


ZONING ORDINANCE

MUNICIPALITY OF RANDOLPH

COVERING:
HAMLETS OF
RANDOLPH - EAST RANDOLPH
AND
THE TOWN OF RANDOLPH

CATTARAUGUS COUNTY, NEW YORK

ADOPTED APRIL 2010

REVISED December 2016

Town of Randolph – Zoning Referral Exemption Agreement: James Isaacson reported that the Town of Randolph has submitted a Zoning Referral Exemption Agreement which they had signed on July 26, 2010.

They did not make any changes to the standard list of exempted referral items. They will be the 6th community that has entered into this agreement with the County Planning Board. Staff recommendation is approval.

Paul Mager moved with a second from Richard Fuller for the County Planning Board to enter into an agreement with the Town of Randolph to exempt certain Zoning Referral actions (listed in Appendix A of the agreement) from referral to the Cattaraugus County Planning Board and to authorize the Chairman to sign said agreement. Carried. Cattaraugus County Planning Board Minutes dated August 26, 2010.

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ZONING ORDINANCE

Municipality of Randolph

ARTICLE 1 – ENACTING CLAUSE

Pursuant to the authority conferred by Article 17 of the Town Law of the State of New York and for each of the purposes specified therein, the Municipal Board of the Municipality of Randolph, County of Cattaraugus and State of New York has ordained and does hereby enact the following ordinance regulating and restricting the location, size and use of buildings and other structures and the use of land in the Municipality of Randolph.

ARTICLE 2 – SHORT TITLE

This ordinance shall be known and may be cited as the "Zoning Ordinance of the Municipality of Randolph, Cattaraugus County, New York."

ARTICLE 3 – INTENT AND PURPOSE

For the purpose of promoting the public health, safety, morals, comfort and general welfare: conserving and protecting property and property values; securing the most appropriate use of land; lessening or avoiding congestion in the public streets and highways; minimizing flood losses in areas subject to periodic inundation; and facilitating adequate but economical provision of public improvements, all in accordance with a comprehensive plan, the Municipal Board finds it necessary and advisable to regulate the location, size and use of buildings and other structures; percentages of lot area which may be occupied; setback building lines; sizes of yards, courts and other open spaces and the use of land for trade, industry, residences, recreation or other purposes, and for such purpose divides the area of the Municipality into Zoning Districts.

ARTICLE 4 – NO AUTOMATIC GOVERNMENTAL IMMUNITY

No government undertaking developmental activities in the Town of Randolph shall consider themselves automatically exempt or immune from the Town of Randolph Zoning code. The encroaching governmental unit will inform the code enforcement officer of their plans and provide adequate documentation prior to beginning any development covered in the Town of Randolph Zoning Code. The code enforcement officer in conjunction with the Planning Board and Zoning Board of Appeals will determine the extent of immunity based on the following nine factors.

1. The nature and scope of the instrumentality seeking immunity;
2. The encroaching government's legislative grant of authority;
3. The kind of function or land use involved;
4. The effect local land use regulation would have upon the enterprise concerned;
5. Alternative locations for the facility in less restrictive Zoning areas;
6. The impact upon legitimate local interests;
7. Alternative methods of providing the proposed improvement;
8. The extent of the public interest to be served by the improvements; and
9. Inter-governmental participation in the project development process and an opportunity to be heard.

ARTICLE 5 – RULES AND DEFINITIONS

Section 5.1 – Rules

The following rules shall apply to interpreting the text of this ordinance:

- A. Words used in the present tense shall include the future.
- B. Words used in the singular shall include the plural, and words used in the plural shall include the singular.
- C. Words used in the masculine form shall include the feminine.
- D. The word "shall" is mandatory. The word "may" is permissive.
- E. The word "lot" shall include the words "plot," "piece," and "parcel."
- F. The word "person" shall include an individual, firm, trust, partnership, association or corporation.
- G. The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," and "occupied for."
- H. The phrases "to erect," "to construct," and "to build" a building have the same meaning and include the excavation for a building foundation and the relocation of a building from one location to another.
- I. The word "building" includes all other structures of every kind regardless of similarity to buildings.

Section 5.2 – Definitions

The following words and terms, wherever they occur in this ordinance, shall be interpreted as herein defined:

ABANDONMENT – To cease or discontinue use.

ACCESSORY APARTMENT – A second dwelling unit either in or added to an existing single-family dwelling, or a free standing building on the same lot as the main dwelling, for use as a complete, independent living facility with provision within the accessory apartment for cooking, eating, sanitation, and sleeping. Such dwelling is an accessory use to the main dwelling unit.

ACCESSORY STRUCTURE OR USE – A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure.

ADULT USE – For the purpose of this ordinance, the term adult use shall include adult bookstores and

adult entertainment parlors, as well as any use determined by the Municipal Board to be similar in nature and character to the uses specifically identified herein, and which excludes any minor by reason of age.

ADULT BOOKSTORE / CABARET – Any business enterprise having more than five (5) percent of its net floor space set aside for the presentation of live shows, motion picture films, sound recordings, or similar visual and/or audio material; or any business enterprise at which entertainers or waiters and waitresses appear in a state of full or partial nudity; or any business enterprise that offers services requiring the client or customer to appear in a full or partial state of nudity; or any business enterprise having more than five (5) percent of its net floor space set aside for more than five (5) percent of the value of its stock in trade allocated to VHS/Cassette/DVD recordings, literature, picture or any other visual or audio material of any kind for sale or viewing on or off premises, which are characterized by their emphasis on matters describing or depicting human males and/or females in full or partial nudity, including but not limited to displaying male or female genitals, public area or buttocks with less than a full opaque covering or which are related to sexual activities.

ADULT VIDEO STORE – An establishment having as a substantial or significant portion of its stock in trade, videotapes or films for sale or viewing on the premises by use of motion picture devices, video equipment, computer equipment, coin operated machines or by other means and which the establishment excludes any minor by reason of age.

PEEP SHOW – A theater which presents materials in the form of live shows, films, videotapes or computers viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.

MASSAGE ESTABLISHMENT – Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. The definition shall not be construed to include a hospital, nursing home, medical clinic or the office of a physician, chiropractor, surgeon, osteopath, or duly licensed physical therapist or duly licensed massage therapist, or barber shops or beauty shops in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs that have facilities for physical exercise such as tennis courts, racquetball courts or exercise rooms and which do not receive their primary source of revenue through the administration of massages.

ADULT MOTEL – A motel or hotel which excludes minors by reason of age, or which makes available to its patrons in their rooms; films, slide shows, digital images or videotapes which, if presented in a public movie theater, would exclude minors by reason of age.

ADULT THEATER – A theater that customarily presents motion pictures, films, digital images or slide shows and which excludes minors by reason of age.

BODY PAINTING STUDIO – An establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body and which excludes minors by reason of age.

ADULT MODEL STUDIO – Any establishment where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by persons other than the proprietor, paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the New York State Education Law for the issuance or conferring of a diploma and is in fact

authorized to issue or confer a diploma.

AGRICULTURAL DATA STATEMENT – Pursuant to section 305-a of Article 25AA of the Agriculture and Markets Law, an agricultural data statement shall contain the following information:

1. The name and address of the applicant.
2. A description of the proposed subdivision and its location.
3. The name and address of any owner of land within an agricultural district, which land is used for agriculture and is located within five hundred (500) feet of the boundary of the property upon which the project is proposed; and
4. A tax map or other map showing the site of the proposed project relative to the location of the identified farm operations.

AGRICULTURAL USE, GENERAL – The use of land for agriculture, in which fewer than 1,000 (one thousand) animal units are located on one agricultural establishment.

AGRICULTURAL USE, INTENSIVE – The use of land for agriculture, in which 1,000 (one thousand) or more animal units are located on one agricultural establishment.

AGRICULTURE – The use of land for the raising or keeping of livestock, the growing of crops in the open or in a greenhouse, including any necessary accessory structures, but not including processing of the agricultural product. Types of agriculture include dairying, pasturage, horticulture, floriculture, apiculture, aquaculture, and viticulture, productions of maple sap, tree farms and mushroom farms.

AIRPORT / AIRSTRIP – Any lot or buildings uses for the purpose of landing, storing, taxiing or taking off of private or commercial aircraft pursuant to the regulations of the appropriate agencies.

ALTERATION – As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

AMBIENT SOUND – Encompasses all sound present in a given environment, being usually a composite of sounds from many sources near and far. It includes intermittent noise events, such as, from aircraft flying over, dogs barking, wind gusts, mobile farm or construction machinery, and the occasional vehicle traveling along a nearby road. The ambient also includes insect and other nearby sounds from birds and animals or people. The near-by and transient events are part of the ambient sound environment but are not to be considered part of the long-term background sound.

ANIMAL UNIT – One animal unit is equal to 1,000 pounds of livestock or another domestic animal.

ANSI – refers to or means the AMERICAN NATIONAL STANDARDS INSTITUTE.

ANTENNA – A system of electrical conductors that transmits or receives frequency waves. Such signals shall include, but are not limited to, radio, television, cellular, paging, digital and/or data communications, personal wireless communication and microwave communication.

APPEAL – A request for a review of the local administrator’s interpretation of any provision of the ordinance or a request for a variance.

APPELLANT – A person requesting a review of the local administrator’s interpretation of any provision of the ordinance or a request for a variance.

APPLICANT – The person or entity filing an application and seeking license under this Ordinance; the owner of a proposed project; the operator of a proposed project; any person acting on behalf of an applicant, project or proposed project. Whenever the term “applicant” or “owner” or “operator” are used in this Ordinance, said term shall include any person acting as an applicant, owner or operator.

AQUACULTURE – Land devoted to the breeding, hatching, and/or raising of fish or other aquatic plants or animals for profit.

AREA BUILDING – The total area taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps. All dimensions shall be measured from exterior wall to exterior wall.

AREA OF SHALLOW FLOODING – A designated AO or VO zone on a community’s Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA LOT – See Lot, Area

AREAS OF SPECIAL FLOOD HAZARD – The land in the flood plain within a community subject to a one person or greater chance of flooding in any given year. This area may be designated as Zone A, AAE, AH, AO, A1-99, V, VO, VE, or VI-30. It is also commonly referred to as the base flood plain or 100 years plain.

AREA VARIANCE – Is the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable Zoning regulations.

AUTOMOBILE BODY SHOP – A building used for the repairing or painting of the exterior and/or undercarriage of motor vehicle bodies, in conjunction with which there may be towing service and motor vehicle rentals for customers while the motor vehicle is under repair.

AUTOMOBILE GRAVEYARD – See Junk Yard

AUTOMOBILE REPAIR SHOP – An establishment where motor vehicle fuels and lubricants are sold and where towing, repairs, servicing, greasing, and adjusting of automobiles and other motor vehicles may be performed. All storage of accessories, repairing, and servicing shall be conducted within a wholly enclosed building.

AUTOMOBILE SALES ESTABLISHMENT – A lot, building, or structure where new or used automobiles, trucks, or motorcycles are available for sale.

BACKGROUND SOUND – Background Sounds are those heard during lulls in the Ambient Sound

Environment and represent the quietest 10% of the time, for example the quietest one minute.

BANK – An institution where money is deposited, kept, lent, or exchanged.

BAR – A business establishment licensed by the State of New York to serve alcoholic beverages and which is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

BARBER SHOP – See Hairdressing Establishment.

BASE FLOOD – The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT – That portion of a building that is partly or completely below grade.

BEAUTY SHOP – See Hairdressing Establishment.

BED & BREAKFAST ESTABLISHMENT – A single family dwelling in which the residents thereof provide overnight accommodation and meals to travelers. A bed and breakfast establishment shall contain a maximum of five (5) rooms available for overnight guests, if within a residential zone.

BILLBOARD – Any structure or portion thereof situated on private premises upon which are signs or advertisements containing written or pictorial information not directly related to the principal use of the land upon which it is located.

BREAKAWAY WALLS – Any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material which are not part of the structural support of the building and which are so designed as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are used or any building to which they might be arrived by flood waters.

BUFFER YARD – A land area used to visibly separate one use from another or to shield or block noise, lights or other nuisances.

BUILDABLE AREA – The space remaining on a zoning lot after the minimum space requirements of this ordinance have been complied with.

BUILDING – Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattels.

BUILDING AREA – The space remaining on a zoning lot after the minimum open space requirements of this Local Ordinance have been complied with.

BUILDING HEIGHT – The vertical distance measured from the average elevation of the propose finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridges for gable, hip, and gambrel roofs.

BUILDING INSPECTOR – See Code Enforcement Officer

BUILDING PERMIT – Written approval from the Code Enforcement Officer to develop, construct or alter a structure or building.

BUILDING SETBACK LINE – A line parallel to the street line at a distance from it, regulated by the front yard requirements set up in this ordinance.

CAMP – Any one or more of the following other than a hospital, place of detention or school offering general instruction.

Type 1 – Any area of land or water on which are located two or more cabins, tents, trailers, shelters, houseboats, or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise; or

Type 2 – Any land, including any building thereon, used for an assembly of persons for what is commonly known as “day camp” purposes; and any of the foregoing establishments whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

CAMPER – See Trailer

CAMPGROUND – An area used for a range of overnight camping experiences, from tents to serviced trailer sites, including accessory facilities which support the use, such as administration offices and laundry facilities but not including the use of manufactured homes on a year around basis.

CEMETERY – Land that is set apart or used as a place for the internment of the dead.

CERTIFICATE OF COMPLIANCE – A certificate issued by the Code Enforcement Officer that certifies that conditions specified in this Zoning Ordinance have been met, that the parcel is properly zoned for the use that is proposed and that the intended use is allowable. Said certificate shall acknowledge any adjustments to the requirements of this ordinance granted by the Zoning Board of Appeals. Certificates of Compliance will be issued after all necessary construction has been completed and prior to occupancy of the structure.

CERTIFICATE OF OCCUPANCY – A permit issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building.

CHILD CARE CENTER – An establishment supplying group care to five or more children who do not have the same parentage, on a regular schedule, more often than once a week.

CIVIC FACILITY – Buildings, structures, and other uses owned and operated by the Municipality of Randolph and regularly used for neighborhood meetings and other forms of public assembly.

CLUB OR LODGE – A building or portion thereof or premises owned and/or operated by a corporation or association for a social, educational or recreational activity, but not primarily for profit or to render a service

which is customarily carried on as a business. The term “club” shall also refer, where the context requires it, to the members of such organization.

CLUSTER DEVELOPMENT – A subdivision design, pursuant to Section 278 of Town Law, that allows lots to be reduced in size, provided the total development density does not exceed that which could be constructed on the site using a conventional subdivision layout, and further provided that the remaining land is dedicated as permanent open space. See planned unit development under Article 8, section 8.3.

CODE ENFORCEMENT OFFICER – The official who is responsible for enforcing the Municipal Building Codes.

COMMERCIAL ESTABLISHMENT – An establishment engaged in buying goods for resale to the general public for personal and household consumption. Commercial establishments shall not be deemed to include establishments specifically listed in this ordinance.

COMMERCIAL RECREATION FACILITY – A recreational facility operated as a business and open to the public for a fee. Types of commercial recreation establishments may include, but are not limited to, bowling alleys, miniature golf courses and facilities where off-road vehicles and all-terrain vehicles may be driven.

COMMERCIAL SCHOOL – A school conducted for profit, including dancing schools, music schools, business and secretarial schools.

CONTRACTOR’S YARD – A yard of any general contractor or builder where equipment and materials are stored or where a contractor performs shop or assembly work.

COVERAGE – See Lot Coverage

CULTURAL FACILITY – Public libraries, museums, art galleries, historical societies, and other similar community institutions.

DAY CARE FACILITY – An establishment where care is provided for two or more children, who are not of common parentage, for a period of less than 24 hours per day. Programs could include those for children who are under the minimum age to attend public school and/or pre-school, after-school and school-vacation care for school aged children.

DEBRIS – Both combustible and noncombustible wastes; such as paper, wrappings, cardboard, cans, wood, glass, bedding, crockery, discarded furniture, appliances and/or automobiles, and yard clippings and leaves which are not stored in an entirely enclosed structure. Yard clippings and leaves that are contained in maintained compost pile, whether or not it is entirely enclosed, shall not be considered to be debris.

dBA – A-Weighted Sound Pressure Level. A measure of over-all sound pressure level designed to reflect the response of the human ear, which does not respond equally to all frequencies. It is used to describe sound in a manner representative of the human ear’s response. It reduces the effects of the low with respect to the frequencies centered around 1000 Hz. The resultant sound level is said to be “Weighted” and the units are “dBA”. Sound level meters have an A-weighting network for measuring A-weighted sound levels (dBA) meeting the characteristics and weighting specified in ANSI

Specifications for Integrating Averaging Sound Level Meters, 51.43-1997 for Type 1 instruments and be capable of accurate readings (corrections for internal noise and microphone response permitted) at 20 dBA or lower. In this Law dBA means LAeq unless specified otherwise.

dB(C) – C-Weighted Sound Pressure Level. Similar in concept to the A-Weighted Sound Level (dBA) but C-weighting does not de-emphasize the frequencies below 1k Hz as A-weighting does. It is used for measurements that must include the contribution of low frequencies in a single number representing the entire frequency spectrum. Sound level meters have a C-weighting network for measuring C-weighted sound levels (dB(C)) meeting the characteristics and weighting specified in ANSI S1.43-1997 Specifications for Integrating Averaging Sound Level Meters for Type 1 instruments. In this Law, dB(C) means L unless specified otherwise

DECIBEL – A dimensionless unit describing the amplitude of sound and denoting the ratio between two quantities that are proportional to power, energy, or intensity. One of these quantities is equal to 20 times the logarithm to the base 10 of the ratio of the measured pressure to the reference pressure, which is 20 micro pascals’.

DEVELOPMENT – Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DOMESTIC, HOME HEALTH CARE OR MEDICAL CARE WORKER – A person employed by one or more persons’ resident in a family, who may occupy dwelling space provided as part or all of his or her compensation without payment of rent, for the purpose of rendering domestic or home health care or medical care services solely for one or more of the residents. The dwelling space provided for a domestic or home health care or medical care worker may include a separate bedroom and bathroom, but shall not include a separate kitchen, nor shall such dwelling space include a separate entrance from the outside to the room or rooms provided for him/her.

DRIVE-IN THEATER – A theater consisting of a screen or screens and parking area where the public is able to view projected movies from a private vehicle.

DRIVE THROUGH WINDOW – An accessory use to a commercial building; usually a bank or a restaurant, in which a customer drives his/her automobile up to an opening in the building, from which the customer transacts business without getting out of the vehicle.

DRUG STORE – A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices and supplies and non-prescription medicines, but where non-medical products are sold as well.

DUMP – A lot or land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning, or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk discarded machinery, vehicles, or parts thereof, or waste material of any kind.

DWELLING – A building or portion thereof, designed or used exclusively for residential occupancy, including one-family dwelling units, two-family dwelling units, multiple-family units, and manufactured homes, but not including hotels, motels, boarding or lodging houses.

DWELLING, MULTIPLE FAMILIES – A building or portion thereof containing three or more dwelling units. Does not include hotel, motel, lodge, bed & breakfast, or nursing home rooms.

DWELLING, SINGLE FAMILY – A building that contains one dwelling unit.

DWELLING, TWO FAMILIES – A building that contains two dwelling units. The units could be side by side, sharing a common wall, or the units could be on separate floors, one above the other.

DWELLING UNIT – A building or portion thereof that provides complete housekeeping facilities for one family. Each dwelling unit shall have its own sleeping, cooking, and toilet facilities. A dwelling unit is designed for permanent occupancy and shall not be construed to include a hotel, motel, or other such use of a transient nature.

EASEMENT – Authorization by a property owner which allows another person to use the owner’s property for a specified purpose.

ENVIRONMENTAL ASSESSMENT FORM (EAF) – A form used to determine the environmental significance of an action, in accordance with the State Environmental Quality Review Act.

ENVIRONMENTAL IMPACT STATEMENT (EIS) – A written document, prepared in accordance with the State Environmental Quality Review Act.

ESSENTIAL SERVICES – The erections, construction, alteration, or maintenance by public utilities or governmental agencies of collection, communication, transmission, distribution or disposal systems necessary for the furnishing of adequate public service or for public health, safety or general welfare, but not including buildings. The term “essential services” shall not include “telecommunications towers.”

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK (OR MANUFACTURED HOME SUBDISISION) – The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

FACTORY-BUILT HOUSING – A factory built structure designed for long term residential use. For the purposes of these regulations, factory built housing consist of two types: modular homes and manufactured homes. Manufactured homes were formally referred to as mobile homes.

FAMILY – One or more persons living together in one dwelling unit and maintaining a common household, including domestic servants, gratuitous guests, together with boarders, rooms, or lodgers not in excess of the number allowed by this local ordinance as an accessory use.

FARM – See Agriculture.

FARM STAND – A use, accessory to the principal use of the lot, in which agricultural products are sold on a seasonal basis. Agricultural products include items such as farm produce, Christmas trees, maple syrup, and wool, but do not include items such as farm implements. The farm stand must be located on the property of the seller/producer of the agricultural products; twenty-five percent (25%) of which must have been produced on the premises.

FARMER'S MARKET – A public market at which farmers and often other vendors sell produce.

FENCE – A structure constructed for reasons of privacy, security, or aesthetics which is located in such a manner as to separate or divide areas. Includes hedges and masonry walls and may or may not be sight obscuring or light tight.

FINAL PLAT – A drawing, in final form, that shows a proposed subdivision containing all information or detail required by law and specified in Article 8 of these regulations, and containing all modifications, if any, required by the Planning Board at the time of approval of the preliminary plat, if such preliminary plat has been so approved.

FINAL PLAT APPROVAL – The signing of the final plat by a duly authorized officer of the Municipality of Randolph, pursuant to a resolution granting final approval to the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the Office of the Cattaraugus County Clerk.

FINANCIAL INSTITUTION – The premises of a bank, savings and loan company, trust company, credit union, finance company, mortgage company, or investment company.

FINISHED GRADE – The elevation at which the finished surface of the surrounding lot meets the walls or supports of a building or structure. If the finished grade is not reasonably horizontal, the average elevation of all sides of the structure shall be used for purposes of computing the height of the building or structure.

FLOOD OR FLOODING – A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) – An official map of the community published by the Federal Emergency Management Agency (FEMA) as part of a river line Community's Flood Insurance study. The FBFM delineates a regulatory floodway along water courses studied in detail in the Flood Insurance study.

FLOOD HAZARD BOUNDARY MAP (FBM) – An official map of the community issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

FLOOD INSURANCE RATE MAP (FIRM) – An official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY – The official report provided by the Federal Emergency Management Agency (FEMA). The report contains flood profiles, as well as the Flood Boundary Floodway map and the water surface elevations of the base flood.

FLOOD PLAIN ADMINISTRATOR - Generally designated as the Code Enforcement Officer.

FLOOD PLAIN OR FLOOD PRONE AREAS – A land are adjoining a river, stream, water course or lake which is likely to be flooded.

FLOOD PROOFING – Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOD PROTECTION ELEVATION – The level and elevation above which a particular use will be considered safe from flooding. Such elevations will be accurately fixed at various points on the official map.

FLOODWAY (F-W) – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation **more than one foot**.

FLOODWAY FRINGE (F-F) – The area lying outside of and adjacent to the floodway which may be subject to inundation by the maximum flood or seasonal regional expectancy.

FLOOR AREA, BASE – The total area on the ground floor of any structure.

FLOOR AREA, GROSS COMMERCIAL AND INDUSTRIAL – The sum of the gross floor areas of a building, or portion of a building devoted to such uses, including accessory storage areas located within selling or working space, such as counters, racks or closets and any basement floor areas devoted to retailing activities, to the production or processing of goods or to business or professional offices.

FLOOR AREA, GROSS RESIDENTIAL – The sum of the area of all floors in a building, measured from the exterior faces of the outside walls, but excluding any porch, verandah, unfinished attic, unfinished basement or cellar, carport, garage or sunroom (unless such sunroom is habitable at all seasons of the year).

FOOD PROCESSING ESTABLISHMENT – A commercial establishment in which food is processed or otherwise prepared for human consumption, but the food is not consumed on the premises.

FORESTRY – The use of land for the purpose of conservation and/or the growing and cutting of trees for the purpose of producing commercial or non-commercial wood products such as furniture and firewood, but shall not include the manufacturing or processing of such products.

FRONTAGE – The side of a lot abutting on a street and ordinarily regarded as the front of the lot.

FUEL BULK STATION – A place where crude petroleum, gasoline, naphtha, benzene, benzyl, kerosene or other flammable liquid which has a flash point at or below two hundred degrees Fahrenheit (closed cap tester) is stored for wholesale purposes, where the aggregate capacity of all storage tanks is more than eight thousand (8,000) gallons, regardless of whether the fuel is stored above ground, underground, or in mobile tank cars or trucks.

GARAGE, PRIVATE – An accessory building, or part of the principal building, which is designed and used

primarily for the storage of motor vehicles that belong to the occupants of the dwelling unit with which it is associated.

GARAGE SALE – See Yard Sale

GAS STATION WITH MINI-MART – A place where gasoline and minor accessories such as motor oil and lubricants are sold directly to the public on the premises in combination with the sale of food items typically found in a grocery store.

GASOLINE OR FILLING STATION – Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories, and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including major repairs, collision service, or painting.

GOLF COURSE – A public or private area operated for the purpose of playing golf, and which may include a club house and accessory driving ranges.

GRADE – The slope of a road, street, or other public way, specified in percentage terms.

GREENHOUSE – A building for the growing of flowers, plants, shrubs, trees and similar vegetation, which are sold either at wholesale or retail, directly from the lot on which the greenhouse is located.

GROCERY STORE – A retail establishment primarily selling food.

HAIRDRESSING ESTABLISHMENT – An establishment providing a personal service to men, women or children by shampooing, cutting, styling, tinting or treatment of hair, by giving manicures, pedicures or facial treatments or by the use of cosmetic products, and without limiting the generality of the foregoing, includes a barber shop and beauty salon.

HEAVY EQUIPMENT STORAGE AND SERVICE – An establishment where heavy machinery and equipment are stored and / or are offered for hire, and in which the machinery and equipment may be serviced and repaired. Such machinery includes excavating equipment, well- digging equipment and farm machinery.

HEIGHT – The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Accessory roof construction such as a chimney, steeple or antenna shall not be included.

HISTORIC RESOURCE - Any historic building, structure, facility, site or prehistoric site that is listed on the State and/or National Registers of Historic Places. Any historic building, structure, facility, site or district or prehistoric site that has been proposed by the New York Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register of Historic Places. Any locally significant historic resource designated pursuant to Article 5-K of the New York State General Municipal Law is also considered to be an historic resource.

HOME OCCUPATION, MAJOR – A home occupation in which no more than one employee, or full time equivalent of one employee, other than members of the family residing on the premises, may be employed on the premises, and which accommodates both dwelling and home occupation parking needs off the street.

HOME OCCUPATION, MINOR – An accessory use of a service character customarily conducted within a dwelling by the residents thereof which is clearly secondary to the use of the dwelling for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than a small sign and in connection therewith there is not involved the keeping of stock in trade, provided that said use does not occupy more than one fourth of the floor area in said principal residential building or such equivalent in accessory building(s). Mortuary establishments, stores, eating establishments, tourist homes and manufacturing establishments of any kind shall not be deemed to be home occupations.

HOTEL, MOTEL, INN, TOURIST OR AUTO COURT – A building or group of buildings where sleeping accommodations are provided to the public for transient occupancy. A hotel, motel, inn, tourist or auto court may or may not include group dining facilities.

INSPECTOR, BUILDING - See Code Enforcement Officer

JUNK – The outdoor storage or deposit of any of the following shall constitute junk:

1. one or more junk motor vehicles
2. one or more junk mobile homes
3. one or more pieces of farm machinery which are no longer in condition for agricultural use
4. one or more unusable pieces of construction equipment
5. one or more abandoned or inoperable household appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.
6. one or more abandoned or irreparably damaged pieces of indoor furniture including but not limited to sofas, lounge not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chest of drawers.
7. disassembled automobile parts or other disassembled machinery or appliances.
8. scrap metal, paper, lumber or rags

JUNK MOBILE HOME – A structure, transportable in one or more sections, built on a permanent chassis and designed to be used as a dwelling unit, which is currently not inhabited and is no longer habitable under the New York State Uniform Fire Prevention and Building Code. Includes but is not limited to mobile homes, manufactured homes, travel trailers, and campers.

JUNK MOTOR VEHICLE - An unregistered, old, or secondhand motor vehicle, no longer in condition for legal use on the public highways; or, used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicles. A vehicle is considered junked when it meets all of the following conditions:

1. It is unlicensed.

2. It is either, stored, abandoned, wrecked, discarded, dismantled, or partly dismantled.
3. It is not in any condition for legal use upon the public highways
4. It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time before such repair.

JUNK YARD – The outdoor storage or deposit of any of the following:

1. Two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways.
2. Two or more junk mobile homes
3. Two or more pieces of farm machinery which are no longer in condition for agricultural use
4. Two or more unusable pieces of construction equipment
5. Two or more abandoned or inoperable household appliances, including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
6. Two or more abandoned or irreparably damaged pieces of indoor furniture, including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
7. Any combination of the above or parts of the above that total two or more items.
8. Disassembled automobile parts or other disassembled machinery or appliances, or scrap metal, paper, lumber or rags.
9. For the purpose of this definition any two items as described above shall constitute a Junk Yard.

KENNEL – A place where dogs or other domestic animals, excluding livestock, are boarded, or bred and raised for profit. The term "kennel" shall not include the keeping of animals in a veterinary hospital for the purpose of observation and/or recovery necessary to veterinary treatment. The term "bred" shall not mean a household pet that has not more than one litter per year per household.

LAUNDROMAT – A building where coin-operated laundry machines, using only water, detergents and additives, are made available to the public.

LETTER OF INTENT – An initial presentation in writing submitted to the Planning Board by an applicant for the Board's consideration in classifying the subdivision as a major or minor subdivision.

LIBRARY – A building containing printed and pictorial material for public use for purposes of study, reference and recreation.

LIMITED ACCESS HIGHWAY – A roadway designed exclusively for vehicular movement, and which has no private access, and which intersects only with selected major streets by means of interchanges

engineered for free-flowing movement.

LINE, STREET – The dividing line between the street and the lot.

LIVESTOCK – Poultry, dairy and beef cattle, horses, swine, sheep, goats, alpaca, or any domestic animal used for human use and or consumption.

LOADING AND UNLOADING SPACE, OFF-STREET – An open hard-surface area of land other than a street or a public way, the principal use of which is for the standing, loading and unloading of motor vehicles, tractors and trailers, to avoid undue interference's with public streets and alleys. Such space shall not be less than ten feet in width, thirty-five feet in length and fourteen feet in height, exclusive of access aisles and maneuvering space.

LOT – A portion or parcel of land considered as a unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use, and the customary accessories and open spaces belonging to the same.

LOT, AREA – The total area within the boundary lines of a lot.

LOT, CORNER – A lot located at the intersection of, and abutting upon, two or more streets. A corner lot is not a through lot.

LOT COVERAGE – That percentage of the lot area covered by the building area.

LOT DEPTH – The horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

LOT LINE ADJUSTMENT - A type of re-subdivision in which there is solely a simple alteration of lot lines, and in which no additional lots are created and no lots are deleted. A lot line adjustment shall not be considered to be a subdivision.

LOT LINES – The property lines bounding a lot. The front lot line shall be the right-of-way line of the street or highway giving access to the lot. In the case of a corner lot, the owner may designate either street lot line as the front lot line.

LOT OF RECORD – Any lot which individually or as a part of a subdivision has been officially recorded or filed in the office of the Clerk of Cattaraugus County.

LOT, THROUGH – A lot having frontage on two parallel or approximately parallel streets, and which is not a corner lot.

LOT, WIDTH – The mean horizontal distance between the side lot lines measured within the lot boundaries or minimum distance between the side lot lines within the buildable area.

LUMBER AND BUILDING MATERIAL SALES – A building or structure in which lumber, and other building, construction and home improvement materials are offered for retail sale.

MAJOR STRUCTURE – A use or structure on the same lot that **is not** of a nature customarily incidental and subordinate to the principle use or structure.

MANUFACTURED HOME – A transportable, factory-built home; formally referred to as a mobile home, designed to be used as a year-round single-family dwelling that is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 United States Code Sec. 5401). A manufactured home is sometimes referred to as a "HUD Code home."

MANUFACTURED HOME PARK – A plot of parcel of land containing two or more manufactured homes.

MANUFACTURED HOME SPACE – A plot of land within a manufactured home park designed for the accommodation of one manufactured home.

MANUFACTURING – The making of goods and articles by hand or machine process. All manufacturing activities shall comply with the performance requirements set forth in Article 10, Section 10.2 of this ordinance.

MASTER PLAN, COMPREHENSIVE – A comprehensive plan for development of the Town, prepared and adopted by the Planning Board and Town Board, pursuant to State law, and including any part of such plan separately adopted and any amendments to such plan, or parts thereof.

MEDICAL CLINIC – A building or structure where two or more members of the medical profession: physicians, dentists, chiropractors, osteopaths, and/or occupational or physical therapists, provide diagnosis and treatment to the general public without overnight accommodation. A medical clinic may include such uses as reception areas, offices, consultation rooms, x-ray facilities, minor operating rooms and/or a pharmacy, providing that all such uses have access only from the interior of the building.

MINING, QUARRYING, SAND AND GRAVEL EXTRACTION, STRIPPING OF TOPSOIL - An open land area where sand, gravel, stone and rock fragments are mined or excavated or top soil is stripped as an industrial operation for sale or off-site use. This definition shall not include grading a lot in preparation for construction of a building.

MOBILE HOME – See Manufactured Home.

MOBILE HOME PARK – See Manufactured Home Park

MOBILE HOME SPACE – See Manufactured Home space

MODULAR HOME – Factory-built housing that is certified as meeting the New York State Building Code. Typically, modular homes are partially assembled in a factory and are delivered to a site in pieces, where they are assembled. Once certified as meeting the standards of the New York State Building Code, modular homes shall be subject to the same standards as site-built homes.

MORTUARY – A building used for human funeral services. Such buildings may contain space and facilities for:

1. Embalming and the performance of other services used in preparation of the dead for burial;
2. The storage of caskets and other related funeral supplies;

3. The storage of funeral vehicles. A mortuary shall not include facilities for cremation.

MOTEL – A motel primarily for transients traveling by automobile, with a parking space on the lot for each lodging unit, and with access to each such unit directly from the outside. A motel may or may not include group dining facilities.

MOTOR VEHICLE – All vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

MUNICIPAL ATTORNEY – The licensed attorney designated by the municipality to furnish legal assistance for the administration of these regulations.

MUNICIPAL BOARD – The board of the Town of Randolph.

NATIONAL GEODETIC VERTICAL DATUM (NGVD) – As corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the flood plain.

NATURAL LANDSCAPED AREA – A landscaped area purposely left to grow in a natural state. Vegetation can include grasses and plants indigenous to the New York State area, as well as non-indigenous plants and flowers. Natural landscaped areas may be un-mowed or mowed intermittently, but are maintained as needed.

NEW CONSTRUCTION – Structures for which the "start of construction" commenced on or after the effective date of this ordinance.

NON-CONFORMING LOT – Any lot, legally existing at the time of enactment of this ordinance, where the area, frontage and/or dimensions do not conform to the provisions of this ordinance.

NON-CONFORMING USE – A building structure or use of land legally existing at the time of enactment of this ordinance and which does not conform to the regulations of the district or zone in which it is situated.

NURSERY SCHOOL – A privately-owned school for two or more children age's two to five, which provides instruction as well as child care.

NURSING HOME – A building in which the proprietor, either for profit or not-for-profit, supplies lodging and meals and in addition, provides nursing, medical or similar care and treatment. A nursing home includes a rest home or a convalescent home.

NYSERDA – New York State Energy Research and Development Agency is a public benefit corporation created under Article 8, Title 9 of the State Public Authorities Law.

OFFICE – A building or portion of a building wherein services are performed involving predominately administrative, professional, or clerical operations. An office shall not include a retail commercial use, any industrial use, clinic, financial institution or place of amusement or place of assembly.

OFFICIAL MAP – The map established by this municipality showing existing and proposed streets,

highways, parks, and drainage systems.

OIL AND GAS WELLS, TANKS AND LINES – A hole and any structure appurtenant thereto, drilled into a geological formation for the purpose of extracting crude oil or natural gas, and the lines to collect these products to a temporary storage tank(s). However, oil and gas wells shall not be construed to allow any processing of crude oil or natural gas.

OPEN SPACE – An area that is intended to provide light and air, and is designed for environmental, scenic, or recreational purposes. Open space may include, but is not limited to, lawns, decorative planting, walkways, buffers, active and passive recreation areas, playgrounds, fountains, wooded areas, and water courses. Open space shall not be deemed to include driveways, parking lots, or other surfaces designed or intended for vehicular travel.

OVERSPEED CONTROL – A mechanism used to limit the speed of blade rotation to below the design limits of the wind energy conversion system.

PARK – A publicly owned area permanently devoted to open space or recreational uses and generally characterized by its natural, historic, or landscaped features, and which may be used for either passive and/or active forms of recreation.

PARKING LOT – An open area of land, other than a street, used for the temporary parking of two or more motor vehicles and available for public use whether free, for compensation, or as an accommodation for clients or customers or residents, but does not include the storing of impounded or wrecked vehicles.

PARKING SPACE - An area exclusive of driveways, ramps, or columns, in which one vehicle can be parked.

PERMITTED USE – A use of land for which no conditional use permit is required.

PERSONAL SERVICE ESTABLISHMENT – A business where professional or personal services are provided for profit and where the retail sale of goods, wares, merchandise, articles or things is only accessory to the provision of such services including but not limited to the following: barber shops, beauty shops, tailor shops, laundry or dry-cleaning shops, and shoe repair shops.

PHARMACY – See Drug Store.

PHOTOGRAPHIC STUDIO – Premises used for portrait and commercial photography, including developing and processing of film, sale of film and photographic equipment, and repair or maintenance of photographic equipment.

PHOTOVOLTAICS (PVs) – An array of cells containing a material that converts solar radiation into direct current electricity.

PLACE OF WORSHIP – A building, such as a church, chapel, temple, synagogue, or mosque, in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship. The building may include such accessory uses as a nursery school, a school of religious education, or parish hall.

PLANNED UNIT DEVELOPMENT – A development approved according to the provisions of Article 8, Section 8.3 of this ordinance.

PLANNING BOARD – The Planning Board of the Town of Randolph, Cattaraugus County, New York.

PLANT NURSERY – Land used for the growing of sod, flowers, bushes, trees or other gardening, landscaping or orchard stock for wholesale or retail sale.

PLAT – A plan or map showing property boundaries and geographic features.

PLOT – A small piece of ground.

PRELIMINARY PLAT – A drawing or drawings, clearly marked "Preliminary Plat," showing the salient features of a proposed subdivision, as specified in Article 8, Section 8.3 of these regulations, and containing sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

PRELIMINARY PLAT APPROVAL – The approval of the layout of a proposed subdivision as set forth in a preliminary plat, but subject to the approval of the plat in final form, in accordance with the provisions of these regulations.

PRINCIPLE STRUCTURE – The main use of a structure as distinguished from a subordinate or accessory structure.

PRINCIPAL USE – The primary purpose for which a lot is used.

PRIVATE SCHOOL – A privately-owned academic or religious school, whose primary purpose is to provide education for children in, grades Kindergarten through Twelve.

PROJECT – An individual or collaborative enterprise that is carefully planned and designed to achieve a particular outcome.

PROPERTY LINE – A line indicating boundary of a piece of property shown on a recorded document.

PUBLIC USE – Public parks, schools, playground and other recreational facilities, and administrative, cultural and service buildings, not including public land or buildings devoted solely to the storage and maintenance of equipment and material.

PUBLIC UTILITY Any person, firm, corporation or municipal department duly authorized under public regulation to furnish to the public electricity, gas, steam, cable television, telephone, fiber-optics, transportation, water or sewer.

QUARRY, SAND PIT, GRAVEL PIT, TOP SOIL, STRIPPING – A lot or land or part thereof used for the purpose of extracting stone, sand, gravel, or top soil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building.

RECYCLING CENTER – A facility in which recoverable used household or office resources, such as newspapers, glassware, and metal cans, are collected, stored, flattened, crushed, or bundled prior to

shipment to others who will use these materials to manufacture new products.

REPAIR SHOP, GENERAL – An establishment in which small items are repaired such as household appliances, vacuum cleaners, television sets and computers.

REPAIR SHOP, PERSONAL SERVICE – An establishment in which personal items are repaired such as clothing, shoes, and jewelry.

RESEARCH AND DEVELOPMENT FACILITIES – A building or group of buildings in which facilities are located for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

RESTAURANT – An establishment which is primarily engaged in serving food and beverages which are consumed on its premises by customers seated at tables and/or counters either inside or outside the building, and, as an accessory use, may be engaged in providing customers with take-out service of food and beverages for off-site consumption.

RESTAURANT, DRIVE-THROUGH – See Drive-Through Window

RESUBDIVISION – Any change in a map of an approved or recorded subdivision plat, if such change affects any lot line, any street layout, or area reserved for public use.

RETAIL BUSINESS – A building in which merchandise is offered for sale at retail, including storage of limited quantities of such merchandise, sufficient only to supply such store.

RIDING STABLES – An establishment in which horses are boarded and may also be available for hire. A riding stable may also provide lessons in riding, handling, training, and care of horses. (See Commercial Recreation)

RIGHT-OF-WAY – A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, street, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for any other special use.

ROOF-MOUNTED WIND TURBINE – A relatively small wind generating facility which generates original power on-site for on-site use by the property owner or home-owner, mounted on the principle building's roof and with a maximum height no greater than ten (10) feet.

SALVAGE YARD – A lot, land, or structure or part thereof used primarily for collection, exchange, storage, packing, disassembly and/or sale of waste, scrap metal, paper, lumber, rags, or similar materials, but not including pawn shops and establishments for the sale, purchase, or storage of used furniture, household equipment or clothing; purchase or storage of used motor vehicles or salvaged machinery to be used for the purpose for which originally manufactured.

SANITARY LAND FILL – A method of disposing of garbage and refuse by spreading, covering, and compacting with earth.

SAWMILL – A building, structure or area where timber is cut, sawed or planed, either to finished lumber or as an intermediary step and may include facilities for the kiln drying of lumber and may include the distribution of such products.

SCENIC RESOURCE – Any road, highway, lane, district or corridor designated pursuant to Article 49 of the New York State Environmental Conservation Law. Any area designated a Scenic Area of Statewide Significance pursuant to the NYS Coastal Management Program is also included.

SCHOOL – A facility, either public or private, that provides a curriculum of instruction.

SEASONAL RESIDENCE – Summer or winter cabins, cottages, hunting camps and similar housing designed, intended and/or used for seasonal, non-permanent residential use. For the purposes of this local ordinance, seasonal residence shall mean and shall be limited to a period not to exceed 180 days per year, computed on the basis of actual number of days occupied or used. Greater use shall constitute permanent residence.

SELF-SERVICE STORAGE FACILITY – A building or buildings used for the storage of household goods and materials, in which individuals rent self-contained storage units that are exclusively available to the individual renter.

SEMI-PUBLIC USE – Churches, parochial schools, colleges, hospitals and other institutions of an educational, religious, charitable or philanthropic nature.

SEQR – State Environmental Quality Review Act

SETBACK – A line parallel to the street line at a distance from it, regulated by the front yard requirements defined in this local ordinance.

SETBACK, BUILDING – The least horizontal distance permitted between a lot line of a lot and the nearest portion of any building on such lot.

SIDEWALK – A designated hard surfaced path provided for pedestrian use, usually located along the side of a street.

SIGN – Any letter, word, symbol, drawing, picture, design, device, article or object that advertises, calls attention to or indicates any premises, persons, products, businesses or activities, whatever the nature of the material and the manner of composition or construction. It does not include signs placed or erected by a village, town, city, county, or state agency for the purpose of showing street names, directions, regulations, or for other public purpose.

SIGN, AWNING – Any visual message incorporated into an awning attached to a building.

SIGN, FREESTANDING – Any sign supported by structures or supports that are placed on, or anchored in; the ground and that are independent from any building or other structure.

SIGN, GROUND – A type of freestanding sign, in which the entire bottom of the sign is generally in contact with or in close proximity to the ground.

SIGN, ILLUMINATED – Any sign illuminated by electricity, gas or other artificial light, either from the interior or exterior of the sign, and which includes reflective and phosphorescent light.

SIGN, OFF-PREMISES – A sign unrelated to a business or a profession conducted, or to a commodity or service sold or offered, upon the parcel where such sign is located.

SIGN, PORTABLE – A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.

SIGN, PROJECTING – A sign which is attached to the building wall or structure and which extends horizontally more than six (6) inches from the plane of such wall, or a sign which is perpendicular to the face of such wall or structure.

SIGN, ROOF – Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

SIGN, WALL - Any sign attached parallel to, but within six inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SIGN, WINDOW – A sign painted or affixed on glass or other window material and which is visible from the exterior of the window.

SITE DEVELOPMENT STANDARDS – Established regulations concerning lot area, yard setback, building height, lot coverage, open space and any other special regulations deemed necessary to accomplish the goals of the purposes of the underlying zoning district.

SITE – The plot of land where the wind energy conversion system is to be placed. The site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties.

SITE PLAN – A scale drawing showing the relationship between the lot lines and building or structures, existing or proposed on a lot, including such details as parking areas, access points, landscaped areas, building areas, setbacks from lot lines, building heights, and densities. See also Article 11 of this ordinance.

SKETCH PLAN – A drawing which illustrates the proposed layout of streets, lots and other features of a proposed subdivision in relation to existing conditions for the purpose of obtaining the advice of the Planning Board prior to the preparation of a preliminary plat.

SLAUGHTERHOUSE – See Food Processing Establishment.

SOLAR ENERGY

1. **GROUND MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity for onsite consumption.
2. **LARGE SCALE SOLAR ENERGY SYSTEM:** A Solar Energy System that is ground mounted and produces energy primarily for the purpose of offsite sale or consumption.
3. **ROOF MOUNTED SOLAR ENERGY SYSTEM:** A solar panel system located on the roof of

any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption.

4. **SOLAR ENERGY EQUIPMENT:** Electrical energy storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.
5. **SOLAR ENERGY SYSTEM:** An electrical generating system composed of a combination of both solar panels and solar energy equipment.
6. **SOLAR PANEL:** A photovoltaic device capable of collection and converting solar energy into electrical energy.

SPECIALIZED ANIMAL RAISING AND CARE – The use of land and/or buildings for the commercial raising and care of animals other than livestock.

SPECIAL FLOOD HAZARD AREAS – Means that maximum area of the flood plain that on the average is likely to be flooded once every hundred years (i.e. that has a 1 percent chance of being flooded each year - "100-year flood").

SPECIAL USE – Any use of land or buildings or both that require special approval from the Zoning Board of Appeals as described herein. See Article 13 of this ordinance.

START OF CONSTRUCTION – The first placement of permanent construction of a structure (other than a manufactured home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a manufactured home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For manufactured homes not within a manufactured park or manufactured home subdivisions, "start of construction" is start of construction means the affixing of the manufactured home to its permanent site. For manufactured homes within manufactured home parks or manufactured home subdivisions, "start of construction" is the date on which the construction of facilities for servicing the site on which the manufactured home is to be affixed (including, at a minimum, the construction of streets, either final site grading of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR) – The New York State Law (Article 8 of the Environmental Conservation Law) and regulations (6 NYCRR Part 617) which require public agencies to consider the potential environmental impacts of an action before such action is approved or undertaken.

STORY – That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above, then the space between the floor and ceiling next above it.

STORY, HALF – The portion of a building located wholly or in part within a sloping roof and in which

there is sufficient space to provide a height between finished floor and finished ceiling of at least seven feet, six inches over a floor area equal to at least fifty percent of its total floor area.

STREET – A way designed primarily to accommodate the flow of vehicular traffic. A street may be designated as a road, drive, avenue, lane, or other similar term.

STRUCTURAL ALTERATIONS – Any change other than incidental repairs which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams and girders.

STRUCTURE – Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. (see Accessory Structure / Major Structure)

SUBDIVIDER – Any person, firm or other legal entity that commences proceedings under these regulations to affect the subdivision of land, either for himself or for others.

SUBDIVISION – The division of any parcel of land into two or more lots or parcels. A lot line adjustment that does not involve the creation of a new lot shall not be considered a subdivision.

SUBDIVISION, MAJOR – Any subdivision not classified as a minor subdivision, including, but not limited to, subdivisions of five (5) or more lots, or any size subdivision requiring any new street or the extension of government facilities or the creation of any public improvements.

SUBDIVISION, MINOR – A subdivision of/and into not more than four (4) lots, including the remaining portion of the original parcel. In addition, a minor subdivision shall not involve the creation of any new streets, the extension of any street, water or sewer line or the installation of drainage improvements through one or more lots to serve one or more other lots. A minor subdivision shall not be in conflict with any provision of the Town's Zoning Ordinance.

SUBSTANTIAL IMPROVEMENT IN F-F AND F-W DISTRICTS – Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either,

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventor of Historic Places.

SURVEYOR – A person licensed as a land surveyor by the State of New York.

SWEPT AREA -- The largest area of the WECS which extracts energy from the wind stream. In a conventional propeller-type WECS, there is a direct relationship between swept area and the rotor diameter.

SWIMMING POOL – Any structure, basin, chamber or tank which is intended for swimming, diving, recreational bathing or wading and which contains, is designed to contain, or is capable of containing water more than 24 inches (610 mm) deep at any point. This includes in-ground, above-ground and on ground pools; indoor pools; hot tubs; spas; and fixed-in-place wading pools. **NOTE:** A pool which is capable of containing more than 24 inches of water is a “swimming pool” (and is subject to all applicable Uniform Code provisions relating to “swimming pools”) even if the pool is filled to a depth of less than 24 inches.

TELECOMMUNICATIONS FACILITIES – Towers and/or antennas and associated accessory structures, if any, together used in connection with the provision of cellular telephone service, personal communications services, digital and/or data communication services, paging services, radio and television broadcast services and similar broadcast services.

TEMPORARY USE – Use of a structure for the designated period of time, usually one year or less.

THEATER – A building or part of a building devoted to showing movies; or for dramatic, musical, or live performances.

THEATER, DRIVE-IN – See Drive-in theater.

TOTAL HEIGHT -- The height of the tower and the furthest vertical extension of the wind energy conversion system.

TOURIST HOME – A dwelling in which overnight accommodations are provided or offered for transient guests for compensation. **See Hotel, Motel, Inn, Tourist or Auto Court.**

TOWNHOUSE – A building containing two or more dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by common or party walls without openings. Townhouses may also be known as row houses.

TRAILER – A vehicle so constructed as to be suitable for attachment to a motor vehicle for the purpose of being drawn or propelled by the motor vehicle, and capable of being used for the temporary living, sleeping or eating accommodation of persons, notwithstanding that such vehicle is jacked up. A self-propelled recreational vehicle shall also be construed to be a trailer. The terms "motor home," "camper", "recreational vehicle", and "travel trailer" shall also be construed to mean a trailer. A trailer is not a mobile home or a manufactured home.

TRANSIENT AMUSEMENT ENTERPRISE – A commercial recreational enterprise where temporary buildings or structures have been erected for the purposes of a circus, carnival or similar activity.

UNDEVELOPED PLAT – A plat existing at the time of the enactment of these regulations that has been filed in the Office of the Cattaraugus County Clerk, where twenty (20) percent or more of the lots within said plat remain to be developed, excluding there from those lots where existing natural conditions (such as poor drainage) have prevented development.

USE – The purpose for which land or a building thereon is designed, arranged or intended, or for which it is occupied, maintained, let or leased.

USE, ACCESSORY – A use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure. **(see accessory structure or use)**

USE, INTENSITY – The maximum number of residential units, or commercial, or industrial spaces within a specified land area designated for that purpose.

USE VARIANCE – The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

VACATION OR RECREATION TRAILER – A home designed for and used for recreation on a seasonal basis only. **(see trailer)**

VARIANCE - Relaxation of the terms of the Zoning Ordinance which is not contrary to the public interest and where owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this ordinance would result in unnecessary and undue hardships.

VARIANCE, AREA – The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VETERINARY HOSPITAL – A building or part thereof used by veterinarians primarily for the purposes of consultation, diagnosis and treatment of household pets or livestock, but shall not include long-term boarding facilities for animals.

WAREHOUSE – A building used primarily for the storage of goods and materials. WECS – Wind Energy Conversion system

WIND ENERGY CONVERSION SYSTEM (WECS) – Any mechanism designed for the purpose of converting wind energy into mechanical or electrical energy. The major components of a typical WECS include a wind turbine, a generator, interconnection apparatus, and control systems.

WIND TURBINE GENERATOR – A rotating machine which converts the wind energy into mechanical energy. If the mechanical energy is used directly by machinery, such as a pump or grinding stones, the machine is usually called a windmill. If the mechanical energy is instead converted to electricity, the machine is called a wind turbine, wind generator, wind power unit, or wind energy converter.

WIND TURBINE TOWER – Wind generating facility which generates original power on-site.

WIND TURBINE TOWER, PRIVATE – An individual wind turbine tower used to generate power for on-site use by the property owner or home owner, except for the required electrical current feed-back to the power company.

WHOLESALE BUSINESS – Place of business primarily engaged in selling merchandise to retailers, to Industrial, commercial, institutional or professional business users, or to other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

WOOD-BURNING BOILER – See Wood-Burning Furnace.

WOOD-BURNING FURNACE – A furnace, designed and intended, through the burning of wood, for the purpose of heating the principal structure, usually a single-family residence, or another accessory structure on the premises. These types of furnaces are characterized by a short stack height. They may be located out-of-doors or enclosed within another accessory structure, such as a garage. Where permitted, these types of furnaces shall be considered to be an accessory structure, for purposes of setbacks. Because these types of furnaces can have detrimental effects of soot, smoke and ash on adjacent and nearby properties, they are not well suited to residential areas that are characterized by small lots.

WOOD-BURNING STOVE – A wood-burning device, located entirely within a dwelling unit and connected to a standard chimney that is used to heat the dwelling. A wood-burning stove is not a wood burning furnace.

YARD – An unoccupied space, open to the sky, on the same lot with a building or structure.

YARD, FRONT – The open, unoccupied space on a lot, which extends across the full width of the lot between the front lot line and the nearest wall or supporting member of a building or structure. Where the front wall of an enclosed porch or verandah extends in front of such building or structure, the front wall shall be deemed to be the front wall of said porch or verandah.

YARD, REAR – That open area of a lot which extends across the full width of a lot between the rear lot line and nearest wall or supporting member of a principal building or structure.

YARD, SIDE – That open area of a lot which extends from the front yard to the rear yard of a lot between a side lot line and the nearest wall of the principal building or structure on the lot. If there is no required front yard or rear yard, the side yard shall extend from the front lot line to the rear lot line.

YARD SALE – The sale of personal property belonging to the occupants of the dwelling unit on whose premises the sale is conducted.

ZERO LOT LINE DEVELOPMENT – A residential subdivision in which building lots may be provided for the erection of detached one-family dwellings having no side yard on one side of a dwelling.

ZONING BOARD OF APPEALS – The Board of Zoning Appeals of the municipality of Randolph, county of Cattaraugus, state of New York. **Zoning Board of Appeals and Board of Appeals are one in the same.**

ZONING DISTRICTS – The Districts as designated in this ordinance.

ZONING MAP – The map or maps incorporated into this local ordinance as a part hereof, designating Zoning Districts.

ZONING PERMIT – The permit issued by the code enforcement officer authorizing the development, construction, extension or use of land and/or buildings.

ARTICLE 6 – GENERAL PROVISIONS

Section 6.1 – General Regulations

- A. Uses Prohibited.** Any use not specifically permitted in this ordinance shall be deemed to be prohibited; unless approved by the Planning Board and Zoning Board of Appeals.
- B. Minimum Requirements.** The provisions of this Zoning Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.
- C. Relationship with other Laws.** Where the conditions imposed by any provision of this Zoning Ordinance upon the use of land or buildings, or upon the bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this ordinance or any other law, Ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive (or which impose higher standards or requirements) shall govern
- D. Effect on Existing Agreements.** This Ordinance is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this Ordinance are more restrictive (or impose higher standards or requirements) than such easements, covenants or other private agreements, the requirements of this Ordinance shall govern.

Section 6.2 – Application of Regulations

- A. Application.** Except as herein after provided
 - 1. No building or land shall hereafter be used or occupied and no building 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.
 - 2. No building shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, specified herein for the district in which such a building is located.
 - 3. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another building.
 - 4. No lot, yard, setback, parking area or other space shall be so reduced in area, dimension or capacity as to make said area, dimension or capacity less than the minimum required under this Ordinance. If already less than the minimum required under this Ordinance, said area, dimension or capacity shall not be further reduced.

- B. Responsibility.** The final responsibility for the conforming of buildings and use to the requirements of this Ordinance shall rest with the owner or owners of such building or use and the property on which it is located.

Section 6.3 – Lot Area and Dimension

- A. Contiguous Parcels.** When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one zoning lot for such use.
- B. Lots or Parcels of Land of Record.** Any single lot or parcel of land, held in one ownership, which was on record at the time of adoption of this Ordinance, that does not meet the requirements for minimum lot width and area, may be utilized for a permitted use, provided that yards, courts or usable open spaces are not less than seventy-five percent of the minimum required dimensions of areas.

Section 6.4 – Access to Public Street

Except as otherwise provided for in this Ordinance, every building shall be constructed or erected upon a lot or parcel of land which abuts upon an existing or plotted street unless a permanent easement of access to a public street was on record prior to the adoption of this Ordinance.

ARTICLE 7 – ESTABLISHMENT OF DISTRICTS

Section 7.1 – Districts

For the purpose and provisions of this ordinance, the Municipality of Randolph is hereby divided into the following types of districts:

A-F-R	Agricultural – Forestry –Residential District
C	Commercial District
E	Expressway District
F-W	Floodway District
F-F	Floodway Fringe District
R	Residential District

Section 7.2 – Zoning Map

The locations and boundaries of the aforesaid Zoning Districts are hereby established on a scaled map, entitled "Zoning Map of the Municipality of Randolph," which is kept on file by the Municipal Clerk. This map is hereby made a part of this Zoning Ordinance and shall have the same force and effect as if the zoning map together with all notations, references and other information shown thereon were fully set forth and described herein.

Section 7.3 - Interpretation of District Boundaries

In the event uncertainty exists regarding the boundaries of any of the aforesaid Zoning Districts shown on the zoning map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the centerlines or right-of- way lines of streets, highways, railroads, public utility easements, or watercourses, said boundaries shall be construed to be coincident with such lines.
- B. Where district boundaries are indicated as approximately following the Municipality of Randolph boundary line, lot lines, or the projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.
- C. Where district boundaries are indicated as approximately parallel to the Municipality of Randolph boundary line, lot lines, right-of-way lines, or projections thereof, said boundaries shall be construed to be parallel thereto.
- D. When a district boundary is questionable, it shall be referred to the Zoning Board of Appeals, who shall, to the best of their ability, establish the exact boundary, using the above criteria. This determination shall be considered final and conclusive, and may only be altered by amendment to the zoning map by the Municipal Board, following the procedures established in Article 15 of this

Ordinance. A copy of the zoning map showing the determination of the Zoning Board of Appeals shall be kept on file by the Municipal Clerk.

Section 7.4 – Zoning of Streets, Alleys, Public-ways, Right-of-Ways and Waterways

Where the center line of a street, alley, public-way, waterway or railroad right-of-way serves as a district boundary, the zoning of such areas, unless otherwise specifically designated, shall be deemed to be the same as that of the abutting property up to such center line.

Section 7.5 – Lots Located in More than One Zoning District

- A.** If a lot is divided into more than one Zoning District, the regulations for each Zoning District shall govern each portion of the lot, provided, however, that each portion of the lot separately conforms to all regulations of the applicable Zoning District. In the event that the lot cannot conform to all regulations for each zoning district, the regulations for the district in which the greater part of the lot lies shall govern.
- B.** In all cases where a district boundary line is located not farther than 15 feet away from a lot line of record, the regulations applicable to the greater part of the lot shall be deemed to apply to the entire lot.

Section 7.6 – Flood Plain Areas

- A.** The purpose of the Flood Plain Area Regulations (i.e. Floodway (F-W) Area and Floodway Fringe (F-F) Area) is to protect the future health, safety, and welfare of the inhabitants from hazards due to periodic or intermittent flooding. This shall include the protection of persons and property, the preservation of water quality, and the minimizing of expenditures for relief, insurance and flood control projects. This does not imply that areas outside the Flood Plain Area or uses permitted within the Flood Plain area will be free from flooding or flood damages.
- B.** Basis for Establishing the Areas of Special Flood Hazard - The areas of special flood hazard have been identified by the federal Emergency Management Agency on Flood Insurance Rate Map enumerated on Map 360068 OOOIA dated February 1, 1978. The above document is hereby, adopted and declared part of this ordinance and is filed at the Municipal Clerk's Office.

ARTICLE 8 – DISTRICT USE REGULATIONS

Section 8.1 – Schedule of District Use Regulations and Purposes.

The requirements and limitations set forth in this article in tables entitled “Schedule A” – District Use Regulations” and “Schedule B – Dimensional Regulations,” with all explanatory matter thereon, are hereby made a part of this ordinance and shall apply in the respective districts as indicated. The provisions of this Zoning Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.

A. Agricultural – Forestry – Residential District

The purpose of the Agricultural-Forestry- Residential District is to protect and promote agricultural uses, while at the same time providing an opportunity for larger lot residential development. An additional purpose of this district is to provide an area for outdoor recreational opportunities.

B. Commercial District

The purpose of the Commercial District is to permit and promote opportunities for retail businesses and commercial facilities at a scale that is appropriate to protect and preserve the historic character of the traditional commercial core.

C. Expressway District

The purpose of the Expressway District is to recognize the limited access highway that runs through the Municipality. The Expressway District is contiguous with the right-of-way owned by the State of New York.

D. Floodplain Overlay District

The purpose of the Floodplain Overlay District is to protect the health, safety and welfare of the residents of the Municipality of Randolph and to minimize the public and private losses from hazards due to periodic or intermittent flooding. These purposes shall include the protection of persons and property, the preservation of water quality and the minimizing of expenditures for relief, insurance and flood control projects. This does not imply that areas outside of the floodplain overlay district or uses permitted within the floodplain overlay district will be free from flooding or flood damage.

The Floodplain Overlay District shall include all areas within the Municipality of Randolph that are identified as areas of special flood hazard by the Federal Emergency Management Agency (FEMA). The areas of special flood hazard are identified and defined on the following documents prepared by FEMA:

1. Flood Insurance Rate Map No. 360096 0001B, whose effective date is August 1, 1978.

2. A scientific and engineering report entitled "Flood Insurance Study, Village of Randolph, New York, Cattaraugus County," dated February 1978.
3. Flood Boundary and Floodway Map, No. 360096 0001B, whose effective date is August 1, 1978.

*The above documents are hereby adopted and
declared to be a part of this local Zoning
Ordinance.*

4. **Permitted, Accessory and Special Permitted Uses:** Permitted uses, special permitted uses and accessory uses shall be those designated in the underlying Zoning District. However, such uses shall be subject to the special restrictions contained in Local Law 1-2000, entitled "A Local Law for Flood Damage Prevention."
5. **Yard, Area, and Other Dimensional Regulations:** All permitted uses, special permitted uses and permitted accessory uses shall conform to the yard area and other dimensional regulations that are specified below in Section 8.2 of this ordinance for the underlying Zoning District. In addition, the uses shall conform to any special dimensional regulations contained in Local Law 1-2000, entitled "A Local Law for Flood Damage Prevention."

E. Residential District

The purpose of the Residential District is to allow residential development at a scale appropriate to benefit those residing within this district.

Section 8.2 – Dimensional Regulations

A. Schedule of Dimensional Regulations

Schedule B, Table of Dimensional Regulations, contains the minimum lot size, minimum lot width, minimum yard requirements, maximum building height and maximum lot coverage for each land use district. This table is hereby declared to be an integral part of this ordinance.

B. Height Regulations

Any structure extending more than forty (40) feet above ground requires a special use permit.

The height limitations contained in Schedule B, Table of Dimensional Regulations, do not apply to spires, belfries, cupolas, water tanks, ventilators, chimneys, silos, grain elevators, antennas, radio or television towers, or any appurtenances usually required to be placed above the roof level and not intended for human occupancy.

C. Measurement of Required Yards

The minimum front yard for a lot shall be determined by measuring at right angles from the nearest street right-of-way line. The rear and side yards shall be determined by measuring at right angles from the rear and side property lines, respectively.

D. Projections into Required Yards

The following encroachments into required yards are permitted:

1. Eaves, cornices, cantilevered roofs, or bay windows may project three feet into any yard.
2. Open and unenclosed porches, verandahs, decks and steps may project ten (10) feet into any front yard or rear yard and eight (8) feet into any side yard.
3. An open, hard-surfaced and uncovered terrace or patio may project into any yard in a residential district, if such terrace is completely unenclosed except by a guard rail or parapet wall not exceeding the maximum height permissible for a fence in the same location. No such terrace shall project into any required front yard more than eight (8) feet. The provision of an awning or similar temporary covering for such a terrace shall be permitted.
4. A chimney, attached to the wall of a building, may project three feet into any yard, provided that the chimney is not wider than eight feet.

E. Yards to be Open

Where yards are required in this ordinance, they shall be construed as permanently maintained open spaces. They shall not be less in depth, or width, or area than the minimum specified.

F. Corner Lots

Whenever a side yard is adjacent to a street, both the front and side yards shall be considered to be front yards, and the standards for front yards shall apply.

G. Through Lots

In the case of a lot running through from one street to another street, the frontage on which the majority of the buildings in the block face shall be considered the primary frontage for the purposes of this ordinance. In cases where there is no clearly defined frontage, the owner, when applying for a building permit, shall specify which lot line is considered the primary frontage. The rear portion of such lot shall, however, be treated as a front for purposes of determining required setbacks and locations of permitted structures and uses.

H. Minimum Floor Area

The minimum interior gross floor area for a single family residence shall be eight hundred (800) square feet.

I. Building Separation

All detached buildings on the same lot, such as a house and a garage, shall be separated by a minimum distance of five (5) feet.

J. Accessory Buildings

1. No accessory building or structure may be located in a required front yard or a required side yard.
2. No accessory building or structure may be located closer to the rear lot line than the applicable side yard requirements. Where an accessory building is erected in the required rear yard on a corner lot, it shall not be located closer to any street than the required front yard distance.
3. Notwithstanding any other provision of this ordinance, clothesline poles, flag poles, garden trellises, fences and retaining walls shall be exempt from any setback requirements.

K. Visual Clearance at Driveways and Intersections

1. On corner lots no fence, wall, hedge or other structure or planting interfering with visibility from motor vehicles shall be erected or placed within the triangular areas formed by the intersecting street lines on such lots and a line drawn between two points thirty feet distant from the intersection, measured along said street lines.
2. On any lot where a private driveway enters a street, no obstruction to visibility from motor vehicles between three (3) feet above ground level and ten (10) feet above ground level shall be located within the triangular area formed by the street property line, the private drive line and a line connecting them at points ten (10) feet from their intersection.

L. Buffer Yard

1. Where any business or industrial use abuts a residential district, the required yard shall contain a landscaped area adjacent to the residential use, a minimum of eight (8) feet in width. The buffer yard shall contain hedges or trees and shall be planted with grass or other planting material. The entire area shall be attractively maintained and kept clean of all debris and rubbish. Parking, storage of merchandise or trash, or other such uses shall not be allowed in the buffer yard.

2. In areas where a buffer yard is required but a natural buffer is considered to be impractical or inappropriate, an opaque fence may be substituted in whole or in part for a natural buffer, provided its specifications are approved by the Zoning Board of Appeals.
3. All fences and vegetative material shall conform to the visual clearance requirements in Section K.

M. One Principal Dwelling Permitted Per Lot

In all districts where single family dwellings are permitted, a lot held in single ownership may be developed for such use in accordance with the requirements of this ordinance, provided that there shall be no more than one principal dwelling unit on each lot. If two or more single family dwelling units are proposed to be located on the same lot, the lot shall be subdivided and each new lot shall meet all the requirements of this ordinance.

N. Fences and Walls

All fences and walls within the Municipality shall be permitted by right in any district and shall conform to the following regulations:

1. Exempt Fencing -- Fencing used for agricultural purposes shall be exempt from all regulations except for the maintenance requirements detailed below. Additionally, non-boundary fencing located more than 25 feet from any property line shall be exempt.
2. Height -- Fences up to four (4) feet in height shall be allowed by right. Fences above four (4) feet in height shall require a Special Use Permit granted by the Zoning Board of Appeals. The Zoning Board of Appeals shall consider visibility from adjacent properties, light and air movement, and purpose of the fence, in addition to the criteria in Article 13.
3. Setback from road -- Fences shall be set back a minimum of ten (10) feet from the edge of the road or street and shall not be located within the roadway right-of-way. All fences shall conform to the requirements of Article 8, Section 8.2 (K), Visual Clearance.
4. Proximity to Neighboring Properties -- All fences and walls shall be located no closer than two (2) feet from adjacent property lines. This setback can be waived if agreed to in writing by adjacent property owners and a copy of such written agreement is submitted to the Municipal Clerk for filing.
5. Fire Hazard -- Any fence which shall be considered to be a fire hazard by the Code Enforcement Officer shall be prohibited.
6. Finished Sides -- The finished sides of all fences must face adjacent properties. This rule can be waived if agreed to in writing by adjacent property owners and a copy of such written agreement is submitted to the Municipal Clerk for filing.

7. Maintenance -- all fences shall be maintained structurally and visually.
8. Any fence erected in a required front yard in a residential district shall be of an open design, such as chain link, ornamental iron, and rail or picket fencing. Opaque fences such as basket-weave and stockade are not permitted within the required front yard.
9. No fence may be constructed with barbed wire, metal spikes, or any other sharp pointed materials. All chain link fences shall be installed with the knuckle portion of the fence up and with the barb portion of the fence on or near the ground. No fence may be electrified, except that a low voltage electrified wire may be strung for the purposes of confining a house hold pet on its owner's property.

O. Reduction in Minimum Lot Size Requirements

For lots to be used for single family dwellings in the Agricultural-Forestry-Residential (A-F-R) District the minimum lot size requirement may be reduced upon the provision of certain municipal services. If the single family dwelling is connected to either a municipal water or sewer system, the minimum lot size may be reduced by 25 percent. If the single family dwelling is connected to both a municipal water system and a municipal sewer system, the minimum lot size may be reduced by 50 percent.

Section 8.3 – Planned Unit Development

A. Purpose

Planned Unit Developments (PUD) are allowed in the Agricultural-Forestry-Residential (A-F-R) District in order to encourage the establishment of common open space, to achieve economy in the provision and maintenance of public facilities, to allow flexibility in design, to preserve natural drainage systems, and to preserve the natural and scenic features.

B. Authorization to Review Planned Unit Developments

1. Authorization is hereby granted to the municipality, pursuant to Section 278 of NYS Town Law to vary the zoning requirements as to lot size, lot width, and yard requirements, pursuant to its administration of the Subdivision Regulations of the Municipality of Randolph.
2. Planned Unit Developments shall comprise at least five (5) acres.
3. Application for Establishment of a Planned Unit Development will be submitted to the Code Enforcement Officer who will review the application and forward to the Municipal Board with recommendations. The Municipal Board shall refer the application to the Planning Board and Zoning Board of Appeals for consideration.

4. The Municipal Board shall require the applicant to furnish such preliminary plans, drawings and specifications as may be required for an understanding of the proposed development. In reaching its decision on the proposed development, the Planning Board; in conjunction, with The Zoning Board of Appeals shall consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property, and consideration of existing Zoning Ordinances.
5. Both the Planning Board and Zoning Board of Appeals shall approve, approve with modifications, or disapprove such applications and shall report their decision to the Municipal Board.
6. The Municipal Board shall hold a public hearing on the proposal, using public notice as provided by ordinance in the case of an amendment to the Zoning Ordinance.
7. Following the public hearing the Planning Board and Zoning Board of Appeals will determine if an additional public hearing is required.
8. The Municipal Board may either approve or disapprove the submitted Planned Unit Development. If approved the boundaries will be defined accordingly, but such action shall have the effect only of granting permission for development of the specific proposed use in accordance with the specifications, plans and elevations filed with the Municipal Board.
9. Where an application for a Special Use Permit would otherwise be required for a use that is proposed to be part of a Planned Unit Development (for example, a golf course), the Municipal Board shall consider that use as part of the entire application for a Planned Unit Development. A separate Special Use Permit shall not be required.

C. Applicability

1. Only major subdivisions shall be eligible for consideration for planned unit development.
2. The permitted, accessory and special permitted uses within a planned unit development shall be the same as those otherwise allowed in the Zoning District in which the development is located.

D. Density

1. Although lot size and width may be reduced in a cluster development, the overall density of the development shall not exceed that which would be allowed under a conventional subdivision design, in the Planning Board's judgment. In order to determine the number of dwelling units and/or building lots, the parcel to be subdivided shall be adjusted as follows:

- a. Land used by public utilities or structures, or recorded easements or rights-of-way shall be subtracted from the total gross land area.
- b. Water bodies, designated wetlands, unstable soils and floodplains shall be subtracted from the total gross land area.
- c. Any other areas deemed unbuildable by the Planning Board because of topographic, geologic or hydrological characteristics and steep slopes (over 25%) shall be subtracted from the total gross land area.
- d. For the purpose of providing land for streets, after deductions have been made in accordance with subsections (a), (b), and (c) above, ten percent of the remaining area shall be subtracted from the total gross area.
- e. The remaining land area shall be the amount used to determine the allowable number of building lots; this shall be determined by dividing the area by the number of units per acre allowed in the Zoning Ordinance for the district in which the property is located. A fraction of a unit greater than one-half shall be rounded up to the nearest whole number. A fraction of a unit of one-half or less shall be rounded down to the nearest whole number.

E. Layout Design Considerations

In large scale subdivisions, the Planning Board may consider the layout of small clusters within the development, each having some open space immediately surrounding it, as a goal of proper site planning, so that a large, massive concentration of units with little or no differentiation can be avoided, and so that the character of the cluster development will match the character of the neighborhood in which it is located.

F. Required Open Space

The land that is saved through the reduction of lot sizes shall be placed in permanent, dedicated open space. The area of the dedicated open space must be equivalent to the total reduction in lot sizes.

The open space areas may include wetlands, floodplains, steep slopes, or other open space having meaningful scenic, ecological, environmental and/or recreational characteristics. The open space shall have such access; shape, size and location as is determined appropriate by the Planning Board to satisfy the intended purpose, but shall not include streets and parking areas. The open space may be publicly or privately owned; it need not be made available for use by the general public.

The required open space may be used for active or passive recreation or to preserve significant scenic or natural features of the site. The required open space may be used for agriculture, if the

Planning Board determines that there is not likely to be a conflict between the residential use of the lots and the agricultural use.

G. Ownership and Maintenance of Open Space

Open space areas may be either public open space or private open space. As used herein, "public open space" means land owned by the Municipality of Randolph or some other government agency. "Private open space" means lands which shall be owned in common by all of the owners of all of the lots in a Planned Unit Development, lands owned by a Homeowners Association, or lands owned by a not-for-profit corporation or other similar legal organization.

1. The permanent preservation of such open space areas shall be legally assured to the satisfaction of the Planning Board and the Municipal Board, by the filing of appropriate covenants, deed restrictions, easements, or other agreements, unless:
 - a. The Municipal Board agrees to accept the dedication of such open space areas. In making its determination the Municipal Board shall consider the intended use of the land, the size and location of the land, the availability of the open space to the public, and the cost of development and/or maintenance of such open space.
 - b. Such area is transferred to a conservation organization which is dedicated to the permanent preservation of open space and is approved by the Municipal Board. Said organization shall be required to submit satisfactory documents assuring the preservation of open spaces.
2. If the open space is not dedicated pursuant to the provisions of Section 8.3 G (1) above, it shall be protected by legal arrangements, satisfactory to the Municipal Board, sufficient to assure its maintenance and preservation for whatever purpose is intended.
3. Covenants or other legal arrangements shall specify ownership of the open space, the method of maintenance, responsibility for maintenance, maintenance taxes and insurance, compulsory membership and compulsory assessment provisions, guarantees that any association formed to own and maintain open space will not be dissolved without the consent of the Municipal Board, and any other specifications deemed necessary by the Municipal Board.
4. In addition, The Municipality of Randolph shall be legally empowered to enforce the covenants in the event of failure of compliance. If the Municipality is required to perform any maintenance work, the Municipality shall be empowered to place a lien upon the properties in the development until said cost has been repaid to the Municipality.
5. The covenant shall further require that the applicant and/or property owner shall be a member of any association formed to own and maintain the open space; such membership shall continue until all of the lots of record have been sold.

6. Dedication of all common areas shall be recorded directly on the final plat. Re-subdivision of such areas is prohibited.
7. Except where otherwise approved by the Planning Board, open space land areas shall be preserved in their natural state, and use of such areas shall be limited to appropriate conservation, open space, and recreational purposes as may be determined by the Planning Board. No structures may be built in the required open space, except with Planning Board approval.

H. Pre-Application Conference - Prior to submitting a formal application, the applicant may meet with the Municipal Board to informally discuss the proposed project. At this time the applicant can inform the Board of the proposal prior to the preparation of a detailed Planned Unit Development application. The Board can review the basic design concept and advise the applicant as to potential problems and concerns and can generally determine the type of information that would be required for the Planned Unit Development application.

I. Application Requirements - The application shall contain the following items:

1. A map of the existing site, showing the following information:
 - a. A vicinity map, showing the project site in relation to the surrounding area
 - b. Scale and north arrow
 - c. Site boundaries and dimensions
 - d. Location and type of existing vegetation
 - e. The 100-year floodplain and/or any New York State designated wet lands
 - f. Existing structures and their current uses
 - g. Existing roads and other improvements
 - h. Location of public utilities and utility easements
 - i. Any other data that may be required by the Municipal Board
2. A map showing the major details of the proposed Planned Unit Development. This map shall be at a scale of not less than 1" = 100'. The plan shall contain sufficient detail to evaluate the land planning, building design, and other features of the proposed Planned Unit

Development. The plan shall contain the following information:

- a. Scale and north arrow
 - b. Proposed name of the development
 - c. Topography of the site showing existing and proposed contours at no greater than five foot intervals.
 - d. The location and size of all existing and proposed buildings, structures and improvements.
 - e. A landscaping plan
 - f. Streets, walkways and easements to be reserved for public use.
 - g. Location and general dimension of all proposed impervious paved areas such as streets, walks, parking lots, tennis courts, etc.
 - h. Proposed open spaces with an indication as to use and ultimate ownership
 - i. Proposed drainage systems and runoff control
 - j. Proposed utility distribution
 - k. Proposed traffic circulation showing access to the existing street system.
 - l. Perspective sketches showing general architectural concepts of all new or remodeled buildings.
 - m. Maximum height, dimensions, and square footage of all buildings.
 - n. Area and dimensions of all lots proposed to be created as part of the project
 - o. A lighting plan
 - p. Any other information required by the Municipal Board
3. A written statement containing the following information:
- a. A statement of the present and future ownership and tenancy of the Planned Unit Development.
 - b. A development schedule indicating the approximate date when construction of the Planned Unit Development, including any phases of the development, can be expected to begin and to be completed.

- c. Copies of any special agreements, conveyances, restrictions, or covenants which will govern the use, maintenance and continued protection of the Planned Unit Development and its common areas, including the required open space areas.
- d. At its discretion, the Municipal Board may waive the requirement for submittal of one or more of the above listed items.

J. Criteria for Review - In acting on an application for a Planned Unit Development, the Town Board shall consider the following criteria:

1. Individual lots, buildings, streets, and parking areas shall be designed and located to minimize alteration of the prominent natural features of the site. Natural features include, but are not limited to, streambeds, wooded hillsides and land forms with slopes greater than twenty-five percent (25%).
2. Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between the development and the land.
3. Individual lots, buildings, and units shall be arranged and situated to relate to each other and to surrounding properties and to decrease the land area devoted to motor vehicle access.
4. Individual lots, buildings, units, and parking areas shall be situated to avoid the adverse effects of shadows, noise, and traffic on the residents of the site and on adjacent sites.
5. The design of the Planned Unit Development shall preserve any significant natural, scenic, or historic features of the site.
6. The Planned Unit Development shall be in harmony with the general purposes, goals, objectives and standards of this Zoning Ordinance.
7. The Planned Unit Development shall not adversely affect neighboring property.
8. The Planned Unit Development shall have an adequate water supply and an adequate system for the disposal of sewage.
9. Streets and storm water drainage systems shall meet all the requirements of the Municipality of Randolph and New York State Department of Environmental Conservation (DEC).
10. A single structure shall not exceed 120 feet in length, unless it meets the following guidelines:
 - a. A prominent shift in the mass of the structure shall occur at each 120-foot interval (or

less). The shift shall be in the form of either a 15-foot change in building facade alignment or a 15-foot change in roofline.

- b. A combination of both a roof line and a facade change is encouraged and to that end, if the combined change occurs at the same location in the building plane, a 15-foot total change will be considered as compliance with this section.
11. The Planned Unit Development shall meet all the parking requirements of this Zoning Ordinance. Use of shared parking areas is encouraged.
 12. The adequacy of the proposed landscaping.
 13. The adequacy of lighting for the Planned Unit Development and its lack of impact on neighboring properties.
 14. The adequacy of the internal circulation system.
 15. The relationship of the proposed development to the one hundred (100) year floodplain, to state designated wetlands and to other geologic hazards.
 16. The Planned Development shall contain the open space required by Article 8, Section 8.3 F. The open space may be used for recreational purposes, or it may be used to preserve natural areas or scenic view sheds. The open space area or areas shall be conveyed in such a manner that they remain permanent open space. The open space area or areas on the parcel may be conveyed to the Municipality of Randolph, or it may be held as private open space. In assessing the suitability and usability of the required open space, the Municipal Board shall use the following criteria:
 - a. All Planned Unit Developments shall contain open space that is equivalent in area to the total reduction in lot size.
 - b. The usability of open space intended for a recreational or public use shall be determined by the size, shape, topography, and location of the open space in relation to the particular use proposed for that site.
 - c. Open space intended for a recreational or public use shall be easily accessible.
 - d. Open space shall include irreplaceable natural features, such as, but not limited to, stream beds, significant stands of trees, scenic vistas, and rock outcroppings.
 - e. The suitability of open space intended for scenic value and purposes shall be determined by its visibility from a significant number of units or buildings or from a significant length of public streets.
 - f. Open space shall not include areas devoted to public or private streets.

- K. Review and Filing of Plat** - Upon filing of the final plat in the Office of the Cattaraugus County Clerk, the sub divider shall also file a copy of the final plat with the Municipal Clerk. The Municipal Clerk shall make appropriate references to the final plat on the Municipal Zoning Map.
- L. Expiration of Approval for the Planned Unit Development** - Construction of an approved Planned Unit Development shall commence within one year of the approval of a Planned Unit Development and shall continue in accordance with the schedule approved by the Municipal Board of Trustees. If construction does not commence within this time period, or if construction does not continue according to the established schedule, the approval of the Planned Unit Development shall expire. An extension of the original approval may be granted by the Municipal Board, prior to its expiration, upon written application by the developer.
- M. State Environmental Quality Review Act** - Prior to taking final action on an application for Planned Unit Development, the Municipal Board shall comply with all the requirements of the State Environmental Quality Review Act.

Schedule A – District Use Regulations

TYPE OF USE	Agricultural Forestry Residential	Commercial	Expressway	Floodway Fringe & Floodway	Residential
Accessory Apartments	SP	SP			
Accessory uses	P	P			P
Adult uses	SP				
Agricultural uses, general	P			SP	SP
Agricultural uses, intensive	SP				
Airports / airstrips	SP				
Aquaculture	SP				
Automobile body shop	SP	SP			
Automobile repair shop	SP	SP			
Automobile sales	SP	SP		SP	
Banks	SP	P			
Bars	SP	SP			
Bed & breakfast establishments	SP	SP			SP
Campgrounds	SP				
Commercial recreation	SP	SP		SP	SP
Commercial schools	SP	P			
Cemeteries	SP				SP
Child care center	SP	SP			SP
Clubs	SP	SP			
Contractor's yard	SP				
Day care facilities	SP	SP			SP
Drive in theater	SP			SP	

Schedule A – District Use Regulations

TYPE OF USE	Agricultural Forestry Residential	Commercial	Expressway	Floodway Fringe & Floodway	Residential
Drive through windows	SP	SP			
Drug store / pharmacy	SP	SP			
Dwelling – single family	P	SP			P
Dwelling – two families	P	SP			SP
Entertainment facilities	SP	SP			
Essential services	SP	SP	SP	SP	SP
Farm Stand (seasonal)	P	SP		SP	P
Feed & grain storage facilities	SP				
Fence (see article 8 section 8.2.N)	SP	SP		SP	SP
Forestry	P			SP	SP
Food processing establishment	SP	SP			
Fuel bulk station	SP				
Gas station	SP	SP			
Golf Courses	SP				SP
Greenhouses	P	SP			
Grocery stores	SP	SP			
Heavy equipment storage	SP				
Home occupation, minor	P	P			P
Home occupation, major	SP	SP			SP
Hotels and motels	SP	SP			
Junk yard	SP				
Kennels	SP	SP			

Schedule A – District Use Regulations

TYPE OF USE	Agricultural Forestry Residential	Commercial	Expressway	Floodway Fringe & Floodway	Residential
Laundromat	SP	SP			
Limited access highway			P		
Lumber & building supplies	SP	SP			
Machine Shops	SP	SP			
Manufactured / mobile homes	SP				
Manufactured / mobile home park	SP				
Manufacturing	SP	SP			
Medical Clinics	SP	SP			SP
Mining, quarrying, sand and gravel Extraction, removal of topsoil	SP			SP	
Mortuaries	SP	SP			
Nursery schools	SP	SP			SP
Nursing homes	SP	SP			SP
Offices	SP	SP			
Oil and gas wells, tanks and lines	SP				
Parks	SP				SP
Personal service establishments	SP	SP			SP
Photographic studios	SP	SP			
Places of Worship	SP	SP			SP
Plant Resources	P	SP			SP
Private Schools	SP	SP			SP
Public sanitary landfills	SP				
Public uses	SP	SP		SP	SP

Schedule A – District Use Regulations

TYPE OF USE	Agricultural Forestry Residential	Commercial	Expressway	Floodway Fringe & Floodway	Residential
Radio & television towers	SP				
Recycling centers	SP	SP			
Repair shops, general	SP	SP			
Repair shops, personal services	SP	SP			
Research & development facility	SP	SP			
Rest home	SP	SP			SP
Restaurant	SP	SP			
Retail business	SP	SP			
Salvage yard	SP				
Sawmill	SP				
Self-service storage facility	SP	SP			
Semipublic use	SP	SP			SP
Specialized animal care and raising	SP				
Seasonal residence	SP				
Solar Energy	SP	SP	SP	SP	SP
Telecommunication facility	SP	SP			
Telecommunication towers	SP	SP			
Theater	SP	SP			
Tourist Home	SP	SP			SP
Transient amusement enterprises	SP			SP	
Veterinary hospital and / or clinic	SP	SP			

Schedule A – District Use Regulations

TYPE OF USE	Agricultural Forestry Residential	Commercial	Expressway	Floodway Fringe & Floodway	Residential
Warehouse	SP	SP			
Wind Turbines Non-commercial	SP	SP		SP	SP
Wind Turbines Commercial	SP				
Wholesale business	SP	SP			
Wood burning furnace	P				

1) Key to abbreviations: P = permitted

SP = special use permit required

No Letter = not permitted

Floodway and floodway fringe districts are subject to regulations in zones adjacent to them on the zoning map plus supplementary regulations under Article 10, section 10.26

Schedule B – Table of Dimensional Regulations

	<u>Agricultural</u> <u>Forestry</u>				
	Residential (3)	Commercial (2)	Expressway	Floodway (4)	Residential
Minimum Lot Area (5)					
Minimum Lot Size	1 acre	10,000 sqft	n/a	not permitted	20,000 sqft
Other	2 acres	n/a	n/a	9 acres	n/a
Minimum Lot Width	150 ft	75 ft	n/a	450 ft	80 ft
Minimum Yard Dimensions (1)					
Front	50 ft	(6)	n/a	180 ft	25 ft
<u>Residential Structures</u>					
Side – principle structure	25 ft minimum 50 ft total	(6)	n/a n/a	n/a	10 ft minimum <u>30 feet total</u>
Rear – principle structure	50 ft minimum				25 ft minimum
Side – accessory structure	15 ft minimum				10 ft minimum
Rear – accessory structure	15 ft minimum				10 ft minimum
<u>Non-Residential Structure</u>					
Side – major structure	50 ft each side	(6)	n/a	225 ft	10 ft minimum <u>30 feet total</u>
Rear – major structure	50 ft	10 ft	n/a	180 ft	25 ft
Side – accessory structure	25 ft minimum				10 ft minimum
Rear – accessory structure	25 ft minimum				10 ft minimum

Schedule B – Table of Dimensional Regulations

	<u>Agricultural</u> <u>Forestry</u> Residential	Commercial (2)	Expressway	Floodway (4)	Residential
Maximum Building Height	40 ft	40 ft	n/a	40 ft	40 ft
Maximum % of Lot Coverage	25 %	90 %	n/a	25 %	40 %
Minimum Floor Area					
Permanent Residential Structure	800 sqft (per family)	n/a	n/a	residences not permitted	800 sqft (per family)
Seasonal Single Story	450sqft	n/a	n/a		n/a

1. Along any U.S., State or County Highway, no residential or accessory building shall be located within 50 feet of the existing or proposed right-of-way line. (Generally 25 feet from the center line for the County)
2. Commercial uses shall not be located or conducted within 30 feet of any lot line or other lot in a residential district.
3. Minimum lot area requirements in the Residential District may be reduced by 25% if **either** an approved combined sewage treatment system or an approved public water supply system is provided, and by 50% if **both** approved systems are provided. If both are provided yard dimensions may be decreased by 20%.
4. Floodway and Floodway Fringe areas are subject to regulations in zones adjacent to them on the zoning map plus supplementary regulations under Article 10, section 10.26.
5. The Cattaraugus County Board of Health may require a large minimum.
6. See State and County Codes.

ARTICLE 9– NON-CONFORMING BUILDINGS & USES

Section 9.1 – Continuation of Use

Except as otherwise provided herein, any lawfully established use of a building or land existing at the time of the enactment of this ordinance or amendments thereto may be continued although such use does not conform with the provisions of this ordinance.

Section 9.2 – Discontinuance of Use

- A. Whenever any part of a building, structure or land occupied by a non-conforming use is changed to or replaced by a use conforming to the provisions of this ordinance, such premises shall not thereafter be used or occupied by a non-conforming use.
- B. Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued, as evidenced by vacancy, for a period of twelve consecutive months, or whenever there is evident a clear intent on the part of the owner to abandon a non- conforming use, such use shall not after being discontinued or abandoned be re-established, and the use of the premises thereafter shall be in conformity with the regulations of the district.
- C. Where no enclosed building is involved, voluntary discontinuance of a non-conforming use other than agriculture for a period of six months shall constitute abandonment, and shall not thereafter be used in a non-conforming manner.
- D. Non-conforming trailers or mobile homes located on a lot in the Residential District, once removed, shall not be relocated on such lot or replaced with another trailer or mobile home.

Section 9.3 – Change of Use

The non-conforming use of any building, structure or portion thereof may be changed, with the approval of the Zoning Board of Appeals, to a use of a more restricted classification, and when so changed shall not thereafter be changed to a less restricted classification.

Section 9.4 – Repairs and Alterations

Normal maintenance of a non-conforming building is permitted. However, such building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost twenty-five (25) percent of the true value of the building unless changed to a conforming use.

Section 9.5 – Extension

A non-conforming use shall not be extended, but the extension of a lawful use to any portion of a non-conforming building designed or manifestly arranged for such use, which existed prior to the enactment of this ordinance, shall not be deemed the extension of such non-conforming use.

Section 9.6 – Restoration

No building destroyed by fire or any other cause to the extent of fifty percent (50%) of its full value shall be repaired or rebuilt except in conformity with the regulations of this local ordinance. Application for a permit to rebuild or restore the damaged portion of any non-conforming building, as described in this section, shall be filed within six months of the day of such damage. If approved, the permit for such rebuilding and restoration shall be granted for a period of one (1) year and shall not be renewable.

Section 9.7 – District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any non- conforming uses existing therein.

ARTICLE 10 – SUPPLEMENTARY REGULATIONS

Section 10.1 – Application.

In addition to all other requirements set forth in this ordinance, the following supplementary regulations shall apply, except as herein specified, in all Zoning Districts created by this ordinance and all amendments here to.

Section 10.2 – Performance Requirements

No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable element or condition and a Zoning Permit shall not be issued unless the following performance requirements are observed to the satisfaction of and approved in writing by the Code Enforcement Officer and the Cattaraugus County Health Department. Failure to continue to conform to these performance standards may result in the revocation of the Zoning Permit.

- A. Air Pollution.** No pollution of air by flying ash, dust vapors or other substance shall be permitted which is harmful to health, animals, vegetation or other property, or which can cause excessive soiling.
- B. Water Pollution.** No pollution of water by chemicals or other substances shall be permitted which is unhealthy to animal or plant life as determined by the Cattaraugus County Health Department.
- C. Fire Hazards.** Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate firefighting and suppression equipment and by such other safety devices as are normally used in the handling of such materials.
- D. Radioactivity or Electrical Disturbance.** No activity shall emit dangerous radioactivity or electrical disturbance at any point where it may adversely affect other land uses in the Town.
- E. Erosion.** No erosion by either wind or water shall be permitted which will carry objectionable substances onto neighboring properties. Conservation measures constructed shall require approval of the Cattaraugus County Soil and Water Conservation District.
- F. Noise.**
 - 1. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this Zoning Ordinance shall be as established for the time period and type of land use district listed below. Sound shall not exceed the limits at the property line as established by the County and State.

Sound Pressure Level Limits Measured in dB(A)s

	<u>7 a.m.-10 p.m.</u>	<u>10 p.m.-7 a.m.</u>
Commercial Districts	65	55
Residential Districts	55	45

2. The levels specified may be exceeded by 10 dB(A) for a single period, no longer than 15 minutes, in any one day.
3. Where the emitting and receiving premises are in different Zoning Districts, the limits governing the stricter zone shall apply to any regulated noise entering that Zoning District.
4. Sound pressure levels shall be measured at all major lot lines, at a height of at least four (4) feet above the ground surface. Noise shall be measured with an approved sound level meter using procedures meeting the current standards of the American National Standards Institute, (ANSI) and approved by the Town of Randolph.

Section 10.3 – No More than one Single-Family Residence per Lot

In all districts where single family dwellings are permitted, a lot may be developed for such use in accordance with the requirements of this Zoning Ordinance, provided that there shall be no more than one single family dwelling unit on each lot. If two or more single family dwelling units are proposed to be located on the same lot, the lot shall be subdivided prior to the construction of the new dwellings, and each new lot shall meet all the requirements of this ordinance.

Where two-family and multiple family dwelling units are allowed in Article 8 Schedule A, more than one dwelling unit may be allowed on each lot, pursuant to the provisions of this ordinance.

For non-residential land uses, more than one permitted principal use may be allowed on a single lot, subject to obtaining a special use permit from the Zoning Board of Appeals, pursuant to the procedures in Article 13. In order for the Zoning Board to grant such a special use permit, the Board must find that the yard, area and other requirements of this ordinance can be met for each individual structure as if they were on individual lots, in addition to the general standards contained in Article 13.

Section 10.4 – Private Swimming Pools

Privately owned swimming pools shall be a permitted accessory use to a residential use in any district that permits residential uses. They shall comply with the “State Uniform Fire Prevention and Building Code” in addition to the following:

- A. The pool is intended and used for the enjoyment of the occupants of the residence and their guests, without charge and without purpose of profit.

- B. An outdoor swimming pool may be permitted in a required side or rear yard, provided that the pool shall be set back a minimum of fifteen (15) feet from the side and rear lot lines.

Section 10.5 – Accessory Apartments.

- A. There shall be no more than one (1) accessory apartment per lot.
- B. The applicant must show that the existing sewage disposal system and water supply are adequate to support the accessory apartment.
- C. The applicant must show that there is adequate off-street parking for the occupants of the accessory apartment, in addition to the parking required for the primary residence. One off-street parking space must be provided for the accessory apartment, in addition to the required parking for the principal dwelling unit.
- D. The minimum floor area for an accessory apartment within a principal dwelling unit shall be three hundred (300) square feet, but in no case shall it exceed twenty-five percent (25%) of the original gross floor area of the principal dwelling unit, unless, in the findings of the Zoning Board of Appeals, a greater floor area is warranted by the specific circumstances of the particular building.
- E. If an accessory apartment is located in the principal dwelling unit, the entry to such unit and its design shall be such that, to the maximum degree feasible, the appearance of the building will remain that of a single family dwelling.
- F. For accessory apartments located in a freestanding building, the minimum floor area shall also be three hundred (300) square feet, and there shall be no more than two (2) bedrooms in the unit. The size of the accessory apartment cannot exceed twenty-five (25) percent of the gross floor area of the principal dwelling unit, unless, in the opinion of the Zoning Board of Appeals, a greater floor area is warranted by the specific circumstances of the application.

Section 10.6 – Bed and Breakfast Establishments

When granted a special use permit, Bed and Breakfast Establishments may be allowed, subject to the following provisions:

- A. The dwelling in which the Bed and Breakfast operates shall be the principal residence of the operator and/or owner and the operator and/or owner shall live on the premises.
- B. A single non-illuminated identification sign; not to exceed two (2) square feet in area (one foot by two feet), may be permitted in the residential district. One non-illuminated sign; not to exceed six (6) square feet in area (two feet by three feet), may be permitted in the agricultural-forestry-residential (A-F-R) district.

- C. One off-street parking space shall be provided for every room which is rented, in addition to the parking that is required for the owner/occupants of the building.
- D. A bed and breakfast establishment shall contain a maximum of five (5) rooms available for overnight guests, if within a residential zone.

Section 10.7 – Manufactured Home Parks and Manufactured Homes.

A. Manufactured Home Parks - Where permitted in Article 8, Schedule A of this ordinance, a manufactured home park shall conform to the following requirements:

1. An application for a manufactured home park permit shall be filed with and issued by the Municipal Board subject to the approval of the Cattaraugus County Health Department. The application shall be in writing, signed by the applicant and shall include the following:
 - a. Name and address of applicant
 - b. Location and legal description of the park.
 - c. A complete plan of the park in conformity with the following:
 1. Shall be located on a well-drained site, properly graded to insure rapid drainage.
 2. Shall contain a minimum of four (4) acres.
 3. Manufactured home spaces shall be provided consisting of a minimum of 6,000 square feet for each space, with a minimum width of 40feet.
 4. There shall be at least a 20-foot clearance between individual manufactured homes and between manufactured homes and any permanent structure on or adjacent to the park.
 5. All manufactured homes shall front on an approved interior street that shall be either a public street or a private street that meets all of the Municipalities requirements for a public street.
 6. An adequate and tested supply of pure water for drinking and domestic purposes shall be supplied to all manufactured home spaces within the park.
 7. No manufactured home shall be located closer than 40 feet to any property line or 60 feet to any exterior street right-of-way line.
 8. A combined sewage treatment and disposal system shall be provided as recommended and approved by the Cattaraugus County Health Department.

9. Adequate garbage disposal facilities, as approved by the Cattaraugus County Health Department, shall be provided.
 10. Every park shall have a fire protection plan approved by the Fire Department having local jurisdiction.
 11. No more than one manufactured home may be placed on a manufactured home space.
 12. No more than five manufactured home lots shall be permitted per gross acre.
 13. A landscaped buffer shall be planted and maintained within this required setback area. A landscape plan for the buffer area shall be approved by the Zoning Board of Appeals. Plantings in the buffer may include evergreen trees, deciduous trees, hedges, etc. Any such plantings shall be arranged around entrances and exits so as not to interfere with site distance and vehicular safety. Fencing may also be required in the buffer area.
 14. All exposed ground surfaces in any manufactured home park shall be paved, surfaced with crushed stone or similar material, or protected with grass or other ground cover capable of preventing erosion and of eliminating objectionable dust and mud.
 15. A hard-surfaced parking pad, which can accommodate two personal vehicles, shall be provided on each manufactured home space.
 16. No outdoor storage of personal property shall be permitted, except within a accessory storage shed not exceeding one hundred sixty (160) square feet in size. All storage buildings shall be placed on a firm foundation. A maximum of one storage shed per manufactured home space shall be permitted.
 17. All manufactured homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home. If feasible, the tongue shall be removed. Skirting shall be completed within thirty (30) days of the date the manufactured home was placed on the site.
 18. All utility lines shall be placed under ground.
- d. Any other information deemed necessary by the Zoning Board of Appeals.
2. The Town Board may revoke any permit to maintain and operate a park when the licensee has been found guilty by a court of competent jurisdiction of violating any provision of this ordinance.
 3. Annual Inspection

- a. An annual inspection shall be conducted by the Code Enforcement Officer to ensure that all aspects of the conditions of approval of the Special Use permit are still in compliance. The Code Enforcement Officer shall report his/her findings to the Zoning Board of Appeals.
- b. If, upon inspection, it is found that the permit holder has violated any provisions of the grant of Special Use permit, or any other provisions of this ordinance, the Zoning Board shall have the authority to suspend such permit and to order the manufactured home park closed, after notice has been given to the permit holder and after said permit holder has had the opportunity to appear at a public hearing to be held in accordance with the public hearing requirements in Article 13 of this ordinance.

B. Manufactured Homes on Individual Lots - Where permitted in Article 8 Schedule A of this Zoning Ordinance by special use permit, a manufactured home may be permitted on a single residential lot, provided that it conforms to the following requirements:

1. The manufactured home shall be the principal use on the lot. The manufactured home shall conform to all setbacks and other dimensional requirements of the Zoning District.
2. The manufactured home shall contain a minimum floor area of 800 square feet.
3. Plans shall be submitted to the Cattaraugus County Health Department for approval of the water supply and sewage disposal systems. Approval by the County Health Department shall be in writing.
4. The manufactured home shall be installed on and secured to a permanent foundation in accordance with New York state requirements. The wheels shall be removed.
5. Skirting or solid material screening the space between the manufactured home floor and the ground shall be installed within 30 days of the installation of the manufactured home on the lot. All manufactured homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home.
6. No more than one (1) manufactured home may be located on one lot, unless a permit has been granted for a Manufactured Home Park or approved for agricultural employee use.

Section 10.8 – Recreation Vehicles and Trailers

Recreation or vacation trailers may be located and used in the residential district for 30 days, subject to obtaining a special use permit from the Zoning Board of Appeals. Said permit may be renewed by the Zoning Board of Appeals for a total consecutive period up to one hundred eighty (180) days.

Recreation or vacation trailers may be located and used in the agricultural/forestry/residential district for a

total of 180 days, subject to obtaining a permit from the Code Enforcement Officer. Individual recreation or vacation trailers owned by residents of the municipality may be stored on the property of the owner for an unlimited period, provided that no residence is taken therein or business conducted therewith.

Section 10.9 – Seasonal Residences

A seasonal residence may be located and used within the Agricultural / Forestry / Residential District for a total of 180 days; subject to the approval of the Zoning Board of Appeals. The seasonal residence shall be provided with adequate water supply and sewage disposal facilities constructed to the standards of the Cattaraugus County Department of Health. Approval in writing from the Cattaraugus County Department of Health shall be submitted prior to the issuance of a building permit. Minimum floor area requirements shall comply with the standards contained in Article 8 schedule B of this ordinance.

Section 10.10 – Temporary Buildings

Temporary buildings or trailers, other than buildings or trailers for living purposes, to be used in connection with construction work as a tool house or field office or similar use, may be permitted in any district during the period that the construction work is in progress, but such temporary buildings shall be removed within thirty (30) days of the completion of such work. Permits for temporary, non-residential buildings shall be issued by the Zoning Board of Appeals for a period of one year.

Temporary buildings or trailers, for residential purposes, may be permitted in any district in which residential uses are allowed; during the period that construction of a permanent residence is in progress. Such temporary buildings shall be removed within thirty (30) days of the completion of such work or of the expiration of the special use permit, whichever occurs first. All temporary residential buildings or trailers shall have approved sanitary facilities and approved water supply systems, constructed to the standards of the Cattaraugus County Department of Health. Approval, in writing from the Cattaraugus County Department of Health shall be submitted prior to the issuance of a permit for a temporary building or trailer. Permits for temporary residential buildings shall be issued by the Zoning Board of Appeals. All permits for temporary residential buildings shall be issued for a period of one year. Prior to the issuance of a permit for a temporary residential building or trailers, the applicant shall demonstrate to the Zoning Board of Appeals that he/she has been issued a valid building permit for the construction of the permanent residence.

Section 10.11 – Accessory Homes for Agricultural Workers

The Zoning Board of Appeals may, by grant of special use permit, allow manufactured housing to be placed on a parcel used for agriculture, in addition to the primary residence on the same parcel. The purpose of the accessory manufactured home shall be to provide housing for an agricultural worker and his/her family. The agricultural worker shall be employed on said farm or agricultural enterprise.

Section 10.12 – Automobile Graveyards, Junk Yards, and Salvage Yards

Where permitted in Article 8 Schedule A of this ordinance as a special use with the Board of Zoning Appeals approval, all automobile graveyards and junk yards shall conform to the following requirements:

- A.** The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- B.** The permittee must maintain an office and a sufficient number of employees on the premises to assure the proper and safe conduct of such activity or business, to minimize the fire hazard there from and to prevent improper trespass thereon by children and others.
- C.** The permittee must erect and maintain in good condition a solid eight-foot fence of wood or other acceptable material, adequate to prohibit the entrance of children and others into the area of the activity or business and to contain within such fence the materials dealt in by the permittee, and such are a abuts a residential area or public street or highway, such fence shall be at least fifty (50) feet from the boundary line or right-of-way thereof. All the materials dealt in by the permittee shall be kept within such fence at all times. Where the topography, existing trees or other considerations accomplish the purposes of screening, the fencing requirements may be reduced by the Board of Zoning Appeals.
- D.** When the area is not supervised by the permittee or his employees, the fence shall be locked at a secure gate in a secure manner.
- E.** The area of the permit tee's activity or business shall not be used as a dump area or as a place for the burning and disposal of junk or trash.
- F.** Law Enforcement, the Code Enforcement Officer, or the Town Board or any of its representatives shall be granted access to the area of the activity or business of the permittee at all reasonable hours to inspect the same for compliance here with.
- G.** No person shall keep or maintain more than one junk yard at a single location by virtue of one permit.
- H.** Open fires are prohibited. Requests for special burning permits may be made to the New York State Department of Environmental Conservation.
- I.** The autos, parts and materials dealt in by the permittee shall be disassembled or dismantled by means other than by burning. They shall be piled less than seven feet high and arranged in neat rows so as to permit easy, clear passage through the area.
- J.** There shall be maintained at each such place of activity or business for which a permit is issued at least two (2) fire extinguishers of approved design and capacity for each 40,000 square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available.
- K.** All activities of the permittee relating to the special use permit such as dismantling, accumulation or storage and buying or selling shall be conducted only from the property described in the special use

permit.

- L.** Prior to approval of a special use permit by the Zoning Board of Appeals, the Board shall consider the following items:
 - 1. The nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gathering;
 - 2. Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke or of other causes.
 - 3. The clean, wholesome and attractive environment which is of vital importance to the continued general welfare of the citizens of the municipality of Randolph by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection, the Zoning Board may consider the type of road serving the junk yard or automobile graveyard or from which the junk yard or automobile graveyard can be seen, the natural or artificial barriers protecting the junk yard or automobile graveyard from view, the proximity of the proposed junk yard or automobile graveyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junk yard or automobile grave yard.
- M.** Notwithstanding any of the foregoing provisions of this section, no junk yard or automobile graveyard, hereafter established, shall be licensed to operate within five hundred (500) feet of a church, school, hospital, public building or place of public assembly.
- N.** Approval of a license for a junk yard or automobile graveyard shall be personal to the applicant and not assignable.
- O.** All automobile graveyards and junk yards shall be approved and licensed for a period of one year. Licenses shall be renewed annually thereafter upon payment of the annual license fee without an additional public hearing, provided all provisions of this ordinance and any conditions of approval are complied with throughout the period of operation and further provided that the junk yard or automobile graveyard does not become a public nuisance under the common law and further provided that the applicant is not convicted of any type of larceny or the receiving of stolen goods.
- P.** Established junkyards and automobile graveyards: A junk yard or automobile graveyard that is already lawfully established on the effective date of this amendment shall be considered approved by the Zoning Board of Appeals and the owner deemed suitable for the issuance of a license. Within sixty (60) days from the effective date of this amendment, however, the owner shall furnish the Zoning Board of Appeals with all the information required in an application, along with any license fee, and the Board shall issue him a license valid for one year. At the time of expiration of the license, the owner shall apply for renewal of the licenses as required in Subsection O, above. Such owner shall

comply with all other provisions of this section, including the fencing requirements.

Section 10.13 – Control of Excavation

Where permitted in Article 8 schedule A of this ordinance, all mining, quarrying, removal of topsoil, sand and gravel extraction shall conform to the following requirements:

- A.** The permittee must personally manage or be responsible for the management of the activity or business for which the permit is granted.
- B.** The permittee must submit to the Municipal Planning Board a plan of operation and a final grading, seeding and restoration plan for the excavation site. A Mining and Reclamation Plan submitted to the New York State Department of Environmental Conservation may be submitted to fulfill the latter requirement.
- C.** The Zoning Board shall approve or modify the plan of operation and shall approve the site restoration plan before the applicant may receive a Zoning Permit. Modifications may include, among other factors, setting limits on hours of operation and location of access.
- D.** No excavation shall take place within 1000 feet of any inhabited dwelling, except upon the written consent of the owners and residents of such dwelling. Excavation or stockpiling of materials shall be set back five hundred (500) feet from any abutting property line.
- E.** No excavation shall be performed to such a depth as to diminish, pollute or impede the water available to any such person drawing water from a private well located within 2000 feet of such excavation.
- F.** During any such excavation for sand, gravel or soil, the permittee shall be responsible for protection of excavation by the use of fences or natural barriers, once the excavation has proceeded to a depth of six feet or more below original gravel level, unless such excavation is leveled for or to such depth for a radial distance of at least 100 feet.
- G.** No gravel mine shall be designed in such a way as to cause excessive dust, noise, traffic or other conditions inappropriate for the neighborhood in which it is located, or so as to endanger the stability of adjacent land or structures.
- H.** Within 30 days of termination of excavation operations, the owner shall commence restoration of the site pursuant to the approved restoration plan. The owner shall be required to reclaim all affected areas within one (1) year of termination of the excavation or of the expiration of the permit, whichever occurs first.
- I.** Before the issuance of a permit, the applicant shall execute and file with the Municipal Clerk a performance bond, cash deposit or other security acceptable to the Municipal Board, in an amount to be fixed by the Zoning Board. Said bond shall remain in full force and effect until a certificate of completion of restoration has been issued by the Zoning Board. In the event the applicant has obtained

a New York State Department of Environmental Conservation Mining Permit, the Town's bonding requirements shall be waived.

Section 10.14 – Sanitation

The dumping of garbage or rubbish shall only be permitted in locations and under conditions approved by the Town Board and the Cattaraugus County Department of Health. Any new or modified facilities for the treatment, storage or disposal of sewage, including excreta, bath, sink and laundry wastes or trade wastes, shall be provided and installed in accordance with the rules, regulations and standards of New York State and Cattaraugus County Department of Health. Careful consideration shall be given to the location and construction of private water supplies to assure adequate protection of such supplies. Approval in writing from the Cattaraugus County Department of Health shall be submitted prior to the issuance of a building permit.

Section 10.15 – Debris, Weeds, and Junk in Residential and Commercial Zones

A. Purpose - The purpose of this section is to protect the health, safety and welfare of residents of the Municipality of Randolph by prohibiting certain types of excessively high vegetation and/or the presence of junk and debris, which may:

1. Cause a fire hazard
2. Furnish cover for prowlers
3. Obstruct visibility at street intersections
4. Result in the aggravation of allergies
5. Furnish a potential harborage or breeding place for disease-carrying insects, rodents, reptiles, other animals and poisonous snakes.
6. Impair the enjoyment of the outdoor environment from neighboring properties.

B. Condition of premises regulated; weeds and grass

1. **Duty of Owner.** The owners of all private property are hereby required to cut, trim or remove brush, fallen tree limbs, high grass, and weeds from their premises and keep such premises in a reasonably clean and sanitary condition to prevent the breeding of insects or vermin and to prevent the spread of noxious weeds to adjoining premises. Premises situated at street intersections or on curved streets shall be kept in such condition as to give a clear and unobstructed view of the intersection or curve.
2. **Exception.** The provisions of Article 10, Section 10.15 (B) (1) shall not be construed to prevent the raising of garden or cultivated crops or the maintenance of a natural landscaped area, or to

unreasonably require the cutting of grass and brush on undeveloped areas except in the immediate vicinity of other properties.

C. Littering

1. **Public Places.** No person shall throw or place any papers, trash, garbage, debris or junk in any street or street right-of-way, park, stream or stream bank, or any other public lands, except at the time and manner provided for the collection of garbage.
2. **Private Property.** No person, either as owner, lessee, agent, tenant or otherwise, of any lot, land, premises or improved property in the municipality, shall throw, cast, deposit or allow to accumulate thereon, any decomposable organic matter which might create a nuisance or act as a breeding place for flies or bugs or as food for rats or vermin; or any trash, debris, junk or discarded material or thing which is capable of holding water, which might serve as a breeding place for mosquitoes; or any combustible matter or material which might increase the fire hazard in his or neighboring property; or any junk motor vehicle; or any trash, rubbish, junk, debris, or any discarded material or thing which may serve to harbor vermin and/or which tends to produce an unsightly and disagreeable appearance or odor objectionable to the neighborhood.
3. **Exception.** The provisions of Article 10, Section 10.15 (C) (1) and (3) shall not be construed to prohibit the proper and temporary accumulation in suitable containers of garbage, ashes, refuse, etc. for regular collection; or the depositing of manure for the immediate cultivation of land; or the presence of regularly maintained compost piles.

D. Unlicensed Vehicles

1. A maximum of one unlicensed vehicle may be stored on a residential lot, provided the following conditions are met:
 - a. The vehicle is not stored in the front yard.
 - b. The vehicle is for the personal use of the occupant of the premises on which the vehicle is stored.
 - c. Repair of the unlicensed vehicle may be allowed provided that sustained and continuous progress in restoring or repairing the vehicle is made. If the repairs or restoration require more than 90 days to complete, the vehicle and all component parts must be stored in a wholly enclosed garage.
2. A maximum of five unlicensed vehicles may be stored on a lot in a commercial district, while undergoing repairs, provided the following conditions are met:
 - a. The vehicles are not stored in the front yard.

- b. The facility on which the vehicles are located is a state licensed automobile repair facility.
- c. Sustained and continuous progress in restoring or repairing the vehicles is made. Upon written citation by the Code Enforcement Officer, a vehicle or vehicles must be made operational within three working days. If the vehicle(s) are not made operational within this time period, it shall be presumptive evidence that the vehicles are junk motor vehicles within the meaning of this ordinance and shall be removed from the Municipality.
- d. For purposes of this section, "to be made operational" shall mean that the vehicle is legally safe for use upon the road and that the vehicle passes New York State vehicle inspection.

E. Enforcement

- 1. **Authority of the Code Enforcement Officer.** The Code Enforcement Officer of the Municipality of Randolph, upon a complaint being made to him, or upon his own motion, shall address to any owner permitting a violation of Section 10.15 to exist upon his property a notice in writing, served personally or by mail to the address appearing on the Municipal tax roll, requiring such person to remove the violation within ten days from the date of the notice of violation.
- 2. **Municipality to Perform Work.** Upon the failure of such owner to comply with such notice within the time specified therein, the Code Enforcement Officer shall notify the Municipal Board and said Board shall direct the Superintendent of Public Works to cause such premises to be put in such condition as will comply with this section and shall charge the costs thereof to the owner of said premises.
- 3. **Payment for Services.** Bills rendered for mowing grass, cleaning sidewalks, removing trees, removing debris and junk, and similar services shall be due thirty (30) days from the date of such bills. The owner of the premises shall be held responsible and liable for all charges for such services. Failure to pay within the aforementioned designated time shall be deemed a violation of this statute and punishable therefore.

Section 10.16 – Storm water Management and Erosion Control

A. Purpose

The intent and purpose of this section is to protect, maintain and enhance both the immediate and long-term health, safety and welfare of the residents of the Municipality of Randolph. In order to achieve these goals, this section has the following objectives: (1) prevent increases in the magnitude and frequency of storm water runoff, so as to prevent an increase in flood flows and in the hazards and costs associated with flooding; (2) maintain the integrity of stream geometry so as to sustain the hydrologic functions of streams; and (3) control erosion and sedimentation so as to prevent its deposition in streams and other receiving bodies.

B. Applicability

Any new development, except an individual single-family home, shall prepare a storm water Management and Erosion Control Plan as part of its application for a building permit. However, any new development, or changes to an existing development, which would result in an impervious surface of less than 10,000 square feet shall not be required to prepare a storm water Management and Erosion Control Plan.

C. Contents of the Storm Water Management and Erosion Control Plan

Such plan shall include provisions for storm water detention which shall limit and control the rate of runoff. The design shall assure that the runoff after development does not exceed that existing at the time of the plan submission. Calculations demonstrating that this condition is met for both a 10 year and a 25-year frequency storm shall be submitted.

The plan shall also include provisions for siltation and erosion control, both during and after construction. The siltation and erosion control plan for use during construction shall be shown on the construction drawings for the development. To the maximum extent feasible, construction plans shall be drawn such that the least amount of existing vegetation, especially mature trees, is disturbed. Vegetation shall be established on all disturbed surfaces as soon as possible upon completion of the work. Siltation control measures shall be maintained in continuous use until adequate vegetation is established.

Section 10.17 – Home Based Occupation

A. Minor Home Based Occupation

1. Minor home based occupations are permitted in any Zoning District that allows residential dwellings, provided that they meet the following conditions:
 - a. A home-based occupation shall be accessory and incidental to the use of a dwelling for residential purposes.
 - b. No one other than the residents of the dwelling unit shall be engaged in the home-based occupation.
 - c. No more than twenty-five percent of the gross floor area of the dwelling shall be devoted to the home-based occupation. However, the home-based occupation may be conducted in a standard accessory building, such as a garage.
 - d. There is no outdoor storage or display of material or equipment.
 - e. The peace, quiet, and enjoyment of the neighborhood shall not be disturbed by electrical interference, dust, noise, smell, smoke or traffic generated by the home-based occupation.
 - f. No equipment is used other than that normally used in household, domestic, or general office use.

- g. There shall be no exterior evidence of the conduct of a minor home based occupation, except that one non-illuminated sign, not to exceed two (2) square feet in size (one foot by two feet) may be displayed.
 - h. No alteration of the residential appearance of the dwelling shall be allowed. Creation of a separate entrance to the dwelling exclusively for the use of the home-based occupation is prohibited.
 - i. Retail sales shall be incidental to the business. However, orders previously made at a sales party may be filled on the premises.
 - j. A minor home based occupation shall not create greater vehicular or pedestrian traffic than is normal for the district in which it is located.
2. Permitted minor home occupations include, but are not necessarily limited to the following, provided they meet the criteria contained herein:
- a. Offices for authors and composers.
 - b. Office facility of a salesman, sales representative, or manufacturer's representative.
 - c. Tutoring of individuals.
 - d. Individual instruction for a musical instrument.
 - e. Direct sale product distribution (Amway, Avon, Tupperware, etc.)
 - f. Typing; word processing services; data processing
 - g. Architectural services, drafting and graphic services, engineering office
 - h. Art and crafts studios
 - i. Consulting services

B. Major Home Based Occupation

1. Major Home Based Occupations are permitted, by grant of Special Use Permit, in any Zoning District that allows residential dwellings, provided that they meet the following conditions. Before the Zoning Board of Appeals may grant a special use permit, it shall determine that the proposed home based business meets the following criteria:

- a. A home-based occupation shall be accessory and incidental to the use of a dwelling unit primarily for residential purposes.
 - b. No more than one employee, or full time equivalent of one employee, in addition to the resident or residents of the dwelling, may be engaged in the major home based occupation.
 - c. No more than twenty-five percent of the gross floor area of the dwelling shall be devoted to the home-based occupation. However, the home-based business may be conducted in a standard accessory building, such as a garage.
 - d. No alteration of the residential appearance of the dwelling shall be allowed.
 - e. The Zoning Board of Appeals shall find that the proposed use is compatible with residential uses and does not pose a safety hazard, and that the peace, quiet, and enjoyment of the neighborhood shall not be disturbed by electrical interference, dust, noise, smell, smoke or traffic generated by the home-based business.
 - f. No retail sales shall be allowed on the premises, except that incidental retail sales may be made in connection with other permitted home occupations. For example, a beauty parlor may be allowed to sell combs, hair spray and other miscellaneous items to customers.
 - g. There shall be no exterior storage of materials to be used in conjunction with a home-based occupation.
 - h. A home-based occupation shall produce no offensive noise, vibration, smoke, electrical interference, dust, odors, or heat.
 - i. A home-based occupation shall be completely enclosed in the principal dwelling or an accessory building.
 - j. All parking necessary for the home occupation shall be provided on-site, not on the street, and shall not be allowed in the required front yard.
 - k. One non-illuminated sign; not to exceed two (2) square feet in area (one foot by two feet), may be permitted in the residential district. One non-illuminated sign; not to exceed six (6) square feet in area (two feet by three feet), may be permitted in the agricultural- forestry-residential (A-F-R) district.
2. Permitted Major Home based occupations include, but are not necessarily limited to, the following, provided they meet the criteria contained herein:
 - a. Offices for accountants and tax preparers
 - b. Hair dressing establishments

- c. Dressmaking, sewing and tailoring, provided that the dressmaker does only custom work for specific clients, and does not sell clothes to the general public at the residence.
- d. Small appliance repair
- e. Upholstering

Section 10.18 – Signs

1. **Purpose** - The purpose of these sign regulations is to encourage the effective use of signs as a means of communication in the Municipality, to maintain and enhance the aesthetic environment, to maintain and enhance the Municipality's ability to attract sources of economic development and growth, to improve pedestrian and traffic safety, and to minimize the possible adverse effect of signs on nearby public and private property.
2. **Permit Required** - A business located within a residential district must receive approval by the Zoning Board of Appeals prior to erecting or changing any signage.
3. **Allowable Signs** - The following signs shall be allowed in all districts.
 - a. Any sign posted by duly constituted public authorities in the performance of their public duties.
 - b. Temporary "For Sale" or "For Lease" signs relating to the premises on which they are posted. The sign shall contain only the name, address and telephone number of the owner or his authorized agent, or both. The sign shall not exceed 6 square feet in area. Only one such sign shall be permitted for each street frontage and it may not be illuminated.
 - c. Temporary signs in a commercial district that advertise any special sale. The sign shall not be erected more than ten (10) days prior to the sale and must be removed within five (5) days after the sale.
 - d. Temporary signs not exceeding 32 square feet announcing an event of community interest which meets the approval of the municipality board, may be erected up to 30 days prior to the event provided the same shall be removed from the premises upon the completion of the event.
 - e. New business enterprises, which are awaiting erection of permanent signs, may install temporary signs, not exceeding 25 square feet in area, for a period not to exceed 30 days.
 - f. For a residence, one sign indicating the name and address of the occupant of the premises, not to exceed one square foot in area. Such sign shall not project above a roof line. It may be mounted on the building wall or pole mounted. An address sign shall not be permitted if the premises contain a sign for a home-based business.

- g.** A minor home based business may install one non-illuminated sign as permitted in Article 10, Section 10.17A g. A major home based business may install one non-illuminated sign as permitted in Article 10, Section 10.17 Bk.
- h.** For new construction or renovation, one sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies, placed on the site where construction is in progress. Such sign shall not exceed 32 square feet in area and 10 feet in height. The sign shall be removed within 30 days of the completion of the construction, repair or renovation work.
- i.** Political Signs: Signs advertising a candidate for political office, or signs advertising any other ballot issue, may be posted 30 days prior to the election and shall be removed within seven (7) days after the election. Such signs shall not exceed six (6) square feet in area.
- j.** Christmas holiday decorations, including lighting, are exempt from the provisions of this local ordinance and may be displayed in any district without a permit for the period from one week before Thanksgiving until the end of January of the following year.
- k.** Signs relating to trespassing and hunting, not exceeding two (2) sq. ft. in area.
- l.** Historical markers, tablets, memorial signs, and plaques authorized by or erected by a governmental agency.
- m.** Directional signs solely indicating ingress and egress placed at driveway locations, where the sign face does not exceed three square feet in area or extend higher than four feet above ground level. Such directional signs may contain a business name, but shall not contain any advertising material. Such sign will conform in all respects with the requirements of this ordinance.

4. Prohibited Signs

- a.** All signs not expressly permitted under this ordinance or expressly exempt from regulation hereunder in accordance with the previous sections are prohibited. Such signs include, but are not limited to:
 - 1. off-premises signs
 - 2. Roof signs
 - 3. Inflatable signs or tethered balloons
 - 4. Streamers, ribbons, spinners or similar devices, except flags and bunting to commemorate national patriotic holidays, which must be removed within 30 days after the holiday.
- b.** No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights except to show time and temperature.

- c. No sign may rotate or have motorized moving parts.
- d. No sign shall impair or cause confusion of vehicular or pedestrian traffic in its design, color or placement. No sign shall impair visibility for the motorist at a street corner or intersection.

5. General Standards

- a. In addition to one wall sign, or one projecting sign, or one awning sign a business establishment may also erect one free standing sign.
 - 1. If the business establishment fronts on more than one street, the establishment may have one sign on each frontage.
 - 2. Where two or more business establishments share one building, the total allowable sign area shall be divided among the businesses, which may erect one sign each.
- b. A sign, except signs erected by a governmental entity for a public purpose, shall not be attached directly or indirectly to any light standard, traffic control structure, utility pole, or tree.
- c. All approved site plans shall include a coordinated plan for the location and size of all signs for the entire project area.
- d. No sign shall be placed in or project into the public right-of-way.
- e. Signs shall not be mounted on roofs or extend above the roof line, unless mounted on a parapet wall which extends above the roof line, in which case the sign may not extend above the top of said parapet.

6. Illumination Standards

- a. No sign shall be illuminated between the hours of 11 p.m. and 6 a.m., unless the premises on which it is located is open for business.
- b. No sign shall contain strobe lights.
- c. No sign shall be designed or illuminated in such a way that it affects traffic safety or is a nuisance to residential properties.

7. Standards for Specific Types of Signs

a. Awning sign

- 01 No sign shall project from an awning.

- 02 Graphics (lettering and images) may be painted or permanently affixed to the surface of the front or sides of the awning.
- 03 A minimum of eight (8) feet above sidewalk level must be allowed for pedestrian clearance.

b. Freestanding Signs

- 01 Freestanding signs may have only two sides.
- 02 Freestanding signs affixed to a pole may not exceed fifteen (15) feet in height and shall not exceed forty (40) square feet on each side. There shall be a minimum clearance of eight (8) feet from the ground to the bottom of the pole mounted sign. The height of the sign shall be measured from the finished grade at the location of the sign or at the main entrance to the building, whichever is lower.
- 03 A retail business establishment in a commercial district that is located within 1,000 feet of an interchange from the expressway may erect one freestanding sign affixed to a pole; not to exceed thirty (30) feet in height and one hundred (100) square feet in area on each side. There shall be a minimum clearance of eight (8) feet from the ground to the bottom of the pole mounted sign.
- 04 In the A-F-R district freestanding signs affixed to a pole may not exceed thirty (30) feet in height and shall not exceed forty (40) square feet on each side. There shall be a minimum clearance of eight (8) feet from the ground to the bottom of the pole mounted sign.
- 05 No part of a freestanding sign shall project into or over any driveway, or any public right of way, or over any property line.
- 06 Freestanding signs shall be located a minimum of ten (10) feet from any property line. In the event that a business use abuts a residential district, the freestanding sign shall be located a minimum of forty (40) feet from the residential property.
- 07 Only one freestanding sign per parcel shall be permitted. If more than one commercial establishment is located on a lot, they shall share the advertising area on one freestanding sign.
- 08 Masonry wall-type ground signs shall not exceed four (4) feet in height and shall be placed so as not to impair visibility for motorists. There is no minimum clearance between the ground and the bottom of this type of sign.

c. Projecting Signs

- 01 No part of a projecting sign shall extend into vehicular traffic areas. Any part of a projecting sign that extends over pedestrian traffic areas shall have a minimum clearance of eight (8) feet.
- 02 Projecting signs shall not extend above the level of the second floor of the buildings to which they are attached, or in any case, be higher than twelve (12) feet from the ground.
- 03 Projecting signs shall have a maximum of two faces and shall have a maximum size of twenty (20) square feet per face.
- 04 For a building located at a street intersection, any portable sign shall be located a minimum of fifteen (15) feet from the corner

d. Portable Signs

- 01 Portable signs, not to exceed forty (40) square feet, may be allowed on a temporary basis to advertise an event or activity of limited duration. Such portable signs may be posted up to ten (10) days prior to an event and must be removed within five (5) days of the end of the event.
- 02 Portable signs, not to exceed forty (40) square feet, may be used by a new business establishment while awaiting installation of a permanent business sign. In no case, shall such portable sign be in use for more than thirty (30) days.
- 03 For a building located at a street intersection, any portable sign shall be located a minimum of fifteen (15) feet from the corner

e. Wall Signs

- 01 Wall signs shall not obscure architectural features of the building, such as arches, sills, moldings, cornices and transoms.
- 02 Wall signs shall not extend above the lowest point of the roof, or beyond the ends of the wall to which it is attached.
- 03 A wall sign shall have a maximum area not exceeding 1.5 square feet for each lineal foot of building face parallel to a street lot line, or ten (10%) percent of the wall area to which it is attached, whichever is less. Where a building fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.
- 04 Where two or more business establishments share one building, the total allowable sign area shall be divided among the businesses, which may erect one sign each.

f. Window Signs

- 01 Window signs shall not exceed more than thirty (30%) percent of the window area in which they are displayed.
- 02 Permanent signs hung inside windows shall be made of clear materials, such as Plexiglas, with lettering painted on them.

g. Miscellaneous Signs

- h. Subdivision Signs:** One permanent identification sign may be allowed at the entrance to a permitted subdivision, provided that the sign does not exceed thirty-two (32) square feet in area and four (4) feet in height. Such sign shall indicate only the name and address of the subdivision.
- i.** Bulletin boards and signs for churches or other places of worship, libraries, museums, social clubs or societies, schools, community or other public buildings may be permitted provided that the area of such sign does not exceed thirty-two (32) square feet in area and such signs are set back a minimum of 15 feet from the street right-of-way line. Such signs must be erected on the same lot as the structure.
- j.** For apartment buildings, one sign, not to exceed thirty-two (32) square feet in area, may be used to indicate the name of the development. In addition, temporary signs advertising the availability of apartments may be posted.
- k.** Signs necessary for the identification, operation or production of a public utility, not exceeding thirty-two (32) square feet in area, may be erected on the premises of such public utility.

- 2. Maintenance -** A sign shall be maintained in a secure and safe condition. If the Code Enforcement Officer determines that a sign is not secure, safe or in good repair, written notice of this deficiency shall be given to the person who obtained the sign permit. If the defect is not corrected within the time period specified in the notice, the Code Enforcement office may revoke the sign permit.
- 3. Replacement -** Any sign that replaces a sign that is in existence at the time of adoption of this local ordinance, shall conform to all provisions herein.

Section 10.19 – Building Projections

Projections from buildings are not permitted over sidewalks, right of ways or boundary lines; with the exception of signs. See Section 10-18.

Section 10.20 – Off-street Parking, Loading areas, and Drive-through Windows

A. General Requirements - In all districts in connection with every residential, commercial, industrial, institutional or other use, there shall be provided at any time any building or structure is erected, enlarged or increased in capacity, off-street parking spaces for automobiles in accordance with the following requirements:

1. A parking space shall be a minimum of 10 feet by 18 feet, exclusive of parking aisles and driveways, shall be a visibly designated and marked space, and shall be of usable shape and surface.
2. Adequate access shall be provided to all parking spaces. Any area containing one or more parking spaces shall have direct access to a public street or alley or to a private street.

B. Calculation of Required Parking Spaces - In the case of combination of uses, the total requirements for off-street 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 joint use of parking areas or other modifications.

C. Off-Street Parking Requirements - The number of off-street parking spaces to be provided shall not be less than the following:

Use	Parking Spaces Required
<u>Single Family Dwelling</u>	<u>2 spaces per unit</u>
<u>Two-family Dwelling</u>	<u>2 spaces per unit</u>
<u>Multiple Family Dwellings</u>	<u>2 spaces per one-bedroom unit or two-bedroom unit</u> <u>3 spaces per three-bedroom unit or greater</u>
<u>Hotel/Motel</u>	<u>1 space per guest room, plus 1 space for every three employees</u>
<u>Churches, Places of Worship,</u> <u>Theaters, Places of Assembly</u>	<u>1 space for every four seats</u>
<u>Restaurants, Bars, Clubs</u>	<u>1 space for each 4 persons allowed under the maximum occupancy load</u>
<u>Golf course</u>	<u>4 for each hole</u>
<u>Bowling alley</u>	<u>5 spaces for each lane</u>
<u>Nursery School/Day Care Center</u>	<u>1 space per employee, plus 2 additional spaces</u>
<u>Retail Uses, Repair Shops,</u> <u>Personal Service Establishments</u>	<u>1 space per 300 square feet of gross floor area</u>
<u>Offices</u>	<u>1 space per 300 square feet of gross floor area</u>
<u>Industrial Uses</u>	<u>1 space per 1,000 square feet of gross floor area, or</u> <u>1 space for every two employees on the largest working shift, whichever is greater.</u>
<u>Warehouses</u>	<u>1 space per 2,000 square feet of gross floor area</u>

Convalescent Center or Nursing Home	1 space for every three beds plus one for each two employees on the maximum working shift
Mortuary or Funeral Home	1 space for each 75 sq. ft. of parlor or chapel area, or 1 Space for every 4 fixed seats, whichever is the greater

D. General Requirements for Off-Street Parking Areas

1. All areas devoted to off-street parking shall be so designed that no automobile is required to back into a street to obtain egress. This provision does not apply to the parking areas serving single-family and two family dwellings.
2. Any lighting that illuminates off-street parking areas and driveways shall be located and arranged so that all direct rays of light fall upon the parking area only and not onto any adjoining properties.
3. If a parking area abuts a residential district, adequate shielding shall be provided to ensure that the adjacent residential uses are protected from glare from lighting and from car headlights. In addition, the parking area shall be set back a minimum of 6 feet from the residential lot line, and this setback shall be landscaped.
4. For any parking areas providing spaces for more than five automobiles, a minimum four (4) foot wide landscaped buffer strip shall be provided between any adjacent sidewalk or public right-of-way and the parking area.

E. Driveway Regulations for Parking Areas

1. Driveways used for ingress and egress to parking areas shall be clearly visible. Driveways that cross sidewalks shall be constructed at a 90-degree angle to the street in order to protect pedestrian safety.
2. Driveways shall not be located closer than 20 feet to an intersection of two public right of ways.
3. The minimum width of a non-residential driveway that provides both ingress and egress shall be 20 feet. The maximum width of such driveway shall not exceed 35feet.
4. No more than two driveways entering on one street from a single commercial or industrial establishment shall be permitted.
5. Shared driveways for abutting commercial and/or industrial establishments shall be encouraged.

F. Off-Street Loading and unloading

Every building having a gross floor area of 10,000 square feet or more and requiring the loading or unloading of trucks shall provide at least one off-street loading space or dock. An additional loading space or dock shall be required for each additional 100,000 square feet of gross floor area or major

fraction thereof. Each loading space shall be not less than 12 feet in width, 25 feet in length and 14 feet in height, or shall be of a size adequate to accommodate the expected size of the trucks.

Loading docks or spaces shall be located in such a way as not to unreasonably interfere with the movement of people and vehicles on public rights-of-way. Loading spaces or docks between a building and a public highway must be buffered and approved by the Zoning Board of Appeals.

Buildings that existed in the Municipal Commercial District as of the effective date of this local ordinance, shall be exempt from providing an off-street loading dock or space. The Zoning Board of Appeals may waive the requirement for a loading dock or space for new construction or expansion projects in the District, provided that the Board can make a finding that such waiver supports the historic character of the District.

G. Drive-through windows

Where permitted in Article 8 schedule A, a drive-through window may be permitted by the Zoning Board of Appeals as a special permitted use according to the procedures outlined in Article 13 of this ordinance. If, in the opinion of the Zoning Board, there is insufficient space on the lot to provide safe operation of a drive-through window, or the location would pose a traffic and safety hazard, the Zoning Board may deny the application.

Stacking space for a minimum of three vehicles shall be provided in the case of a bank. Stacking space for a minimum of six vehicles shall be provided for a fast-food restaurant. Such spaces shall be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street. Each stacking space shall be a minimum of 20 feet long.

H. Waiver of parking requirements

The Zoning Board of Appeals may waive the requirements for off-street parking, if the applicant can show that adequate on-street parking exists to serve the facility or if the applicant has entered into a legal agreement with a nearby facility to use the parking lot of that facility, and if, in the opinion of the Zoning Board, the existing parking area is adequate to serve both facilities. Joint use of parking areas for facilities that have different hours of operation is encouraged.

Section 10.21 – Yard Sales

Yard sales are permitted provided that the following conditions are met:

- A. No items may be offered for sale that have not been owned and used by the occupant of the premises. Multiple family sales are permitted if they are held on the premises of one of the participants.
- B. No more than three yard sales shall be conducted on any one lot in any one calendar year. Yard sales

shall not be conducted for longer than three consecutive days.

- C. Yard sales shall be conducted during daylight hours only.
- D. Rummage sales, white elephant sales and similar occasional fund-raising activities held by and at churches and other religious organizations, clubs, charitable organizations, educational or service organizations shall not be construed to be yard sales.

Section 10.22 – Adult Uses

Where permitted by Special Use Permit all adult uses, as defined in Article 5, Section 5.2 Definitions of this Zoning Ordinance, shall conform to the following standards which shall be considered to be the minimum standards:

- A. All adult uses shall be operated in a manner that is consistent with the New York State Penal Law relating to exposure, obscenity or lewdness.
- B. No adult use shall be established or shall be operated within one thousand (1,000) feet of:
 - 1. a church, synagogue, or other place of worship
 - 2. a public or private elementary or secondary school, day care center, pre-school program or other uses of a similar nature
 - 3. a lot line of any existing residential property
 - 4. the boundary of any residential district
 - 5. a public park, municipal building or community center
- C. Distance limitations shall be measured in a straight line, without regard to intervening structures
- D. No adult use shall be operated within one thousand (1,000) feet of another adult use.
- E. No more than one adult use shall be operated on any single parcel of land. No adult use shall be operated in the same building, structure, or portion thereof, which contains another adult use.
- F. All adult uses shall be conducted in an enclosed building. Sound within the building shall not be audible to a person passing by outside the building.
- G. All building openings, entries, windows, and doors associated with an adult use shall be located, covered, or screened in such a manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property. Such screening shall be done in an aesthetically appropriate manner.

- H. No exterior sign associated with an adult use shall contain any photographic or artistic representation of the human body.
- I. No adult use shall be established in any building which is used, in part, for residential purposes. Nonresidential use shall be established in any building which contains an approved adult use.
- J. Adequate landscaping shall be provided to minimize the visual impact on adjacent sites of any structure containing an adult use.
- K. Prior to the commencement of any adult use, or upon transfer of ownership or control of the building, property or business, the premises shall be inspected by the Code Enforcement Officer, or other person authorized by the Municipal Board, who shall determine that the business is in compliance with all laws, ordinances, rules and regulations applicable to the use and that the business is in compliance with all regulations contained in this section.
- L. Additional Sign Requirements: In addition to the sign requirements of Section 10.18, the following provisions shall apply to signs erected or maintained in connection with an adult use:
 - 1. No off-premises signs shall be permitted.
 - 2. Advertisements, displays or promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways or from other areas public or semipublic, and such displays shall be considered to be signs.
 - 3. No more than one wall sign shall be permitted for an adult use. Such sign shall be permitted only on the front facade and shall not exceed twenty-four (24) square feet in area.
 - 4. Sign messages shall be generic in nature and shall not contain material classified as advertising. No exterior sign associated with an adult use shall contain any photographic or artistic representation of the human body.

Section 10.23 – Telecommunications Facilities

A. Purpose - The purpose of these supplemental regulations governing telecommunications facilities is to promote the health, safety and general welfare of the residents of the Municipality of Randolph; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future facilities, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, visual impact assessment, and appropriate landscaping.

B. Special Use Permit Required

1. No telecommunications facility may be constructed and no existing structure shall be modified to serve as a telecommunications facility without first obtaining a Special Use Permit from the Zoning Board of Appeals. In granting a Special Use Permit the Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed use.
2. All telecommunications facilities shall conform to the standards contained in this section and in other sections of the Municipality of Randolph Zoning Ordinances. These standards shall be considered minimum requirements.
3. No Special Use Permit for a telecommunications facility, or renewal or modification of such permit, shall be granted by the Zoning Board of Appeals unless it finds that such facility:
 - a. Is necessary to meet current or expected demands for service.
 - b. Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies.
 - c. Is designed and constructed in a manner which minimizes visual impact to the maximum extent practical.
 - d. Complies with all other requirements of this Local Ordinance, unless they are expressly superseded herein.
 - e. Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.
 - f. In the case of construction of a new telecommunications tower, such facility is designed to accommodate future shared use by at least one (1) other telecommunication service provider.

C. Exceptions - The following uses are not considered to be telecommunications facilities for the purposes of this Zoning Ordinance:

1. Antennas and satellite antennas used solely for the residential reception of household television and radio reception.
2. Antennas used for private citizens' band radio, amateur (ham) radio and other similar communications.

D. Application Materials for new Telecommunications Facilities - All applicants for a Special Use Permit for the construction of a telecommunications facility shall submit the following documents and information.

1. A report from a professional engineer, licensed to practice in the State of New York, which shall:
 - a. Describe the facility and the technical, economic and other reasons for the facility and tower design, including a cell search area analysis, demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target area.
 - b. Describe how many and what kinds of antennas are proposed.
 - c. Describe how many and what kind of antennas are possible on the tower
 - d. Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure
 - e. Describe the fall zone of the proposed tower
2. A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration(FAA).
3. A letter of intent committing the facility owner to negotiate in good faith for shared use by third parties in the future. This letter shall be filed with the Code Enforcement Officer prior to the issuance of a building permit (assuming the telecommunications tower is approved). Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. This letter shall commit the facility owner and his or her successors in interest to:
 - a. Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
 - b. Negotiate in good faith for shared use by third parties.
 - c. Allow shared use if an applicant agrees in writing to pay charges.
 - d. Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

4. The reports and evaluations required in Article 10, Section 10.23 (F), Shared Use and Section 10.23 (G), Use of Existing Buildings.
5. A Full Environmental Assessment Form (EAF) and the Visual Addendum to the EAF. The Zoning Board of Appeals may require submittal of a more detailed visual analysis based on the results of the Visual Addendum.
6. A site plan, showing all existing and proposed structures and improvements on the site, including towers, antennas, roads, buildings, guy wires and anchors, parking and landscaping. The height and type of tower shall be indicated. Materials and colors of the tower and other buildings shall be shown. The site plan shall include grading plans for new facilities and roads. Any landscaping and other proposed screening methods shall be detailed. Information on proposed lighting of the tower and the site shall be included.
7. Site Plans for all Telecommunications Facilities must bear the seal of a professional engineer licensed to practice in the State of New York.
8. Any other material that the Zoning Board of Appeals deems necessary to evaluate the application.

The Municipality of Randolph, at the expense of the applicant, may employ its own consultant to review the findings and conclusions of safety analysis, visual analysis, or structural inspection provided by the applicant.

Any permit granted under this section shall be valid only for the number and type of antennas in the approval. Any increase in number or change in type of antennas on any existing tower shall require approval by the Zoning Board of Appeals.

Any new facility which is approved under this section shall be designed to accommodate future shared use by other telecommunications providers.

E. Application Materials for Applicants Proposing to Use an Existing Tall Structure or an Existing Telecommunications Tower

1. All applications for a Special Use Permit for a telecommunications facility that will be placed on an existing structure or that will use an existing telecommunications tower shall submit the following application materials to the Zoning Board of Appeals.
 - a. A completed application for a Special Use Permit.
 - b. Documentation of intent from the owner of the existing facility to allow the shared use.
 - c. A report from a professional engineer licensed to practice in the State of New York certifying that the proposed shared use will not diminish the structural integrity and safety of the existing

structure or existing telecommunications tower, and explaining what modifications, if any, will be required in order to certify to the above.

- d. A completed short Environmental Assessment Form (EAF) and a completed Visual Addendum to the EAF. The Zoning Board of Appeals may require a more detailed visual analysis, based on the results of the Visual Addendum.
- e. A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).
- f. A site plan showing the information described in Article 10, Section 10.23 (D)(6).
- g. Any other information deemed necessary by the Zoning Board of Appeals.

2. Any permit granted under this section shall be valid only for the number and type of antennas in the approval. Any increase in number or change in type of antennas on any existing tower must be approved by the Zoning Board of Appeals.

F. Shared Use of Telecommunications Facilities

- 1. At all times, shared use of existing telecommunications towers shall be preferred to the construction of new towers.
- 2. An applicant shall be required to present an adequate report inventorying existing towers and approved towers that have not been built within a reasonable distance of the proposed site. This distance shall be determined by the Zoning Board of Appeals in consultation with the applicant. If an appropriate communications tower or towers is available, the applicant shall submit a written evaluation of the feasibility of sharing such tower. The evaluation shall analyze, but is not limited to, the following factors:
 - a. Structural capacity of the tower or towers
 - b. Radio frequency interference
 - c. Geographic service area requirements
 - d. Mechanical or electrical incompatibilities
 - e. Inability or ability to locate equipment on the tower or towers
 - f. Cost, if fees and costs for sharing would exceed the cost of a new communication tower over a 25-year period, and

- g. Any restriction or limitations of the Federal Communications Commission that would preclude the shared use of the tower.
3. A telecommunications tower that is determined to be inappropriate for sharing shall be assumed to be inappropriate for sharing the same types of facilities in the future. Such towers will not need to be evaluated in the future regarding sharing with the same type of facility for which it has been determined to be inappropriate. The Town Clerk shall maintain a list of such towers, and shall provide such list to all applicants or potential applicants for a Special Use Permit for a telecommunications tower.
4. An applicant shall not be required to share use of an existing telecommunications tower if the cost is unreasonable. Those costs include, but are not limited to, structural reinforcement of the existing tower, preventing transmission or receiver interference, additional site screening, and other charges including real property acquisition of a lease required to accommodate shared use. Costs associated with this subsection shall be considered unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a 25-year period.
5. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of an appropriate existing communication tower. Written requests and responses for shared use shall be provided.

G. Use of Existing Buildings

1. The use of suitable existing buildings and structures, such as church steeples, silos, or water towers, shall be encouraged over the construction of new towers, wherever feasible.
2. The applicant shall prepare an inventory of those buildings and structures in the cell search area which exceed seventy-five (75%) of the height of the proposed tower, to determine if any may be suitable to accommodate the antenna(s). If suitable structures are located, the applicant shall enter into good faith negotiations with the building owner to secure rights to place one or more antennae on such structures.
3. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of the existing building or structure. Written requests and responses shall be provided.
4. An applicant shall not be required to use an existing, suitable building or structure if the cost is unreasonable. Costs associated with this subsection shall be considered to be unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a 25 year period.

H. Visual Impact Assessment

1. The Zoning Board of Appeals may require the applicant to undertake a visual impact assessment which may include:

- a. A map showing locations from which the facility may be seen.
- b. Pictorial representation of "before and after" views from key viewpoints both inside and outside of the town, including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of residents, visitors or travelers. The Zoning Board of Appeals shall determine the appropriate sites in consultation with the applicant.
- c. Assessment of alternative tower designs and color schemes.
- d. Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. Visibility

1. All towers and accessory facilities shall be sited to have the least practical adverse effect on the environment.
2. Placement of the antenna(s) on a suitable existing structure, such as a church steeple, water tower, or silo is encouraged, whenever feasible.
3. Towers shall not be artificially lighted, except as required by the Federal Aviation Administration (FAA). However, the Zoning Board of Appeals may require lighting of the tower for public safety considerations.
4. Towers shall be finished or painted in colors that minimize their visibility, unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
5. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding six (6) inches in diameter, measured at a height of four and one-half feet above the ground (breast height), shall take place prior to approval of the Special Use Permit.
6. No portion of any tower may be used for signs or advertising purposes, including the company name, banners, streamers, etc.
7. The applicant shall demonstrate that the proposed height for the tower and antenna(s) is the minimum necessary to function satisfactorily. No tower or antenna(s) that is taller than this minimum height shall be approved.
8. An accessory structure or building, if any, shall be designed using materials, colors and textures

that are compatible with their natural surroundings or with the structures in the neighborhood in which they are located.

J. Setbacks

1. Telecommunications facilities shall comply with all existing setbacks within the Zoning District in which they are sited. Additional setbacks may be required by the Zoning Board of Appeals to contain on-site substantially all ice-fall or debris from tower failure and/or to preserve the privacy of adjoining residential and public property. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities.
2. A lot leased or purchased for the construction of a telecommunications facility shall not result in the creation of a non-conforming lot.

K. Screening and Landscaping

1. The Zoning Board of Appeals may require fencing around the telecommunications facility.
2. Landscaping shall be planted on the outside of the fencing. The landscaping may be installed on the inside of the fencing, subject to the approval of the Zoning Board of Appeals, if the survivability or utility of landscaping on the exterior of the fencing is questionable.
3. The Zoning Board of Appeals may require evergreen hedges or other planting strips as necessary to screen portions of the facility. Installation of new plantings will not be required in those places where the presence of existing vegetation or structures is sufficient to screen the tower and accessory buildings or in cases where the proposed landscaping would not be visible.

L. Access - Adequate emergency and service access shall be provided. Maximum use of existing roads, whether public or private, shall be made. Road construction, where necessary, shall minimize ground disturbance and vegetation cutting. Roads grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking - Parking shall be provided on site to assure adequate emergency and service access. The Zoning Board of Appeals shall determine the number of required spaces based upon information to be provided by the applicant.

N. Site Remediation

1. After construction, the site shall be re-graded, reseeded and re-landscaped pursuant to plans approved by the Zoning Board of Appeals. If any off-site disturbance to the landscape has occurred as a result of construction or site preparation of a telecommunications facility, that off-site area shall also be re-graded and reseeded or other site remediation work performed to the satisfaction of the Zoning Board of Appeals.

2. The Zoning Board of Appeals shall require a bond to be posted by the applicant to ensure that this work is performed. Upon completion of the work to the satisfaction of the Zoning Board of Appeals, the bond will be returned to the applicant; however, all or a portion of the bond may be held for a growing season to ensure that any landscaping survives and thrives.

O. Engineering and Maintenance

1. Every telecommunications facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
2. Every facility shall be inspected, at the owner's expense, at least every two years for structural integrity by an engineer, specializing in structural engineering, who is licensed to practice in the State of New York. A copy of the inspection report shall be promptly submitted to the Code Enforcement Officer.
3. The structural inspection report shall describe the structural integrity of the Facility, maintenance issues and repairs needed or made, if any. In the event that the structural inspections indicate structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Code Enforcement Officer. Failure to make the repairs may result in revocation of the Special Use Permit.

P. Removal of Obsolete Facilities

1. All obsolete and unused telecommunication towers shall be removed within twelve (12) months of cessation of use.
2. The owner of the telecommunication facility shall annually file a declaration with the Code Enforcement Officer as to the continuing operation of every facility installed subject to this Local Ordinance.
3. The Zoning Board of Appeals shall require, as a condition of approval of the Special Use Permit, that the applicant post a bond with the Municipality, sufficient to allow the Municipality to have the unused tower removed, if the owner fails to do so within the prescribed time period.

Q. Expiration of Special Use Permit

1. The grant of Special Use permit shall expire upon:
 - a. The failure to commence active operation of the telecommunications facility within twelve (12) months of the approval of the Special Use permit by the Zoning Board of Appeals. This time

limit may be extended by the Zoning Board of Appeals, upon written application of the applicant. Such application shall state the cause of delay in commencing operation.

- b. The discontinuance of the active and continuous operation of the telecommunications facility for a continuous period of twelve (12) months, regardless of any reservation of an intent not to abandon or discontinue the use or of an intent to resume active operations.

Section 10.24 – Alternative Energy Conversion Systems

Purpose – The purpose of these supplementary regulations is to regulate the placement of energy conversion systems to protect the public safety, health and welfare; to provide a regulatory structure that promotes the protection of the Town residents; to minimize the adverse impacts on the Town’s character, environment, economy and property values; to minimize negative impacts on the unique resources including but not limited to, adjacent lands, waterways, residential and farming communities of the township.

- A. All energy collection/storage facilities and appurtenant electrical equipment shall cause no undue interference, noise, or glare.
- B. Wind energy towers and/or solar collectors shall be erected only to such height as is necessary to accomplish the purpose for which they are intended, and that such structures do not obstruct solar access to neighboring properties.

Section 10.25 – Commercial/Industrial Wind Energy Conversion Systems

A. Meteorological Evaluation Towers (MET’s)

1. **Description** - A tower used at a potential project site which has equipment attached to it which is designed to assess wind resources. Generally a met tower will have anemometers, directions vanes, temperature sensors, pressure sensors, and other measurement devices attached to it at various levels above the ground to collect information over a period of time.

B. Special Use Permit Required

1. No meteorological Evaluation Tower may be constructed and no existing structure shall be modified to serve as a Meteorological Tower without first obtaining a Special Use Permit from the Zoning Board of Appeals. In granting a Special Use Permit the Zoning Board of Appeals shall have the authority to impose such reasonable conditions and restrictions as are related to the proposed use.
2. All Meteorological Towers shall conform to the standards contained in this section and in other sections of the Municipality of Randolph Zoning Ordinances. These standards shall be considered minimum requirements.
 - a. No Special Use Permit for a meteorological tower, or renewal or modification of such permit, shall be granted by the Zoning Board of Appeals unless it finds that such facility:
 01. Is necessary to meet current or expected demands for service.

02. Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies.
03. Is designed and constructed in a manner which minimizes visual impact to the maximum extent practical.
04. Complies with all other requirements of this Local Ordinance, unless they are expressly superseded herein.
05. Is the most appropriate site among those available within the area for the location of a meteorological tower.

C. Additional Requirements

1. Any sponsor proposing a meteorological tower must complete a notice of proposed construction or alteration form (FAA Form 7460-1) at least 45 days prior to the date of proposed construction or alteration is to begin.
2. FAA Advisory Circular 70/7460-1L sets forth standards for marking and lighting obstructions that have been deemed to be a hazard to navigable airspace.
3. Standards for voluntary marking of MET's, less than 200 feet above ground level (AGL), have been added to provide recommendations toward increasing conspicuity of these structures, particularly for low level agricultural flight operations. These standards include those for lighting and marking of the tower and associated guy wires identified in FAA regulations.
4. Sponsor will provide a detailed plan showing potential locations of utility scale turbines based on specifications in this code.

D. Applicability / Severability – No Wind Facility or Wind Energy Conversion System shall be constructed, reconstructed, modified or operated in the Town of Randolph, except in compliance with this Zoning Ordinance.

E. Applications for Commercial and industrial Wind Energy Conversion Systems – An application for Special Use Permit for a Wind Energy Facility or a single WECS shall include the following:

1. Name, address, phone number, and email of the applicant. If the applicant is represented by an agent, the application shall include the name, address, phone number, and email of the agent as well as an original signature of the applicant authorizing the representation.
2. Name, address, phone number, and email of the property owner. If the property owner is not the applicant, the application shall include proof of site control by recorded document establishing that applicant is authorized to utilize the property for the intended purpose.
3. Address, or other property identification, of each proposed WECS location, including Tax Map section, block and lot number, latitude and longitude coordinates.

4. A description of the project, including the number and maximum rated power output capacity of each WECS.
5. For each WECS proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
 - a. Property lines and physical dimensions of the Site.
 - b. Location, approximate dimensions and types of existing structures and uses on Site, public roads, and adjoining properties within a three-thousand-foot radius of the proposed WECS.
 - c. Location and ground elevation of each proposed WECS.
 - d. Location of all above and below ground utility lines on the Site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 - e. Location and size of structures above 35 feet within a three-thousand-foot radius of any proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are considered structures.
 - f. Location of and measured distances (accurate GPS measurements may be utilized) of each proposed WECS tower from every setback required pursuant to this section.
 - g. To help demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower site having a radius equal to:
 01. One and one-half times the total height of the proposed WECS
 02. Two times the total height of the proposed WECS
 03. Five times the total height of the proposed WECS
 04. One thousand feet
 05. Three thousand feet
 06. Five thousand feet
 07. One-half mile
 08. One mile
 - h. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
 - i. The names and addresses of all property owners within a three-thousand-foot radius of each WECS, as shown on the assessment roll of the Town of Randolph, together with the current use of all such property.
6. Elevation drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.
7. Landscaping Plan: depicting vegetation and forest cover describing the area to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added, identified

by species and size of specimens at installation, and their locations.

8. **Lighting Plan:** showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, the application shall so state and such determination shall be submitted prior to final approval.
9. **Decommissioning Plan:** A decommissioning plan as specified in this Section.
10. **Complaint Resolution Plan:** A Complaint Resolution Plan to address complaints within 24 hours of receipt of notice thereof and to resolve any complaint in a diligent and timely manner under the circumstances.
11. Information relating to the construction/ installation of the Wind Energy Facility as follows:
 - a. A proposed construction schedule describing commencement and completion dates of the project and beginning and ending hours of daily construction
 - b. A description of the routes to be used by construction and delivery vehicles, the gross weights, and heights of those loaded vehicles.
12. Completed Part 1 of the Full Environmental Assessment Form (EAF).
13. For each proposed WECS, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
14. As part of the application, or as a supplement to the application, simultaneously submitted, the following: Each submittal shall contain a thorough analysis/explanation of the ability and means to comply with the "Standards for Commercial/Industrial WECS" Section of this code.
 - a. **Shadow Flicker:** The applicant shall submit a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may be present at locations of any residences, highways, parks or open recreation areas and detail measures that will be taken to mitigate or eliminate such interference and to comply with the requirements of this Section.
 - b. **Visual Impact:** Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least several locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - c. Photographs and/or detailed drawings of each wind turbine model, including the tower and foundation.

- d. Visual Assessment, including a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures. The Zoning Board shall determine which viewpoints the visual assessment shall include.
- e. **Fire Protection/Emergency Response Plan:** A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Wind Energy Facility to address coordination with local emergency/fire protection providers during the construction or operation phase in the event of an emergency, fire or other hazard.
- f. **Noise Analysis/Study:** A noise analysis by a qualified acoustical consultant documenting the noise levels associated with each proposed WECS. The study shall document noise levels at property lines and at the property line of the nearest residences not on the site for each residence in a 360° circle of the site. The noise analysis shall be performed according to the International Standard For Acoustic Noise Measurement Techniques For Wind Generators (IEC 61400-11), or other procedure accepted by the Zoning Board of Appeals, and shall include both a dBA analysis and dBC analysis. The noise analysis/study shall demonstrate compliance with the noise provisions as set forth in the “Standards from Commercial/Industrial WECS” (H) Section of this Law.
- g. **Property Value Analysis:** Property value analysis prepared by a New York State licensed appraiser experienced in appraising rural properties of the type and nature typically found in the Town of Randolph evaluating the potential impact of the project on values of properties in the Town of Randolph, and in addition a proposed means to protect property owners from decrease in values caused by the establishment and operation of the proposed WECS, and to comply with the property value preservation subsection set forth in the “Standards for Commercial/Industrial WECS” Section of this code.
- h. **Electromagnetic Interference:** An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, including broadband, weather and other radar, identifying specific potential interference established systems.
- i. **Transportation Impacts:** An analysis of impacts on local transportation identifying impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures, potential traffic tie-ups by haulers of WECS’ materials, impacts on school bus routes, and impacts of visitors to the WECS’ facilities. Local roads shall include all state highways, county highways, town highways, and hamlet streets and highways, which will be or may be used by the applicant.
- j. **Transportation Plan:** A transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, town highways, and village/hamlet streets and highways, which will be or may be used by the applicant.
- k. **Ground Water Impacts:** An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or

operation decommissioning and post decommissioning of each WECS. A geotechnical report shall be provided and shall include: soil and geologic characteristics of the Site based on Site sampling and testing, a bedrock profile within one (1) mile of the Site, information on depth of well, average flow rate, and with permission by owner, test of water quality for all wells within two (2) miles of the Site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.

- l. An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase.
- m. Cultural, Historical and Archeological Resources Plan: An analysis of impacts on cultural, historical and archeological resources addressing and assessing impacts anticipated during construction, reconstruction, modification or operation of each WECS. This assessment shall be conducted in accordance with standards of the New York State Office of Parks, Recreation and Historic Preservation.
- n. **Wildlife Impacts:** An analysis of impacts on local wildlife shall be prepared, addressing impacts anticipated during construction, reconstruction, modification, or operation of each WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna. The analysis will include migratory and resident avian species and bat species. The scope of such assessment shall take into consideration New York State Department of Environmental Conservation and the United States Fish and Wildlife Service studies, standards and recommendations and must at a minimum consist of pre-construction data of three years, and literature/ studies/survey for threatened and endangered and species of concern and migratory species that provide relevant information on critical flyways and migration routes, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The reports shall provide sufficient information to allow the Zoning Board to make a determination on any mitigation conditions or a denial of permits as provided in standards for Commercial/Industrial WECS Section.
- o. **Operation and Maintenance Plan:** An operation and maintenance plan providing for regular periodic Wind Energy Facility schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- p. **Blade Throw Report:** A report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade may be thrown. (The basis of the calculation and all assumptions must be thoroughly explained and justified.) The frequency incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included and the report must specifically address the climatic and weather conditions found in the Town of Randolph
- q. **Stray Voltage Report:** An assessment, pre- and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.

- r. A health report utilizing available background health, including mental health, analysis for the Town, and the region including age, proliferation of known health disorders; effects of noise presence of WECS and flicker effect on people, as well as a proposed means of accessing a health background on individuals who wish to participate for determination of health effects if a WECS is constructed. A thorough analysis of the potential health effects including mental health related to Commercial/Industrial Wind Turbines, and a plan to mitigate each affects and to address them.
- s. An agriculture effect report, including impacts on all types of agricultural activities present in the Town of Randolph. The report shall address effect of wind turbulence and disruption on fruit production, effect on beef and dairy farms, grain farming and all other farming activities. The report must address insect and bee population effects, effects on orchard and crop pollination, micro-climate effects and impacts on orchard and crop growing seasons.
- t. A report/analysis of the effects on the economy of the Town, including income of residents and effects on other industries and jobs.
- u. A report and analysis on any effect on local airplane landing strips.
- v. A report and analysis on any outdoor activities common in the Town of Randolph, including hunting, fishing, hiking, biking, etc.
- w. A complete report on:
 - 01. The need for the project including demand analysis, limitations on transport of power to high demand areas.
 - 02. Other “clean” energy power projects in the western New York area and NW Pennsylvania area in comparison to other areas of the state.
 - 03. Increase expenses imposed upon the Town of Randolph as a result of the proposed project.
 - 04. All alternative sites identified by the applicant and its affected entities.
 - 05. Local power needs in the Town of Randolph and total power generated.
 - 06. Total disruption/burden placed upon the Town of Randolph for all power generation activities, including existing facilities and infrastructure. Compare to other areas of the State; use population/energy usage per capita verses total energy burden.
- x. For any requirement of a report, analysis or study, required pursuant to this Section (P) or required by any other provision of this ordinance, or by the Zoning Board of Appeals in its review process, the Zoning Board of Appeals may require an expanded or supplemental report or study by the applicant, or an independent study, analysis or report by a consultant of the Board’s choosing. Applicant shall be responsible for the cost of any review/report study or analysis commissioned by the applicant, to be paid for from the escrow fund established pursuant to this Section.
- y. The applicant shall, prior to the receipt of a Special Use Permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and

the applicable Transmission Owner. Applicant shall also provide proof of complying with Public Service Commission power purchase requirements.

- z. A statement, signed under penalties of perjury that the information contained in the application is true and accurate to the best of applicant's knowledge.
- aa. Proof of continuous liability insurance in the Minimum amount of \$5,000,000 per occurrence with a total policy minimum of \$10,000,000 per year. This shall be submitted to the Town of Randolph indicating coverage for potential damages or injury to landowners and the public. A clause must be included in the insurance policy stating that the insurance company will notify the Town of Randolph Clerk of any lapse or change in the coverage within five days.
- ab. Disclosure of Financial Interests. For any financial interest held by a Municipal Officer or his or her relative in any wind development company or its assets within three years prior to the date of an application for a permit under this local law, the Wind Company shall disclose the application the Municipal Officer or his or her relative, and the nature and scope of the financial interest of each person.
- ac. All wind speed data obtained by applicant from any wind measurement tower in the Town, including explanation of methodology utilized to obtain measurements.
- ad. The applicant shall fund an escrow as required by this Section to cover the amount by which the Town's cost to review the applicant's application, including the cost of any independent study, analysis or report and the cost of the Town Engineer exceed the application fees paid by the applicant. The applicant and the Town may enter into an agreement as to the amount of the escrow. If no agreement is reached prior to review, the fund shall be 1.5 percent of the total estimated cost of the project, including both "hard" and "soft" costs, approvals, etc. The amounts paid to the Town shall not exceed this amount. This amount is determined to be the best estimate of all costs to the Town for its review process as set forth in this Section. The escrow shall be funded prior to review of the application. If at the end of the review process, and decision on the application by the Town Board, funds remain in the escrow fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.
- ae. Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town of Randolph and placed in the Town Library and Town Clerk's office as well as on the Town of Randolph website.

F. Application Review Process.

- a. Applicants may request a pre-application meeting with the Town Supervisor, Town Planning Board, Zoning Board of Appeals, Town Code Enforcement Officer and such consultants as the Supervisor shall determine. Such meeting shall be informal, and no party shall be bound by any statements made.
- b. An original executed and fifteen (25) copies of the application and a complete digital version shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. The Town Clerk shall forward copies to each member of the Code

Enforcement Officer, Town Planning Board, Zoning Board of Appeals, Town Board and additional copies to such individuals as the Supervisor shall direct.

- c. The Code Enforcement Officer, in consultation with the Town Engineer and any other consultants deemed necessary, shall determine whether the application is complete. If the application is deemed incomplete, the Town Code/Zoning Enforcement Officer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECS proposed is increased. When the application is complete, it shall be filed with the Town Clerk and the applicant shall be notified it has been accepted for filing.
- d. Upon filing of a complete application, the Town Clerk shall transmit the application to the Zoning Board of Appeals.
- e. In addition to the Zoning Board of Appeals public hearing requirement, the Town Board may in its discretion require the Applicant to conduct information sessions for the public benefit. The number of such sessions shall be at the discretion of the Town Board and notice shall be given to media in such a manner as the Town Board shall determine. During these sessions, the public will be afforded the opportunity to question the Applicant regarding the Project.
- f. In the event any hearing is adjourned by the Zoning Board of Appeals to hear additional comments, no further mailing shall be required. The Zoning Board will publicize notice of meetings.
- g. At the discretion of the Zoning Board of Appeals, the public hearing may be combined with public hearings on any Environmental Impact Statement. Notice for SEQRA public hearings must meet the specification set out in 6 N.Y.C.R.R. §617.12 (c).
- h. Notice of the project shall also be given, when applicable, to (1) the Cattaraugus County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns where the project site is located within three thousand feet of the adjoining Town boundary.
- i. SEQRA Review. Applications for Commercial/Industrial WECS are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Town's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA.
- j. After a thorough and detailed evaluation of the application in which the Town Board, Planning Board and Zoning Board of Appeals completes the required "hard look" of all materials and public input and upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Zoning Board of Appeals shall approve, approve with conditions, or deny the application(s). The Zoning Board of appeals shall issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
- k. If approved, the Code enforcement officer will issue, to the applicant, a Special Use Permit for each WECS for the purpose of construction and continued operation based on satisfaction of all conditions for said Permit. This authorizes the Code Enforcement Officer/Building Inspector to issue a building permit for each approved WECS, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.

1. The decision of the Zoning Board of appeals shall be filed within five business days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- m. If any approved WECS is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.

G. Standards for Commercial/Industrial WECS - The following restrictions on location, standards and conditions shall apply to all Commercial/Industrial WECS. Applications must demonstrate compliance with these standards.

1. Restricted areas:
 - a. Commercial (c) or Expressway (E-1) District.
 - b. No Commercial/Industrial Wind Energy Systems shall be allowed within the boundary areas of the Town of Randolph LWRP.
2. Setbacks. No Commercial/Industrial Wind Energy Systems shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail. Measurements are from the outer edge of any part of the system at its closest possible distance from the property in question.
 - a. From restricted areas: A minimum of 2500 feet from any Residential (R) Commercial (c) or Expressway (E-1) District boundary line.
 - b. From structures: A minimum of 2000 feet or 2.5 times the total WECS height from any building, whichever is greater.
 - c. From property lines: A minimum 1500 feet or 2 times the total WECS height from any property line excluding adjoining lot lines of the project participants. Such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement recorded in the Cattaraugus County Clerk's Office for a period of the life of the permit, that the affected adjacent landowner(s) agree to the elimination of the setback.
 - d. From public road and highways: A minimum 1500 feet or 2 times the total WECS height from any public road and highway right of way, whichever is greater.
 - e. From aboveground transmission lines, greater than 12 kilovolts: A minimum 2 times the total WECS height from any above-ground transmission line greater than 12 kilovolts.
 - f. From residences: A minimum of three times the total WECS height or 2000 feet.
 - g. From another Commercial/Industrial WECS turbine: A minimum of 2000 feet.
3. All power transmission lines from the tower to any building or other structure shall be located underground.
4. No television, radio or other communication antennas may be affixed or otherwise made part of any Commercial/Industrial WECS, except pursuant to the Town Site Plan Review and Subdivision

ordinance. Applications may be jointly submitted for WECS under this ordinance and telecommunications facilities under the Site Plan and Subdivision ordinance.

5. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
6. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Motion-sensitive on-demand lighting is required. Minimum-security lighting for ground level facilities shall be allowed as approved on the Site plan.
7. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. All structures in a project shall be finished in a single, non-reflective, matte finished color. Individual WECS shall be constructed using wind turbines whose appearance, with respect to one another, so as to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
8. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception. No WECS 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. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS causing the interference.
9. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all applicable rules and regulations.
10. WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible. All top soil disturbed during construction, reconstruction or modification of each WECS will be stockpiled and returned to the site upon completion of the activity, which disturbed the soil.
11. WECSs shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered. When the Zoning Board of Appeals determines that significant negative impacts have not or cannot be sufficiently mitigated by a proposed WECS, no permit may be issued.
12. WECSs shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
13. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
14. For all aspects of the application and operations of WECS, the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for wind power projects in effect, as of the date of the application, and any other agricultural effects identified shall be mitigated shall

be adhered to, both inside and outside of agricultural districts.

15. The maximum total height of any WECS shall be determined by application of all parts of this Section to the application. The minimum feasible height shall be the maximum height of any WECS, and applicant shall justify any requested maximum height and demonstrate to the Zoning Board's satisfaction the reason why a lower height is not feasible. Notwithstanding the forgoing, no wind tower total height shall exceed 500 feet.
16. Construction of the WECS shall be limited to the hours of 7 AM to 7 PM Monday through Saturday, unless a different schedule is approved by the Zoning Board.
17. If it is determined that a WECS is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for suspension or revocation of the Special use Permit for the specific WECS causing the problems.
18. WECSs shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community. This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of NY's Department of State guidelines for Scenic Areas of Statewide Significance shall be respected.
19. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
20. Fencing may be required, as determined by the Zoning Board.
21. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7-day week coverage. The Zoning Board of Appeals may require additional signs based on safety needs.
22. No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the tower structure.
23. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.
24. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
25. The owner and/or operator of a WECS that has received approval under this section and for which a permit has been issued shall file with the Town Clerk on an annual basis an Operation and Maintenance Compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the Operation and Maintenance Plan. The annual report shall include a noise analysis by a qualified acoustical consultant performed according to the International Standard for Acoustic Noise Measurement Techniques For Wind Generators (IEC

61400-11) or such other procedure as accepted by the Zoning Board of Appeals during the permit review process which certifies to the Town that the noise level of the WECS is in full compliance with the provisions of this Section and the permit as issued.

26. Traffic Routes.

- a. Construction and delivery vehicles for WECSs and/or associated facilities shall use only traffic routes established as part of the application review process.
- b. The applicant is responsible for remediation of damaged roads and infrastructure upon completion of the installation and/or maintenance of a WECS. The applicant shall comply in all requirements of any Town of Randolph Infrastructure, Preservation or Protection Law.
- c. In addition to complying with any Town of Randolph Infrastructure Preservation or Protection Law, Prior to placing the Wind Energy Facility in operation, and for the life of the project, the applicant shall repair or reconstruct all state highways, county highways, town highways and hamlet streets and highways damaged by the applicant to the standards set forth by the Cattaraugus County Highway Department regardless of the condition of such highways, roads and streets prior to the commencement of construction by the applicant.

27. Noise Standards for Wind Energy Systems.

Noise standards are based on:

- a. Growing evidence of “turbine syndrome” caused by low frequency noise,
- b. Noise produced at high elevations causing it to carry long distances.
- c. Constant noise output often with an annoying woofing sound.
- d. Infrasound travels through both air and ground for long distances.

Sound Pressure Level Limits Measured in dB(A)s

Residential Districts 45

- a. This levels may be exceeded by 10 dB(A) for a single period, no longer than 15 minutes, in any one day.
- b. Sound pressure levels shall be measured at all major lot lines, at a height of at least four (4) feet above the ground surface. Noise shall be measured with an approved sound level meter using procedures meeting the current standards of the American National Standards Institute, (ANSI) and approved by the Town of Randolph.
- c. Noise below the 20 Hz level (Infrasound) is not permitted. WECS must be certified that they are designed to not produce infrasound. The Town will determine procedures to measure infrasound based on current ANSI standards. Any WECS suspected of producing infrasound will be shut down, except for Town approved noise testing. Testing will occur inside and outside of buildings.
- d. In the event, audible noise due to Wind Energy Facility operations contains a steady or pure

tone, or an intermittent or reoccurring tone, such as a whine, screech, or hum, the tones shall be eliminated.

- e. Noise testing may be requested by the Code Enforcement Officer in response to complaints or reasonable suspicion of violation of permit requirements. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Zoning Ordinance and shall include an evaluation of any complaints received by the Town. The Town may conduct, or have conducted, such testing as it determines in addition to the applicant/operator. Such testing shall be paid for by the WECS applicant/operator. The applicant/operator shall cooperate with any Town testing of noise levels, including providing access to all sites for that purpose.
28. Economic Effects. WECS shall be sited and constructed so as to minimize any adverse economic effects on the Town, its residents and its economic activities, including agricultural activities in accordance with conditions established by the Zoning Board.
 29. Health Effects. WECS shall not adversely affect the health, including mental health of the residents of the Town of Randolph. All available material and studies as well as baseline health reports of willing residents must be contained in a Health Maintenance Plan for any WECS project. Pre-construction, health exams shall be provided to willing residents. Reports of residents' exams shall be sealed or maintained in the possession of residents or their physicians unless they are made available by residents in accordance with HIPAA procedures.
 30. No WECS shall be located in the Town of Randolph which, after all data, required reports and studies are considered, it is determined by the Zoning Board, will cause unacceptable interference with or danger to bird or bat populations, or to migration routes.
 - a. When a WECS has been constructed in the Town of Randolph, the applicant/owner/operator shall inventory all bird or bat kill and report the same to the Town on a monthly basis. The applicant/owner/operator shall also provide access to the site and surrounding area to the Town's designated representative to inventory killed birds or bats on a daily basis, if requested.
 - b. If a tower or towers in a WECS are determined to cause excessive numbers of bird or bat kill after consultation with the Department of Environmental Conservation and other involved agencies, remedial action shall be required up to and including suspension or revocation of a permit or any part thereof.
 31. Real Property Value Protection Plan. The WECS owner(s) ("applicant") shall assure the Town of Randolph that there will be no loss in real property value within two miles of each wind turbine within their WECS. To legally support this claim, the applicant shall consent in writing to a Real Property Value Protection Agreement ("Agreement") as a condition of approval for the WECS. This Agreement shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the WECS, that they have some protection from WECS-related real property values losses.

The applicant shall agree to guarantee the property values of all real property partially or fully within two miles of the WECS. Any real property owner(s) included in that area who believe that

their property may have been devalued due to the WECS, may elect to exercise the following option:

- a. All appraiser costs are paid by the applicant, from an Escrow Account. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("Diminution Value"), caused by the proximity to the WECS. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no WECS was proposed or constructed.
 01. If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("Average Diminution Value": ADV).
 02. If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
 03. In either case, the property owner may elect to receive payment from applicant of the ADV. Applicant is required to make this payment within 60 days of receiving said written election from property owner, to have such payment made.
- b. Other Agreement Conditions.
 01. If a property owner wants to exercise this option, they must do so within 10 years of the WECS receiving final approval from the Town of Randolph.
 02. A property owner may elect to exercise this option only once.
 03. The applicant and the property owner may accept mutually agreeable modifications of this Agreement, although the applicant is not allowed to put other conditions on a financial settlement (e.g. confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method that is considered an exercise of this option.
 04. This Agreement applies to the property owner of record as of the date of the issuance of the permit, and is not transferrable to subsequent owners.
 05. The property owner of record as of the date of the issuance of the WECS permit must reasonably maintain the property from that time, until they choose to elect this option.
 06. The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.
 07. The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the WECS application.
 08. This Agreement will be guaranteed by the applicant (and all its successors and assigns), for 10 years following the WECS receiving final approval from the Town of Randolph, by

providing a bond (or other surety), in an amount determined to be acceptable by the Town.

09. Payment by the applicant not made within 60 days will accrue an interest penalty. This will be 12 percent annually, from the date of the written election from property owner.
10. For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the applicant.
11. Upon application, applicant shall provide a performance bond (or equivalent) in an amount determined by the Town of Randolph and held by the Town of Randolph. This surety account will ensure execution of all aspects of this Agreement (including compensation of eligible property owners in the case of default by applicant). Failure to maintain this surety account shall be cause for revocation or suspension of the WECS Permit.
32. Any other standard or requirement established by the Zoning Board as set forth as a condition of approval of an application shall apply.

H. Decommissioning and Site Restoration Plan and Requirements - An application for a Wind Energy Facility permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

1. If any WECS remains non-functional or inoperative for a continuous period of 180 days, the applicant shall, without any further action by the Town, remove said system at its own expense in accordance with the provisions of subsection C of this Section. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan.
2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA or by lack of income generation. The applicant shall make available to the Town all reports from the purchaser of energy from individual WECS. Upon request of the Town, the Town may also require periodic documentation reporting the power output generated by the WECS.
3. The plan shall provide for the removal from the Project Parcels, and lawful disposal or disposition of, all Wind Turbines and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 60 inches below grade. The plan shall provide for the removal of all access roads that the owner of the Project Parcels wants removed. The plan shall provide for the restoration of the Project Parcels to similar condition to that which existed before construction of the WECS.
4. The plan shall provide for the decommissioning of the site upon the expiration or revocation of the WECS permit, or upon the non-functioning of the WECS.
5. The Plan shall include:
 - a. the estimated decommissioning cost in current dollars;
 - b. how said estimate was determined;

- c. the method of ensuring that funds will be available for decommissioning and restoration; and the method that will be used to keep the decommissioning costs current, by adjusted annually based on a suitable index such as the “RS Means Heavy Construction Cost Data” index.
6. The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional towers and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund in an amount to be determined by the Town for the period of the life of the facility. This fund shall be no less than 125% of the estimated cost of full decommissioning and restoration in the form of a cash deposit with the Town in the amount of 25% of such fund and the balance of such fund in the form of an irrevocable bond in form and content as approved by the Town Board. All decommissioning funding requirements shall be met prior to commencement of construction.
7. The plan shall include written non-revocable authorization from the permit holder and the owners of all Parcels within the project for the Town to access the Parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan. The written authorization shall be in a form approved by the Town and shall be binding on the heirs, assigns and distributees of the owner(s), and shall be recorded in the Office of the Cattaraugus County Clerk.
8. Use of Decommissioning Fund.
 - a. Any non-functional WECS or any WECS for which the special use permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration by the applicant or owner of the WECS within 180 days of the date on which the facility becomes non-functional or of the revocation of the special use permit.
 - b. If removal of the WECS is required and the applicant, permittee, or successors fails to remove the WECS and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.
 - c. If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.

I. Limitations on Approvals; Easements on Town Property.

1. Nothing in this Zoning Ordinance shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Zoning Ordinance shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility.
2. Notwithstanding anything to the contrary contained in this Zoning Ordinance or any other local law, ordinance, rule or regulation of the Town of Randolph, Building Permits shall not be issued for new construction on the same parcel as a permitted WECS when the proposed construction is located within a setback required by this Section. No property or lot upon which a WECS has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks

required by this Section and/or as set forth in the permit.

J. Permit Enforcement Revocation.

1. Testing fund. A Special Use Permit shall contain a requirement that the applicant perform periodic noise testing by a qualified acoustical measurement consultant, which shall be included in the annual Operation Maintenance and Compliance report required under this Section, and may be required more frequently upon request of the Code Enforcement Officer in response to complaints or reasonable suspicion of violation of permit requirements. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Zoning Ordinance and shall include an evaluation of any complaints received by the Town. The Town may, if the Code Enforcement Officer so determines, conduct or have conducted, such testing as it determines in addition to the applicant/operator. Such testing shall be paid for by the applicant.
2. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions and requirements of this Section. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition or any provision of this Section, the owner, or operator shall immediately notify the Code Enforcement Officer. Upon such notice, or if the Code Enforcement Officer determines that a violation exists, he shall determine the severity of the non-compliance. If he determines the violation to be a threat to the life, safety, health or immediate well-being of the public, he may order the WECS to be shut down. Upon notification of a violation, the applicant/owner/operator shall submit a remediation plan in writing within 10 days outlining the steps to be taken to remedy the violation. If no plan is submitted, or if remediation is not completed within 90 days of notice, or at any other time the Code Enforcement Officer deems appropriate, the Code Enforcement Officer shall notify the Town Board.
3. Notwithstanding any other enforcement provision under this Section, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Zoning Board may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order suspension of the permit until compliance is achieved, or (3) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 180 days. If the WECS is not removed, the Town shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

K. Fees.

1. Non-refundable Application Fees for WECS, Wind Measurement Towers, and Small WECS shall be established by the Town Board and reviewed periodically. The fee may be changed by resolution of the Town Board. Until established, the fee shall be \$1,000.00 per megawatt of rated maximum capacity submitted with the application.
2. Reimbursement of Expenses Related to WECS Project: The Town Board of the Town of Randolph has determined that the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, for such facilities (WECS), an administrative fee of \$500.00 per permit request shall be charged for administrative costs, plus the amount charged to

the Town by the outside consultant(s) hired by the Town to review the plans and inspect the work. The Town and the applicant will enter into an agreement for an inspection and/or certification procedure for these unique facilities, and the applicant will be required to deposit the sum of \$100,000.00 in an escrow account with the Town which the Town may use to pay for any expenses it incurs related to this project. The fees established herein may be amended from time to time by resolution of the Town Board.

3. Nothing in this Local ordinance shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

L. Project Management and Oversight.

1. Upon approval by the Zoning Board of Appeals of a WECS Special Use Permit application, and as a condition to the issuance of a WECS Special Use Permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the Permit. Such representative and site manager shall be in place for as long as the WECS is in place. This person will have the authority to make management and technical decisions as situations demand. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of field representative and site manager to the Town Code Enforcement Officer and the Town Supervisor. The applicant shall also provide contact information for all entities providing operation, maintenance and monitoring services.
2. As a condition to the issuance of a WECS Special Use Permit, the services of an engineering firm will be retained by the Town of Randolph during the construction phase of the WECS project.
3. Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of 3 percent of the estimated cost of construction, including all materials, contracts and labor. Said amount is determined to be the reasonable cost to the Town to provide for such inspection. If the cost to the Town is less than that amount, the balance shall be refunded to the applicant upon completion of the construction, issuance of a Certificate of Occupancy and approval of all State and Federal agencies.
4. The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specifications and drawings. A representative of the engineering firm shall be on-site at all times during the construction phase. The firm will also monitor road and infrastructure use and determine any damages to same.
5. The engineering firm's duties shall include coordination with the Code Enforcement Officer for enforcement actions and project specification compliance and they will be confirming that all project specifications are implemented. The engineering firm's representative may recommend that the Code Enforcement Officer issue a "stop work order" for issues including but not limited to: (a) safety, (b) developer compliance issues, and (c) insufficient project documentation.
6. The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the engineering firm representative prior to starting the revised schedule.

7. The applicant shall provide the engineering firm representative and the Code Enforcement Officer with “As Built” Drawings within (1) one week of completion of each portion of the construction phase or as requested by the engineering firm representative, or code enforcement officer.
8. All up-grades or changes to the WECS project, as permitted, shall be reviewed and approved by the engineering firm and Code Enforcement Officer prior to the implementation of such upgrades or changes. No changes to basic design, height or location will be permitted unless approved as an amendment to the application by the Zoning Board.
9. A final Maintenance Plan shall be provided to and approved by the Code Enforcement Officer, with input from the engineering firm prior to issuance of a Certificate of Occupancy, including but not limited to:
 - a. List of all items requiring regular maintenance.
 - b. Duration of accumulated time between scheduled maintenance.
 - c. Work to be completed during the maintenance operation.
 - d. Person responsible for the maintenance.
 - e. Process applicant uses to ensure maintenance is carried out appropriately.
10. All performance data routinely monitored during turbine operation shall be provided to the Code Enforcement Officer. Data shall include but not limited to:
 - a. Vibration levels.
 - b. Noise levels.
 - c. Rotational Speeds.
 - d. Kilowatt hours of production.
11. All performance data and maintenance reports shall be filed with the Code Enforcement Officer monthly, or more frequently as required.
12. In the event of an accident, the Town Code Enforcement Officer shall have the authority to shut down all of the affected turbines until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur, as evidenced by a report satisfactory to the Code Enforcement Officer.

M. Enforcement; Penalties and Remedies for Violations.

1. This Local ordinance shall be enforced by the Town Code Enforcement Officer.
2. Any person owning, controlling or managing any building, structure or land who shall undertake a

Wind Energy Facility in violation of this Local code or, operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this Local code, shall be guilty of a violation and subject to the penalties of the Town of Randolph Zoning Ordinance section 17.4

3. The Code Enforcement Officer may, after notice of violation, enter into a Consent Order with the applicant/owner/operator, to remedy the violation with specifications to be taken and an agreed schedule.
4. Special Proceeding: In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Wind Energy Facility and shall be entitled to injunctive relief, including a Temporary Restraining Order and a Temporary Injunction as the Court deems appropriate.

N. Miscellaneous.

1. Nothing in this Zoning Ordinance, including the approval by the Zoning Board of appeals and issuance of the permit by the Town, shall eliminate any property or rights of property owners or residents to enforce their legal remedies including, but not limited to, actions in law or equity in the nature of nuisance proceedings, or tort or negligence proceedings.
2. The Town reserves its right to opt out of the tax exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by Subsection (8) of said law or by any other provision of law.

Section 10.26– Non-Commercial Wind Energy Conversion Systems

These regulations provide standards for Non-Commercial Wind Energy Conversion Systems (WECS) that are designed for on-site home, farm and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent is to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town.

A. Application Process

1. Prior to construction of any non-commercial WECS, the project proponent shall first obtain a Special Use Permit and Site Plan Approval from the Town of Randolph Zoning Board, and a Building Permit from the Town's Code Enforcement Officer.
2. All applications for a non-commercial WECS shall include the following information:
 - a. Name and address of the applicant
 - b. Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
 - c. A site plan drawn in sufficient detail to show the following:
 01. Location of the tower on the site and the tower height, including blades, rotor diameter and ground clearance.

- 02. Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the Wind Energy Conversion Systems.
 - 03. Dimensional representation of the various structural components of the tower construction including the base and footing.
 - 04. Certification by a licensed New York State Professional Engineer that the towers design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Building and Fire Prevention Code.
- d. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system, provided by a licensed New York State Professional Engineer.
 - e. Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of the residential wind turbine and tower.
 - f. Photographs or detailed drawings of the wind turbine model, including the tower and foundation.
 - g. Grading plan and erosion and sedimentation control plan
 - h. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code adopted by New York State.
 - i. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity from the grid.
 - j. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
 - k. Completed Environmental Assessment Form.
 - l. Such additional information as may be reasonably requested by the Zoning Board for a complete understanding of the proposed project.

B. Criteria for Approval

The Zoning Board of Appeals shall use the following criteria to evaluate all Non-Commercial Wind Energy Conversion Systems:

- 1. **Minimum Lot Size** - A non-commercial WECS shall be located on a lot that is a minimum of one acre in size.

2. Only one non-commercial WECS shall be allowed per lot. The system shall be primarily used to reduce the on-site consumption of electricity and at no times shall electricity be distributed off-grid across property lines.
3. **Setbacks** -The non-commercial WECS shall be set back a minimum of 1.5 times the total height of the WECS from:
 - a. Any year-round residence in existence at the time the application is made.
 - b. Property lines of the site on which the structure is located.
 - c. The right of way of public roads
4. **Maximum height:** The maximum overall height of any non-commercial wind energy conversion system shall be 150 feet.
5. The maximum turbine output shall not exceed 100 kW per hour.
6. The WECS shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
7. **Lighting:** Exterior lighting on any structure associated with the system shall not be allowed, except lighting that is specifically required by the Federal Aviation Administration (FAA).
8. **Signage:** No advertising sign or logo shall be placed or painted on any turbine or tower. The Zoning Board may allow the placement of the manufacturer's logo on a ground level structure in an unobtrusive manner.
9. **Compliance with regulatory agencies:** The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction related to the construction of the non-commercial Wind Energy Conversion System. If all such approvals have not been received at the time that the Zoning Board considers the application for Special Use Permit, receipt of these other agency approvals shall be a condition to be completed prior to the issuance of a Building Permit.
10. **Safety and security requirements:** The applicant shall adhere to the following safety and security requirements.
 - a. **Safety shutdown:** Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
 - b. **Grounding:** All structures which may be charged with lightning shall be grounded according to applicable electrical code.
 - c. **Wiring:** All wiring associated with the wind energy facility shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles,

towers or lines. This standard may be modified by the Zoning Board if the terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

- d. **Ground clearance:** The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.
- e. **Climb ability:** Wind turbine towers shall not be climbable up to 15 feet above ground level and/or other appropriate method of access control shall be provided.
- f. **Anchor points for guy wires:** Anchor points for any guy wires for a system tower shall be located on the property that the system is located on and not on or across any above ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence 6 feet high or sheathed in bright orange or yellow covering from ground to eight feet above the ground. The minimum setback for the guy wire anchors shall be 10 feet from the property boundary.
- g. **Signage:** Appropriate warning signage shall be placed on wind turbine towers, and electrical equipment. Signage shall also include one (1) twenty- four-hour emergency contact numbers to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.

11. Noise Standard

- a. **Audible noise standard:** Must comply with article 10 section 10.2f noise standards of this code.
 - b. **Low frequency noise:** A noncommercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
12. **Interference with television, microwave and radio reception** - The noncommercial wind energy conversion energy system shall be operated such that no disruptive electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
13. **Erosion Control** - Prior to granting a special use Permit for a non-commercial WECS, the Zoning Board shall determine that the Erosion and Sedimentation Control Plan is adequate.

C. Abandonment of Use

- 1. All non-commercial WECSs shall be maintained in good condition and in accordance with all requirements of this section. The Code Enforcement Officer shall inspect each non-commercial WECS annually to insure compliance with this provision. If this inspection shows that the structure is unsafe, then the owner will be given an opportunity to bring the structure into compliance. If the structure is deemed unsafe and the owner does not bring the structure into compliance within a reasonable period of time, the tower shall be dismantled and removed from the property at the owner's expense. The Town reserves the right to dismantle the structure and to charge back the cost of this removal to the property owner. If unpaid this will be added as a charge to the tax levy

of the property.

2. Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the Special Use Permit shall constitute grounds for the revocation of the permit, after a public hearing by the Zoning Board of Appeals.

D. Assessment - A non-commercial wind energy conversion system may be subject to assessment by the Town of Randolph.

E. Zoning Board Action - The Zoning Board may grant the Special Use Permit, deny the Special Use Permit, or grant the Special Use Permit with written stated conditions. Denial of the Special Use Permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the Special Use Permit, the applicant shall obtain a building permit for each tower.

F. Amendments to Approval - Any changes or alterations to the wind energy conversion system, after approval of the Special Use Permit and Site Plan, shall require amendment to the Special Use Permit. Such amendment shall be subject to all the requirements of this section.

Section 10.27 – Commercial Solar Energy Conversion Systems

A. Applicability/Severability - No Commercial/Industrial Solar Energy Conversion System shall be constructed, reconstructed, modified or operated in the Town of Randolph, except in compliance with this Zoning Ordinance.

B. Applications for Commercial/Industrial Solar Energy Conversion Systems

1. An application for Special Use Permit for a Commercial/Industrial Solar Energy Conversion System shall include the following:
 - a. Name, address, telephone number and email address of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number and email address of the agent as well as an original signature of the applicant authorizing the representation.
 - b. Name, address, telephone number and email address of the property owner. If the property owner is not the applicant, the application shall include proof of site control by recorded document establishing that applicant is authorized to utilize the property for the intended purpose.
 - c. Contact information or other property identification, of each proposed Commercial/Industrial Solar Energy Conversion System location, including Tax Map section, block and lot number, latitude and longitude coordinates.
 - d. A description of the project, including the number and maximum rated power output capacity of each Commercial/Industrial Solar Energy Conversion System.
 - e. For each Commercial/Industrial Solar Energy Conversion System proposed, a plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:

01. Property lines and physical dimensions of the Site.
 02. Location, approximate dimensions and types of existing structures and uses on Site, public roads, and adjoining properties within a one thousand foot radius of the proposed Commercial/Industrial Solar Energy Conversion System.
 03. Location and ground elevation of each proposed Commercial/Industrial Solar Energy Conversion System.
 04. Location of all above and below ground utility lines on the Site, and all related transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
 05. Location of and measured distances (accurate GPS measurements may be utilized) of each proposed Commercial/Industrial Solar Energy Conversion System from every setback required pursuant to this section.
 06. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
 07. The names and addresses of all property owners within a one thousand foot radius of each Solar Energy Conversion System, as shown on the assessment roll of the Town of Randolph, together with the current use of all such property.
- f. Landscaping Plan depicting vegetation and forest cover describing the area to be cleared of vegetation and forest cover and areas where vegetation and forest cover shall be added, identified by species and size of specimens at installation, and their locations.
 - g. A decommissioning plan as specified in this Section.
 - h. A Complaint Resolution Plan to address complaints within 24 hours of receipt of notice thereof and to resolve any complaint in a diligent and timely manner under the circumstances.
 - i. Information relating to the construction/ installation of the Commercial/Industrial Solar Energy Conversion System as follows:
 01. A proposed construction schedule describing commencement and completion dates of the project and beginning and ending hours of daily construction
 02. A description of the routes to be used by construction and delivery vehicles, the gross weights, and heights of those loaded vehicles.
 - j. Completed Part 1 of the full Environmental Assessment Form.
 - k. For each proposed Commercial/Industrial Solar Energy Conversion System, include make, model, picture, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and

coolants.

1. Each application submittal shall contain a thorough analysis/explanation of the ability and means to comply with the “Standards for Commercial/Industrial Solar Energy Conversion Systems” Section of this code.
 01. Reflection: The applicant shall submit a study on potential reflection. The study shall identify locations where reflection may be caused by the Commercial/Industrial Solar Energy Conversion System and the expected durations of the reflection at these locations. The study shall identify areas where reflection may be present at locations of any residences, highways, parks or open recreation areas and detail measures that will be taken to mitigate or eliminate such interference and to comply with the requirements of this Section.
 02. Visual Impact: Applications shall include a visual impact study of the proposed Commercial/Industrial Solar Energy Conversion System as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least several locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 03. Fire Protection/Emergency Response Plan: A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Commercial/Industrial Solar Energy Conversion System to address coordination with local emergency/fire protection providers during the construction or operation phase in the event of an emergency, fire or other hazard.
 04. Property Value Analysis: Property value analysis prepared by a New York State licensed appraiser experienced in appraising rural properties of the type and nature typically found in the Town of Randolph evaluating the potential impact of the project on values of properties in the Town of Randolph, and in addition a proposed means to protect property owners from decrease in values caused by the establishment and operation of the proposed Commercial/Industrial Solar Energy Conversion System, and to comply with the property value preservation subsection set forth in the “Standards for Commercial/Industrial Solar Energy Conversion Systems” Section of this code.
 05. Electromagnetic Interference: An assessment of potential electromagnetic interference with microwave, radio, television, satellite systems, personal communication systems and other wireless communication, including broadband, weather and other radar, identifying specific potential interference established systems.
 06. Transportation Impacts: An analysis of impacts on local transportation identifying impacts anticipated during construction, reconstruction, modification, or operation of each Commercial/Industrial Solar Energy Conversion System. Transportation impacts to be considered shall include, at a minimum, potential damage to local road surfaces, road beds and associated structures; potential traffic tie-ups by haulers of Commercial/Industrial Solar Energy Conversion System materials; impacts on school bus routes; impacts of visitors to the Commercial/Industrial Solar Energy Conversion System’ facilities. Local roads shall include all state highways, county highways, town highways, and hamlet streets and highways, which will be or may be used by the applicant.

07. **Transportation Plan:** A transportation plan describing routes to be used in delivery of project components, equipment and building materials, and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, and measures to restore damaged/disturbed access routes and all other infrastructure following construction. Roads shall include all state highways, county highways, town highways, and village streets and highways, which will be or may be used by the applicant.
08. **Ground Water Impacts:** An analysis of impacts on local ground water resources shall be prepared, regarding impacts anticipated during construction, reconstruction, modification, or operation decommissioning and post decommissioning of each Commercial/Industrial Solar Energy Conversion System
09. An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase.
10. **Cultural, Historical and Archeological Resources Plan:** An analysis of impacts on cultural, historical and archeological resources addressing and assessing impacts anticipated during construction, reconstruction, modification or operation of each Commercial/Industrial Solar Energy Conversion System. This assessment shall be conducted in accordance with standards of the New York State Office of Parks, Recreation and Historic Preservation.
11. **Wildlife Impacts:** An analysis of impacts on local wildlife shall be prepared, addressing impacts anticipated during construction, reconstruction, modification, or operation of each Commercial/Industrial Solar Energy Conversion System. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on flying creatures (birds, bats, insects), as well as wild creatures existing at ground level. An assessment of the impact of the proposed development on the local flora and fauna. The analysis will include migratory and resident avian species and bat species. The scope of such assessment shall take into consideration New York State Department of Environmental Conservation and the United States Fish and Wildlife Service studies, standards and recommendations and must at a minimum consist of pre-construction data of three years, and literature/ studies/survey for threatened and endangered and species of concern and migratory species that provide relevant information on critical flyways and migration routes, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for three-year post-installation studies. The reports shall provide sufficient information to allow the Zoning Board to make a determination on any mitigation conditions or a denial of permits as provided in standards for Commercial/Industrial Solar Energy Conversion System Section.
12. **Operation and Maintenance Plan:** An operation and maintenance plan providing for regular periodic Commercial/Industrial Solar Energy Conversion System schedules, any special maintenance requirements and procedures and notification requirements for restarts.
13. **Stray Voltage Report:** An assessment, pre- and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.

14. An Agriculture Effect Report: A report including impacts on all types of agricultural activities present in the Town of Randolph. The report shall address effect of wind turbulence and disruption on fruit production, effect on beef and dairy farms, grain farming and all other farming activities. The report must address insect and bee population effects, effects on orchard and crop pollination, micro-climate effects and impacts on crop growing seasons.
15. A report and analysis on any outdoor activities common in the Town of Randolph, including hunting, fishing, hiking, biking, snowmobiling etc.
16. A complete report on:
 - a. The need for the project including demand analysis, limitations on transport of power to high demand areas.
 - b. Other “clean” energy power projects in the WNY area and NW Pennsylvania area in comparison to other areas of the state.
 - c. Increase expenses imposed upon the Town of Randolph as a result of the proposed project. All alternative sites identified by the applicant and its affected entities.
 - d. Local power needs in the Town of Randolph and total power generated.
 - e. Total disruption/burden placed upon the Town of Randolph for all power generation activities, including existing facilities and infrastructure. Compare to other areas of the State; use population/energy usage per capita verses total energy burden.
 - f. In addition to any requirement of a report, analysis or study by this ordinance, the Zoning Board may require an expanded or supplemental report or study by the applicant, or an independent study, analysis or report by a consultant of the Board’s choosing. Applicant shall be responsible for the cost of any review/report study or analysis commissioned by the applicant, to be paid for from the escrow fund established pursuant to this Section.
 - g. The applicant shall, prior to the receipt of a Special Use Permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner. Applicant shall also provide proof of complying with Public Service Commission power purchase requirements.
 - h. A statement, signed under penalties of perjury that the information contained in the application is true and accurate to the best of applicant’s knowledge.
 - i. Proof of continuous liability insurance in the minimum amount of \$5,000,000 per occurrence with a total policy minimum of \$10,000,000 per year. This shall be submitted to the Town of Randolph indicating coverage for potential damages or injury to landowners and the public. A clause must be included in the insurance policy stating that the insurance company will notify the Town of Randolph Clerk of any lapse or change in the coverage within five days.
 - j. The Solar Company shall disclose any financial interest held by a Municipal Officer or his or her relative in any solar development company or its assets within three

years prior to the date of an application for a permit under this local law.

- k. The applicant shall fund an escrow as required by this Section to cover the amount by which the Town's cost to review the applicant's application, including the cost of any independent study, analysis or report and the cost of the Town Engineer exceed the application fees paid by the applicant. The applicant and the Town may enter into an agreement as to the amount of the escrow. If no agreement is reached prior to review, the fund shall be 1.5 percent of the total estimated cost of the project, including both "hard" and "soft" costs, approvals, etc. The amounts paid to the Town shall not exceed this amount. This amount is determined to be the best estimate of all costs to the Town for its review process as set forth in this Section. The escrow shall be funded prior to review of the application. If at the end of the review process, and decision on the application by the Town Board, funds remain in the escrow fund, the balance shall be returned to the applicant together with an accounting of the expenditures incurred by the Town.
- l. Copies of all applications and proposed plans should be made available to the public within seven days of receipt by the Town of Randolph and placed in the Town Library and Town Clerk's office as well as on the Town of Randolph website.

C. Application Review Process

1. Applicants may request a pre-application meeting with the Town Supervisor, Town Planning Board, Zoning Board of Appeals, Town Code Enforcement Officer and such consultants as the Supervisor shall determine. Such meeting shall be informal, and no party shall be bound by any statements made.
2. An original copy of the application and a complete digital version shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. The Town Clerk shall forward the application to the Code Enforcement Officer for review.
3. The Code Enforcement Officer, in consultation with the Town Engineer and any other consultants deemed necessary, shall determine whether the application is complete. If the application is deemed incomplete, the Town Code Enforcement Officer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number or size of Solar Energy Conversion Systems proposed is increased. When the application is complete, it shall be filed with the Town Clerk and the applicant shall be notified it has been accepted for filing.
4. A complete application and twenty-five (25) copies of the application and a complete digital version shall be submitted to the Town Clerk by the applicant. The Town Clerk shall forward copies to each member of the Town Planning Board, Zoning Board of Appeals, Town Board, Code Enforcement Officer and additional copies to such individuals as the Supervisor shall direct.
5. The Zoning Board of Appeals will determine a date for a public hearing.

6. In addition to the Zoning Board public hearing requirement, the Town Board may in its discretion require the Applicant to conduct information sessions for the public benefit. The number of such sessions shall be at the discretion of the Town Board and notice shall be given to media in such a manner as the Town Board shall determine. During these sessions, the public will be afforded the opportunity to question the Applicant regarding the project.
7. In the event any hearing is adjourned by the Zoning Board to hear additional comments, no further mailing shall be required. The Zoning Board will publicize notice of meetings.
8. At the discretion of the Zoning Board, the public hearing may be combined with public hearings on any Environmental Impact Statement. Notice for SEQRA public hearings must meet the specification set out in 6 N.Y.C.R.R. §617.12 (c).
9. Notice of the project shall also be given, when applicable, to (1) the Cattaraugus County Planning Board, if required by General Municipal Law §239-1 and 239-m, and (2) to adjoining Towns where the project site is located within three thousand feet of the adjoining Town boundary.
10. SEQRA Review. Applications for Commercial/Industrial Solar Energy Conversion Systems are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies or communities, in which case the records of review by said agencies or communities shall be part of the record of the Town's proceedings. The applicant shall be responsible for the Town's legal and engineer's fees in connection with the SEQRA.
11. After a thorough and detailed evaluation of the application in which the Town Board, Planning Board and Zoning Board completes the required "hard look" of all materials and public input and upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Zoning Board shall approve, approve with conditions, or deny the application.. The Zoning Board shall issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.
12. If approved, the Code enforcement officer will issue, to the applicant, a Special Use Permit for each Solar Energy Conversion System for the purpose of construction and continued operation based on satisfaction of all conditions for said Permit. This authorizes the Code Enforcement Officer to issue a building permit for each approved Solar Energy Conversion System, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law.
13. The decision of the Zoning Board shall be filed within five business days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
14. If any approved Solar Energy Conversion System is not substantially commenced within one year of issuance of the permit, the special use permit shall expire.

D. Standards for Commercial/Industrial Solar Energy Conversion Systems:

The following restrictions on location, standards and conditions shall apply to all Commercial /Industrial Solar Energy Conversion Systems. Applications must demonstrate compliance with these standards.

1. Restricted areas:
 - a. Commercial or Expressway District.
 - b. Residential.
2. Setbacks. No Commercial/Industrial Solar Energy Conversion System shall be allowed within the following setbacks. If more than one setback applies, the most restrictive setback shall prevail.
 - a. From restricted areas: A minimum of 300 feet from any Residential, Commercial or Expressway District boundary line.
 - b. From property lines: A minimum 300 feet from any property line excluding adjoining lot lines of the project participants. Such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement recorded in the Cattaraugus County Clerk's Office for a period of the life of the permit, that the affected adjacent landowner(s) agree to the elimination of the setback.
3. All power transmission lines from the Commercial/Industrial Solar Energy Conversion System to any building, other structure or utility transmission lines shall be located underground.
4. No television, radio or other communication antennas may be affixed or otherwise made part of any Commercial/Industrial Solar Energy Conversion System, except pursuant to the Town Site Plan Review and Subdivision ordinance.
5. No advertising signs are allowed on any part of the Commercial/Industrial Solar Energy Conversion System, including fencing and support structures.
6. All applicants shall use measures to reduce the visual impact of Commercial/Industrial Solar Energy Conversion System to the extent possible. All structures in a project shall be finished in a single, non-reflective, matte finished color.
7. No Commercial/Industrial Solar Energy Conversion System shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems will produce electromagnetic interference with signal transmission or reception. No Commercial/Industrial Solar Energy Conversion System 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. If it is determined that a Commercial/Industrial Solar Energy Conversion System is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific Commercial/Industrial Solar Energy Conversion System causing the interference.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all applicable rules and regulations.

9. Commercial/Industrial Solar Energy Conversion System shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided. The use of previously developed areas will be given priority wherever possible. All top soil disturbed during construction, reconstruction or modification of each Commercial/Industrial Solar Energy Conversion System will be stockpiled and returned to the site upon completion of the activity, which disturbed the soil. Tillable agricultural sites should be avoided.
10. Commercial/Industrial Solar Energy Conversion Systems shall be located in a manner that minimizes significant negative impacts on animal species in the vicinity, particularly bird and bat species, including those that may be listed by the U.S. Fish & Wildlife Service as threatened or endangered. When the Zoning Board determines that significant negative impacts have not or cannot be sufficiently mitigated by a proposed Commercial/Industrial Solar Energy Conversion System, no permit may be issued.
11. Commercial/Industrial Solar Energy Conversion Systems shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. For all aspects of the application and operations of Commercial/Industrial Solar Energy Conversion System, the New York State Department of Agriculture and Markets guidelines for agricultural mitigation for Commercial/Industrial Solar Energy Conversion System projects in effect, as of the date of the application, and any other agricultural effects identified shall be mitigated and shall be adhered to, both inside and outside of agricultural districts.
14. If it is determined that a Commercial/Industrial Solar Energy Conversion System is causing stray voltage issues, the operator shall take the necessary corrective action to eliminate these problems up to and including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy stray voltage issues is grounds for suspension or revocation of the Special use Permit for the specific Commercial/Industrial Solar Energy Conversion System causing the problems.
15. Commercial/Industrial Solar Energy Conversion Systems shall be located in a manner that minimizes significant negative impacts on the historical and cultural aspects of the community. This shall be done in coordination with the New York State Office of Parks, Recreation and Historic Preservation. In addition, the review of NY's Department of State guidelines for Scenic Areas of Statewide Significance shall be respected.
16. Fencing is required to prevent unauthorized access. Warning signs with the owners contact information shall be placed on the entrance and perimeter of the fencing. The Zoning Board may require additional signs based on safety needs.
17. The owner and/or operator of a Commercial/Industrial Solar Energy Conversion System that has received approval under this section and for which a permit has been issued shall file with the Town Clerk on an annual basis an Operation and Maintenance Compliance report detailing the operation and maintenance activities over the previous year and certifying full compliance with the Operation and Maintenance Plan.
18. Economic Effects. Commercial/Industrial Solar Energy Conversion Systems shall be sited and

constructed so as to minimize any adverse economic effects on the Town, its residents and its economic activities, including agricultural activities in accordance with conditions established by the Zoning Board.

19. Real Property Value Protection Plan. The Commercial/Industrial Solar Energy Conversion System owner(s) ("applicant") shall assure the Town of Randolph that there will be no loss in real property value within one mile of each Commercial/Industrial Solar Energy Conversion System. To legally support this claim, the applicant shall consent in writing to a Real Property Value Protection Agreement ("Agreement") as a condition of approval for the Commercial/Industrial Solar Energy Conversion System. This Agreement shall provide assurance to non-participating real property owners (i.e. those with no Commercial/Industrial Solar Energy Conversion System on their property) near the Commercial/Industrial Solar Energy Conversion System, that they have some protection from Commercial/Industrial Solar Energy Conversion System related real property values losses.
20. The applicant shall agree to guarantee the property values of all real property partially or fully within one mile of the Commercial/Industrial Solar Energy Conversion System. Any real property owner(s) included in that area who believe that their property may have been devalued due to the Commercial/Industrial Solar Energy Conversion System, may elect to exercise the following option:
 - a. All appraiser costs are paid by the applicant, from an Escrow Account. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction, if any, in value to the real property ("Diminution Value"), caused by the proximity to the Commercial/Industrial Solar Energy Conversion System. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property and what the FMV would have been at the time of exercising this option, assuming no Commercial/Industrial Solar Energy Conversion System was proposed or constructed.
 1. If the higher of the Diminution Valuations submitted is equal to or less than 25% more than the other, the two values shall be averaged ("Average Diminution Value": ADV).
 2. If the higher of the Diminution Valuations submitted is more than 25% higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
 3. In either case, the property owner may elect to receive payment from applicant of the ADV. Applicant is required to make this payment within 60 days of receiving said written election from property owner, to have such payment made.
 - b. Other Agreement Conditions.
 1. If a property owner wants to exercise this option, they must do so within 10 years of the Commercial/Industrial Solar Energy Conversion System receiving final approval from the Town of Randolph.

2. A property owner may elect to exercise this option only once.
3. The applicant and the property owner may accept mutually agreeable modifications of this Agreement, although the applicant is not allowed to put other conditions on a financial settlement (e.g. confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method that is considered an exercise of this option.
4. This Agreement applies to the property owner of record as of the date of the issuance of the permit, and is not transferrable to subsequent owners.
5. The property owner of record as of the date of the issuance of the Commercial/Industrial Solar Energy Conversion System permit must reasonably maintain the property from that time, until they choose to elect this option.
6. The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.
7. The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to the date of the Commercial/Industrial Solar Energy Conversion System application.
8. This Agreement will be guaranteed by the applicant (and all its successors and assigns), for 10 years following the Commercial/Industrial Solar Energy Conversion System receiving final approval from the Town of Randolph, by providing a bond (or other surety), in an amount determined to be acceptable by the Town.
9. Payment by the applicant not made within 60 days will accrue an interest penalty. This will be 12 percent annually, from the date of the written election from property owner.
10. For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the applicant.
11. Upon application, applicant shall provide a performance bond (or equivalent) in an amount determined by the Town of Randolph and held by the Town of Randolph. This surety account will ensure execution of all aspects of this Agreement (including compensation of eligible property owners in the case of default by applicant). Failure to maintain this surety account shall be cause for revocation or suspension of the Commercial/Industrial Solar Energy Conversion System Permit.
12. Any other standard or requirement established by the Zoning Board as set forth as a condition of approval of an application shall apply.

E. Decommissioning.

1. If any Commercial/Industrial Solar Energy Conversion System remains non-functional or inoperative for a continuous period of 180 days, the applicant shall, without any further action by the Town, remove said system at its own expense in accordance with the provisions of this ordinance. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the Commercial/Industrial Solar Energy Conversion System to

an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan.

2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA or by lack of income generation. The applicant shall make available to the Town all reports from the purchaser of energy from individual Commercial/Industrial Solar Energy Conversion System. Upon request of the Town, the Town may also require periodic documentation reporting the power output generated by the Commercial/Industrial Solar Energy Conversion System.

F. Decommissioning and Site Restoration Plan and Requirements

An application for a Commercial/Industrial Solar Energy Conversion System permit shall include a decommissioning and site restoration plan containing the information and meeting the requirements in this section.

1. The plan shall provide for the removal from the Project Parcels and lawful disposal or disposition of all Commercial/Industrial Solar Energy Conversion Systems and other structures, hazardous materials, electrical facilities, and all foundations to a depth of not less than 60 inches below grade. The plan shall provide for the removal of all access roads that the owner of the project parcels wants removed. The plan shall provide for the restoration of the project parcels to farmland of similar condition to that which existed before construction of the Commercial/Industrial Solar Energy Conversion System.
2. The plan shall provide for the decommissioning of the site upon the expiration or revocation of the Commercial/Industrial Solar Energy Conversion System permit or upon the non-functioning of the Commercial/Industrial Solar Energy Conversion System.
3. The Plan shall include:
 - a. The estimated decommissioning cost in current dollars
 - b. How said estimate was determined
 - c. The method of ensuring that funds will be available for decommissioning and restoration
 - d. The method that will be used to keep the decommissioning costs current will be adjusted annually based on a suitable index such as the "RS Means Heavy Construction Cost Data" index.
4. The plan shall include provisions for financial security to secure completion of decommissioning (removal of non-functional systems and appurtenant facilities) and site restoration. The applicant, or successors, shall continuously maintain a fund in an amount to be determined by the Town for the period of the life of the facility. This fund shall be no less than 125% of the estimated cost of full decommissioning and restoration in the form of a cash deposit with the Town in the amount of 25% of such fund and the balance of such fund in the form of an irrevocable bond in form and content as approved by the Town Board. All decommissioning funding requirements shall be met prior to commencement of construction.

5. The plan shall include written non-revocable authorization from the permit holder and the owners of all parcels within the project for the Town to access the parcels and implement the decommissioning and site restoration plan, in the event the permit holder fails to implement the plan. The written authorization shall be in a form approved by the Town and shall be binding on the heirs, assigns and distributees of the owner(s), and shall be recorded in the Office of the Cattaraugus County Clerk.
6. Use of Decommissioning Fund.
 - a. Any non-functional Commercial/Industrial Solar Energy Conversion System or any Commercial/Industrial Solar Energy Conversion System for which the special use permit has been revoked, shall be removed from the site and the site restored in accordance with the approved decommissioning and site restoration by the applicant or owner of the Commercial/Industrial Solar Energy Conversion System within 180 days of the date on which the facility becomes non-functional or of the revocation of the special use permit
 - b. If removal of the Commercial/Industrial Solar Energy Conversion System is required and the applicant, permittee, or successors fails to remove the Commercial/Industrial Solar Energy Conversion System and restore the site in accordance with the approved decommissioning and site restoration plan, the permittee, by accepting the permit, authorizes the Town Board to contract for such removal and restoration and to pay for the removal and restoration from the posted decommissioning and site restoration fund.
 - c. If the fund is not sufficient, the Town shall charge the permit holder for the costs over and above the amount of the fund.

G. Limitations on Approvals; Easements on Town Property

1. Nothing in this Zoning Ordinance shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact any Commercial/Industrial Solar Energy Conversion System
2. Notwithstanding anything to the contrary contained in this Zoning Ordinance or any other local law, ordinance, rule or regulation of the Town of Randolph, Building Permits shall not be issued for new construction on the same parcel as a permitted Commercial/Industrial Solar Energy Conversion System when the proposed construction is located within a setback required by this Section. No property or lot upon which a Commercial/Industrial Solar Energy Conversion System has been permitted shall be further subdivided in a manner that would result in a reduction of the setbacks required by this Section and/or as set forth in the permit.

H. Permit Enforcement Revocation

1. Operation. A Commercial/Industrial Solar Energy Conversion System shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all requirements and other permit conditions of this ordinance. Should a Commercial/Industrial Solar Energy Conversion System become inoperable, or should any part of the Commercial/Industrial Solar Energy Conversion System be damaged, or should a Commercial/Industrial Solar Energy Conversion System violate a permit condition or any provision of this ordinance, the owner, or operator shall immediately notify the Code Enforcement

Officer. Upon such notice, or if the Code Enforcement Officer determines that a violation exists, he shall determine the severity of the non-compliance. If he determines the violation to be a threat to the life, safety, health or immediate well-being of the public, he may order the Commercial/Industrial Solar Energy Conversion System to be shut down. Upon notification of a violation, the applicant/owner/operator shall submit a remediation plan in writing within 10 days outlining the steps to be taken to remedy the violation. If no plan is submitted, or if remediation is not completed within 90 days of notice, or at any other time the Code Enforcement Officer deems appropriate, the Code Enforcement Officer shall notify the Town Board.

2. Notwithstanding any other enforcement provision under this ordinance, if the Commercial/Industrial Solar Energy Conversion System is not repaired or made operational or brought into permit compliance after said notice, the Zoning Board may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order suspension of the permit until compliance is achieved, or (3) order revocation of the Commercial/Industrial Solar Energy Conversion System Permit for the Commercial/Industrial Solar Energy Conversion System and require the removal of the Commercial/Industrial Solar Energy Conversion System within 180 days. If the Commercial/Industrial Solar Energy Conversion System is not removed, the Town shall have the right to use the security posted as part of the Decommission Plan to remove the Commercial/Industrial Solar Energy Conversion System.

I. Fees

1. Non-refundable Application Fees for Commercial/Industrial Solar Energy Conversion Systems shall be established by the Town Board and reviewed periodically. The fee may be changed by resolution of the Town Board. Until established, the fee shall be \$1,000.00 per megawatt of rated maximum capacity submitted with the application.
2. The Town Board of the Town of Randolph has determined that the review of building and electrical permits for Commercial/Industrial Solar Energy Conversion Systems require specific expertise for those facilities. Accordingly, for such facilities an administrative fee of \$500.00 per permit request shall be charged for administrative costs, plus the amount charged to the Town by the outside consultant(s) hired by the Town to review the plans and inspect the work. The Town and the applicant will enter into an agreement for an inspection and/or certification procedure for these unique facilities, and the applicant will be required to deposit the sum of \$100,000.00 in an escrow account with the Town which the Town may use to pay for any expenses it incurs related to this project. The fees established herein may be amended from time to time by resolution of the Town Board.
3. Nothing in this Local ordinance shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

J. Project Management and Oversight.

1. Upon approval by the Zoning Board of Appeals of a Commercial/Industrial Solar Energy Conversion System Special Use Permit application, and as a condition to the issuance of a

Commercial/Industrial Solar Energy Conversion System Special Use Permit, the applicant shall designate a field representative and site manager who will be responsible for overseeing compliance with the conditions of the Permit. Such representative and site manager shall be in place for as long as the Commercial/Industrial Solar Energy Conversion System is in place. This person will have the authority to make management and technical decisions as situations demand. The applicant shall provide and update, at all times, the names, addresses, daytime telephone numbers and emergency telephone numbers of field representative and site manager to the Town Code Enforcement Officer and the Town Supervisor. The applicant shall also provide contact information for all entities providing operation, maintenance and monitoring services.

2. As a condition to the issuance of a Commercial/Industrial Solar Energy Conversion System Special Use Permit, the services of an engineering firm will be retained by the Town of Randolph during the construction phase of the Commercial/Industrial Solar Energy Conversion System project.
3. Prior to commencing construction, the applicant shall pay the Town a project inspection fee in the amount of the 3 percent of the estimated cost of construction, including all materials, contracts and labor. Said amount is determined to be the reasonable cost to the Town to provide for such inspection. If the cost to the Town is less than that amount, the balance shall be refunded to the applicant upon completion of the construction, issuance of a Certificate of Occupancy and approval of all State and Federal agencies.
4. The engineering firm will oversee all aspects of construction and will be included in all design, construction, and planning meetings and shall be provided with all technical information, specifications and drawings. A representative of the engineering firm shall be on-site at during the construction phase. The firm will also monitor road and infrastructure use and determine any damages to same.
5. The engineering firm's duties shall include coordination with the Code Enforcement Officer for enforcement actions and project specification compliance and they will be confirming that all project specifications are implemented. The engineering firm's representative may recommend that the Code Enforcement Officer issue a "stop work order" for issues including but not limited to: (a) safety, (b) developer compliance issues, and (c) insufficient project documentation.
6. The applicant shall file daily, weekly and monthly construction plans and will follow the planned work schedule as much as possible. When daily, weekly, or monthly schedules are not completed as planned, updated schedules shall be developed and given to the engineering firm representative prior to starting the revised schedule.
7. The applicant shall provide the engineering firm representative and the Code Enforcement Officer with "As Built" Drawings within (1) one week of completion of each portion of the construction phase or as requested by the engineering firm representative, or code enforcement officer.
8. All up-grades or changes to the Commercial/Industrial Solar Energy Conversion System project, as permitted, shall be reviewed and approved by the engineering firm and Code Enforcement Officer prior to the implementation of such upgrades or changes. No changes to basic design, height or location will be permitted unless approved as an amendment to the application by the Zoning Board.
9. A final Maintenance Plan shall be provided to and approved by the Code Enforcement Officer, with input from the engineering firm prior to issuance of a Certificate of Occupancy, including but not limited to:

- a. List of all items requiring regular maintenance
 - b. Duration of accumulated time between scheduled maintenance
 - c. Work to be completed during the maintenance operation
 - d. Person responsible for the maintenance
 - e. Process applicant uses to ensure maintenance is carried out appropriately
10. In the event of an accident, the Town Code Enforcement Officer shall have the authority to shut down all of the affected Commercial/Industrial Solar Energy Conversion Systems until a thorough investigation has taken place, a cause has been determined and steps have been taken to ensure the problem will not reoccur, as evidenced by a report satisfactory to the Code Enforcement Officer.

K. Enforcement; Penalties and Remedies for Violations

- 1. This Local ordinance shall be enforced by the Town Code Enforcement Officer.
- 2. Any person owning, controlling or managing any building, structure or land who shall undertake a Commercial/Industrial Solar Energy Conversion System in violation of this Local code, or operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this Local code, shall be guilty of a violation and subject to the penalties of the Town of Randolph Zoning Ordinance.
- 3. The Code Enforcement Officer may, after notice of violation, enter into a Consent Order with the applicant/owner/operator, to remedy the violation with specifications to be taken and an agreed schedule in conformance with this ordinance.
- 4. Special Proceeding: In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Commercial/Industrial Solar Energy Conversion System and shall be entitled to injunctive relief, including a Temporary Restraining Order and a Temporary Injunction as the Court deems appropriate.

L. Miscellaneous.

- 1. Nothing in this Zoning Ordinance, including the approval by the Zoning Board of appeals and issuance of the permit by the Town, shall eliminate any property or rights of property owners or residents to enforce their legal remedies including, but not limited to, actions in law or equity in the nature of nuisance proceedings, or tort or negligence proceedings.
- 2. The Town reserves its right to opt out of the tax exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by Subsection (8) of said law or by any other provision of law.

Section 10.27 – Non-Commercial Solar Energy Conversion Systems

These regulations provide standards for Non-Commercial Solar Energy Conversion Systems that are designed for on-site home, farm or business use, and that are primarily used to reduce on-site consumption of utility power. The electrical output from the solar device cannot exceed 110% of the site's anticipated annual electrical needs. The intent is to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town.

A. Application Process

1. Prior to construction of any non-commercial solar conversion system, the project proponent shall first obtain a Special Use Permit and Site Plan Approval from the Town of Randolph Zoning Board, and a Building Permit from the Town's Code Enforcement Officer.
2. All applications for a non-commercial solar conversion system shall include the following information:
 - a. Name, address, phone and email of the applicant
 - b. Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
 - c. A site plan drawn in sufficient detail to show the following:
 1. Location of the solar conversion system on the site and size specifications.
 2. Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the solar conversion system.
 3. Dimensional representation of the various structural components of the system including the base and attachments.
 4. Certification by a licensed New York State Professional Engineer that the system's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Building and Fire Prevention Code.
3. Evidence that the proposed system height does not exceed the height recommended by the manufacture or distributor of the system, provided by a licensed New York State Professional Engineer.
4. Solar conversion system information: Specific information on the type, size, height, material, rated power output, performance, safety, and noise characteristics of the residential solar conversion system.
5. Photographs or detailed drawings of the solar conversion system.
6. Grading plan and erosion and sedimentation control plan if located on the ground.
7. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the current Electrical Code adopted by New York State.

- a. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity from the grid.
- b. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
- c. Completed Environmental Assessment Form
- d. Such additional information as may be reasonably requested by the Zoning Board for a complete understanding of the proposed project.

B. Criteria for Approval - The Zoning Board shall use the following criteria to evaluate all solar conversion systems

1. The Solar conversion system and its components shall be designed to blend into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
2. **Signage:** No advertising sign or logo shall be placed or painted on any Solar conversion system. The Zoning Board may allow the placement of the manufacturer's logo on a ground level structure in an unobtrusive manner.
3. **Compliance with regulatory agencies:** The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction related to the construction of the Solar conversion system. If all such approvals have not been received at the time that the Zoning Board considers the application for Special Use Permit, receipt of these other agency approvals shall be a condition to be completed prior to the issuance of a Building Permit.
4. **Safety and security requirements:** The applicant shall adhere to the following safety and security requirements.
 - a. **Safety shutdown:** Each solar conversion system shall be equipped with accessible manual and automatic shutdown controls.
 - b. **Grounding:** All structures which may be charged with lightning shall be grounded according to applicable electrical code.
 - c. **Wiring:** All wiring associated with the solar conversion system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers or lines. This standard may be modified by the Zoning Board if the terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
 - d. **Signage:** Appropriate warning signage shall be placed on solar conversion systems and electrical equipment. Signage shall also include one (1) twenty- four-hour emergency contact numbers to the owner of the solar conversion system as well as signage warning of electrical shock or high voltage and harm from revolving machinery.

5. **Interference with television, microwave and radio reception:** The non-commercial solar conversion system shall be operated such that no disruptive electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
6. **Erosion Control:** Prior to granting a Special Use Permit for a non-commercial solar conversion system, the Zoning Board shall determine that the Erosion and Sedimentation Control Plan is adequate.

C. Abandonment of Use

1. All non-commercial solar conversion system shall be maintained in good condition and in accordance with all requirements of this section. The Code Enforcement Officer may inspect a non-commercial solar conversion system to insure compliance with this provision. If this inspection shows that the structure is unsafe, then the owner will be given an opportunity to bring the structure into compliance. If the structure is deemed unsafe and the owner does not bring the structure into compliance within 30 days, the solar conversion system shall be dismantled and removed from the property at the owner's expense.
2. Solar conversion systems shall be maintained in good working order and shall be removed if not in use for more than 6 months by removal of such system within 60 days after the end of the 6th month.
3. The Town reserves the right to dismantle the structure and to charge back the cost of this removal to the property owner. If unpaid this will be added as a charge to the tax levy of the property.
4. Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the Special Use Permit shall constitute grounds for the revocation of the permit, after a public hearing.
5. **Assessment** - A non-commercial solar conversion system may be subject to assessment by the Town of Randolph.
6. **Amendments to Approval** - Any changes or alterations to the solar conversion system, after approval of the Special Use Permit and Site Plan, shall require amendment to the Special Use Permit. Such amendment shall be subject to all the requirements of this section.

Section 10.28 – Regulation for Floodway (F-W) and Floodway Fringe (F-F) Districts

A. General Standards

1. All new construction and substantial improvements (including manufactured homes) shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All new construction and substantial improvements shall be constructed with materials and utility

equipment resistant to flood damage.

3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
4. Service Facilities. Any public facility including electrical and heating shall be constructed at or above the regulatory flood protection elevation for the particular area or flood proofed.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
7. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
8. Review subdivision proposals and other proposed new development to determine whether such proposal will be reasonably safe from flooding. Subdivision should be reviewed to assure that:
 - a. All such proposals are consistent with the need to minimize flood damage.
 - b. All public utilities and facilities such as gas, sewer, electrical and water systems are located and constructed to minimize or eliminate flood damage.
 - c. Adequate drainage shall be provided to reduce exposure to flood hazards.
 - d. All subdivision proposals and other proposed new developments greater than 50 lots or 5 acres whichever is the lesser shall require base flood elevation data.

B. Specific Standards

1. Within A zones, in the absence of Federal Insurance Administration base flood elevation data, other available data must be considered as basis for elevating residential structures to or above the base flood level, and flood proofing or elevating non-residential structures to or above the base flood level must be considered for the purpose of determination of applicable flood insurance risk premium rate with such A-zones.
2. Residential construction. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
3. Non-residential Construction. New construction or substantial improvement of any

commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, be flood-proofed so that below the base flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official.

4. Manufactured Homes

- e. No manufactured home shall be placed in a floodway, except in an existing manufactured home park or existing manufactured home subdivision.
- f. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 - 1. Over-the-top ties be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than 50 feet long requiring one additional tie per side;
 - 2. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four additional ties per side.
 - 3. All components of the anchoring system be capable of carrying a force of 4,800 pounds, and;
 - 4. Any additions to the manufactured home be similarly anchored.
- g. For new manufactured home parks and subdivisions; for expansions to existing manufactured home parks and subdivisions; for existing manufactured home parks and subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals 50 percent of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for manufactured homes not placed in a manufactured home park or subdivision require:
 - 1. Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level:
 - 2. Adequate surface drainage and access for a hauler are provided, and
 - 3. In the instance of elevation on pilings
 - a. Lots are large enough to permit steps,
 - b. Piling foundations are placed in stable soil no more than ten feet apart, and

- c. Reinforcement is provided for pilings more than six feet above the ground level.

C. The following regulations shall apply in all areas designated as F-W Districts:

1. No permanent structures shall be permitted in the F-W District.
2. Encroachments, including fill, new construction, substantial improvements and other developments, unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge, is prohibited.

D. Flood Control Facilities: With the construction of flood control facilities approved by the Town Municipal Board and the New York State Conservation Department, permits may be granted in the F-W District for the same uses that are permitted in the non-floodway district nearest it on the zoning map.

E. Standards for Areas of Shallow Flooding (AO Zones). Located within the areas of special flood hazard established in Article 7 Section 7.6 and Article 8 Section 8.1(D), are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the community's Flood Insurance Rate Map(FIRM).
2. All new construction and substantial improvements of non-residential structures shall:
 - a. Have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the Flood Insurance Rate Map (FIRM),or
 - b. Together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

ARTICLE 11 – SITE PLAN REVIEW

Section 11.1 – Purpose

- A. The purpose of this article is to ensure that any new development or substantial redevelopment is in harmony with the character of the area.
- B. An additional purpose is to minimize conflicts between future development and neighboring existing uses and natural features of the site; this will minimize any potential adverse effects to the health, safety, and general welfare of the residents.

Section 11.2 – Authorization to Review Site Plans

- A. The power to approve, approve with conditions, or disapprove site plans is hereby vested in the Zoning Board of Appeals. When considering a site plan application, the Zoning Board shall consider the plan elements contained in Article 11, Section 11.7: Criteria for Approving Site Plans.
- B. When approving a site plan, the Zoning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed site plan. Such conditions may include, but are not limited to, limiting the hours of operation; controlling the number and location of driveways; requiring fencing, screening, and/or landscaping to protect adjacent properties; requiring landscaping on site; limiting the number, size, and location of signs; and conditions affecting any of the other plan elements listed in Article 11, Section 11.7: Criteria for Approving Site Plans.
- C. Where applicable, site plan approval must be obtained, and all conditions of approval must be met by the applicant, prior to the issuance of a Zoning Permit or Certificate of Compliance. The Zoning Board shall determine when the conditions must be met.
- D. Where a variance would normally be required under the provisions of this ordinance, the Zoning Board shall not have the authority to vary those provisions under site plan review. Application must be made for a variance and the Zoning Board of Appeals shall act on the variance application prior to final action on the application for site plan approval.

Section 11.3 – Applicability and Exceptions

All new development and land use activities, and any change in use, shall require site plan review and approval prior to the issuance of a building permit, except the following:

- A. All agricultural activities, including construction of buildings and structures that are normally accessories to agricultural activities.
- B. The sale of agricultural produce and temporary structures related to the sale of agricultural produce.
- C. Construction of new one-family or two-family dwellings, including ordinary accessory structures and related land use activities. Additions, of any size, to existing one-family and two-family dwellings are also exempt from site plan review.
- D. Signs, except for signs that are included in projects that would otherwise require site plan review.

- E. Ordinary repair or maintenance to existing structures or uses.
- F. Interior structural alterations within any existing building.
- G. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this ordinance.
- H. Logging and timber cutting.
- I. Home based businesses.
- J. Accessory structures, including fences, unless the fence or other accessory structure is part of a larger project which is subject to site plan review.

Section 11.4 – Application Procedure

- A. An applicant for Site Plan approval shall submit a completed application to the Code Enforcement Officer.
- B. The application shall contain the following information and materials:
 - 1. An application for a Zoning Permit to include a legal mailing address and phone number.
 - 2. An area map showing:
 - a. The applicant's entire holdings
 - b. All adjacent properties
 - c. Adjacent streets, roadways and sidewalks
 - 3. A plot plan, drawn to scale and having a north arrow and date, that shows:
 - a. The location, dimensions, and use of all proposed buildings
 - b. Means of access and egress
 - c. All parking facilities and loading areas
 - d. Location, design, and size of all signs
 - e. Physical features intended to protect adjacent land uses, including screening, fencing and landscaping
 - f. Existing natural features, such as wetlands, water bodies, watercourses, floodplain areas, and wooded areas.
 - g. Internal streets and side walks
 - 4. Floor plans and elevations showing all architectural features, including materials to be used.
 - 5. A description of the sewage disposal and water supply systems to be used. Their location shall be shown on the plot plan.

6. Grading plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater and proposed erosion control measures.
 7. If the proposed project is in or near a floodplain, the applicant shall show that the project would not increase the base flood elevation. This proof shall be prepared by a registered professional engineer.
 8. Landscaping plan and planting schedule
 9. Location and design of outdoor lighting facilities
 10. Description of the nature and intensity of the proposed operation and its compatibility with surrounding development.
 11. Any additional information the Zoning Board deems is necessary for an adequate assessment of a particular application.
 12. All required fees
- C. The Zoning Board may, at its discretion, waive any application requirement that it deems is not relevant to a particular application.

Section 11.5 – Pre-Application Conference

A conference may be held between the Zoning Board and the applicant prior to the preparation and submission of a formal site plan. The purpose of the pre-application conference is to enable the applicant to inform the Board of the proposal prior to the preparation of a detailed site plan application. The Zoning Board shall review the basic site design concept and advise the applicant as to potential problems and concerns and generally determine the information to be required for the site plan application.

Section 11.6 – Action on the Site Plan

A. Public Hearing

1. The Zoning Board shall hold a public hearing on the application within sixty-two (62) days from the date that the complete application is received by the Code Enforcement Officer
2. Notice of the public hearing shall be published in the following ways:
 - a. By publication in a newspaper of general circulation at least five days prior to the date of the public hearing.
 - b. By mailing a notice of the hearing to the owners of every parcel that is within two hundred and fifty feet of the nearest line of the property that is the subject of the appeal. Notice shall also be mailed to such other property owners as the chairperson of the Zoning Board of Appeals may direct. Such notices shall be mailed at least ten (10) days prior to the public hearing.
 - c. By mailing a notice to the applicant at least ten (10) days prior to the hearing.
 - d. For all appeals that meet the requirements contained in Article 15 of this ordinance (and in Section 239m of NYS General Municipal Law), the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least

ten (10) days prior to the public hearing and shall be accompanied by a full statement of the application.

B. Decision

The Zoning Board of Appeals shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Board must reach its decision may be extended by mutual consent of the applicant and the Board.

C. Filing of Decision

The decision of the Zoning Board of Appeals shall be filed in the office of the Municipal Clerk within five business days after such decision, and a copy thereof mailed to the applicant.

Section 11.7 – Criteria for Approving Site Plans

When making a decision to approve, approve with conditions, or disapprove a Site Plan, the Zoning Board of Appeals shall consider the following:

1. Compatibility of the proposed project with the general purposes and intent of this Zoning Ordinance.
2. Compatibility of the proposed development with the natural features of the site.
3. Compatibility of the proposed development, including the nature and intensity of use, with the existing uses and character of the neighborhood.
4. Adequacy of on-site parking arrangements, both in terms of number of spaces and their arrangement on the lot.
5. Adequacy of the means of access and egress to and from the site, for both pedestrians and vehicles, and adequacy of the internal circulation of the site.
6. Location, arrangement, appearance and sufficiency of off-street loading facilities.
7. Adequacy, type, and arrangement of trees, shrubs, walls, fencing and other features proposed to provide screening between the site and adjacent land uses.
8. Adequacy of trees, shrubs, and other landscaping proposed for the site.
9. Size, design, number, placement and arrangement of signs.
10. Location, size, arrangement, and design of the proposed buildings and other structures, including the compatibility of the proposed architectural features, colors and materials with the existing surrounding area and with established community guidelines.
11. Adequacy, location and design of lighting.
12. Adequacy of storm water and sanitary waste disposal.
13. Adequacy of the water supply system.

14. Compliance with the Americans with Disabilities Act(ADA)
15. When considering an application containing residential units, the adequacy of land for park, playground or other recreational purposes, if appropriate.
16. Protection of solar access on adjacent or neighboring properties containing solar facilities.
17. The requirements of Article 10, Supplementary Regulations, that applies.
18. Any other elements as may reasonably be related to the health, safety, and general welfare of the community.

Section 11.8 – Expiration of Site Plan Approval

Approval of the site plan shall expire one (1) year from the date of approval, if the applicant has not commenced construction on the project within that time. Extension of the approval may be granted only by the Zoning Board, upon written application by the applicant.

Section 11.9 – State Environmental Quality Review Act

Prior to taking final action on an application for Site Plan review, the Zoning Board shall comply with the provisions of the State Environmental Quality Review Act (SEQRA).

ARTICLE 12 – ZONING BOARD OF APPEALS

Section 12.1 – Organization

- A. The Municipal Board shall appoint a Zoning Board of Appeals consisting of five members. The terms of office shall be five years, excepting that the five members first appointed shall serve for terms of one, two, three, four and five years. Such Board of Appeals, subject to the provisions of the Law, shall determine its own rules of procedure. The members of the Board of Appeals shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled in the same manner as the original for the unexpired term of any member whose term becomes vacant. No member of the Board of Appeals shall hold other elective office in the Municipal government.
- B. The Municipal Board may designate an alternate member to substitute for a member when such member is unable to participate on an application or matter before the Zoning Board of Appeals. Such alternate member shall have all the powers and responsibilities of a Zoning Board of appeals member for the term defined by the Municipal Board.
- C. The Municipal Board may; by local ordinance, establish requirements for members of the Zoning Board of Appeals to complete training and/or continuing education classes on zoning and planning issues.
- D. Any member of the board who has three (3) or more unexcused absences within the calendar year may be removed from office.

Section 12.2 – Powers and Duties

- A. **Powers** – With due consideration for the purpose and intent of this Zoning Ordinance, the Zoning Board of Appeals shall have the power and authority to:
 - 1. Hear and determine appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer charged with the enforcement of this local ordinance.
 - 2. Hear and decide all matters referred to it, or upon which it is required to pass under this local ordinance.
 - 3. Decide any question involving the interpretation of any provision of this local ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect there to.
 - 4. Hold public hearings and approve or disapprove each application for a use or area variance, as defined in this local ordinance.
 - 5. Hold public hearings and approve or disapprove each application for a special use permit received in compliance with the provisions of this local ordinance.

6. Hold public hearings and approve or disapprove each application for site plan review, in accordance with the provisions of this local ordinance.
7. Reverse or affirm, wholly or partly, or modify any order, requirement, decision, interpretation or determination of the Code Enforcement Officer. The Zoning Board of Appeals shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Code Enforcement Officer and to that end the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
8. Revoke any decision to grant a variance, special use permit, or site plan approval, after a public hearing, if the owner/applicant fails to comply with any conditions of approval of the original application. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the failure to comply as a violation in accordance with Article 17, Section 17.3 B9 of this local ordinance.

B. Duties of the Chairperson

All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson, and at such other times as the Zoning Board of Appeals may determine. The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

C. Meetings Open to the Public

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law.

D. Minutes and Records

The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. The minutes shall include the reasons for all decisions, and any conditions of approval. The Zoning Board of Appeals will insure that the Code Enforcement Officer, Municipal Clerk, and the Planning Board receive copies of the minutes and action taken.

E. Assistance to the Zoning Board of Appeals

The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Municipality for such assistance as shall be deemed necessary and as shall be authorized by the Municipal Board.

Section 12.3 – Procedures

A. Request for a Special Use Permit or Variance

1. Any request for a special use permit or variance will be presented to the Code Enforcement Officer. He will provide the necessary forms for the applicant and inform the applicant to present the

completed forms to the municipal clerk. The municipal clerk will notify the chairman of the Zoning Board of Appeals who will; in turn, notify the Planning Board of the hearing date. The municipal clerk will make the proper notification of public hearing to the media and affected customers.

2. The Zoning Board of Appeals shall act in strict accordance with the procedure specified by law and by this ordinance. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Zoning Board of Appeals. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed. The use for which the special permit is sought or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted as the case may be. At least fifteen (15) days before the date of the hearing required by law on an application or appeal to the Board, the municipal clerk shall transmit to the Planning Board a copy of said application or appeal, together with a copy of the notice of the aforesaid hearing and shall request that the Planning Board make a recommendation in accordance with this Section.
3. Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

B. Procedure for the Applicant or Appellant

1. All applications and appeals made to the Zoning Board of Appeals shall be in writing on forms prescribed by the Code Enforcement Officer. Every application or appeal shall refer to the specific provision of this ordinance, and shall exactly set forth the interpretation that is claimed, the plans for a special use or the details of the variance that is applied for, in addition to the following information:
 - a. The name, mailing address, and phone number of the applicant /appellant.
 - b. The name and address of the owner of the district lot to be affected by such proposed change or appeal.
 - c. A statement of the present zoning classification of the district lot in question, the improvements thereon and the present use thereof.
 - d. A reasonably accurate description of the present improvements, and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, showing the size and location of the lot, the location of all buildings on the lot, driveway entrances, parking areas and any other proposed features
 - e. All required fees.
 - f. Any other information that the Zoning Board of Appeals determines is necessary to consider the application.
2. An appeal to the Zoning Board of Appeals from any ruling by the Code Enforcement Officer may be taken by any person aggrieved. Such appeal shall be taken to the Zoning Board of Appeals by filing with the Municipal Clerk, thereof, a notice of appeal, specifying the grounds therefore.

C. Procedure for the Code Enforcement Officer.

1. The notice of appeal in any case where a permit has been granted or denied by the Code Enforcement Officer shall be filed within such time as shall be prescribed by the Zoning Board of Appeals under general rule after notice of such action granting or denying the permit has been mailed to the applicant. The Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record upon which the action appealed from was taken, or in lieu thereof certified copies of said papers.
2. The Code Enforcement Officer may recommend to the Zoning Board of Appeals a modification or reversal of his action in cases where he believes substantial justice requires the same but where he himself did not have sufficient authority to grant the relief sought.

D. Public Hearing

1. Before acting on any application or appeal the Zoning Board of Appeals shall hold a public hearing. The public hearing shall be held within 62 days of the date that the completed application or notice of appeal is filed with the Code Enforcement Officer.
2. Notice of the public hearing shall be published in the following ways:
 - a. By publication in a newspaper of general circulation in the Municipality at least five days prior to the date of the public hearing.
 - b. By mailing a notice of the hearing to the owners of every parcel that is within two hundred and fifty (250) feet of the nearest line of the property that is the subject of the appeal. Notice shall also be mailed to such other property owners as the chairperson of the Zoning Board of Appeals may direct. Such notices shall be mailed at least ten (10) days prior to the public hearing.
 - c. By mailing a notice to the appellant or applicant at least ten (10) days prior to the hearing.
 - d. In the case of an appeal alleging error or misinterpretation in any order or other action by the Code Enforcement Officer, the following persons shall be notified: the appellant and the person or persons, if any, who benefit from the order, requirement, regulation or determination.
 - e. For all applications and appeals that meet the requirements contained in Article 16 of this ordinance (and in Section 239m of NYS General Municipal Law), the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing.
3. At the public hearing any person may appear in person, or by agent or by attorney.
4. Adjournment of Hearing. Upon the day for hearing any application or appeal, the Zoning Board of Appeals may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

E. Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, they would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Code Enforcement Officer and on due cause shown.

F. Decision

1. The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to render any decision.
2. In the exercise of its functions upon such appeals or upon exceptions, the Zoning Board of Appeals may in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from or may make such order, requirement, decision or determination in accordance with the provisions hereof. Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. These findings and conditions of approval, if any, shall be recorded in the minutes.
3. The Zoning Board of Appeals shall decide upon the application or appeal within sixty-two (62) days of the final public hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.

G. Filing of Decisions and Notice to the Applicant

1. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Municipal Clerk within five (5) business days and shall be a public record.
2. A copy of the decision of the Zoning Board of Appeals shall be mailed by the municipal clerk to the applicant within five (5) business days of the decision.

H. Expiration of Appeal Decision

Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal or request for a variance shall expire if the applicant fails to obtain any necessary Zoning Permit, or comply with the conditions of said authorized permit within six (6) months from the date of authorization thereof.

I. Rehearing

1. Whenever the Zoning Board of Appeals, after hearing all the evidence presented upon an application or appeal, under the provisions of this local ordinance, denies the same, the Board shall refuse to hold further hearings on the same or substantially similar application or appeal by the

same applicant, his successor, or assign for a period of one (1) year, except and unless the Zoning Board of Appeals shall find and determine from the information supplied by the applicant for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare, and that a reconsideration is justified.

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

J. Appeal from Decision of Zoning Board of Appeals.

All decisions of the Zoning Board of Appeals are subject to court review in accordance with applicable laws of the State of New York.

Section 12.4 – Compliance with State Environmental Quality Review Act

The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) prior to acting upon an application for variance, an appeal, or similar action.

ARTICLE 13 – SPECIAL USE PERMITS

Section 13.1 – Purpose

The purpose and intent of Special Use 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 unusual characteristics, or the special characteristics of the area in which they are to be located, special uses require careful consideration so that they may be properly located and conditioned in order to minimize their effect on nearby properties and to meet the objectives of this Zoning Ordinance.

Section 13.2 – Authorization to Grant Special Use Permits

- A. The Zoning Board of Appeals may issue a special use permit for any of the special uses listed in Article 8, Schedule A of this ordinance, provided such special use complies with the general standards set forth in this section and with the special requirements enumerated elsewhere herein. Application for special use permits shall be made to the Zoning Board of Appeals through the Code Enforcement Officer and shall be accompanied by an application for the necessary Zoning Permit, such preliminary plans and lot layouts as the Code Enforcement Officer may deem necessary.
- B. If the application is approved, the Zoning Board of Appeals may impose any reasonable conditions that it feels are necessary to mitigate potential impacts to the neighborhood, to the Municipality as a whole, or to the environment. These conditions may include, but are not limited to, the following:
 - 1. Limiting the hours of operation
 - 2. Requiring fencing, screening, and landscaping to protect adjacent or nearby property
 - 3. Limiting the number, size and location of signs
 - 4. Controlling the number and location of driveway entrances
- C. The Zoning Board of Appeals may issue a temporary Special Use permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board, provided that any such renewal or extension shall be subject to the same procedure as specified herein for the original issuance of the special use permit involved.
- D. If conditions are imposed by the Zoning Board of Appeals, those conditions shall be satisfied before the Code Enforcement Officer can issue a Zoning Permit or a Certificate of Compliance. The Zoning Board shall determine when the condition must be met.

- E. Where a variance would normally be required under the provisions of this ordinance, the Zoning Board shall not have the authority to vary those provisions under the Special Use Permit application procedure. Application must be made for a variance and the Zoning Board of Appeals shall act on the application for a variance prior to final action on the application for the Special Use permit.

Section 13.3 – Application Procedure

- A. An applicant for a Special Use Permit shall submit a completed application to the Code Enforcement Officer, who shall forward it to the Zoning Board of Appeals. Refer to Article 12, Section 12.3 (B) Procedure for the Applicant or Appellant.
- B. The Zoning Board of Appeals may, at its discretion, waive any application requirement that it deems is not relevant to a particular application.

Section 13.4 – Action on the Special Use Permit Application

A. Public Hearing

1. The Zoning Board of Appeals shall hold a public hearing on the application within sixty-two (62) days from the date the complete application is received by the Code Enforcement Officer.
2. Notice of the public hearing shall be published as stated in Article 12, Section 12.3D.

B. Decision

1. The Zoning Board of Appeals shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Zoning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.
2. The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to grant a special use permit.

C. Filing of Decision

1. The Zoning Board of Appeals shall file a copy of its decision on the application with the Municipal Clerk within five (5) business days of the date of the decision.
2. A copy of the decision of the Zoning Board of Appeals shall be mailed by the municipal clerk to the applicant within five (5) business days of the decision.

Section 13.5 – Criteria for Granting Special Use Permits

The Zoning Board of Appeals shall not grant any Special Use Permit unless it finds that the proposed action is in accordance with the following criteria:

- A.** The proposed project is in harmony with the general purposes and intent of this ordinance.
- B.** The nature and intensity of the proposed use is in harmony with the character of the surrounding neighborhood(s).
- C.** The proposed use is of such character, size and location that in general it will be in harmony with the orderly development of the district in which the property is situated, and will not be detrimental to the orderly development of adjacent areas.
- D.** The proposed use will not alter the essential character of the neighborhood nor be detrimental to the residents thereof. A permit for a special use in a residential area shall only be granted when it is clearly obvious that the special use will not impair the use, enjoyment and value of adjacent residential properties, and that any vehicular traffic generated will not be hazardous or otherwise detrimental to the prevailing residential character of the neighborhood.
- E.** A Special Use permit for a commercial or industrial use shall only be granted when it is clearly obvious that such use will be harmonious with the area in which its location is sought and will not create undue pedestrian or vehicular traffic hazards or any display of signs, noise, fumes, smoke, dust or lights that will hinder the normal development of the area or impair the use, enjoyment and value of adjacent land and buildings.
- F.** If located near any parcel being used for an agricultural activity, the proposed use will not unduly adversely affect the pre-existing agricultural use.
- G.** The proposed project will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Municipality.
- H.** Essential public facilities, such as streets, police and fire protection, water and sewage disposal systems, exist to adequately serve the proposed project or will be provided on-site by the applicant.
- I.** There is adequate on-site parking provided, and the proposed project will not unduly increase traffic in the neighborhood of the site.
- J.** The proposed project is adequately screened from adjacent properties.
- K.** The proposed project is compatible in design and materials with the prevailing architectural standards in the general neighborhood.
- L.** The proposed project will not generate excessive noise, odor, dust, smoke or vibrations.
- M.** The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic

feature of major significance.

- N. The proposed project conforms to all applicable requirements contained in Article 10, Supplementary Regulations, of this ordinance.

Section 13.6 – Standards

Upon finding that such general standards and the special standards set forth herein have been fully met, the Zoning Board of Appeals may issue such special use permit and in so doing may impose any conditions that it may deem necessary to accomplish the reasonable application of said standards.

Furthermore, it may deny any such application which in its judgment is not in accordance with said general or special standards. Said Board may require, as a condition of the issuance of any special use permit, that it shall be periodically renewed, or said Board may issue a temporary special use permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board, provided that any such renewal or extension shall be subject to the same procedure as specified herein for the original issuance of the special use permit involved and shall be in conformity with aforesaid general and special standards.

Section 13.7 – Expiration of a Special Use Permit

- A. The Special Use Permit shall expire after one year if the applicant fails to implement his application as filed with the Code Enforcement Officer. Extension may be granted only by the Zoning Board of Appeals, upon written application prior to the expiration of the Special Use approval.
- B. A Special Use Permit shall expire if the use of the property in accordance with the grant of a Special Use Permit shall cease continuously for one (1) year.
- C. Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a grant of special use permit be renewed periodically.

ARTICLE 14 – VARIANCES

Section 14.1 – Variances

Variances: The Zoning Board of Appeals may issue a variance for any use of structure (use variance) or area (area variance) in the Municipality of Randolph, provided such variance complies with the general standards set forth in this section and with the special requirements enumerated elsewhere herein. Application for variances shall be made to the Board of Zoning Appeals through the Code Enforcement Officer and shall be accompanied by all material needed to verify the claim.

General Standards: Each case must be determined on its own merits. Unnecessary hardships and practical difficulties are the determining factors for the authorization of a use variance and an area variance respectively.

A. Use Variances

1. In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence; and
 - b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and
 - c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. That the alleged hardship has not been self-created.
2. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

B. Area Variances

1. In making its determination on an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such

grant. In making such determination the board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
 - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
 - c. Whether the requested area variance is substantial.
 - d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.
2. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

C. Use and Area Variances in the Floodplain Overlay District

In addition to the above criteria, when considering an application for a use or area variance in the FO Floodplain Overlay District, the Zoning Board of Appeals shall consider the requirements of Local Law # 1 [2000], entitled "A Local Law for Flood Damage Prevention." In particular, the Zoning Board of Appeals shall consider the variance procedure contained in Section 6.0 of that law and the special criteria that must be met in order to grant an application for a variance.

In addition to the above criteria, variances in the F-F and F-W require the following criteria:

- a. The danger that materials may be swept onto other lands to the injury of others.
- b. The danger to life and property due to flooding or erosion damage.
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- d. The importance of the services provided by the proposed facility to the community.
- e. The necessity to the facility of a waterfront location, where applicable.
- f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- g. The compatibility of the proposed use with existing and anticipated development.

- h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area.
- i. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
- k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

D. Imposition of Conditions

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

E. Expiration of Grant of Variance

- 1. A variance shall expire if construction or other use of the property in accordance with the grant of variance has not been commenced within one (1) year of the date of approval. Extension may be granted only by the Zoning Board of Appeals, upon written application prior to the expiration of the variance approval.
- 2. A variance shall expire if the use of the property in accordance with the grant of variance shall cease continuously for one (1) year.
- 3. Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a grant of variance be renewed periodically.

Section 14.2 – Compliance with State Environmental Quality Review Act

The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) prior to acting upon an application for variance, an appeal, or similar action.

ARTICLE 15 – AMENDMENTS

Section 15.1 – Municipal Board May Amend

The Municipal Board may, from time to time, on its own motion, or on petition or on recommendation of the Planning Board or Zoning Board of Appeals, amend, supplement or repeal the regulations and provisions of this ordinance after public notice and hearings as provided by the Municipal Law.

Section 15.2 – Review by Planning Board

Every such proposed amendment or change, whether initiated by the Municipal Board or by petition, shall be referred to the Planning Board for report thereon. Referral to the Planning Board shall be made fifteen (15) days before the public hearing hereinafter provided for. If the Planning Board shall fail to submit such report within thirty (30) days of the date of referral, it shall be deemed that the Planning Board has approved the proposed amendment or change.

Section 15.3 – Public Notice and Hearing

The Municipal Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments, and shall cause notice to be given as follows:

A. Public Notice

1. Notice of the public hearing shall be published of at least ten (10) days in advance of such hearing in a newspaper of general circulation in the Municipality. Such notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.
2. In addition, the following notices shall be given, If appropriate:
 - a. A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any State Park shall be given to the Regional State Park Commission having jurisdiction over such State facility at least ten (10) days prior to the date of such public hearing.
 - b. A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any city, municipality, town, or county, shall be given to the clerk of such municipality at least ten (10) days prior to the date of such hearing.
 - c. A written notice of any proposed change or amendment affecting property within 500 feet of the property of any housing authority erecting or owning a housing project authorized under the public housing law shall be given to the executive director of such housing authority and to the

chief executive officer of the municipality providing financial assistance thereto, at least ten (10) days prior to the date of such hearing.

B. Public Hearing - The hearing shall be held at the stated time and place by the Municipal Board and shall include within its proceedings:

1. The proposed change, amendment or supplement, either in complete or summary form.
2. An opportunity for all interested persons to be heard in a manner prescribed by the Municipal Board.

Section 15.4 – Adoption

- A.** Prior to final action by the Municipal Board on the proposed amendment, it shall be referred to the Cattaraugus County Planning Board following the provisions of Article 16 of this ordinance.
- B.** Any such amendments may be approved by a majority vote plus one of the Municipal Board of Trustees.

Section 15.5 – Filing Requirements

- A.** Amendments made to this ordinance, excluding any map incorporated therein, shall be entered in the minutes of the Municipal Board. Such minutes shall describe and refer to any map adopted in connection with the amendment.
- B.** A copy or a summary of the amendment, excluding any map incorporated therein, shall be published once in the official newspaper of the Municipality.
- C.** A copy of the amendment, together with an abstract or summary of any amendment to the zoning map shall be posted conspicuously at or near the main entrance to the office of the Municipal Clerk.
- D.** Affidavits of the publication of the summary and posting of the amendment shall be filed with the Municipal Clerk.
- E.** The Municipal Clerk shall maintain every map adopted in connection with this Zoning Ordinance and every amendment thereto. Said documents shall be made available during regular business hours for public inspection.

ARTICLE 16 – REFERRAL

Section 16.1 – Proposed Actions Subject to Referral

In accordance with the laws of New York State, the following proposed actions by the Municipal Board, the Planning Board, or the Zoning Board of Appeals shall be referred to the Cattaraugus County Planning Board for its review and recommendation before final action is taken by the local board. These items shall be referred only if they meet the geographic requirements in Article 16, Section 16.2.

- A. Adoption of or amendment to the Municipal Comprehensive Plan.
- B. Adoption of or amendment to the Zoning Ordinance.
- C. Issuance of special use permits.
- D. Approval of site plans.
- E. Granting of use or area variances.
- F. Any other authorizations which a local board may issue under the provisions of this Zoning Ordinance.

Section 16.2 – Geographic Criteria

The proposed actions set forth in Article 16; Section 16.1 shall be subject to the referral requirements of this article if they apply to a parcel or lot within five hundred (500) feet of any of the following:

- A. The boundary of any municipality.
- B. The boundary of any existing or proposed county or state park or any other recreation area.
- C. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
- D. The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
- E. The existing or proposed boundary of any county or state owned land on which a public building or institution is situated.
- F. The boundary of a farm operation located in an agricultural district, as defined by Article 25AA of the agriculture and markets law, except that applications for area variances shall not be referred.

Section 16.3 – County Planning Board Review

- A.** The Cattaraugus County Planning Board shall have thirty (30) days after receipt of a full statement of the proposed action, or such longer period as may have been agreed upon by the County Planning Board and the local board, to report its recommendations to the local board. The County Planning Board's report shall include a statement of the reasons for its recommendation.

- B.** If the County Planning Board recommends modification or disapproval of a proposed action, the local board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

- C.** If the County Planning Board fails to report back to the local board within thirty (30) days, or other such time period as may have been agreed to, the local board may take final action on the proposed action without such report. However, any report by the County Planning Board that is received two or more days prior to final action by the local board shall be subject to the provisions of Article 16 Section 16.3.(B).

Section 16.4 – Report of Final Action

Within thirty (30) days after its final action on the proposal, the local board shall file a report of the action it has taken with the County Planning Board. If the local board acted contrary to a recommendation of modification or disapproval, the report shall set forth the reasons for that decision.

ARTICLE 17 – ADMINISTRATION & ENFORCEMENT

Section 17.1 – General Procedure

A. General Sequence of Steps

All persons desiring to undertake any new construction, structural alteration, or change in the use of a building or lot shall apply to the Code Enforcement Officer for a Zoning Permit by filing the appropriate application form and by submitting the required fee. The Code Enforcement Officer will then either issue or refuse the Zoning Permit or refer the application to the Zoning Board of Appeals. After the Zoning Permit, has been received by the applicant, he/she may proceed to undertake the action permitted in the Zoning Permit and upon completion of such action, shall apply to the Code Enforcement Officer for a Certificate of Compliance.

B. Zoning Permit Types - Under the terms of this ordinance, the following classes of Zoning Permits may be issued:

1. **Permitted Use** - A Zoning Permit for a permitted use may be issued by the Code Enforcement Officer of his own authority.
2. **Special Uses.** A Zoning Permit for a Special Use may be issued by the Code Enforcement Officer after review by the Planning Board and upon the order of the Zoning Board of Appeals, after a public hearing held by the Board of Appeals for the purpose of deciding upon the request.
3. **Zoning Permit after an Appeal or a Request for a Variance.** A Zoning Permit may be issued by the Code Enforcement Officer upon the order of the Zoning Board of Appeals and after a Public Hearing held by the Board of Appeals for the purpose of deciding upon the appeal or a request for a variance.

Section 17.2 – Fees

A schedule of fees for all permits and applications required by this ordinance shall be established by the Municipal Board. The Municipal Board may change the fee schedule from time to time.

Section 17.3 – Code Enforcement Officer

This ordinance shall be enforced by the Code Enforcement Officer who shall be appointed by the Municipal Board. No Zoning Permit or Certificate of Occupancy shall be issued by him except where all the provisions of this Ordinance have been complied with.

A. Duties. The powers and duties of the Code Enforcement Officer shall include the following:

1. Examine applications pertaining to the use of land, buildings, and structures.
2. Receive, file and forward for appropriate action all applications for special uses, site plans, variances and amendments to this ordinance.

3. Review permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required. Review permits to assure sites are reasonably safe from flooding.
4. Issue Zoning Permits and Certificates of Compliance, when all provisions of this local ordinance have been complied with, and keep permanent records thereof.
5. Conduct such inspections of buildings, structures and use of land as are necessary to determine compliance with the provisions of this Zoning Ordinance.
6. Maintain permanent and current records of this Zoning Ordinance, including all maps, amendments, special use permits issued, site plan approvals and variances granted.
7. Upon request by the subject board, review applications and make recommendations to the Municipal Board, Planning Board and Zoning Board of Appeals. When requested by the Chair of the respective boards, attend meetings of the Planning Board, Zoning Board of Appeals, and the Municipal Board.
8. When flood proofing is utilized for a particular structure, the Code Enforcement Officer shall obtain certification from a registered professional engineer or architect, licensed to practice in the State of New York.
9. Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
10. Assure that maintenance is provided within the altered or relocated portion of said water course so that the flood carrying capacity is not diminished.
11. Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures.
12. Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood proofed.
13. Any other duties which may be established by the Municipal Board.

B. Zoning Permits

1. **General.** No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Code Enforcement Officer. Except upon written order of the Zoning Board of Appeals, no such Zoning Permit or Certificate of Occupancy 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 ordinance.
2. **Information Necessary for Application.** There shall be submitted with all applications for Zoning

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 ordinance.

3. **Public Record.** 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. The second copy of each application with accompanying plan shall become a public record after a Permit is issued or denied.
4. **Water Supply and Sewage Disposal.** All water supply and sewage disposal installations shall conform to the New York State Department of Health regulations and the regulations of the Cattaraugus County Department of Health. No plot plan shall be approved by the Code Enforcement Officer in any zone unless such conformity is certified in writing on the plan by the Cattaraugus County Department of Health.
5. **Storm Water Runoff.** Drainage affecting adjacent properties shall be considered by the Code Enforcement Officer before issuing a Zoning Permit, including possible storm water runoff to said properties.
6. **Issuance of Permits.** It shall be the duty of the Code Enforcement Officer to issue a Zoning Permit, provided he is satisfied that all requirements of this ordinance are satisfied, and that all other reviews and actions, if any called for in this ordinance, have been complied with and all necessary approval secured therefore.

All Zoning Permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, worker or other person shall perform any building operations of any kind unless a Zoning Permit covering such operation has been displayed as required by this ordinance, nor shall they perform building operations of any kind after notification of the revocation of said Zoning Permit.

7. **Denial of Permits.** When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this ordinance, he/she shall refuse to issue a Zoning Permit, and the applicant may appeal to the Zoning Board of Appeals for a reversal of the Code Enforcement Officer's decision.
8. **Expiration of Zoning Permit.** A Zoning Permit shall expire after one year if the applicant fails to implement his application as filed with the Code Enforcement Officer.
9. **Revocation of Permits.** If it shall appear, at any time, to the Code Enforcement Officer that the application or accompanying plot is in any material respect false or misleading, or that work is being done upon the premises differing materially from that called for in the application filed with him under existing laws or ordinances, he may forthwith revoke the Zoning Permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to said Code Enforcement Officer. After the Zoning Permit, has been revoked, the Code Enforcement Officer, at his discretion, before issuing a new Zoning Permit, may require the applicant to file an

indemnity bond in the favor of the Municipality with sufficient surety conditioned for compliance with this ordinance and all building laws and ordinances then in force and in a sum, sufficient to cover the cost of removing the building if it does not so comply.

10. **Filing of Permits.** The Code Enforcement Officer shall maintain a permanent record of every administrative decision that he/she makes. A copy of such decision shall be filed with the Municipal Clerk.

C. Certificates of Compliance

1. No land shall be occupied or used and no structure hereafter erected, altered or extended and no change in use shall occur until a Certificate of Compliance shall have been issued by the Code Enforcement Officer.
2. Application for Certificate of Compliance shall be made within fifteen (15) days of completion of the structure, alteration, or other work.
3. Said Certificate of Compliance shall be issued by the Code Enforcement Officer within thirty (30) days after the application is received. The Certificate shall state that all work completed is in compliance with the provisions of this ordinance, including any variances or other permits that may have been issued.
4. The Code Enforcement Officer shall maintain a record of all Certificates of Compliance. Copies of said certificates shall be furnished upon request to any person having a proprietary or tenancy interest in the parcel or building affected.

Section 17.4 – Violations and Penalties

- A. Complaints of Violations.** Whenever a violation of this Zoning Ordinance 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 and report thereon to the Municipal Board.

B. Procedure for Abatement of Violations

1. In case any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this ordinance, notification of the violation will be issued in writing by the Code Enforcement Officer. Compliance with this Zoning Ordinance must be met within the time period specified in the notice of violation.
2. After the specified number of days, the Municipal Board, or with their approval, the Code Enforcement Officer, or any other proper person, authority or official, may commence an action to enforce this ordinance.

C. Penalties

1. A violation of this ordinance is an offense, punishable by a fine not exceeding \$350.00 or imprisonment for a period not to exceed six (6) months or both for conviction of a first offense.
 2. Conviction of a second offense, both of which were committed within a period of five (5) years, is punishable by a fine not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed six (6) months, or both.
 3. Conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, is punishable by a fine of not less than \$700.00 nor more than \$1,000.00 or imprisonment for a period not to exceed six (6) months, or both.
 4. Each week's continued violation shall constitute a separate additional violation.
 5. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this ordinance shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.
- D.** The provisions of this Article shall not limit the available procedures for enforcement and remedies provided for under the Municipal Law of the State of New York or any other law.

Section 17.5 – Article Seventy-Eight Proceedings

Any person or persons, jointly or severally aggrieved by any decision of the Municipal Board, Zoning Board of Appeals, the Planning Board or any officer, department, board or bureau of the Municipality, pursuant to this ordinance, may apply to the Supreme Court for review by a proceeding under Article Seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the Municipal Clerk.

ARTICLE 18 – SEPARABILITY

If any part of provision of this ordinance or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this ordinance or the application thereof to other persons or circumstances and the Town Board hereby declares that it would have enacted this ordinance or the remainder thereof had the invalidity of such provision or application thereof been apparent.

ARTICLE 19 – WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town Board of Randolph, or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE 20 – EFFECTIVE DATE

This local ordinance shall take effect immediately upon filing in the Office of the NYS Secretary of State.

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YARD SALE – (3, 19, 34, 86, 87)

ZERO LOT LINE DEVELOPMENT – (34)

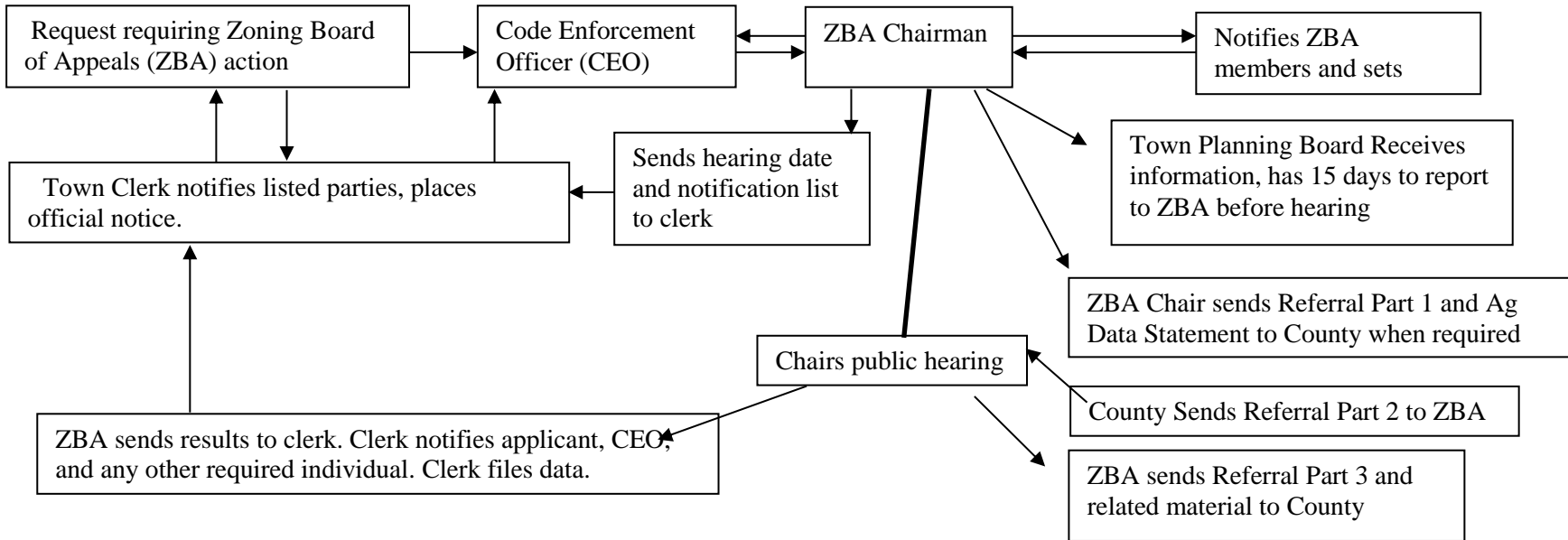
ZONING BOARD OF APPEALS – (4, 5, 7, 11, 13, 30, 33, 34, 35, 37, 38, 43, 44, 45, 60, 63, 64, 66, 67, 68, 70, 76, 77, 78, 86, 89, 91, 92, 93, 94, 95, 96, 97, 101, 103, 104, 105, 106, 107, 108, 109, 115, 117, 118, 121, 126, 134, 136, 143, 145, 146, 148, 149, 150, 151, 152, 153, 154, 155, 157, 158, 159, 160, 161, 163, 165, 166, 167, 169, last page)

ZONING DISTRICTS – (6, 34, 37, 62, 63)

ZONING MAP – (2, 34, 37, 38, 52, 57, 59, 142, 162)

ZONING PERMIT – (34, 62, 71, 143, 144, 152, 154, 165, 166, 167)

Town of Randolph Zoning Board of Appeals Flowchart



General notification list: Official newspaper, applicant/appellant, Property owners and municipalities within 250 feet of affected property, ZBA members, Town planning board members, County planning board, Individuals recommended by CEO or ZBA.

Zoning Code Timeline for permits and appeals.
 5 days before public hearing - Newspaper notice must have been published.
 10 days before public hearing - Notice mailed to appellant/applicant, property owners/municipalities within 250 feet and others listed by ZBA
 10 days before public hearing - Notice sent to County Planning Board, if applicable.
 15 days before public hearing - Last date to notify planning board.
 62 days from date CEO accepts application - ZBA must have held public hearing.
 62 days from last public hearing – ZBA must have made decision.
 5 days after decision – ZBA must have filed results with Town clerk.
 5 days after decision – Clerk must have sent results of ZBA decision to applicant/appellant.

Revised 2/14/2015

