

**PART 4.**  
**NONRESIDENTIAL DISTRICTS**

**§ 4-1. General**

**4-1-1. Key to Use Tables.**

- A. **Permitted.** A  in the Permitted column of a district use table indicates that a use is allowed by right in the respective district, subject to the use regulations in Part 6. Such uses are subject to all other applicable regulations of this Ordinance.
- B. **Special Use.** A  in the Special Use column of a district use table indicates that a use is allowed only if reviewed and approved as a special use permit in accordance with § 8-6. Special uses are subject to all other applicable regulations of this Ordinance including the additional standards contained in Part 6, except where expressly modified by the Zoning Board of Appeals as part of the special exception approval process.
- C. **Uses Not Allowed.** Any unlisted use indicates that the use is not allowed in the particular district.
- D. **Uses Not Listed.** The Zoning Enforcement Officer shall determine whether or not an unlisted use is similar to an existing use or is substantially similar to an already defined specific use, using the criteria in § 8-12-4, Determination of Similar Uses. **[Amended 3-4-2019 by L.L. No. 6-2019]**
- E. **Standards.** The "Standards" column on the use table is a cross-reference to any limited or special use regulation listed in Part 6.
- F. **Developments with Multiple Principal Uses.** A development comprised of uses regulated by separate rows on the Use Table shall be reviewed using the most restrictive regulations from among the proposed uses.

**§ 4-2. Office Building District (OB)**

**4-2-1. Purpose.** To provide areas within the Town devoted exclusively to offices by regulating the land area, bulk and spacing of uses, particularly at common boundaries and promoting the most desirable land use and traffic patterns in accordance with the objectives of the comprehensive plan.

**4-2-2. Permitted and Special Uses.**

- A. **Permitted Uses and Structures.**

<b>NB General Development Standards</b>		
Bulk Storage of Combustible or Flammable Liquids		§ 7-10

## § 4-4. General Business District (GB)

**4-4-1. Purpose.** To provide community centers within existing and proposed commercial nodes and mixed use activity centers for the location of commercial uses which serve a larger market area than a neighborhood center, as articulated in the comprehensive plan, and provide for community-wide needs for general goods and services and comparison shopping. Such uses require larger land areas, generate large volumes of traffic and may generate large amounts of evening activity.

### 4-4-2. Principal and Special Uses.

#### A. Permitted Uses and Structures.

GB	Permitted	Special Use	Standards
<b>OPEN USES</b>			
No open uses allowed			
<b>RESIDENTIAL USES</b>			
Upper-story dwelling unit	✓		§ 6-2-6
<b>PUBLIC AND CIVIC USES</b>			
Ambulance service	✓		
Daycare center, nursery or other private school	✓		
Minor utilities	✓		
Place of worship	✓		§ 6-3-3
Public utility service structure or facility		✓	§ 6-3-4
Public works construction yard [Added 12-7-2009 by L.L. No. 19-2009]	✓		§ 6-3-5

GB	Permitted	Special Use	Standards
Telecommunication facility		✓	§ 6-7
<b>COMMERCIAL</b>			
Advertising agency	✓		
Animal grooming, cat boarding facility, hospital or veterinarian. <b>[Amended 2-4-2008 by L.L. No. 1-2008]</b>	✓		§ 6-4-1
Antiques and second-hand merchandise store	✓		
Apparel and accessories store	✓		
Apparel repair and alterations and shoe repair shop	✓		
Archival center	✓		
Bakery or confectionary shop (retail)	✓		
Bank	✓		§ 4-8-4
Beauty or barber shop	✓		
Book and stationery store	✓		§ 6-4-7 <b>[Amended 12-19-2011 by L.L. No. 34-2011]</b>
Commercial recreation activities, indoor	✓		
Commercial recreation activities, outdoor <sup>5</sup>		✓	

GB	Permitted	Special Use	Standards
Department store	✓		
Dog day care facility <b>[Added 10-17-2011 by L.L. No. 25-2011]</b>	✓		§ 6-4-13 <b>[Amended 11-5-2012 by L.L. No. 17-2012]</b>
Drug store	✓		§ 4-8-4
Employment agency	✓		
Farm and garden supply store	✓		
Farm equipment sales or service	✓		
Food store	✓		
Funeral home	✓		
Gymnasium or health club <b>[Added 2-4-2008 by L.L. No. 1-2008]</b>	✓		
Hardware store	✓		
Home furnishing store	✓		
Home garden store	✓		
House and camping trailer sales, camping equipment and accessories and related repair and service	✓		

5. Editor's Note: The entry for "contracting or construction services," which immediately followed this entry, was repealed 10-17-2022 by L.L. No. 19-2022.

GB	Permitted	Special Use	Standards
Household fixture and appliance sales or service	✓		
Jewelry store	✓		
Job printing or photography store	✓		
Ice store	✓		
Laundromat, cleaning and dyeing outlets and pickup	✓		
Liquor store	✓		
Motel or hotel	✓		
Motion picture theater or live theater <b>[Added 9-21-2009 by L.L. No. 14-2009]</b>	✓		
Nurseries for sale of plants, shrubs, and trees	✓		
Office	✓		
Passenger terminal	✓		
Personal training facility <b>[Added 2-4-2008 by L.L. No. 1-2008]</b>	✓		
Photographic store	✓		
Photography studio <b>[Added 2-4-2008 by L.L. No. 1-2008]</b>	✓		

GB	Permitted	Special Use	Standards
Printing and photocopying store	✓		
Plumbing store	✓		
Postal store or post office	✓		
Radio or television station <b>[Added 4-12-2010 by L.L. No. 2-2010]</b>	✓		
Recording studio <b>[Added 4-12-2010 by L.L. No. 2-2010]</b>	✓		
Restaurant with drive-through	✓		§ 4-8-4
Restaurant with outdoor dining	✓		§ 6-4-9 <b>[Amended 12-19-2011 by L.L. No. 34-2011]</b>
Restaurant without drive-through or outdoor dining	✓		
Retail services	✓		
Sexually oriented cabaret or theater, or sexually oriented motion picture theater <b>[Added 7-7-2008 by L.L. No. 9-2008]</b>	✓		§ 6-6
Sexually oriented media store, sex shop <b>[Added 7-7-2008 by L.L. No. 9-2008]</b>	✓		§ 6-6
Shops for custom work for the making of articles to be sold only at retail on the premises	✓		
Sporting goods and bicycle store	✓		

GB	Permitted	Special Use	Standards
Tattoo parlor / body art studio <b>[Added 1-16-2007 by L.L. No. 2-2007]</b>	✓		
Variety store	✓		
Vehicle parts sales	✓		§ 6-4-11 [Amended 12-19-2011 by L.L. No. 34-2011]
Vehicle sales (new), rental, leasing and related repair; used vehicle sales and vehicle rental in conjunction with new vehicle sales only	✓		§ 6-4-12 [Amended 12-19-2011 by L.L. No. 34-2011]
Wholesale store	✓		
<b>INDUSTRIAL</b>			
<i>No industrial uses allowed</i>			

## B. Dimensional Standards.

For parcels 30 acres in size or more as of (effective date), the Planned Unit Development Process is required. See § 6-9. **[Added 5-20-2013 by L.L. No. 8-2013; amended 9-21-2009 by L.L. No. 14-2009; 11-3-2014 by L.L. No. 39-2014]**

GB Principal & Accessory Use/Structure Dimensional Standards		Vehicle Use Area
Min. lot area	None	
Min. lot width	None	
Min. front yard		
Height of structure for first 35 ft.	20 ft	10 ft*
Height of structure for any portion of building above 35 ft.	30 ft	10 ft*
Min. rear yard (abutting residential *** /nonresidential)		

<b>GB Principal &amp; Accessory Use/Structure Dimensional Standards</b>		<b>Vehicle Use Area</b>
Height of structure up to 30 ft	See § 2-5-4B(3)/ 15 ft	15 ft* / 5 ft*
Height of structure 30 ft or more	See § 2-5-4B(3)/ 25 ft	15 ft* / 5 ft*
Min. side yard (abutting residential***/nonresidential)**		
Height of structure up to 30 ft	See § 2-5-4B(3)/ None or 10 ft if not on lot line	15 ft* / 5 ft*
Height of structure 30 ft or more	See § 2-5-4B(3) / 25 ft	15 ft* / 5 ft*
Max. height	65 ft	
Max. building coverage	None	
Min. interior building separation	None required	

*	The entire area must be landscaped.
**	Accessory structures shall be setback a minimum of 10 feet
***	R-R, S-A, R-1, R-2, R-3, CR-3A, TR-3, R-4, MFR-4A, MFR-5, MFR-6, MFR-7, PRD, PDD, NCD <sup>6</sup> [Amended 11-30-2020 by L.L. No. 17-2020]

#### 4-4-3. Accessory Uses and Structures.

A. **Permitted Accessory Uses and Structures.** The following accessory uses and structures incidental to any permitted principal use are allowed subject to the requirements of § 6-8, Accessory Uses or Part 7, General Development Standards.

<b>GB Permitted Accessory Uses and Structures</b>	<b>Standards</b>
Landscaping	§ 7-2
Off-street parking, loading, and stacking	§ 7-1
Signs	§ 7-8
Solar energy systems [Added 12-11-2017 by L.L. No. 24-2017]	§ 6-10
Small wind energy system [Added 8-17-2009 by L.L. No. 12-2009]	§ 6-8-14

6. Editor's Note: The diagram which immediately followed this table was repealed 2-8-2016 by L.L. No. 2-2016.

GB Permitted Accessory Uses and Structures	Standards
Other uses and structures customarily incidental to the principal use	

B. **Dimensional Standards.** The dimensional standards for an accessory use or structure shall be the same as those for the principal use in § 4-4-2B.

#### 4-4-4. General Development Standards.

- A. Interior side or rear yards separating parking, loading and stacking area from lot lines are not required for unified developments.
- B. Development in the GB district shall also comply with the requirements referenced in the table below.

GB General Development Standards	
Off-Street Parking, Loading and Stacking	§ 7-1
Landscaping, Buffers and Screening	§ 7-2
Site Lighting	§ 7-3
Outdoor Storage and Display	§ 7-4
Fences and Walls	§ 7-5
Access and Circulation	§ 7-6
Provisions for Flood Hazard Reduction	§ 7-7
Sign Regulations	§ 7-8
Performance Standards	§ 7-9
Bulk Storage of Combustible or Flammable Liquids	§ 7-10

#### § 4-5. Commercial Service District (CS)

4-5-1. **Purpose.** To provide areas within the Town for the location of large scale commercial uses meeting community-wide needs for specialized goods and services.

#### 4-5-2. Principal and Special Uses.

##### A. Permitted Uses and Structures.

**PART 6.**  
**USE REGULATIONS**

**§ 6-1. Open Use Standards**

**6-1-1. Stables, Public or Private.** A stable is permitted in accordance with the district use tables in Part 3 or Part 5, subject to the following standards.

- A. A maximum of two horses shall be allowed on the first two acres with an additional horse allowed for each additional two acres.
- B. The stable and all exercise tracks shall be located at least 50 feet from any lot line; and
- C. The manure from such stables shall be stored in tightly covered containers, which will control odor and insects.

**§ 6-2. Residential Use Standards**

**6-2-1. Attached Dwelling.** An attached dwelling is permitted in accordance with the district use tables in Part 3, 4 or Part 5, subject to the following standards.

- A. There shall be only one attached dwelling structure per lot.
- B. The attached dwelling shall not exceed four units per structure.

**6-2-2. Assisted Group Living.** An assisted group living facility including elderly or handicapped group living, adult care facility, a nursing home and a senior citizen home is permitted in accordance with district use tables in Part 3 or Part 5, subject to the following standards.

- A. The minimum floor area shall conform to the minimum floor area requirements stated in the affected district. Alternatively, if the sum of the floor areas of all bedrooms, dining areas, recreation rooms, and other common living areas divided by the total number of bedrooms is equal to 400 square feet or more, the facility shall be permitted.
- B. Any applicable requirements of NY Social Services Law, Chapter 55.

**6-2-3. Common Recreation.** A common recreation use or structure is permitted in accordance with the district use tables in Part 3, subject to the following standards.

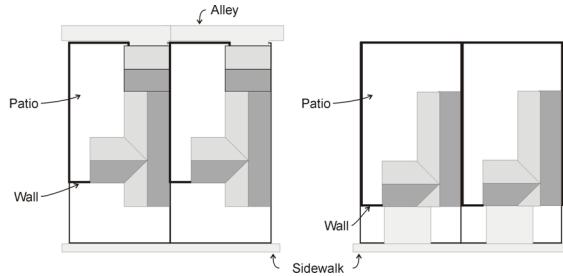
- A. The land is owned by a homeowners' association or other common ownership and is maintained and used only by the members of the association or the owners in common, their families and guests;
- B. The members of the association or common owners are residents of the subdivision within which the structure or use is located; and
- C. All buildings shall be located at least seventy-five feet from any adjoining residential lot line and all other structures and uses shall be at least 25 feet away.

**6-2-4. Dormitory.** A dormitory is permitted in accordance with the district use tables in Part 3, subject to the following standards. **[Amended 9-6-2016 by L.L. No. 10-2016]**

- A. The Zoning Board of Appeals shall consider proximity to campus and residential areas, traffic impact and the availability of public transportation when reviewing a special use permit for a dormitory.
- B. The dormitory shall meet the off-street parking requirements in § 7-1-6. Such requirements shall not be eligible for a variance.

**6-2-5. Patio Home.** A patio home is permitted in accordance with the district use tables in Part 3 or Part 5, subject to the following standards.

- A. **Description.** The patio home is a single-family detached dwelling unit, similar to a zero lot line home, placed on a small lot. Due to the modest area of the lot, the rear yard may be enclosed by a wall, while still preserving a narrow front yard. Where an alley is provided, all garage access shall take place from the alley.



**B. Patio House Dimensional Standards.**

- (1) Notwithstanding the dimensional standards for the district in which a patio home is permitted, a patio home shall comply with the following standards.

<b>Patio Home Standards</b>	
Min. lot area (per dwelling)	5,000 sf
Min. lot width	40 ft
Min. front yard	12 ft
Min. garage setback from street ROW	20 ft
Min. rear yard	10 ft
Min. side yard	—
Min. patio area	1,000 sq ft
Min. patio width	20 ft
Min. building separation	12 ft
Max. height	28 ft
Max. building coverage	40%

<b>Patio Home Standards</b>	
Min. floor area	1,000 sq ft

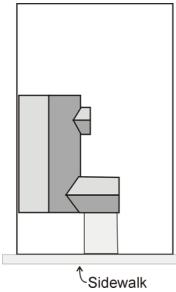
(2) A garage with alley access may extend into the rear setback.

**6-2-6. Upper-Story Dwelling Unit.** An upper-story dwelling unit is permitted in accordance with the district use tables in Part 4 or Part 5, subject to the following standards.

- A. The minimum floor area per dwelling unit shall be as follows: 400 sq ft for a zero bedroom unit; 640 sq ft for a one bedroom unit; 760 sq ft for a two bedroom unit; 1,000 sq ft for a three bedroom unit, and 1,200 sq ft for a four bedroom unit. **[Amended 2-4-2008 by L.L. No. 1-2008]**
- B. Parking may be shared with ground floor uses, where appropriate.

**6-2-7. Zero Lot Line Home.** A zero lot line home is permitted in accordance with the district use tables in Part 3 or Part 5, subject to the following standards.

- A. **Description.** The zero lot line home is a single-family detached dwelling unit positioned on one side lot line without any setback. The home has private yards on three sides of the building, including a wider side yard comprising the equivalent of two side yards for conventional detached housing. Garage access may take place from the front or the rear of the lot.



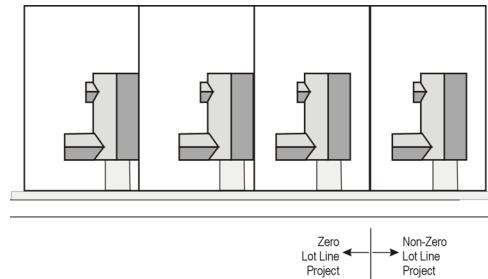
- B. **Zero Lot Line Dimensional Standards.** Notwithstanding the dimensional standards for the district in which a zero lot line home is permitted, a zero lot line home shall comply with the following standards.

<b>Zero Lot Line Home Standards</b>	
Min. lot area (per dwelling)	5,000 sf
Min. lot width	40 ft
Min. front yard	15 ft
Min. garage setback from street ROW	20 ft
Min. rear yard	10 ft

<b>Zero Lot Line Home Standards</b>	
Min. side yard	—
Min. building separation	12 ft
Max. height	2 stories (up to 35 ft)
Max. building coverage	40%

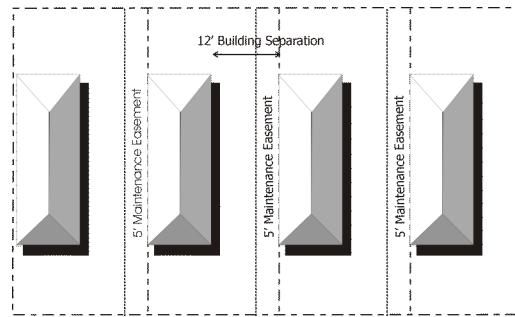
**C. Setbacks.**

(1) The side yard setback may be reduced to zero on one side of the home. This reduction is not permitted on the front or rear yard setback or on the side yard setback adjacent to lots that are not within the zero lot line project.

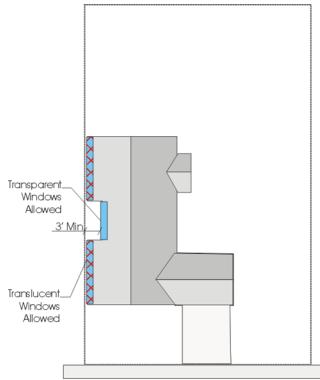


(2) A garage with alley access may extend into the rear setback.

**D. Maintenance Easement.** An easement between the two property owners to allow for maintenance or repair of the home shall be required when the roof overhang or side wall of the house are within four feet of the adjacent property line. The easement on the adjacent property shall provide at least five feet of unobstructed space. The easement shall be recorded on the deed for the lot where the projection occurs.



**E. Privacy.** If the sidewall of the house is on the property line, or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not permitted. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are permitted.



**6-2-8. Fraternity or Sorority House.** Permitted only as an accessory use to a college, university, or other educational institution. **[Added 9-6-2016 by L.L. No. 10-2016]**

- A. Located a minimum of 250 feet from any lot in the R-R, SA, R-1, R-2, R-3, CR3-A, TR-3, R-4, MFR-4A, MFR-5, MFR-6, MFR-7, MHR-8, AG, NCD, PRD, PDD, TND, or TNB Overlay districts.
- B. Maintained for persons enrolled in a college, university, or other educational institution and located entirely on the campus of that institution.
- C. Operated by a nationally chartered membership organization or a locally chartered organization recognized by the educational institution on which it is located.
- D. On-site management and security is provided 24 hours/day.
- E. A minimum 1.25 spaces of off-street parking for each bed is required.

### **§ 6-3. Public and Civic Use Standards**

**6-3-1. Cemetery or Mausoleum.** A cemetery or mausoleum is permitted in accordance with the district use tables in Part 5, subject to the following standards.

- A. A cemetery shall be a minimum of 50 feet from any residential district. A mausoleum shall be a minimum of 100 feet from any residential district. **[Amended 4-12-2010 by L.L. No. 2-2010]**
- B. Any cemetery shall contain a single continuous area of 20 acres or more.

**6-3-2. Day Care.** A day care is permitted in accordance with the district use tables in Part 3, Part 4, or Part 5 subject to NY Social Services Law, Chapter 55, Article 6, Children.

**6-3-3. Place of Worship.** A place of worship is permitted in accordance with the district use tables in Part 3, Part 4 or Part 5, subject to the following standards.

- A. The minimum lot area shall be one acre and the minimum lot width shall be 200 feet.
- B. The minimum yards for structures, parking, loading and stacking areas shall be in accordance with the following table.

Yard	Structure Height		Parking, Loading & Stacking Area
	Up to 30 ft	30 ft or more	
Front, from right-of-way of a dedicated street	50	Add 1 additional foot of setback on all sides for every foot of height over 30 feet	15 ft*
Side, abutting a residential district	25		10 ft*
Rear, abutting a residential district	50		10 ft*
Side and rear, abutting a nonresidential district	15		5 ft*
* Entire area shall be landscaped			

- C. Maximum building coverage shall be 25 percent.
- D. Maximum structure height shall be 65 feet.
- E. Schools and day-care centers are permitted as an accessory use.

**6-3-4. Public Utility Service Structure or Facility.** A public utility service structure or facility is permitted in accordance with the district use tables in Part 3, Part 4 or Part 5 subject to the following:

- A. The facility shall be secured.
- B. The facility shall not be used for storage of vehicles or fuels for vehicles.
- C. The site plan for the proposed structure shall be reviewed by the Planning Director before a hearing is held by the ZBA. The Planning Director shall submit a written report to the ZBA containing its analysis of the proposal under the standards set forth in § 8-6-6. Site plan submittal and review under § 8-7 shall not be required.

**6-3-5. Public Works Construction Yard.** A public works construction yard is permitted in accordance with the districts' "Permitted Use and Structures" tables in Part 4, subject to the following standards. **[Added 12-7-2009 by L.L. No. 19-2009]**

- A. Such yard shall be permitted on a temporary basis by the Commissioner of Building for a period not to exceed the terms of the public works construction contract and restoration period or one year, whichever is less. The applicant shall submit an operation plan for the location and extent of activities to occur on the site, and a site restoration plan. The operation plan shall include any proposed changes to the drainage system. A public works construction yard may continue to be operated for a period exceeding one year upon approval of a Temporary Use Permit by the ZBA. If approved, the Temporary Use Permit shall stipulate the duration of the permit and all restrictions or conditions deemed appropriate by the ZBA.

- B. The yard shall be maintained in such a manner that it is neither obnoxious nor offensive by reason of emission of odor, dust, smoke, gas, noise, vibration, electromagnetic disturbance, radiation or other nuisance situation as determined by the Commissioner of Building.
- C. All noise-making activities that are audible at the property line of the public works construction yard shall be limited to the hours stipulated in Chapter 138, Noise, of the Town of Amherst Code. Additionally, in the OB, NB, GB, MS, SC, RD, and ST districts, the hours of operation shall be limited to Monday through Friday from 7 A.M. to 7 P.M.
- D. A public works construction yard shall not be located within 250 feet of a residential zoning district, a property containing a day-care center or any other occupied building.
- E. When a public works construction yard is located within 500 feet of a residential property, fencing of the entire perimeter of the public works construction yard shall be required. The fencing shall be substantially opaque with a minimum height of seven feet a maximum height of ten feet. The point of access to the yard shall be provided with a gate that is secured when the yard is not in use. **[Amended 3-4-2019 by L.L. No. 6-2019]**
- F. Only one point of access to the public works construction yard shall be permitted. Such access shall be provided directly to a public right-of-way.
- G. The storage or stockpiling of materials and supplies within the construction yard shall be limited to a maximum height of 20 feet.
- H. The maximum area of a public works construction yard shall be one acre.
- I. The operation for any on-site crushing of stone, concrete or similar processing shall not be conducted within 500 feet of a residential zoning district listed in Part 3 of this Zoning Ordinance. The hours of operation for any on-site crushing of stone, concrete or similar processing shall be limited to Monday through Friday from 8 A.M. to 5 P.M. Additionally, such activity shall not be conducted on any day that is a national (United States) holiday. **[Amended 3-4-2019 by L.L. No. 6-2019]**
- J. Any lighting placed on the site shall be oriented so as to direct glare or excessive illumination away from the public right-of-way and adjoining properties.
- K. Unless otherwise approved by this ordinance, no signage shall be permitted on the site.
- L. The yard shall be maintained in good condition during the time of its use. Material and construction residue and debris shall not be permitted to accumulate. Grass shall be regularly mowed and weed growth controlled.
- M. In the event that the conditions of this section are not adhered to, the Commissioner of Building may issue a stop work order.
- N. Upon completion of construction, all materials, supplies, equipment and debris associated with the yard's activities shall be completely removed and the area restored to its original vegetative and topographic state as stipulated in the site reclamation plan

within 90 days.

O. Fee. The fee for the operation of a public works construction yard shall be one-hundred dollars (\$100) for each year, or portion thereof, of operation. This fee shall be in addition to any fee required for the application of a Temporary Use Permit from the ZBA. **[Amended 3-4-2019 by L.L. No. 6-2019]**

**6-3-6. Archery and Shooting Club, Outdoor** Upon approval of a special use permit by the Zoning Board of Appeals, an archery and shooting club is permitted in accordance with the district use tables in Part 5, subject to the following standards. **[Added 2-24-2014 by L.L. No. 5-2014]**

- A. The minimum site area shall be 15 acres.
- B. The facility owner shall provide to the Town a hold-harmless agreement signed by all owners of the facility and to remain valid throughout the existence of the club.
- C. The minimum distance from any firing point measured in the direction of fire to the nearest property line shall be a minimum of 500 feet and a minimum of 3,000 feet from any occupied structure.
- D. Hours of operation shall be limited to 8:00 a.m. to 9:00 p.m.
- E. The facility shall be monitored at all times by an attendant, and no unsupervised clients shall be permitted in any of the shooting areas.
- F. All facilities to be designed and constructed in accordance with nationally recognized guidelines for such facilities, such as the National Rifle Association's The Range Manual: A Guide to Planning and Construction.
- G. All construction of such facilities shall comply with all codes including the Town fire code and building code.
- H. The entire perimeter of all hunting and shooting clubs shall be fenced and signed to reduce the potential for trespassing into firing zones. Warning signs identifying the range shall be posted around the perimeter of the parcel on which the shooting range is located at minimum intervals of 75 feet.
- I. No sales or consumption of alcoholic beverages shall be permitted on the property.

**6-3-7. Outdoor Recreation Facility** An outdoor recreation facility is permitted in accordance with the district use tables in Part 5, provided that the facility is not within 50 feet from an abutting residential district or use. **[Added 2-24-2014 by L.L. No. 5-2014]**

#### **§ 6-4. Commercial Use Standards**

**6-4-1. Animal Grooming, Cat Boarding Facility, Animal Hospital or Veterinarian.** An animal grooming facility, cat boarding facility, animal hospital or veterinarian is permitted in accordance with the district use tables in Part 4 or Part 5, provided that all activity associated with the operation shall take place within a completely enclosed building. **[Amended 2-4-2008 by L.L. No. 1-2008]**

**6-4-2. Bed and Breakfast.** A bed and breakfast establishment is permitted subject to the approval of a special use permit by the ZBA and in accordance with the following standards:

- A. A bed and breakfast shall only be established in a single-family detached dwelling.
- B. A maximum of four guestrooms and a maximum of 10 overnight guests at any time shall be permitted in any one bed and breakfast establishment.
- C. No food preparation, except beverages, is allowed within individual guestrooms. Meal service may only be provided to overnight guests.
- D. All parking areas on property (except driveways) shall be behind the required building setback line and shall be screened from the view of adjacent residences to a height of six feet by a solid screening fence, or dense shrubs and vegetation.
- E. The bed and breakfast shall be located adjacent to and take access from a collector or arterial street only, as defined by the Town and this ordinance.
- F. The operator of the bed and breakfast shall be a full-time resident of the dwelling in which the bed and breakfast establishment is housed.
- G. No exterior evidence of the bed and breakfast establishment shall be allowed, except for parking and one attached sign no larger than eight square feet. No additional advertising of any kind is allowed on site. The Zoning Board of Appeals shall have discretion regarding the location of the attached sign.
- H. Guests for events or similar functions shall be limited to a total of 15 (including overnight guests).
- I. The Zoning Board of Appeals shall have the authority to impose additional reasonable conditions and restrictions as are directly related to and incidental to the proposed bed and breakfast establishment.

**6-4-3. Car Wash.** A car wash is permitted in accordance with the district use tables in Part 4 however, unenclosed overnight parking of motor vehicles at a car wash is prohibited.

- (1) Appurtenances including but not limited to vacuums, above grade tanks, vent piping and utility structures shall not be within a required front yard, and be effectively screened with landscaping when visible from adjacent public roadways. **[Added 12-12-2022 by L.L. No. 22-2022]**

**6-4-4. Contracting or Construction Services.** Contracting or construction services are permitted in accordance with the district use tables in Part 4 or Part 5, provided that there shall be no storage of the contractor's materials or equipment.

**6-4-5. Farm Equipment Sales or Service and House and Camping Trailer Sales.** Farm equipment sales or service or house and camping trailer sales, when permitted in a TNB Overlay District, shall comply with the following standards: **[Added 12-19-2011 by L.L. No. 34-2011<sup>1</sup>]**

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1. Editor's Note: This local law also redesignated former Subsections 6-4-5 through 6-4-11 as Subsections 6-4-6 through 6-4-12,

- (1) No vehicle storage, display or parking shall be permitted between the principal structure and front lot line.
- (2) No service bay or garage doors shall face the street.
- (3) Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.

**6-4-6. Laundromat, Cleaning and Dyeing Outlets and Pickup Stations.** A laundromat, cleaning and dyeing outlet or pickup station is permitted in accordance with the district use tables in Part 4 or Part 5 provided that such use shall have a gross floor area that does not exceed 5,000 square feet.

**6-4-7. Media Store with Some Sexually Oriented Media.** A retail book, video or other media store that has sexually explicit media that constitutes more than ten percent but no more than 30 percent of its inventory or that occupies more than ten percent but no more than 30 percent of its gross public floor area shall be permitted and shall not be subject to the standards for a sexually oriented media store provided that: **[Added 7-7-2008 by L.L. No. 9-2008]**

- A. The sexually explicit media is kept in a separate room from the rest of the inventory of the store;
- B. Access to the separate room is available only to persons 18 years or older;
- C. Access to the room is through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control; and
- D. Customers and activities in the room are visible at all times to management or the clerk on duty through a video system located at the clerk's or manager's counter.

**6-4-8. Private Parking Facility.** A private parking facility is permitted in accordance with the district use tables in Part 5 subject to the following standards.

- A. The parcel served by such facilities shall be located within 250 feet of the nearest point of the parking facilities. For developments greater than 60,000 square feet, the parking facilities shall be located within 500 feet.
- B. When the private parking facilities are being used to meet the minimum required parking requirements for a building, the use of the private parking facilities shall be provided at all times that the building is in use.

**6-4-9. Restaurant With Outdoor Dining.** A restaurant with outdoor dining is permitted in accordance with the district use tables in Part 4 or Part 5, subject to the following standards.

- A. A minimum of five feet of clear walkway along the curb and leading to the entrance of the establishment shall be free of tables and other impediments.
- B. Adequate trash receptacles shall be provided in the outdoor dining area.
- C. Where 24 or less seats are located in the outdoor dining area, such seats need not be

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respectively.

included in calculating the minimum parking requirement for the restaurant. **[Amended 10-9-2017 by L.L. No. 21-2017]**

- D. Outdoor dining shall be permitted between the hours of:
  - (1) 6 AM and 10 PM, Sunday through Thursday.
  - (2) 6 AM and 11 PM, Friday and Saturday.
- E. Patrons shall be permitted to remain outdoors to complete meals and beverages served before the latest hours indicated above. Outdoor dining shall be prohibited at any other time.
- F. Outdoor dining may be permitted after the hours listed in § 6-4-9D, provided a special use permit is granted in accordance with § 8-6. **[Amended 12-19-2011 by L.L. No. 34-2011]**
- G. Any designated seating area shall be within a hardscaped area. A lawn picnic area may be established if hardscaped accessible elements are incorporated. All seating/tables shall be a minimum of 10 feet from any rear or interior property line. **[Added 10-17-2022 by L.L. No. 19-2022]**

**6-4-10. Service Station.** A service station is permitted in accordance with the district use tables in Part 4 or Part 5, subject to the following standards.

- A. **All Permitted Districts.** Unenclosed parking of motor vehicles at service stations shall be limited to four vehicles, and no vehicle shall remain so parked in excess of 24 hours. Unenclosed overnight parking of motor vehicles at motor vehicle washing establishments is prohibited.
- B. **MS and SC District.**
  - (1) Fuel pumps and pump islands may be located in a required side or rear yard but shall not be located in any required yard abutting a residential district.
  - (2) All fuel pumps and pump islands shall be at least 10 feet from any building.
  - (3) All fuel pumps, pump islands and canopies shall be at least 20 feet from any lot line.
  - (4) Fueling operations within the SC district shall be limited to personal motor vehicles, inclusive of service vans. Fueling of tractor trailers buses and other commercial vehicles is prohibited. **[Added 12-12-2022 by L.L. No. 22-2022]**
  - (5) Fuel delivery areas shall be internal to the site served and not located within a required front yard. Use of internal roadways for shopping centers shall not be utilized for fuel unloading. **[Added 12-12-2022 by L.L. No. 22-2022]**
  - (6) Appurtenances including but not limited to vacuums, above grade tanks, vent piping and utility structures shall be effectively screened with landscaping when visible from internal roadways and adjacent public roadways. **[Added 12-12-2022 by L.L. No. 22-2022]**

**C. TND District.**

- (1) No more than eight pumps shall be permitted.
- (2) If more than four pumps are proposed, the pumps shall be split and located on either side of the building.
- (3) No signs shall be located on any canopy over the pumps.
- (4) All canopy lighting shall meet the requirements of § 7-3.

**D. TNB Overlay District. [Added 12-19-2011 by L.L. No. 34-2011, § 2, item 5; amended 12-19-2011 by L.L. No. 34-2011, § 3, item 1; 11-5-2012 by L.L. No. 17-2012]**

- a. The design of any fuel canopy structure shall relate in form, materials, color and architectural style to the principal structure on the premises.
- b. The design of the fuel canopy shall employ a non-illuminated fascia. Signage shall be of similar style, color and materials as signage on the principal structure.
- c. The design of the fuel island canopy shall include fully recessed lighting arranged and shielded so that the sources or lenses of such illumination are not visible from any street or adjoining property. The lighting levels shall comply with the requirements of § 7-3-4.

**6-4-11. Vehicle Parts Sales.** A vehicles parts sales establishment is permitted in accordance with the district use tables in Part 4, subject to the following standards.

- A. Vehicles shall be serviced only with parts bought on-site.
- B. Space for servicing vehicles shall be limited to 15 percent of the retail space floor area and shall not exceed 15,000 square feet.

**6-4-12. Vehicle Sales, Rental, Leasing and Related Repair. [Amended 12-19-2011 by L.L. No. 34-2011]**

- A. All Permitted Districts. A vehicles sales, rental or leasing establishment is permitted in accordance with the district use tables in Part 4, subject to the following standards. **[Amended 3-4-2019 by L.L. No. 6-2019]**
  - (1) All vehicle storage shall occur on paved surfaces except for vehicle storage located behind the rear line of any principal building, which may occur on any surface approved by the Commissioner of Building.
  - (2) No outdoor speakers shall be permitted.
  - (3) Wheel stops or other permanent barriers shall be installed to prevent vehicles from encroaching on required setbacks or landscaping.
  - (4) Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.

- (5) In the MS district, such uses shall require a minimum lot area of one-half acre.
- (6) In the GB district, used car sales and car rental shall be in conjunction with new car sales only and shall be limited to less than 50 percent of total automobile inventory on the same lot as the new car sale usage.
- (7) When abutting a residential district, car sales and service establishments must meet the following standards: **[Amended 10-17-2022 by L.L. No. 19-2022]**
  - (a) Hours of operation are limited from 7:00 a.m. to 9:00 p.m.
  - (b) Overhead doors shall not face a residential district and doors will be closed except for entry and exit of vehicles.
  - (c) The minimum setback to paved areas shall be 25 feet.

B. TNB Overlay District

- (1) No vehicle storage, display or parking shall be permitted between the principal structure and front lot line.
- (2) No service bay or garage doors shall face the street.
- (3) Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.

**6-4-13. Dog Day Care Facilities.** A facility for the day care and socialization of dogs is permitted in accordance with the district use tables in Part 4 or Part 5 subject to the following standards. **[Added 10-17-2011 by L.L. No. 25-2011; amended 11-5-2012 by L.L. No. 17-2012]**

- A. Dogs may be groomed, trained, exercised and socialized, but not boarded overnight, bred or sold.
- B. All activities related to the dog day care facility shall be undertaken indoors with the exception of short-term outdoor periods for the dogs to relieve themselves. Outdoor areas shall be located a minimum of 250 feet from the nearest residential district boundary and shall be screened by solid wood, vinyl or masonry fencing that is eight (8) feet high.
- C. Dog day care facilities may include as an accessory use the retail sale of products related to the operation of the facility.
- D. The operator of the facility will be required to maintain all required licenses and permits.
- E. All animal waste must be placed in closed waste disposal containers and collected and disposed of by a qualified waste disposal company at least weekly.
- F. A building for a dog day care facility shall be soundproofed to maintain a noise level that is less than 35 dBA as measured at the property line or common wall if within a multi-tenant building.
- G. The hours of operation of a dog day care facility shall begin no earlier than 6:00 AM

and shall end no later than 9:00 pm.

**6-4-14. Truck Servicing, Repair, and Washing.** Truck servicing, repair, and washing, when permitted in a RD District, shall comply with the following standards. **[Added 8-9-2021 by L.L. No. 11-2021]**

- A. Any retail sales area shall be limited to 15% of the gross floor area of the principal structure.
- B. Vehicle maintenance or repair facilities must maintain a minimum distance separation of 150 feet to any residential dwelling building. Such distance may be increased during site plan review approval by the Planning Board or Planning Director as applicable, but not to exceed 300 feet to mitigate for potential noise and odor.
- C. Overhead doors shall not face a residential district and doors will be closed except for entry and exit of vehicles.
- D. The following uses and activities are not allowed:
  - (1) The sale or dispensing of fuel.
  - (2) The servicing, repair, and washing of fuel cargo tanker trucks.
  - (3) Vehicle sales.
  - (4) Outdoor dining.
  - (5) Outdoor speakers.
  - (6) Truck stop related lodging and showers.
  - (7) Unenclosed overnight vehicle parking and vehicle storage that is not directly related to truck servicing and repair work.
- E. All on-site vehicle parking, loading, stacking, and circulation areas shall be paved, curbed, screened, follow the standards established in Part 7, and comply with the following additional standards.
  - (1) Site access and internal circulation shall be designed to prevent conflicts with passenger vehicles and minimize the need for the backing up of trucks.
  - (2) Shared parking is not allowed.
  - (3) Wheel stops or other permanent barriers shall be installed to prevent vehicles from encroaching on building structures, required setbacks, and landscaping.
  - (4) The minimum setback to paved areas facing a public roadway shall be 25 feet.
  - (5) A minimum vertical clearance of 18 feet is required under overhead utility line spans.
  - (6) A minimum vertical clearance of 14 feet is required under any other roof structure or building projection.

## § 6-5. Industrial Use Standards

**6-5-1. Research and Development Uses.** Research and development uses listed in the district tables in Part 4 shall be permitted provided that no such use shall occupy more than 15 percent of the gross floor area of the occupant space within which it is located and no such use shall exceed 25,000 square feet of the gross floor area of the building.

## § 6-6. Standards for Sexually Oriented Businesses [Added 7-7-2008 by L.L. No. 9-2008]

### 6-6-1. Purpose. [Amended 2-22-2019 by L.L. No. 1-2019]

- A. Concurrently with a major revision to this Zoning Ordinance, the Town of Amherst retained Eric Damian Kelly, Ph.D., FAICP, and Connie B. Cooper, FAICP, working under Duncan Associates, to study the issues related to sexually oriented businesses in the Town and in the surrounding region. In a report entitled "Findings and Recommendations, Sexually Oriented Entertainment and Related Businesses," dated August 2005, Kelly and Cooper summarized studies from other communities, including several in New York State, documenting the negative secondary effects that sexually oriented businesses may have on property values and the negative effects that such businesses may have on the community through increases in crime around them. As part of their work, Cooper and Kelly provided to the Town copies of major studies from other communities, which have also been made available to the Town Board. Based on Kelly and Cooper's report and on these other studies, the Town Board has made specific findings regarding such secondary effects and has concluded that the regulations contained in this Article provide an appropriate and narrowly tailored approach to limiting the negative secondary effects of such businesses while allowing the types of communication protected by the First Amendment to occur in Amherst, limited only by appropriate regulations on the place and context of such communications.
- B. The Constitution and laws of the State of New York grant to the Town of Amherst powers, especially police power, to enact reasonable legislation and measures to regulate and supervise sexually oriented entertainment establishments in order to protect the public health, safety and welfare.
- C. It is not the intent of the Town of Amherst in enacting this Ordinance to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the Town of Amherst to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, video tapes, books and/or other materials. Further, by enacting this Ordinance, the Town of Amherst does not intend to deny or restrict the rights of any adult to obtain and/or view any sexually oriented materials protected by the United States and/or State Constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have.

### 6-6-2. Restrictions Affecting Sexually Oriented Uses. [Amended 2-22-2019 by L.L. No. 1-2019]

- A. Sexually oriented media stores, sex shops, and other sexually oriented businesses to which this section may be applicable by cross-reference, shall be permitted uses in the

zoning districts in which they are listed as such only if they also comply with the following locational standards:

- (1) No more than one of the uses governed by these provisions shall be permitted on any single lot in the Town of Amherst.
- (2) None of the uses regulated under this Section shall be allowed within 500 feet of any lot or parcel in the Town and located within any of the following zoning districts: R-R, S-A, R-1, R-2, R-3, CR-3A, TR-3, R-4, MFR-4A, MFR-5, MFR-6, MFR-7, or MHR-8;
- (3) Within 1,000 feet of the property line of a public or private school, religious institution, day-care center, public park or playground, or public library;
- (4) Within 1,000 feet of another sexually oriented business. Sexually oriented businesses permitted under this Zoning Ordinance shall, with the exception of their permitted signs, landscaping, and off-street parking, be conducted in an enclosed building.

B. Sexually oriented cabarets, sexually oriented theaters, and sexually oriented motion picture theaters shall be subject to the following standards:

- (1) Presentation Area. The room or area in the establishment in which performances or presentations will take place shall have a minimum area of at least 500 square feet, all parts of which shall be open and visible to a person at least five feet in height standing anywhere in the room. There shall be no partitions, half-walls, screens, curtains or other dividers dividing portions of the room that are accessible to the public from other parts of the room that are accessible to the public; and
- (2) Private Rooms. There shall be no private rooms or booths that are accessible to the public, except required restrooms. This shall not prohibit the construction of offices, dressing rooms, kitchens, storage areas and other non-public spaces, provided that they are clearly posted "employees only" or "public access not allowed."

C. A person who knowingly owns, manages, operates, conducts or maintains any of the uses governed by these provisions in any way which is contrary to these regulations shall be subject to prosecution under § 8-16 of this Ordinance.

#### **6-6-3. Registration. [Amended 2-22-2019 by L.L. No. 1-2019]**

- A. No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains a sexually oriented use, without first complying with the provisions of this part of the Zoning Ordinance as set forth below.
- B. In addition to any and all other necessary licenses and permits, no form of sexually oriented use shall be allowed to operate or continue to operate until a certificate of registration is filed with the Town Clerk containing:
  - (1) The name and address of the business or establishment subject to the provisions of

this part of the Zoning Ordinance.

- (2) The names, business and home addresses and business or home phone numbers of the owner(s) of the business or establishment subject to the provisions of this part of the Zoning Ordinance.
- (3) If the entity registering under this section is not a natural person, the registration shall include the names, business and home addresses and business or home phone numbers of all directors, officers, general partners or managing partners of the business.
- (4) The date of the initiation of the sexually oriented business.
- (5) The exact nature of the sexually oriented use, specifying whether it is a sexually oriented media store, a sex shop, a sexually oriented motion picture theater, or a sexually oriented cabaret or theater.
- (6) If the premises or the building in which the business containing the sexually oriented use is located is leased, a copy of the lease showing that the petitioner under this Section has control of the premises, and the name, address and telephone number of the landlord.
- (7) The petitioner shall also submit a plan drawn to appropriate scale of the premises proposed for registration indicating the areas to be covered by the registration, all windows, doors, entrances and exits and the fixed features of the proposed registered premises. The term "fixed features" shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths and stands, immovable counters and similar appurtenances that are permanent.
- (8) The petitioner shall state all criminal convictions, the nature of this conviction and location.
- (9) The petition shall certify that the property in question is free of liens for any "delinquent tax", as such term is defined in Section 1102, Article 11 of the Real Property Tax Law of the State of New York, including, but not limited to, any unpaid tax, special ad valorem levy, special assessment or other charge imposed upon real property by or on behalf of a municipal corporation or special district, plus all applicable charges, relating to any parcel which is included in the return of unpaid delinquent taxes or such other general, special or local law as may be applicable, however, in no event, however shall "delinquent tax" include any unpaid tax or other charge against lands owned by the state. If the Building Commissioner determines that tests or other reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.

C. If there occurs any change in the information required for the information of registration or the certification of registration, the Town Clerk shall be notified of such change and a new or amended certificate filed within 30 days of such change.

- D. No certificate of registration issued under the provisions of this part of the Zoning Ordinance shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than stated in the certificate of registration. Relocation of the business requires a new registration, in accordance with the provisions of this section.
- E. The owner, manager or agent of any sexually oriented use shall cause a copy of the certificate of registration issued under the provisions of this part of the Zoning Ordinance to be displayed at eye level in a portion of the premises that is regularly open to customers of the business.
- F. Any knowingly false statement or any statement which the registrant or petitioner should reasonably have known to be false which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for denial, rejection, suspension or revocation of the certificate of registration.
- G. It is a violation of this part of the Zoning Ordinance for the owner or person in control of any property to establish or operate thereon or to permit a sexually oriented use without having in force a certificate of registration complying with this subsection.

**6-6-4. Review Procedure. [Amended 2-22-2019 by L.L. No. 1-2019]**

- A. Upon receipt of an application for a certificate of registration under this part, the Town Clerk shall review it for completeness. If the application is incomplete, the Town Clerk shall, within five business days of receiving such application, return it to the petitioner, with a form or letter indicating that it is incomplete, identifying the item(s) that are missing, and stating that the incomplete application will not be processed.
- B. If the application is complete, the Town Clerk shall, no later than the end of the fifth day after receipt of the application, forward it to the Commissioner of Building and the Chief of Police for review and comment determination regarding compliance with § 6-6-5. The Town Clerk shall request that each of these officials provide a written review determination of compliance or non-compliance within 14 days of receiving the application; if either official fails to act within that time, such official shall be deemed to have recommended approval. Upon receipt of the reviews determinations from these officials, but no later than the 21st business day after receiving the application, the Town Clerk shall act in accordance with the following sub-section.
- C. If the Town Clerk, after receiving the determinations of the Chief of Police and Commissioner of Building, indicating that the application shows that the proposed business application will conforms with the standards set out in § 6-6-5, then the Clerk shall approve the application on or before the end of the 21st day after receipt of the complete application.
- D. If the Town Clerk receives a determination from the Chief of Police or the Commissioner of Building that the application shows that the business fails or will fail in any way to conform to the standards set out in § 6-6-5, then the Clerk shall disapprove the application, acting within such time, and shall, in writing, notify the petitioner that the application has been denied and shall specify the standards with which the business

would not conform. In making their determination, the Chief of Police and the Commissioner of Building shall identify those standards set out in § 6-6-5 which the application fails or will fail in any way.

E. Notification of denial shall be by certified mail and shall be sent to the address on the registration application, which shall be considered to be the correct address.

**6-6-5. Standards for Review. [Amended 2-22-2019 by L.L. No. 1-2019]**

A. **Personal.** The Chief of Police shall determine that the application fails to conform to the code if an investigation indicates that any owner, officer, director, general partner or managing partner of the proposed establishment:

- (1) Has had a registration under this part of the Zoning Ordinance or its predecessors revoked during the previous five years;
- (2) Has been convicted of prostitution, pandering, solicitation for any type of sex act, rape, or any other sexual offense that is a felony under New York law, regardless of where the conviction took place, within the previous ten years; or
- (3) Has been convicted of possessing, manufacturing or selling any unlawful drugs, or trafficking illegally in prescription drugs.

B. **Physical Location and Design.** The Zoning Enforcement Officer shall determine that the application fails to conform to the code if a review of the application indicates that the proposed location of the business or, in the case of a sexually oriented cabaret, sexually oriented motion picture theater or sexually oriented theater, that the proposed location does not meet the required setbacks for sexually oriented business or the layout of the proposed business does not conform with the requirements of § 6-6-2A. **[Amended 3-4-2019 by L.L. No. 6-2019]**

C. **Application.** The Clerk shall deny the application if either the Chief of Police or Commissioner of Building finds that any statement in the application is materially false and that the petitioner knew, or should have known, that it was false or that the provisions of § 6-6-5 have not met the requirements of the code.

D. **Other.** Unless the Clerk makes one of the negative findings set forth in sub-sections A, B and C of this section, the Clerk shall approve the license, conditioned only on payment of the required fee.

E. **Appeal.** Any person aggrieved by a decision of the Clerk hereunder may appeal the decision to the Zoning Board of Appeals in accordance with § 8-13.

**6-6-6. Term of Registration. [Amended 2-22-2019 by L.L. No. 1-2019]**

A. All registrations issued under this part of this Zoning Ordinance shall be classified as annual registrations which shall be paid for on or before October 1 and shall expire on September 30 of the following year. A registration beginning business after October 1 and before April 1 may obtain a new registration upon application and the payment of the appropriate annual registration fee, and such registration shall expire on the following September 30. A registrant beginning business after March 31 and before

October 1 may obtain a new registration upon application and the payment of 1/2 of the appropriate annual registration fee required by the Town Board. Such registration shall expire on September 30 of the same year. The provisions of this subsection shall not affect any other provisions of this part of the Zoning Ordinance.

B. A registrant under this Section shall be entitled to a renewal of his, her or its annual registration from year to year, as a matter of course, on or before October 1, by presenting the registration for the previous year or satisfactory evidence of its loss or destruction to the Town Clerk and by paying the appropriate registration fee.

#### 6-6-7. Revocation.

A. The registration issued under this part of this Zoning Ordinance may be revoked if the owner, general partner, managing partner, officer or director of the registrant is convicted of a criminal act which would have been the basis for denial of the application under § 6-6-5A. If the Chief of Police learns of such a conviction, the Chief of Police shall notify the Town Clerk. Upon notification, the Town Clerk shall send Notice of Proposed Revocation to the registrant at the establishment address. Such notice shall provide that the registration will be revoked unless it is appealed to the Zoning Board of Appeals in accordance with § 8-13. If a timely appeal is not filed with the Zoning Board of Appeals, the registration shall be automatically revoked without further action by the Town Clerk, and the establishment will thereafter be considered an unlawful use, subject to the enforcement actions provided in this Ordinance.

B. If the Commissioner of Building learns of a violation of the provisions of this ordinance, the Commissioner of Building shall so notify the Town Clerk. Upon notification, the Town Clerk shall send Notice of Proposed Revocation to the registrant at the establishment address. Such notice shall provide that the registration will be revoked unless it is appealed to the Zoning Board of Appeals in accordance with § 8-13. If a timely appeal is not filed with the Zoning Board of Appeals, the registration shall be automatically revoked without further action by the Town Clerk, and the establishment will thereafter be considered an unlawful use, subject to the enforcement actions provided in this Ordinance.

#### 6-6-8. Limitations on Board of Zoning Appeals.

The authority and duties of the Board of Zoning Board of Appeals when acting under this Section shall be modified as follows:

A. The Board may reverse or affirm a decision of the Town Clerk to approve or deny registration or a proposal by the Town Clerk to revoke a registration but shall not have any other authority to modify the action of the Town Clerk; and

B. The matter shall be considered at a public meeting, with the opportunity for the petitioner, the appellant if not the petitioner, and the Town Clerk and their witnesses to be heard, but it shall not be subject to a public hearing as otherwise defined herein;

C. The time limit for action by the Board under § 8-13-5B shall be reduced to 45 days after the filing of the appeal; and

D. If the Board fails to act within said 45-day period, the petitioner may at any time request from the Town Clerk a "certificate of deemed denial," and the Town Clerk shall

forthwith issue such a certificate; the applicant may rely on such certificate as a final action by the Town which may then be appealed to a court of competent jurisdiction.

#### 6-6-9. Businesses Prohibited.

A. The following businesses are specifically prohibited in the Town:

- (1) A massage parlor, studio or other establishment operated by a person who is not licensed by the State of New York as a massage therapist or as a medical practitioner;
- (2) A sexually oriented encounter center;
- (3) A sexually oriented video arcade or a sexually oriented viewing booth or arcade booth;
- (4) A lingerie modeling establishment unless operated as a sexually oriented cabaret or theater in accordance with the requirements of this section; and
- (5) A nude or sexually oriented modeling establishment unless operated as a sexually oriented cabaret or theater in accordance with the requirements of this section.

### § 6-7. Telecommunication Facility Standards

#### 6-7-1. Definitions.

**ACCESSORY STRUCTURE OR FACILITY** — An accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to generators or other emergency power supply equipment, utility or transmission equipment storage sheds or cabinets, or fencing.

**ANTENNA OR ANTENNAE** — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building and permitting authority.

**APPLICATION** — All necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

**CO-LOCATION** — The use of a single tower or structure to support antennae from multiple providers of wireless services.

**COMMERCIAL IMPRACTICABILITY OR COMMERCIALLY IMPRACTICABLE** — The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a particular return on investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable."

**HEIGHT** — The distance measured from the pre-existing grade level to the highest point on

the tower or structure, including any antenna or lightning protection device.

**MODIFICATION OR MODIFY** — The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennae, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is technically equivalent to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility.

**PERSON** — Any individual, corporation, estate, trust, partnership, joint-stock company, an association of two or more persons having a joint common interest, or any other entity.

**PERSONAL WIRELESS FACILITY** — See definition for "wireless telecommunications facilities."

**PERSONAL WIRELESS SERVICES OR PWS OR PERSONAL TELECOMMUNICATIONS SERVICE OR PCS** — The same meaning as defined and used in the Telecommunications Act of 1996.

**PETITIONER** — Any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

**TELECOMMUNICATION SITE** — See definition for "wireless telecommunications facilities."

**SPECIAL USE PERMIT** — The official document or permit by which a petitioner is allowed to construct and use wireless telecommunications facilities as granted or issued by the Town.

**STEALTH OR STEALTH TECHNOLOGY** — Minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

**TELECOMMUNICATIONS** — The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

**TELECOMMUNICATIONS STRUCTURE** — A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

**TEMPORARY** — Temporary in relation to all aspects and components of this local law, something intended to, or that does, exist for fewer than 90 days.

**WIRELESS TELECOMMUNICATIONS FACILITIES (WTF)** — Includes "telecommunications tower" and "tower" and "telecommunications site" and "personal wireless facility" and any commercial equipment or location used in connection with the provision of wireless communication services, including cellular telephone services, personal

communications services, radio and television broadcast services and private radio communications services, which are regulated by the Federal Communications Commission both in accordance with the Telecommunications Act of 1996 and other federal laws. A telecommunication facility shall include antenna(e), principal and accessory telecommunication equipment and supporting masts, monopoles and structures, buildings and appurtenances servicing same.

**6-7-2. Purpose.** The purpose of this Section is to:

- A. Implement an application process for persons seeking a special use permit for WTFs;
- B. Establish a policy for examining an application for and issuing a special use permit for WTF that is both fair and consistent;
- C. Promote and encourage, wherever possible, the sharing and/or co-location of facilities-WTF among service providers;
- D. Promote and encourage, wherever possible, the placement, height, appearance and quantity of WTFs in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such WTFs, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology will be strongly encouraged to ensure that WTFs are compatible with surrounding land use.
- E. Promote and encourage the site development standards which preserve the character of residential areas and which ensure that adequate screening and stealth technology is used.
- F. Ensure that WTFs are limited to those for which the petitioner has demonstrated a need for service essentially within the Town of Amherst.

**6-7-3. Special Use Permit Application and Other Requirements.**

- A. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, WTFs as of the effective date of this Section without having first obtained a special use permit for a WTF, or alternatively, in the case of a modification to an existing WTF, an "Eligible Facilities Request" pursuant to section 6409, of 47 U.S.C. § 1455, a Zoning Authorization shall first be obtained from the Town Planning Department. Notwithstanding anything to the contrary in this Section, no special use permit shall be required for those non-commercial exceptions noted in the definition of WTFs. **[Amended 11-9-2020 by L.L. No. 14-2020]**
- B. All petitioners for a special use permit for a WTF or any modification of such facility shall comply with the requirements set forth in this Section. The ZBA is the officially designated agency or body of the Town to whom applications for a special use permit for a WTF must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for a WTF. The Town may at its discretion delegate or

designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the ZBA with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for a WTF.

- C. An application for a special use permit for WTFs shall be signed on behalf of the petitioner by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the petitioner, shall also sign the application. At the discretion of the Town, any false or misleading statement in the application may subject the petitioner to denial of the application without further consideration or opportunity for correction.
- D. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Town.
- E. The petitioner shall include a statement in writing:
  - (1) That the petitioner's proposed WTFs shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the ZBA in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations;
  - (2) That the construction of the WTFs is legally permissible, including, but not limited to the fact that the petitioner is authorized to do business in the state, and that the petitioner is licensed by the FCC to provide wireless telecommunications service in the Town.
- F. No WTF shall be installed or constructed until the application is reviewed and approved by the ZBA, and the special use permit and all appropriate building, electrical, plumbing and fire prevention permits have been issued.
- G. All applications for the construction or installation of new WTFs shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the petitioner. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the State of New York. The application shall include the following information:
  - (1) Documentation that demonstrates the need for the WTF to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
  - (2) The name, address and phone number of the person preparing the report;
  - (3) The name, address, and phone number of the property owner, operator, and petitioner, and to include the legal form of the petitioner;
  - (4) The postal address and tax map parcel number of the property;
  - (5) The zoning district in which the property is situated;

- (6) Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines along with the setback dimensions from the WTF to the abutting property lines;
- (7) The location and use of all structures within 500 feet from the WTF;
- (8) The location, size and height of all structures on the property which is the subject of the application;
- (9) The location, size and height of all proposed and existing antennae and all appurtenant structures;
- (10) The type, locations and dimensions of all proposed and existing landscaping, and fencing;
- (11) The number, type and design of the tower(s) and antenna(e) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
- (12) The make, model and manufacturer of the tower and antenna(e);
- (13) A description of the proposed tower and antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- (14) The frequency, modulation and class of service of radio or other transmitting equipment;
- (15) The actual intended transmission and the maximum effective radiated power of the antenna(e);
- (16) Direction of maximum lobes and associated radiation of the antenna(e);
- (17) Certification that the cumulative NIER levels at the proposed site are within the threshold levels adopted by the FCC;
- (18) Certification that the proposed antenna(e) will not cause interference with other telecommunications devices;
- (19) A copy of the FCC license applicable for the intended use of the WTF;
- (20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed WTFs on the proposed site.
- (21) A statement of the proposed emergency power supply. The storage of fuel on the site shall be identified. The type of fuel and quantities shall be provided. If lead acid batteries are proposed, a statement of battery classification and location shall be submitted. The statement shall provide the cumulative acid weight of all batteries at the proposed facility. Upon approval of the application for the WTF, the petitioner shall provide this information to the local fire department.

- H. In the case of a new tower, the petitioner shall be required to submit a written report demonstrating its efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the Town. Such report shall include an investigation of every Tower and every structure with a height exceeding 60 feet from finished grade within two miles of the proposed location of the new tower. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.
- I. The petitioner shall certify that the telecommunication facility, foundation and attachments are designed and will be constructed to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads.
- J. The petitioner shall certify that the WTFs will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- K. A petitioner shall be required to submit a written report identifying buried conductors within 50 feet of any non-building mounted WTF.
- L. A petitioner may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.
- M. The petitioner shall furnish a visual impact assessment, which shall include:
  - (1) A "Zone of Visibility Map" which shall be provided in order to determine locations from which the WTF may be seen.
  - (2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
  - (3) An assessment of the visual impact of the tower base, guy wires and accessory structures from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- N. The petitioner shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed WTFs.
- O. Any and all representations made by the petitioner to the Town on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Town.
- P. All utilities at a WTF site shall be installed underground and in compliance with all

laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the applicable building, plumbing, electrical and fire codes of the Town, the National Electrical Safety Code and the National Electrical Code where appropriate.

- Q. All WTFs shall be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the WTF.
- R. Both the WTF and any accessory structure that are higher than or not contained within fencing, walls or other visual screening shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This shall include the utilization of stealth or concealment technology as may required by the Town.
- S. At a telecommunications site, an access road, turnaround space and parking shall be provided to assure adequate emergency and service access. Access road construction shall be suitable for the weight of vehicles that will use the road during construction and maintenance activities, as approved by the Building Department. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T. A person who holds a special use permit for a WTF shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted WTFs in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding codes, rules and regulations, the more stringent shall apply.
- U. A holder of a special use permit granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the petitioner.
- V. An applicant shall submit to the ZBA one original and nine copies of the completed application. The Town of Amherst reserves the right to request additional copies of the completed application if deemed necessary by the Town. Written notification of the application shall be provided in accordance with the provisions of the Zoning Ordinance of the Town of Amherst and applicable NYS laws. The Town Planning Department shall be provided with a copy of the application.
- W. The petitioner shall examine the feasibility of designing a proposed tower to accommodate future demand for a minimum of five additional commercial applications, for example, future co-locations. The tower shall be structurally designed to

accommodate a minimum of five additional antenna arrays equal to those of the petitioner, and located as close to the petitioner's antenna as possible without causing interference. This requirement may be waived, provided that the petitioner, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

- (1) The foreseeable number of FCC licenses available for the area;
- (2) The kind of WTF site and structure proposed;
- (3) The number of existing and potential licenses without WTFs spaces/sites;
- (4) Available space on existing and approved towers.

X. The owner of the proposed new tower, and his or her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

- (1) Respond within 60 days to a request for information from a potential shared-use petitioner;
- (2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
- (3) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are 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, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- (4) Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit for the tower.

Y. There shall be a pre-application meeting with the Building Department, the Planning Department and the Town's designated consultant. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting, at the discretion of the Building Department, may also include a site visit. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the petitioner.

Z. The holder of a special use permit shall notify the Town of any intended modification of a WTF and shall apply to the Town to modify, relocate or rebuild a WTF.

AA. The petitioner will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration (FAA) Regulation Part 77. This requirement shall be for any new tower or for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings

with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

AB. All information necessary to satisfy SEQRA requirements.

**6-7-4. Location of WTFs.**

- A. Petitioners for WTFs shall locate, site and erect said WTFs in accordance with the following priorities, one being the highest priority and seven being the lowest priority.
  - (1) On existing towers or other structures without increasing the height of the tower or structure;
  - (2) On Town-owned properties;
  - (3) On existing towers or other structures when a material increase in height is required;
  - (4) On properties in areas zoned for industrial use;
  - (5) On properties in areas zoned for business or non-residential use;
  - (6) On properties in areas zoned for agricultural use.
  - (7) On properties in areas zoned for residential use.
- B. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected.
- C. A petitioner may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the petitioner must explain to the reasonable satisfaction of the ZBA why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- D. Notwithstanding the above, the ZBA may approve any site located within an area in the above list of priorities, provided that the ZBA finds that the proposed site is in the best interest of the health, safety and welfare of the Town and will further the policies and goals set forth in § 6-7-2.
- E. The petitioner shall submit a written report demonstrating the petitioner's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

**6-7-5. Shared Use of WTFs and Other Structures.**

- A. Locating on existing towers or other structures without increasing the height, shall be preferred by the Town, as opposed to the construction of a new tower. The petitioner shall submit a comprehensive report inventorying existing towers and other suitable

structures within two miles of the location of any proposed new tower, unless the petitioner can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure can not be used.

- B. A petitioner intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the petitioner.
- C. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- D. Tower structures existing prior to the effective date of this ordinance, in compliance with all of the Town's ordinances prior to the effective date of this ordinance, but which are not in compliance with the current ordinance, are legally non-conforming structures and may continue in existence as legally non-conforming structures.

#### **6-7-6. Height of Telecommunications Towers.**

- A. The maximum permitted height of a new WTF shall be 100 feet. The maximum permitted height of the WTF may be exceeded if the petitioner provides satisfactory technical justification to the ZBA.
- B. The petitioner shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

#### **6-7-7. Appearance and Visibility of WTs.**

- A. WTs shall not be artificially lighted or marked, except as required by law.
- B. Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements established by the Building Department of the Town of Amherst.
- C. If lighting is required, the petitioner shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under applicable regulations.
- D. No freestanding lattice towers or guyed towers shall be permitted.
- E. Visual screening, including but not limited to landscaping, walls and fences, shall be approved by the ZBA. The Town's landscape architect and consultant shall provide recommendations to the ZBA regarding visual screening.
- F. No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing additions, repair, renovations, modifications or servicing.
- G. The facility shall be maintained in good order and repair at all times in accordance with applicable Town regulations.

**6-7-8. Security of WTFs.** All WTFs and antennae shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All antennae, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- B. All antennae, towers and auxiliary structures shall be properly bonded and grounded to protect the facility and surrounding properties from lightning discharges.
- C. All towers and accessory structures shall be surrounded by a fence or wall that completely provides visual screening of all accessory structures associated with the WTF. This Section shall not apply to signage as required in § 6-7-9.
- D. There shall be no permanent climbing pegs within 20 feet of the ground adjacent to the tower.
- E. Towers shall have a fenced, restricted zone, equal in distance to 1/4 of the tower height in each direction surrounding the tower to ensure safety from ice/debris fall. This area may be reduced by the Town for structures with flush-mounted antennae. The restricted zone will not apply to facilities with antennae mounted inside the structure or facilities mounted on existing utility poles or structures.

**6-7-9. Signage.** A WTF shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(e) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the petitioner and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

**6-7-10. Lot Size and Setbacks.** All proposed towers not mounted on existing buildings or structures and any other proposed WTF structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or WTF structure plus 10 percent of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. In addition, the facility shall be separated from residential property lines, school property lines, designated historical districts, historical landmarks and historical sites by the minimum distance of 500 feet. The ZBA may modify this condition if the facility is attached to an existing nonresidential structure, or if an easement has been granted or other agreement with all property owners within 500 feet has been reached. In an agricultural district, the WTF shall be located a minimum of 500 feet from any dwelling unit. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

**6-7-11. Retention of Expert Assistance and Reimbursement by Petitioner.**

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. A petitioner shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.
- C. The total amount of the funds needed as set forth in subsection B of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

#### **6-7-12. Action on an Application for a Special Use Permit for WTs.**

- A. The Building Department and the Planning Department of the Town of Amherst and the designated consultant will undertake a review of an application pursuant to this local law in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and the petitioner's desire for a timely resolution.
- B. The Building Department of the Town of Amherst and/or the designated consultant may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.
- C. The site plan for the proposed WTS shall be reviewed by the Planning Department before a hearing is held by the ZBA. The Planning Department shall submit a written report to the ZBA containing its analysis of the proposal under the standards set forth in the applicable sections of this Zoning Ordinance. The Planning Department analysis is advisory in nature and is not binding on the ZBA. This review of the site plan by the Planning Department shall supersede all other site plan review requirements as established in the Zoning Ordinance.
- D. After the public hearing and after formally considering the application, the ZBA may approve, approve with conditions, or deny a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the petitioner.

- E. If the ZBA denies the special use permit for WTs, then the petitioner shall be notified of such denial in writing within 10 calendar days of the Town's action.
- F. The timeframe for action on special use permit applications for WTs shall be consistent with all applicable FCC regulations. [Added 8-1-2011 by L.L. No. 19-2011]

#### **6-7-13. Recertification of a Special Use Permit for WTs.**

- A. Between 12 months and six months prior to the five-year anniversary date after the effective date of the special use permit and all subsequent five-year anniversaries of the effective date of the original special use permit for WTs, the holder of a special use permit for such WTs shall submit a signed written request to the Town for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
  - (1) The name of the holder of the special use permit for the WTs;
  - (2) If applicable, the number or title of the special use permit;
  - (3) The date of the original granting of the special use permit;
  - (4) Whether the WTs have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the special use permit and if so, in what manner;
  - (5) If the WTs have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  - (6) That the WTs are in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations;
  - (7) Recertification that the tower and attachments both are designed and constructed and continue to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the State of New York, the cost of which shall be borne by the petitioner.
  - (8) The holder of the special use permit shall certify to the Town that the cumulative NIER levels at the site are within the threshold levels adopted by the FCC.
- B. If, after such review, the Town determines that the permitted WTs are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Town shall issue a recertification of the special use permit for the WTs, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted WTs are not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Town may refuse to issue a recertification special use permit for the WTs, and in such event, such WTs shall not be used after the date that the petitioner receives written notice of the decision by the Town until such time as the WTs is brought into compliance. Any decision requiring

the cessation of use of the WTF or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the WTF.

- C. If the petitioner has submitted all of the information requested and required by this local law, and if the review is not completed, as noted in subsection B of this Section, prior to the five-year anniversary date of the special use permit, or subsequent five-year anniversaries, then the petitioner for the permitted WTFs shall receive an extension of the special use permit for up to six months, in order for the completion of the review.
- D. If the holder of a special use permit for WTFs does not submit a request for recertification of such special use permit within the time-frame noted in subsection A of this Section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries, unless the holder of the special use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Town agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

**6-7-14. Extent and Parameters of Special Use Permit for WTFs.** The extent and parameters of a special use permit for WTFs shall be as follows:

- A. Such special use permit shall be non-exclusive.
- B. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town within 30 days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior notice to the petitioner, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this local law after prior written notice to the holder of the special use permit.

**6-7-15. Application Fee.**

- A. At the time that a person submits an application for a special use permit for a new WTF or for a co-location on an existing WTF, such person shall pay a non-refundable application fee of \$1,500 to the Town.
- B. No application fee is required in order to rectify a special use permit for WTFs unless there has been a visible modification of the WTF since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in subsection A shall apply.

**6-7-16. Performance Security.** The petitioner must submit an analysis, certified by a NYS licensed professional engineer, of the cost of removal of the WTF and surrounding property restoration. The petitioner shall, at the petitioner's cost and expense, be required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of

security and the form and manner of execution, in an amount approved by the ZBA, but not less than twice the certified cost of said removal. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

**6-7-17. Reservation of Authority to Inspect WTFs.** In order to verify that the holder of a special use permit for WTFs and any and all lessees, renters, and/or licensees of WTFs place and construct such facilities, including towers and antennae, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennae and buildings or other structures constructed or located on the permitted site.

**6-7-18. Indemnification.**

- A. Any application for WTFs that is proposed for Town property, pursuant to this local law, shall contain a provision with respect to indemnification. Such provision shall require the petitioner, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B. Notwithstanding the requirements noted in subsection A of this Section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a special use permit for WTFs.

**6-7-19. Default or Revocation.**

- A. If WTFs are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this local law or of the special use permit, then the Town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within 30 days of the date of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other Section of this local law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Town may, at its sole discretion, order the violation remedied within 24 hours.

B. If within the period set forth in subsection A above the WTs are not brought into compliance with the provisions of this ordinance, or of the special use permit, or substantial steps are not taken in order to bring the affected WTs into compliance, then the Town may revoke such special use permit for WTs, and shall notify the holder of the special use permit within 48 hours of such action.

**6-7-20. Removal of WTs.**

A. Under any of the following circumstances, the Town may determine that the health, safety and welfare interests of the Town warrant and require the removal of WTs.

- (1) WTs with a permit have been abandoned (i. e., not used as WTs) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days. The owner or user of the WTs shall notify the Town within 10 days of the discontinuance of the use of the facilities or any part thereof.
- (2) Permitted WTs fall into such a state of disrepair that it creates a health or safety hazard.
- (3) WTs have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.

B. If the Town makes such a determination as noted in subsection A of this Section, then the Town shall notify the holder of the special use permit for the WTs within 48 hours that said WTs are to be removed.

C. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such WTs, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town. However, if the owner of the property upon which the WTs are located wishes to retain any access roadway to the WTs, the owner may do so with the approval of the Town.

D. If WTs are not removed or substantial progress has not been made to remove the WTs within 90 days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the WTs at the sole expense of the owner or special use permit holder.

E. If, the Town removes, or causes to be removed, WTs, and the owner of the WTs does not claim and remove it from the site to a lawful location within 30 days, then the Town may take steps to declare the WTs abandoned, and sell all equipment and components thereof.

F. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the WTs, for no more 90 days, during which time a suitable plan for sale, lease, sub-lease, removal, conversion, or re-location of the

affected WTFs shall be developed by the holder of the special use permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the special use permit and the Town. If such a plan is not developed, approved and executed within the 90-day time period, then the Town may take possession of and dispose of the affected WTFs in the manner provided in this Section.

**6-7-21. Relief.** The ZBA may grant relief, waiver or exemption from any aspect or requirement of this local law. Any petitioner desiring relief, waiver or exemption from any aspect or requirement of this local law may request such at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the petitioner. The petitioner shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the petitioner demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

**6-7-22. Adherence to State and Federal Rules and Regulations.**

- A. To the extent that the holder of a special use permit for WTFs has not received relief, or is otherwise exempt, from appropriate state and/or Federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit for WTFs, then the holder of such a special use permit shall conform the permitted WTFs to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

**§ 6-8. Accessory Uses and Structures**

**6-8-1. General Standards.**

- A. Any accessory use may be permitted provided that it is customarily associated with a primary use that may be permitted by right consistent with the district use tables in Parts 3, 4, and 5. The establishment of such accessory uses shall be consistent with the following standards.
  - (1) The accessory use shall be subordinate to the primary use or principal structure;

- (2) The accessory use shall be subordinate in area, extent or purpose to the primary use served;
- (3) No accessory structure shall be located in the required front yard of the structure to which it is accessory and the street line of the street servicing it.
- (4) The accessory use shall be located within the same zoning district as the primary use; and
- (5) Accessory uses located in residential districts shall not be used for business purposes other than legitimate Home Occupations.

- B. The total floor area of all accessory structures and the floor area of attached or built-in garages shall not exceed 75 percent of the floor area of the principal structure, except as permitted by the ZBA in accordance with the provisions of § 8-13 of this Ordinance.
- C. In the R-R and AG districts, the total floor area of all accessory structures shall not exceed 200 percent of the floor area of the principal structure, except as permitted by the ZBA in accordance with the provisions of § 8-13 of this Ordinance.

**6-8-2. Accessory Dwelling Units.** Where permitted as an accessory use in Part 3, an accessory dwelling unit may be constructed within any single-family detached dwelling following approval of a Special Use Permit as set forth in § 8-6, subject to the following standards: **[Amended 12-4-2023 by L.L. No. 13-2023]**

- A. General Standards for Accessory Dwelling Units.
  - (1) A maximum of one (1) accessory dwelling unit is permitted on an individual lot.
  - (2) Accessory dwelling units shall be within or substantially attached to the principal structure with the exception of lots located in the R-R, R-1, SA and AG zoning districts that satisfy the minimum dimensional standards listed in Part 3, as amended.
  - (3) Accessory dwelling units shall be a minimum of 500 sq. ft and the accessory dwelling unit shall not exceed 49% of the gross floor area of the principal dwelling up to 900 sq. ft., whichever is less restrictive.
  - (4) The maximum height of an accessory dwelling unit is limited to the maximum height of the principal structure in the respective zoning district.
  - (5) A maximum of 2 bedrooms shall be permitted for an accessory dwelling unit. A third bedroom is permitted if built within the roof portion of the structure.
  - (6) The accessory dwelling unit shall have its own entrance, which may be shared with the principal dwelling by a common area.
  - (7) A minimum of one (1) off street parking space shall be provided with a maximum of two (2) parking spaces permitted. Driveways shall not be expanded in the area between the front wall of the principal structure and the right-of-way line to accommodate required ADU parking.

- (8) The principal dwelling or accessory dwelling unit must be owner occupied. The property owner must certify that either unit is their principal place of residence and legal domicile. Both the principal structure and accessory dwelling unit must remain in common ownership.
- (9) Accessory dwelling units must maintain a complementary exterior finish to the principal structure.
- (10) Exterior lighting shall meet the standards listed in § 7-3 of this Ordinance.

B. Standards for Detached Accessory Dwelling Units in the RR, R-1, SA and AG Zoning Districts.

- (1) The minimum separation from the principal structure shall be 10 feet.
- (2) Detached accessory dwelling units must have the same roof style as the principal dwelling and shall have a maximum height of 2 stories (up to 25 ft).
- (3) A detached accessory dwelling unit shall not be located between the front of the structure that it is subordinate to and the right-of-way line of the street(s) servicing it, and must meet the side yard requirements as specified for the principal dwelling.

C. The Special Use Permit for an accessory dwelling unit shall be valid for a period not exceeding two years. Thereafter the Building Commissioner, with concurrence from the Zoning Enforcement Officer, may renew a Special Use Permit upon satisfactory proof of compliance with the standards listed in § 6-8-2 above and any conditions placed by the Zoning Board of Appeals on the original permit.

- (1) A Special Use Permit renewal shall be valid for a period not exceeding two years.
- (2) The original Special Use Permit or any subsequent renewal by the Building Commissioner shall not be transferable. A new property owner shall seek approval from the Zoning Board of Appeals.
- (3) The Building Commissioner may deny the renewal of a Special Use Permit based on the following:
  - (a) Failure to comply with NYS Building Code for property maintenance.
  - (b) Falsification of a certification of legal residence.
- (4) If a Special Use Permit renewal is denied, the property owner must seek a new Special Use Permit approval from the Zoning Board of Appeals pursuant to § 8-6 of this Ordinance.

**6-8-3. Commercial Recreation.** Where permitted as an accessory use in Part 4, commercial recreation shall occupy no more than 15 percent of the gross floor area of the principal structure.

**6-8-4. Convenience Retail and Service.** Where permitted as an accessory use in Part 3 & 5, a convenience retail and service facility shall be subject to the following standards. **[Amended 12-14-2020 by L.L. No. 20-2020]**

- A. In the MFR-7 district, the facility shall be designed to serve the needs of the residents of the project and have no signs outside the building. The total gross floor area of such facility shall not exceed five square feet per dwelling unit within the project.
- B. In the MHR-8 district, the facility shall be designed to serve the needs of the residents of the manufactured home park. One identification sign not exceeding two square feet in area shall be permitted. Pole signs shall not be permitted. The total floor area shall not exceed 30 square feet per lot within the manufactured home park. Automobile drive-in restaurants shall not be permitted.
- C. In the RD district, the convenience retail and service facility shall be designed to serve the needs of the employees of the industrial park and meet the following standards:
  - (1) Be part of a planned research and development park, manufacturing park or industrial park, and
  - (2) Such supportive convenience retail and retail service facility is established after the planned development park, manufacturing park or industrial park is established and such development park is 50 percent occupied, and
  - (3) The convenience retail/service is within 0.25 miles of the principal use site and not within 0.25 miles of another convenience retail and service facility, and
  - (4) The convenience retail/service does not exceed 5,000 gross square feet.

**6-8-5. Conference Center.** Where permitted as an accessory use in the ST district, a conference center shall be subject to the following standards.

- A. The minimum district size shall be 25 acres.
- B. One conference center shall be permitted per district.

**6-8-6. Home Occupations.** Where permitted as an accessory use in Part 3, a home occupation shall be subject to the following standards.

- A. General Standards.**
  - (1) A home occupation is that accessory use of a dwelling that shall constitute all or some portion of the livelihood of a person or persons living in the dwelling. The home occupation shall be incidental and subordinate to the use of the premises for residential purposes.
  - (2) There shall be no change in the outside appearance of the building or premises or other evidence from the outside of the conduct of a home occupation.
  - (3) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
  - (4) Instruction in music, dancing and similar subjects shall be limited to two students at a time.

- (5) All activities involving outside visitors, clients or deliveries shall be limited to the hours between 8 A.M. and 9 P.M.
- (6) Off-street parking shall be provided at the rate of one space per 200 square feet of home occupation floor area. The off-street parking spaces required for the home occupation shall be maintained in addition to the space or spaces required for the residence itself. No parking spaces, other than driveways, may be located in the required front yard setback. Parking spaces shall be screened from adjacent parcels with residential zoning using tree and shrub plantings, earthen berms, low walls or a combination of these methods to establish a visual screen at least 36 inches above the highest surrounding grade within two years of installation.
- (7) No display pertaining to the home occupation shall be visible from outside the dwelling.
- (8) In the R-4 district, home occupations shall be permitted only as accessory uses to detached dwelling units.
- (9) The area devoted to the home occupation shall not exceed 15 percent of the ground floor area of the principal structure. **[Amended 2-4-2008 by L.L. No. 1-2008]**
- (10) A home occupation may be allowed in an attached dwelling unit provided that such dwelling unit has a primary exterior entrance.

B. **Home Occupation Types.** Home occupations shall be separated into two categories and permitted subject to the following provisions. **[Amended 2-8-2016 by L.L. No. 2-2016]**

- (1) **Type 1 Home Occupation.** A Type 1 Home Occupation shall be deemed an accessory use for a detached dwelling unit and no further approval shall be required. Such home occupation shall meet the following standards.
  - (a) The business shall be conducted entirely within a dwelling or integral part of a dwelling and have no outside storage of any kind related to the home occupation.
  - (b) The business shall be clearly incidental and secondary to the principal use of the dwelling.
  - (c) The business shall be conducted only by persons residing on the premises (nonresident employees are not permitted).
  - (d) There shall be no identification sign, display or advertising of the home occupation on the site or structures.
  - (e) The business shall involve no retail sales or services provided to customers on-site, and shall not include any storage, pick-up or delivery of merchandise or equipment, except for standard parcel delivery services.
- (2) **Type 2 Home Occupation.** Following approval as a special use by the ZBA, a limited business operation may be conducted as a Type 2 Home Occupation. Upon demonstration of continued compliance with the conditions of the original

approval, the Commissioner of Building shall biennially renew the special use permit. If violations are determined, then a new application for a special use permit shall be submitted to the ZBA. The Commissioner of Building may inspect the premises without prior notice during normal business hours. Such home occupation shall meet the following standards. **[Amended 3-4-2019 by L.L. No. 6-2019]**

- (a) The home occupation may have only one nonresident employee, assistant or associate.
- (b) No more than one unlighted sign not more than two square feet in size, identifying the resident and the business, attached flat against the building, shall be permitted. Such sign may be allowed in the required front yard along an arterial or collector street upon approval by the ZBA.

**C. Exclusions to Home Occupations.** No home occupation shall be permitted that has any of the following characteristics:

- (1) Internal or external alterations inconsistent with the residential use of the building;
- (2) Except for signage and parking as permitted under this Ordinance, home occupation activities shall not be visible from the street;
- (3) Creates a hazard to persons or property;
- (4) Results in electrical interference;
- (5) Is a nuisance; or
- (6) Results in outside storage or display.

**D. Prohibited Home Occupations.** The following are prohibited as Home Occupations:

- (1) Automobile and/or body and fender repairing;
- (2) Greenhouse, commercial nurseries and truck farming;
- (3) Food handling, processing or packing, other than catering services that utilize standard home kitchen equipment;
- (4) Repair, manufacturing and processing uses; however, this shall not exclude the home occupation of a seamstress where goods are not manufactured for stock, sale or distribution;
- (5) Restaurants; and
- (6) Uses which entail the harboring, training, raising or treatment of dogs, cats, birds or other animals on-site.
- (7) Sale of firearms and/or weapons. **[Added 10-17-2022 by L.L. No. 19-2022]**

**6-8-7. Kennels. [Amended 8-20-2012 by L.L. No. 15-2012]**

**A. Kennels** or any outdoor runs shall have a minimum front yard of 200 feet and a

minimum side and rear yard of 100 feet.

- B. Outdoor runs shall be visually screened from adjacent properties and public right-of-way with an opaque material, which may include shrubs, walls, fences or berms, and which are a minimum of six feet in height. Where vegetative material is used, said material shall form an opaque screen within two years from the time of first planting.

**6-8-8. Park Office.** Where permitted as an accessory use in the MHR-8 district, a park office shall be subject to the following standards.

- A. One identification sign per use not exceeding two square feet in area shall be permitted. Pole signs shall not be permitted.
- B. The total floor area shall not exceed 30 square feet per lot within the manufactured home park.

**6-8-9. Raising of Livestock, Noncommercial.** [Amended 1-22-2013 by L.L. No. 2-2013; 5-12-2014 by L.L. No. 11-2014]

- A. Where permitted as an accessory use in the S-A district, the raising of livestock, except for chickens as regulated in Chapter 203 § 6-8-9(B), for noncommercial purpose shall be subject to the following standards:
  1. The lot size shall be two (2) acres or more;
  2. Any structures for the housing of livestock shall be a minimum of 50 feet from any lot line;
  3. Fences or other enclosures shall be provided so as to keep the livestock 50 feet from the lot line.
- B. In the SA, R-R, R-1, R-2, R-3 and R-4 districts, chickens may be raised in compliance with the following minimum regulations: [Amended 10-17-2022 by L.L. No. 19-2022]
  1. The raising of chickens shall be conducted as an accessory use on the same premises associated with an occupied single-family detached dwelling as the principal use;
  2. The chickens shall be raised for noncommercial purposes;
  3. The number of chickens shall be limited to a maximum of six (6);
  4. Roosters shall not be allowed. Breeding of chickens on-site shall not be allowed;
  5. Prior to establishing chickens as an accessory use, such use shall require a permit issued by the Building Department to the resident land owner. The land owner shall provide a property survey, a dimensioned plan of the proposed chicken coop and two photos of the yard area where the chicken coop will be located;
  6. The raising of the chickens shall be subject to all applicable sanitary, noise and property maintenance regulations, ordinances and laws. Chicken waste shall not be composted or mulched on-site. Chicken waste shall be stored in appropriate

containers that do not create any nuisance;

7. Any odor associated with the raising of the chickens shall not be perceptible beyond the property line of the premises where the chickens are being raised;
8. The chickens must be kept in coops or in fenced or walled enclosures (chicken run) at all times so constructed that the chickens cannot fly over any fence or wall or otherwise escape from the coop or chicken run. The chickens shall not be allowed to roam freely beyond the property lines of the premises;
9. Feed for the chickens must be stored in secure containers that will not attract rodents, vermin or pests of any type. Unsecured excess feed shall not be allowed;
10. Chickens shall not be allowed in the front yard between the principal structure and a public or private street;
11. Chicken coops or other structures for the housing of the chickens, that are established on or after May 1, 2014, shall be located at least fifteen (15) feet from any property line. Chicken coops or other structures for the housing of the chickens, that exist prior to May 1, 2014, shall be located at least three (3) feet from any property line.
12. The chicken coop must be screened from public view with either solid fencing or landscaping.
13. The accessory use permit approval may be withdrawn by the Building Commissioner if the resident land owner fails to adhere to the above referenced conditions. Any continuation of the accessory use without a valid permit shall be considered a violation subject to the penalties identified in § 8-16-1 of this chapter.

**6-8-10. Restaurant.** Where permitted as an accessory use in Part 4 or Part 5, a restaurant without a drive-through shall occupy no more than 15 percent of the gross floor area of the principal structure. **[Amended 3-4-2019 by L.L. No. 6-2019; 12-14-2020 by L.L. No. 20-2020]**

- A. In the RD district, the restaurant shall be designed to serve the needs of the employees of the industrial park and meet the following standards:
  - (1) Be part of a planned research and development park, manufacturing park or industrial park, and
  - (2) Such supportive restaurant is established after the planned development park, manufacturing park or industrial park is established and such development park is 50 percent occupied, and
  - (3) The supportive restaurant is within 0.25 miles of the principal use site and not within 0.25 miles of another supportive restaurant, and
  - (4) The supportive restaurant does not exceed 5,000 gross square feet.

**6-8-11. Retail Sales and Service.** Where permitted as an accessory use in Part 3, Part 4 or Part 5, retail sales and service shall occupy no more than 15 percent of the gross floor area of the

principal structure: **[Amended 3-4-2019 by L.L. No. 6-2019]**

**6-8-12. Swimming Pool and Tennis Court.** Where permitted as an accessory use in Part 3, Part 4 or Part 5, limits on maximum building coverage shall not apply to swimming pools or tennis courts. Within a front yard or a required side yard, swimming pools and tennis courts are not permitted, except to the extent permitted for accessory structures in the district. **[Amended 2-4-2008 by L.L. No. 1-2008; 3-4-2019 by L.L. No. 6-2019]**

**6-8-13. Dumpsters.** See § 7-2-4D.

**6-8-13.1. Moving Containers/PODS®.** The use of moving containers or PODS® for the temporary storage of household goods is permitted as a customary accessory use of a dwelling unit with the following restrictions: **[Added 10-17-2022 by L.L. No. 19-2022]**

- A. **Preparation for Moving.** One storage container may be utilized if situated on a driveway for a period not to exceed 45 consecutive days for purposes of packing household goods associated with a dwelling unit in preparation of a household move.
- B. **Homeowner construction renovations.** One storage container may be utilized if situated on a driveway for a period not to exceed 90 consecutive days for purposes of storing building materials and/or supplies during a residential alteration project which is part of an approved building permit.

**6-8-14. Small Wind Energy Systems.** **[Added 8-17-2009 by L.L. No. 12-2009]**

- A. **Purpose.** This section is intended to provide standards to promote the safe, effective and efficient use of small wind energy systems designed for home, farm and small commercial use and that are primarily used to reduce the on-site consumption of utility supplied electricity.
- B. **Development Standards.** A small wind energy system is permitted in accordance with the district use tables in Part 3, Part 4 or Part 5, subject to the following standards.
  - (1) **General Standards.**
    - (a) A small wind energy system shall be located on a lot a minimum of one acre in size. Only one small wind energy system per lot shall be allowed.
    - (b) Tower height, measured as the vertical distance from ground level to the tip of the blade at its highest point, shall be a maximum of 65 feet. The allowable height shall be reduced if necessary to comply with all applicable Federal Aviation Administration requirements. The minimum distance between the ground and any part of the rotor blade shall be 30 feet.
    - (c) The minimum required setback from property lines, overhead utility lines, and the primary structure shall be equal to the total height of the tower and the turbine. No part of the small wind energy system, including guy wire anchors, shall extend closer than ten feet to the property line.
    - (d) Except during short-term events including utility outages and severe wind storms, the noise level produced by the operation of a small wind energy

system shall not exceed 50 decibels, as measured at the site property line.

- (e) Exterior lighting on the system shall not be allowed, except that which is specifically required by the Federal Aviation Administration.
- (f) Other than appropriate warning signage, a small wind energy system shall not be used as, or used to support, signage. In addition, a small wind energy system shall not be used to support radio, television, or telecommunication equipment.
- (g) The system's tower and blades shall remain painted or finished the color originally applied by the manufacturer, typically a non-reflective light gray or light blue color.

**(2) Safety Standards.**

- (a) Towers with climbing features shall be constructed to provide one of the following means of access control, or other appropriate method of access.
  - (i) Tower-climbing apparatus located no closer than 12 feet from the ground.
  - (ii) A locked anti-climb device installed on the tower.
  - (iii) A locked, protective fence at least six feet in height that encloses the base of the tower.
- (b) All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access.
- (c) The small wind energy system shall be equipped with manual and automatic over-speed controls.

**(3) Siting and Installation Standards.**

- (a) A small wind energy system shall be designed and constructed to be in compliance with the applicable provisions of the Uniform Fire Prevention and Building Code and National Electrical Code. Applications for a small wind energy system shall submit the following information:
  - (i) Legal property survey;
  - (ii) Property lines and physical dimensions of the property;
  - (iii) Location, dimensions, and types of all existing structures on the property;
  - (iv) Location of the proposed small wind energy system and all associated equipment;
  - (v) The right-of-way of any public road that is contiguous with the property;
  - (vi) Any overhead utility lines and/or buried utility locations;

(vii) Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type;

(viii) Tower foundation blueprints or drawings;

(ix) Tower blueprint or drawing;

(x) Line drawing of electrical components; and

(xi) Other information as required by the Commissioner of Building.

(b) No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

(c) All on-site electrical wires associated with a small wind energy system shall be installed underground, except for "tie-ins" to a public utility company and public utility transmission poles, towers, and lines.

**(4) Maintenance and Removal.**

(a) The small wind energy system shall be maintained in good condition. Such maintenance shall include, but not be limited to, painting and structural integrity of the foundation and support structure and security barrier (if applicable).

(b) Any small wind energy system that is found to be unsafe by the Commissioner of Building shall be repaired by the owner or be removed within 120 days. In the event that a small wind energy system is not operational for a period of 6 consecutive months or more, the Town will notify the landowner by registered mail and provide 45 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for the corrective action. If the Commissioner of Building deems the timetable for corrective action as unreasonable, the Town shall notify the landowner and such landowner shall remove the small wind energy system and all associated equipment within 120 days.

**§ 6-9. Planned Unit Development Process (PUD). [Added 5-20-2013 by L.L. No. 8-2013]**

**6-9-1. Purpose.** The PUD process is designed to permit coordinated developments that allow flexibility to respond to market demands and the needs of tenants.

The PUD process shall be required for development or redevelopment of a portion of any lot measuring 30 acres in size or larger as of (effective date of PUD), except for the following:

A. Developments consistent with a site plan or subdivision preliminary plat approved prior to (effective date of PUD)

B. Site plan modifications approved prior to (effective date of PUD) that result in changes to 50% or less of the total area of the lot.

The PUD process may run concurrently with the review of a zoning map amendment, if one is proposed.

#### 6-9-2. Use Regulations.

A. **Permitted Criteria, Standards and Regulations.** Criteria, standards and regulations are hereby established with respect to planning of land and the arrangements of buildings and open spaces for those areas which are included in a PUD and which require development and site plan approval. The application of the criteria, standards and regulations set forth in this Section are intended to result in the optimum development and use of land in the Town. They are intended to insure full consideration of every planning element pertinent to the objectives of this Section and the Comprehensive Plan. Conditions placed on individual use areas of a PUD shall supersede regulations elsewhere in this Ordinance, unless otherwise noted.

B. **Minimum District Size.** The minimum area required to qualify for a PUD shall be 30 contiguous acres of land. For purposes of this paragraph, lands separated by streams or drainage courses, highways, streets or other public or private rights of way shall be deemed contiguous. Boundaries should assume reasonably regular configurations, taking advantage of natural features, public rights of way and other clearly defined features as outer perimeters in order to facilitate buffering between the PUD and adjacent areas and in order to minimize the development obstacles created by sharply irregular boundaries resulting from noncontiguous ownership patterns.

C. **Permitted Uses.** All uses permitted in the underlying zoning district shall be permitted in a PUD as provided in this Section.

- (1) All permitted principal and accessory uses and operations which, as a result of not being enclosed, would constitute a nuisance or offense beyond the lot line, or which as a result of not being enclosed would conflict with any of the specific performance standards set forth in this subsection, shall be performed wholly within an enclosed building or buildings.
- (2) Outside storage or parking of commercial or recreation vehicles, camper bodies, boats and trailers on lands occupied for residential purposes shall be prohibited.

#### 6-9-3. Development Standards.

A. **Off-Street Parking and Loading.** The design criteria set forth in this Section are intended to provide desirable latitude and freedom to encourage variety in the location and arrangement of uses, to encourage convenience in accessibility to these uses through provision of pedestrian and bicycle pathways and public transportation services and to achieve the efficient sharing of parking and loading facilities by multiple uses. Therefore, in lieu of specific minimum parking and loading requirements and other similar considerations, the following performance standards shall apply:

- (1) Pedestrian connection between parking areas and buildings shall be along walkways to the extent necessary to assure pedestrian safety.
- (2) Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access and shall be developed as an integral part of an overall site design.
- (3) Any above-grade loading facility shall be screened from public view to the extent necessary to eliminate unsightliness and should be separate from private vehicles and pedestrians where feasible.
- (4) The design of buildings and parking facilities shall take advantage of the topography of the site where appropriate to provide separate levels of access.
- (5) Off-street parking and loading spaces shall be provided for all new buildings at the time of erection and for all enlargements of existing buildings and shall be maintained in usable shape and good condition.
- (6) Off-street parking and loading spaces shall be provided so as to minimize overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights of way.

## B. Landscaping, Buffering and Screening.

- (1) **Landscape Features and Building Arrangements.** The design criteria set forth in this Section supercede those in § 7-2. They are intended to provide considerable latitude and freedom to encourage variety in the arrangement of the bulk and shape of buildings, open space and landscape features. Buildings may be arranged in various groups, courts, sequence or clusters with open spaces organized and related to the buildings so as to provide privacy and to form a unified composition of buildings and space. Although latitude in design is provided and encouraged, the following design conditions shall, however, be assured in any PUD. Yards, building setback and spacing and building height and shape, landscape features and building arrangement shall be designed in a manner to assure:
  - (a) Proper light, air and views for the residents, tenants and the public;
  - (b) Safety in accommodating pedestrian and vehicular circulation and vehicular storage and service;
  - (c) Usability of and convenient access to open space;
  - (d) Screening to minimize the unsightliness and monotony of parked cars;
  - (e) Availability of open land for landscaped features, recreation or other private uses;
  - (f) Privacy between adjacent buildings and intersecting wings of buildings, from streets, parking and recreation areas;
  - (g) The creation of a variety of common open spaces and private areas, through

the planning of landscape features such as walls, fences, hedges and other features.

**(2) Landscaping Standards.** Landscaping plans shall meet the following standards:

- (a) Landscaping shall provide privacy and screening between uses, with visual, noise and air quality factors considered.
- (b) Landscaping shall contribute to prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems.
- (c) Landscape treatment for public and private plazas, roads, paths, service and parking areas shall be designed as an integral part of an entire project and shall combine with walks and street surfaces, and such requirements shall be in lieu of any other Town requirement for trees in public street rights of way.
- (d) The area covered by impervious surfaces such as buildings and paved areas must be accompanied by planted areas as well as other features to hold or carry stormwater runoff. Outdoor planted or grassed areas within parking lots must be not less than five percent of the total vehicular area in parking lots designed for 10 cars or more and shall be suitably distributed so as to relieve any unsightliness and monotony of parked cars.
- (e) Landscape materials shall be appropriate to the growing conditions on the site and the Town's environment.
- (f) Natural features such as streams, rock outcrops, escarpments, marshlands, wetlands, topsoil, trees and shrubs, natural contours and outstanding vegetational, topographical and geological features are encouraged to be preserved and incorporated in the open space areas and in the landscaping of the development.
- (g) Plastic or other types of artificial plantings or vegetation shall not be permitted. Trees shall be planted adjacent to all residential units so as to provide no less than three trees of a minimum two and one half inch caliper, measured six inches above the ground, per residential unit, including existing trees on the site which are preserved. Trees to be planted throughout the district and along the vehicular ways shall include both deciduous and coniferous species in adequate density and design to provide year round benefit of such plantings.
- (h) Trees shall be of numerous species as to minimize the impact and spread of disease.

**(3) Aesthetics.**

- (a) Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance and easily maintained.
- (b) The sides and rear of all buildings shall be designed in such manner as to

avoid undue sacrifice of amenity and design values when viewed from side and rear vantage points.

(4) **Screening.** Visual and noise screening devices shall be designed and maintained to serve their intended purposes set forth in this Section. Artificial planting materials shall not be allowed. Landscape screening should be given priority where effective, easily maintained and botanically feasible. Decorative masonry walls in conjunction with berms and plant materials are encouraged.

### C. Local Circulation System.

#### (1) Vehicular circulation.

- (a) The vehicular circulation system and parking facilities shall be designed to fully accommodate the automobile safely and efficiently without allowing it to dominate and destroy the form of the area, and with screening and buffering as may be required to satisfy the environmental standards of this Section.
- (b) Dwellings and other buildings shall be served by streets, drives or emergency accessways planned to assure access by service and emergency vehicles.
- (c) Driveways and streets serving group and cluster developments shall be connected to collector and arterial streets at locations where traffic can be controlled and operated effectively and safely with minimum interference to the capacity of the arterial and collector streets, bicycle routes and pedestrian ways.
- (d) Streets may be either private or public.
- (e) Standards of design and construction for all roads to be dedicated shall meet applicable town standards unless specifically modified as part of the site plan approval. The right of way and pavement widths, locations and designs for private ways, roads and alleys shall conform to generally accepted planning and engineering practices, taking into account the estimated needs of the full proposed development.
- (f) There shall be provision of safe bicycling routes throughout the district which may be coincident with pedestrian ways but which shall be separated from the motorized vehicle system wherever feasible.

#### (2) Pedestrian Circulation.

- (a) Pedestrian ways shall connect residential areas with other residential areas, community facilities, schools, recreational areas, commercial areas and public transportation.
- (b) The system of pedestrian walks, malls and landscaped spaces shall be of such extent and the elements of such system shall be so distributed in location and number so as to assure safety of pedestrians from vehicular traffic and encourage pedestrian travel within such system instead of in vehicular rights of way, without restraints imposed by public, private or common ownerships.

- (c) Major pedestrian walks, malls and public transportation loading places where feasible shall be separated from general vehicle circulation.
- (d) Landscaped, paved and comfortably graded pedestrian walks shall be provided, particularly from building entrances to adjacent buildings, play areas, parking areas and streets.
- (e) Sidewalks, pathways and bikeways to be located within a public right of way shall meet town standards as to width, location and materials unless specifically modified as a part of the site plan approval.

**D. Topography and Site Appearance.** PUD's shall be designed to take advantage of the topography of the land in order to utilize the natural contours, to provide for water storage and control of water runoff, to protect natural drainage courses, to economize in the construction of utilities, to reduce the amount of grading and to maximize the conservation of trees and topsoil. Significant natural features and other characteristics of the site shall be preserved and incorporated as distinctive features of the development.

**E. Open Space.**

**(1) Definition.**

- (a) Open space includes:
  - (i) Uncovered and unpaved lands or water areas in public, common or private ownership, except lots under single family ownership;
  - (ii) Lands covered by structures or other improvements may also be deemed to constitute open space under the limited conditions specified in this Section;
  - (iii) Large areas of land in a natural state;
  - (iv) Areas for active and passive recreation;
  - (v) Parks and large landscaped or wooded areas;
  - (vi) Drainage, runoff areas and flood plain areas and areas for stormwater storage and protection of water quality;
  - (vii) Connectors between major open space areas;
  - (viii) Pedestrian and bicycle circulation systems;
  - (ix) Areas for preservation of wildlife, woodlands, wetlands and outstanding natural features, including geologic and topographic;
  - (x) Areas for public or private recreation, public education, community and cultural facilities when approved by the Town Board;
  - (xi) Conservation facilities and areas.

(2) **Scale and Character.** Such proposed uses must be appropriate to the scale and character of the new district, considering its size, density, expected population, topography and the number and types of dwelling units.

(3) **Area and location.**

(a) In any PUD a minimum of 25 percent of the total land area, less the amount used exclusively for nonresidential purposes, must be in open space.

(i) At least 70 percent of this total open space shall be in private ownership open to the public or in public or common ownership.

(ii) Any part of the total open space, either in a natural state or improved as permitted by and meeting the standards of this Section, may be offered for dedication or other disposition without cost to the Town or other public entity for recreation and other open space uses for use by the public and acceptable to the Town Board and other public entity and to the owner and if accepted constitutes a credit to paragraph (a) above. Offers for dedication or other disposition of major open space for public use may be made at any time after approval of the development plan.

(b) Any public or common open space shall be located and organized to be readily accessible by foot and bicycle to residential populations served thereby (preferably without their having to cross limited access and arterial roadways). In addition, access and parking for vehicles shall be provided where appropriate.

(c) The location, condition, size and configuration of the open space must be suitable for its use as proposed in the development plan and/or site plan. Lakes or other water areas may not occupy so large a proportion of the major common open space that other open space and recreational uses cannot be adequately provided for.

(4) **Open Space Alterations.** The continued use of common open space for the purposes contemplated in this Section shall be assured through appropriate deed restrictions which shall include a provision that such open space use shall not be materially altered or abridged without the approval of the Town Board.

(5) **Physical Improvements.**

(a) Open space must be suitably improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved.

(b) The buildings, structures and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space and must conserve and enhance the amenities of the common open space with regard to its topography and unimproved condition.

(6) **Public Open Space.** The standards for the Planning Board's determination whether to recommend Town Board approval of an offer for the dedication or other

disposition to the Town or other public entity of public open space lands shall, without excluding any other applicable requirements of this Section, include the following:

- (a) The need for public open space in the PUD. In determining the manner of public ownership, the usage by the Town's population outside the PUD shall be considered.
- (b) The potential for an open space connection with other public open space areas.
- (c) The desirability of public access due to the special physical and biological characteristics of the area which make it suitable for public open space uses.
- (d) The desirability of public acquisition of floodways, drainageways and areas subject to flooding for water management and recreational uses.
- (e) Review and acceptability of covenants or similar provisions proposed for inclusion in dedication instrument, intended to assure that public use remains consistent with the objectives of the development plan and site plan.

(7) **Perimeter Treatment.** The design of improvements and landscaping along the boundaries of a PUD should be visually harmonious and functionally compatible with adjoining development. Extensive parking areas, service areas and other features likely to have adverse effects on surrounding property (due, e.g., to adverse views, lights, noise) shall be screened against viewing from first stories both inside and outside the district. Screening shall also be provided to protect against lights, noise or other undesirable conditions in the surroundings.

F. **Utilities.** New public and private utilities and those relocated or replaced shall be generally underground.

G. **Signs.**

- (1) Freestanding signs in a PUD shall be limited to traffic and pedestrian directional and control signs, street signs and signs identifying the development.
- (2) Pole signs shall be prohibited in a PUD.
- (3) One identification sign shall be permitted for each nonresidential use, identifying use on the premises as permitted on the site plan, of not more than 20 square feet, not projecting beyond the building to which it is attached more than 12 inches, not projecting more than 10 feet in height above grade. Signs shall be designed as an integral part of a Coordinated Sign Plan in accordance with § 8-11.
- (4) Any illuminated sign visible from any public street or from adjoining property used for residential purposes shall be so shaded, shielded, directed or maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect neighboring premises nor the safe vision of operators of vehicles moving on public roads or highways.

**§ 6-10. Solar Energy. [Added 12-11-2017 by L.L. No. 24-2017; amended 12-14-2020 by L.L. No. 18-2020]**

6-10-1. Purpose. This Solar Energy Law is adopted to provide provisions for, so far as conditions may permit, the accommodation of solar energy systems and equipment, including:

- A. Taking advantage of a safe, abundant, renewable, and non-polluting energy resource;
- B. Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses;
- C. Increasing employment and business development in the region by furthering the installation of Solar Energy Systems;
- D. Minimizing adverse impacts on neighboring properties through thoughtful design and installation of Solar Energy Systems;
- E. Insure solar developments conform to the existing community character as defined in the Comprehensive Plan and are compatible with the Focal Area Plan for North Amherst; and
- F. To protect prime farmland and promote dual use/colocation of solar energy developments to protect active farming and agricultural land.

6-10-2. Definitions. (See Section 2-1 "Specific Terms" of Zoning Ordinance)

6-10-3. Applicability. The requirements of this law shall apply to all solar energy systems installed or modified after its effective date, excluding general maintenance and repair and Building-Integrated Photovoltaic Systems.

6-10-4. General Requirements.

- A. Building permits are required for all solar energy systems.
- B. Qualified Installer. All solar energy systems must be installed by a qualified solar installer and, prior to issuance of a Certificate of Compliance, must be inspected by a Town Building Inspector. In addition, any connection to the public utility grid must be approved by the appropriate public utility.
- C. Storage Batteries. When storage batteries are included as part of the system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Uniform Fire Prevention and Building Code when in use and when no longer used shall be disposed of in accordance with the laws and regulations of Erie County and other applicable laws and regulations. Such battery storage structures shall be located within the solar compound.
- D. Notice of Intent. The developer of a proposed Tier III solar energy system shall provide any required written notice of intent to the Town Supervisor, the Town Attorney and the Town Planning Director. All required notice of intent communications shall be by mail.

6-10-5. Roof-mounted and Building-Integrated Solar Energy Systems. The following standards are applicable to rooftop and building-mounted photovoltaic and solar-thermal energy

systems:

- A. Permitted in all zoning districts.
- B. No size thresholds, except as limited by the applicable edition of the New York State Uniform Fire Prevention and Building Code.
- C. Site plan approval:
  - 1) Site plan approval or modification is not required for changes to or the addition of roof-mounted or building-integrated solar energy systems.
  - 2) Site plan approval or modification is required for any equipment (i.e. storage batteries) related to roof-mounted or building-integrated solar energy systems that will be located on the ground.
- D. Roof-mounted solar panels facing a public right-of-way (front yard or side yard on a corner lot) must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
- E. Roof-mounted solar energy systems mounted on detached accessory structures (i.e. sheds, covered porches, carports) shall not exceed the maximum height restrictions for accessory structures of the underlying zoning district.
- F. Glare. Solar energy systems shall be designed and located in order to limit reflective glare within the airport's approach zones, as well as towards roads or any habitable or occupiable building on adjacent properties.
- G. Safety. No roof-mounted solar-thermal energy system shall be located in a manner that would cause the shedding of ice or snow from the roof into an open porch, stairwell or pedestrian travel area. If no other alternative is available, the Building Commissioner may approve such installation with the addition of necessary safety features, such as snow guards and diverters.

#### 6-10-6. Standards applicable to all ground-mounted solar energy systems.

- A. Height. The maximum height for all ground-mounted systems is 20 feet when the system is oriented at maximum vertical tilt.
- B. Setbacks. Ground-mounted solar energy systems shall adhere to the setback requirements as outlined in Section 7B. below.
- C. Siting on the Lot. All such systems shall be installed in the side or rear yards and shall not be permitted in the front of the building line in any yard facing a public street.
- D. Maintenance. The owner or operator shall maintain the facility in good condition. Maintenance shall include, but not limited to, structural repairs and integrity of security measures.
- E. Abandonment. If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the collectors, plates, piping, mounts and associated equipment and facilities by no later

than 150 days after the end of the twelve-month period.

6-10-7. Additional standards for ground-mounted solar energy systems.

- A. Ground-mounted solar energy systems are divided into three size categories, as follows
  - 1) Tier I ground-mounted solar energy systems have a total facility footprint of 2,000 square feet or less.
  - 2) Tier II ground-mounted solar energy systems have a total facility footprint of more than 2,000 square feet and less than 7,000 square feet.
  - 3) Tier III ground-mounted solar energy systems have a total facility footprint equal to or greater than 7,000 square feet.
- B. Standards applicable to ground-mounted solar energy systems based on scale size.
  - 1) **Tier I** ground-mounted solar energy systems standards:
    - a) Permitted in all zoning districts as an accessory use.
    - b) Setbacks. Ten feet minimum from side and rear yard lot lines.
    - c) Lot coverage. The footprint of the solar energy system counts towards the total maximum lot coverage as prescribed in the underlying zoning district.
    - d) Glare. Solar energy systems shall be designed and located in order to limit reflective glare within the airport's approach zones, as well as towards roads or any habitable or occupiable building on adjacent properties.
    - e) With the exception of a single-family lot, Minor Site plan review required.
    - f) Screening. Solar energy systems installed on residential land use shall be screened with a minimum of six feet to adjacent residential land uses or a public right-of-way. Screening for non-residential installations shall be required in accordance with § 203.7-2-4C.
  - 2) **Tier II** ground-mounted solar energy system standards
    - a) Permitted as an accessory use in the following zoning districts: Agricultural (AG), Rural Residential (RR), Community Facilities (CF), Recreation Conservation (RC), General Business (GB), Motor Service District (MS), Office Building (OB), Planned Residential District (PRD), Planned Development District (PDD), Multifamily Residential District Four-A (MFR-4A), Multifamily Residential District Five (MFR-5), Manufactured Home Residential District Eight (MFR-8).
    - b) Permitted as a principal or accessory use in the following zoning districts: Agricultural (AG), Suburban Agriculture (SA), General Industrial (GI), Commercial Service (CS), Research and Development (RD), and Science and Technology (ST).

- c) Setbacks. Thirty feet minimum from a side or rear lot line.
- d) Lot coverage. The footprint of the solar energy system counts towards the total maximum lot coverage as prescribed by the underlying zoning district.
- e) Site Plan Review:
  - 1. Minor site plan review is required for districts within which the system is considered as an accessory use.
  - 2. Major site plan review is required for installations that will be considered the principal use of the property and shall provide the additional application information as required by Subsection 3.e. below.
- f) Design Standards:
  - 1. Fencing. When fencing is installed, barbed wire or similar fence style shall not be utilized.
  - 2. Glare. Solar energy systems shall be designed and located in order to limit reflective glare within the airport's approach zones, as well as towards roads or any habitable or occupiable building on adjacent properties. A Glare Study and Visual Simulations may be required for Tier II projects.
  - 3. Screening. Solar energy systems installed on residential land use shall be screened with a minimum of six feet to adjacent residential land uses. Screening for non-residential installations shall be required in accordance with § 203.7-2-4C.

3) **Tier III** solar energy system Special Use Permit standards:

- a) Tier III solar energy systems may be permitted as a Special Use in the following zoning districts: Agricultural (AG), Suburban Agriculture (SA), Office Building (OB), Commercial Service (CS), Research and Development (RD), and Science and Technology (ST); and therefore is subject to the criteria outlined in Town Code § 203.8-6.
- b) Setback. Fifty feet minimum from any lot line. Access roads, and landscaping may occur within the setback. The required front setback shall be a minimum of fifty feet and shall be a maximum of 100 feet when concerns for community character have been identified.
- c) Foot print and lot coverage. The footprint of the solar energy system counts towards the total maximum building coverage as prescribed by the underlying zoning district with the exception of the Suburban Agriculture (SA) and Agricultural (AG) districts. In the Suburban Agriculture (SA) and Agricultural (AG) districts the maximum building coverage for Tier III solar energy systems including any principal or accessory structures on the site is 75 percent. Solar facilities located on contiguous or non-contiguous parcels under the same solar facility ownership or operator will be counted together

towards maximum footprint calculations.

d) Special Use Permit approved by the Town Board is required prior to construction, installation or modification. In addition to Special Use Permit application requirements (§ 203.8-6), the following additional information shall be submitted as part of the application:

1. Ownership and Access. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements for use and access.
2. Site Plans. Site plans showing the layout of the solar energy systems, including all solar panels, significant components and equipment, mounting systems, and other important site features as required by the Subsection f) Design Standards below. Site plans must be signed by a Professional Engineer or Registered Architect.
3. Materials used and other land uses on the site plan shall reflect the adjacent public highway corridor. Allowing space for an agricultural use or buildings should be a priority along the road frontage of a predominantly rural agricultural character.
4. A line of sight section along the entire extent of the project site to the adjacent roadways shall be shown either north to south or east to west depending on the project's location. The topography and vegetation should be clearly shown. Photos of the existing roadway character should also be submitted by the applicant.
5. Utility notification. Submission of documentation from the utility company that operates the electrical grid where the installation is to be located acknowledging the photovoltaic solar energy systems will be connected to the utility grid. Off-grid systems shall be exempt from this requirement.
6. Safety. The owner/operator shall provide evidence that a copy of the site plan application has been submitted to the appropriate Fire Safety Division. All means of shutting down the photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.
7. Operation and Maintenance. Submission of a plan for the operation and maintenance of the facility, to include measures for maintaining safe access, operational maintenance of the solar energy system, general property upkeep, such as mowing and trimming and an agricultural soils preservation plan if applicable.
  - a) For installations on prime farmland, projects shall comply with the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural

Lands. Where an agricultural soils preservation plan has been approved as part of a project, it shall be a condition of any such approval that such agricultural component will be maintained as approved.

8. Airport Approach Zone. Tier III ground-mounted solar energy systems within the airport's approach zone must receive clearance from the Buffalo Niagara International Airport that the planned facility will not create a flight safety issue due to reflective glare.
9. Decommissioning Plan. Submission of a decommissioning plan, to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility to ensure that the site is restored to its original state. Decommissioning cost estimates shall be prepared by a professional engineer or licensed contractor, and take into account inflation. Proof of sufficient decommissioning funds shall be required prior to issuance of a permit. Compliance with this plan shall be made a condition of the issuance of a special use permit. A mandatory performance bond is required prior to a Special Permit being issued for the development.

- e) Major site plan review is required for all Tier III solar energy systems and shall provide the additional application information as required by Subsection 3.d. above.
- f) Design Standards.
  1. Fencing. When fencing is installed, barbed wire or a similar style security-top fencing shall not be utilized. Fencing may be further screened by landscaping needed to avoid adverse aesthetic impacts. The fencing materials should be of a camouflage nature.
  2. Glare. Photovoltaic solar energy systems and other site elements shall be designed to minimize reflective glare toward roads and any inhabited building on adjacent properties. A Glare Study and Visual Simulations shall be submitted with any Tier III Project application.
  3. Screening/Buffering. Based on site-specific conditions, including topography, adjacent structures, and roadways, reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, creating berms, and providing landscape screening to abutting properties and roads, but should not result in shading solar energy systems. Screening shall be required in accordance with § 203.7-2-4C. The following may be required in addition to 7-2-4C:
    - a) The applicant shall follow 7-2-3(A) for the landscape and grading plan specifications. The proposed vegetation is recommended to include the same species located within northern Amherst near the project site.

b) The proposed vegetation shall be located to effectively screen the solar field. The proposed shrubs should be no less than 5-7 ft. on center and smaller trees no less than 10-12 ft. on center. The plantings on the south side of the solar array shall have a minimum mature height of 12 ft. Plantings along the northeast and northwest portion of the solar field shall have a minimum mature height of 20 ft. Plantings along the north side of the solar array shall have a minimum mature height of 30 ft.

c) All plantings shall be selected to be trimmed and managed by the utility company. Depending on the solar array design, a 3 to 6 ft. high berm (with a max. 1:3 slope) may be required. The berms should not interfere with the public road R.O.W. or existing utility easements.

4. Lighting. All lighting on the site related to the solar energy system shall comply with the Town's Site Lighting Standards § 203.7-3 and be limited to that required for safety and operational purposes.

5. Signage. All signage shall comply with the Town's Sign Regulations § 203.7-8. A sign shall be displayed on or near the main access point identifying the owner and providing a twenty-four-hour emergency contact phone number.

6. Utility Connections. Required connections to a utility providers' existing overhead infrastructure and all on site transmission lines and other electrical connections shall be made underground. One new above grade utility connection pole shall be permitted for metering and main connection purposes near the utility provider's existing distribution line. All new required connection equipment including but not limited to reclosers, GOABS, switch gear, fused cutouts and transformers shall be ground mounted and located within the solar compound, maintaining the required setbacks of the ground mounted solar compound.

7. Access Roads. The access road shall be designed to limit views into the solar array. All access roads should be dimensioned on the plan and materials specified. All access roads are required to be paved unless otherwise allowed by the Town of Amherst Commissioner of Building.

8. Natural resource mitigation. In the Agricultural District (AG), Suburban Agricultural District (SA), and the Rural Residential District (RR), Solar Energy System developments shall be required to maintain native vegetation to the extent practicable pursuant to a vegetation management plan: provide native perennial vegetation and foraging habitat beneficial to bees, game birds, songbirds and other pollinators where no active farming is present. When establishing perennial vegetation and beneficial foraging habitat, applicants shall be required to use native plant species and seed mixes. Additionally, animals such as sheep, goats and/or lambs may also be required. Apiculture shall be considered.

## g) Decommissioning.

1. If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the owner and/or operator shall implement the decommissioning plan, to include, but not be limited to:
  - i. Removal of above-ground and below-ground equipment, structures and foundations.
  - ii. Restoration of the surface grade and soil after removal of equipment to a condition or better, which it existed prior to the installation. This includes adding an adequate layer of topsoil where existing topsoil has been removed or eroded.
  - iii. Herbaceous revegetation of restored soil areas with native seed mixes, excluding any invasive species.
2. If the owner and/or operator fail to fully implement the decommissioning plan within 180 days, then in addition to other remedies provided by this section or chapter, by New York Town Law § 268, or by law or equity, the Town may remove the solar energy system and restore the property according to the decommissioning plan and to cover these costs to the municipality.
3. Estimate and financial surety. As part of the decommissioning plan, the applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the solar farm at issue. The Board issuing the Special Use Permit shall establish the amount of such surety to be established by the applicant prior to the issuance of the building permit, at 125% of the estimate. The surety may be in the form of escrowed funds, bonds or otherwise, but it is the intention of the surety to ensure that the Town has sufficient funds available to remove the installations and restore landscaping consistent with the plan in the event that the applicant fails to comply with its decommissioning obligations. The decommissioning plan shall provide a mechanism for re-evaluating the amount of the required surety every five years.

**§ 6-11. New and Substantially Modified Small Cell Personal Wireless Services Facilities Standards in the Public Rights-of-Way. [Added 11-9-2020 by L.L. No. 14-2020]**

**6-11-1. Definitions.** As used in this Chapter, the following terms shall have the definitions which follow:

**ABOVE GROUND LEVEL ("AGL")** — A height measured with respect to the underlying ground surface (as opposed to altitude/elevation above mean sea level (AMSL), or (in broadcast engineering) height above average terrain (HAAT)).

**ACCESSORY EQUIPMENT** — Any equipment serving or being used in conjunction with

a SC-PWSF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

**ANTENNA** — A device used to transmit and/or receive radio or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas (such as panel antennas), microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

**APPROVAL AUTHORITY** — The Planning Director or the Commissioner of Building is responsible for review and approval or denial of zoning and building permit applications. The approval authority for a project which requires a special use permit refers to the Zoning Board of Appeals.

**BASE STATION** — A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any accessory equipment associated with a tower. Base Station includes, without limitation:

- 1) Equipment associated with personal wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- 2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).
- 3) Any structure other than a tower that, at the time the relevant application is filed with the Town under this section, supports or houses equipment described in paragraphs 1) and 2) in this definition that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the Town under this section, does not support or house equipment described in this Code.

**CAMOUFLAGE** — Concealment or stealth techniques that result in a PWSF that (1) blends in with the underlying support structure and the surrounding area, or (2) appears to be an object that is congruent with its environment, but the equipment or the concealment technique is readily apparent to the observer. Examples include, but are not limited to, (i) facade or rooftop mounted popout screen boxes; (ii) antennas mounted within a radome and a cable skirt above a street light standard, traffic light standard, or utility pole; (iii) faux trees either as the only tree in the vicinity or consistent with other tree species in the vicinity; or

(iv) a minaret.

**CODE** — For the purposes of this Chapter, the term "Code" refers to Chapter 203, § 6-11, "New and Substantially Modified Small Cell Personal Wireless Services Facilities Standards in the Public Rights-of-Way."

**CO-LOCATION** — Outside the right-of-way, the mounting or installation of transmission equipment on an existing structure for the purpose of transmitting and/or receiving RF signals for communications purposes. Inside the right-of-way, this term means:

- (1) Mounting or installing an antenna facility on a pre-existing structure, and/or
- (2) Modifying or replacing in-kind a pre-existing structure for the purpose of mounting or installing an antenna facility on that structure.

**CONCEALMENT TECHNIQUES** — Concealment techniques include, but are not limited to, (i) the use of RF-transparent screening, (ii) approved specific colors and textures, (iii) minimizing the size of the site, (iv) integrating the installation into existing utility infrastructure, (v) installing new infrastructure that matches existing infrastructure in the area (vi) controlling the installation location.

**CPCN** — A "Certificate of Public Convenience and Necessity" granted pursuant to Title 16 of the New York Codes, Rules and Regulations.

**DISTRIBUTED ANTENNA SYSTEM (DAS)** — A network of spatially separated antenna nodes connection to a common source via a transport medium that provides personal wireless services within a geographic area.

**ELIGIBLE SUPPORT STRUCTURE** — Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the Town under Chapter 203.

**EXISTING** — "Existing" means the term as defined by the FCC in 47 C.F.R. Section 1.6100(b)(5), as may be amended, which provides that "[a] constructed tower or base station is existing for purposes of [the FCC's Section 6409(a) regulations] if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed. This term also includes co-location installations as previously defined.

**EXISTING HEIGHT** — The height of the structure as originally approved or as of the most recent modification that received regulatory approval prior to February 22, 2012, the date that Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act. Height shall be measured from pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.

**GRADE OR "GROUND LEVEL"** — The surface elevation of any lawn, public right-of-way, or other improved or unimproved surface.

**HEIGHT** — The distance measured from the pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.

**INTERFERENCE** — Physically or electronically affecting the operation, views, signals or

functions of another party's equipment.

**MACROCELL** — A macrocell provides the largest area of coverage within a mobile network. The antennas for macrocells can be mounted on ground-based masts, rooftops or other existing structures. They are generally positioned at a height that is not obstructed by terrain or buildings. They provide radio coverage over varying distances depending on the frequency used, the number of calls made and the physical terrain. Macrocell base stations typically occupy space greater than eight cubic feet for station equipment, greater than three cubic feet per antenna and three or more antennas. Macrocell have a typical power output in hundreds or thousands of watts.

**NIER** — An abbreviation for non-ionizing electromagnetic radiation.

**NEW INSTALLATION** — Installation of any form of PWSF at any location where there is not currently a PWSF.

**NON-RESIDENTIAL ZONING DISTRICTS** — The following districts: OB, NB, GB, CS, MS, SC, TI-2.5, TI-4, SC-3, DC-3, DC-5, CTR-2.5, CTR-5, CTR-8, RD, ST, GI, CF, TND, LW-1, TNB.

**NPSC** — "NPSC" means the New York Public Service Commission, or its duly appointed successor agency.

**OTARD** — An abbreviation for "Over-the-Air Reception Device" which includes satellite television dishes not greater than one meter in diameter.

**PERSON** — Any individual, corporation, estate, trust, partnership, joint-stock company, an association of two or more persons having a joint common interest, or any other entity.

**PETITIONER** — Any person or entity submitting an application to install personal wireless service facilities within the public right-of-way or outside of the public right of way.

**PUBLIC RIGHTS-OF-WAY or "PROW"** — Real property owned or otherwise controlled or maintained by the Town which is devoted to (i) public transportation purposes; or (ii) the placement of the Town's municipal utilities and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right of way includes, without limitation, the area on, below, or above public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the Town which are owned, controlled, or maintained by the Town.

**PWS** — An abbreviation for "Personal Wireless Services." This term shall have the same meaning as defined and used in the Telecommunications Act of 1996.

**PWSF or PWSFs** — An abbreviation for "Personal Wireless Services Facility/Facilities".

**RADOME** — A weatherproofed enclosure that protects and conceals an antenna or antennas contained therein.

**RF** — An abbreviation for "Radio Frequency."

**SECTION 6409(a)** — Refers to the Middle Class Tax Relief and Job Creation Act of 2012, 47 USC § 1455(a).

**SITE** — The area occupied by the structure supporting the antenna, the accessory equipment

and the path of the wires and cable connecting the antenna to the accessory equipment.

**SMALL CELL PERSONAL WIRELESS SERVICES FACILITY ("SC-PWSF" or "SMALL CELL")** — An umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi. Small cells occupy no more than twenty-eight cubic feet for all base station equipment, and no more than three cubic feet per antenna and typically have a range from ten meters to several hundred meters. Types of small cells include femtocells, picocells and microcells-broadly increasing in size from femtocells (the smallest) to microcells (the largest).

- 1.) Pursuant to C.F.R. Title 47, this definition includes facilities that meet each of the following conditions:
  - a. are mounted on structures 50 feet or less in height including their antennas as defined in 47 C.F.R. § 1.1320(d), or
  - b. are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - c. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- 2.) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. § 1.1320(d)), is no more than three cubic feet in volume;
- 3.) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- 4.) Do not require antenna structure registration under 47 C.F.R. Part 17;
- 5.) Are not located on Tribal lands, as defined under 36 C.F.R. 800.16(x); and
- 6.) Do not result in human exposure to RF radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

**SPECIAL USE PERMIT/SUP** — The official document or permit by which a petitioner is allowed to construct and use PWS facilities as granted or issued by the Town (see Zoning Authorization).

**STEALTH** — State-of-the-art concealment techniques that completely screen the SC-PWSF and all associated equipment from public to the extent that the observer does not recognize the structure as a wireless facility. Examples include, but are not limited to: (i) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (ii) new architectural features that match the underlying building in architectural style, physical proportion and construction materials quality; (iii) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

**SUBSTANTIAL CHANGE OR MODIFICATION** — Shall mean the same as defined by the FCC in 47 CFR § 1.40001(b)(3), as may be amended.

**TOWER** — Any structure built for the sole or primary purpose of supporting any FCC-

licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

**TOWN** — The set of entities charged by the Town of Amherst with implementing the provisions of this Chapter, and related elements of the Town Code, including, but not limited to the Town Board, Zoning Board of Appeals, Planning Department, Town Attorney, Building Department, and Highway Department.

**TOWN-OWNED INFRASTRUCTURE** — Infrastructure that is maintained, owned, or operated by the Town including, but not limited to: (i) street light standards, (ii) traffic signal standards, (iii) structures for signage, (iv) buildings, and (v) poles or similar structures owned or operated by the Town.

**UNCONCEALED** — A PWS Facility that is not a stealth facility and has no or effectively no camouflage techniques applied such that the wireless equipment is plainly obvious to the observer.

**UTILITY POLE** — A structure that is: (a) maintained, owned, or operated by: (i) a public utility; (ii) a communications service provider; (iii) a municipality; (iv) an electric membership corporation; or (v) a rural electric cooperative; and (b) designed and used to: (i) carry lines, cables, or wires for telephone, cable television, or electricity; or (ii) provide lighting. The term does not include a Tower, PWSF, eligible support structure, or an electrical transmission tower.

**ZONING AUTHORIZATION** — An administrative zoning approval issued by the Planning Department.

**6-11-D Purpose.** The purposes of this Code are:

- A. To establish reasonable and uniform standards and procedures for SC-PWSF deployment, construction, installation, design, co-location, modification, operation, relocation and removal within or outside the PROW when mounted on buildings or other approved structures, consistent with and to the extent permitted under federal and New York State law;
- B. To balance the provision of PWS that meet the community's needs while promoting and protecting public health, safety, welfare and community and neighborhood character, by requiring that PCS carriers utilize careful siting, state-of-the-art technology, advanced design, innovative concealment, camouflage, or stealth techniques, sufficient screening and buffering, and adequate setbacks from residential uses;
- C. To ensure that the Town's current and ongoing costs of granting and regulating private access to and use of the PROW are fairly and fully compensated by the petitioners seeking such access;
- D. To conserve the limited physical capacity of those PROW held in trust by the Town by assuring that SC-PWSFs in the PROW are limited to those for which the petitioner has demonstrated, by substantial evidence in a written record, a need for service primarily within the Town;

- E. To encourage the use of Town-owned infrastructure for co-location opportunities as a siting priority, and to provide an administrative review for those facilities that will pose fewer aesthetic impacts to the community; and
- F. To recognize that the Town cannot deny any request for authorization to place, construct or modify SC-PWSFs on the basis of environmental effects of radio frequency emissions so long as such facilities comply with the Federal Communication Commission's regulations concerning such emissions.

#### **6-11-3. Applicability.**

- A. This Code applies to all SC-PWSFs within the PROW of the Town's territorial boundaries, and all applications and requests for approval to construct, install, substantially modify, co-locate, relocate, or otherwise deploy SC-PWSFs within the Town's territorial boundaries, unless exempted pursuant to § 6-11-3(B).
- B. Notwithstanding § 6-11-3(A), the provisions in this Chapter will not be applicable to:
  - (1) Wireless facilities owned and operated by the Town for public purposes;
  - (2) Wireless facilities owned and operated by the Town and governed under Chapter 103 (Emergency Responder Radio Coverage);
  - (3) Amateur radio facilities;
  - (4) OTARD antennas; and
  - (5) The activities of a Person authorized to occupy the PROW pursuant to a cable television franchise.
- C. All application requests for approval submitted pursuant to Section 6409(a) will be first evaluated pursuant to the zoning provisions of Chapter 203 of the Town Code to confirm that such request is an eligible facility request.
- D. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of a SC-PWSF as of the effective date of the Code without having first obtained a special use permit (SUP) and/or Zoning Authorization as provided herein, and for proposed SC-PWSF in the PROW or on Town-owned land and/or Town-owned facility, a License Agreement.

#### **6-11-4. Jurisdiction and Management of the PROW.**

- A. The Town has jurisdiction and exercises regulatory control over all PROWs:
  - (1) Under the authority of New York State law;
  - (2) Whether the Town has a fee, license, easement, or other legal interest in the PROW; and
  - (3) Whether the legal interest in the PROW was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

- B. The Town shall have the right to limit the placement of new or additional equipment in its PROW if there is insufficient space to reasonably accommodate all requests to occupy and use the PROW.
- C. No person may occupy or encroach on a PROW without the permission of the Town. The Town grants permission to use its PROW by permits and license agreements, which shall be in the general form as developed by the Town.
  - (1) Authority. The Town Board is the officially designated body of the Town to whom applications for license agreements must be made to establish SC-PWSF within the PROW. PROWs are valuable public properties, acquired and maintained by the Town at great expense to its taxpayers, and the grant to a licensee of the use of the PROW is a valuable property right without which the licensee would be required to invest substantial capital in PROW costs and acquisitions.
  - (2) Compensation. Therefore, a licensee shall pay the Town as general compensation, no later than January 31 of each calendar year for the duration of the license agreement, an amount equal to the annual fee as set by the terms of the license agreement. Interest at 18% per annum will be payable on late payments. License fees collected under this Code shall be placed in an enterprise fund and used to reimburse the Town's costs in managing the PROW with respect to each special use permit holder or Zoning Authorization. Such costs include, but are not limited to, inspection costs, administrative costs, costs of maintaining the PROW, costs of degradation of streets and PROW property, and monitoring installation and maintenance of SC-PWSFs in the PROW pursuant to this Code.

#### **6-11-5. Special Use Permit/Zoning Authorization Required.**

- A. The Zoning Board of Appeals (ZBA) shall issue a Special Use Permit (SUP) prior to the installation of all new SC-PWSFs. Applications for SUPs shall be filed with the Planning Department and shall meet the minimum application requirements listed in § 6-11-6. The fee for a SUP shall be in an amount to be determined by the Town Board by resolution which may be amended from time to time.
- B. Exemptions to the SUP requirement: Upon compliance with the substantive requirements of this Chapter, the following activities shall not require the issuance of a SUP, but shall require a Zoning Authorization from the Planning Department, the fee for which review shall be in an amount to be determined by the Town Board by resolution which may be amended from time to time:
  - (1) New SC-PWSFs that will not be located in the PROW and will be located on a building situated within a Nonresidential Zoning District pursuant to Part 4 of Chapter 203 and which is currently being utilized for non-residential purposes, as long as such installation is Concealed or Camouflaged and a minimum of 100 feet away from a residential use and/or residentially zoned property (as measured from the closest point of a SC-PWSF to the nearest residential use property line).
  - (2) New SC-PWSFs that will be on an existing or replacement utility pole, traffic signal/traffic signage support mast, or light pole within a PROW that is situated

within a Nonresidential Zoning District, as long as such installation is a minimum of 100 feet away from a residential use and/or residentially zoned property (as measured from the closest point of a SC-PWSF to the nearest residential use property line).

- (3) New SC-PWSF that will be located on a new tower/structure within a PROW that is within a Nonresidential Zoning District, as long as such installation is a minimum of 100 feet from a residential use and/or residentially zoned property (as measured from the closest point of a SC-PWSF to the nearest residential use property line).
- (4) Modification of an existing SC-PWSF that is exempt pursuant to the provisions of section 6409 of 47 U.S.C. § 1455.

C. A holder of a SUP or Zoning Authorization for a SC-PWSF shall construct, operate, maintain, repair, remove, modify or restore the permitted SC-PWSF in strict compliance with all applicable technical, safety and safety-related codes adopted by the Town, New York State and/or any nationally recognized standards.

D. A holder of a SUP or Zoning Authorization granted under this ordinance shall obtain, at its own expense, all construction permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental agency having jurisdiction over the petitioner.

E. A SUP or Zoning Authorization shall not be granted for a tower or utility pole to be built on speculation. If the petitioner is not installing a SC-PWSF on a tower or utility pole already existing or under construction, it shall provide:

- (1) A true and correct copy of the petitioner's Certificate of Public Convenience and Necessity (CPCN) granted by the New York State PSC; and
- (2) A binding written commitment or executed lease from an FCC-licensed PWS provider to utilize or lease space on the proposed tower/utility pole; or
- (3) Notice to proceed or other regulatory authorization that supports the petitioner's right to install a SC-PWSF on the proposed tower/utility pole. Said FCC-licensed PWS provider must be the petitioner or the co-petitioner for any proposed new SC-PWSF, co-location or substantial modification and shall provide all necessary data to comply with the terms of this Chapter as part of the application for a SUP, or the SUP or Zoning Authorization shall not be granted.

F. Petitioner shall commence installation no later than two (2) years after the issuance of an applicable SUP or Zoning Authorization, and shall commence operation no later than six (6) months after installation. These dates may be extended by mutual written agreement of the parties in the event of force majeure events. If petitioner fails to commence installation and operation of any applicable SC-PWSF, after providing 30 days' notice and opportunity to cure, the Town may terminate the SUP or Zoning Authorization.

**6-11-6. Application Submission Requirements, SUP/Zoning Authorization.**

- A. Applications for both SUPs and Zoning Authorizations shall be directed to the Planning Director and provide the information set forth in subsections (B) through (L) below. Applications that do not provide required information shall be treated as incomplete until such required information is provided.
- B. **License Agreement.** If the installation will be in the Town PROW, the applicant must first obtain a non-exclusive, revocable license agreement with the Town by making a written request with the Town Attorney to enter into a License Agreement.
  - (1) The license fees shall be in an amount established by the Town Board by resolution, which may be amended from time to time.
  - (2) The Town shall not discriminate among competing service providers in its administration of license agreements.
  - (3) No exclusive, irrevocable property right or any other interest is created by the License. There is no right to convey, express or implied, with the License.
  - (4) The License may not be assigned, except upon written consent of the Town, which shall not be unreasonably withheld, provided the assignee assumes all obligations of the License, agrees in writing to abide by its terms, and meets all other criteria as set forth in this Section.
  - (5) A general License will be granted per petitioner for all SC-PWSFs to be located in the PROW, provided that the Applicant meets the requirements for such a License.
  - (6) A petitioner shall demonstrate the entitlement to use the land for the designated purpose, e.g., through demonstration that the Town owns the fee of the highway at issue, through the grant of an easement or a pole attachment agreement, and/or other legal mechanism. The petitioner bears any and all risk that it has the legal right to construct the SC-PWSF in the location that it has chosen.
  - (7) The License agreement shall be in the general form as developed by the Town.
  - (8) Each License agreement is subject to approval by the Town Board.
  - (9) By issuance of a License, the Town does not represent or warrant title or ownership of the PROW. The petitioner proceeds at its own risk.
  - (10) Indemnification. Any License agreement shall contain indemnification provisions, indemnifying the Town for the Licensee's use of the Town PROW and related activities, to the maximum extent permitted by law.
  - (11) Performance Bond/Surety. Any License agreement shall require that the Licensee provide a performance bond or other appropriate surety, as approved by the Town Board in an amount equal to or greater than a written estimate from a New York Licensed Engineer with experience in SC-PWSF removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities,

cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings, and foundations, whether above or below ground.

- (12) The License shall require compliance with this Section, as may be amended by the Town Board.
- (13) Insurance. In addition to and without limiting the indemnification and performance bond/surety requirements herein, the License agreement shall contain a requirement that the Licensee procure, at the Licensee's expense, insurance in an amount sufficient as determined by the Town Board, with the Town included as an additional insured.

C. **Written Statement.** The petitioner's application shall include a statement in writing that includes the following:

- (1) The name and service address of all parties who have a legal interest in the application including the property owners, PROW owners, equipment owners, FCC licensed carriers, design professionals, consultants and building contractors.
- (2) Agreement that the proposed SC-PWSF shall be maintained in a safe manner, and in compliance with all conditions of the SUP, Zoning Authorization, and/or license agreement, without exception, unless specifically granted a waiver by the ZBA in writing, as well as all applicable local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations. Any reasonable conditions imposed through a special use permit shall be consistent with this § 6-11 and § 8-6-6 of this chapter.
- (3) That the construction or modification of the SC-PWSF is legally permissible, including, but not limited to, the fact that the petitioner is authorized to do business in New York State, and that the petitioner and/or co-petitioner is licensed by the FCC to provide PWS in the Town.
- (4) That the petitioner has owner authorization and/or property rights to install and/or modify, maintain and operate SC-PWSFs and equipment in, under and above the PROW or on private property. This statement must be supported by documentation, which includes, but is not limited to, owner authorization, an easement, a lease, and/or a License issued pursuant to § 6-11-6(B) above. The petitioner bears all risk that it has the legal right to construct the SC-PWSF in the designated location.
- (5) That the person preparing the request for a SUP or Zoning authorization is preparing such request with the petitioner's knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The property owner (or in the case of a utility pole, the utility owner), if different than the petitioner, shall also sign application statement, or shall provide a letter or other written authorization allowing the petitioner to file the application.

D. **Radio Frequency Analysis (RF Study).** All applications for a SUP or Zoning Authorization shall provide a RF analysis. Such analysis shall be prepared by a radio

frequency engineer and shall demonstrate the necessity for the proposed service and the desired coverage objective. The analysis shall include:

- (1) Full color signal propagation maps which shall include a narrative description summarizing the findings in layman's terms. Existing obstacles such as buildings, topography, or vegetation that cannot adequately be represented in the propagation maps, yet may cause significant signal loss and therefore require additional facility height, and/or a specific site location should be clearly described and/or illustrated through additional visual analyses, such as line-of-sight or Fresnel zone modeling diagrams.
- (2) Information demonstrating how the chosen location meets the applicant's need to improve and/or provide service. Such report shall also demonstrate, if applicable, why an alternative preferred site, which may provide greater aesthetic benefits, cannot be utilized.

E. **RF Exposure Compliance.** A RF compliance report shall be prepared by a NYS licensed engineer expert in the field of RF emissions that states that the proposed SC-PWSF, as well as any co-located SC-PWSF(s), will comply with applicable federal RF threshold levels, exposure standards, and exposure limits.

F. **Site plan.** A site plan shall be provided that shows the dimensioned location of the proposed or existing SC-PWSF structure, any support equipment, the geographic coordinates of the proposed facility, adjacent buildings labeled by use, existing above and below grade improvements, easements of record, trees to be impacted and any other existing PWSFs within the area of disturbance.

G. **Elevation Drawing.** An elevation drawing to scale, showing the support structure; the proposed antenna, remote radio units, support cabinets, AC power connections, electric meter sockets, backup power supply, mounting hardware, cable runs, cable shrouds, antennas shrouds or other concealment/camouflage elements; maximum height of the antenna; and the lowest mounting height of any equipment. All elements shown must identify make and manufacturer, the actual color of each component, the actual frequency, and class of service radio or other transmitting equipment. If utilizing an existing utility pole, the utility pole number, installation date of the utility pole, estimated remaining service life of the utility pole, and the material type of the utility pole.

H. **Visual Assessment.** The applicant shall furnish information to conduct a visual impact assessment, and which shall include at minimum:

- (1) "Before" and "after" photo simulations from key viewpoints, residences within 100 feet of the SC-PWSF, and from any other location where the site is visible to a large number of visitors, travelers or residents. Petitioners may seek guidance regarding site-specific appropriate vantage points for photo simulations at a voluntary pre-application meeting. Such viewpoints shall be from a publicly accessible location.
- (2) Petitioner shall identify the location, dimension and types of all trees within or

adjacent to the PROW which the petitioner seeks to substantially trim, remove or replace. The petitioner shall submit a landscape plan, satisfactory to the Town, for the replacement of such trees.

- I. **SEQRA.** The applicant shall submit, with the application or at a voluntary pre-application meeting, all information necessary to satisfy the State Environmental Quality Review Act (SEQRA), including but not limited to a complete Full Environmental Assessment Form.
- J. **12-month build-out plan required.** The applicant shall submit a buildout plan which shall include a description, maps, and data of the carrier's existing PWSFs within the Town and all PWSFs within 500 feet of the Town's boundary, together with the carrier's intentions for additional facilities within the Town for the ensuing twelve (12) months; indicating whether each proposed facility is for initial coverage or capacity building purposes, showing proposed general locations or areas in which additional facilities are expected to be needed, and shall also certify whether any existing PWSFs of the petitioner are in active use and necessary for its telecommunications operations. Such build out plan shall reflect changes as new installations are installed. In the event a Freedom of Information (FOIL) request is made for the 12-month plan, the applicant will be notified of the same so that appropriate objections to disclosure can be lodged consistent with Chapter 22 of the Town Code.
- K. **Acoustic Analysis.** The Applicant must provide a written report that analyzes acoustic levels for the proposed SWF and all associated equipment. The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturer's specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. This requirement may be satisfied by providing manufacturer's specifications demonstrating that the equipment does not generate noise, or generates noise at an imperceptible level.
- L. **Alternatives Analysis.** The petitioner must list all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The petitioner must also provide a written explanation for why the alternatives considered were not chosen. This explanation must include a comparative analysis and such technical information and factual justification as are necessary to document the reasons why each alternative not feasible, unavailable, or not as consistent with the design standards in this Section as the proposed location. This would include an analysis of the siting preferences set forth in this Section.

#### 6-11-7. Siting Preferences

- A. To minimize visual impacts, the Town establishes siting priorities for SC-PWSFs. The following site location types ranked from most preferred to least preferred shall be considered by carriers when seeking the establishment of a SC-PWSF.
  - (1) Building mounted installations on non-residential buildings in non-residential zoning districts.
  - (2) Existing traffic signal or traffic signage support mast standards within

nonresidential zoning districts.

- (3) Replacement traffic signal or traffic signage support mast standards within nonresidential zoning districts.
- (4) Existing or replacement utility poles within a PROW in nonresidential zoning districts.
- (5) Replacement street lights within a PROW in non-residential zoning districts.
- (6) Existing street lights within a PROW in non-residential zoning districts.
- (7) Existing utility structures with a minimum height of 30 feet not in a road right of way within non-residential zoning districts.
- (8) Non-replacement support structures within the public road right of way in non-residential zoning districts.
- (9) Existing utility poles within a public road right of way within the SA — Suburban Agriculture District and not fronting an existing residential use.
- (10) Existing utility structures with a minimum height of 30 feet not in a road right of way within the SA - Suburban Agricultural District and not contiguous to a residential use.
- (11) Existing traffic signal standards or traffic signage support mast standards within residential zoning districts.

B. Locations Requiring Mitigation. The Town discourages new support structures and siting in residential zoning districts, although siting in residential districts may be necessary if no alternatives are available. Where technically feasible, efforts should be made to co-locate or to locate in manufacturing or business zoning districts. If location in a residential zoning district is necessary, techniques to minimize aesthetic impacts are mandatory, including Camouflage and/or Concealment.

C. Prohibited locations. The Town prohibits any structures or parts of structures associated with SWF placement from obstructing access to above- or underground traffic control infrastructure, public transportation vehicles, shelters, street furniture, or other improvements, above- or underground utility infrastructure, fire hydrants, doors, gates, or other ingress and egress points to any building appurtenant to the PROW, or any fire escape. Ground-mounted equipment shall not be closer than twelve (12) feet from any existing lawful encroachment in the PROW and driveway aprons.

#### 6-11-8. Design Regulations.

A. **Concealment/Camouflage.** All new SC-PWSFs and substantial changes/modifications to SC-PWSFs shall maximize the use of concealment or camouflaging techniques to blend the equipment and other improvements with the support structure, and to blend into the surrounding environment in a manner consistent with the uses within the adjacent zoning district(s) and immediate vicinity. The use of state-of-the-art technology and best practices shall be required to ensure high quality design. Economic

considerations alone are not justification for failing to employ such techniques. Concealment/camouflaging techniques include, but are not limited to:

- (1) RF-transparent screening;
- (2) Use of approved, specific colors and textures;
- (3) Minimizing the size of the site;
- (4) Integrating the installation into existing utility infrastructure;
- (5) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site. The new infrastructure may then be dedicated to the Town and the SC-PWSF installation is integrated into the new infrastructure;

In circumstances where a proposed SC-PWSF is easily visible or within a non-preferred location, the Town may require additional concealment, camouflage, or stealth techniques for the proposed SC-PWSF. **Appendix A**<sup>2</sup> shall serve as examples of the technology available that the Town may require to mitigate the visual impacts associated with the SC-PWSF.

**B. Antennas.** The antenna shall be the smallest possible volume but in no case greater than three cubic feet. Antenna installations on existing/replacement utility poles or traffic signal standards/traffic signage sign support masts shall be located at the top of the pole unless the petitioner demonstrates that such location is not feasible or practical. The antenna should not increase the height of the existing structure by more than ten percent or ten feet, whichever is greater, in no event shall the installation exceed 50 feet in height. Antennas shall be fully enclosed in a non-reflective radome, cap, cantenna, or other RF-transparent panel covering or shield of a diameter no more than fifty percent (50%) greater than that of the pole. Antennas shall be painted, coated, and/or textured using non-reflective materials and color to match the predominant color of the support structure. When mounted on top of wooden utility pole, such cap shall also extend to the pole top, covering any antenna mounting hardware.

- (1) Offset mounting of an antenna on a utility pole may be considered if technical justification is provided, and it has been demonstrated that alternative sites have been exhausted.
- (2) Strand mounted antenna installations, as demonstrated in the diagram in **Appendix B**,<sup>3</sup> may be considered if technical justification is provided and it has been demonstrated that alternative sites have been exhausted, and such installation resembles similar utility equipment in proximity to the installation.

**C. Utility Pole-Mounted Accessory Equipment.** All utility pole-mounted equipment, mast arms, electric meters, and other facilities shall be sized to minimize visual clutter and be installed as close to the utility pole as technically feasible to minimize visibility

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2. Editor's Note: Appendix A is included at the end of this § 6-11.

3. Editor's Note: Appendix B is included at the end of this § 6-11.

from the public view to the greatest extent feasible. All pole-mounted accessory equipment shall maximize the use of RF-transparent screening, building materials in a neutral, non-reflective color consistent in color and texture with other new and existing poles and equipment in the general geographic area so as to reduce visual intrusiveness. This shall include the utilization of concealment or stealth techniques as required by the Town. No accessory equipment associated with any SC-PWSF shall impair pedestrian use of sidewalks, pathways, or public or private trail systems. The accessory equipment shall not be located in a manner that violates the current or proposed Americans with Disabilities Act Accessibility Guidelines. This equipment must be high enough that the equipment boxes cannot be reached from the ground so as to prevent vandalism.

- (1) Cabinets, meter sockets, electrical disconnects and other accessory equipment shall be positioned on the utility pole side which is with the direction of vehicle travel for the nearest travel lane (see **Appendix C<sup>4</sup>**).
- (2) **Wiring and Cabling.** All cabling and wiring must be contained in a cable skirt, conduit, cover, or cable shield and affixed directly to the face of the pole. No exposed slack or extra cable will be allowed.
- (3) The use of existing utility poles shall be permitted only if the pole is plumb. Utility poles which are not plumb shall be avoided, and/or replaced with new utility poles.

**D. Underground Accessory Equipment.** When existing utility infrastructure is currently underground, or when approved but not yet constructed development will require the installation of utilities underground, petitioners for a proposed SC-PWSF within a PROW, or within a private street in Town's Retrofit Districts, shall, to the maximum extent practicable, conceal all electric service, cable runs, remote radio units and other support equipment either within the support structure itself, or within underground vaults/distribution boxes. All new SC-PWSF shall be designed to match the existing street infrastructure or infrastructure that will be proposed (see **Appendix D<sup>5</sup>**).

**E. Ground-Mounted Accessory Equipment.** Ground mounted equipment may be installed when associated with a building mounted application, and when not visible from a public view shed. Such equipment installations shall be consistent in color with the adjacent building and shall be screened with landscaping if deemed necessary to further mitigate aesthetic impacts. Applications shall include proposed camouflage techniques for ground-mounted equipment, which may include, but are not limited to: strategic choice of color, paint, and/or materials, landscaping, placement in less visible locations, and placement within existing or replacement street furniture.

**F. Lighting.** SC-PWSFs in the PROW shall not be illuminated by artificial means, except when mounted on an existing light pole or where the illumination is specifically required by the Federal Aviation Administration or other federal, state or local regulations. Any permitted lighting shall be consistent in design and bulb type with other lighting fixtures in the vicinity.

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4. **Editor's Note:** Appendix C is included at the end of this § 6-11.

5. **Editor's Note:** Appendix D is included at the end of this § 6-11.

- G. **Utilities.** Where other utility infrastructure is underground, all utilities at a SC-PWSF site shall also be installed underground to the extent technologically feasible and to the extent other utility providers located within the same PROW have installed or are required to install their infrastructure underground. The Town shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- H. **Signage.** All SC-PWSFs must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SC-PWSFs may not bear any other signage or advertisements unless expressly approved by the Town, required by law or recommended under FCC or other federal agencies for compliance with RF emissions regulations. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. Signage shall be maintained in legible condition at all times.
- I. **Improving Technologies.** In the event that improving technologies permit the installation of smaller or lower antennas without degradation of their capabilities and without excessive replacement cost, the SC-PWSF carrier shall use the smallest equipment that is necessary when modifying or replacing an existing SC-PWSF.
- J. **Siting.** All SC-PWSFs shall be sited to avoid or minimize obstruction of views from public vantage points, to minimize the negative aesthetic impacts of the PROW, and to be the least visually intrusive as practicable.
  - (1) **Spacing.** All SC-PWSFs within residential PROW's shall not be closer than 500 feet to another SC-PWSF operated by the same carrier.
  - (2) Absent petitioner's demonstration that such siting is the only technologically feasible option for achieving coverage goals, SC-PWSFs shall not be situated in front of a dwelling. All installations along a PROW near residential uses shall be situated opposite an interior property line. See **Appendix E**<sup>6</sup> for illustrations.

#### 6-11-9. Public Safety and General Welfare.

- A. **NIER Certification. (Nonionizing Electromagnetic Radiation).** Prior to installation and upon any modification to a SC-PWSF, the PCS carrier/owner of the SC-PWSF shall provide to the Town Building Commissioner a NIER certification report prepared by a third party inspection firm affirming that the facility is in compliance with the FCC maximum allowable exposure limits. Failure to provide a NIER Certification report shall be considered a violation and subject to the penalties for violations as specified in § 8-16-1 of this chapter.
  - (1) For SC-PWSF that have been constructed within residential zoning districts or fronting residential uses, the Town may require that the PCS carrier produce its maintenance records for such facilities if complaints are received that such facilities are being inordinately serviced.

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6. Editor's Note: Appendix E is included at the end of this § 6-11.

- B. **Engineering Requirements.** The proposed SC-PWSF shall be designed by a NYS Licensed Professional Engineer. The design must include calculations that demonstrate sufficient strength of the pole to be used.
- C. **Emergency Power.** The Town strongly disfavors backup power sources mounted on the ground or on poles in the PROW. The use of battery and other alternative backup power sources adds to the size of the facility, thus adding to the aesthetic impact within a right of way. The need for emergency power on a facility within a PROW shall be clearly demonstrated by an applicant. Any proposed backup power source shall be shown on the elevation drawing and in the photo renderings, and shall meet the minimum requirements of the International Fire Code (IFC).
- D. **Security.** All sites shall be reasonably protected against unauthorized climbing. The bottom of the tower, measured from ground level to twelve (12) feet AGL, shall be designed in a manner to discourage unauthorized climbing.

#### 6-11-10. Height of SC-PWSFs in the PROW.

- A. The maximum permitted height of a new SC-PWSF in the PROW including the antenna, lightening rod or other extensions shall be limited to the height necessary to deliver the desired service to the area, as demonstrated by the petitioner, but in no case shall exceed fifty (50) feet AGL.
- B. The petitioner shall submit to the Town sufficient technical evidence and documentation justifying the total height of any proposed SC-PWSF. Such evidence and documentation will be analyzed in the context of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- C. Where antennas are moved to lower heights on an existing SC-PWSF and the full height is no longer needed, the overall height of the structure shall be reduced. No antenna support structure shall remain at a height that is taller than that required by installed and operational antennas.

#### 6-11-11. Action on an Application for a Special Use Permit or Zoning Authorization for a SC-PWSFs.

An application to site a SC-PWSF will be reviewed to confirm that the proposed facility meets the zoning standards set forth in this chapter. Once a SUP or a Zoning Authorization is granted, a separate building permit shall be issued by the Building Department for those installations mounted on buildings or other eligible support structures on private land or within a Town PROW. Construction in PROWs controlled by governmental entities other than the Town of Amherst shall be authorized by such other governmental entities.

- A. The Planning Department will review all SUP and Zoning Authorization applications for SC-PWSFs, consistent with the timeframes permitted by the FCC. Except for qualified Eligible Facilities applications, the Planning Department may reject:
  - (1) A proposed site, if alternative sites exist which have a higher siting preference as stated in § 6-11-7, and the applicant has not provided justification for not pursuing a higher preference alternative.

- (2) A proposed installation if the design is inconsistent with the standards set forth in § 6-11-8 or the applicant has not demonstrated that he/she cannot implement a concealment/camouflage technique.
- B. The Planning Department shall provide an advisory report to the ZBA prior the ZBA rendering a decision. The Planning Department may rely on experts to assist in a review and evaluation of PWS facilities. RF analysis is highly specialized and confirming the accuracy of an applicant's demonstration of need for the proposed SC-PWSF cannot ordinarily be done by Town staff. Therefore, the Town may hire any consultant, attorney and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, technical aspects of the proposed facility or modification of an existing facility. The review shall address the following:
  - (1) The accuracy and completeness of submission;
  - (2) Compliance with applicable RF emission standards and determination based upon FCC OET BULLETIN 65, as amended from time to time;
  - (3) Whether the proposed SC-PWSF is necessary to meet the carrier's service requirements and is the least intrusive means of doing so;
  - (4) Technical demonstration of the unavailability of alternate sites or configurations and/or coverage analysis;
  - (5) The appropriateness of granting any requested variances;
  - (6) The applicability of analysis techniques and methodologies;
  - (7) The validity of conclusions reached; and
  - (8) Any specific technical issue designated by the Town.
- C. The petitioner shall deposit with the Town in escrow funds sufficient to reimburse the Town for all reasonable costs of consultant, attorney and expert services in connection with the review of any application, including the construction and modification of the site once permitted. The initial deposit shall be determined by the Town's fee schedule, as may be amended time to time by resolution of the Town Board. The placement of the initial deposit with the Town shall be submitted with the application. If there is a question regarding the necessity of an escrow deposit, the petitioner may seek clarification at a voluntary pre-application meeting.

The Town reserves the right to request a deposit after acceptance of a formal application if during the course of its review, the Town deems that additional expertise will be necessary. The Town will maintain a separate escrow account for all such funds per application. The Town's consultants/experts shall invoice the Town for their services. If at any time during the process this escrow account has a balance less than the minimum amount determined by the Town's fee schedule, the petitioner shall, upon notification by the Town, replenish said escrow account so that it has a minimum balance as determined by the Town's fee schedule, or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.

- D. The ZBA shall conduct a public hearing and render a decision within the time frames prescribed by the FCC. The time within which the decision shall be rendered may be extended by mutual consent of the petitioner and the Board. Such agreement shall be in writing and approved by resolution of the ZBA, and may be requested on behalf of the ZBA by the Planning Director.
- E. In rendering its decision the ZBA shall consider:
  - (1) Whether the applicant has demonstrated that the site selected is of the highest preference available as established by § 6-11-7, and;
  - (2) The SC-PWSF is consistent with the design criteria established by § 6-11-8, and;
  - (3) Whether the applicant has sufficiently demonstrated a need to improve service coverage and/or capacity, or provide a new service not yet provided, by providing a competent RF analysis, and;
  - (4) Whether, the applicant has demonstrated that the carrier's gap in service and/or capacity issues, or proposed new service, cannot be mitigated or delivered by any technologically feasible means other than the proposed SC-PWSF; and
  - (5) That the applicant has mitigated the aesthetic impacts of the proposed SC-PWSF to the maximum extent practical, taking into consideration the existing context of the community/neighborhood character and the existence of any other similar utility infrastructure of nearby.

#### **6-11-12. Waiver.**

Where the petitioner demonstrates sufficient evidence that strict compliance with one or more of the provisions of this section would result in extraordinary hardship to the petitioner, the Town Zoning Board of Appeals may grant a waiver of any of the provisions of this Section. The burden of demonstrating hardship is on the petitioner.

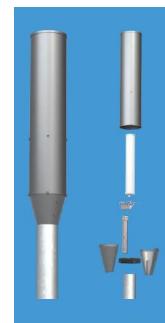
#### **6-11-13. Severability.**

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision of this Ordinance.

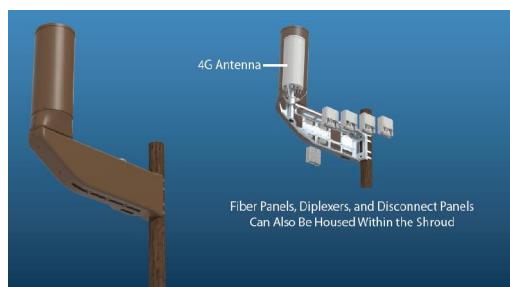
#### 6-11-14. Effective Date.

This Local Law shall take effect immediately and be filed in the Office of the Secretary of State in accordance with Municipal Home Rule Law Section 27 and published pursuant to Town Law Sections 130, 133 as well as Chapter 28 of the Code of the Town of Amherst.

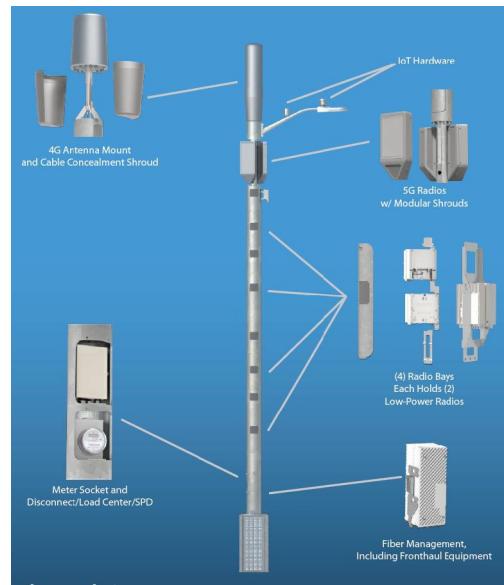
#### Appendix A. Concealment technique examples



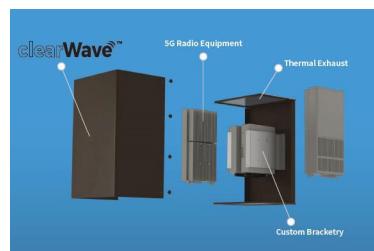
#### Appendix A (cont'd). Antennas shrouds with mounting concealment



### Appendix A (cont'd). Antenna shrouds with radio concealment



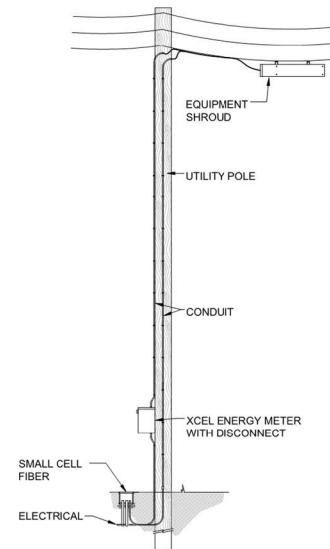
### Appendix A (cont'd). Unified Poles with internal concealment and equipment shrouds



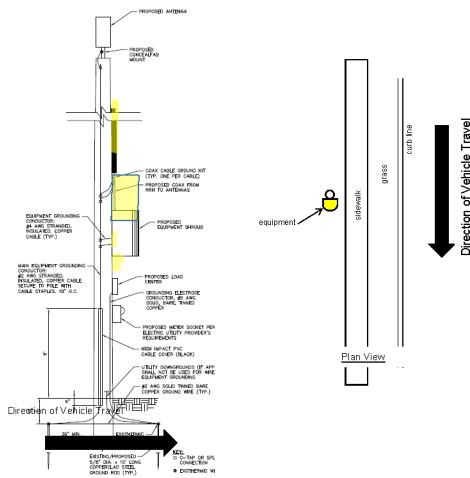
## Appendix A (cont'd). Radio Shrouds

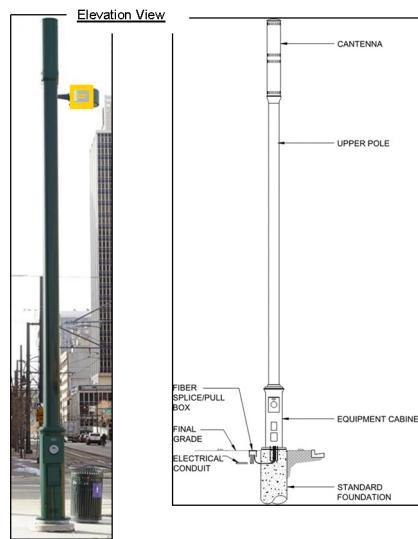
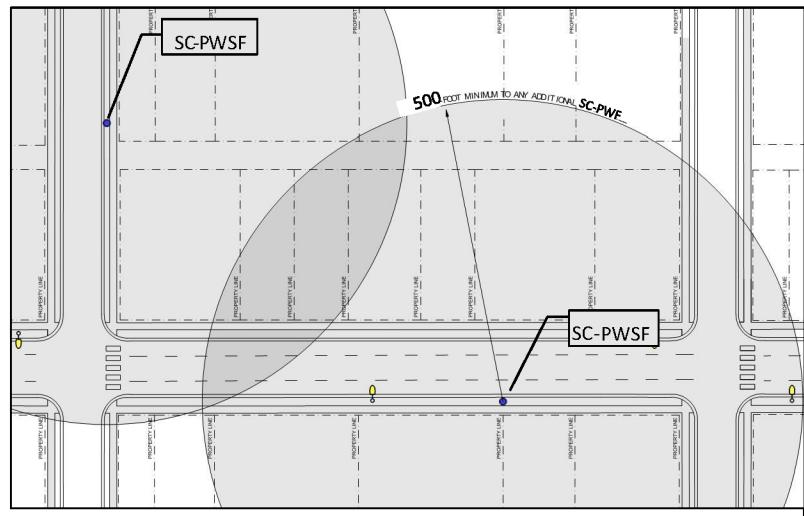


## Appendix B: Typical Existing/Replacement Utility Pole Installation, Strand Mounted



## Appendix C: Illustration of "nearest travel lane".



**Appendix D: SC-PWSF with equipment internally mounted and street light internally mounted****Appendix E. Required spacing between SC-PWSF**

**Appendix E (cont'd). Required Location — Siting near residential buildings**