



ZONING ORDINANCE

Adopted
May 10, 1990
Amended through
March 24, 2006

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

TABLE OF CONTENTS

ARTICLE I ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION AND VALIDITY 1

SECTION 101 ENACTING CLAUSE..... 1

SECTION 102 TITLE 1

SECTION 103 PURPOSES..... 1

SECTION 104 APPLICATION OF REGULATIONS 2

SECTION 105 VALIDITY..... 3

SECTION 106 EFFECTIVE DATE AND REPEAL 3

ARTICLE II DEFINITIONS..... 3

SECTION 201 INTERPRETATION OF TERMS AND WORDS 3

SECTION 202 DEFINITIONS..... 4

ARTICLE III ESTABLISHMENT OF ZONING DISTRICTS..... 19

SECTION 301 ZONING DISTRICT CLASSIFICATION 19

SECTION 302 ZONING MAP ESTABLISHED 19

SECTION 303 INTERPRETATION OF ZONING DISTRICT BOUNDARIES 19

SECTION 304 LOTS IN TWO OR MORE DISTRICTS..... 20

SECTION 305 EXISTING LOTS OF RECORD..... 20

ARTICLE IV GENERAL REGULATIONS..... 21

SECTION 401 BUILDINGS, USES AND LOTS..... 21

A. One Principal Building and Use Per Lot 21

B. Yard and Open Space for Every Building 21

C. Subdivision of a Lot..... 21

D. Irregularly Shaped Lots 21

E. Lots Under Water or Subject to Flooding 22

F. Required Road Frontage..... 22

G. Parts of Lot Not Counted Toward Area Requirements 22

H. Adjacent Lots 22

I. Yards on Corner Lots 22

SECTION 402 SUPPLEMENTARY YARD REGULATIONS, STRIPPING, AND EXCAVATIONS 23

A. Porches..... 23

B. Projecting Horizontal Architectural Features..... 23

C. Fire Escapes..... 23

D. Visibility at Intersections..... 23

E. Buffer Strip 23

F. Open Space 23

G. Stripping of Top Soil..... 24

H. Excavation During Construction..... 24

SECTION 403 LOCATION OF ACCESSORY BUILDINGS AND STRUCTURES ..
..... 25

SECTION 404 NONCONFORMING USES, STRUCTURES AND LOTS 25

A. Lawful Existing Uses or Structures..... 25

B. Abandonment..... 26

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

C. Restoration and Repair.....	26
D. Reversion	26
E. Alterations	26
F. District Changes	26
SECTION 405 USES NOT PERMITTED.....	27
SECTION 406 MINIMUM DIMENSIONAL CRITERIA.....	27
SECTION 407 MINIMUM ENCLOSED LIVING AREA	27
SECTION 408 DWELLING FRONT YARD GRADE AND DRAINAGE.....	28
SECTION 409 STABLING FARM ANIMALS	28
SECTION 410 HEIGHT MODIFICATIONS.....	28
SECTION 411 OUTSIDE SOLID FUEL BURNING DEVICES.....	29
ARTICLE V ZONING DISTRICT REGULATIONS.....	30
SECTION 501 AGRICULTURAL & RESIDENTIAL-1 DISTRICT A&R-1	30
A. Permitted Uses	30
B. Uses Requiring A Special Use Permit.....	30
SECTION 502 AGRICULTURAL & RESIDENTIAL-2 DISTRICT A&R-2	31
A. Permitted Uses	31
B. Uses Requiring a Special Use Permit	32
SECTION 503 RESIDENTIAL DISTRICT - R	33
A. Permitted Uses	33
B. Uses Requiring Special Use Permit	33
SECTION 504 COMMERCIAL DISTRICT - C	34
A. Permitted Uses	34
B. Uses Requiring A Special Use Permit.....	34
SECTION 505 INDUSTRIAL DISTRICT I.....	35
A. Permitted Uses	35
B. Uses Requiring Special Use Permit	35
SECTION 506 PLANNED UNIT DEVELOPMENT - PUD	35
A. Purpose	35
B. General Requirements	36
C. Application Procedure and Approval Process.....	37
D. Design Standards	40
SECTION 507 FLOOD PLAIN OVERLAY ZONE - FPO (INFORMATION ONLY) ..	41
.....	41
ARTICLE VI SUPPLEMENTARY REGULATIONS	42
SECTION 601 OFF-STREET PARKING SPACE REQUIREMENTS	42
A. Residential Uses	42
B. Motel	42
C. Places of Public Assembly.....	42
D. Professional Offices.....	42
E. Commercial.....	42
F. Restaurant, Eating and Drinking Establishment (other than drive-in)	43
G. Industrial, Wholesale, Warehouse, Storage, Freight, and Trucking Uses	43
.....	43
H. Unspecified Uses	43

TOWN OF PAVILION ZONING ORDINANCE

Amended through March 24, 2006

SECTION 602 OFF-STREET LOADING SPACE REQUIREMENTS43

SECTION 603 MODIFICATION OF PARKING AND LOADING REQUIREMENTS43

SECTION 604 GASOLINE STATION, GASOLINE STATION/MARKET, MOTOR VEHICLE REPAIR SHOP, DRIVE-IN BUSINESS43

SECTION 605 PUBLIC UTILITY FACILITY44

SECTION 606 SIGNS44

 A. General Standards..... 44

 B. Off-Premise Signs.....45

 C. Exempt Signs (Require No Permits).....45

 D. Signs Permitted in Residential and Agricultural & Residential Districts 46

 E. Signs Permitted in Commercial and Industrial Districts.....47

 F. Non-Conforming Signs47

 G. Prohibited Signs 48

SECTION 607 COMMERCIAL EXCAVATION49

 A. Major Excavation 49

 B. Minor Excavation 49

 C. Duration of Special Use Permit..... 51

SECTION 608 CLUSTER RESIDENTIAL DEVELOPMENT52

SECTION 609 SWIMMING POOLS53

 A. Permit.....53

 B. Location53

 C. Fencing.....53

 D. Drainage.....53

SECTION 610 JUNKYARDS53

 A. Establishment.....53

 B. Location Requirements.....54

 C. Aesthetic Considerations54

 D. Fencing.....54

 E. Existing Junkyards.....55

SECTION 611 RECREATIONAL VEHICLES AND CAMPGROUNDS/RECREATIONAL VEHICLE PARKS55

 A. Recreation Vehicles.....55

 B. Campgrounds/Recreational Vehicle Parks55

SECTION 612 ALL TERRAIN VEHICLES, SNOWMOBILES, GO-KARTS, MOTORCYCLES, AND MOTOR VEHICLE RACE TRACKS AND COURSES59

 A. Establishment.....59

 B. Definitions59

 C. Location Requirements.....59

 D. Minimum Lot Area.....59

 E. Operation of Race Track or Course..... 60

 F. Operation of Vehicles on Race Tracks or Courses Prohibited During Certain Hours..... 60

 G. Operation of Vehicles Without Mufflers Prohibited 61

 H. Duration of Permit 61

SECTION 613 ADULT USES 61

 A. Purposes..... 61

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

B. Definitions	61
C. Restrictions Affecting Adult Establishments	64
D. Prohibition Regarding Public Observation	64
SECTION 614 FENCES	65
A. All Fencing	65
B. Fencing-Front Yard.....	65
C. Fencing-Side and Rear Yards	66
SECTION 615 LIGHT INDUSTRIAL USES	66
A. Process	66
B. Conditions.....	66
SECTION 616 SKILLED TRADE SHOP	67
A. Process	67
B. Conditions.....	68
SECTION 617 CLUSTER RESIDENTIAL DEVELOPMENT	69
SECTION 618 ANIMAL WASTE STORAGE FACILITIES.....	69
SECTION 619 COMMERCIAL COMMUNICATION TOWERS	70
A. Shared Use of Existing Towers and/or Structures	70
B. New or Altered Towers and/or Structures	71
C. Supporting Documentation.....	71
D. Shared Usage of Site with New Tower.....	71
E. New Tower at a New Location.....	72
F. Future Shared Usage of New Towers.....	72
G. Setbacks for New Towers	72
H. Visual Impact Assessment.....	73
I. New Tower Design	73
J. Existing Vegetation	74
K. Screening	74
L. Access	74
M. Parking.....	75
N. Fencing.....	75
O. Maintenance and/or Performance Bond.....	75
P. Removal of Obsolete/ Unused Facilities	75
Q. Routing of Emergency 911 Calls	75
SECTION 620 PONDS	76
A. Purpose	76
B. General Provisions	76
SECTION 621 HOME OCCUPATIONS	76
A. Purpose	76
B. General Provisions	76
ARTICLE VII MOBILE HOMES AND MOBILE HOME PARKS	77
SECTION 701 SINGLE MOBILE HOMES.....	77
A. Single Mobile Home - Permanent Residence	77
B. Mobile Home - Temporary Residence.....	78
C. Mobile Home - Replacement of an Existing	78
SECTION 702 MOBILE HOME PARKS	79
A. Standards and Requirements for the Construction of Mobile Home Parks	79
B. Mobile Home Park Maintenance Standards.....	85

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

C. Mobile Home Park Special Use Permits.....	86
D. Mobile Home Park Plans and Registration of Mobile Home Park Occupants/Units.....	87
ARTICLE VIII ADMINISTRATION AND ENFORCEMENT	87
SECTION 801 ENFORCEMENT.....	87
SECTION 802 DUTIES OF THE ZONING ENFORCEMENT OFFICER	87
A. Inspection and Review.....	87
B. Violations and Written Orders.....	88
C. Appearance Ticket.....	88
D. Revocation of Certificate of Compliance	88
E. Records	88
SECTION 803 CERTIFICATES AND PERMITS	89
A. Zoning Permit.....	89
B. Temporary Use Permit.....	89
C. Emergency Housing.....	89
D. Special Use Permit	89
E. Certificate of Compliance	89
SECTION 804 APPLICATION PROCEDURES	89
A. Application.....	89
B. Issuance of Zoning Permit.....	90
C. Installation of Foundation.....	90
D. Initiation of Construction	90
E. Completion of Construction	90
F. Location of Permit.....	90
SECTION 805 FEES FOR PERMITS, AMENDMENTS, APPEALS, SITE PLAN REVIEW, SPECIAL USE PERMITS, AND OTHER ADMINISTRATIVE ACTIONS ..	90
SECTION 806 CERTIFICATES OF COMPLIANCE.....	90
SECTION 807 BOARD OF APPEALS	91
A. Organization	91
B. Meetings, Minutes and Records.....	91
C. Filing Requirements.....	91
D. Hearing Appeals.....	91
E. Time of Appeal.....	91
F. Hearing An Appeal.....	92
G. Time of Decision.....	92
H. Filing of Decision and Notice	93
I. Permitted Action by the Zoning Board of Appeals	93
J. Solar Access	95
K. Rehearing.....	95
SECTION 808 PLANNING BOARD	95
A. Organization	95
B. Powers and Duties.....	95
C. Site Plan Review	96
D. Special Use Permit	101

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

SECTION 809	VIOLATION AND PENALTY	104
SECTION 810	COMPLAINT OF VIOLATION.....	105
SECTION 811	STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)	105
ARTICLE IX	AMENDMENTS.....	106
SECTION 901	INITIATING AMENDMENTS	106
A.	Initiating Amendments.....	106
B.	Petitions	106
C.	State Environmental Quality Review (SEQR).....	106
SECTION 902	REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD	107
A.	Referral to Town Planning Board	107
B.	Referral to County Planning Board.....	107
SECTION 903	HEARING ON PROPOSED AMENDMENT	107
SECTION 904	PETITION PROTESTING AMENDMENT.....	108
SECTION 905	PERIODIC REVIEW BY PLANNING BOARD.....	108
SECTION 906	WIND ENERGY SYSTEMS	108
A.	Permit Requirements.....	108
B.	Restoration Requirement. (see also Restoration section under Agricultural Mitigation)	109
C.	Special Use Permit or Zoning Permit Requirements.	110
D.	Standards.....	111
E.	Spacing and Density.....	111
F.	Structure.	111
G.	Height.....	112
H.	Clearance.....	112
I.	Access and Safety.	112
J.	Electrical Wires.	112
K.	Lighting.....	112
L.	Buildings and Outdoor Storage.....	113
M.	Aesthetics.....	113
N.	Signs.	114
O.	Agricultural Mitigation.	114
P.	Noise.....	117
Q.	Insurance.	118
R.	Shadow Flicker.	118
S.	Electromagnetic Interference (EMI).	118
T.	Severability.	118
ARTICLE X	LEGAL STATUS PROVISIONS.....	118
SECTION 1001	PROVISIONS ARE MINIMUM REQUIREMENTS.....	118
SECTION 1002	CONFLICT WITH OTHER LAWS	119
SECTION 1003	EXISTING ZONING PERMITS	119
SECTION 1004	EXISTING PRIVATE AGREEMENTS	119
SECTION 1005	SEPARABILITY CLAUSE	119
SECTION 1006	REPEALER.....	120
SECTION 1007	EFFECTIVE DATE.....	120

TOWN OF PAVILION
ZONING ORDINANCE

ARTICLE I ENACTING CLAUSE, TITLE, PURPOSES,
APPLICATION AND VALIDITY

SECTION 101 ENACTING CLAUSE

Pursuant to the authority conferred by the Town Law of the State of New York, the Town Board of the Town of Pavilion hereby adopts and enacts as follows:

SECTION 102 TITLE

This Zoning Ordinance shall be known as the "Town of Pavilion Zoning Ordinance".

SECTION 103 PURPOSES

This Zoning Ordinance is adopted for the protection and promotion of the public health, safety, morals and general welfare of the community, as follows:

A. To guide the future growth and development of the Town in accordance with a comprehensive land use and population density that represents the most beneficial and convenient relationships among the residential, non-residential and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions; trends in population and mode of living, and having regard for the use of land, building development and economic activity, considering such conditions and trends both within the Town and with respect to the relation of the Town to areas outside thereof.

B. To provide adequate light, air and privacy; to promote safety from fire, flood and other danger, and to prevent over-crowding of the land and undue congestion of the population.

C. To protect and conserve the value of the land throughout the Town and the value of buildings appropriate to the various districts established by this Zoning Ordinance.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

D. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town.

E. To bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Zoning Ordinance, and to minimize the conflicts among the uses of land and buildings.

F. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

G. To provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings throughout the Town.

H. To limit concentrated development to an amount equal to the availability and capacity of public facilities and services.

I. To prevent the pollution of streams and ponds; to safeguard the water table, and to encourage the wise use and sound management of the natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

SECTION 104 APPLICATION OF REGULATIONS

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Zoning Ordinance. No building, land, water, structure, or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the health or safety of the community.

In interpreting and applying this Zoning Ordinance, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public safety, health, morals and general welfare. This Zoning Ordinance shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties; however, where this Zoning Ordinance imposes greater restrictions than are imposed by other Zoning Ordinances, rules, regulations, licenses,

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Zoning Ordinance shall prevail.

This Zoning Ordinance shall not apply to uses which were legal, prior, existing, non-conforming uses as defined herein.

Nothing herein contained shall require any change in plans or construction of a building for which a zoning permit has been issued.

All buildings under construction at the time of this Zoning Ordinance is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced for purposes of issuance of the initial Certificate of Compliance. The regulations contained in this Zoning Ordinance shall govern all future activities undertaken in such buildings.

SECTION 105 VALIDITY

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

SECTION 106 EFFECTIVE DATE AND REPEAL

This Zoning Ordinance shall take effect only after a summary thereof is published in the Batavia Daily News. The existing Zoning Ordinance of the Town of Pavilion (effective July 20, 1970) together with all changes and amendments thereto, the existing Mobile Home Ordinance, and any other enactments of the Town Board of the Town of Pavilion which are inconsistent with the provisions of this Zoning Ordinance are hereby repealed, except that should any section, clause, etc. of this Ordinance be declared invalid, the corresponding section of the 1970 Zoning Ordinance shall not be deemed to have been repealed.

ARTICLE II DEFINITIONS

SECTION 201 INTERPRETATION OF TERMS AND WORDS

For the purposes of this Zoning Ordinance, all words used in the present tense include the future tense. All words in the plural number include the singular number, and all words in the singular number include the plural number, unless the natural

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

construction of the word indicates otherwise. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. The word "shall" is mandatory and directory. The word "may" is permissive. The word "used" includes "designed, intended or arranged to be used".

SECTION 202 DEFINITIONS

Accessory Building/Structure - A building/structure which houses or contains an accessory use. Used mobile homes, utility trailers, motor vehicles, etc. shall not be considered or allowed as accessory buildings or structures.

Accessory Use - Use of building, structure or land customarily incidental and subordinate to principal use or building, and located on the same lot.

Adult Care - The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility - A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Ordinance an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses - The definitions associated with adult uses are contained in Section 613.

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

Animal Kennel – Building used for the housing, grooming, breeding, or training of domestic animals, including dogs and cats, that operates for commercial purposes.

Animal Waste Storage Facility - Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

Area Variance - The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Ordinance.

Bed and Breakfast - An owner-occupied one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two (2) weeks. Meals may or may not be provided.

Board of Appeals - The officially designated Town of Pavilion Board of Appeals as established by the Town Board in accordance with Section 267 of Town Law.

Boarding House - Owner-occupied dwelling wherein more than three (3) non-related, non-transient people are sheltered for profit.

Buffer - A strip of land covered with sufficient permanent evergreen planting (consisting of both trees and shrubs) to provide a continuous physical screen preventing visual access from one use to another and to reduce the noise intensity transferred from one use area to another, subject to approval of the Planning Board.

Building - A structure wholly or partially enclosed within exterior and party walls, and a roof, affording shelter to persons, animals or property.

Building Area - The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

Building Height - The vertical dimensions measured from the average elevation of the finished lot grade at the front of the building to the highest point of roof for flat roofs; to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

Building Line - A line formed by the intersection of a horizontal plane at average grade level and a vertical plane with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

Building Primary - A building or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

Campground/Recreational Vehicle Park - A parcel of land used or intended to be used, let, or rented for occupancy by campers or for occupancy by or of three (3) or more recreational vehicles, tents, or movable or temporary dwellings, rooms, or sleeping quarters of any kind.

Certificate of Compliance - A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certification shall acknowledge compliance with all the requirements of this Zoning Ordinance and such adjustments thereto granted by the Board of Appeals.

Child Day Care - Shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity (blood relationship) of the parents or stepparents of such child.

Child day care does not refer to care provided in:

(1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;

(2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;

(3) A facility providing day service under an operating certificate issued by the department;

(4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or

(5) A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center - Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Club House - A building used to house a social, fraternal or service organization or club not organized or conducted for profit and which is not an adjunct to or operated by or in conjunction with a public tavern, cafe, or other place of business.

Club Membership - A group of persons organized in accordance with the Not-For-Profit Law (example-fish and game clubs).

Cluster Development - A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development

occurs, but maintaining the density limitation imposed by said minimum lot area through the provision of open space as a part of the subdivision plan.

Commercial Excavation - A lot or part thereof used for the purpose of extracting stone, sand, gravel, or clay, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made. Commercial excavation shall be divided into two (2) categories based on the scale and type of operation as follows:

1. Major Excavation - All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations.
2. Minor Excavation - All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavations.

Community Area - An area or space within a mobile home park including fences, walls, and other minor structures, which is designated for joint use of occupants or restricted to non-residential use.

Community Residence - A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24-hour basis. For the purposes of this Zoning Ordinance, an approved community residence as defined herein is considered a one (1) family dwelling.

Community Structure - A structure within a mobile home park providing laundry, toilet, recreation, parking or other common facilities including management office and storage buildings.

Coverage - That percentage of the plot or lot area covered by the total building area.

Curb Level - The officially established grade of the curb in front of the mid-point of the lot.

Disposal Transfer Station - A solid waste management facility, other than a Recyclables Handling and Recovery Facility exclusively handling non-putrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

Drive-In Business - A drive-in business includes drive-in restaurant, refreshment stand, bank, car wash and the like where patrons enter the premises and are served or entertained in automobiles.

Dwelling Unit - One (1) or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one (1) family.

Dwelling, One Family - A dwelling containing one (1) dwelling unit only.

Dwelling, Two Family - A dwelling containing two (2) dwelling units only.

Dwelling, Multi Family - A dwelling containing three (3) or more dwelling units.

Electromagnetic Interference (EMI) - The interference to communication systems created by the scattering of electromagnetic signals.

Family - One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

Family Day Care Home - Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for under NYS Department of Social Services. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Ordinance, a family day care home shall be considered an accessory use to a one (1) family dwelling.

Family-Type Home - Adult care operated and provided for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Ordinance a family-type home shall be considered a home occupation.

Farm - Land used in agricultural production. Not less than ten acres of land used in the preceding two years for the production for sale of crops, livestock and livestock products of an average gross sales value of ten thousand dollars or more. Land used in agricultural production shall not include land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products.
Land used in agricultural production shall also include:

A. Rented land which otherwise satisfies the requirements for eligibility for an agricultural value assessment under Article 25 AA of the NYS Agricultural and Markets Law
(Article 25 AA, Ag&ML).

B. Land of not less than ten acres used for the production for sale of crops, livestock or livestock products, exclusive of woodland products, which does not

independently satisfy the gross sales requirement, where such land was used in such production for the preceding two years and currently is being so used under a rental arrangement of five or more years in conjunction with land which qualifies for an agricultural value assessment under Article 25 AA, Ag&ML;

C. Land used in support of a farm operation or land used in agricultural production, constituting a portion of a parcel, as identified on the assessment roll, which also contains land qualified for an agricultural value assessment under Article 25 AA, Ag&ML.

Factory-Manufactured Home (Modular Home) - A factory manufactured home incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. Such dwelling unit shall be constructed and installed in accordance with the requirements of Subchapter B of the State Fire Prevention and Building Code and shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council. Factory-manufactured homes shall be deemed to be one (1) or two (2) family or multiple dwellings.

Fence - An artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials other than temporary uses such as snow fences or rabbit fences.

Floor Area Total - The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the outside face of exterior walls, or from the center line of walls separating two (2) uses. Said areas shall not include areas below the average level of the adjoining ground, garage space, or accessory building space.

Garages, Private - A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

Garages, Public - Any garage other than a private garage, operated for gain.

Gasoline Station - Any building or land used for sale of motor fuel, oil and motor vehicle accessories, which may include facilities for lubricating, washing or servicing motor vehicles, but not painting or body repairs.

Gasoline Station-Market (Convenience Store) - A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, food or grocery market, or a commercial use which provides for gasoline sales. For the

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

purpose of this definition, sales from vending machines are not considered commercial service.

Grade, Established - The elevation of the center line of the streets established by the Town authorities.

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

Group Family Day Care - Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for under NYS Department of Social Services. For the purposes of this Zoning Ordinance, a family day care home shall be considered a home occupation use.

Habitable Floor Area - Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Home Occupation - An occupation or hobby which is carried on within a dwelling or accessory building, which is clearly incidental and secondary to the use of such a dwelling or accessory building for residential purposes, carried on only by members of the family residing on the premises. In particular, a home occupation may include, but is not limited to, the following: Art studio, barber shop, beauty parlors (when limited to two (2) work stations), cook, day nursing, draftsman, dress maker, electrical/radio/television repair, laundering, musician, photographer, professional office of a physician, dentist, lawyer, engineer, architect or accountant within a dwelling occupied by the same, upholsterer, teaching or tutoring, real estate offices, insurance offices, group family day care, school-age child care program or family-type home. A home occupation shall not be interpreted to include the following: motor vehicle or small engine repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants.

Indoor Recreational Facility - A parcel of land and building used or intended to be used for the following types of uses: theater, bowling, roller skating, ice skating, court games, and swimming.

Junk - Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous materials, tires and pallets.

Junkyard - A lot, land or structure, or part thereof, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, baled, packed, disassembled, handled, or abandoned, including: automobile or other vehicle or machinery, wrecking

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

or dismantling yards; house wrecking yards; used lumber yards; places or yards for storage of salvaged house wrecking and structural steel materials and equipment; or where more than one (1) vehicle is held outside of a completely enclosed building, whether for the purpose of resale or sale of used parts therefrom, for the purpose of reclaiming for use some or all the materials therein, or for the purpose of storage or disposing of the same for any other purpose. The term junkyard shall not include pawn shops and establishments for the sale, purchase or storage of used furniture, household equipment and clothing, or for processing of used, discarded or salvaged materials as part of manufacturing operations.

Exceptions:

(1) New, and/or used motor vehicles, which are operable, qualify for a current New York State Motor Vehicle inspection sticker under Article 5 of the New York Motor Vehicle and Traffic Law, and are offered for sale to the public, may be stored on premises on which new or used car sales may be conducted in accordance with the provisions of these regulations.

(2) A single motor vehicle offered for sale by a private individual for a total period of time, consecutive or nonconsecutive, not to exceed thirty (30) days.

(3) Storage of a single motor vehicle for use on a seasonal basis (i.e., a "winter car") provided such vehicle is intact, located in other than a front yard, and has a NYS Motor Vehicle Inspection sticker issued within the previous twelve (12) months affixed to it.

(4) The storage of vehicles subject to seasonal use such as travel trailers and snowmobiles even though such vehicles may be unlicensed during the part of the year they are not in use.

(5) The storage of agricultural equipment, machinery and vehicles in an Agricultural & Residential District (A&R-1 or A&R-2) which are a part of farm operations.

Light Industrial Use - The processing, fabrication, assembly or packaging of previously prepared or refined materials and/or prototype development, model making, service, repair or refinishing applications which do not involve the use of high hazard (see NYS Uniform Code Section 703.4) materials or processes, or result in the generation of noxious or annoying fumes, odors, noise or other disturbances.

Lot - A parcel or area of land, the dimension and extent of which are determined by the latest official records or by the latest approved map of a subdivision of which the lot is a part.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

Lot Area - An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating lot area.

Lot, Corner - A parcel of land at the junction of and fronting on two (2) or more intersecting streets.

Lot Coverage - That percentage of the lot area which is devoted to building area.

Lot Depth - The average horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot Line - A line of record bounding a lot which divides one (1) lot from another lot or from a public or private street or any other public space.

Lot Line, Front - In the case of a lot abutting upon only one (1) street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one (1) street, each street line shall be considered a front lot line.

Lot of Record - An area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed as filed in the official records of the County Clerk.

Lot, Through - A lot, other than a corner lot, which has frontage on more than one (1) street.

Lot Width - The horizontal distance between the side lot lines measured at right angles to its depth at the front lot line.

Lot, Zoning - A parcel of land occupied, or to be occupied, by a principal use, or uses, together with permitted accessory uses, yards, and open spaces, having frontage on an officially accepted street and having not less than the minimum area required by these regulations for a lot in the zoning district within which said parcel of land is located. A Lot of Record may or may not be a zoning lot.

Mobile Home - A structure, whether occupied or not, transportable in one (1) or more sections which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. For the purposes of this Zoning Ordinance, an unoccupied mobile home shall be considered the same as an occupied mobile home.

Mobile Home Lot - A designated site within a mobile home park or subdivision for the exclusive use of the occupants of a single mobile home.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

Mobile Home Park - A parcel of land under single management which has been planned and improved for the rental or lease of lots and the provision of services for mobile homes for non-transient use.

Mobile Home Pad - That part of an individual mobile home lot which has been reserved for the placement of the mobile home.

Mobile Home Subdivision - A parcel of land developed under single ownership where lots are sold for the use of mobile homes and where such services as water, sewage disposal, recreational facilities and laundry facilities may be provided by the management for a service charge.

Motel/Hotel - A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

Motor Vehicle Repair Shop - A building used for repair and servicing of motor vehicles.

Non-Conforming Building - A building which in its design or location upon a lot does not conform to the regulations of this Zoning Ordinance for the zone in which it is located.

Non-Conforming Lot - A lot of record existing at the date of the passage of this Zoning Ordinance which does not have the minimum width or contain the minimum area for the zone in which it is located.

Non-Conforming Use - Use of a building or of land that does not conform to the regulations of the zone in which it is located.

Nursery - Any place used commercially as a garden for the open cultivation and growing of trees, shrubs and other plants, including the replanting of said plants grown at places other than the nursery, exclusive of retail sales.

Outdoor Recreation Facility - A parcel of land used or intended to be used for the following types of uses: golf, tennis, swimming, picnicking, court games, field games, skiing, ice skating, sledding or fish and game club. An outdoor recreation facility shall not include motorized vehicle race tracks or courses.

Outdoor Solid Fuel Burning Device - A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

Parking Space, Off-Street Automobile - An off-street area suitable for vehicular parking and having direct access to a road. The minimum area per automobile shall be two hundred (200) square feet with a minimum width of ten (10) feet.

Patio - An outdoor living space with a floor designed to supplement the residential living area.

Planning Board - The officially designated Pavilion Town Planning Board, as established by the Town Board in accordance with Chapter 62 of the Consolidated Laws, Article 16, Sections 271 and 272.

Pond - A body of water (other than a swimming pool) created through construction or other similar method, having a depth of two (2) or more feet.

Primary Use - The main or principal use to which a building or lot is to be used.

Public Utility - Telephone, electric and cable television, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer station; and all other facilities; equipment and structures necessary for conducting a service by a government or a public utility.

Recreational Vehicle - A vehicle type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are:

A. Travel Trailer - A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and of a body width of no more than eight (8) feet and a body length of no more than thirty-two (32) feet when factory equipped for the road.

B. Camp Trailer - A vehicular portable unit, mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle.

C. Truck Camper - A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two (2) basic types:

(1) Slide-in camper - A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.

(2) Chassis-mount camper - A portable unit designed to be affixed to a truck chassis.

D. Motor Home - A vehicular unit built on a self-propelled motor vehicle chassis.

Recyclables Handling and Recovery Facility - Recyclables handling and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected and which is regulated by 6 NYCRR Part 360.

Restaurant - Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Restaurant-Drive-In - A restaurant at which food is sold for consumption off the premises. For the purposes of this Zoning Ordinance, a restaurant which sells food for both on premises and off-premises consumption shall be considered a drive-in restaurant.

School-Age Child Care Program - Care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

Shadow Flicker - The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

Secondary Use - A subordinate use of a lot or building, the purpose of which is incidental to that of the primary use and which is located on the same lot.

Service Station, Motor Vehicle - See "Gasoline Station".

Self-Service Storage Facility - A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self-service storage facility.

Sign - Any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others, but not including any flag, badge, or insignia of any public, quasi-public, civic, charitable or religious groups.

Sign, Area - The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

Sign, Advertising - An advertising sign directing attention to a business, commodity, service, entertainment, etc. conducted, sold or offered elsewhere than upon the premises where such sign is located.

Sign, Business - A business identification sign containing the name of the business enterprise located on the same premises.

Site Plan - A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Ordinance, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan. Plats showing lot, blocks or sites which are subject to review under Section 276 of NYS Town Law and/or any local laws of the Town of Pavilion regulating the division of property shall not be subject to review as site plans under this Zoning Ordinance unless a zoning application is submitted.

Skilled Trade Shop - A shop where an individual involved in a skilled building trade (i.e., carpenter, plumber, electrician, etc.) assembles custom fixtures, cabinets, etc. for installation by him/her at a job site location. No retail sales of materials and/or products directly to the public shall be allowed on site.

Special Use Permit - A specifically designated use that would not be appropriate generally without restriction in a zoning district, but which, if controlled as to number, area, location, relation to the neighborhood, or otherwise, in the opinion of the Planning Board, promotes the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and/or the general welfare.

Stable, Private - An accessory building in which one (1) or more horses or other livestock are kept for private use and not for hire, remuneration, or sale.

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

Stabling of Farm Animals - A concentration of livestock, poultry or fur bearing animals within a building, structure or other defined area for the purpose of housing or feeding.

Street/Road - A public thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

Street/Road Grade - The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

Street/Road Right-of-Way Line - That line determining the limit of the highway rights of the public, either existing or contemplated.

Structure - An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

Swimming Pool - All private or semi-private swimming, bathing, wading pools or tanks of a permanent or semi-permanent nature which have a depth of two (2) feet or more and which are erected or constructed either above, below or partly above and below grade level. All farm ponds which come under other local or state jurisdiction shall be excluded from this Zoning Ordinance.

Swimming Pool, Private - A swimming pool operated as a secondary use to a residential dwelling unit or units, located on an individual residential lot and installed and operated in conformance with Section 609.

Swimming Pool, Public - A public or privately owned pool open to the general public or on a membership basis and having appropriate dressing room facilities, recreation facilities and off-street parking area.

Temporary Use - An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this Zoning Ordinance. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

Total Height - The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

Use - The specific purposes for which land, water, structure or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

Use Variance - The authorization by the Zoning Board of Appeals for use of land for a purpose which is not allowed or is prohibited by this Zoning Ordinance.

Utility, Public - Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television, or other similar service.

Warehouse - A building used primarily for the storage and/or distribution of goods and materials.

Wind Energy System - Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or other component used in the system.

Wind Farm System - A wind energy system that includes more than one wind tower.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

Wind Tower - The monopole, freestanding, or guyed structure that supports a wind turbine generator.

Yard - An open unoccupied space on the lot, plot, or parcel of land on which the building stands, which extends the entire length of the front or rear of interior lot line.

Yard Area, Front - An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of that lot. Setback line shall be synonymous with the rear limit of the required front yard area.

Yard, Rear - A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a rear yard shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

Yard, Side - An open, unoccupied space between the side line of the lot and the nearest line of the building. It shall extend from the front yard to the rear yard or in the absence of either, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.

ARTICLE III ESTABLISHMENT OF ZONING DISTRICTS

SECTION 301 ZONING DISTRICT CLASSIFICATION

The Town of Pavilion is hereby divided into the following zoning districts and overlay zones:

R	Residential District
A&R-1	Agricultural & Residential District 1
A&R-2	Agricultural & Residential District 2
C	Commercial District
FPO	Flood Plain Overlay Zone (information purposes only)
PUD	Planned Unit Development District

SECTION 302 ZONING MAP ESTABLISHED

Said zoning districts are bounded and defined as shown in a map entitled "Zoning Map of the Town of Pavilion, N.Y.". The official copy of the zoning map is hereby made a part of this Zoning Ordinance and is on file with the Town Clerk.

SECTION 303 INTERPRETATION OF ZONING DISTRICT BOUNDARIES

Where uncertainty exists as to the location of any boundaries shown on the zoning map, the following rules shall apply:

A. Zoning district boundary lines are intended to follow streets, right-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.

B. Where zoning district boundaries are indicated as following approximate streets, right-of-way, or water courses, the center lines thereof shall be construed to be such boundaries.

C. Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs or other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.

D. Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.

E. If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

SECTION 304 LOTS IN TWO OR MORE DISTRICTS

Where a zoning district boundary line divides a lot in single ownership at the effective date of this Zoning Ordinance, leaving part subject to permissive regulations and part subject to prohibitive regulations, the Zoning Board of Appeals after public hearing may permit an extension of the use of that lot into the district where it is prohibited provided the extension does not extend more than fifty (50) feet into that district. Furthermore, the Board may impose conditions of that extension as protection to neighboring property.

SECTION 305 EXISTING LOTS OF RECORD

A single family dwelling, mobile home, and/or customary accessory buildings may be placed on any undeveloped lot of record existing prior to the effective date of this Zoning Ordinance and having a minimum of one hundred (100) feet in width and twenty thousand (20,000) square feet in area. This provision shall apply even though such lot fails to meet the requirements for area, width or yard size, provided that the other requirements of this Zoning Ordinance are met. The minimum yard requirements for single family dwellings on existing lots shall be as follows:

1. Front.....Fifty (50) feet
2. Side.....Fifteen (15) feet
3. Rear.....Thirty-five (35) feet

ARTICLE IV **GENERAL REGULATIONS**

The provisions of this Zoning Ordinance shall be subject to such exceptions, additions or modifications as herein provided by the following general supplementary regulations. The dimensions and restrictions set forth in Schedule A are incorporated herein and made a part of this Zoning Ordinance.

SECTION 401 **BUILDINGS, USES AND LOTS**

A. One Principal Building and Use Per Lot - There shall not be more than one (1) principal building and one (1) principal use on any one lot in the Agricultural & Residential A&R-1, A&R-2 and the Residential - R Districts except as provided for in the following:

(1) An approved multifamily dwelling project,

(2) A single family dwelling accompanying a non-residential use permitted on a lot in A&R-1, A&R-2 and R Districts, or

(3) A single family dwelling accompanying a non-residential use requiring a Special Use Permit in A&R-1, A&R-2 and R Districts, if approved by the Planning Board as part of the Special Use Permit Application Process.

B. Yard and Open Space for Every Building - No yard or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be included as any part of the yard or open space for any other building. Also, no yard or any other open space on one lot shall be considered as a yard or open space for a building on any other lot.

C. Subdivision of a Lot - Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Zoning Ordinance with respect to the existing building, including yards and other required spaces in connection therewith. No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this Zoning Ordinance.

D. Irregularly Shaped Lots - Where a question exists as to the proper application of any of the requirements of this Zoning Ordinance to a particular lot or parcel because of the peculiar or irregular shape of the lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provisions of Section 807.

E. Lots Under Water or Subject to Flooding

1. No more than twenty-five (25) percent of the minimum area requirements of a lot may be met by land which is under water or subject to periodic flooding.
2. Land which is under water and is open to use by persons other than the owner shall be excluded from the computation of the minimum area of a lot.
3. Land in the bed of a stream not exceeding five (5) feet in width at mean water level, and land in a pond not exceeding one hundred fifty (150) square feet in area shall not be considered as under water for the purpose of computing lot area.
4. Where any part of a lot is separated by the main body of water, such separate land shall not be included in computing lot area.

F. Required Road Frontage - No zoning permit shall be issued for any structure unless the lot upon which that structure is to be built has the required frontage on a road, as defined herein, which frontage provides the actual access to such structure, and which road shall have been suitably improved to Town Board standards or a bond posted therefore to the satisfaction of the Town Board or Planning Board, as provided in Section 280a of the Town Law.

G. Parts of Lot Not Counted Toward Area Requirements - No part of such lot less in width than one-half (1/2) of the minimum requirements for the district in which it is located shall be counted as part of the minimum required lot area.

H. Adjacent Lots - Where two (2) or more adjacent lots are at the time of the effective date of this Zoning Ordinance in the same ownership, they shall not be considered a single lot, unless they are described as one (1) parcel in a deed recorded at the Genesee County Clerk's Office.

I. Yards on Corner Lots - Any yard adjoining a street shall be considered front yard for the purpose of this Zoning Ordinance and shall comply with all the requirements for a front yard in the district in which located. When dealing with corner lots, one of the remaining yards shall be considered a side yard and the other shall be considered a rear yard.

**SECTION 402 SUPPLEMENTARY YARD REGULATIONS, STRIPPING,
AND EXCAVATIONS**

A. Porches - No unroofed structures shall be considered part of a building insofar as yard requirements are concerned. A roofed porch shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

B. Projecting Horizontal Architectural Features - Architectural features, such as window sills, belt courses, porches, railings, chimneys, cornices, eaves or bay windows, shall not project more than four (4) feet into any required yard.

C. Fire Escapes - Open fire escapes may extend into any required yard.

D. Visibility at Intersections - On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three (3) feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting rights-of-way lines and a straight line joining said road lines at points which are forty (40) feet distance from the point of intersection, measured along said rights-of-way lines. This paragraph shall not apply to existing trees, provided that no branches are closer than ten (10) feet to the ground.

E. Buffer Strip - Wherever a buffer strip is required by this Zoning Ordinance, it shall meet the following standards:

1. Be at least ten (10) feet in width along any commercial or industrial lot line abutting a lot in a Residential or Agricultural-Residential District.

2. Be of evergreen planting of such type, height and spacing as, in the judgment of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plans and specifications for such planting shall be filed with the approved plan for the use of the lot.

3. A wall or fence of which the location, height, and design has been approved by the Planning Board, may be substituted for the required planting.

F. Open Space - Commercial and Industrial Districts - Where a Commercial or Industrial District abuts a Residential or Agricultural-Residential District, there shall be at least fifty (50) feet of open space within the Commercial or Industrial District along such abutting line, which open space shall include a buffer strip pursuant to the provisions of Subsection E of this Section.

G. Stripping of Top Soil

1. Topsoil, defined for the purpose of this Zoning Ordinance, as the natural surface covering land to a depth of eight (8) inches, shall not be removed from a premise except as hereinafter provided in this Section.

2. The provisions of this Section shall not apply to the removal or sale of alluvial deposits or of the materials excavated resultant from the establishment of a farm pond or to the excavation or gravel or other fill except that no gravel or fill shall be excavated less than five hundred (500) feet from any public road.

3. An application for a permit for the removal of topsoil or muck shall state the details of the program for the rehabilitation and reconditioning of the land after stripping. Such program shall include the details of preparation of the surface of the soil and the fertilization, liming and seeding, or for the covering of not less than five (5) inches of topsoil or five (5) inches of tillable muck conditioned, fertilized and seeded. The application shall be subject to review and approval of the Planning Board as to the sufficiency of the program. No permit shall be issued until the application shall have been reviewed by the Planning Board and approved by such Board as being sufficient to restore the land.

4. No permit shall be authorized or issued for an area in excess of five (5) percent of the gross area of the premises during any one calendar year.

5. Subsequent permits shall not be authorized or issued for any premises unless the provisions of this Section and the conditions of any previous application have been fulfilled to the satisfaction of the Planning Board.

6. No permit shall be authorized or issued for the stripping of topsoil, muck or other natural material from any premises on which any real property taxes are delinquent.

7. The Planning Board, for premises of 20 acres or less in area, may authorize the removal, in any one calendar year, of topsoil in an amount greater than five (5) percent of the area of the premises, but not to exceed ten (10) percent of the gross area of the premises.

H. Excavation During Construction - In any construction, open excavations shall be limited to a maximum of sixty (60) days, with appropriate fencing, barricades or covering.

SECTION 403 LOCATION OF ACCESSORY BUILDINGS AND STRUCTURES

A. Accessory buildings are permitted as follows:

1. One-story accessory building having a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall not be located closer than eight (8) feet to the rear and side lot lines in the rear yard area. Accessory buildings shall not be located in front of the principal building, i.e., the front yard.

2. The location of accessory buildings having a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in compliance with the required yard areas of the respective districts and shall not be located in front of the principal building, i.e., the front yard.

B. Accessory structures (other than buildings) are permitted as follows:

1. Accessory structures (other than buildings) equal to or less than fifteen (15) feet in height, including satellite dishes with a diameter of greater than three (3) feet but less than thirteen (13) feet, shall not be located closer than fifteen (15) feet to the rear and side lot lines and shall be located in the rear yard area. Satellite dishes less than (3) feet in diameter may be located anywhere on a lot provided the minimum front, side and rear yard distance setbacks are maintained.

2. Accessory structures (other than buildings) greater than fifteen (15) feet in height, including production model Wind Energy Conversion Systems (windmills) and satellite dishes greater than thirteen (13) feet in diameter, shall be located in the rear yard in compliance with the required yard area of the respective district.

SECTION 404 NONCONFORMING USES, STRUCTURES AND LOTS

A. Lawful Existing Uses or Structures

Except as otherwise provided in this Section, the lawful use of land or structures existing at the effective date of this Zoning Ordinance may be continued, although such use or structure does not conform to the regulations specified in this Zoning Ordinance for the zone in which such land or structure is located, provided, however:

1. That a nonconforming lot shall not be further reduced in size.
2. That a nonconforming building shall not be altered unless such alteration would tend to reduce the degree of nonconformance.
3. That a nonconforming use may not be expanded.
4. No existing conforming use shall be changed to a nonconforming use.

B. Abandonment

A nonconforming use shall be abandoned when a cessation occurs of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

C. Restoration and Repair

Nothing in this Zoning Ordinance shall prevent the restoration and repair or continuation of use of a nonconforming building destroyed or partly destroyed by a disaster, provided that restoration is commenced within eight (8) months after date of destruction and is completed within sixteen (16) months after date of destruction.

D. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

E. Alterations

A nonconforming building may not be structurally altered during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Zoning Ordinance.

F. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein or created thereby.

SECTION 405 USES NOT PERMITTED

Uses which are not specifically permitted by this Zoning Ordinance are prohibited.

SECTION 406 MINIMUM DIMENSIONAL CRITERIA

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least sixteen (16) feet. This provision shall not prohibit the construction of smaller additions or projections, as long as the dwelling unit without such additions or projections has a minimum outside width of at least sixteen (16) feet. This minimum dimensional criteria shall be required at all conventional built (i.e., on-site and factory manufactured) units and mobile homes.

SECTION 407 MINIMUM ENCLOSED LIVING AREA

A. In R, A&R-1, and C Districts one (1) family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) as follows:

- (1) One (1) story dwelling 950 square feet on first floor.
- (2) Two (2) story dwelling 750 square feet on first floor.

B. In R, A&R-1, and C Districts two (2) family and multiple family dwellings shall have a habitable floor area per unit as follows:

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
1 bedroom	550
2 bedroom	650
3 bedroom	800
4 bedroom	1,000
5+ bedroom	As determined by Planning Board

C. In A&R-2 Districts the following minimum floor areas shall apply:

(1) One and two family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) as follows:

- (a) One (1) story dwelling 1,350 square feet on first floor.

(b) Two (2) story dwelling 900 square feet on first floor, minimum of 1,500 square feet total.

Multi-family dwelling 650 square feet per dwelling unit.

SECTION 408 DWELLING FRONT YARD GRADE AND DRAINAGE

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one (1) foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise and approved by the Town Code Enforcement Officer. The Zoning Enforcement Officer and/or Code Enforcement Officer may require any applicant for a zoning and/or building permit to provide any documentation deemed necessary in order to determine compliance with applicable flood plain and wetlands regulations.

SECTION 409 STABLING FARM ANIMALS

A. There shall be no stabling of farm animals or storage of manure, fertilizer, or similar odor or dust producing substance within the C District unless a suitable site plan has been approved by the Planning Board. Such site plan shall include an animal waste disposal plan which is acceptable to the Genesee County Soil and Water Conservation District. Stabling and/or storage shall be permitted in the A&R-1, A&R-2 and I Districts provided the following restrictions are observed:

1. No such stabling or storage shall take place within 500 feet of an R or C District.
2. No such stabling or storage shall take place within 100 feet of a lot line.

SECTION 410 HEIGHT MODIFICATIONS

A. The height limitations of this Zoning Ordinance shall not apply to church spires, belfries, cupolas, domes, silos, grain bins and other buildings not used for human occupancy.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

B. Chimneys, ventilators, skylights, residential television and radio antenna, solar panels and similar features, and necessary mechanical appurtenances usually carried on and above the roof level may exceed the height limitations of this Zoning Ordinance by not more than fifteen (15) feet. Television and radio antennae affixed to the ground shall not exceed a height of fifty (50) feet.

C. The provisions of this Zoning Ordinance shall not apply to prevent erection of a parapet wall or cornice for ornament which may extend above the height limits of this Zoning Ordinance by up to five (5) feet.

D. Public and quasi-public buildings, schools, churches and other similar permitted uses may exceed the maximum height specified for the zone district provided that the minimum front, side and rear yard setbacks are increased by two (2) feet for each one (1) foot of such additional height up to a maximum height of fifty (50) feet and provided that on-site fire protection facilities approved by the local fire company are installed.

SECTION 411 OUTSIDE SOLID FUEL BURNING DEVICES

A. Outside solid fuel burning devices shall not be installed in an R District or within 500 feet of such district. When installed outside the R District (and the required 500 foot buffer), such units shall be installed and operated in a manner as will not allow smoke or fumes to enter buildings on surrounding properties.

ARTICLE V ZONING DISTRICT REGULATIONS

SECTION 501 AGRICULTURAL & RESIDENTIAL-1 DISTRICT A&R-1

The Agricultural & Residential-1 District is designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A&R-1 District should be aware of such inherent conflicts and that residences are a secondary use.

A. Permitted Uses

The following uses are permitted in the Agricultural & Residential-1 District:

1. Farm and all usual agricultural operations including stabling of farm animals (see Section 409)
2. One (1) and two (2) family dwelling
3. Mobile home (see Sections 406 and 701)
4. Home occupation
5. Church and other places of worship, parish house, convent, rectory and parsonage
6. School, public park, playground, library, municipal building and water system and similar public uses
7. Farm water supply, conservancy and fire protection pond located not less than one hundred (100) feet from any street or property lines
8. Private stable
9. Accessory use and building

B. Uses Requiring A Special Use Permit

The following uses are permitted in an Agricultural & Residential-1 District upon the issuance of a special use permit:

1. Multi-family dwelling(s)
2. Motel
3. Wind Energy Conversion System-Production Model
4. Outdoor recreation facility
5. Indoor recreation facility
6. Club
7. Airport landing strip

8. Animal Kennel
9. Motor vehicle repair shop
10. Community center
11. Professional office
12. Nursing home
13. Public utility
14. Public stable
15. Commercial greenhouse
16. Commercial excavation
17. Temporary mobile home
18. All terrain vehicle, snowmobile, go-kart, motorcycle and motor vehicle race track and course
19. Mobile home park
20. Child day care center
21. Adult care facility
22. Cluster residential development (see Section 617)
23. Bed and breakfast
24. Self-service storage facility
25. Light industrial use (see Section 615)
26. Skilled trade shop (see Section 616)
27. Animal waste storage facility (see Section 618)
28. Commercial Communications Tower (see Section 619)
29. Ponds (see Section 620)

SECTION 502 AGRICULTURAL & RESIDENTIAL-2 DISTRICT A&R-2

The Agricultural & Residential-2 District is somewhat more restrictive than the A&R-1 District but is still designed to accommodate primarily agricultural uses in order to preserve the Town's agricultural base and maintain its rural nature, but residential uses are permitted therein. It is recognized, however, that agricultural and residential uses have a number of inherent conflicts between them. Individuals who plan to develop residential uses within the A&R-2 District should be aware of such inherent conflicts and that residences are a secondary use.

A. Permitted Uses

The following uses are permitted in the Agricultural & Residential-2 District:

1. Farm and all usual agricultural operations including stabling of farm animals (see Section 409)

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

2. One (1) and two (2) family dwelling
3. Home occupation
4. Church and other places of worship, parish house, convent, rectory and parsonage
5. School, public park, playground, library, municipal building and water system and similar public use
6. Farm water supply, conservancy and fire protection pond located not less than one hundred (100) feet from any street or property lines
7. Private stable
8. Accessory use and building

B. Uses Requiring a Special Use Permit

The following uses are permitted in an Agricultural & Residential-2 District upon the issuance of a special use permit:

1. Multi-family dwelling(s)
2. Motel
3. Wind Energy Conversion System-Production Model
4. Outdoor recreation facility
5. Indoor recreation facility
6. Club
7. Airport landing strip
8. Animal kennel
9. Motor vehicle repair shop
10. Community center
11. Professional office
12. Nursing home
13. Public utility
14. Public stable
15. Commercial greenhouse
16. Commercial excavation
17. All terrain vehicle, snowmobile, go-kart, motorcycle and motor vehicle race track and course
18. Child day care center
19. Adult care facility
20. Cluster residential development (see Section 617)
21. Bed and breakfast
22. Self-service storage facility
23. Commercial Communication Towers (see section 619)
24. Ponds (see Section 620)

SECTION 503 RESIDENTIAL DISTRICT - R

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 20,000 square feet. The purpose of this district is to encourage residential growth in areas of the Town which have existing concentrations of residential uses. The Residential District will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A. Permitted Uses

The following uses are permitted in the Residential District:

1. One (1) family dwelling
2. Church and other places of worship, parish house, convent, rectory and parsonage
3. School, public park, playground, library, municipal building and water system and similar public uses
4. Accessory use and building

B. Uses Requiring Special Use Permit

The following uses are permitted in a Residential District upon issuance of a special use permit:

1. Two (2) family dwelling
2. Multi-family dwelling(s)
3. Home occupation
4. Outdoor recreation facility
5. Professional office
6. Community center
7. Nursing home
8. Public utility (See Section 605)
9. Child day care center
10. Adult care facility
11. Cluster residential development (see Section 617)
12. Bed and breakfast
13. Boarding House

SECTION 504 COMMERCIAL DISTRICT - C

The Commercial District is designed to accommodate commercial, service, and light industrial uses.

A. Permitted Uses

The following uses are permitted in the Commercial District:

1. Retail use and service
2. Restaurant
3. Motel
4. Professional office
5. Personal service business
6. Wholesale trade
7. Office, bank
8. Self-service storage facility

B. Uses Requiring A Special Use Permit

The following uses are permitted in the Commercial District upon the issuance of a special use permit:

1. Drive-in business (see Section 604)
2. Motor vehicle repair shop (see Section 604)
3. Gasoline station (see Section 604)
4. Gasoline station-market (see Section 604)
5. Indoor recreation facility
6. Motor vehicle sales
7. Recreational vehicle and mobile home sales and service
8. Public utility (See section 605)
9. Enclosed light industrial uses involving the processing, fabrication, assembly or packaging of previously prepared or refined materials (see Section 615)
10. Machinery and transportation equipment, sales, service, and repair
11. Residential uses
12. Child day care center
13. Public and/or private stable including stabling of farm animals (see Section 409)
14. Animal Kennel
15. Commercial Communications Towers (see Section 619)
16. Ponds (see Section 620)

SECTION 505 INDUSTRIAL DISTRICT I

The I District is designed to accommodate both light and heavy industrial uses.

A. Permitted Uses

The following uses are permitted in the Industrial District:

1. Enclosed manufacturing industry
2. Enclosed warehouse or wholesale use
3. Public utility
4. Enclosed service and repair
5. Machinery and transportation equipment, sales, service and repair
6. Enclosed industrial processes and service
7. Freight or trucking terminal
8. Contractor's yard
9. Public garage
10. Farm and all usual agricultural operations including stabling of farm animals (see Section 409)
11. Accessory building and use

B. Uses Requiring Special Use Permit

1. Gasoline station
2. Commercial excavation (see Section 607)
3. Adult uses (see Section 613)
4. Junkyards (see Section 610)
5. Child day care center
6. Self-service storage facility
7. Recyclables handling and recovery facility
8. Disposal transfer station
9. Commercial Communication Towers (see Section 619)
10. Ponds (see Section 620)

SECTION 506 PLANNED UNIT DEVELOPMENT - PUD

A. Purpose

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land,

buildings, circulation systems and utilities; to provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities; to permit a variety of residential types and/or non-residential uses; and to preserve natural and scenic qualities of the site during the development process.

B. General Requirements

1. Minimum Area

The minimum area required to qualify for a Planned Unit Development shall be five (5) contiguous acres of land.

2. Ownership

The tract of land for a Planned Unit Development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner, or jointly by owners, of all property included in a project. In the case of multiple ownership, the approved Planned Unit Development plan is binding on all owners.

3. Location

The Planned Unit Development District shall be applicable to any zoning district or parts of zoning districts where the applicant can demonstrate that the characteristics of his holdings and plan will meet the objectives of this Section.

4. Common Open Space

Common open space in a Planned Unit Development may be one (1) or more sites for use in common by all of the occupants within the project area or by the residents of the Town as a whole, depending upon dedication of such sites. Such common open space may be retained in private ownership or received in dedication by the Town. If the open space remains in private ownership, arrangements for the operation, maintenance, improvement and liability of such common property and facilities must be approved by the Town Board. No common open space, so designated by the proposal and approved by the Town Board, may be thereafter developed or disposed of except with the approval of the Town Board.

5. Permitted Uses

Any uses identified as permitted uses or uses allowed by special permit as set forth in this Zoning Ordinance may be permitted in a Planned Unit Development.

6. Mix of Uses

The mix of permissible uses shall be determined by the Town Board.

C. Application Procedure and Approval Process

1. Conceptual Review

Before submission of a petition for rezoning as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his proposal before entering into any binding commitments or incurring substantial expenses of site plan preparation and the required documentation.

2. Rezoning Procedure

a. Submission of Petition

All petitions for the establishment of Planned Unit Development districts shall be submitted to the Town Clerk (see Paragraph d. of this Subsection).

b. Notification and Referral

Within five (5) working days, the Town Clerk shall notify the Town Board of the petition and shall refer the petition and all supporting documentation to the Town Planning Board for their review and recommendations.

c. Planning Board Review

Within sixty-two (62) days of receipt of the application, the Town Planning Board shall review the petition and shall recommend approval, approval with modifications or disapproval. Failure to act within 62 days or such longer period as may be consented to shall cause such application to be forwarded to the Town Board without a recommendation.

d. Submission Requirements

The applicant shall submit a minimum of four (4) sets of such plans, and drawings (additional sets may be required). These four (4) sets shall be submitted to the Town Clerk. The preliminary plans shall be accompanied by such maps, charts and written material necessary for the Boards to make a preliminary judgment on the suitability and impact of the proposed Planned Unit Development on the Town. Preliminary plans should include the following:

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

(1) A preliminary site plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.); the number and type of residential structures and dwelling units within each residential area; the approximate square footage of non-residential use within each nonresidential area; the amount of open space; traffic circulation; and the surrounding land uses.

(2) A written preliminary description of the proposal including the total number of acres in the site; the estimated number and type of housing units; the estimated residential and nonresidential density; the major planning assumptions and objectives; the probable effect on adjoining properties; and the effect on the overall Town development plan and the effect on this Zoning Ordinance.

e. Review Considerations - In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Ordinance, and the impact on the established land uses in the area, overall density of development, traffic circulation, the provision of open spaces, and the effect on schools and other municipal facilities.

f. Town Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and review of the proposed zone change by the County Planning Board, amend the Zoning Ordinance so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved for the Planned Unit Development, such action does not authorize improvements to the rezoned land.

3. Final Plan

a. Ownership - Before final approval of the Planned Unit Development, the applicant must show evidence of the full legal ownership in the land.

b. Submission of Final Plan

Upon approval of the zone change, the applicant has one (1) year in which to submit a final plan to the Town Clerk.

c. Notification and Referral

Within five (5) working days, the Town Clerk shall notify the Town Board of the petition and shall refer the petition and all supporting documentation to the Town Planning Board for their review and recommendation.

d. Planning Board Review

Within sixty-two (62) days of receipt of the application, the Town Planning Board shall review the petition and shall recommend approval, approval with modifications or disapproval. Failure to act within 62 days or such longer period as may be consented to shall cause such application to be forwarded to the Town Board without a recommendation.

e. Submission Requirements

The applicant shall submit a minimum of four (4) complete sets of the final plan and drawings (additional sets may be required). These four (4) sets shall be submitted to the Town Clerk. The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat. The final plan shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Town to make an impartial judgment on the suitability and impact of the proposed Planned Unit Development on the Town. Such material shall include, but not be limited to, the following:

(1) A mapped development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of non-residential use within each nonresidential area and the amount of open space.

(2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Town development plan and the effect on this Zoning Ordinance.

(3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

(4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Town due to the development, the projected new

population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

f. Review Considerations - In review of the final plan, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Ordinance, and the protection of the established and permitted uses in the area. It shall consider the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

g. Town Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Town Board may, after a public hearing and review of the final plan by the County Planning Board, approve, approve with modifications or disapprove the final plan. The Town Board shall make final decision in accordance with official Town development policies and may impose conditions relating to that plan.

D. Design Standards

1. Area Requirements

Overall area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements and the Town Board approves such modifications.

2. Traffic and Circulation

All proposed public roads shall meet the design and construction specifications set forth by the Town.

Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one (1) or more of the following methods:

- a. Public dedication
 - b. Establishment of a Home Owners Association
 - c. Retention of responsibilities, control and maintenance by the developer
4. Performance and Maintenance Bonds

Performance and maintenance bonds may be required at the discretion of the Town Board.

SECTION 507 FLOOD PLAIN OVERLAY ZONE - FPO (INFORMATION ONLY)

The Flood Plain Overlay Zone is shown on the zoning map of the Town of Pavilion for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Pavilion (Community Number 360282B).

In addition to the Zoning Ordinance, areas within special flood hazard areas are regulated by the Town of Pavilion's Flood Damage Prevention Law which is administered by the Zoning Enforcement Officer or other designee of the Town Board. These requirements are in addition to those contained in the underlying zoning district.

There is hereby established a Flood Plain Overlay Zone (FPO), the boundaries of which are delineated on the Zoning Map. This Section provides additional special requirements for areas within the defined Flood Plain Overlay Zone. These requirements are in addition to those contained in the underlying zoning district.

ARTICLE VI SUPPLEMENTARY REGULATIONS

SECTION 601 OFF-STREET PARKING SPACE REQUIREMENTS

For every building hereafter erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto a public road without backing out onto it. The Planning Board, through site plan review, may modify the requirements of this Section.

A. Residential Uses

1. Two (2) parking spaces for every dwelling unit.
2. Home occupations: The number of parking spaces required of the existing residential uses (see above), plus three (3) spaces and one (1) space for each 100 square feet of space used for the home occupation.

B. Motel

Three (3) parking spaces, plus one (1) space for every guest room.

C. Places of Public Assembly

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

D. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

E. Commercial

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every 200 square feet of commercial area.

F. Restaurant, Eating and Drinking Establishment (other than drive-in)

One (1) parking space for every 100 square feet of floor area.

G. Industrial, Wholesale, Warehouse, Storage, Freight, and Trucking Uses

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

H. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

SECTION 602 OFF-STREET LOADING SPACE REQUIREMENTS

Every building occupied for the purpose of commercial or industry shall provide adequate space for off-street loading and unloading of vehicles.

SECTION 603 MODIFICATION OF PARKING AND LOADING REQUIREMENTS

The Planning Board may modify requirements for parking and loading spaces.

SECTION 604 GASOLINE STATION, GASOLINE STATION/MARKET, MOTOR VEHICLE REPAIR SHOP, DRIVE-IN BUSINESS

Gasoline station, gasoline station/market, motor vehicle repair shop, motor vehicle sales agency and drive-in businesses shall comply with the following:

1. Lots containing such uses shall not be located within 300 feet of any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.
2. Lot size shall be at least 40,000 square feet.

3. Lot frontage shall be at least 200 feet.
4. Lot depth shall be at least 150 feet.
5. Pumps, other service devices, and fuel and oil storage shall be located at least 30 feet from all lot lines.
6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.
7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be 30 feet.

SECTION 605 PUBLIC UTILITY FACILITY

Public utility installations shall comply with the following:

- A. Such facility shall be surrounded by a fence approved by the Planning Board.
- B. The facility shall be landscaped in a manner approved by the Planning Board.
- C. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
- D. Any other requirements as determined by the Planning Board.

SECTION 606 SIGNS

A. General Standards

Every sign shall be designed, attached, supported, and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.

4. Not prevent free access to any door, window, or fire escape.

Signs may be illuminated by a steady light provided that lighting does not illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare.

B. Off-Premise Signs

Off-premise advertising signs are not permitted in any district.

C. Exempt Signs (Require No Permits)

1. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations not exceeding six (6) square feet.

2. Flags and insignia of any government, except when displayed in connection with commercial promotion.

3. On-premise directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or non-illuminated, not exceeding four (4) square feet per face and six (6) feet in height. Business names and advertising messages shall not be allowed.

4. Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.

5. Number and name plates identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.

6. Lawn signs identifying residents, not exceeding one (1) square foot (per side). Such signs are to be non-illuminated except by a light which is an integral part of a lamp post if used as a support, with no advertising message thereon.

7. Private-owner merchandise sales signs for garage sales and auctions, not exceeding four (4) square feet for a period not exceeding seven (7) days.

8. Temporary non-illuminated "For Sale", "For Rent", real estate signs and signs of similar nature, concerning the premises upon which the sign is located. In a residential or agricultural-residential zoning district, one (1) sign not exceeding four (4) square feet per side and located not less than ten (10) feet from a lot line. In a commercial or industrial zoning district, one sign (1) not exceeding 32 feet set back at

least 15 feet from all property lines. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises.

9. One (1) sign identifying a farm not exceeding 20 square feet in area and located not less than ten (10) feet from a lot line.

10. One (1) sign identifying a school, church, public park or public building, not exceeding 40 square feet in area on any one side and located not less than ten (10) feet from a lot line.

11. Signs necessary for public safety or welfare.

12. Temporary Signs - A sign used on a temporary basis to identify or announce an activity or function such as a construction project and the specialists concerned, elections, sporting events, carnivals, meetings, etc. Such signs shall not exceed 16 square feet and shall not be located closer than five (5) feet to any lot line. Temporary signs shall be removed within ten (10) days after the activity or function ends.

13. Holiday decorations, including lighting.

14. Signs required by Federal, State, County or Town regulations (i.e., NYS registered motor vehicle shop and NYS inspection stations).

D. Signs Permitted in Residential and Agricultural & Residential Districts

The following signs are permitted in R, A&R-1 and A&R-2 Districts upon issuance of a zoning permit.

1. One (1) home occupation sign not exceeding four (4) square feet in area and located no closer than ten (10) feet to any lot line.

2. Two (2) farm product signs not exceeding 16 square feet in area and located no closer than ten (10) feet to any lot line.

3. One (1) sign identifying a mobile home park, not exceeding 20 square feet in area and not located less than ten (10) feet from any lot line.

4. One (1) sign identifying an apartment complex or nonresidential use allowed by special use permit as listed in Section 808. The sign shall not exceed 20 square feet in area and shall not be located closer than ten (10) feet to any lot line.

5. One (1) on-premise sign for uses which have a valid special use permit to operate. Such sign may either be wall-mounted with a maximum size of 20 square feet, or freestanding with a maximum size of eight (8) square feet per side.

Freestanding signs shall be limited in height to 25 feet and not be located within 10 feet of a property line. The final location/placement of all signs for uses allowed by special use permits in the R, A&R-1 and A&R-2 Districts shall be determined by the Planning Board.

E. Signs Permitted in Commercial and Industrial Districts

The following signs are permitted in C and I Districts upon issuance of a zoning permit.

1. Two (2) on-premise signs, one (1) of which may be free-standing, shall be allowed for each permitted use. If attached, such signs shall not exceed a total area of 100 square feet or an area equal to ten (10) percent of the wall area of the building or portion thereof devoted to such use or activity, whichever is less. No sign shall project more than one (1) foot from the facade of the building.

2. Free-standing signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size.

a. Each commercial or industrial use may have one (1) free-standing sign. Such free-standing sign shall have an area of not more than 25 square feet nor be more than 25 feet in height, and located not less than ten (10) feet from any lot line.

b. In a shopping center or industrial park there may be one (1) directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed 30 square feet in area. No individual free-standing sign shall be allowed in a shopping center.

3. Off-premises directional signs not exceeding four (4) square feet in size and limited to two (2) signs per use shall be permitted.

F. Non-Conforming Signs

1. Non-conforming signs shall be removed at the expense of the owner when any use of the property on which the sign is located is discontinued. This shall include both temporary and permanent signs.

2. Non-conforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this Zoning Ordinance. This provision shall not restrict routine maintenance of non-conforming signs involving replacement of electrical parts and repainting.

G. Prohibited Signs

The following types of sign are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger and in any case within not more than ten (10) days, make such sign conform with the provisions of this chapter or shall remove it. If within ten (10) days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1. Any sign which by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads shall be prohibited.

2. No person shall erect or maintain a sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

3. Signs which make use of words such as "STOP", "LOOK", "DANGER", and other words, phrases, symbols, or character in such a manner as to interfere with, mislead or confuse traffic shall be prohibited.

4. Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind current shall be prohibited.

5. It shall be unlawful for any person to display upon a sign or other exterior advertising structure any obscene, indecent, or immoral matter.

SECTION 607 COMMERCIAL EXCAVATION

Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, shall require a special use permit from the Planning Board.

A. Major Excavation

1. State Permit

In order to obtain said special use permit, the applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.

2. Reclamation

The applicant shall further be required to comply with the reclamation standards established by the New York State Department of Environmental Conservation while carrying out such use.

B. Minor Excavation

As part of the application process for a special use permit, the applicant's plan shall be presented to the Genesee County Soil and Water Conservation District for its review and comments. Also, before issuing a special use permit, the Planning Board must find that such excavation will not endanger the stability of adjacent land or structures or the quality or quantity of groundwater and that it does not constitute a detriment to public health, safety, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition.

In granting said special use permit, the Planning Board shall specify any reasonable requirement including the following:

1. Minimum Lot Area

The minimum lot area shall be ten (10) acres.

2. Minimum Setback Requirements

All buildings shall be located not less than 100 feet from any street or property line. The top of the slope of all excavation operations shall be located or shall occur not less than 100 feet from any street or property line. The setback area shall not

be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

3. Slope

During mining, the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.

4. Drainage

All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing on to public roads, adjacent property or into any stream. Excavation areas shall be planned and graded to avoid spasmodic collection of stagnant water.

5. Dust

All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind blown air pollutants.

6. Roadside Landscape

Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented in the entire area of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back the overburden around the perimeter of the excavation site to create a "berm" for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or other property boundaries.

7. Fencing

Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed area, distance from property lines, depth of pit water and slope of pit walls.

8. Topsoil

All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the reclamation plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the

effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.

9. Erosion

The applicant shall include a plan for the control of soil erosion.

10. Hours of Operation

All operations shall be conducted between the hours of seven o'clock in the morning (7:00 a.m.) and six o'clock in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.

11. Blasting and/or Processing

Operations involving blasting and on-site processing of mineral deposits shall not be allowed.

12. Reclamation Plan

The applicant shall submit a reclamation plan.

Reclamation Plan means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.

Where feasible, reclamation shall be a continuing operation. Grading, topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1) year after the termination of operations, at the expense of the operator.

13. Performance Bond

A performance bond or some other financial guarantee may be required to assure that the conditions stipulated in the approval of the special use permit are carried out.

C. Duration of Special Use Permit

The special use permit for a minor excavation shall be issued for a period of one (1) year, subject to a subsequent annual review and recertification by the Planning Board based on a written request for such continuance, which request shall be submitted to the Town Zoning Enforcement Officer at least 60 days prior to the expiration of each such one (1) year period. A public hearing shall not be required for such annual recertification, except upon motion of the Planning or Town Board.

The special use permit for a major excavation shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms therein, and it meets the reclamation standards established by the New York State Department of Environmental Conservation.

If on-site mining or processing operations are not carried out continuously for one (1) year for a major or minor excavation, the site shall be considered abandoned, and, prior to any further excavation or processing, a new permit shall be required.

Except when incidental to the construction of a building on the same lot, or the construction of a farm pond, the excavation, processing or sale of topsoil, earth, sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation, hereafter, may be permitted as a special permit use in the Agricultural & Residential District upon the approval of a special use permit by the Planning Board.

In its consideration of an application for a permit for a special use permit the Planning Board shall find that such excavation will not endanger the stability of adjacent land or structures or constitute a detriment to public health, safety, convenience, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting a permit the Planning Board shall specify any reasonable requirements for those commercial excavations not directly regulated by the NYS Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law. Commercial excavations regulated directly by NYSDEC shall comply with the requirements set forth by DEC together with any Town requirements which may be applied to similar industrial types of uses. Planning Board specifications for commercial excavations not directly regulated by DEC shall include the following.

SECTION 608 CLUSTER RESIDENTIAL DEVELOPMENT

Cluster residential development of one (1) family dwellings may be permitted, as specified in the New York State Cluster Enabling Act, Chapter 963 of the Laws of 1963, in the A-R and R Districts of the Town provided that the following conditions are observed:

- A. The project shall encompass a minimum land area of ten (10) acres.

- B. The developer shall dedicate to permanent open space no less than twenty-five (25) percent of the total project area.

- C. The developer shall have received informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filling the special use permit application.

D. The requirements of this Zoning Ordinance insofar as overall density, minimum front, side and rear yard areas for the outer boundaries of the entire project, maximum building height and maximum lot coverage are as specified in the zoning schedule of this Zoning Ordinance. All other area requirements of this Zoning Ordinance may be modified by the Planning Board.

SECTION 609 SWIMMING POOLS

A. Permit

Before any swimming pool is erected, constructed or installed upon any property in the Town, a zoning permit shall be obtained. A zoning permit shall be required for any enlargement or other major alteration of any existing swimming pool.

B. Location

Swimming pools shall not be located within the front yard area or within the minimum required side or rear yard areas.

C. Fencing

Fencing shall be erected in conformance with the New York State Uniform Fire Prevention and Building Code.

D. Drainage

When draining a swimming pool such activity shall be conducted in a manner which will not be injurious to surrounding properties.

SECTION 610 JUNKYARDS

A. Establishment

No person shall operate, establish, or maintain a junkyard until he has obtained a special use permit in compliance with Section 808.

B. Location Requirements

Said use shall not be located within 100 feet from any highway right-of-way, body of water or property line; or 500 feet from any existing dwelling, church, school, hospital, public building, or place of public assembly.

In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

C. Aesthetic Considerations

The Planning Board shall also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection the Planning Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barrier protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.

D. Fencing

Such use shall be completely surrounded with a fence which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than 100 feet from the right-of-way of a public highway. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage shall be accomplished within the area enclosed by the fence.

Where the topography, land forms, natural growth of trees or other considerations accomplish the purpose of this Section in whole or in part, the fencing requirements hereunder may be reduced by the Planning Board, provided, however, that such natural barrier conforms with the purpose of this Section.

E. Existing Junkyards

All junkyards existing at the time of adoption of this Zoning Ordinance shall be limited to the size, area, and scale of the present use and operation unless a permit is authorized in accordance with these regulations.

**SECTION 611 RECREATIONAL VEHICLES AND CAMPGROUNDS/
RECREATIONAL VEHICLE PARKS**

A. Recreation Vehicles

1. Recreation vehicles may be occupied as a dwelling only as follows:

a. As provided in Subsection 611-B of this Zoning Ordinance.

b. For not more than two (2) separate periods per year, not exceeding two weeks each, one (1) recreational vehicle may be used as temporary lodging parked on the same lot with a dwelling.

c. With a temporary permit, issued by the Planning Board, one (1) recreational vehicle may be used for a period of six (6) months each and subject to the following conditions:

(1) Approval shall be granted by the Genesee County Health Department.

(2) Any connections must be removed and the recreational vehicle moved to an approved parking location upon expiration of such permit.

2. An unoccupied recreational vehicle may be stored only in the side or rear yard areas of a lot no closer than five (5) feet from any lot line. When so stored, no connections shall be permitted.

B. Campgrounds/Recreational Vehicle Parks

1. Location

A campground/recreational vehicle park shall be located and maintained only in an A-R District upon issuance of a special use permit and in accordance with the standards set forth in this Zoning Ordinance.

2. Existing Campgrounds/Recreational Vehicle Parks

All existing campgrounds/recreational vehicle parks of record shall be exempt from this Zoning Ordinance, except that they shall comply with this Section whenever they are sold or any addition, expansion or alteration of the use or operation is proposed. Within six (6) months after the adoption of this Zoning Ordinance, the Zoning Enforcement Officer shall notify existing campgrounds/recreational vehicle parks of this provision.

3. Standards and Requirements for the Construction of Campgrounds/Recreational Vehicle Parks

Before a special use permit for a campground/recreational vehicle park is issued under Section 808, the Planning Board shall determine that the proposed use is designed and arranged in accordance with the following standards.

a. Site

The campground/recreational vehicle park shall be located on a well-drained site which is properly graded to insure rapid drainage and be free at all times from stagnant pools of water.

b. Lots

Each campground/recreational vehicle park shall be marked off into lots. The total number of lots in such campground/recreational vehicle park shall not exceed 12 per gross acre. Each lot shall have a total area of not less than 2,500 square feet with a minimum dimension of thirty (30) feet. Only one (1) recreational vehicle or tent shall be permitted to occupy any one lot.

c. Setbacks

All recreational vehicles or tents shall not be located nearer than a distance of:

- Twenty-five (25) feet from an adjacent property line, except residential property.

- One hundred (100) feet from any adjacent residential property line.

- One hundred (100) feet from the right-of-way of a public street or highway.

- Ten (10) feet from the nearest edge of any roadway located within the park.

d. Recreational Vehicle/Tent Site

Each residential vehicle/tent site shall have a stand of sufficient size and durability to provide for the placement and removal of recreational vehicles and for the retention of each recreational vehicle in a stable condition. The stand shall be suitably graded to permit rapid surface drainage.

e. Accessibility

Each campground/recreational vehicle park shall be easily accessible from an existing public road with entrances and exits designed and strategically located for the safe and convenient movement into and out of the campground/recreational vehicle park and with minimum conflicts with the movement of traffic on a public road. All entrances and exits shall be at right angles to existing public roads and all entrances and exits shall be of sufficient width to facilitate the turning movements of recreational vehicles.

f. Street System

(1) Each campground/recreational vehicle park shall have improved streets to provide convenient access to all lots and other important facilities within the campground/recreational vehicle park.

(2) The street system shall be so designed to permit safe and convenient vehicular circulation within the campground/recreational vehicle park.

(3) All streets shall have the following minimum width:

- One-way traffic movement: 12 feet.

- Two-way traffic movement: 20 feet.

(4) Except in cases of emergency, no parking shall be allowed on such streets.

(5) Adequate access shall be provided for each lot. Such access shall have a minimum width of nine (9) feet.

g. Utilities

All sewer and water facilities provided in each campground/recreational vehicle park shall be in accordance with the regulations of the Genesee County Department of Health and the New York State Department of Environmental Conservation.

h. Open Space

Each campground/recreational vehicle park designed for 20 or more sites shall provide a common open area suitable for recreation and play purposes. Such open space shall be conveniently located. The open space area shall be at least ten (10) percent of the gross land area of the campground/recreational vehicle park but not less than one (1) acre.

i. Improvements

Lighting, landscaping and buffer areas may be required by the Planning Board and shall be in keeping with surrounding development, the unique features of the site and the health and safety of occupants of the campground/recreational vehicle park.

j. Management

Every campground/recreational vehicle park shall be managed from an office located on the premises. The management shall maintain the campground/recreational vehicle park in such a manner so as to protect the health, safety and comfort of all persons accommodated in the campground/recreational vehicle park in a clean and attractive manner.

k. Removal of Wheels

Unless special consent is given by the Planning Board, it shall be unlawful to remove wheels from any recreational vehicle or otherwise permanently affix such recreational vehicle to the ground. Such removal shall be grounds for the revocation of the permit for such campground/recreational vehicle park.

l. Campground/Recreational Vehicle Park Special Use Permits

(1) Pursuant to Article VIII, the Zoning Enforcement Officer shall inspect at least annually the operation of a campground/recreational vehicle park to make sure it complies with provisions of this Zoning Ordinance and any and all conditions prescribed by the Planning Board when issuing the special use permit.

(2) Before receiving a special use permit for a campground/recreational vehicle park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

**SECTION 612 ALL TERRAIN VEHICLES, SNOWMOBILES, GO-KARTS,
MOTORCYCLES, AND MOTOR VEHICLE RACE TRACKS AND
COURSES**

A. Establishment

No person shall establish or operate a race track or course for all terrain vehicles, snowmobiles, go-karts, motorcycles, dirt bikes, or motor vehicles until he has obtained a special use permit in compliance with Section 808.

B. Definitions

1. Race Track or Course - Shall mean any ground, area, track, or course upon which vehicles are used for conducting races, contests, or demonstrations of skill or stunts for the paid or unpaid enjoyment or entertainment of the public or for the gratification of the contestants.

2. Track or Course Operator - Shall mean any person who allows the paid or unpaid use of real property by vehicles.

3. Vehicles - Shall mean all terrain vehicles, snowmobiles, dirt bikes, go-karts, motorcycles, or other vehicles propelled by a force other than human energy.

C. Location Requirements

1. Said use shall not be located within 200 feet from any highway right-of-way, body of water or property line; or 1,000 feet from any existing dwelling, church, school, hospital, public building, or place of public assembly.

2. In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, dust, fumes, smoke, odors, traffic, erosion, siltation, or other conditions.

D. Minimum Lot Area

The minimum lot area shall be five (5) acres.

E. Operation of Race Track or Course

1. No person shall operate or permit the operation of a trace track or course in such manner as to cause unreasonably loud or disturbing noises of such a character, intensity, or duration as to be detrimental to the peace, welfare, or good order of the people of the Town of Pavilion or in such a manner as to cause disturbing, noisy, riotous, or tumultuous conduct within the Town. Loud speakers, announcing devices, horns, and other noise producing devices shall not at any time be operated in such manner as to disturb the occupants of the premises in the vicinity of the race track and shall be so toned down, muffled or subdued that the sound therefrom shall not carry more than 2,500 feet from the perimeter of the track in all directions.

2. No person shall operate or allow to be operated a race track or course in such a manner as to allow the creation and dispensing through the air to the adjoining areas of the town of noxious odors, fumes, smoke, or dust of such density or concentration as to be detrimental to the health, peace, welfare, and good order of the people of the Town or as to hurt, destroy, or deface the property of the inhabitants of the Town. If any event is being conducted at any time upon a race track when the ground or surface of the track or of the approaches thereto is so dry as to cause dirt or dust to be stirred up either by the racing vehicles or by vehicles transporting spectators to or from the race track or course and to be blown or to drift to adjacent areas, the operator shall sprinkle the track and its approaches with water or other substance so as to settle such dust or dirt.

F. Operation of Vehicles on Race Tracks or Courses Prohibited During Certain Hours

1. No person shall operate and no owner of a vehicle shall permit the operation thereof on a race track or course before the hour of nine o'clock in the morning (9:00 a.m.) of any day, except Sunday, when no person shall operate or permit to be operated vehicles on a race track or course within the Town of Pavilion before the hour of one o'clock in the afternoon (1:00 p.m.).

2. No person shall operate a vehicle on a race track or course after the hour of nine o'clock in the evening (9:00 p.m.) on any day, except on Friday and Saturday, when no person shall operate a vehicle on a race track after the hour of eleven o'clock in the evening (11:00 p.m.) within the Town of Pavilion.

3. No owner of real property and no race track or course operator shall permit real property owned by him or under his control to be used for operation of a vehicle after the hour of nine o'clock in the evening (9:00 p.m.) of any day, except Friday and Saturday when no vehicle shall be permitted to be operated after the hour of eleven o'clock in the evening (11:00 p.m.) within the Town of Pavilion.

G. Operation of Vehicles Without Mufflers Prohibited

1. No person shall operate, allow to be operated, or lease or rent a vehicle for operation on property within the Town of Pavilion unless it is equipped with an adequate muffler properly maintained to prevent any excessive or unusual noise.

2. No owner of real property and no vehicle track or course operator owning or having control of real property in the Town of Pavilion shall permit the operation of a vehicle thereon without a muffler in constant operation adequate to prevent any excessive or unusual noise.

H. Duration of Permit

The permit for operation of the race track or course shall be for a period of one (1) year, subject to annual review and recertification by the Town Planning Board based on a written request for continuance.

SECTION 613 ADULT USES

A. Purposes

The Town of Pavilion conducted a study of the potential secondary affects posed by adult establishments. This study, along with other similar studies, has shown buildings and establishments operated as adult establishments pose secondary effects which may pose detrimental and harmful impacts to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Town of Pavilion, this Section is intended to control those secondary affects of adult establishments by restricting such uses to non-residential areas of the Town, and otherwise regulating their operation.

B. Definitions

As used in this Section, the following terms shall have the meanings indicated:

1. Adult Establishment - A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

a. An adult bookstore is a bookstore which has as a substantial portion (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

(1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical area; or,

(2) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

b. An adult eating or drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:

(1) Live performances which are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities; or,

(2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, and

(3) Employees who as part of their employment, regularly expose to patrons specified anatomical areas, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

c. An adult theater is a theater which regularly features one or more of the following:

(1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or,

(2) Live performances which are characterized by an emphasis upon the depiction or description of specified anatomical areas or specified sexual activities, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

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

f A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

g Any other adult commercial establishment is a facility - other than an adult bookstore, adult eating or drinking establishment, adult theater, commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons specified anatomical areas and which is not customarily open to the general public during such features because it excludes minors by reason of age.

For the purpose of defining adult establishments, specified sexual activities are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

Specified anatomical areas are: (i) less than completely and opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a substantial portion of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.

For the purpose of determining whether a bookstore has a substantial portion (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock

accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

2. Person - A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

3. Substantial - For the purposes of the Section the term substantial shall mean an amount equal to or greater than 25 percent of the total

C. Restrictions Affecting Adult Establishments

Adult establishments, including but not limited to adult bookstore, adult eating or drinking establishments, or adult theater shall be permitted subject to the following restrictions:

1. No such adult establishment shall be located within five hundred (500) feet of property in residential use in a Residential (R) District, or one hundred (100) feet of a building containing a dwelling unit(s) located in an A-R-1 or A-R-2 Districts.

2. No such adult establishment shall be located within one thousand (1,000) feet of a pre-existing school, place of worship, day care center, community center, library, playground or park.

3. No such adult establishment shall be located in any zoning district except the Commercial and the Industrial Districts.

D. Prohibition Regarding Public Observation

No adult establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

SECTION 614 **FENCES**

The installation, or replacement, of a fence within the Town does not require a permit provided the regulations listed below are met. The regulations contained herein shall not apply to fences erected or maintained solely for agricultural purposes in conjunction with a farm operation or similar business. Fencing requirements for junkyards are contained in Section 610.

A. All Fencing

1. All fencing must be installed, or replaced, in conformance with the NYS Uniform Code. Fencing shall be located on an individual's own property and not on adjoining property or directly upon a property line.

2. No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.

3. The "good side" of the fence shall face the neighboring property. If any question exists as to which side of a fence is the "good side", the Zoning Board of Appeals shall render the final interpretation.

4. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e., grass, weeds) around a fence is regularly mowed. Failure on the part of a property owner to maintain his fence in accordance with these provisions shall constitute a violation of this Ordinance.

B. Fencing-Front Yard

1. Fencing located within front yards shall be located not closer than one (1) foot to the edge of a public sidewalk or three (3) feet from the front property line, whichever is less.

2. Fencing located in the front yard shall not exceed three (3) feet in height for closed fencing, or four (4) feet in height for open fencing for that portion of fence located within 25 feet of a public right-of-way. For the purposes of this Section, the term open fencing shall refer to fencing which is at least 75% open (i.e., chain link type fencing), fencing which is less than 75% open shall be considered closed fencing.

3. Plantings and bushes used in lieu of a man made fence as set forth above (i.e., a hedge) shall not exceed three (3) feet in height, when located within 25 feet of a public right-of-way.

C. Fencing-Side and Rear Yards

Fencing located in side or rear yards shall not exceed six (6) feet in height.

SECTION 615 LIGHT INDUSTRIAL USES

Light industrial uses may be permitted in the Agricultural & Residential - 1 (A&R-1) and (C) Districts upon compliance with the following standards and the issuance of a special use permit in conformance with Section 808.

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a light industrial use in the A&R-1 and C Districts.

B. Conditions

The following conditions are intended to insure that a light industrial use is compatible with surrounding land uses:

1. The proposed light industrial uses shall comply with all the construction and safety standards contained in the NYS Uniform Code and all other applicable laws, codes and regulations.
2. No outside process or storage associated with the light industrial uses shall be permitted. Long term (greater than 24 hours) storage of products and/or materials shall not be allowed in trucks or trailers parked on-site.
3. No light industrial use shall involve a use classified as "high hazard" by the NYS Uniform Code (see Section 703.4) or use highly hazard materials. Use and storage of low and moderate hazard materials and processes shall be done in compliance with all applicable laws, codes and regulations. The Town Zoning Enforcement, Code Enforcement and representatives of the Fire Department shall have the authority to thoroughly inspect all light industrial uses at least annually and to perform spot inspections as they determine necessary to protect the public health and safety.
4. When located within an A&R-1 District, a light industrial use shall be located a minimum of 1000 feet from the nearest existing residential use.
5. When the Planning Board has determined that a buffer area may be necessary to protect surrounding land uses from a light industrial use, it may require the

installation and maintenance of a buffer strip as set forth in Section 402. E of this Zoning Ordinance.

6. There shall be no exterior advertising of the light industrial use except for a sign no larger than twenty (20) square feet for which a permit has been obtained pursuant to the provisions of Section 606.D.4.

7. No light industrial use shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire explosion or other physical hazard to any person, building, or vegetation.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

SECTION 616 SKILLED TRADE SHOP

The purpose of this provision is to allow for residents within the A&R-1 District which are self-employed skilled trades persons to operate a shop for fabrication of fixtures, cabinets, etc. for installation by them at their various job sites. It is recognized that operation of such shops without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses. Upon compliance with the following standards the Planning Board may issue a special use permit in conformance with Section 808.

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a skilled trade shop A&R-1 District.

B. Conditions

The following conditions are intended to insure both that the skilled trade shop is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The skilled trade shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3. No more than one (1) nonresident person shall be employed in the skilled trade shop.
4. Not more than 25% of the floor area (with a maximum of 500 sq. ft.) of the principal dwelling may be used for the craftsman shop. Occupation of accessory buildings to be utilized shall not exceed 2,000 sq. ft.
5. There shall be no exterior advertising of the skilled trade shop, except for a sign no larger than four (4) square feet for which a permit has been obtained pursuant to the provisions of Section 606.D.1.
6. There shall be no exterior storage of materials used or products/fixtures made in the skilled trade shop.
7. No skilled trade shop shall result in:
 - a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.
 - b. Hazard of fire explosion or other physical hazard to any person, building, or vegetation.
 - c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) skilled trade shop. No residential lot shall contain a skilled trade shop together with a home occupation or any other non-residential use requiring a special use permit.

10. The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed skilled trade shop and neighboring residential uses if the Board determines such condition is a reasonable mitigation factor.

SECTION 617 CLUSTER RESIDENTIAL DEVELOPMENT

Cluster residential development of one-family dwellings may be permitted, as specified in the NYS Town Law Section 278, in the A&R-1, A&R-2 and R Districts of the Town provided that a special use permit is obtained and the following conditions are observed:

- A. The project shall encompass a minimum land area of ten (10) acres.
- B. The developer shall dedicate all unsubdivided lands to permanent open space. In no case shall such lands be less than twenty-five (25) percent of the total project area. All such lands shall be suitable, in the opinion of the Planning Board, for the intended use. Such lands shall be offered for dedication to the Town Board.
- C. The developer shall seek preliminary, nonbinding, informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filing the special use permit application.
- D. The overall density, maximum building height and maximum lot coverage requirements as set forth in Zoning Schedule A of this Zoning Ordinance for the district involved apply to the entire cluster development project, whereas the minimum frontage, and side and rear yard requirements for the applicable district apply only to the outer lots of said cluster residential development. All other area requirements as set forth in Zoning Schedule A may be modified by the Planning Board.

SECTION 618 ANIMAL WASTE STORAGE FACILITIES

All proposals for installation and/or modification of animal waste storage facilities shall required an animal waste management plan be submitted to the Genesee County Soil and Water Conservation (GCSWCD) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD then the Planning Board will

consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

SECTION 619 COMMERCIAL COMMUNICATION TOWERS

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of an existing tower and/or structure including another commercial communications tower, water tower, or building shall be preferred to the construction of a new commercial communication tower. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the A&R-1, A&R-2, C and I Districts shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:

1. The existing structure is not increased in height or otherwise modified so as to change its visual appearance,
2. The antenna(s) do not extend above such structure more than twenty (20) feet, and
3. The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.
4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
5. The applicant must demonstrate that the operation of any new antenna will not interfere with the telecommunications transmissions of other carriers or public safety officials.
6. Any additional structures proposed will be located within any existing fence line so as not to be in direct view from any public right of way or neighboring property.

B. New or Altered Towers and/or Structures

The Planning Board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Section 808 (Site Plan Review provisions need to be added) for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site Plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Section 808, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower or other structure is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B of this Section. Any new commercial communication tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on site substantially all ice fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased in the sole discretion of the Planning Board, or it may be decreased, again in the sole discretion of the Planning Board, in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.

2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to those guidelines and criteria listed below that the Planning Board, in its sole discretion, deems appropriate at the pre submission conference:

1. Assessment of "before and after" views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned 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 or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.

4. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.

6. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special use permit. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times,

minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 601. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates in the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor, and be constructed of a material that matches the material used in fencing that already exists in the area.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the Planning Board shall require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be based upon the value of the tower and the unique characteristics of the tower and site. The applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

Q. Routing of Emergency 911 Calls

In accordance with Genesee County Local Law No. 3 of 2001, all emergency 911 calls placed through any cellular, PCS or wireless network that originate

within Genesee County shall be routed to the Genesee County Public Safety Answering Point (P.S.A.P.) at the Genesee County Sheriff's Office.

SECTION 620 PONDS

A. Purpose

The purpose of this section is to provide for the construction of ponds that are adequately designed and located so as to not pose adverse impacts upon surrounding land uses. Farm water supply, conservancy, storm water/erosion control and fire protection or other ponds may be located within the A&R-1, A&R-2, R, C, or I Districts upon issuance of a special use permit provided the following criteria are met.

B. General Provisions

1. The proposed pond is located not less than 100 feet from any property line. This setback distance shall be measured from the edge of the surface of the water at its highest level.

2. The proposed pond design is deemed acceptable by the Genesee County Soil and Water Conservation District (GCSWCD), as provided through a written certification of approval.

3. Any soil excavated in the construction of a pond shall not be removed from the affected parcel without the specific authorization of the Planning Board in issuing the Special Use Permit.

SECTION 621 HOME OCCUPATIONS

A. Purpose

All home occupations located within the Town of Pavilion shall conform with the following restrictions in pursuit of the health, safety and welfare of the community, and to minimize any negative externalities or nuisances that they may cause.

B. General Provisions

1. There shall be no exterior display other than an announcement or professional sign as set forth in Section 606, Subsection D, such sign shall not be illuminated.

2. There shall be no exterior storage of materials or other indication of such home occupation, or any deviation from the residential character of the premises.

3. No offensive noise, vibrations, smoke, dust, odors, heat, or glare shall be produced.

4. No equipment, device or object shall be used which will cause within the neighborhood, line disturbances in the electrical service so as to interfere with the normal reception of the radio or television broadcast signals.

5. No article or services shall be sold or offered for sale except as may be produced primarily by members of the immediate family residing on the premises.

ARTICLE VII MOBILE HOMES AND MOBILE HOME PARKS

SECTION 701 SINGLE MOBILE HOMES

A. Single Mobile Home - Permanent Residence

1. Criteria

A mobile home may be permanently occupied as a one (1) family residence on any lot in an A&R-1 District provided it complies with Section 406 (Minimum Dimensional Criteria), the following criteria are met and a zoning permit is issued:

a. The mobile home unit shall comply with the current Construction and Safety Standards set forth by the United States Department of Housing and Urban Development, and have a minimum floor area of 950 square feet and shall comply with Section 406, exclusive of any porches, additions or other extensions.

b. Placement of the mobile home must comply with the minimum area requirements for a one (1) family dwelling in the A&R-1 District, including, but not limited to: lot size and width, yard areas, parking and finished grade.

B. Mobile Home - Temporary Residence

1. Restrictions

A mobile home may be temporarily occupied as a one (1) family residence on any lot in the A&R-1 District for a maximum period of two (2) years under the following circumstances, even though it does not comply with Section 406, upon the issuance of a special use permit.

a. Home Building - If the owner of a vacant lot has been issued an active, valid zoning permit by the Town of Pavilion for the construction of a private dwelling on the lot in question.

b. Fire or Other Disaster - The existing dwelling on the lot has been damaged in such a manner as to make it uninhabitable.

2. Criteria

Mobile homes occupied as temporary residences shall meet the following criteria:

a. The mobile home units shall comply with the current Construction and Safety Standards set forth by the United States Department of Housing and Urban Development, and have a minimum floor area of 600 square feet exclusive of any porches, additions or other extensions.

b. Placement of the mobile home must comply with the minimum area requirements for a one (1) family dwelling in that district, including, but not limited to: lot size and width, yard areas, parking and finished grade.

c. Mobile homes in the Town of Pavilion shall not be relocated in said Town without compliance with this Section.

d. Additions, alterations and extensions to existing mobile homes and those permitted under this Section shall require a zoning permit.

C. Mobile Home - Replacement of an Existing

1. An existing "single wide" mobile home which is occupied as a one (1) family dwelling on any lot in a R, A&R-1, A&R-2, C or PUD District may be replaced with another "single wide" mobile home, even though such replacement unit does not comply with Section 406, provided the following criteria are met:

(a) The replacement mobile home unit shall be constructed in accordance with regulations set forth in the Compilation of Federal Regulation (CFR), Title 24 Housing and Urban Development, Chapter XX Office of

Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, Part 3280 Manufactured Mobile Home Construction and Safety Standards.

(b) The location of the replacement mobile home shall not increase the degree of nonconformity (other than unit size, square footage) relative to the area requirements that exist with the current mobile home.

(c) The mobile home shall be installed in compliance with the N.Y.S. Uniform Code and shall be protected from ground frost heaves.

(d) The mobile home shall be skirted with a noncombustible material so as to enclose the area between the floor of the mobile home and the ground. Such skirting is to be properly ventilated and must be completed within 30 days after arrival.

(e) The water supply system and sewage disposal system for the mobile home shall be approved by the County Health Department.

(f) The mobile home shall have a minimum floor area of 800 square feet.

SECTION 702 MOBILE HOME PARKS

A mobile home park may be located in the A&R-1 District provided the following criteria are met and a special permit is issued.

A. Standards and Requirements for the Construction of Mobile Home Parks

Condition of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the mobile home park occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to predictable sudden flooding or erosion and shall not be used for any purpose which would expose person or property to hazards.

1. **Site, Size, Density and Setback Requirements**

a. The minimum size for mobile home parks shall be ten (10) acres.

b. The maximum number of mobile home spaces shall not exceed five (5) per gross acre.

c. Each mobile home park shall set aside ten (10) percent of the total acreage of the site as open space and recreation area.

d. A setback of 75 feet shall be observed from the right-of-way of any public road bordering the site to any mobile home in the park.

e. A setback of 50 feet shall be observed from any property line excluding the right-of-way of any public road to any mobile home in the park.

f. The site shall be located and laid out so that no mobile home shall be closer than 500 feet to any existing one family or two (2) family dwelling.

2. Lot Size, Density and Setback Requirements

a. The minimum lot in a mobile home park shall be 8,000 square feet, with a minimum width of 70 feet and a minimum depth of 100 feet.

b. A mobile home having a width of 24 feet or more shall be located on a lot having an area of at least 10,000 square feet with a minimum width of 80 feet.

c. No mobile home shall be closer than 30 feet to another mobile home or other structure in the park.

d. Each mobile home located in a mobile home park shall have a front yard, a rear yard and two (2) side yards. No side yard or rear yard space shall be less than 15 feet in depth and no front yard shall be less than 25 feet in depth.

e. There shall be a minimum setback of 25 feet observed from an abutting park street to any mobile home in the park.

f. Maximum height for buildings shall be 35 feet.

3. Site Layout and Design Requirements

The layout and design of the mobile home park shall conform with the following requirements:

a. Streets

(1) All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means. Each mobile home space in a park shall have direct access to a street.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

(2) All mobile home parks containing 20 or more mobile home sites shall have access from two (2) points along a single public road, or if bordering on two (2) roads, access can be one (1) for each road, as long as such access points are separated by at least 100 feet.

(3) Entrances to mobile home parks shall have direct connections to a public road and shall be designed to allow free movement of traffic on such adjacent public road. No parking shall be permitted on the entrance street for a distance of 100 feet from its point of beginning.

(4) The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to 500 feet and their closed end shall be provided with an adequate turn around 65 feet in diameter cul-de-sac.

(5) Each mobile home space in a park shall have direct access to a roadway which roadway meets the minimum standards established by the Town Highway Superintendent or Town Engineer.

(6) Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight (8) percent.

(7) Street intersections should generally be at right angles and in no case shall any angle or intersection be less than 75 degrees.

(8) Park entrances and exits shall be so located to provide a minimum of sight distance on the adjacent public road in both directions from the interior road at the point of intersection of not less than 300 feet.

(b) Parking

(1) Two (2) car parking spaces shall be provided for each mobile home to meet the needs of occupants of the mobile home park and their guests without interference with normal movement of traffic.

(2) At least one (1) parking space shall be situated on each unit, and the remainder may be located in adjacent parking bays along the park streets.

(3) Parking may be in tandem.

(4) Each parking space shall have dimensions of at least ten (10) feet by twenty (20) feet and shall have all weather surfacing.

(c) Storm Water Drainage

(1) All mobile home parks shall be well drained and constructed so as to eliminate the accumulation of standing surface water for extended periods of time. The drainage system shall consist of buried corrugated steel pipe to carry storm water only or a series of well-constructed and properly maintained open ditches to carry surface runoff to off-site drainage channels or on-site drywells.

(2) The drainage system shall be designed to adequately handle at least that storm water generated by the site during a ten (10) year storm as determined by the U.S. Army Corps of Engineers. It must be certified by the Genesee County Soil and Water Conservation District Office that the off-site downstream drainage system is capable of handling the run-off generated by the park during a ten (10) year storm.

(d) Buffer Zone

(1) There shall be provided a buffer area of at least ten (10) feet in width from any property line. Such buffer area shall be primarily clear of obstructions other than trees and other natural landscape and shall not be used for any above ground structures.

(2) All mobile home parks, located adjacent to industrial or commercial land uses, shall be provided with screening such as fences or natural growth along the property boundary line separating the park and such adjacent nonresidential uses.

(e) Recreation Area

(1) Not less than ten (10) percent of the gross site area shall be devoted to recreation facilities, generally provided in a location or locations convenient to all.

(2) Recreation areas may include space for community use facilities, such as indoor recreation areas, swimming pools, hobby and repair shops and service buildings.

(3) Where compliance with Section 702(A)(1)(a) provisions result in undue hardship and/or individual lot areas are substantially above minimum standards and provide for sufficient outdoor recreation, an exemption may be granted by the Planning Board to an extent that an absolute minimum of one hundred (100) square feet per lot be considered sufficient for the site of a centralized recreation area, and provided that no recreation area shall contain less than 5,000 square feet.

(f) Landscaping

Mobile home parks shall be landscaped to provide an attractive setting for mobile homes and other improvements, to provide adequate privacy, and pleasant outlooks for living units, to minimize reflected glare, and to afford summer shade. Such landscaping shall include the planting and maintenance of at least the following:

(1) Trees and shrubs at suitable intervals along park streets, within recreation areas, and around park borders.

(2) Special planting to screen objectionable views such as garbage and trash collection stations, nonresidential uses, and any unsightly objects or conditions on adjacent properties.

(3) Lawns on all areas which are not paved or used as sites for mobile homes or buildings.

4. Lot and Mobile Home Requirements

a. Each lot shall front on an approved interior street.

b. Interior lots shall not be permitted to front on more than one (1) street.

c. No more than one (1) mobile home may be placed on any lot.

d. Each mobile home/lot shall be clearly numbered for easy identification.

e. No mobile home shall be located within a park except in an authorized space.

f. All mobile homes shall comply with the current Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of 600 square feet, exclusive of any porches, additions or other extensions.

g. Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.

h. No addition shall be made to a mobile home except for a canopy and/or a porch open on three (3) sides, or a sun ("Florida") room.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

i. One (1) accessory building, not to exceed 100 square feet in dimension, may be located on each lot. Such accessory building shall be appropriately anchored.

j. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Departments of Health.

k. All utilities shall be underground.

l. No front yard shall be used for storage.

5. Required Site Improvements

a. Water Supply System - All water supply systems shall be approved by the Genesee County Health Department.

b. Wastewater Treatment System - All wastewater treatment systems shall be approved by the Genesee County Health Department.

6. Electrical Systems

All electrical installations in mobile home parks shall be underground, residential distribution designed and constructed in accordance with local electric utility and with the National Electrical Code. The point of the electrical connection for the mobile home shall be within the area of the mobile home stand.

7. Gas Equipment and Installation

Gas equipment and installations within a mobile home park shall be designed and constructed in accordance with the applicable codes adopted by the local utility. Where the state or other political subdivision does not assume jurisdiction, such installations shall be designed and constructed in accordance with the appropriate provisions of the current edition of the American National Standard-National Fuel Gas Code.

8. Fuel Oil Distribution System

Distribution systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.

9. Bulk Fuel Storage

A mobile home park shall be provided with facilities for the safe and efficient storage of required bulk fuels. Such facilities shall be in accordance with applicable codes and regulations.

10. Lighting

Artificial lighting shall be provided to illuminate walks, driveways and parking spaces for the safe movement of pedestrians and vehicles at night.

11. Service Buildings

a. Each park shall make available community service buildings to house laundry and other sanitary facilities.

b. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot.

c. Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Sanitary Code and/or all applicable regulations of this Zoning Ordinance, NYS Uniform Code and any other statutes regulating buildings, electrical installations, and plumbing and sanitation systems enacted or adopted by the Town.

B. Mobile Home Park Maintenance Standards

1. Refuse Disposal

a. The park owner is responsible for provision of refuse pickup and disposal.

b. The storage, collection and disposal of refuse in the mobile home park shall be so conducted as to create no health hazard, rodent harborage, insect breeding areas, accident or fire hazards or air pollution.

c. No refuse or other organic material shall be placed, stored or dumped in other than refuse containers anywhere in the park. The existence of any refuse or rubbish outside a container for more than 24 hours shall be a violation of this Zoning Ordinance.

2. Fire Protection

a. Mobile home parks shall be kept free of litter, rubbish and other flammable materials.

b. Fire shall be made only in stoves and other equipment intended for such purposes.

3. Responsibilities of the Park Owner and Management

a. The person to whom a license for a mobile home park is issued shall operate the park in compliance with this Zoning Ordinance and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

b. The park management shall supervise the placement of each mobile home on its mobile home stand and the installation of all utility connections.

c. The owner of a mobile home park shall develop a regular program of park maintenance which shall attend to such items as grass cutting, maintained buffer zones and open drainage ditches, roadway and parking area repairs, cleaning and maintenance of service buildings, and whatever regular maintenance operations are required by the water supply system, sewerage system, and other services provided by the park. This maintenance program shall be presented to the Planning Board at the time the special use permit is applied for under Section 808 of this Zoning Ordinance and, once approved, a copy thereof filed with the Town Clerk and Zoning Enforcement Officer. A copy shall also be furnished to all residents of the park and be posted in conspicuous places throughout the park.

4. Responsibilities of Park Occupants

a. Park occupants shall comply with all applicable requirements of this Zoning Ordinance and regulations issued hereunder and shall maintain their mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.

5. Temporary Living Units

No occupied travel trailers, recreational vehicles or other form of temporary type living units shall be permitted in a mobile home park except in compliance with Section 611. Unoccupied travel trailers and recreational vehicles shall be stored in areas designated for the storage of such units.

C. Mobile Home Park Special Use Permits

1. Annual Inspection

Pursuant to Section 808, the Zoning Enforcement Officer shall inspect at least annually the operation of a mobile home park to make sure it complies with the provisions of this Zoning Ordinance and any and all conditions prescribed by the Planning Board when issuing the special use permit.

2. Compliance With Regulations

Before receiving a special use permit for a mobile home park, the owner thereof shall make an adequate showing that the subject property complies with the provisions of this Section.

D. Mobile Home Park Plans and Registration of Mobile Home Park Occupants/Units

It shall be the duty of each mobile home park owner/operator to keep a register containing a record of all mobile home owners and occupants located within the park. This register shall contain the following:

1. The name and legal address of all occupants.
2. The name and address of the owner of each mobile home.
3. The make, model, year, and license number of each mobile home.

ARTICLE VIII ADMINISTRATION AND ENFORCEMENT

SECTION 801 ENFORCEMENT

The duty of the administering and enforcing the provisions of this Zoning Ordinance is hereby conferred upon the Zoning Enforcement Officer, who shall have such powers as are conferred upon him by this Zoning Ordinance and as reasonably may be implied. He shall be appointed by the Town Board and shall receive compensation as the Town Board shall determine.

SECTION 802 DUTIES OF THE ZONING ENFORCEMENT OFFICER

A. Inspection and Review - It shall be the duty of the Zoning Enforcement Officer, or his duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Zoning Ordinance. He shall have the right to enter any building or premises during reasonable hours in the course of his duties with the permission of and in the presence of the owner or manager.

B. Violations and Written Orders - Where the Zoning Enforcement Officer, in the course of his duties, determines that any plans, buildings or premises are in violation of the provisions of this Zoning Ordinance, he shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered, and may specify the time permitted for such action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal, all as provided by this Zoning Ordinance.

C. Appearance Ticket - The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.

D. Revocation of Certificate of Compliance - On the serving of notice by the Zoning Enforcement Officer to the owner of any violation of any of the provisions of this Zoning Ordinance, the Certificate of Compliance for such buildings or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

E. Records - The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him. Such records shall form a part of the records of his office and shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following:

1. **Application File** - An individual permanent file for each application for a permit provided for by this Zoning Ordinance shall be established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer.

2. **Monthly Report** - The Zoning Enforcement Officer shall prepare a monthly report for the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him; all permits and certificates issued and denied; and all complaints of violations received and all violations found by him, and the action taken by him consequent thereon. A copy of this quarterly report shall also be transmitted by the Zoning Enforcement Officer to the Tax Assessor, Planning Board and Board of Appeals at the same time it is transmitted to the Town Board.

SECTION 803 CERTIFICATES AND PERMITS

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this Zoning Ordinance.

A. Zoning Permit - The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or structures or part of any building, or the change in the use of any land or building or part thereof, where he shall determine that such plans are not in violation of the provisions of this Zoning Ordinance. Zoning permits shall be required for permitted uses.

B. Temporary Use Permit - Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit. A temporary use permit shall only be effective for a period not to exceed 12 months; such permit may be extended by the Zoning Enforcement Officer not more than once for an additional period not to exceed six (6) months.

C. Emergency Housing - The Zoning Enforcement Officer may grant a non-renewable temporary housing permit for a period of time not exceeding 90 days in conformance with Section 803.

D. Special Use Permit - Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Zoning Ordinance.

E. Certificate of Compliance - The Zoning Enforcement Officer is hereby empowered to issue a certificate of compliance which shall certify that all provisions of this Zoning Ordinance have been complied with in respect to the location and use of the building, structure or premises in question.

SECTION 804 APPLICATION PROCEDURES

A. Application - Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Ordinance. Three (3) copies of applications, together with a layout sketch, shall be submitted together with any documentation deemed necessary by the Zoning Enforcement Officer to adequately review the application (i.e., County Health Department review and approvals of onsite wastewater treatment systems for new construction and expansions of existing uses). The

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Zoning Ordinance and either issue or deny the zoning permit applied for.

B. Issuance of Zoning Permit - The Zoning Enforcement Officer shall issue a zoning permit only after all required variances and special use permits have been obtained.

C. Installation of Foundation - The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.

D. Initiation of Construction - If a zoning permit is not obtained by the applicant within 90 days after final approval, such approval shall be void.

E. Completion of Construction - A permit shall be void if construction is not substantially completed within a period of one (1) year from the date of said permit. The Zoning Board of Appeals may issue a six (6) month extension of a permit for good cause shown. Two (2) such extensions of a permit will be allowed.

F. Location of Permit - The zoning permit shall be located in a place readily visible to the public during construction activities.

SECTION 805 FEES FOR PERMITS, AMENDMENTS, APPEALS, SITE PLAN REVIEW, SPECIAL USE PERMITS, AND OTHER ADMINISTRATIVE ACTIONS

Fees may be charged for permits, and processing of applications for amendments, appeals, site plan reviews, special use permits and other administrative actions. The fees shall be set by resolution of the Town Board and may be changed from time to time in the same manner.

SECTION 806 CERTIFICATES OF COMPLIANCE

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Zoning Ordinance.

SECTION 807 BOARD OF APPEALS

A. Organization

The Town Board shall appoint members to the Zoning Board of Appeals in accordance with the provisions of Section 267 of the Town Law and shall designate the chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as acting chairperson.

B. Meetings, Minutes and Records

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

C. Filing Requirements

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

D. Hearing Appeals

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

E. Time of Appeal

Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall

be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be born by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

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

F. Hearing An Appeal

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal. Such public hearing shall be advertised by publication in a paper of general circulation within the Town of a notice of such hearing at least five (5) days prior to the date thereof. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

At least thirty (30) days before the date of the public hearing unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

The Zoning Board of Appeals shall send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R, C or I District, or five hundred (500) feet when the involved property is located in an A&R-1, A&R-2 or PUD District, at least ten (10) days before the date of the hearing.

G. Time of Decision

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

H. Filing of Decision and Notice

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

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

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

2. Use Variances

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

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

a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

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

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

d. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Zoning Ordinance.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

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

4. Imposition of Conditions

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

J. Solar Access

Pursuant to Chapter 74-2 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Ordinance the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

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

SECTION 808 PLANNING BOARD

A. Organization

The Planning Board shall consist of seven (7) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so, the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

B. Powers and Duties

1. **Site Plan Review**

Review of site plans in accordance with NYS Town Law Section 274-a set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless otherwise required by this Zoning Ordinance (i.e. special use permit).

2. Special Use Permits

Granting of special use permits in accordance with NYS Town Law Section 274-b as set forth in this Zoning Ordinance based upon the criteria set forth in paragraph G of this Section.

3. Review Use Variances

Review area and use variance applications referred to the Planning Board in accordance with Section 807.F and make a recommendation to the Zoning Board of Appeals.

4. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows.

a. Except as otherwise provided in Section 510.A.1.C, the Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:

- (1) Temporary uses incidental to a construction project.
- (2) Temporary real estate sales office incidental to a subdivision.
- (3) Other similar temporary incidental uses which:
 - (a) Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and
 - (b) Contribute materially to the welfare and well-being of the Town.

b. Temporary use permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.

c. Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.

C. Site Plan Review

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

1. Notice and Public Hearing

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R, C or I District, or five hundred (500) feet when the involved property is located in an A&R-1, A&R-2 or PUD District, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

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

- a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
- b. Layout sketch showing proposed lots, blocks, building locations and land use area.
- c. Traffic circulation, parking and loading spaces, and pedestrian walks.
- d. Landscaping plans including site grading, landscape design, open space and buffer zone.
- e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- f. Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
- g. Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.

h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.

i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.

j. description of proposed measures to control runoff and drainage from the site and when required by NYS DEC and/or SEQR process, a Stormwater Management and Erosion Control Plan.

k. a description of the proposed generation, storage and/or disposal of hazardous materials and/or hazardous wastes on-site, including estimates of amounts involved and provisions for transport, storage and environmental protection.

l. Together with any other permits or applications made to other governmental agencies and any additional information requested by the Planning Board.

3. Site Plan Review Criteria

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

a. Harmonious relationship between proposed uses and existing adjacent uses.

b. Maximum safety of vehicular circulation between the site and street including emergency vehicle access.

c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.

d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.

e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.

f. protection of the aquifer and aquifer recharge areas that provide drinking water for both private and municipal wells. In evaluating the protection of the aquifer, aquifer recharge areas and the water supplies, the Planning Board shall give consideration to the simplicity, reliability, and feasibility of the control measures proposed and the degree of threat to water quality that would result if the control measures failed.

4. Area Variances

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

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.

6. Waiver of Requirements

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

7. Reservation of Parkland on Site Plans Containing Residential Units

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

b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Town Law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

9. Performance Standards

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

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be

extended by mutual consent of the Planning Board and the developer. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

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

D. Special Use Permit

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Ordinance if certain standards and conditions are met. Each such use is listed in this Zoning Ordinance as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Ordinance shall be followed and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the public welfare. Also, the Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Ordinance.

1. Application

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

2. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Ordinance, application may be made

to the Zoning Board of Appeals for an area variance pursuant to Section 274-b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.

3. Notice and Public Hearing

The Planning Board shall hold a public hearing as part of the special use permit process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and public notice thereof shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing. The Planning Board shall mail a notice of the hearing to the applicant at least ten (10) days before such hearing and also send, by regular mail, a copy of the notice of hearing to all owners of property situated within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R, C or I District, or five hundred (500) feet when the involved property is located in an A&R-1, A&R-2 or PUD District, at least ten (10) days before the date of the hearing. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

4. Conditions

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

5. Waiver of Requirements

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

6. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board

recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

7. Abandonment of Special Use Permit

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

8. Standards Applicable for all Special Use Permits

The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this Zoning Ordinance.

a. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.

b. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.

c. The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.

d. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.

e. When a commercial or industrial special use abuts a residential property the Planning Board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.

f. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

g. The proposed use shall meet the off-street parking and loading requirements of similar uses.

h. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.

i. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards. The Planning Board shall review and approve all such proposals.

j. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.

k. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Ordinance unrelated to the use which is the subject of the requested special use permit, as determined by the Planning Board.

l. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.

m. In addition to the general standards for special permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Ordinance.

n. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e., mining.

SECTION 809 VIOLATION AND PENALTY

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any building, structure or land or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.

B. It shall be unlawful for any person to fail to comply with a written order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, sub-contractor, construction superintendent or their agents, or for any person taking part

or assisting in the construction, repair or use of any building to violate any of the applicable provisions of this Zoning Ordinance, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this Section and/or this Zoning Ordinance shall be punishable by a fine as set forth in Section 268 of Town Law as amended.

E. The Zoning Enforcement Officer may, with permission of the Town Supervisor, request that the Town Attorney initiate the legal action to enforce provisions of this Zoning Ordinance.

F. In addition to the foregoing remedies, the Town of Pavilion may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Ordinance and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Ordinance. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

SECTION 810 COMPLAINT OF VIOLATION

Whenever a violation of this Zoning Ordinance occurs, any person may file a written/signed complaint in regard thereto. The Zoning Enforcement Officer shall properly record such complaint and immediately investigate it and take appropriate action.

SECTION 811 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified as follows:

- Zoning text amendments - Town Board
- Zoning district amendment - Town Board

Special use permits	- Planning Board
Site Plan Review	- Planning Board
Zoning permit (if required)	- Planning Board
Variances (if required)	- Zoning Board of Appeals

When a project involves two (2) or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete until a determination of no significance has been made or until a draft environmental impact statement is completed.

ARTICLE IX AMENDMENTS

SECTION 901 INITIATING AMENDMENTS

A. Initiating Amendments

The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Ordinance.

B. Petitions

Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

C. State Environmental Quality Review (SEQR)

Amendments of the Zoning Ordinance may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action the zone change is according to SEQR regulations. Depending on the size of the zone change and several other factors it may be a TYPE I or an UNLISTED action.

To make a decision, the Board should consult Part 617 of Article 8 of Environmental Conservation Law (New York).

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed.

SECTION 902 REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD

A. Referral to Town Planning Board

All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its recommendation thereon. The Planning Board shall have thirty (30) days to submit its report to the Town Board. Failure of the Planning Board to report within the required time shall not prevent the Town Board from further processing the proposed amendment.

B. Referral to County Planning Board

Where required by Section 239-m of the General Municipal Law or other applicable statute a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action. Failure of the County Planning Board to report within the required time shall not prevent the Town Board from further processing the proposed amendment.

SECTION 903 HEARING ON PROPOSED AMENDMENT

Before adopting any amendments to this Zoning Ordinance the Town Board shall give notice of hearing thereon to such persons and in such manner as is required by Section 264 of the Town Law for the amendment of a Zoning Ordinance and shall hold a hearing thereon pursuant to such notice.

SECTION 904 PETITION PROTESTING AMENDMENT

In case of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending 100 feet therefrom or of that directly opposite thereto, extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) of the members of the Town Board.

SECTION 905 PERIODIC REVIEW BY PLANNING BOARD

From time to time, at intervals of not more than three (3) years, the Planning Board should re-examine the provisions of the Zoning Ordinance and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

SECTION 906 WIND ENERGY SYSTEMS

The purpose of this Section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, and aesthetic conditions. This Section does not repeal, annul, impair, or interfere with any existing ordinance or local law.

It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Ordinance.

A. Permit Requirements

1. Special Use Permit. A Special Use Permit is required for a wind farm system and for any wind energy system, or a component thereof.

2. Zoning Permit. A Zoning Permit and Site Plan Review are required for the installation of a wind tower that is part of any wind energy system or for wind energy systems considered a part of a farm operation.

3. Expiration. A permit issued pursuant to this Zoning Ordinance expires if:

a. the wind energy system is not installed and functioning within 2 years from the date the permit is issued; or

b. the wind energy system is out of service or otherwise unused for a continuous 12-month period.

4. Fees. The application for a Special Use Permit for a wind energy system must be accompanied by the fee required for a Special Use Permit.

5. Financial Assurance. The owner of a wind energy system must provide a performance bond, completion bond, or other financial assurance that guarantees the performance of the complete restoration of the land developed for the wind energy system.

B. Restoration Requirement. (see also Restoration section under Agricultural Mitigation)

1. A wind energy system that is out of service for a continuous 12-month period or any wind energy system found to be unsafe by the Building Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment in form of a letter to the owner of a wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the Notice of Abandonment if the owner provides information within 30 days from the date of the Notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.

2. The owner of a wind energy system must provide the Zoning Enforcement Officer with a written Notice of Termination of Operations if the operation of a wind energy system is terminated.

3. Within 3 months of receipt of Notice of Abandonment or within 6 months of providing Notice of Termination of Operations, the owner of a wind energy system must:

a. remove all wind turbines, aboveground improvements, and outdoor storage;

b. remove all foundations, pads, and underground electrical wires to a depth of 4 feet below the surface of the ground; and

c. remove all hazardous material from the property and dispose of the hazardous material in accordance with federal and state law.

d. all disturbed areas will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible.

C. Special Use Permit or Zoning Permit Requirements.

In addition to those criteria set forth under other Sections of this Zoning Ordinance, the Town shall consider the following factors when setting conditions upon Special Use Permits or Zoning Permits issued for all wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

1. Proposed ingress and egress.
2. Proximity to transmission lines to link the system to the electric power grid.
3. Number of wind turbines and their location.
4. Nature of land use on adjacent and nearby properties.
5. Location of other wind energy systems in the surrounding area.
6. Surrounding topography.
7. Proximity to residential structures, residential zoning districts, or areas identified for future residential use.
8. Design characteristics that may reduce or eliminate visual obtrusiveness.
9. Possible adverse effects on migratory birds, and other animals and wildlife.
10. Possible adverse effects of stray voltage, interference with broadcast signals, shadow effect, and noise.
11. Impact on the orderly development, property values, and aesthetic conditions
12. Recommendations of the Town Board.
13. Any other factors that are relevant to the proposed system.

D. Standards.

1. **Location.**

a. A wind energy system may only be located in areas that are zoned Agricultural – Residential (AG-R) and Industrial (I).

b. A wind tower may not be located within one-quarter mile (1,320 ft.) of any State Forest, public park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal, or local government designation; or within 1,000 feet of a State-identified wetland.

c. A wind tower may not be located within 2,500 feet from Important Bird Areas as identified by New York Audubon.

2. **Set Backs.** A wind tower in a wind energy system and each wind tower in a wind farm system must be set back (as measured from the center of the base of the tower):

a. from the property line of the parcel on which the wind tower is located by a minimum distance equal to twice the total height of the wind tower, unless waived in writing by the abutting landowner.

b. from any residence or building that is on any parcel by a minimum distance of 1,000 feet, unless waived in writing by the owner of such structure.

c. from any public building that is on any parcel by a minimum distance of 1,000 feet.

d. from the right-of-way of any public road by a minimum distance of 1,000 feet or twice its total height, whichever is greater.

E. Spacing and Density. A wind tower must be separated from any other wind tower, or adjacent wind farm system by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.

F. Structure. A wind tower must be of monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed.

G. Height. The total height of a wind energy system must be 175 feet or less. Other maximum building/ structure height restrictions within other sections of this Zoning Ordinance are not applicable.

H. Clearance. The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.

I. Access and Safety.

1. **Security.** A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.

2. **Climbing Aids.** Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.

3. **Operational Safety.** Wind towers shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

4. **Lightning.** All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

5. **Access Roads.** All wind systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

J. Electrical Wires.

1. **Location.** All electrical wires associated with a wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction section under Agricultural Mitigation).

2. **Transmission Lines.** All wind systems shall combine transmission lines and points of connection to local distribution lines.

3. **Substations.** All wind systems shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.

K. Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning

Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.

L. Buildings and Outdoor Storage. Any ancillary buildings and any outside storage associated with a wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.

M. Aesthetics.

1. **Appearance, Color, and Finish.** The exterior surface of any visible components of a wind energy system must be a nonreflective, neutral color. Wind towers and turbines that are located within view, or within one mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blade rotation.

2. **Visual Impact Assessment.** The applicant shall complete a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed wind energy systems or any proposed modifications to existing wind energy systems. The visual impact assessment shall include:

a. "Before and after" photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned 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 or travelers. A balloon test may also be requested by the Planning Board.

b. Alternative tower designs.

c. Assessment of visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the wind energy system identified by the Planning Board.

d. A viewshed map of the proposed wind energy system with a radius of seven (7) miles from any portion of the wind energy system.

e. An inventory of all aesthetic resources in the viewshed defined in item d.

3. Visual Impacts Offset Plan. The applicant may be required to prepare and implement a visual impacts offset plan to mitigate negative impacts on aesthetics of a proposed wind energy system. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

N. Signs. No wind turbine, tower, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 sq. ft. in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.

O. Agricultural Mitigation. The following shall apply to construction areas for wind energy systems located in County-adopted, State-certified Agricultural Districts. The applicant is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. For larger projects, the applicant shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields.

1. Siting.

a. Minimize impacts to normal farming operations by locating structures along field edges where possible.

b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.

c. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.

d. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

2. Construction.

a. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.

b. Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.

c. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.

d. Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.

e. In cropland, hayland and improved pasture a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to forty-eight inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.

f. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.*

g. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

h. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.*

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

i. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.

j. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.*

*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

3. Restoration.

a. Restoration scheduling will be consistent with the seasonal limitations identified by Ag. and Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (general permit).

b. Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

c. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

d. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

e. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

f. Following restoration, all construction debris will be removed from the site.

4. Two Year Monitoring and Remediation.

a. The applicant will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

b. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.

c. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.

d. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the applicant's responsibility to fully redress all project impacts.

e. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

P. Noise. Audible noise due to the operation of any part of a wind energy system shall not exceed 50 dBA for any period of time, when measured at any residence, school, hospital, church, public park or public library.

Q. Insurance. Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

R. Shadow Flicker.

1. **Shadow Flicker Maps.** Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school, hospital, church or public library.

2. **Shadow Flicker Duration.** Shadow flicker for all sensitive areas/locations within the project area shall be limited to 30 hours per year and shall not exceed 30 minutes per day.

S. Electromagnetic Interference (EMI). All wind energy systems shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy system or the applicant shall mitigate any such interference.

T. Severability. The provisions of this section are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Zoning Ordinance shall not affect the validity or effectiveness of the remainder of the Zoning Ordinance.

ARTICLE X LEGAL STATUS PROVISIONS

SECTION 1001 PROVISIONS ARE MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this Zoning Ordinance shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular:

A. To promote the purposes set forth in the preamble to this Zoning Ordinance and in the statements of legislative intent for the respective districts or groups of districts.

B. To provide a gradual remedy for existing conditions which are detrimental thereto.

SECTION 1002 CONFLICT WITH OTHER LAWS

Whenever any provision of this Zoning Ordinance and any other provision of law, whether set forth in this Zoning Ordinance or in any other law, Zoning Ordinance, or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

SECTION 1003 EXISTING ZONING PERMITS

In all cases where:

A. A zoning permit has been lawfully issued on the basis of an application showing complete plans for the proposed construction of a new building or other structure, or for an enlargement of an existing building or other structure which requires construction of foundation, and

B. The adoption of this Zoning Ordinance or for any subsequent amendment thereto, would make the completed building or other structures nonconforming or noncomplying construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or noncomplying building or other structure.

SECTION 1004 EXISTING PRIVATE AGREEMENTS

This Zoning Ordinance is not intended to abrogate or annul any easement, covenant, or any other private agreement.

SECTION 1005 SEPARABILITY CLAUSE

It is hereby declared to be the legislative intent that, if any provision or provisions of this Zoning Ordinance or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective

TOWN OF PAVILION ZONING ORDINANCE
Amended through March 24, 2006

in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the zoning lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this Zoning Ordinance shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

SECTION 1006 REPEALER

The ordinances entitled "The Zoning Ordinance for the Town of Pavilion", effective as of July 20, 1970 and the existing "Mobile Home Ordinance of the Town of Pavilion", together with all changes and amendments thereto, are hereby repealed and declared to be of no effect.

SECTION 1007 EFFECTIVE DATE

This Zoning Ordinance was adopted by the Pavilion Town Board on May 10, 1990 and shall take as provided for in Town Law of the State of New York.