to the general public where a dog or dogs are housed for compensation by the day, week or a specified or unspecified time. The term shall not include a kennel where the practice of veterinary medicine is performed. The term shall include any establishment available to the general public that, for consideration, takes control of dog(s) from the owner for a portion of a day for the purposes of exercise, day care or entertainment of the dog. For the purpose of this term, each time a dog enters the kennel it shall be counted as one dog. This term does not include any establishment engaged in only dog grooming or dog training. [Added 3-13-2013 by L.L. No. 2-2013]

BOARDING OR LODGING HOUSE — A building where selected persons are supplied with and charged for meals or sleeping accommodations or both for fixed periods of time.

BUILDING — Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals, materials, chattel or services.

BUILDING, ACCESSORY — See "accessory building."

BUILDING AREA — The area taken on a horizontal plane at the main grade level of the building exclusive of storage space, open porches, terraces, and steps, and, in respect to dwellings, also exclusive of attached or built-in garages.

BUILDING GROUP — A group of two or more principal buildings and any buildings accessory thereto occupying a lot in one ownership and having any yard in common.

BUILDING LOT — The line, established by statute or local law, beyond which a building shall not extend, as specifically provided by law.

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

BUILDING, SEMIDETACHED — A building attached by a party wall to another building normally of the same type on another lot, but having one side yard.

BULK — A term to describe the size, volume, area, and shape of buildings and structures, and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures, or other walls of the same building, other structure, or tract of land.

CELLAR — Any space in a building the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. Special grading, such as berms designed specifically for architectural, landscaping and/or energy conservation purposes, shall be excluded from this definition.

CHURCH or PLACE OF WORSHIP — A building or premises used for regular worship by members or representatives of a religious sect or organization as defined by state statute.

CLUB, MEMBERSHIP — An organization catering exclusively to members and their guests, or premises and buildings for recreational or athletic purposes which are not conducted primarily for gain, provided that there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

CLUSTER DEVELOPMENT, RESIDENTIAL — A zoning technique whereby any dimensional requirements in this chapter may be modified in a subdivision, provided that the overall density limitations are not exceeded for the total parcel.

COMMERCIAL KENNEL — Any building or lot upon which a person (or persons) or entity:
[Added 3-13-2013 by L.L. No. 2-2013]

- (1) Breeds two or more litters of dogs/puppies in a calendar year; or
- (2) Maintains more than four unspayed or unneutered dogs of breeding age; or
- (3) Publicly or privately sells or offers for sale any dog for consideration, a fee, a commission or a percentage of the sale price; or
- (4) Transfers dogs at wholesale for resale to another; or
- (5) Offers or maintains dogs at wholesale for resale to another.

COMMERCIAL USE — The use of a parcel of land or one or more buildings for the purpose of retail or wholesale business activity in the preparation, processing or repair of materials, products, services or commodities for sale to others.

CONTIGUOUS PARCEL — A tract of land under the control of one person or firm or its agent that is not divided by any natural or man-made barriers such as existing roads and highways, rivers, areas with slopes greater than 35%, and not bisected by water bodies.

CONTRACTOR'S YARD — Any space, whether inside or outside a building, used for the storage or keeping of more than three pieces of construction equipment, machinery, or vehicles, or parts thereof, which are in active use by a construction contractor or for equipment rental or sales.

CONVENIENCE/MINI-MARKET — A commercial retail use which combines the sale of beverages, dairy and baked goods, snack foods, similar grocery items, and other related items

which may also be accompanied by the sale of motor vehicle fuel and accessory substances.

COVERAGE — The portion or percentage of lot area covered by buildings or structures, including accessory buildings and structures.

DAY-CARE CENTER/NURSERY — Any place, however designated, operated for the purpose of providing daytime care and instruction for children and operated on a regular basis for a fee, including kindergartens, day nurseries, and day-care centers, which must conform to New York State laws.

DISTRICT — Any one of the areas, as shown on the Zoning Map of the Town of Benton,¹ into which the Town has been divided for the purposes of this chapter.

DOG, ADULT — A live *Canis lupus familiaris* or any dog hybrid reaching four months of age. [Added 3-13-2013 by L.L. No. 2-2013]

DRIVE-IN USE — An establishment that, by design of physical facilities or by service or packaging procedures, encourages or permits customers to receive a service or obtain a product that may be used or consumed in a motor vehicle on the premises.

DWELLING — A building designed or used principally as the living quarters for one or more families. The terms "dwelling," "one-family dwelling," "two-family dwelling," or "multiple dwelling" shall not be deemed to include motel, hotel, rooming house or other accommodations used for more or less transient occupancy.

DWELLING, MULTIFAMILY — A dwelling containing three or more dwelling units and occupied or designed for occupancy by three or more families living independently of each other, but not including townhouses.

DWELLING, ONE-FAMILY — A building containing one dwelling unit only.

DWELLING, ONE-FAMILY DETACHED — A building accommodating a single family and having two side yards.

DWELLING, ONE-FAMILY SEMIDETACHED — A one-family dwelling having one party wall and one side yard.

DWELLING, TWO-FAMILY — A building containing two dwelling units.

DWELLING UNIT — One room or rooms physically arranged so as to create an independent housekeeping establishment for owner occupancy, rental or lease, and containing independent cooking, sanitary and sleeping facilities. This shall include sectional, modular and mobile home units, provided that they meet the standards of this chapter and the building code. Motel, hotel and lodging establishments are not dwelling units.

EASEMENT — A vested or acquired right to use land other than as a tenant for a specific purpose, such right being held by someone other than the owner who holds title to the land.

EFFECTIVELY SCREENED — A particular use shall be considered effectively screened when barriers of sufficient height and capacity are provided so as to reduce the transmission of sound

1. Editor's Note: The Zoning Map is on file in the Town offices.

and light into adjacent properties to the point where the adjacent property owner is not disturbed.

EQUIPMENT RENTAL OR SALES YARD — See "contractor's yard."

ESCORT — A person who, for a fee, tip or other consideration, agrees to or offers any of the following: act as a date for another person; privately model lingerie for another person; or privately perform a striptease for another person. [Added 6-8-2005 by L.L. No. 1-2005]

ESSENTIAL UTILITY SERVICES — The erection, construction, alteration or maintenance by public utilities or Town or other governmental agencies of underground or overhead gas, electrical, or water transmission or distribution systems, communications systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith and reasonably necessary for the furnishing of adequate service by such public utilities or Town or other governmental agencies for the public health or safety or general welfare.

EXCAVATION OF SAND OR GRAVEL — A lot or land or part thereof used for the purpose of extracting stone, sand, gravel, or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building.

FAMILY — One or more persons who live together in a single dwelling unit and maintain a common household.

FARM — Any parcel of land containing at least five acres which is used for financial gain in the raising of agricultural products, livestock, poultry, dairy products and nursery stock. It includes necessary farm structures and the storage of equipment used. It does not include the raising of fur-bearing animals, livery or boarding stables, riding academies, and kennels. It also excludes structures used for storage of commercial equipment not used in a farm-related business or home occupation.

FARM-RELATED BUSINESS — Activities and services carried on for financial gain and directed at meeting the needs of those engaged in area farming and providing materials and services needed for farming. Farm-related business is subject to the provisions of Article VII of this chapter.

FENCE — A natural or artificial barrier of shrubs, trees, wood, masonry, stone, metal wire or any other material manufactured for the construction of a fence. [Amended 6-17-1996 by L.L. No. 1-1996]

FLOOR AREA — The sum of the gross horizontal area of the several floors of a building and its accessory buildings, measured from the exterior walls.

GARAGE, PRIVATE — A detached or attached accessory building used for the storage of private motor vehicles, boats, lawn and garden equipment and household furnishings.

GOLF COURSE — Any tract of land designated for playing the game of golf and for services related thereto.

GRADE LEVEL — The level where the average finished grade of the ground intersects the foundation wall at the main entrance.

GROCERY STORE — A commercial retail use which provides for the sale of a full range of

food products including meats, fruits, vegetables, dairy products, snack foods, beverages and similar grocery items.

HEIGHT OF BUILDING — The vertical distance measured from the elevation of the average finished grade level to the highest point of the roof.

HIGHWAY — Any state highway, county road or Town road, and unless the context indicates otherwise any street laid out on a filed subdivision map which connects with a state highway, county road or Town road.

HOME OCCUPATION — An accessory use which is clearly incidental to or secondary to the residential use of a dwelling unit and does not change the character thereof, and is carried on within the enclosed walls of a dwelling unit or accessory building by one or more occupants of such dwelling unit. Home occupations are subject to the provisions of Article VII of this chapter.

HOTEL/MOTEL — A facility offering transient lodging accommodations at a daily rate to the general public. Additional facilities such as a restaurant, meeting rooms and/or recreational facilities may be provided.

INDUSTRIAL USE — The use of a parcel of land and/or building for the purpose of manufacture, fabrication, extraction, assembly, warehousing and other processing or handling of materials.

INSTITUTIONAL, GOVERNMENTAL OR PHILANTHROPIC USE — Those uses limited to churches, public or private schools covering kindergarten through grade 12, libraries and uses by the municipal, state, or federal government.²

LOT — A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same and which abuts and is accessible from a private or public street.

LOT AREA — The area within the property lines excluding any portion thereof within the boundaries of a street or highway.

LOT, CORNER — A lot situated at the junction of and adjacent to two or more intersecting streets or highways and when the interior angle of the intersection does not exceed 135°. This lot shall be deemed to front on each street or highway it abuts and be subject to the required front yard for each street or highway, with the yards opposite subject to side yard requirements. [Amended 6-17-1996 by L.L. No. 1-1996]

LOT COVERAGE — See "coverage."

LOT, DEPTH OF — The mean distance from the front street line or mean highwater mark of a lot to its rear line.

LOT FRONTAGE — A lot line which is coincident with a road line or mean high water mark.

LOT LINES — The lines bounding a lot as defined herein.

2. Editor's Note: The former definition of "kennel," which immediately followed this definition, was repealed 3-13-2013 by L.L. No. 2-2013.

LOT, THROUGH — A lot which faces on two streets at opposite ends of the lot and which is not a corner lot.

LOT WIDTH — The distance between the two side lot lines measured along the rear lines of the required front yard and the required rear yard.

MANUFACTURED HOUSING — A factory-built, single-family structure that is manufactured under the authority of 42 U.S.C. § 5401, the National Manufactured Home Construction and Safety Standards Act of 1974, is transportable in one or more sections, is built on a permanent chassis, and is used as a place of human habitation; but which is not constructed with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent site, and which does not have wheels or axles permanently attached to its body or frame.

MANURE STORAGE FACILITY — A facility constructed as an accessory use to an animal husbandry use, riding stable, or kennel, intended to collect, hold, process, store, treat, or distribute solid and liquid animal waste. Included within this definition are storage tanks, lagoons, seepage pits, drains, and collection systems intended to handle animal waste solids and food-processing. Not included within this definition are systems designed and constructed to handle human waste. [Added 11-9-2011 by L.L. No. 4-2011]

MEMBER — An individual appointed by the Town Board to serve on the Town Planning Board or the Town Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Planning Board and Zoning Board of Appeals. [Added 7-12-1999 by L.L. No. 1-1999]

MIGRANT CAMP — As defined in the State Sanitary Code, Chapter 1, Part 15, a property consisting of a tract of land and all vehicles, mobile homes, buildings or other structures pertaining thereto, any part of which may be used or occupied by persons employed as laborers in farm activities, including sleeping facilities, provided in whole or in part, by the employer of such persons, owner, lessee, or operator thereof, with or without stipulated agreement as to the duration of their stay, whether or not they are supplied with meals but who are supplied with services or facilities as are necessary for their use of such property. This shall not include a private home, hotel, boardinghouse, lodging house, or similar property which is regularly operated primarily for the occupancy of people engaged in some activity other than farm labor, or if engaged in farm labor, the premises are occupied by one family per dwelling unit and there are not more than two such families.

MINOR — A person less than 18 years of age. [Added 6-8-2005 by L.L. No. 1-2005]

MOBILE HOME — A dwelling unit that is manufactured as a relocatable living unit, which is designed to be transported on a permanent chassis and to be installed on a site with or without a permanent foundation when connected to utilities. This does not include Department of Motor Vehicles registered recreation vehicles, travel trailers or dwelling units that are prebuilt in one or more parts and transported to and assembled on a permanent foundation.

MOBILE HOME PARK — A contiguous parcel of land divided into two or more lots, for sale or lease, on which mobile homes or manufactured houses will be placed for nontransient use.

MUNICIPAL BUILDING — Any building established and operated by any governmental

agency.

NONCONFORMING BULK — That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this chapter, either following its effective date or as a result of subsequent amendment thereto.

NONCONFORMING USE — Any use of a building, other structure, or tract of land which does not conform to the use regulations for the district in which such use is located, either at the effective date of this chapter or as a result of subsequent amendment thereto.

NUDE, NUDITY or STATE OF NUDITY — The appearance of: [Added 6-8-2005 by L.L. No. 1-2005]

- (1) Human bare buttocks, anus, male genitals, female genitals or areola or nipple of the female breast; or
- (2) A state of dress which fails to opaquely and fully cover human bare buttocks, anus, male genitals, female genitals, pubic region or areola or nipple of female breast.

NURSERY SCHOOL — See "day-care center."

NURSING OR CONVALESCENT HOME — A building with sleeping rooms where, for a fee, persons are housed on a twenty-four-hour basis and furnished with meals and/or nursing care.

OPEN SPACE — Area not occupied by any building, structure or parking area.

OPEN SPACE, COMMON — Area not occupied by any building structure or parking area which is available to the general public or to owners or tenants of a particular development.

PARKING SPACE — An off-street space available for the parking of one motor vehicle and having an area of not less than 200 square feet exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

PERSON — An individual, proprietorship, partnership, corporation, association or other legal entity. [Added 6-8-2005 by L.L. No. 1-2005]

PERSONAL SERVICE ESTABLISHMENT — An office, store, or other place of business catering to the personal needs of a customer, such as normally conducted by a beautician, tailor or dressmaker.

PLANNING BOARD — The Planning Board of the Town of Benton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of the Town Law. [Added 7-12-1999 by L.L. No. 1-1999]

PREMISES — A lot together with all the buildings and uses thereon.

PRIVATE KENNEL — Any building or lot upon which a person does not meet the definition of "commercial kennel" where dogs are bred by the owner, for the purpose of hunting, tracking and exhibiting in dog shows, performance events or field and obedience trials. [Added 3-13-2013 by L.L. No. 2-2013]

PROMOTE — To manufacture, issue, sell, give, provide, lend, mail, deliver, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to do the same. [Added 6-8-2005 by L.L. No. 1-2005]

PUBLIC UTILITY — A business or service which is of public consequence and need, such as electricity, gas, water or telephone service.

QUARRY — See "excavation of sand or gravel."

RESCUE ORGANIZATION — Any facility where homeless, stray, abandoned, rescued or unwanted animals are received, harbored, maintained or made available for adoption to the general public and which is owned, operated or maintained by a duly incorporated humane society, animal welfare society, society for the prevention of the cruelty to animals or other nonprofit or tax-exempt organization devoted to the welfare, protection or humane treatment of animals. A rescue organization may board up to 20 dogs at a time per year. [Added 3-13-2013 by L.L. No. 2-2013]

RESIDENCES — See "dwelling unit."

RESTAURANT — Any establishment, however designated, whose primary use is preparation and sale of food for consumption to patrons seated within an enclosed building or on the premises. A snack bar or refreshment stand at a public or quasi-public community swimming pool, playground, playfield or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RETAIL BUSINESS — A business establishment engaged in selling directly to consumers.

RIDING ACADEMY or STABLE — Any establishment where horses are kept for riding, driving or stabling for compensation.

RIGHT-OF-WAY — The property used for movement of vehicles, including, but not restricted to, the pavement area.

ROAD, COLLECTOR — All Town roads or streets, other than major roads and interior subdivision roads.

ROAD, MAJOR — All state and county highways.

ROAD, MINOR — Streets or roads other than collector roads or major roads, whether dedicated or not.

ROADSIDE STAND — A light structure with a roof, either attached to the ground or movable, not for year-round use and at which only local produce and locally produced handcrafted items are offered for sale to the general public.

ROAD WIDTH — The width of the right-of-way or the distance between property lines on opposite sides of a street.

SADOMASOCHISTIC ABUSE — Actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed. [Added 6-8-2005 by L.L. No. 1-2005]

SATELLITE TELEVISION ANTENNA — An antenna the purpose of which is to receive television and/or radio signals from orbiting satellites.

SETBACK — The required distance from the nearest right-of-way or lot line measured at right angles or radially from such points to the nearest edge of any building located on such lot.

SEXUAL CONDUCT — Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such be female, breast. [Added 6-8-2005 by L.L. No. 1-2005]

SEXUAL EXCITEMENT — The condition of human male or female genitals when in a state of sexual stimulation or arousal. [Added 6-8-2005 by L.L. No. 1-2005]

SIGN — Any structure or part thereof, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of, an announcement, direction or advertisement. A "sign" includes a billboard, but does not include the flag insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive, movement, or event which is temporary in nature and which does not include any lettering or advertisement.

SIGN, ACCESSORY — Any sign, other than the primary or principal business sign which relates to the principal use, business or profession conducted on the lot.

SIGN AREA — The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. Only one face of a sign shall be counted to determine the sign area, except that any neon tube, string of lights, or similar device shall be deemed to have minimum dimensions of one foot.

SIGN, PRINCIPAL BUSINESS — A sign which directs attention to a business or profession conducted on the premises. A "For Sale" sign or a "To Let" sign relating to the property on which it is displayed shall be deemed a business sign.

SINGLE OWNERSHIP — Possession of land under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than 30 years, regardless of any division of such land into parcels for the purpose of financing.

SITE PLAN — Maps and supporting information required under Article VIII for special uses as specified in § 110-16, Use Regulation Table.

SPECIAL USE — Uses granted by special permit through the site plan approval process as specified in this chapter.

SPECIFIED ANATOMICAL AREAS [Added 6-8-2005 by L.L. No. 1-2005]

- (1) Unless completely and opaquely covered, human genitals, pubic region, buttocks, and female breasts directly and laterally below the top of the areola.
- (2) Even if completely and opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following: [Added 6-8-2005 by L.L. No. 1-2005]

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts.
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.
- (3) Masturbation, actual or simulated.
- (4) Excretory functions.

STORY — That portion of a building included between the surface of the floor and the ceiling next above it, having a height of at least seven feet six inches.

STREET — Any federal, state, county or town highway or road, any street shown upon a subdivision plat approved by the Town Planning Board under Article 16 of the Town Law, as amended, or a street on a plat duly filed and recorded in the office of the Yates County Clerk prior to the appointment of the Planning Board and the grant to such Board of the power to approve plats. [Added 9-14-2005 by L.L. No. 2-2005]

STREET, PRIVATE [Added 9-14-2005 by L.L. No. 2-2005]

- (1) A way for vehicular use, either by the general public or for the benefit of a lot or lots alone, which said way is between right-of-way lines, that is not owned, plowed or maintained by any governmental jurisdiction and that was created prior to the effective date of this definition.
- (2) As of the effective date of this definition, a private street may only be created pursuant to Article XI of the Highway Law, as amended.³

STRUCTURE — Anything constructed or erected. Structures include, but are not limited to, buildings, mobile homes, walls, signs, patios, decks, landings, fences (excluding agricultural fences), swimming pools (both in ground and aboveground), docks and piers above the high water line of Seneca Lake, satellite and television dish or other antenna and communication towers.

SUITABLY LANDSCAPED — Landscaped with vegetation of a type sufficient to effectively screen differing uses, enhance the quality of the environment, limit erosion, and protect the general welfare.

TOURIST CAMP — Any parcel of land on which may be located one or more cabins, camping vehicles, tents or other accommodations of a design or character suitable for seasonal or other temporary living purposes including summer cabin colony, vacation resort, day camp, and travel trailer park but not including a mobile home park, boardinghouse or motel.

TOWNHOUSE — A building consisting of three or more attached single-family dwelling units each having separate outdoor entrances and common vertical party walls.

TRAILER, HOUSE — See "mobile home."

TRAILER PARK — See "mobile home park."

3. Editor's Note: See New York State Highway Law § 300 et seq.

TRAVEL TRAILER — A unit which is used or designed to be used for seasonal and/or temporary living or sleeping purposes, and which is customarily standing on wheels or rigid supports.

USE — This term is employed in referring to both:

- (1) The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained, or occupied.
- (2) Any occupation, business activity, or operation conducted in any building or other structure, or on land.

VETERINARY HOSPITAL — A building for the treatment of animal illness.

WAREHOUSE — A building, or part of a building or premises, for storing of goods, wares and merchandise, whether for the owner or for others, prior to shipment to final retail sale operation and whether it is a public or private ownership and use.

WHOLESALE ESTABLISHMENT — A business establishment engaged in selling to retailers or jobbers rather than directly to consumers.

YARD, FRONT — A yard extending along the full length of the front lot line between the side lot lines, not including any land within the right-of-way of public or private streets.

YARD, REAR — A yard extending the full length of the rear lot line.

YARD, REQUIRED — That portion of the open space of a lot which lies between the principal building or group of buildings and the nearest lot line of the lot, with a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

YARD, SIDE — A yard situated between the building and the side line of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear yard front line (or rear lot line).

ZONES — Area defined for the purpose of regulating permitted and special land uses (see "district").

ZONING BOARD OF APPEALS — The Zoning Board of the Town of Benton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of the Town Law. [Added 7-12-1999 by L.L. No. 1-1999]

B. Words and phrases not herein defined shall be given standard dictionary definitions or common usage meaning.

ARTICLE III Establishment of Districts

§ 110-7. Application of regulations.

Except as hereinafter provided:

- A. No building or land shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved, or altered, unless in conformity with the regulations herein specified for the district in which it is located.
- B. No building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of dwelling units, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards or side yards, than is specified herein for the district in which such building is located.
- C. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this chapter shall be included as part of a yard or other open space similarly required for another building.
- D. No lot shall be so reduced in size that its area or any of its dimensions or open spaces shall be smaller than required by this chapter.
- E. The Code Enforcement Officer shall, prior to issuing a building permit, be satisfied that the issuance of such permit is not in violation of this chapter or any other law, laws or regulations of record of the Town of Benton. Cases which appear in violation of this chapter shall be referred to the Chairman of the Board of Zoning Appeals for review and recommendation.

§ 110-8. Enumeration of zoning districts. [Amended 3-14-2007 by L.L. No. 1-2007; 11-14-2007 by L.L. No. 3-2007]

In order to fulfill the purpose of this chapter, the Town of Benton establishes the following zoning districts:

- A-R-1 Agricultural-Residential-One District
- A-R-B Agricultural-Residential-Business District
- H-C Hamlet Center District
- L-R Lakefront Residential District
- W-E-F Wind Energy Facilities Overlay District

§ 110-9. Zoning Map.

The location and boundaries of said zoning districts are shown on a scaled map designated "Zoning Map of the Town of Benton," adopted on January 16, 1992, by the Town Board of the Town of Benton and certified by the Town Clerk. Said map is kept on file and is available for public viewing in the Town of Benton Town offices and is declared to be a part of this chapter. A copy of said map is included herein.⁴

4. Editor's Note: The Zoning Map is on file in the Town offices.

§ 110-10. Interpretation of district boundaries.

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

- A. Center lines and right-of-way lines. Where district boundaries are indicated as approximately following the center lines or right-of-way lines of streets, highways, public utility easements, or watercourses, said boundaries shall be interpreted to be coincident with such lines.
- B. Lot or boundary lines. Where district boundaries are indicated as approximately following a Town boundary line, property lines, lot lines, or projections thereof, said boundaries shall be interpreted to be coincident with such lines or projections thereof.
- C. Parallel to lot or boundary lines. Where district boundaries are so indicated that they are approximately parallel to the Town boundary line, property lines, lot lines, right-of-way lines, or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.
- D. District boundaries shall be determined by use of an accurate scale which shall be shown on the Zoning Map. In no instances shall a district boundary be set at less than the minimum lot depth required in the Density Control Schedule.⁵
- E. In the event of a questionable district boundary, the questionable boundary shall be referred to the Board of Zoning Appeals, and it shall, to the best of its ability, establish the exact boundary.
- F. The copy of the Zoning Map showing any such determinations made under this section shall be kept on file at the office of the Town Clerk.
- G. Precise zone boundary determinations made by the Zoning Board of Appeals in accordance with the above rules shall be considered final, and may only be altered by amendment of the Zoning Map by the Town Board.
- H. Lots divided by zoning district lines. Where a lot is divided by a district boundary line, the regulations for each respective district shall apply.

ARTICLE IV
Use Regulations

§ 110-11. Agricultural-Residential-One (A-R-1) District.

- A. Intent. The Agricultural-Residential-One (A-R-1) District is intended to encourage agricultural use of land, conserve the scenic beauty and open space of the Town and permit limited residential development. The regulations of the district recognize that the rich Honeoye-Lima types of soils and topographic conditions within Benton are excellently suited for successful agriculture and that allowance for residential development and limited farm-related businesses and home occupations is necessary in order to maintain

5. Editor's Note: See § 110-18, Density Control Schedule.

economically viable agricultural activity. The intent of the district is also to recognize that the area is designated as an "agricultural district" under the New York State Agricultural Districts Law.⁶

- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-12. (Reserved)⁷

§ 110-13. Agricultural-Residential-Business (A-R-B) District.

- A. Intent. The Agricultural-Residential-Business District (A-R-B) is intended to enable the orderly continuation of farming and agricultural activities and also to permit more extensive residential and business development than is encouraged within the A-R-1 District. Orderly residential development is encouraged within the A-R-B District, as is the development of individual business enterprises within the guidelines of the regulations. [Amended 11-14-2007 by L.L. No. 3-2007]
- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-14. Hamlet Center (H-C) District

- A. Intent. The Hamlet Center (H-C) District is intended to promote and encourage the continued health of the Town's traditional hamlet centers and to encourage and enable continued investment in residential and compatible business activity in these historic centers. The district recognizes that the preservation of property values and vitality within the hamlets requires the ability to develop additional parcels of land along hamlet streets and edges. The character of these historic centers within the Town is a vital component of the quality of rural life in the Town of Benton.
- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18 of this article, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-15. Lakefront Residential (L-R) District.

- A. Intent. The Lakefront Residential District (L-R) is intended to maintain and enhance the

6. Editor's Note: See Agriculture and Markets Law § 300 et seq.

7. Editor's Note: Former § 110-12, Agricultural-Residential-Two (A-R-2) District, was repealed 11-14-2007 by L.L. No. 3-2007.

residential character and attractiveness of the Town's lakefront residential neighborhood. The district recognizes that the preservation of the traditional low-density residential character of this lakefront neighborhood is a vital public policy of the Town of Benton.

- B. Permitted uses. Permitted uses shall be as specified in § 110-16 of this article, entitled "Use Regulation Table."
- C. Dimensional requirements. Dimensional requirements as set forth in § 110-18 of this article, entitled "Density Control Schedule," shall be observed for all uses permitted in this district.

§ 110-15.1. Wind Energy Facilities Overlay (W-E-F) District. [Added 3-14-2007 by L.L. No. 1-2007]

A. Purpose. The purpose of these regulations is to provide for the construction and operation of wind energy facilities in The Town of Benton, subject to reasonable conditions that will protect the public health, safety and welfare.

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

ACCESSORY BUILDING — Barn, shop, garage, shed or any other building not considered to be an occupied building. [Added 12-9-2009 by L.L. No. 3-2009]

APPLICANT — The person or entity filing an application under these regulations.

FACILITY OWNER — The entity or entities having an equity interest in the wind energy facility, including their respective successors and assigns.

HUB HEIGHT — The distance measured from the surface of the tower foundation to the height of the wind turbine hub, to which the blade is attached.

NONPARTICIPATING LANDOWNER — Any landowner except those on whose property all or a portion of a wind energy facility is located or who has an agreement with the facility owner or operator.

OCCUPIED BUILDING — A residence, school, hospital, church, public library (or other building used for public gathering) that is occupied or in use when the permit application is submitted. [Amended 12-9-2009 by L.L. No. 3-2009]

OPERATOR — The entity responsible for the day-to-day operation and maintenance of the wind energy facility.

PARTICIPATING LANDOWNER — Any landowner on whose property all or a portion of a wind energy facility is located or who has an agreement with the facility owner or operator.

SMALL WIND ENERGY SYSTEM — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

TOWER HEIGHT — The height above grade of the fixed portion of the tower, excluding the wind turbine itself.

TURBINE HEIGHT — The distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

WIND ENERGY FACILITY — An electric generating facility whose main purpose is to supply electricity, consisting of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.

WIND TURBINE — A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

C. Applicability.

- (1) These regulations apply to all wind energy facilities proposed to be constructed after the effective date of this section, except that these regulations are not intended to apply to stand-alone wind turbines constructed primarily for small wind energy systems.
- (2) Wind energy facilities constructed prior to the effective date of this section shall not be required to meet the requirements of these regulations, provided that any physical modification to an existing wind energy facility that materially alters the size, type and number of wind turbines or other equipment shall require a permit under these regulations.

D. Nonpermitted areas. Wind energy facilities shall not be permitted/constructed in L-R, A-R-B and Hamlet Center Districts. [Amended 11-14-2007 by L.L. No. 3-2007]

E. Permitted areas. Wind energy facilities shall be permitted in an overlay zone encompassing A-R-1 districts with the following boundaries: north, west and south to the Town lines and east to Route 14A where it follows 14A up to Haven's Corner's Road. At Havens Corner's Road, the zone runs east to Pre-Emption Road, then north along Pre-Emption Road to the Town line.

F. Permit requirement.

- (1) No wind energy facility, or addition of a wind turbine to an existing wind energy facility, shall be constructed unless a special use permit has been issued to the facility owner or operator approving construction of the facility under these regulations.
- (2) Special use permits will only be considered within the boundaries of the overlay zone outlined in Subsection E, Permitted areas.
- (3) The permit application or amended permit application shall be accompanied with a fee as determined by the Town Board.
- (4) Any physical modification to an existing and permitted wind energy facility that alters the size, type and number of wind turbines or other equipment shall require a permit modification under these regulations. Like-kind replacements, however, shall not require a permit modification.
- (5) The use shall not have an adverse effect on the agriculture of the area.

G. Permit application.

- (1) The permit application shall demonstrate that the proposed wind energy facility will comply with these regulations.
- (2) Among other things, the application shall contain the following:
 - (a) A narrative describing the proposed wind energy facility, including an overview of the project; the project location; the approximate generating capacity of the wind energy facility; the approximate number, representative types and height or range of heights of wind turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
 - (b) An affidavit or similar evidence of agreement between the property owner and the facility owner or operator demonstrating that the facility owner or operator has the permission of the property owner to apply for necessary permits for construction and operation of the wind energy facility.
 - (c) Identification of the properties on which the proposed wind energy facility will be located, and the properties adjacent to where the wind energy facility will be located.
 - (d) A site plan showing the planned location of each wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the wind energy facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
 - (e) Documents related to decommissioning.
 - (f) A completed New York State Environmental Impact Assessment/SEQR.
 - (g) Dimensional representation of the structural components of the tower construction, including the base and footings.
 - (h) Manufacturer's specifications and installation and operation instructions.
 - (i) Certification by a registered professional engineer that the tower and base design is sufficient to withstand wind load requirements.
 - (j) All turbines shall be new equipment commercially available. Used, experimental or prototype equipment still in testing shall be approved by the Town of Benton Planning Board as per the normal special use permit process.
 - (k) Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted with the application.
 - (l) A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.

- (m) A revegetation plan that complies with NYS Ag and Markets restoration guidelines will be submitted and must address how areas that are temporarily disturbed during construction will be restored as well as restoration after decommissioning.
- (n) A drainage plan for construction and operation as well as an erosion plan must be developed and submitted for approval by the Town of Benton Code Enforcement Officer and the Planning Board.
- (o) Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Town of Benton to ensure compliance with these regulations. This may include but not be limited to bird migration and flicker impact studies.
- (p) The application shall contain a written plan for storage usage and disposal of all hazardous materials, lubricants, cleaning supplies, etc., in accordance with DEC regulations and the written plan shall be approved by DEC.

H. Design and installation.

- (1) Design safety certification. The design of the wind energy facility shall conform to applicable industry standards, including those of the American National Standards Institute. The applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.
- (2) Uniform Construction Code. To the extent applicable, the wind energy facility shall comply with the NYS Building Codes, National Electrical Codes, NFPA and other national or state codes as deemed applicable by The Town of Benton Code Enforcement Officer.
- (3) Controls and brakes. All wind energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
- (4) Electrical components. All electrical components of the wind energy facility shall conform to relevant and applicable local, state and national codes.
- (5) Visual appearance; power lines.
 - (a) Wind turbines shall be a nonreflective, nonobtrusive color such as white, off-white or gray.
 - (b) Wind energy facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety. Lighting shall not be a nuisance to surrounding residences and, when installed on multiple turbines, shall not be synchronized but rather designed to flash independently.
 - (c) Wind turbines shall not display advertising, except for reasonable identification

of the turbine manufacturer, facility owner and operator at the base of the tower in no larger than six-inch letters.

- (d) On-site transmission and power lines between wind turbines shall, to the maximum extent practicable, be placed underground and in accordance with Ag and Markets recommendations and relevant building codes.
- (6) Warnings.
 - (a) A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
 - (b) Visible, reflective, colored objects such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 10 feet from the ground.
- (7) Climb prevention/locks.
 - (a) Wind turbines shall not be climbable up to 15 feet above ground surface.
 - (b) All access doors to wind turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by nonauthorized persons.
- (8) Meteorological (MET) tower construction. Meteorological towers shall be monopoles rather than lattice construction, and shall use no guy wires where possible.
- (9) Turbine height. Turbine height shall not exceed 407 feet (base to top of extended blade). [Added 12-9-2009 by L.L. No. 3-2009]

I. Setbacks.

- (1) Occupied buildings.
 - (a) Wind turbines shall be set back from the nearest occupied building located on a participating landowner's property a distance of not less than the normal setback requirements for that zoning classification or 1.25 times the turbine height, whichever is greater. The setback distance shall be measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.
 - (b) Wind turbines shall be set back from the nearest occupied building located on a nonparticipating landowner's property a distance of not less than 2.5 times the turbine height, as measured from the center of the wind turbine base to the nearest point on the foundation of the occupied building.
- (2) Accessory buildings. Wind turbines shall be set back from any accessory building a distance of not less than 1.25 times the turbine height. [Added 12-9-2009 by L.L. No. 3-2009⁸]
- (3) Property lines. All wind turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for that zoning

8. This local law also provided for the redesignation of former Subsection I(2) and (3) as Subsection I(3) and (4), respectively.

classification or 1.25 times the turbine height, whichever is greater. The setback distance shall be measured to the center of the wind turbine base.

- (4) Public roads. All wind turbines shall be set back from the nearest public road a distance of not less than 1.25 times the turbine height, as measured from the right-of-way line of the nearest public road to the center of the wind turbine base.
- J. Waiver of setbacks. Property owners must adhere to all setbacks. The only exception to this is in the event where there are two adjacent participating landowners, property line setbacks may be waived between the two landowners' properties by way of a written document where the two landowners agree to the waiver. The Planning Board must also agree to the waiver.
- K. Use of public roads.
- (1) The applicant shall identify all state and local public roads to be used within the Town of Benton to transport equipment and parts for construction, operation or maintenance of the wind energy facility.
 - (2) The Town of Benton's engineer or a qualified third-party engineer hired by the Town of Benton and paid for by the applicant shall document road conditions prior to construction. The engineer shall document road conditions again 30 days after construction is complete or as weather permits.
 - (3) The Town of Benton may bond the road in compliance with state regulations.
 - (4) Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense, returning the road to a condition satisfactory to the Town Board or its representatives.
 - (5) The applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.
- L. Local emergency services.
- (1) The applicant shall provide a copy of the project summary and site plan to local emergency services, including all local paid or volunteer fire and ambulance department(s).
 - (2) Upon request, the applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the wind energy facility.
- M. Noise and shadow flicker.
- (1) Audible sound from a wind energy facility shall not exceed 50 dBA, as measured at the exterior of any occupied building on a nonparticipating landowner's property. Methods for measuring and reporting acoustic emissions from wind turbines and the wind energy facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled "Procedures for the Measurement and Reporting of Acoustic Emissions from wind turbine Generation Systems Volume I: First Tier."

- (2) The facility owner and operator shall make reasonable efforts to minimize shadow flicker to any occupied building on a nonparticipating landowner's property.

N. Waiver of noise and shadow flicker provisions.

- (1) Property owners may waive the noise and shadow flicker provisions of these regulations by signing a waiver of their rights.
- (2) The written waiver shall notify the property owner(s) of the sound or flicker limits in these regulations, describe the impact on the property owner(s), and state that the consent is granted for the wind energy facility to not comply with the sound or flicker limit in these regulations.
- (3) Any such waiver shall be recorded in the Recorder of Deeds' office of the county where the property is located. The waiver shall describe the properties benefited and burdened, and will advise all subsequent purchasers of the burdened property that the waiver of sound or flicker limit shall run with the land and may forever burden the subject property.

O. Signal interference.

- (1) No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
- (2) No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or interference with signal transmission or reception.

P. Liability insurance. Prior to issuance of a building permit, the applicant shall provide the Town of Benton with proof in the form of a duplicate insurance policy or a certificate issued by an insurance company of liability insurance of a level to be determined by the Town Board in consultation with the Town's insurer to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation and transmission facility.

Q. Decommissioning.

- (1) The facility owner and operator shall, at its expense, complete decommissioning of the wind energy facility, or individual wind turbines, within 12 months after the end of the useful life of the facility or individual wind turbines.
- (2) The wind energy facility or individual wind turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of 12 months.
- (3) Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.
- (4) Disturbed earth shall be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

- (5) An independent and certified professional engineer shall be retained to estimate the total cost of decommissioning ("decommissioning costs") without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("net decommissioning costs"). Said estimates shall be submitted to the Town of Benton after the first year of operation and every fifth year thereafter.
- (6) The facility owner or operator shall post and maintain decommissioning funds in an amount equal to net decommissioning costs, provided that at no point shall decommissioning funds be less than 25% of decommissioning costs. The decommissioning funds shall be posted and maintained with a bonding company or federal or Commonwealth chartered lending institution chosen by the facility owner or operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within NYS and is approved by the Town of Benton.
- (7) Decommissioning funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Town of Benton.
- (8) If the facility owner or operator fails to complete decommissioning within the period prescribed by Subsection Q(1), the landowner shall have six months to complete decommissioning.
- (9) If neither the facility owner or operator nor the landowner complete decommissioning within the periods prescribed by Subsection Q(1) and (8), then the Town of Benton may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a participating landowner agreement to the Town of Benton shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Town of Benton may take such action as necessary to implement the decommissioning plan.
- (10) The escrow agent shall release the decommissioning funds when the facility owner or operator has demonstrated and the municipality concurs that decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.

R. Maintenance/inspections.

- (1) The owner or operator of the wind facility must submit, on an annual basis, a summary of the operation and maintenance reports to the Town of Benton. In addition to the above annual summary, the owner or operator must furnish such operation and maintenance reports as the Town reasonably requests.
- (2) Any physical modification to the wind facility that alters the mechanical load, mechanical load path, or major electrical components shall require recertification. Like-kind replacements shall not require recertification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with the Town of Benton Code Enforcement Officer to determine whether the physical modification requires a special use permit modification.

- (3) The Town of Benton staff, along with licensed third-party professionals retained by the Town for the specific purpose of conducting inspections of the wind facility, shall have the right, once annually, and with sufficient prior notice, to accompany the owner or operator, or his agent, on the premises where a wind facility has been constructed, to inspect all parts of said wind facility installation and to require that repairs or alterations be made. The owner or operator of a wind facility may retain a licensed third-party professional engineer familiar with the specific wind facility system to prepare and submit to the Town of Benton a written report which addresses the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary. This report must be submitted within 30 days after receiving notice from the Town of Benton that repairs or alterations are requested unless both parties have agreed to a longer period of time. The Town of Benton will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report.
- (4) Inspections, at a fee to be determined from time to time by the Town of Benton and paid by the applicant, may be made by the Town of Benton Code Enforcement Officer or by a qualified inspector for equipment of this type selected by the Town of Benton, no more than once annually to certify the safety and maintenance of the wind facility and accessory structures.

S. Public inquiries and complaints.

- (1) The facility owner and operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
- (2) The facility owner and operator shall make reasonable efforts to respond to the public's inquiries and complaints.

T. Small wind energy systems permitted use. Small wind energy systems shall be a permitted use, following site plan approval from the Planning Board, in all zoning classifications where structures of any sort are allowed; subject to certain requirements as set forth below:

- (1) Tower height. For property sizes between 1/2 acre and one acre, the tower height shall be limited to 80 feet. For property sizes of one acre or more, the tower height shall be limited to 200 feet, except where such height does not conform to regulations imposed by FAA.
- (2) Setback. No part of the wind system structure, including guy wire anchors, may extend closer than 1.25 times the turbine height to the property boundaries of the installation site.
- (3) Noise. Small wind energy systems shall not exceed 50 dBA, as measured at the closest nonparticipating landowner's occupied building. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.
- (4) Approved wind turbines. Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other

small wind certification program recognized by the American Wind Energy Association.

- (5) Compliance with Uniform Building Code. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the Uniform Building Code and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer. Wet stamps shall not be required.
 - (6) Compliance with FAA regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
 - (7) Compliance with National Electric Code. Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.
 - (8) Utility notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
- U. Compliance with New York State Department of Agriculture and Markets guidelines. Wind power construction projects located in county-adopted, state-certified agricultural districts shall comply with the following guidelines. The project sponsor is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals of these guidelines are being met. For larger projects, the project sponsor shall hire an environmental monitor to oversee the construction and restoration in agricultural fields.
- (1) Siting guidelines.
 - (a) Minimize impacts to normal farming operations by locating structures along field edges and in nonagricultural areas where possible.
 - (b) Locate access roads which cross agricultural fields along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
 - (c) Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields and in nonagricultural areas where possible.
 - (d) All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based

on a new design.

- (2) Construction guidelines.
 - (a) The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
 - (b) Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
 - (c) All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the environmental monitor.
 - (d) Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings.
 - (e) In cropland, hayland and improved pasture, a minimum depth of 48 inches of cover will be required for all buried electric cables. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of 36 inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric cables shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use, whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.
 - (f) All excess subsoil and rock shall be removed from the site. On-site disposal of such material may be allowed if approved by the landowner and, when applicable, the environmental monitor, with appropriate consideration given to any possible agricultural or environmental impacts. (Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
 - (g) In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
 - (h) All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil. (Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the

landowner when required.)

- (i) Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas. (Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.)
- (3) Restoration guidelines.
- (a) Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.
 - (b) All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
 - (c) All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
 - (d) All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
 - (e) Following restoration, all construction debris will be removed from the site.
- (4) Two-year monitoring and remediation.
- (a) The project sponsor will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two-year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
 - (b) General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on-site monitoring of all

agricultural areas impacted by construction and through contact with respective farmland operators and the Department of Agriculture and Markets.

- (c) Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the project sponsor.
- (d) When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the project sponsor as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at or shortly after the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the project sponsor's responsibility to fully redress all project impacts.
- (e) Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

§ 110-16. Use Regulation Table.

The attached Use Regulation Table is hereby adopted and declared to be a part of this chapter and is hereinafter referred to as the "Town of Benton Use Regulation Table."⁹

ARTICLE V

Area Bulk Regulations; Density Control

§ 110-17. Purpose.

In order to provide adequate open spaces for access to light and air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, and to lessen congestion on streets, no building or premises shall be erected, altered or used except in accordance with the standards set forth in this article.

§ 110-18. Density Control Schedule.

9. Editor's Note: The Use Regulation Table is included at the end of this chapter.

The attached schedule of density control regulations is hereby adopted and declared to be a part of this chapter and is hereinafter referred to as the "Town of Benton Density Control Schedule."¹⁰

§ 110-19. Corner lots.

Whenever a side or rear yard is adjacent to a street, the standards for front yards shall apply.

§ 110-20. Projections into required yards.

A. The following projections into required yards may be permitted:

- (1) Open fire escapes: four feet into side or rear yards.
- (2) Awnings or movable canopies and overhangs: six feet into any yard.
- (3) Cornices, eaves, insulation walls and roofs, and other similar architectural features: three feet into any yard.
- (4) Apparatus needed for the operation of active or passive solar energy systems, including detached solar collectors, reflectors, piping or ductwork, and insulation necessary for efficient utilization thereof.

B. Any open or enclosed porch or attached carport or garage shall be considered a part of the building in the determination of the size of the required yard or lot coverage. Nonroofed paved terraces shall not be considered a part of the building.

C. Accessory buildings and uses shall comply with the provisions of Article IX, § 110-52, of this chapter. [Amended 6-17-1996 by L.L. No. 1-1996]

§ 110-21. Minimum lot size.

A. In all districts where residences are permitted, a lot held in single ownership may be improved for residential use according to the minimum lot size per dwelling unit and bulk regulations for each district as set forth in the Density Control Schedule,¹¹ provided that there shall be no more than one principal building and use on each lot. If two or more principal residential structures are located on the same lot, the minimum average density requirement must be complied with and future partition of the lot must be anticipated by providing adequate width and yards.

B. A residential lot of required or larger than required size as set forth in this chapter shall not be reduced in size for transfer of ownership if such lot so subdivided will form one or more lots which shall not be in compliance with the requirements for the minimum average residential density for the district in which such lot or lots are situated, except as provided in Article X, Residential Cluster Development.

§ 110-22. Distance between principal buildings on a lot.

10. Editor's Note: The Density Control Schedule is included at the end of this chapter.

11. Editor's Note: The Density Control Schedule is included at the end of this chapter.

No detached principal building shall be closer to any other principal building on the same lot than the average heights of said buildings.

§ 110-23. Lakeshore frontage.

- A. No person, firm, company, corporation or other entity shall deed, grant, sell, give, permit or lease a right-of-way or an easement to the lakeshore (except for "essential utility services," as defined in Article II, § 110-6, for drawing water) of less than 50 feet minimum width for each dwelling unit served. The minimum required area for a dwelling unit in an L-R District shall not include the area of any right-of-way or easement deeded, granted, sold, permitted, conveyed, given, or leased.
- B. Any multiple-dwelling development or planned subdivision with L-R District lakeshore land used as a common recreation area shall have a minimum of 25 feet of lot width for each dwelling unit served.
- C. Joint or individual ownership of one or more parcels of land in districts or municipalities adjacent to the L-R District sharing ownership in an unoccupied and/or vacant L-R District lot shall have a minimum of 25 feet of lot width in the L-R District for each dwelling unit of the adjacent district or municipality. No dwelling unit or other structure shall be permitted on such L-R District lot.

**ARTICLE VI
Special Uses**

§ 110-24. Intent.

The intent of special uses and special uses approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their special characteristics, or the special characteristics of the area in which they are to be located, special uses require special consideration so that they may be properly located with respect to the objectives of this chapter and their effect on surrounding properties.

§ 110-25. Authorization to grant or deny special uses.

The special uses listed in this chapter may be permitted upon issuance by the Zoning Board of Appeals of a special use permit in accordance with the standards and procedures set forth in this chapter. Special uses may also be enlarged or otherwise altered by such special use permit. In permitting a special use or the modification of a special use, the Zoning Board of Appeals may impose in addition to the standards and requirements expressly specified by this chapter, additional conditions which it considers to be necessary to protect the surrounding property, the neighborhood, or the Town as a whole. These conditions may include limiting the height of buildings, controlling the location and number of vehicular access points, increasing the street width, increasing the number of off-street parking and loading spaces required, limiting the number, size and location of signs, and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.

§ 110-26. Application for special use.

A property owner(s) or his agent(s) may initiate a request for a special use by filing an application with the Code Enforcement Officer. Such application shall be accompanied by a site plan in conformance with Article VIII of this chapter. A filing fee, as set by the Town Board, shall also be required, no part of which is returnable.

§ 110-27. Standards governing special use.

A special use shall comply with the procedures and standards set forth in Article VIII, Site Plan Approval and Approval of Special Uses, and Article 9, Development Standards For Site Plan Review, of this chapter except as these standards have been modified in authorizing the special use. Consideration shall be given to the following:

- A. The submission of a site plan in accordance with Article VIII is required before any consideration can be given for a special use.
- B. In order to grant any special use, the Zoning Board of Appeals shall find that the request is in harmony with the general purpose and intent of this chapter, taking into account the location and size of the use, the nature and intensity of the proposed use and the size of the site with respect to its accessibility and the traffic-bearing capacity of the surrounding thoroughfares.
- C. In order to grant any special use, the Zoning Board of Appeals shall find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of particular case, be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- D. In the case where a special use has been permitted, no building permit shall be issued until 15 days after the granting of the special permit by the Zoning Board of Appeals, and then only in accordance with the terms and conditions of said permit. The appeals proceeding shall be instituted within 30 days after the filing of the decision in the office of the Town of Benton Clerk.
- E. A special permit for a special use shall become void one year after approval or after such time as may be specified as a condition of approval, if no construction or use activity has begun. The special permit shall be void if the original use shall cease for more than one year for any reason.
- F. The Zoning Board of Appeals, on its own motion and after proper notice and hearing, may revoke any approval of a special use for noncompliance with conditions set forth in the granting of said use after first holding a public hearing. Notice of the public hearing shall be published at least five days prior to the scheduled date in a newspaper of general circulation in the Town. The foregoing shall not be the exclusive remedy, but it shall be unlawful and punishable hereunder for any person to violate any condition imposed by an approved special permit for a special use.

§ 110-28. Public hearing on special use.

Before a special use is permitted, the proposed special use shall be considered by the Zoning

Board of Appeals at a public hearing. Notice of said hearing shall be given as provided in § 110-27F.

§ 110-29. Notification of action.

The Zoning Board of Appeals shall notify the applicant of its action within 45 days after the public hearing.

§ 110-30. Appeal.

The applicant or any interested person may appeal a decision of the Zoning Board of Appeals. The appeal shall be made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision on a special use application with the Town of Benton Clerk.

ARTICLE VII
Farm-Related Businesses and Home Occupations

§ 110-31. Farm-related business (special use). [Amended 6-17-1996 by L.L. No. 1-1996; 11-14-2007 by L.L. No. 3-2007]

Within A-R-1 and A-R-B Districts on lots of three acres or more, farm-related businesses may be permitted as special uses subject to site plan review as authorized by Article VIII of this chapter. "Farm-related businesses" are defined as activities and services directed toward meeting the needs of those engaged in area farming and providing materials and services needed for farming. Farm-related businesses are subject to the following standards:

- A. For the purposes of this chapter, farm-related businesses may involve the following types of uses. Other uses may be permitted if the applicant demonstrates that the proposed farm-related business would serve the area farming community.
 - (1) Facilities for the manufacturing, processing, warehousing, sales, distribution, storage, repair and service of agricultural produce, equipment, vehicles or supplies.
 - (2) Blacksmith shops and harness making.
 - (3) Butcher shops.
 - (4) Grain mills.
 - (5) Processing of locally produced agricultural products.
 - (6) Veterinary offices.
 - (7) Feed supply, seed, and fertilizer distribution.
- B. The maximum lot coverage of a farm-related business shall be 25%.
- C. Farm-related business may be conducted in a building or buildings comprising up to 15,000 square feet.
- D. The length of access drive shall be sufficient to accommodate stacking of delivery and customer vehicles.

- E. No farm-related business shall be located within 80 feet of any adjoining side or rear property line. Such distance shall be measured as a straight line between the closest points of any structure or any other physical improvement of the farm-related business and the adjoining property line.
- F. Screening must be provided when a farm-related business abuts any property used principally for residential purposes. Certain pieces of apparatus used for farm-related businesses which create noxious dust, odor, light or noise conditions may require greater setbacks or screening, as determined by the Planning Board.
- G. Off-street parking areas shall be provided for the farm-related business as required in § 110-50 of this chapter. Truck parking shall be limited to trucks used by the farm or in the farm occupation.
- H. Any outdoor storage of supplies, materials and products shall be screened from adjoining roads and properties. The display of farm equipment for sale shall be exempted from this provision.
- I. If in the opinion of the Planning Board a proposed farm-related business presents a fire hazard, emits smoke, dust or other air pollutants, noise, or glare, or could create a potential nuisance as a result of its hours of operation, the Board may impose such other reasonable conditions it deems appropriate.

§ 110-32. Home occupations permitted as special use. [Amended 6-11-2001 by L.L. No. 2-2001; 11-14-2007 by L.L. No. 3-2007]

Within A-R-1, A-R-B and H-C Districts, on lots of two acres or more, a home occupation which meets the following standards may be permitted as a special use subject to site plan review as authorized by Article VIII of this chapter:

- A. For the purposes of this chapter, home occupations on lots of two acres or more may involve any one of a wide range of uses, so long as the use is not incompatible with the primary agricultural or residential use of the land. These uses include, but are not limited to, professional offices, including doctors, dentists, veterinarians, attorneys, engineers, architects, accountants, real estate and insurance offices, music, dance or artist studios, barber and/or beauty shops, tailoring or dressmaking, business, agricultural and/or personal service establishments. The applicant must demonstrate that the home occupation is compatible with the rural or hamlet setting and will not create nuisances for nearby properties.
- B. The home occupation shall be conducted by the owner-occupant or tenant of the farm or home and no more than two additional employees.
- C. The home occupation shall occupy no more than 4,000 square feet of gross floor area.
- D. The maximum lot coverage of the residence or farm, as specified in the Density Control Schedule¹² of this chapter, shall include the home occupation.

12. Editor's Note: The Density Control Schedule is included at the end of this chapter.

- E. The maximum area devoted to the home occupation (including the structure, parking, storage, and driveway if separate) shall be no more than 10,000 square feet of land.
- F. Where practicable, home occupations shall be conducted within an existing farm or residential building. Any building constructed for use by the home occupation shall be located within 100 feet of the residence or other farm building, and shall be set back at least 100 feet from the roadway.
- G. Any building constructed for the use of the home occupation shall be of a nature that it can be converted to agricultural or residential use if the home occupation is discontinued. The structure's exterior appearance should be that of a farm or residential building.
- H. No home occupation shall be located within 50 feet of any adjoining side or rear property line. Such distance shall be measured as a straight line between the closest points of any structure or any other physical improvement of the home occupation and the adjoining property line.
- I. Outdoor storage shall be located so as not to be visible from adjoining roads and properties. This may be done by means of placement within a building, landscaping, screening or placement on the lot behind a building.
- J. Off-street parking areas shall be provided for the home occupation at a ratio of not more than one space per 200 square feet of building area devoted to the home occupation and not less than one space per 500 square feet of building area devoted to the home occupation. Truck parking shall be limited to trucks used by the farm, if any, or in the home occupation. One parking space must be provided for each employee.
- K. The use shall not create excessive noise, vibration, glare, smoke or fumes which are continuously detectable beyond the limits of the property.

§ 110-33. Home occupations permitted as accessory use. [Amended 6-17-1996 by L.L. No. 1-1996]

Home occupations which meet the following standards are permitted as accessory uses to a residence, and no special use permit shall be required in order to establish or maintain such uses:

- A. For the purposes of this chapter, home occupations may involve any one of a wide range of uses, so long as the use is not incompatible with the primarily residential use of the property. Such uses include, but are not limited to, those occupations listed in § 110-32. The applicant must demonstrate that the home occupation is compatible with the residential character and setting and will not create nuisances for nearby properties.
- B. The home occupation shall be conducted by the owner-occupant or tenant of the residence.
- C. The home occupation shall be conducted in the home or in an accessory building which maintains the appearance of the property as a residential property.
- D. The permitted home occupation shall occupy no more than 1,000 square feet of gross floor area.
- E. There shall be no exterior storage of business vehicles, equipment, supplies, materials, merchandise, or inventory.

- F. There shall be no exterior display of products.
- G. A minimum of one parking space shall be provided for each 500 square feet of gross floor area devoted to the permitted home occupation.
- H. The use shall not create excessive noise, vibration, glare, smoke or fumes which are continuously detectable beyond the limits of the property.

ARTICLE VIII
Site Plan Review and Approval of Special Uses

§ 110-34. Intent.

- A. The intent of site plan approval is to authorize the Town of Benton Planning Board to review and approve site plans for special uses otherwise permitted by this chapter in order to accomplish compliance with the intent of the standards of this chapter. The objective is to evaluate site plans in order to minimize conflicts between the site layout and design of proposed uses and existing uses and natural site conditions and thereby minimize any adverse effects affecting the health, safety, and overall welfare of the community. The level of site plan review is intended to be commensurate with the scale and complexity of the proposed development or change.
- B. Development standards to be used for site plan review are found in Article IX of this chapter.

§ 110-35. Authorization.

The power to approve, approve with modification, or disapprove site plans, where required by this chapter, is hereby vested in the Town of Benton Planning Board pursuant to § 274-a of the Town Law of New York State. Prior to issuing a building permit for construction, reconstruction or expansion, or change in use of any special use, a site plan and supporting documentation shall be submitted to the Planning Board for its review and approval. For development proposals involving new construction of 2,000 square feet or more of floor area, the Planning Board may require that the site plans be prepared by a licensed architect or engineer. Such requirement shall be reasonably based on the complexity of the site development and of proposed structure(s) or land uses which are included in the development proposed by the applicant.

§ 110-36. Site plan review for special use home occupations and certain farm-related businesses.

Where applicants propose special use home occupations under the requirements of § 110-32 of this chapter, or farm-related businesses requiring no additional construction, or farm-related businesses proposing the construction, reconstruction, expansion or use of less than 2,000 square feet of floor area, the applicant is required to submit a sketch plan¹³ and written description to the Planning Board which describes the following characteristics of the proposed use or development:

- A. Its location on the property owned or leased by the applicant, its relationship to other uses or buildings on the property, and its distance from the nearest public streets.

13. Editor's Note: Request of a sketch plan is authorized pursuant to L.L. No. 2-1992, adopted 3-9-1992.

- B. A description of the uses and/or buildings or improvements proposed by the applicant and their locations on the property.
- C. The size of the proposed uses measured in square feet.
- D. Any exterior improvements proposed, including parking, landscaping or other improvements.
- E. A description of the type of activity which would occur as part of the proposed home occupation or farm-related business, including the anticipated business traffic involved, any processing operations which may result in noise, odor or glare to neighboring uses and any requirements for paving, storage or utility use.
- F. The Planning Board shall review the sketch plan and written description in accordance with the requirements of §§ 110-31 and 110-32 of this chapter and may approve, approve with modifications or disapprove the applicant's proposal based on the findings of its review. The Planning Board will notify the applicant within 30 days of its findings; provided, however, that the time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.

§ 110-37. Site plan review for certain farm-related businesses or residential special uses.

For farm-related business proposals involving the construction, reconstruction or use of 2,000 square feet or more of floor area or for other business or residential special uses requiring a special permit, the following site plan review procedures will be carried out by the Planning Board.

§ 110-38. Concept plan conference.

The Planning Board may request a conference with the applicant while the proposed development is still in the concept stage,¹⁴ and may request that a concept or sketch plan be submitted at that time. A concept plan conference may also be initiated by the applicant. The purpose of a concept plan conference is to provide the opportunity for the person applying for a special use to consult early and informally with the Planning Board in order to minimize conflicts, save time and money and make the most of opportunities for desirable development.

A. Requirements.

- (1) The Planning Board may discuss with the applicant general requirements as to design of streets, reservations of land, drainage, utilities, water supply, fire protection, and other improvements as well as procedural matters.
- (2) Applicants proposing the development of land adjoining state or county highways are advised to consult with the District Engineer of the New York State Department of Transportation or Yates County Highway Superintendent in order to resolve problems at the earliest possible stage. The Planning Board shall provide written comments on the concept plan for a proposed development and in the course of its review may consult with other interested public agencies.

14. Editor's Note: Request of a concept plan conference is authorized pursuant to L.L. No. 2-1992, adopted 3-9-1992.

- (3) The concept plan shall include the following information:
- (a) An area map showing:
 - [1] Applicant's entire holdings, that portion of the applicant's property under consideration for development and any adjacent parcels owned by the applicant.
 - [2] All properties, their ownership and uses, subdivisions, streets, zoning districts, easements, and adjacent buildings within 500 feet of the applicant's property.
 - (b) A site development plan:
 - [1] Existing natural features such as water bodies, watercourses, wetlands, wooded areas, individual large trees, and flood hazard areas.
 - [2] Zoning districts, certified agricultural districts, and school districts.
 - [3] Special improvement districts (water, sewer, lights, fire, drainage and the like).
 - [4] Easements.
 - [5] All existing man-made features.
 - [6] All proposed buildings, man-made structures, landscaping and public improvements.
 - (c) A map showing the topography of the site.
 - (d) A soils overlay, if general site grades exceed 15% or if portions of the site have susceptibility to erosion, flooding or ponding.

§ 110-39. Preliminary site plan application.

Application for preliminary site plan approval¹⁵ shall be made in writing in triplicate to the Code Enforcement Officer no less than 15 days prior to the next scheduled Planning Board meeting. The Code Enforcement Officer shall refer all preliminary site plan applications to the Planning Board for its review and approval. For the purposes of this chapter, the submission date shall be the date of the first regular Planning Board meeting following submission to the Code Enforcement Officer.

§ 110-40. Preliminary site plan requirements.

The preliminary site plan application shall include the information listed below. The Planning Board may at its discretion waive any preliminary requirements which are not relevant to the proposed use and site.

- A. An area map showing that portion of the applicant's property under consideration for

15. Editor's Note: Request for preliminary site plan applications is authorized pursuant to L.L. No. 2-1992, adopted 3-9-1992.

development, any adjacent parcels owned by the applicant, and all streets, zoning districts, easements and adjacent buildings within 500 feet of the applicant's property.

B. A preliminary site plan shall include the following information:

- (1) Title of drawing, including the name and address of the applicant.
- (2) North arrow, scale and date.
- (3) Boundaries of the project at a scale of not more than 100 feet to one inch.
- (4) Existing natural features such as watercourses, water bodies, wetlands, wooded areas and individual large trees, showing features to be retained.
- (5) Existing and proposed contours at intervals of not more than five feet.
- (6) Location of proposed land uses and their areas in square feet or acres, the uses proposed and the height of each proposed structure.
- (7) Location of all existing or proposed site improvements including streets, drains, culverts, retaining walls, fences and easements, whether public or private.
- (8) Description of sewage disposal and water systems and the location proposed for such facilities.
- (9) Provision for buffer areas and other landscaping.
- (10) Delineation of residential areas, if proposed, indicating the general extent of each area, a description of the dwelling unit types proposed, and a calculation of residential density in dwelling units per gross acre for each such area.
- (11) Location of all parking and truck-loading areas, showing access and ingress drives.
- (12) The location, design and size of all signs and lighting facilities.
- (13) The approximate locations and dimensions of areas proposed for neighborhood parks or playgrounds, or other permanent open space.
- (14) Building orientation.
- (15) The location and design of all energy distribution facilities, including electrical, gas and solar energy.
- (16) Provision for energy efficiency.
- (17) Grading and erosion control measures including the proposed location of sediment sink/settling pond and interceptor swales, etc.
- (18) Location and design for stormwater management facilities.
- (19) A drainage report including supporting design data and copies of the engineering computations used to determine the design capacities and performance requirements of drainage facilities.
- (20) The lines and dimensions of all property which is offered, or is to be offered, for

dedication for public use, with the purpose indicated thereon, and of all property that is proposed to be reserved by deed covenant for the common use of the property owners of the development.

- C. The Planning Board may require additional information which appears necessary for a complete assessment of the project.
- D. Review of preliminary site plan.
 - (1) The Planning Board review of the preliminary site plan shall include, but is not limited to, the following considerations:
 - (a) Adequacy and arrangement of vehicular traffic access and circulation.
 - (b) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - (c) Location, arrangement, size and design of buildings, lighting and signs.
 - (d) Relationship of the various uses to one another and their scale.
 - (e) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and noise buffer between adjacent uses and adjoining lands.
 - (f) Adequacy of stormwater and sanitary waste disposal.
 - (g) Adequacy of structures, roadways and landscaping in areas susceptible to flooding and ponding or erosion.
 - (h) Compatibility of development with natural features of the site and with surrounding land uses.
 - (i) Adequacy of floodproofing and prevention measures consistent with flood hazard prevention district regulations.
 - (j) Adequacy of building orientation and site design for energy efficiency; the extent to which the proposal plan conserves energy use and energy adequate sunlight for use by solar energy systems.
 - (k) Adequacy of open space for play areas, informal recreation and the retention of natural areas such as wildlife habitats, wetlands and wooded areas.
 - (l) Adequacy of pedestrian access, circulation, convenience and safety.
 - (2) In their review of a preliminary site plan, the Planning Board may consult with the Code Enforcement Officer, Fire Commissioners, other local and county officials, and any designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

§ 110-41. Public hearing.

Upon the Planning Board's certification that the preliminary site plan application is complete and satisfactory, a public hearing shall be scheduled within 45 days from the time of such certification. For the purpose of this chapter, the submission date shall mean the date of the first regular Planning Board meeting following submission of the preliminary site plan to the Code Enforcement Officer. Notice of the public hearing shall be published at least five days prior to the scheduled date in a newspaper of general circulation in the Town.

§ 110-42. Notification of decision on preliminary site plan.

Within 45 days of the public hearing at which a preliminary site plan is considered, unless an extension is agreed upon by mutual consent, the Planning Board shall act upon it. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, specially approved, or disapproved. A copy of the appropriate minutes of the Planning Board shall be a sufficient report. The Planning Board's statement may include recommendations as to desirable revisions to be incorporated in the final site plan application. If the preliminary layout is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case the Planning Board may recommend further study of the proposal and resubmission of the preliminary site plan.

§ 110-43. Final site plan application.

After receiving approval, with or without conditions, from the Planning Board on a preliminary site plan, and approval for all necessary permits and curb cuts from state and county officials, the applicant may prepare a final site plan and submit it to the Planning Board for its review and approval. However, if more than six months have elapsed between the time of the Planning Board's report on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revisions prior to accepting the proposed final site plan for review. The final site plan shall conform to the approved preliminary site plan, and shall incorporate any revisions or other features that may have been recommended by the Planning Board at the preliminary review. All revisions shall be clearly indicated by the applicant.

§ 110-44. Notification of decision on final site plan.

Within 45 days of the submission of the final site plan, the Planning Board shall render a decision. This decision shall also immediately be filed in the office of the Town of Benton Clerk.

- A. Upon approval, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward it to the Code Enforcement Officer who shall then issue a building permit if the project conforms to all other applicable requirements.
- B. Upon disapproval, the Planning Board shall so inform the Code Enforcement Officer who shall then deny a building permit. The Planning Board shall also notify the applicant in writing of its decision and its reason for disapproval. A copy of the appropriate minutes may suffice for this notice.
- C. Specifications for improvements shown on the site plan shall be those set forth in this chapter and in other laws, rules and regulations, or in construction specifications of the

Town of Benton, as they shall from time to time be enacted.

§ 110-45. Appeals.

- A. The applicant or any interested person may appeal a decision of the Planning Board. The appeal is made to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within 30 days after the filing of a decision on a special use application with the Town of Benton Clerk.
- B. The Planning Board, at its discretion, may waive the concept and final application procedure.

**ARTICLE IX
Development Standards For Site Plan Review**

§ 110-46. General provisions.

- A. The Planning Board, in reviewing a site plan, shall be guided by the standards presented in this article. In the review, they shall take into consideration the prospective character of the development and require improvements be designed to such standards as are consistent with reasonable protection of the public health, safety, or welfare.
- B. Where a property is divided into lots and blocks, whether intended for single or multiple ownership, the requirements of the Town of Benton's Subdivision Regulations, as may be adopted by the Town from time to time, shall be followed.
- C. For permitted uses the Code Enforcement Officer shall ensure compliance with this article and any other applicable laws, articles or sections.

§ 110-47. Trees and landscaping.

Developers shall take adequate measures to preserve desirable existing trees in suitable locations and to provide new lawn, trees and shrubs to suitably landscape proposed developments.

§ 110-48. Street names.

All streets shall be named, and such names shall be subject to the approval of the Planning Board. A street which is a continuation of an existing street shall bear the same name. Relating street names to features of local historical, topographical, or other natural interest is encouraged. Street signs shall be provided by the developer at all intersections and shall be of a type approved by the Town Highway Superintendent.

§ 110-49. Standards for street design.

Streets shall be designed and constructed to conform with New York State Department of Transportation, Yates County and Town of Benton specifications. The typical section approved by the Town Highway Superintendent shall be used for all roads. Pavement and right-of-way widths shall vary with type of use.

§ 110-50. Parking.

A. General provisions.

- (1) It shall be the responsibility of the owner of a property to provide the off-street parking spaces required in the listing below for any use which is erected, enlarged, or altered after the effective date of this chapter.
- (2) A parking space shall be considered adequate if it is not less than 200 square feet (10 feet by 20 feet) exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to street or alley.
- (3) No exit or entrance drive connecting a parking area and a street shall be permitted within 30 feet of the intersection of two public rights-of-way.
- (4) Where appropriate, the Planning Board may, upon the presentation of evidence, vary the number of circumstance of the following parking space requirements, in order that the general welfare be served and the prospective uses be equitably treated.
- (5) In stadiums, churches, and other places of assembly, in which patrons or spectators occupy benches, pews, or other similar seating facilities, each 20 inches of such seating facilities shall be counted as one seat.
- (6) The lighting of off-street parking lots shall not be directed into adjacent properties.
- (7) If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.

B. Required parking spaces. The minimum number of required spaces shall be determined on the basis of dwelling units, bedrooms, floor area, number of members, employees and/or visitors, equipment, and/or seats contained in proposed new buildings or structures, or added by alteration to existing buildings or structures, and such minimum number of spaces shall be maintained by the owners of such buildings or structures, as follows:

- (1) Residences: two spaces per dwelling unit.
- (2) Home occupation: see §§ 110-32 and 110-33 of this chapter.
- (3) Hospitals, sanitariums, nursing homes: one space for each bed.
- (4) Bed-and-breakfast, boardinghouse, tourist home, or rooming house: one space for each guestroom within the facility.
- (5) Motels/hotels: one space for each unit plus one space for every four employees.
- (6) Offices, service, retail, professional: one space for each 200 square feet of gross floor area.
- (7) Medical and dental clinics: one space for each 100 square feet of gross floor area.
- (8) Retail establishments, funeral homes, veterinary hospitals, banks, and related commercial establishments of a personal service or business service nature: one space for each 100 square feet of gross floor area.
- (9) Restaurants: one space for each 100 square feet of customer floor area plus additional

space as required to accommodate tractor trailer parking and maneuvering.

- (10) Commercial recreation, membership clubs: one space for every three persons allowed within the maximum occupancy as established by the Code Enforcement Officer.
 - (11) Roadside stands: one space for every 50 square feet of area devoted to selling or display.
 - (12) Nursery and elementary schools: one space per employee plus two additional spaces per classroom.
 - (13) High schools and colleges: one space per employee plus one space per each eight students.
 - (14) Churches, temples, auditoriums, theaters: one space for every five seats.
 - (15) Industrial uses: one space for each 1,000 square feet of floor area devoted to manufacture, storage or stationary operating equipment and one space for each company vehicle.
 - (16) Farm-related business: one space per employee and compliance with the parking requirements provided in this Subsection B, based on type of business.
 - (17) Automobile service and sales: two spaces per employee plus one space per service bay.
- C. Calculation of parking spaces. In the case of combination of uses, the total requirements for off-street automobile parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.
- D. Dimensions of parking spaces. Every parking space provided shall be at least 10 feet wide and 20 feet long, and every space shall have usable driveway access to a street or alley.
- E. Construction of parking. Parking areas, with the exception of single-family residences, shall be surfaced with a suitable all-weather, dust-free surface.
- F. Landscaping. Wherever possible, parking areas should be landscaped with lawn, trees, shrubs or other plant material.

§ 110-51. Signs. [Amended 6-17-1996 by L.L. No. 1-1996; 3-15-2006 by L.L. No. 1-2006]

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

A. General provisions.

- (1) No sign shall be erected or placed at or near the intersection of any streets in such a manner as to cause a traffic hazard at the intersection; or at any location where, by reason of the position, shape, or color of the sign, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device.
- (2) No sign shall be placed or erected above the maximum elevation of the main roofline

of the principal building located upon the lot where the sign is located.

- (3) No permitted freestanding sign shall be greater than 25 feet in height above the average surface of the ground of the lot where the sign is located.
- (4) All signs shall be set back a minimum of 10 feet from any side or rear lot line and cannot be located in the highway right-of-way.
- (5) The provisions of this section shall not apply to safety signs, road signs, historical markers or highway directional signs erected by municipal public agencies.
- (6) Illumination of signs shall not be intermittent or of varying intensity and shall not produce glare beyond the limits of the property lines.
- (7) Signs with moving parts are not permitted except in the cases of public service signs (such as time and temperature signs) which are approved by the Code Enforcement Officer.
- (8) Marquee-type signs are not permitted, except as a special use permit. The definition of a "marquee sign" is a sign with or without internal lighting and removable letters.
- (9) Signs must be constructed of durable materials and maintained in good condition. If allowed to become dilapidated, they shall be repaired or removed within 30 days, by the direction of the Code Enforcement Officer, at the owner's expense. The following design elements shall be preferred:
 - (a) Use of natural construction materials such as stone, brick, wood, or simulated materials.
 - (b) Landscaping.
 - (c) Simplicity of design and color scheme.
- (10) All off-premises signs will require special use permits.

B. Signs permitted for any use.

- (1) Real estate signs.
 - (a) Residential use: six square feet per side for a total area of 12 square feet.
 - (b) Business and industrial uses: 12 square feet per side for a total area of 24 square feet.
- (2) Single identification signs not classified as business signs. Such signs shall contain no more than two sides with a maximum area of 10 square feet per side for a total area of 20 square feet.
- (3) Memorial signs or tables.
- (4) Temporary construction signs identifying an architect, engineer, or contractor when placed upon the property where the construction is being undertaken. Such signs shall be removed within 30 days after construction is completed.

- (5) Temporary event posters or banners covering such things as festivals, political and sporting events, shows and elections. Such signs shall not be displayed until four weeks prior to the event and must be removed within two weeks following the event.
- (6) All signs, certificates and licenses that are mandated to be on display by any local, county, state and federal law or authority.
- (7) Temporary signs for the sale of seasonal fruits and vegetables during the growing season shall be allowed when a permitted or a special use occupation is involved and shall have an aggregate total face area of not more than a maximum of 16 square feet per side, not to exceed 32 square feet in total area.
- (8) Temporary signs shall be constructed of light-weight, nondurable materials and shall generally appear and be temporary in nature.
- (9) Temporary signs shall not be located within the limits of a public right-of-way and shall be located in such a manner as not to interfere with traffic or pedestrian visibility.
- (10) Temporary signs, event posters or banners, other than for the sale of seasonal fruits and vegetables, shall contain no more than two sides with a maximum area of 10 square feet per side for a total area of 20 square feet.
- (11) Temporary signs may be displayed for a maximum of six months per year.
- (12) Larger temporary signs may only be used with issuance of a special use permit.

C. Business signs.

- (1) The design, appearance and location of a sign and the material used in the fabrication of the sign shall be submitted to and approved by the Planning Board before a permit is issued to erect a sign.
- (2) Maximum signage, both attached and detached from the building, shall consist of no more than 10% of the area of the primary building facade.
- (3) One detached sign shall be permitted and shall contain no more than two sides with a maximum area of 32 square feet per side for a total area of 64 square feet. A second detached sign may be permitted with issuance of a special use permit.
- (4) A dwelling unit in which a home occupation is permitted may display a sign noting such an occupation. Such sign shall contain no more than two sides with a maximum area of 10 square feet per side for a total area of 20 square feet.
- (5) Subdivision signs are permitted. Such signs shall contain no more than two sides with a maximum area of 16 square feet per side for a total area of 32 square feet.

§ 110-52. Accessory buildings and uses. [Amended 6-17-1996 by L.L. No. 1-1996]

A. Accessory buildings not attached to principal buildings shall comply with the following requirements:

- (1) No accessory building shall exceed 20 feet in total height, except agriculture

structures.

- (2) No accessory building shall be located closer than 15 feet to a side or rear lot line.
 - (3) No accessory building shall be located within the required front yard or closer to the front lot line than the existing principal residential building.
 - (4) No accessory building may be used for habitable space.
- B. Accessory buildings attached to a principal building shall comply with the same requirements as the principal building involved.
- C. Accessory uses (except fences) not enclosed in a building shall comply with the following requirements:
- (1) No accessory use shall be located closer than 15 feet to a side or rear lot line.
 - (2) No accessory use shall be located within the required front yard or closer to the front lot line than the existing principal residential building.
 - (3) No accessory use shall adversely affect the character of any residential neighborhood by reason of noise, glare or safety.
- D. Fences.
- (1) All fences shall be located within the established lot area of the property concerned, with clearance provided for proper maintenance.
 - (2) No fence shall be erected or placed at or near an intersection of any road or street in such a manner as to cause a traffic hazard.
 - (3) All fences shall not exceed 10 feet in height.
- E. Special designs. In cases where a developer has designed a grouping of buildings, the Planning Board may approve the siting of accessory buildings such as garages and carports in the front yard, provided that the buildings are in compliance with all required setbacks.

§ 110-53. Drainage and erosion control.

- A. Drainage systems. Adequate and comprehensive drainage systems shall be provided to convey the stormwater runoff originating within and outside the proposed development as follows:
- (1) Drainage systems shall have sufficient capacity to accommodate the potential future runoff based upon the probable land use and ultimate development of the total watershed upland of the development.
 - (2) Preservation of natural watercourses is generally preferable to the construction of drainage channels.
 - (3) Interior drainage systems shall be designed to accommodate a ten-year storm.
 - (4) Utilizing the drainage guidelines outlined above, the Planning Board may require the developer to submit the following:

- (a) Plan profiles, and typical and special cross-sections of proposed drainage facilities.
 - (b) Final design capacities and estimated performance of the drainage facilities.
 - (c) A grading plan identifying suitable contour intervals with grading details to indicate proposed grades.
 - (d) If the development is within or adjacent to a designated floodplain, an analysis of the area with respect to management of the floodplain shall be included in the drainage report.
- B. Erosion control. In order to ensure that land development will occur with minimum soil erosion, the Planning Board may require the developer to consult with the Soil Conservation Service and the Soil Conservation Service shall determine whether or not to require that the following procedures be put into practice. Such procedures may include:
- (1) Exposing the smallest practical area of land at any one time during the development.
 - (2) Provision of temporary vegetation and/or mulching to protect critical areas.
 - (3) Provision of adequate drainage facilities, which may include swales and sedimentation basins, to accommodate increased runoff caused by changed soil and surface conditions during and after development.
 - (4) Adjusting the development plan to the topography and soils so as to minimize erosion potential.
 - (5) Retention and protection of existing vegetation wherever possible.
 - (6) Installation of permanent final vegetation and structures as soon as practicable.
 - (7) Provision of adequate protective measures when slopes in excess of 15% are graded.
 - (8) Installation of temporary sedimentation basins as required by the Soil Conservation Service.

§ 110-54. Mobile homes. [Amended 6-17-1996 by L.L. No. 1-1996]

All mobile homes shall meet the minimum lot size and setback requirements for a residential use in said district. All mobile homes require a building permit.

- A. Mobile home standards. All mobile homes installed in the Town of Benton shall meet the following minimum requirements:
- (1) Minimum size: 24 feet wide 720 square feet. [Amended 11-14-2007 by L.L. No. 3-2007]
 - (2) No less than two means of exit.
 - (3) Water and sewage facilities that meet state and local health standards.
 - (4) New York State Certification and shall meet all State Fire Prevention and Building Code requirements.

- (5) Installation of masonry pad foundation. [Amended 11-14-2007 by L.L. No. 3-2007]
- (6) All mobile homes shall be on lot of record.
- (7) Minimum roof pitch: 4 1/2. [Amended 11-14-2007 by L.L. No. 3-2007]
- B. Temporary business use. A single mobile home to be used as a temporary business office, storehouse or construction field office may be located anywhere in the Town. Such temporary location, however, shall be subject to the site plan review and shall be allowed for a period of time which shall not exceed six months. This time limit may be extended if, in the opinion of the Code Enforcement Officer, such extension is a proper continuance of the temporary purpose.
- C. Temporary residential use. For a time period not to exceed 12 months, a single mobile home to be used as a residence on an emergency basis on a lot where an existing residence is destroyed or damaged to the extent that it is not habitable.

§ 110-55. Excavations for soil mining.

Excavation for the purpose of commercial soil mining such as gravel pits, quarrying, or any subsoil removal shall be allowed only by special permit, subject to the following provisions:

- A. Before a special permit is issued, the applicant shall submit to the Planning Board the following information:
 - (1) Two copies of a map at a scale of one inch equals not more than 100 feet showing all land within 200 feet thereof, with exact locations of all buildings, streets, utilities, drainage or other easements, watercourses, lot lines, block and lot numbers and names and landowners. Such map shall also show the present topography at two-foot contour intervals. The map shall be signed by a professional engineer or land surveyor for certification of its accuracy.
 - (2) Two copies of the proposed plan of excavation at the same scale as above showing the proposed finished elevations at two-foot contour intervals and the proposed drainage plan.
 - (3) Two copies of a reclamation plan. The plan must show the land restored to a configuration permitting reuse of the land for another purpose such as housing, industrial parks, commercial areas, parks, etc. Such a plan would illustrate road and building layout as well as final contour elevations. Pre-planning for such future use enables an efficient, sequential restoration of land as excavation progresses, thereby permitting an economically efficient operation. The plans shall be prepared by a competent professional such as an architect, landscape architect or civil engineer.
- B. Excavation operations requiring a New York State Department of Environmental Conservation Soil Mining Permit shall obtain such permit prior to the issuance of a special permit by the Town.
- C. During excavation or quarry operations, open pits and quarry walls shall be entirely surrounded by a substantial fence at least six feet high that will effectively block access to the area, with suitable gates provided with locks. The top of the slope shall not be closer

than 40 feet to a property line. Suitable landscaping may also be required if appropriate to the public health, safety, or welfare. In those cases where excavating is already in progress but has not as yet come within 40 feet of the property line, this chapter shall be retroactive to prevent excavation within 40 feet of the property line.

- D. No rock crusher, cement plant, or other crushing, grinding, polishing, or cutting machinery or other physical or chemical process for treating the product of such excavation shall be permitted, without prior approval of the Planning Board.
- E. The proposed finished grading plan shall show the land to be smooth-graded and topsoil respread to a minimum depth of four inches; the slope shall not exceed the normal angle of repose of the material removed but in no instance shall a finished slope exceed one foot vertical to two feet horizontal. Slopes shall be seeded with appropriate grasses and reforestation seedlings may be required to be planted.
- F. The applicant may be required to furnish a performance bond, in the amount determined by the Town Board to be sufficient to guarantee completion of the finished grading and drainage plan. Such bond shall be released by the Town Board only upon certification that all requirements including the finished grading and drainage have been complied with.
- G. No special permit for excavation operations or soil mining shall be granted for a period of more than five years, but such permit may be extended for additional five-year periods upon approval of the Planning Board. To receive such an extension, the applicant must provide plans and information showing the sequence and timing of excavation.
- H. Upon approval, one copy of the approved excavation plan shall be returned to the applicant by the Town Clerk together with a special permit upon payment of a fee as set by the Town Board resolution to cover all engineering and other costs directly attributable to the approval and office and field checking of the proposed soil mining operation.

§ 110-56. Erection, re-erection and razing of damaged buildings.

- A. Any building which has been damaged by fire or other causes to the extent of more than 50% of its appraised valuation shall be repaired or rebuilt in conformance with the regulations of this chapter. Such building shall either be so repaired or razed within 18 months in a fashion which leaves the site clean.
- B. A building which has been damaged by fire or other causes to the extent of less than 50% of its appraised valuation must be reconstructed within a period not to exceed 18 months or be razed by or at the cost of the owner.
- C. Enforcement will be by the Code Enforcement Officer, utilizing the services of a qualified appraiser when necessary.

§ 110-57. Industrial use design standards.

The following general standards are hereby adopted for the control of any industrial use. No such use shall be permitted, established, maintained or conducted therein which shall cause or be likely to cause:

- A. Excessive smoke, fumes, gas, dust, glare, noise, discharge of effluent, odor, or any other

atmospheric pollutant beyond the boundaries of the lot whereon such use is located. What smoke is excessive shall be determined according to Ringlemann's Scale for Grading the Density of Smoke, published by the U.S. Bureau of Mines, when the shade or appearance of such smoke is darker than No. 2 on said Ringlemann Smoke Chart.

B. Hazard to person or property by reason of fire, explosion, radiation, or other cause.

§ 110-58. Private kennel, boarding kennel and rescue organization standards. [Amended 3-13-2013 by L.L. No. 2-2013]

A private kennel, boarding kennel and rescue organization shall conform to the following minimum requirements:

- A. Minimum lot size: three acres.
- B. Setback. The actual kennel facility and all associated runs or fenced areas shall be set back a minimum of 100 feet from all lot lines.
- C. Buffer. All kennel facilities and associated shall be adequately screened by fence, plantings or landscaping from all roads and adjacent properties.
- D. The kennel facility shall have sufficient indoor boarding areas and associated outdoor runs to accommodate the proposed number of animals to be boarded.
 - (1) Indoor area shall be a minimum of 16 square feet in size.
 - (2) Outdoor runs:
 - (a) Shall be a minimum of 4 1/2 feet wide and 12 feet long.
 - (b) Shall be appropriately separated from adjacent runs by fencing, concrete, block or other appropriate materials.
 - (c) Shall provide a form of shelter if not directly linked to a separate indoor kennel area.

§ 110-58.1. Commercial kennel standards. [Added 3-13-2013 by L.L. No. 2-2013]

A commercial kennel will be permitted in the Town of Benton in its designated district A-R-1 only under the following conditions:

- A. No more than 15 adult dogs are permitted in a commercial kennel or on the premises on which it is located at any time.
- B. All animals shall be kept in clean and sanitary premises, structures or enclosures.
- C. The ambient temperature shall be consistent with the requirements of the specific companion animals. Heating shall be deemed necessary when the inside ambient temperature of the facility falls below 50° F. for a period of four consecutive hours and cooling shall be required when the temperature of the facility rises above 85° F.
- D. All facilities shall be adequately ventilated with fresh or filtered air to minimize drafts, odors and moisture condensation and to provide for the health and comfort of the animals

at all times. Ventilation shall be provided by either natural or mechanical means. The necessary equipment or comparable means shall be provided to exhaust the air from the animal area to the outside of the building.

- E. Uniformly distributed natural and/or artificial lighting shall be provided to permit routine inspection and facilitate routine cleaning and the proper care and maintenance of the animals. Lighting shall be so arranged as to protect each animal from excessive illumination.
- F. One inside pen shall be provided for each dog or animal boarded or kept.
- G. For dogs weighing 70 pounds or less, any inside pen shall have a minimum measurement of four feet wide by four feet long. For all dogs weighing more than 70 pounds, any inside pen shall have a minimum measurement of six feet wide by six feet long in area size. Any pen shall be of sufficient height for the dog to stand fully erect on all four legs with at least six inches of headroom.
- H. Cages or pens may not be stacked one on top of another.
- I. There shall be a minimum of one outside exercise pen or run for every three dogs boarded or kept that is 70 pounds or less and one outside exercise pen or run for every two dogs boarded or kept that is over 70 pounds.
- J. There shall be no more than one dog in an outside exercise pen or run at any one time.
- K. Each outside pen or run shall:
 - (1) Have a concrete base;
 - (2) Be enclosed by a minimum six-foot-high chain-link fence with shelter and with secure gates; and
 - (3) The size of the pen or run shall be 4.5 feet in width and 12 feet in length.
- L. There shall be potable water available to each dog or animal at all times.
- M. A plan for sewage and waste disposal shall be submitted with the permit application and may include septic disposal, composting, spreading or burying of all waste generated at the facility. A plan for disposal of remains of dead animals shall also be submitted with the permit application.
- N. A facility can only be established on at least five acres of property located at least 100 yards from any adjoining property lines. A facility cannot be established within a one-mile radius of the property boundary of any existing commercial kennel or commercial breeding facility.
- O. Inspection requirement:
 - (1) Prior to the commencement of any use or upon any transfer of ownership or control of a facility, the premises must be inspected by the Town Zoning Officer, together with the local Dog Control Officer, and found to be in compliance with all laws, ordinances, rules and regulations applicable to the use and occupancy for a commercial kennel or commercial dog breeding facility and/or dealers, in compliance

with the Code of the Town of Benton, and in compliance with the New York State Agriculture and Markets Law, the New York State General Business Law, the New York State Penal Law relating to the mistreatment of animals and the Uniform Fire Prevention and Building Code.

- (2) The Town Zoning Officer and local Dog Control Officer shall complete their certifications that the premises is in compliance or is not in compliance within 20 days of the inspections of the premises by such officials.
 - (3) Any owner and/or operator of a commercial kennel, any employee of such owner and/or operator, or any agent of such owner and/or operator, shall permit the Town Zoning Officer, the local Dog Control Officer, the Yates County Health Department, the Yates County Sheriffs Department, the New York State Police, the New York State Health Department, or an authorized representative of any other Town, county or state department or agency that has permitting authority regarding the use of the premises to inspect the premises of the commercial kennel for the purpose of ensuring compliance with any Town, county or state law at any time during normal operational hours.
 - (4) If the owner/operator of a commercial kennel does not permit any person authorized to inspect such commercial kennel pursuant to the Town of Benton Zoning Law to conduct an inspection authorized by such law or by any other local, county or state law; or the special use permit for a commercial kennel expires and is not in the process of being renewed by the Planning Board; or upon inspection as described above, it shall be found that the owner/operator has violated any provisions of this section of the Town of Benton Zoning Law or any provisions of the Code of the Town of Benton or of any local, county or state law or regulations pertaining to commercial kennels or commercial breeding facilities, the Zoning Board of Appeals shall have the power to revoke or suspend the special use permit after providing notice to the owner/operator of the commercial kennel and an opportunity for the owner/operator to be heard before the Zoning Board of Appeals. If the Zoning Board of Appeals does revoke or suspend the special use permit following such hearing, the Town Zoning Officer and the local Dog Control Officer shall thereafter order the animals removed and commercial kennel closed.
- P. The duration of any special use permit permitting a commercial kennel shall be for a maximum period of one year and shall expire on December 31 of each year unless otherwise allowed by the Town Planning Board. The special use permit shall run for the calendar year if so renewed by the Town of Benton Planning Board. An application for renewal of any permit must be made no more than 90 and no less than 60 calendar days prior to expiration of such permit.
- Q. Continuation of nonconforming commercial kennels:
- (1) Preexisting facilities shall be considered nonconforming structures and must follow the terms under Article XI (Nonconforming Buildings, Uses and Lots) of the Town's Zoning Laws.
 - (2) Nonconformities shall be allowed no modification and/or expansion without a

variance except for expanding the size of kennel runs to meet requirements in the section. The facility may not increase the number of dogs bred within the facility.

§ 110-59. Townhouse and multifamily developments.

All townhouse and multifamily development, as permitted in Article IV of this chapter, shall, in addition to the requirements set forth in Article IV, conform to the following standards. These standards shall be regarded as minimum requirements.

A. Townhouse developments shall meet the following standards:

- (1) There shall be no more than four townhouse units in any contiguous group.
- (2) Yard requirements:
 - (a) Front yard: minimum 20 feet (from interior project road).
 - (b) Rear yard: minimum 30 feet.
 - (c) Side yard: minimum 15 feet (at ends of buildings).
- (3) All principal buildings shall be set back a minimum of 50 feet from any lot line.
- (4) No accessory building, including unattached garages, shall be nearer than 50 feet from any lot line.
- (5) Maximum building height shall be 35 feet.
- (6) Maximum site coverage by all buildings and structures shall not be more than 20% of the lot area, such percentage to be calculated on the basis of the total project area.

B. Multifamily developments shall meet the following standards:

- (1) Yard requirements:
 - (a) No building shall be nearer than 50 feet to the road line of any dedicated road peripheral to the site.
 - (b) No accessory building, including unattached garages, shall be nearer than 50 feet from any lot line.
- (2) Maximum building height shall be 35 feet.
- (3) Maximum site coverage by all buildings and structures shall be not more than 20% of the lot area, such percentage to be calculated on the basis of total project area.
- (4) No building shall contain more than eight dwelling units.

C. Minimum unit size of multifamily dwelling units:

- (1) Efficiency: 550 square feet.
- (2) One-bedroom: 700 square feet.
- (3) Two-bedroom: 850 square feet.

- (4) Three-bedroom: 1,000 square feet.

§ 110-60. Automobile service and sales uses.

Where permitted, an automobile service station, service and repair garage or automobile sales area shall conform to the following standards which shall be regarded as minimum requirements:

- A. Minimum lot size shall be:
 - (1) For a gasoline filling station, service and repair garage: 30,000 square feet.
 - (2) For a combination gas station, mini-mart convenience food store: 45,000 square feet.
 - (3) Additional lot area and setbacks shall be required as deemed to be adequate by the Planning Board to accommodate tractor trailer servicing.
- B. Lot frontage and width shall be at least 150 feet.
- C. No automobile service station shall be located within 500 feet of any public entrance to a church, school, library, hospital, charitable institution, or place of public assembly. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.
- D. Fuel pumps and other service devices shall be located at least 35 feet from any front lot line and 50 feet from any side and rear lot lines. This distance shall be measured from the outside edge of the fuel island.
- E. All automobile parts, including tires and dismantled vehicles, are to be stored within a building. Tires that are offered for sale may be placed outside during normal business hours but must be stored in a rack. Tires to be processed or sold for junk must be stored either inside a building or behind a six-foot high fence, wall or natural screen.
- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans and/or anti-freeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- G. All repair work is to be performed within a building. Automobiles waiting to be serviced or stored on the premises shall not encroach on any required yard area. Wrecked automobiles being held for insurance adjuster inspection may be stored for a period not to exceed 30 days and must be stored in the rear of the premises, out of sight as much as possible.
- H. Parking.
 - (1) No vehicle shall be parked, stored or left standing within 35 feet of the street line.
 - (2) Parking requirements shall be in conformance with § 110-50. Such parking areas shall not conflict with the traffic pattern established for the use of the fuel pumps. Additional parking area may be required by the Planning Board to accommodate tractor trailer parking areas.
 - (3) Where parking areas abut a residential use, they shall be screened by a buffer area no less than 10 feet in depth composed of densely planted evergreen shrubbery, solid fencing, or a combination of both which, in the opinion of the Planning Board, will be

adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of six feet above finished grade at the highest point of the parking area. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide adequate screen, the Code Enforcement Officer may direct the property owner to replace said shrubs.

- I. All storage and display areas shall be provided with a hard, dust-free surface, shall be adequately drained and, if lighted, shall produce no glare on adjacent properties.
- J. A maximum of two driveways and curb cuts shall be permitted. These shall be no less than 20 feet and no wider than 30 feet, and located a minimum of 30 feet from any street intersection and a minimum distance of 40 feet shall be maintained between such driveways and curb cuts.

ARTICLE X Residential Cluster Development

§ 110-61. Intent.

The intent of this article is to permit variation in lot size and housing type in suitable areas in order to encourage flexibility of design, to enable land to be developed in such a manner as to promote its most appropriate use, to facilitate the adequate and economical provision of streets and utilities and to preserve the natural and scenic qualities of open space, in accordance with § 281 of the New York State Town Law. This purpose is achieved by permitting lot sizes to be reduced in a subdivision tract if the overall density does not exceed that which otherwise is permitted in the applicable zoning district, and the land thus gained is preserved as permanent open space for the use and enjoyment of the residents of the area and Town.

§ 110-62. Authorization to grant or deny residential cluster development.

In accordance with § 281 of the Town Law, the Town Board authorizes the Planning Board to permit variations in the dimensional requirements of this chapter under their subdivision review powers. The Planning Board shall comply with all procedures and standards set forth in this article when implementing such power.

§ 110-63. Standards governing residential cluster development.

Any residential cluster development shall conform to the following requirements:

- A. This procedure shall apply only to parcels of land which are a minimum of 10 acres in size. In addition, it shall be determined that such development will not be detrimental to the health, safety, or general welfare of persons residing in the vicinity, or injurious to property or improvements in close proximity, and that the proposed development create an attractive residential environment which is in conformance with the Town's Comprehensive Plan, and that the gross density will be no greater than if the tract were developed in accordance with the existing zoning requirements, and that the permanent retention of open space areas along with their care and maintenance is guaranteed.
- B. When such development is proposed adjacent to any existing residence or residential area,

a buffer area of at least 30 feet in width shall be maintained within the proposed development along any lot line that abuts an existing residential development area or a conventionally platted residential map that has been filed with the Yates County Clerk.

- C. The size of lots in a residential cluster development may vary from the normal requirements of the district, but no dimensional or area requirement of the district shall be reduced by more than 50%.
- D. Single-family detached houses shall be subject to the following minimum setback requirements:
 - (1) Front yard: 25 feet.
 - (2) Rear yard: 25 feet.
 - (3) Side yard: 15 feet.
- E. All residential cluster development plans shall be prepared with competent professional assistance and shall be consistent with the spirit and intent of this chapter.
- F. In areas without public water and sewer, any reduction in lot size allowed under this article shall be dependent on approval of water and sewer provisions by the New York State Department of Health and the New York State Department of Environmental Conservation.
- G. Land not contained in lots or road rights-of-way.
 - (1) All the land not contained in the lots or road rights-of-way, if provided, shall be contiguous or on either side of a watercourse and of such size and shape as to be usable for recreation, open space or agriculture.
 - (2) Such land shall either be deeded to the Town or be held in corporate ownership by the owners of lots within the development, and, if held in corporate ownership, the developer shall incorporate into the deeds of all property within the development a clause giving to the owners an interest in such open land which shall be used for recreation, open space or agricultural purposes. No structure save those incidental to the recreational, open space or agricultural use shall be permitted thereon.
 - (3) The open space lands shall be subject to taxation unless deeded to the Town. In the case of such tracts, the developer may petition the Town to take over the land to be used in perpetuity as open space.
- H. Special designs. In cases where a developer has proposed a special design for groups of dwellings and garages, the Town Planning Board, after inspecting the plans and elevations, may recommend approval of smaller minimum lot sizes than those specified in § 110-18, Density Control Schedule, provided that the sanitary systems are approved by the New York State Departments of Health and Environmental Conservation, that the gross density does not exceed that normally permitted within the zoning district in which the property is located, and the layout is not detrimental to the health, general welfare, and aesthetic character of the community.
- I. Construction shall start within one year of the date of approval and shall be completed within a timeframe agreed to by the developer and the Planning Board. If such timeframe is

not met by the developer within the agreed-upon timeframe, the residential cluster development approval may be revoked by the Planning Board.

J. Notice and hearing.

- (1) In the event that the organization established to own and maintain common property or a successor organization shall fail to maintain the common property in reasonable order and condition in accordance with the plan, the Town may serve written notice upon such organization or upon the residents and owners of the development setting forth the manner in which the organization has failed to maintain the common property in reasonable condition. Said notice shall include a demand that such deficiencies of maintenance be cured within 30 days thereof, and shall state the date and place of a hearing thereon which shall be held within 14 days of the notice.
- (2) At such a hearing, the Town may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within 30 days or any extension thereof, the Town, in order to preserve the taxable values of the properties within the development and to prevent the common property from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common property, call a public hearing upon notice to such organization, or to the residents and owners of the development to be held by the Town, at which hearing such organization or the residents and owners of the development shall show causes why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year.
- (3) If the Town shall determine that such organization is ready and able to maintain said common property in reasonable condition, it shall cease to maintain said common property at the end of said year. If the Town shall determine such organization is not ready and able to maintain said common property in a reasonable condition, the Town may at its discretion continue to maintain said common property during the next succeeding year, subject to a similar hearing and determination in each year thereafter.
- (4) The cost of such maintenance by the Town shall be assessed at the same proportion as each unit's assessed value bears to the total assessment of the development.

§ 110-64. Review of residential cluster development plans.

The approval procedure shall be generally the same as that specified in the subdivision regulations for the review and approval of a proposed subdivision of land. The applicant shall submit at successive stages a concept plan, preliminary plan, and final plan in accordance with the requirements of the Town of Benton Subdivision Regulations, as they may be from time to time enacted. If subdivision regulations have not been enacted, the site plan review requirements of this chapter shall be followed. In addition, the applicant at each stage shall provide the

following information:

- A. Proposed number of dwelling units and computation of overall residential density per gross acre.
- B. A tabulation of the total number of acres in the proposed project; the percentage designated for each use area.
- C. Proposed location and acreage for parks, playgrounds, natural watercourses and other open space.

§ 110-65. Public hearing on residential cluster development.

A residential cluster development shall not be approved as a subdivision plat by the Planning Board until a public hearing has been held on the proposal in the manner specified in the subdivision regulations and by § 281 of the Town Law.

ARTICLE XI

Nonconforming Buildings, Uses and Lots

§ 110-66. Continuation of nonconforming buildings and lots.

Any lawful building, structure or use existing at the time of enactment of this chapter, or any subsequent amendment thereof applying to such building, structure, or use, may be continued although such building, structure, or use does not conform to the provisions of this chapter; provided, however, that:

- A. Nothing herein contained shall be construed to render lawful any existing building, structure or use not lawfully conforming to provisions of the Town of Benton Zoning Law hereby repealed. If the existing use commenced prior to the effective date of this chapter, but after the enactment of the Town of Benton Zoning Law adopted by the Town of Benton on January 1, 1971, as further re-enacted on January 16, 1987, the use must have been a permitted use under the Zoning Law in effect at that time; otherwise, such use shall be a violation of this chapter, and the enforcement provisions of this chapter shall apply. Such use shall not be considered a preexisting nonconforming use under this chapter.
- B. No nonconforming building, structure or use shall be enlarged, extended or increased if such enlargement would increase the degree of nonconformance. [Amended 6-17-1996 by L.L. No. 1-1996]
- C. A preexisting nonconforming use of land or building may not be increased in area to a total area greater than that occupied by the use at the time of adoption of this chapter.
- D. Nonconforming buildings, structures and uses shall have a minimum front yard requirement of 50 feet. [Added 6-17-1996 by L.L. No. 1-1996]
- E. Additions or modifications to a preexisting nonconforming building or structure are permitted without the need for a variance, provided the side and rear yard requirements, as listed in the Town of Benton Density Control Schedule, included at the end of the Zoning Chapter in the Town Code and attached to § 110-18 of the Town of Benton Zoning Code, are adhered to and provided the addition or modification is no closer to the front lot line

than the existing building or structure. [Added 6-11-2001 by L.L. No. 2-2001]

§ 110-67. Discontinuance.

- A. When a nonconforming building, structure or use has been discontinued for a period of two years, or is changed to a conforming use, any future use of the building or land shall conform to the provisions of this chapter.
- B. Any land or building upon or within which a preexisting nonconforming use is superseded by a permitted use shall thereafter conform to the regulations of the district in which it is located.

§ 110-68. Maintenance and repairs.

A nonconforming building or structure may be repaired or restored to a safe condition.

§ 110-69. Construction initiated prior to this chapter.

Any building or structure for which permitted construction was begun prior to the effective date of this chapter, or any subsequent amendment thereof, may be completed and used in accordance with the plans and specifications for such building and structure.

§ 110-70. Nonconforming lots of record.

Any lot held in single and separate ownership prior to the adoption of this chapter, and whose area is less than the specified minimum lot requirements of this chapter for the district involved, may be considered as complying with such minimum lot requirements and no variance shall be required, provided that:

- A. Such lot does not adjoin any other lot or lots held by the same owner whose aggregate area is equal to or greater than the minimum lot area required for that district.
- B. Such lot has an area of at least 4,000 square feet and a minimum width of at least 50 feet at the front lot line and is to be used for residential purposes.
- C. The following minimum yard dimensions are required for residences and attached accessory buildings. [Amended 6-17-1996 by L.L. No. 1-1996]
 - (1) Front yard: 50 feet.
 - (2) Side yard: 15 feet.
 - (3) Rear yard: 25 feet.
- D. No detached accessory building or use shall be located closer than 10 feet to a side or rear lot line, or closer to the front lot line than the existing principal residential building. [Amended 6-17-1996 by L.L. No. 1-1996]
- E. All other bulk requirements for that district are complied with.

§ 110-71. Alterations.

A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost of 50% of the assessed value of the building unless said building is changed to conform to the requirements of this chapter.

§ 110-72. Restoration.

No building damaged by fire or other causes to the extent of more than 50% of its assessed valuation shall be repaired or rebuilt except in conformity with the regulations of this chapter. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe by the Code Enforcement Officer.

§ 110-73. Reduction in lot area.

A building permit shall not be issued for any lot that is reduced in area so that it creates a nonconforming bulk or use in violation of any regulations contained in this chapter.

**ARTICLE XII
General Exceptions**

§ 110-74. Public properties.

Nothing in this chapter shall restrict construction or use of public buildings, lands or property in the exercise of a governmental function.

§ 110-75. Public utilities.

Nothing in this chapter shall restrict the construction or use of underground or overhead distribution facilities of public utilities operating under the law of the State of New York.

§ 110-76. Conforming lots of record. [Added 6-17-1996 by L.L. No. 1-1996]

Any conforming lot of record prior to the adoption of this chapter (Local Law No. 1-1992) shall comply with the following yard requirements:

- A. Principal structures.
 - (1) Front yard: 50 feet.
 - (2) Side yard: 15 feet.
 - (3) Rear yard: 25 feet.
- B. Accessory structures (detached).
 - (1) Front yard: 50 feet.
 - (2) Side yard: 15 feet.
 - (3) Rear yard: 15 feet.

**ARTICLE XIII
Zoning Board of Appeals and Planning Board**

§ 110-77. Establishment of Zoning Board of Appeals.

Pursuant to the Town Law of the State of New York, the Town Board shall appoint a Zoning Board of Appeals consisting of five members, shall designate its Chairman, and shall provide for such expenses as may be necessary and proper. A member of the Zoning Board of Appeals shall not at the same time be a member of the Town Board. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing.

§ 110-78. Term of appointment of Zoning Board of Appeals.

Of the members of the Zoning Board of Appeals first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years, from and after his or her appointment. The appointment of a Chairman shall be for a period of one year. Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the duration of the unexpired term.

§ 110-79. Zoning Board of Appeals staff.

The Zoning Board of Appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.

§ 110-80. Rules of procedure for Zoning Board of Appeals.

- A. The Zoning Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by-laws, and forms as it may deem necessary for the proper execution of its duties in order to fulfill the intent of this chapter.
- B. It shall refer to the Planning Board such matters as required by this chapter, by New York State Law, including the New York State General Municipal Law ~ 239-1 and 239-m, and any other pertinent matters for review and recommendations and defer any decision thereon for a period of not more than 30 days pending a report from the Town or the County Planning Board. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal.

§ 110-81. Alternate members. [Added 7-12-1999 by L.L. No. 1-1999]

- A. Declaration of policy. It is sometimes difficult to maintain a quorum on the Zoning Board of Appeals and Planning Board because members may find they have a conflict of interest situation on a specific matter before such Board; or that they have a schedule conflict which prevents their attendance. In such instances, official business cannot be conducted, which may delay or impede adherence to required timelines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- B. Authorization/effect.
 - (1) The Town Board of the Town of Benton shall appoint alternate members of the Planning Board and Zoning Board of Appeals. These individuals would serve when

members are unable to participate on an application or matter before the respective Board because of the absence or conflict of interest of such member.

- (2) Alternate members of the Planning Board and Zoning Board of Appeals shall be appointed by the Town Board or other duly authorized appointing authority for a term of five years.
- (3) The Chairperson of the Planning Board and the Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is absent or unable to participate on an application or matter before the Board because of a conflict of interest. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting and Zoning Board of Appeals meeting at which the substitution is made.
- (4) All provisions of state law relating to Planning Board and Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law or local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

ARTICLE XIV **Administration**

§ 110-82. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer of the Town of Benton, who shall be appointed by the Town Board. No permit shall be issued by the Code Enforcement Officer except where all the provisions of this chapter have been complied with. The Code Enforcement Officer shall keep the Planning Board and Zoning Board of Appeals advised of all matters pertaining to the enforcement of this chapter other than routine duties, and shall submit a monthly report to the Town Board and Planning Board, enumerating the applications received, inspections made, permits issued or refused, and other actions taken.

§ 110-83. Building permits.

- A. No building or structure shall be erected, added to, or the exterior structurally altered until a permit thereof has been issued by the Code Enforcement Officer. Except on written order of the Zoning Board of Appeals, no such building permit shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this chapter.
- B. There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this chapter.
- C. One copy of such layout or plot plan shall be returned when approved by the Code Enforcement Officer, together with such permit to the applicant, upon the payment of a fee

as set by Town Board resolution.

- D. In the event that an application for a building permit is not approved, the applicant shall be entitled to a refund of 50% of the fee paid, provided that no construction has been commenced. If construction work has been started and the application is not approved, the fees paid shall not be refunded.
- E. Upon approval of the application, and upon receipt of the legal fees therefor, the Code Enforcement Officer shall issue a building permit to the applicant upon the form prescribed by him and shall affix his signature or cause his signature to be affixed thereto.
- F. Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "approved." One set of such approved plans and specifications shall be retained in the Town files and the other set shall be returned to the applicant together with the building permit and shall be kept at the building site open to inspection by the Code Enforcement Officer or his authorized representative at all reasonable times.
- G. If the application, together with plan, specifications, and other documents filed therewith, describe proposed work which does not conform to all of the requirements of the applicable building regulations, the Code Enforcement Officer shall disapprove the same and shall return the plans and specifications to the applicant. Upon the request of the applicant, the Code Enforcement Officer shall cause refusal, together with the reasons thereof, to be transmitted to the applicant in writing.
- H. A building permit shall expire one year from the date of issuance, at which time it shall be renewed if construction has not been completed. [Amended 6-17-1996 by L.L. No. 1-1996]

§ 110-84. Certificates of occupancy.

No land, building or structure shall be used or occupied, and no building or structure hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Code Enforcement Officer in accordance with the provisions of this chapter. Such certificate shall state that such land or buildings, or part thereof, and the proposed use thereof, are in complete conformity with the provisions of this chapter. It shall be the duty of the Code Enforcement Officer to issue a certificate of occupancy, provided that said Officer is satisfied that the land or buildings conform with all the requirements herein set forth and with the plan submitted with the application.

§ 110-85. Variances.

- A. Use variances.
 - (1) A use variance may be requested when the applicant desires to utilize land for a use which is not allowed under the use regulations of this chapter. The established rule is that the Zoning Board of Appeals has the power to grant a use variance only when the applicant is able to prove that the strict application of this chapter will result in unnecessary hardship. When determining unnecessary hardship for a use variance, all of the following criteria shall be met:
 - (a) The land or building in question cannot yield a reasonable return if used only

for uses permitted in the zoning district in which it is located.

- (b) The variance requested will not alter the essential character of the locality and the spirit of this chapter will be preserved.
 - (c) The hardship faced by the applicant is due to the unique circumstances and characteristics of the land or building in question and not to the general conditions in the locality.
 - (d) The unnecessary hardship which is claimed by the applicant has not been created by the owner or a predecessor in title.
- (2) Where there are unnecessary hardships in the way of carrying out the strict letter of this chapter, the Zoning Board of Appeals shall have the power, after public notice and hearing, to grant a variance in the application of any of the use regulations or provisions of this chapter in such a way that the spirit of the law shall be observed and maintained, public health, safety and welfare secured and substantial justice done.
- (3) A variance of the use provisions of this chapter shall be granted by the Board of Appeals only if or whenever it finds:
- (a) That there are unique circumstances or conditions, described in the findings of the Board of Appeals, applying to such land or building and not applying generally to land or buildings in the neighborhood, that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or buildings, and that the land or buildings in question cannot yield a reasonable return if used only for an activity which is permitted on said land; and
 - (b) That, for reasons set forth in the findings of the Zoning Board of Appeals, the granting of the use variance is the minimum variance that will accomplish this purpose; and
 - (c) That the granting of the use variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the locality or otherwise detrimental to the public welfare.
- (4) All applications for use variances shall be referred to the Town of Benton Planning Board. No decision shall be made by the Zoning Board of Appeals until the Planning Board has completed its review and issued its report. If the Planning Board fails to issue a report within 30 days the Zoning Board of Appeals shall assume that a favorable report has been issued.

B. Area variances. Where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height and all other regulations not specifically related to use of land or building unreasonable or impossible to comply with, the Zoning Board of Appeals shall have the power to vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In determining whether to grant an area variance the Zoning Board of Appeals must consider the following:

- (1) How substantial the variance is in relation to the requirement;

- (2) Whether a substantial change will be produced in the character of the neighborhood;
 - (3) Whether the difficulty can be obviated by some method feasible for the applicant to pursue other than a variance; and
 - (4) Whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance.
- C. Financial gain not a criterion. A use or area variance shall not be granted solely for the reasons of additional financial gain on the part of the owner or occupant of the land or building involved.
- D. Conditions and compliance. In granting any variance, the Zoning Board of Appeals may prescribe any conditions that it deems to be necessary or desirable. The granting of a variance to any provisions of this chapter shall not prevent the necessity of complying in every other respect with the other provisions of this chapter.

§ 110-86. Notification of public hearings. [Added 6-17-1996 by L.L. No. 1-1996]

In addition to the required notification, all property owners within 500 feet of the property lines shall be notified of the hearing by regular mail.

ARTICLE XV
Amendments

§ 110-87. Procedures.

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation from the Town Planning Board, amend the regulations and districts established under this chapter after public notice and hearing in each case. All proposed amendments of the regulations or districts herein established shall be filed in writing in a form required by the Town Board.

§ 110-88. Advisory report by Town Planning Board.

Every proposed amendment, unless initiated by the Town Planning Board, shall be referred to the Town Planning Board. The Town Planning Board shall report in writing its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Town Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Town Planning Board disapproves the proposed amendment, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution fully setting forth the reasons for such contrary action.

§ 110-89. Public notice and hearing.

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

- A. By publishing notices of the proposed amendment and the time and place of the public

hearing in a newspaper of general circulation in the Town, not less than 10 days prior to the date of public hearing.

- B. By giving written notice of hearing to any required municipal, county, regional, metropolitan, state or federal agency in a manner prescribed by law.

§ 110-90. Protest by owners.

If a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of land included in such proposed amendment, or by the owners of 20% or more of the area of land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the area of land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of at least a three-fourths majority of the Town Board.

§ 110-91. Decision by Town Board.

The Town Board shall set the public hearing as required and shall render its decision within 60 days of the receipt of the Planning Board's report.

§ 110-92. Notification of decision.

The Town Board shall notify the applicant for an amendment of its decision in writing within five days after the decision has been rendered.

**ARTICLE XVI
Remedies**

§ 110-93. Complaints of violations.

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate the report thereon.

§ 110-94. Procedure for abatement of violations; penalties for offenses.

- A. Whenever in the opinion of the Code Enforcement Officer, after proper examination and inspection, there appears to exist a violation of any provision of this chapter, or of any rule or regulation adopted pursuant thereto, the Code Enforcement Officer shall serve a written notice of violation upon the owner of the property in violation. Fourteen days after notification this shall be considered a violation and shall be subject to appropriate penalties and other remedies as provided for herein and under the laws of the State of New York.
- B. Such notice of violation shall:
 - (1) Inform the owner of the nature and details of the violation;
 - (2) Recommend remedial action which, if taken, will effect compliance with this chapter and other rules and regulations of the Town of Benton; and
 - (3) State the date of compliance by which the violation must be remedied or removed.

- C. In the event the violation is not remedied, then the person notified of such violation shall be subject to conviction for a violation as defined by the Penal Laws of the State of New York and shall be subject to a fine of not more than \$250 or by sentence of imprisonment for a period of not more than 15 days, or both. Each week that the violation continues shall constitute a separate offense.

§ 110-95. Alternative penalty.

In addition to other remedies provided in this chapter, the Town Board or, with its approval, the Code Enforcement Officer may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE XVII
Fee Schedule

§ 110-96. Establishment of fees.

A schedule of fees for all building permits and approval applications as required in this chapter shall be set from time to time by resolution of the Town Board.

ARTICLE XVIII
Adult Use and Entertainment Establishments
[Added 6-8-2005 by L.L. No. 1-2005]

§ 110-97. Title.

This article shall be known as the "Adult Use and Entertainment Establishments Law" of the Town of Benton.

§ 110-98. Legislative intent.

- A. Purpose. It is the purpose of this article to regulate adult entertainment businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location of adult entertainment businesses within the Town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult entertainment materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to adult entertainment materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.
- B. In the development and execution of this article, the Town prepared an Adult Business Study, last dated August 2004, which recognized that adult uses and entertainment establishments create negative secondary effects on the community, including, but not limited to, increased crime, decreased market values, public resentment, a general blighting of the commercial districts or other districts in which they are situate and a negative influence upon community character.

- C. It is the purpose of this article to regulate the creation, opening and operation of adult use and entertainment establishments, as herein defined, in order to achieve the following:
- (1) To preserve the character of and the quality of life in the Town of Benton neighborhoods, business areas and tourist areas.
 - (2) To control such harmful and adverse secondary effects of adult uses on the surrounding areas.
 - (3) To restrict minors' access to adult uses.
 - (4) To maintain the general welfare and safety for the Town of Benton residents, business owners and tourists.

§ 110-99. Regulated uses.

Uses subject to these controls and special regulations are as follows and hereinafter collectively referred to as "regulated uses":

- A. Adult use and entertainment establishments.
- B. Adult arcade.
- C. Adult bookstore or adult video store.
- D. Adult cabaret.
- E. Adult motel.
- F. Adult motion-picture theater/adult theater.
- G. Escort agency.
- H. Massage parlor.
- I. Nude model studio.
- J. Sexual encounter center.

§ 110-100. Allowed zoning district.

All uses regulated by this article may only be created, opened, commenced or operated within the Agricultural-Residential-Business (A-R-B) District.

§ 110-101. Special use permit.

All uses regulated by this article shall be permitted only upon the Town of Benton Zoning Board of Appeals issuing a special use permit in accordance with Article VI of the Town of Benton Zoning Law and in accordance with the following additional standards:

- A. A structure utilized for any use regulated by this article must be 1,000 feet or more from the nearest point of a dwelling, as that term is defined in the Town of Benton Zoning Law.
- B. The property lines of any uses regulated by this article must be 1,000 feet or more from the

property lines of a property containing a church, synagogue, other place of worship, library, school or day-care facility whether within the Town of Benton or outside the Town.

- C. A structure utilized for any use regulated by this article must be 1,000 feet or more from the property lines of a park, playground or a public, civic, or governmental facility whether within the Town of Benton or outside the Town.
- D. A structure utilized for any use regulated by this article must be 1,000 feet or more from a school bus stop.
- E. A structure utilized for any use regulated by this article must be 1,000 feet or more from the property lines of another use regulated by this article, whether or not such other establishment is located in the Town.
- F. A use regulated by this article is not allowed on the same parcel as another regulated use or adult use and entertainment establishment.
- G. All uses regulated by this article shall be conducted in an enclosed building. Regardless of location or distance, no one who is passing by an enclosed building having a use governed by these provisions shall be able to visually see any specified anatomical area or any specified sexual activity by virtue of any display which depicts or shows said area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.
- H. Only one exterior sign will be allowed and it will be limited to only the name of the establishment and it must conform to all other Town of Benton signage requirements or regulations.

§ 110-102. Display prohibited.

All uses regulated by this article shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window or by means of a depiction or decoration, or to allow to be displayed or exhibited, any specified anatomical area or specified sexual activity.

§ 110-103. Penalties for offenses.

- A. Any person, firm, corporation or entity who or which shall violate any portion of this article shall be guilty of a violation and, upon conviction thereof, shall be subject to a fine in an amount not to exceed \$250 for each violation or imprisonment for a period of not more than 15 days, or both. Regardless of the provisions in § 110-94C of the Town of Benton Zoning Law, continuation of a violation of the provisions of this article shall constitute, for each day the violation is continued, a separate and distinct offense.
- B. The owner and/or any occupant and/or any tenant and/or general agent of a building, premises or part thereof where such a violation has been committed or does exist shall be guilty of such a violation.
- C. Any person, firm, corporation or entity violating any of the provisions of this article shall become liable to the Town for any expense or loss or damage occasioned the Town by reason of such violation.

- D. The Code Enforcement Officer may issue a cease-and-desist order on any regulated use covered by this article that is operating without a valid and current special use permit or is otherwise operating in violation of this article. Such cease-and-desist order will prohibit such business from any further operation until the violation is cured.

ARTICLE XIX
Miscellaneous Provisions
[Added 11-9-2011 by L.L. No. 4-2011]

§ 110-104. Manure storage facility regulations.

- A. The regulations in this section shall apply to all manure storage facilities.
- B. Construction requirements.
- (1) No manure storage facility, or addition to an existing manure storage facility, shall be constructed unless a building permit has been issued by the Town of Benton Zoning Officer to the owner of the subject property under these regulations.
 - (2) To obtain the building permit, the owner of the property on which the manure storage facility is proposed must submit to the Town Zoning Officer:
 - (a) An application for the building permit;
 - (b) Any required fee;
 - (c) A site plan; and
 - (d) Yates County Soil and Water Conservation District written recommendations or stamped engineered plans.
 - (3) The applicant shall comply with and follow the Yates County Soil and Water Conservation District written recommendations or stamped engineered plans, whichever was provided as part of the building permit application, throughout the construction process.
 - (4) The site plan for the manure storage facility submitted with the building permit application shall demonstrate that construction of the manure storage facility will comply with the following stipulations:
 - (a) Setbacks. The manure storage facility will be set back a minimum of 300 feet from any occupied residence not affiliated with that agricultural operation. The manure storage facility will be located behind the primary living structure and a minimum of 120 feet from the road right of way in front and a minimum of 85 feet from the side property line.
 - (b) Size. The size of the manure storage facility will be a minimum of eight months' capacity based on manure produced by the number of livestock planned to be using the facility.
 - (c) Fencing. All manure storage facilities shall be surrounded by a fence and the fence shall be a minimum of four feet in height.

- (d) Visual barrier. All facilities that are a part of a manure storage facility shall have a visual barrier if manure can be seen from the road or from a neighboring residence.
 - (e) Core trenching. Core trenching will be required for every earthen facility, regardless of size. Core trenching will be a minimum of eight feet wide and four feet deep centered underneath proposed dike and will include compacting.
 - (f) Setback from wells, open ditches, streams, and other waterways will be according to NYS Department of Health Regulations.
- (5) The Town Zoning Officer shall oversee inspection of the construction of the manure storage facility and ensure that the recommendations of Yates County Soil and Water Conservation District or the stamped engineered plans were followed.
- (6) The contractor building the manure storage facility shall sign off to the Town of Benton Zoning Officer that the Yates County Soil and Water Conservation District written recommendations or stamped engineered plans were fully followed prior to the Town of Benton Zoning Officer issuing a certificate of occupancy.