

TITLE 17

ZONING

Chapters:

17.04 Introductory Provisions and Definitions

17.08 *Districts* Established

17.12 *District Use* Requirements

17.16 *Bulk* and *Density* Control Requirements

17.20 Planned-Multiple Residential *District*

17.21 *Planned Unit Development District*

17.24 *Overlay Districts*

17.28 Cluster Residential *Development*

17.32 *Site Plan* Review and Approval

17.33 *Special Use* Permit Review and Approval

17.36 *Development* Requirements Generally

17.37 *Stormwater Management*, Erosion, and *Sediment Control*

17.40 *Accessory Structure* and *Use* Requirements

17.44 *Alternative Dwelling* Parks

17.48 *Off-Road* and Loading Requirements

17.52 *Signs*

17.56 Nonconforming *Structures, Uses, and Lots*

17.60 Zoning Board of Appeals

17.64 Administration and Enforcement

17.68 Amendments

17.72 Town of Big Flats Planning Board Law

* Prior history: LL No. 2, 1997, LL No. 1, 1999, LL No. 3, 2002, LL. No. 2, 2009 and LL No. 4, 2009.

17.04

INTRODUCTORY PROVISIONS AND DEFINITIONS*

Sections:

17.04.010 Short title.

17.04.020 Authority.

17.04.030 Precedence of more restrictive standards.

17.04.040 Purpose.

17.04.050 Interpretation, separability and conflict.

17.04.060 Definitions.

17.04.070 Application of requirements.

17.04.080 General requirements.

* Prior history: LL No. 2, 1997, LL No. 1, 1999 and LL No. 3, 2002.

17.04.010 Short title.

This title shall be known as the "Zoning Law of the town of Big Flats, N.Y." and may also be referenced as "BFZL".
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.04.020 Authority.

Pursuant to the Municipal Home Rule Law of the Consolidated Laws of New York State, the town board in the *county* of Chemung, state of New York, resolves, enacts, and publishes the following provisions.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.04.30 Precedence of more restrictive standards.

The provisions of this chapter are in addition to the provisions set forth in other town laws or regulations, as well as any other lawfully adopted rules, regulations or ordinances, including but not limited to those of Chemung *county*, state of New York, or the United States. Wherever the requirements of this chapter are at variance with the requirements of other lawfully adopted rules, regulations, or ordinances, the more restrictive or that imposing the higher standards shall govern.
(LL No. 6, 2009)

17.04.040 Purpose.

The zoning requirements and *districts* set forth and the *districts* identified upon the zoning map of the town are made to promote public health, safety, and general welfare of the community; and specifically:

- A. To encourage the most appropriate *use* of land in the community in order to conserve and protect the value of property;
- B. To eliminate the sprawl of *development* and provide for more adequate and suitably located commercial facilities and consequently eliminate *road*-side hazards and add to community attractiveness;
- C. To create a suitable system of open spaces and recreation areas, and to protect and enhance existing wooded areas, scenic areas, farmlands, and *waterways*;
- D. To protect groundwater *resources* which serve as public and private sources of water supply;
- E. To regulate *development densities* in order to assure access to light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, to lessen congestion on *roads*, to provide efficient municipal utility services, and to accommodate *solar energy systems* and equipment and access to sunlight necessary thereto;
- F. To improve transportation facilities and traffic circulation, and to provide adequate off-*road parking* and loading facilities;
- G. To assure privacy for residents and freedom from public nuisances and things harmful to the health, safety and general welfare of the community;

- H. To protect the community against unsightly, obtrusive, and nuisance land *uses* and operations;
- I. To enhance the aesthetic aspects throughout the entire town and maintain its natural beauty; and
- J. To provide an opportunity for occupancy of housing or *uses* of land to all people regardless of race, creed, sex, *color*, national origin, age, disability or marital status.

This title has been made with reasonable consideration for the character of each *district* and a *district's* suitability for particular *uses*, and with a view to conserving and protecting the value of the property, to encourage the most appropriate *uses* of the land throughout the town.

These purposes are achieved through this title by regulating and restricting the height, number of stories, and size of *buildings* and other *structures*; restricting the *density* of population; regulating the size of yards and other open spaces; regulating and restricting the location and *use* of a *building structure* and *lot* for trade, industry, residential or other purposes; creating *districts* for such purposes and establishing their boundaries; continuing a zoning board of appeals to determine and vary the application of various provisions of this title in harmony with its general purposes and intent and in accordance with general and specific rules in this chapter contained; and providing for the enforcement of this title.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.04.050 Interpretation, separability and conflict.

- A. The following rules of construction of language shall apply to the text of this title.
 - 1. Words used in the present tense include the future tense.
 - 2. Words used in the singular include the plural, and words used in the plural include the singular.
 - 3. Words used in the masculine *form* shall also include the feminine.
 - 4. The word "person" includes an individual, partnership, association, firm or corporation.
 - 5. The word "shall" is mandatory; the words "may" or "should" are permissive.
 - 6. The words "used" or "occupied" as applied to any *lot* or *building* shall be construed to include the words "intended, arranged or designed to be used or occupied".
 - 7. A *building* or *structure* includes any part thereof.
 - 8. The phrases, "to erect," "to construct", and "to build" each has the same meaning and includes to excavate for a *building* and to relocate a *building* by moving it from one location to another.
 - 9. Other words not defined above or in Section 17.04.060 shall be as defined in the New York State Uniform Fire Prevention and *building* Code or as used in their common meaning.
 - 10. The term "NYS" means New York State.

B. If any section, subsection, paragraph, subdivision, sentence, clause, or provision of this title shall be held invalid, such invalidity shall apply only to the section, subsection, paragraph, subdivision, sentence, clause, or provision adjudicated invalid, and the remainder of this title shall remain valid and in full force and effect.

C. This title shall be interpreted in such a way wherever possible so that the meaning of the words, phrases and subsections in this title shall make them consistent, valid and legal in effect.

D. Whenever the requirements of this title are at variance with the requirements of other lawfully adopted laws, rules, requirement, or ordinances of the town, the one of these with the most restrictive provisions or those imposing the higher requirement

shall govern.

E. Any reference in this title to other laws, rules or regulation shall be interpreted to include any future amendments to those laws, rules or regulation.

F. Unconstitutionality and illegality. If any clause, sentence, paragraph, word, section or part of this title shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair, or invalidate any paragraph, word, section or part thereof not directly involved in the controversy in which such judgment shall have been rendered.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.04.060 Definitions.

The following words or phrases as used in this title are defined as follows:

Adverse visual impact means the negative effect of a regulated activity on the *visual quality* of a *landscape*.

Aesthetic impact means any occurrence which creates a detrimental effect on the perceived beauty of a place or *structure*. Mere visibility, even startling visibility of a *project* proposal, should not be a threshold for decision-making. Instead a *project*, by virtue of its visibility, must clearly interfere with or reduce the public's enjoyment and/or appreciation of the appearance of an inventoried *resource* (e.g., cooling *tower* plume blocks a view from a state park overlook).

Agricultural activity means activity including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new *structures* associated with *agricultural activities*.

Agri-business means, for sale, gain, or commercial purpose as a *principal use*, the: (a) processing of agricultural products from *agricultural plant* and *agricultural animal uses* into modified *forms* of such agricultural products, and/or (b) packaging of such modified agricultural product, and/or (c) storage of *agricultural plant* products in silos, grain elevators, or similar *structures* that are not part of an *agricultural plant use*. Examples of such modified agricultural *projects* are foodstuff, fertilizer, and fuels. The term *agri-business* does not include *factory farm*, *feedlot*, and *slaughterhouse*.

Agricultural animal means the: (a) raising and gathering of *agricultural animals* products for sale, gain, or commercial purpose as a *principal use*, (b) incidental storage of feed for *agriculture animal* products raised on the same *lot* with such storage, and (c) the place of sale of those *agricultural animals* products raised on the same *lot* with such place of sale. As used in this definition, *agricultural animals* products consist of livestock, poultry, dairy cows, fur-bearing animals and bees, for sale, gain or commercial purposes. The term *agricultural animal* does not include *agri-business*, *commercial stable*, *factory farm*, *feedlot*, *kennel*, and *slaughterhouse*.

Agricultural plant means the: (a) raising and harvesting of *agricultural plant* products for sale, gain, or commercial purpose as a *principal use*, and (b) storage and/or place of sale of those *agricultural plant* products raised on the same *lot* with such storage and/or place of sale and additionally of *agricultural plant* products raised on another *lot* devoted to *agricultural plant use*. As used in this definition, *agricultural plant* products consist of whole plants and plant parts, but excluding cut tree wood. Examples of whole plants are vegetable-bearing plants, fruit-bearing plants, herb-bearing plants, flowering plants, bushes and trees. Example of plant parts are: vegetables, fruits, herbs, cut flowers, cut twigs, cut evergreen trees and tree sap. As used in this definition, whole plants exclude invasive and rampant plants described in Section 17.36.200.

Airport means any *lot* designed to be used and/or operated either publicly or privately by any *person* for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary *buildings*.

Alteration means any change, rearrangement, modification, addition or enlargement to a *building*, *structure*, *use*, or *lot* other than repairs.

Alternative dwelling park means a contiguous *parcel* of land under *single ownership* on which two or more *manufactured homes* or homes of any other styles of construction having less than one thousand two hundred (1,200) square feet and/or having any

one overall exterior dimension of less than twenty (20) feet are located.

Amusement center means a continuous commercial *use* in which six or more mechanical, electrical or electronic machines or devices used or designed to be operated for entertainment or as a game, and either activated by the insertion of a coin or token for their operation or *use* of which a charge is made.

Antenna means a *structure* greater than twelve (12) foot in height being a device: (a) mounted on a supporting *structure* or on a vehicle continuously maintained at a location for a period of more than one week, and (b) used for receiving or transmitting electromagnetic signals for telephone, television, radio and/or other communication devices from and/or to orbiting space satellites and/or ground communications systems.

Antenna array means a collective assembly of *antennae*.

Antenna, Co-Location. Co-location antenna means the construction or installation of an *antenna* on an existing *tower* or on a *lot* containing an existing *wireless telecommunications facility use*.

Antique or *Craft shop* means a *retail* storefront that primarily deals in the on-site sale of *antiques* or hand-made crafts. A site or facility housing three or more *antique* or craft vendors shall not be considered an *antique* or *craft shop*. Additionally, a facility that primarily deals in the sale of *antiques* or *crafts* through internet or catalog sales shall not be considered an *antique* or *craft shop*.

Applicant means a property *owner* or agent of a property owner who has filed an application for a *land development activity*.

Art center means a facility that is able to encompass a variety of art *forms*. *Stage theaters*, small scale motion picture theaters, art galleries, *museums*, and educational facilities may be included as part of an *art center*.

Art gallery means a facility for the exhibition of art, characterized by the ownership of a collection. As part of standard *use* activities, limited sales of exhibited art shall be allowed.

Aquifer means an area consisting of saturated, permeable geologic material capable of yielding water to wells and springs.

Assisted living facility means a facility with a *principal use* of assisted living care as defined and regulated by New York State. (see also *convalescent home* and *nursing home*.)

Atmospheric perspective means the light scattering effect of these particles causes atmospheric or aerial perspective, the second important *form* of perspective. In this *form* of perspective there is a reduction in the intensity of *colors* and the *contrast* between light and dark as the distance of objects from the observer increases. *Contrast* depends upon the position of the sun and the reflectance of the object, among other items. The net effect is that objects appear "washed out" over great distances.

Attic means that space of *building* which is between the top of the uppermost floor construction and the underside of the roof. (See *Story*.)

Auction facility means a *lot* or *structure* dedicated to periodic auction of goods and/or services.

Auction facility, Farm means an *auction facility* dedicated to periodic auction of livestock, such as horses, sheep, lambs, goats, and/or cattle and/or farm implements, such as tractors threshers, or dairy equipment.

Authorized board or body means the town board or other board designated by the legislative body to review and act on *development* and subdivision review.

Auto Salvage Yard. See Salvage yard.

Backdrop means the distant part of a *landscape* located from four miles to infinity from the viewer.

Bakery means a small scale facility where the baking and serving of goods primarily takes place on-premise. Large-scale wholesale *bakery* facilities shall not be construed as a *bakery*.

Bank means a financial institution licensed by the government whose primary activities include borrowing or lending money. For the intent of this document, a credit union shall be defined as a *bank*.

Bar means a business establishment licensed by NYS to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the *lot*. Food or entertainment may be provided on the *lot* as a secondary *use*.

Barrier means a *structure* and/or plant materials that obstruct visual and/or noise impact on *use* from another *use* and which is located in a *buffer yard*. A *barrier* is not considered a *fence* for the purposes of the regulations set forth in Section 17.36.060.

Basement means any space of a *building* which is partly below *finished grade*, but having more than one-half of its height measured from floor to ceiling above average *finished grade*. (See *Cellar*.)

Bed and breakfast means a *building* consisting of a *one-unit dwelling* in which at least one, but not more than four, sleeping rooms are provided as an *accessory use* by the resident-owner for compensation from and for the accommodation of *transient guests* with no more than two meals served daily and the entire service included in one stated price.

Billboard. See *Sign, Off-Lot*.

Boarding house means a *building*, other than a *hotel/motel* or *bed and breakfast*, containing a general kitchen and a general dining room, in which at least three, but no more than six, sleeping rooms are offered for rent, with or without meals to nontransient guests. A lodging house, or rooming house shall be deemed a *boarding house*.

Body modification facility means a business that performs permanent or semi permanent deliberate modification of the human body for nonmedical reasons in a nonsurgical setting. Examples of body modification include but are not limited to: tattooing, branding, piercing (excluding piercing of the ear), or other *forms* of body modification that are not of a religious or cultural nature.

Buffer means an area of land forming a physical separation between two *uses* and consisting of the required *setback* and any *buffer yard*.

Buffer yard means an area of a *buffer* lying between a *lot line* or *transition yard* and the required *setback* that is *landscaped* in accordance with Section 17.36.200 and having the same width as the required *setback*.

Building means any *structure*, either *temporary* or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than one hundred twenty (120) square feet of area.

Building area means the total of areas taken on a horizontal plane at the main grade level of the *principal building* and all *accessory buildings* including open or enclosed porches, attached carport or garage but exclusive of terraces, and uncovered steps. Such horizontal area of each *building* is the area within and circumscribed by the exterior faces of the outer walls and/or architectural elements of the *building*.

Building, Accessory means an *accessory structure* that is a *building*.

Building group means a group of two or more *principal buildings* and any *accessory buildings* occupying a *lot* in one ownership and having any yard in common.

Building height. (See *Structure height*.)

Building, Principal means a *building* where the *principal uses* of the *lot* are conducted and situated.

Building, Semi-Detached means a *building* attached by a party wall to another *building* normally of the same type on another *lot*, but having one *side yard*.

Bulk means a term to describe the size, volume, area, and shape of a *structure* and the physical relationship of their exterior walls or their location to *lot lines*, other *buildings* and *structures*, or other walls of the same *building*; and of all open spaces required in connection with a *structure*, or *lot*.

Bulk storage means materials stored in large quantities which are dispensed in smaller units for *use* or consumption as regulated in Chapter 17.24.

Campground means a public or privately owned facility consisting of campsites offered for rent on a nightly, weekly, monthly, or seasonal basis, as well as common amenities intended to serve *campground* patrons. Such amenities may include restaurants, conference facilities, restrooms, recreation areas, small-scale *convenience marts*, and assembly areas. Campsites may or may not feature access to publically or privately maintained utilities such as sewer, water, or electric service. *Campgrounds* shall not be confused with *alternative dwelling parks*.

Car wash means a *building*, *lot*, or portions thereof where vehicles are washed either by the patron or others using machinery and mechanical devices specifically designed for this purpose.

Catering means the on or off site business of providing and distributing of foodstuffs for private gatherings.

Catering facility means a fixed location where *catering* events occur. Such locations may include kitchens, seating areas, and/or conference facilities.

Cellar means that space of a *building* that is considered nonhabitable and is partly or entirely below average *finished grade*, which has more than half its height, measured from the floor to ceiling, below the average established curb level or *finished grade* of the ground adjoining the *building*. (See *Basement*.)

Cemetery means the land that is set apart or used for the internment of the dead or in which human bodies have been buried. A *cemetery* may include facilities for storing ashes of human remains that have been cremated or the internment of the dead in sealed crypts or compartments, but may not include a *structure* for the cremation of human remains.

Central water means a water supply system serving five or more properties that has been approved by the town of Big Flats and the Chemung *county* Health Department for either private or public operation.

Channel means a natural or artificial *watercourse* with a definite bed and banks that conducts continuously or periodically flowing water.

Church. See *Place of worship*.

Clearing means any activity that removes the vegetative surface cover.

Clear vision zone means a volumetric zone at an intersection, of any combination of *roads*, *drives*, *internal drives* and *driveways* permitting a visual *line* of sight and defined by a geometric sector of certain radius in a base plane in feet above *finished grade* and by a zone height extending a certain number of feet above the base plane.

Club, Membership means an organization *catering* exclusively to members and their guests, and *lot* and/or *building* for social, educational, service, recreational or athletic purposes, which are not conducted primarily for financial gain, providing there are no vending stands, merchandising, or commercial activities except as when limited to the *use* of the membership or guests for the club purposes.

Club, Rod and Gun means a membership club where the primary purpose is related to outdoor sportsman activities. Such facilities may include shooting ranges, hunting and fishing areas, limited lodging facilities for member *use*, and other recreation and social facilities similar to those of other membership clubs.

Cluster residential development (CRD) means a subdivision plat or plats, for the residential *use*, approved pursuant to Chapter 17.28, in which the applicable physical and dimensional requirements may be modified to provide an alternative permitted method for the layout, configuration and design of *lots*, *buildings* and *structures*, *roads*, utility *lines*, and other infrastructure, parks, and landscaping in order to preserve the natural and scenic qualities of open lands.

Code enforcement officer (CEO) means an official designated by the *town board* for the purpose of enforcing codes, laws, ordinances, rules, regulations, and conditions set by resolution of the *town board*, planning board, or zoning board of appeals.

Co-locator means a company, *person*, or entity that owns or operates a *co-location antenna*.

Color means the property of reflecting light of a particular wavelength that enables the eye to differentiate otherwise indistinguishable objects. A hue (red, green, blue, yellow, etc.) as *contrasted* with a value (black, white, or gray).

Commercial vehicle means any vehicle with a net vehicle weight of five tons or more and/or more than four axles, or trailer longer than eighteen (18) feet used or designed to be used for the commercial transportation of *persons*, goods, wares, or merchandise.

Composition means the arrangement of the component parts of a *landscape*. Component parts are objects or activities usually described in terms of *color*, *texture*, *line*, *form*, *dominance*, and scale.

Concentrated animal feeding operation. See *Factory farm*.

Condominium means a *building* or *building group*, in which residential *dwelling units*, commercial, or industrial units are owned individually with common areas and facilities owned jointly by all the *owners* of individual space within the *building* or *building group*. *Condominiums* are regulated under the *Condominium Act* (Article 9B of Real Property Law).

Conference center means a center where meetings or conferences are conducted. A *conference center* may be part of a *hotel/motel*, may operate as a stand-alone facility, or may be operated in conjunction with a *catering facility*.

Consulted agencies means each government agency having decision-making authority applicable to a proposed *development* and private consultant designated by such governmental *agency*.

Contrast means the diversity or distinction of adjacent parts. Effect of striking differences in *color*, *form*, *line*, or *texture* of a *landscape*. Comparing the component parts of a *landscape* in terms of *form*, *line*, *color*, *texture*, *dominance*, or scale.

Control points means the two end points of a line-of-sight. One end is always the elevation of an observer's eyes at a place of interest (e.g., a high point in a state park) and the other end is always an elevation of a *project* component of interest (e.g., top of a stack of a combustion facility or the *finished grade* of a landfill).

Convalescent home means a *building* used for accommodation and care of *persons* receiving nonskilled, long or short-term care, meeting the New York State Department of Social Services (NYS DSS) definition of a proprietary facility. (See also *Nursing home*.)

Convenience mart means a *retail use* that combines no less than two and no more than three *uses* on a single *lot*, with at a minimum, the sale of *motor vehicle* fuel and accessory substances, as well as the sale of groceries taking place on the property. *Fast food restaurants* may be permitted as a *use* for a *convenience mart* if the total floor space dedicated to the *fast food restaurant* (including seating) is no greater than ten (10) percent of the total *floor area* of the *convenience mart* and no *drive through* window is provided.

Constrained Land includes wetlands (including a one hundred (100) ft. *buffer* around such wetland), *watercourses*, floodways, 100-year floodplains, lands within the Ridgeline Overlay *Districts* (Chapter 17.24), and slopes over twenty-five (25) percent, which are two thousand (2,000) sq. ft. or more of contiguous sloped area.

Cottage industry means a business conducted as an *accessory use*, which is clearly incidental to or secondary to a residential *use* of a *dwelling unit* and which: (a) does not change the character of the residential *use*; (b) is carried out wholly within the enclosed walls of the *dwelling unit* and/or an *accessory structure* located on the same *lot* as the *dwelling unit*; and (c) is operated by a resident of the *dwelling unit*; and with up to three *employees* who do not reside in the *dwelling unit*.

Coverage means that *lot area* or percentage of *lot area* covered by *buildings*, including *accessory structures*, and all other impervious surfaces.

Crematorium means a *structure* used for the purposes of the cremation of human remains.

Cumulative effects means the impact on the environment, which results from the incremental impact of the activity when

added to other past, present, and reasonably foreseeable future activities regardless of what entity undertakes such other actions. *Cumulative effects* can result from individually minor, but collectively significant activities taking place over a period of time.

Day care center means a place, *person*, association, corporation, institution, or *agency* which provides day care for children as defined and licensed by NYSDSS pursuant to the NYS Social Services Law and related rules and regulations. The name, description, or *form* of the entity which operates a *day care center* shall not affect its status as a *day care center*.

The term *day care center* shall not refer to care provided in:

1. A day camp as defined in the State Sanitary Code (10 NYCRR Chapter I);
2. An after school program operated by a *private school* or religious organization; or
3. A facility operated by a public school *district* or providing day services under an operating certificate issued by the department of mental health.

Day care of adults shall be as defined and licensed by the NYSDSS pursuant to the NYS Social Services Law and related rules and regulations.

Day care of children shall be as defined and licensed by the New York State Department of Social Services (NYSDSS), pursuant to the NYS Social Services Law and related rules and regulations. The term *day care of children* includes services provided with or without compensation or payment.

Day Care, Family Home means day care provided as an *accessory use* in the care givers' residence in accordance with NYSDSS rules and regulations.

Day Care, Group Family Home means day care provided as an *accessory use* in the care givers' residence in accordance with NYSDSS rules and regulations.

Dedication means the deliberate appropriation of property by its owner for general public *use*.

Density means the minimum *lot area* per permitted *principal use*. (See *Bulk* and *density* control schedule.)

Design engineer or *professional* means an engineer, architect, *landscape* architect, designer, or surveyor licensed to practice in the state of New York.

Developer means any entity or *person* undertaking proposed land *development* activities.

Development means any man-made changes to improved or unimproved real estate, including, but not limited to, the construction or reconstruction of *buildings*, *structures* and/or impervious surfaces, the construction of tanks or other storage facilities, pumps, pumping stations, waste treatment or disposal facilities, and/or the excavation, dredging, filling, mining, or *grading* for purposes of *development*.

Development design guidelines means the town of Big Flats *Development Design Guidelines* and all subsequent revisions. These guidelines are on file with the town clerk and *director of planning*.

Direct effects means those effects caused by the activity and occur at the same time and place. *Direct effects* are a subset of *cumulative effects*.

Director of planning means an official designated by the town board for the purpose of providing professional opinion to the town board, planning board or zoning board of appeals. This official also shall serve the town as a zoning enforcement officer.

District means a portion of the land area of the town: (a) mapped on the zoning map of the town of Big Flats pursuant to Section 17.08.020 and designated as a *use district* with specified permitted *uses* pursuant to Sections 17.08.040 and 17.12.010; (b) established as a planned multiple residential *district* (PMRD) pursuant to Chapter 17.20; (c) established as a *planned unit development* (PUD) pursuant to Chapter 17.21 or (d) established as an overlay *district* pursuant to Chapter 17.24.

Distribution center means a facility that stores inventory and ships finished good orders to customers for a specific geographic area. Such a facility may accept customer returns, but no direct *retail* or wholesale sales are done from this location.

Dominance means the extent to which an object is noticeable when compared to the surrounding context.

Double frontage lot means a *lot* which *fronts* upon two streets which do not intersect at the boundaries of the *lot*. Also known as a "through lot".

Drive means an improved way that provides or is designed to provide vehicular access between a *road* and a *parking area* and/or an *internal drive*.

Drive, Internal means an improved way that provides or is designed to provide vehicular access between a *drive* and one or more *uses* on the same *lot*.

Drive-through use means an *accessory use* for a business *use* that provides service to a *person* in a *motor vehicle* alongside a service window, booth, receptacle or other like arrangement on the exterior of a principal or *accessory structure* for the business *use*.

Driveway means an improved way on a *lot* containing a *one-unit dwelling* and/or *two-unit dwelling* and providing or designed to provide vehicular access between the residential *use* and a *road* and/or *drive* or *internal drive*.

Dry cleaning facility, Off-site means a location where patrons drop off clothing to be dry cleaned and pick up dry cleaned items, but no *dry cleaning facilities* are located on site. Such facilities may be a primary *use* or an *accessory use*.

Dry cleaning facility, On-site means a location where the cleaning of clothing or fabrics with chemical solvents takes place.

Dump. See *Solid waste disposal facility*.

Duration means the period of time in which an effect on a *resource* may exist or remain detectable.

Dwelling, Accessory unit means a second *dwelling unit* accessory to a *one-unit dwelling*, included as part of the initial construction of a *one-unit dwelling* or subsequently added thereto for *use* as a complete, independent living facility with provisions within the accessory apartment for cooking, eating, sanitation, and sleeping. An accessory *dwelling unit* may also be located in a separate *accessory structure* on the same *lot* as the main dwelling, such as a detached garage, provided that such *structure* is clearly an accessory to the main *dwelling unit* rather than the accessory *dwelling unit*.

Dwelling, In-Ground means a *dwelling unit* that is constructed principally below the average *finished grade* elevation of the *lot* on which it is located and with at least one wall open for a height of at least six feet and/or provide for special light and ventilation design.

Dwelling, Multi-Unit means a *building* consisting of three or more *dwelling units*.

Dwelling, One-Unit means a *building* consisting of one *dwelling unit* that is:

1. Detached having two *side yards*; or
2. Semi-detached having only one *side yard* and one common party wall.

Dwelling, Two-Unit means a *building* consisting of two *dwelling units*.

Dwelling unit means one or more rooms, connected together, with provision for living, cooking, sanitary, and sleeping facilities arranged for the *use* of one *family* or household. This shall include a *manufactured home*, *house trailer*, or factory *manufactured home* provided they meet the requirements of this title and the NYS Uniform Fire Prevention and *Building Code*. It shall not include a *hotel/motel* or a *boarding house*.

Easement means a recorded *right-of-way* or right of *use* held by a person or entity from an *owner* of a *lot*.

Equipment storage area means any space, inside or outside of a *structure*, used for the storage or keeping of equipment and/or the associated materials and machinery for construction, excavating, landscaping, or associated *commercial vehicles*, or associated transportation trailers, or parts thereof, whether they are in operable or inoperable condition, which are in active or inactive *use*. This definition shall exclude equipment, material, machinery and vehicles associated with an active *agricultural animal use*, active *agricultural plant use*, or active timber harvesting operation.

Erosion control manual means the most recent version of the "New York Standards and Specifications for Erosion and *Sediment Control*" manual, commonly known as the "Blue Book."

Existing uses means the current appearance and *use* of the *landscape*, considering previous human *alterations*.

Factory farm means a *feedlot* confirming more than three hundred (300) *agricultural animals*.

Family means a household consisting of a single housekeeping unit occupied by one or more persons. (See the NYS Uniform Fire Prevention and *Building Code*.)

Farm market means a permanent *structure*, operated on a seasonal or year-round basis, that allows for agricultural producers to *retail agricultural plant* products and agriculture-related items directly to *consumer* and enhance income through value-added products, services, and activities.

Farm stand See *Roadside Stand*.

Feedlot means a *lot* on which *agricultural animals* have been, are or will be stabled or confined and fed or maintained within a ground surface area not more than twenty-five (25) times the ground surface area occupied by the *agricultural animals* for further growth thereof for a total of forty-five (45) days or more in any twelve-month period, and the animal confinements areas do not sustain crops, vegetation, forage growth, or post harvest residues in the normal growing season. Two or more *feedlots* under a common ownership shall be treated as a single *feedlot* if the *lots* on which they are located adjoin each other, or if they use a common area or system for the disposal of wastes.

Fence means a vertical *structure*, constructed of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials, erected in the minimum *setback* or *buffer yard*.

Finished grade means the elevation at which the finished surface of the surrounding *lot* intersects the walls or supports of a *building* or *structure*. If the *line* of intersection is not reasonably horizontal, the *finished grade*, in computing height of a *building* and *structure*, shall be the mean elevation of all *finished grade* elevations around the periphery of the *building*.

Fitness center means a public or privately owned facility which houses equipment for the purpose of physical exercise. Such facilities may include gymnasiums, workout facilities, swimming pools, ball courts, outdoor exercise areas, personal service facilities, or small scale restaurant facilities. A health club or a gymnasium shall be considered a *fitness center*.

Flea market means a *lot* or *parcel* with outdoor stalls, booths, or selling spaces used for the display or sale of used or new goods, wares, merchandise, *antiques*, collectibles and arts and crafts.

Floor area means the aggregate sum of the gross horizontal area of the floor or several floors of the *building* or *building group*. The *floor area* of a *building* or *building group* shall include:

1. *Basement* space;
2. Elevator shafts and stairwells at each floor;
3. Floor space for mechanical equipment, with structural headroom of seven feet six inches or more;
4. Penthouses;
5. *Attic* space (whether or not a floor has actually been laid) providing structural headroom of seven feet six inches or

more for at least fifty (50) percent of the area;

6. Interior balconies and mezzanines;
7. Enclosed porch or attached garage;
8. *Accessory use*, exclusive of space for *parking lots*.

However, the *floor area* of a *building* shall not include:

1. *Cellar* space, except that *cellar* space used for *retail* shall be included for the purposes of calculating requirements for accessory off-road *parking* spaces and accessory off-road *loading berths*;
2. Elevator and stair bulkheads, accessory water tanks, and cooling *towers*;
3. Floor space used for mechanical equipment, with structural headroom of less than seven feet six inches;
4. *Attic* space, whether or not a floor has actually been laid, providing structural headroom of less than seven feet six inches for fifty (50) percent of the area;
5. Uncovered steps and/or exterior fire escapes;
6. Terraces, breeze ways, open porches, and outside balconies and open spaces;
7. Accessory off-road *parking* spaces;
8. Accessory off-road *loading berths*.

Footprint, Building means the perimeter of a *structure* or series of *structures* at ground level as depicted on a scaled drawing.

Form means the *structure*, mass or shape of a *landscape* or an object. *Landscape form* is often defined by the edges or outlines of landforms, rockforms, vegetation patterns, *waterforms*, or the enclosed spaces created by these attributes.

Fuel storage terminal means a fuel storage and distribution facility where motor fuel is supplied by pipeline or marine vessel and from which motor fuel may be removed at the rack.

Funeral service means a business that provides burial and funeral related services for the deceased and their families. These services may include a prepared wake and funeral. The provision of a chapel for the *funeral service* may be included on site.

Grading means excavation or fill of material, including the resulting conditions thereof.

Gross floor area means the sum of the gross horizontal areas of several floors of a *building* measured from the exterior faces of the exterior walls or from the centerline of walls separating two *buildings*. *Gross floor area* does not include *basements* when at least one-half the floor-to-ceiling height is below grade. *Gross floor area* does not include accessory *parking*, *attic* space having a floor-to-ceiling height less than seven feet, exterior balconies, uncovered steps, or inner courts.

Health care clinic means a place where medical, dental, vision, nutrition, physical therapy, chiropractic, and other similar health care services are furnished to *persons* on an out-patient basis by three or more physicians or professional health care providers who have common offices in a *building* which may also offer laboratory/testing facilities, medical, or surgical procedures, and similar health care services.

Heliport means any *lot* or other facility used or designed to be used, either publicly or privately, by any *person* for the *landing* and taking off of helicopters, including all necessary taxiways, aircraft storage and tie-down areas, hangars, and other necessary *buildings*.

Home occupation means an occupation or profession conducted as an *accessory use*, clearly incidental and secondary to the

residential *use* of a *dwelling unit* and which does not change the character of the *dwelling unit*, and which is carried on wholly within the enclosed walls of the *dwelling unit* by only a resident of the *dwelling unit*.

Hospital means an institution for the care and treatment of sick and injured, equipped with technical facilities, medical, nursing and other professional and technical personnel necessary for diagnosis and treatment of *persons* suffering from sickness or injury who may require bed care. (See the NYS Public Health Law.)

Hotel/motel means one or several *buildings*, or any part thereof, which contains living and sleeping accommodations for transient occupancy, which may have a common exterior entrance or entrances and which may or may not include dining and/or meeting facilities. Individual rooms may or may not have small scale kitchen facilities. This term shall not include a *bed and breakfast* or *boarding house*.

House trailer means a transportable, factory-built *structure* designed to be used as a year-round *dwelling unit* and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Requirements Act of 1974, which became effective June 15, 1976.

Ice cream parlor means a location where the primary product is ice cream and items derived from ice cream or similar dairy products. The ice cream sold at such a facility shall typically be intended for immediate consumption, although limited sale of packaged ice cream and frozen dairy goods are allowed. An outdoor ice cream stand shall be considered an *ice cream parlor*.

Impervious cover means those surfaces, *improvements*, and *structures* that cannot effectively infiltrate rainfall, snow melt and water (e.g., *building* rooftops, pavement, sidewalks, *driveways*, etc.).

Improvements means constructed or installed facilities, other than *buildings* including but not limited to: *drives* or *internal drives*, utilities, *parking areas*, *roads*, the entire *stormwater management* system and components, domestic and fire protection, water supply, and public sewer, except those portions thereof that are the responsibility of the town of Big Flats Water *district*, town of Big Flats Sewer *district*, Chemung *county* Department of Public Works, and Chemung *County* Sewer *District* No. 1, and other similar facilities needed to support the principal or *accessory use*.

Incineration service means an on or off-site service providing for the disposal of waste materials via combustion.

Indirect effects means those effects caused by the activity or *use* attributed to the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. *Indirect effects* are a subset of *cumulative effects*.

Industrial stormwater permit means a state pollutant discharge elimination system permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial *stormwater* discharges or specifies on-site pollution control strategies.

Industrial use means any activity conducted in connection with the manufacture, assembly, disassembly, fabrication, painting, coating, *resource* recovery, storage, or processing of materials or products.

Infiltration means the process of percolating *stormwater* into the subsoil.

Invasive species means any species that is nonnative (or alien) to the local ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

Inn means a commercial facility, resembling in character traditional residential construction, providing lodging and meals, which is characterized by common dining facilities and a common leisure room available for *use* by lodgers and the general public. The period of accommodation shall be of a clearly *temporary* nature. Such *use* shall not be construed as a *boarding house*.

Jurisdictional wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and *duration* sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Kennel means any *lot* or *structure* used or maintained for the boarding, breeding, sale, letting for hire, or the commercial training of dogs, cats and/or other domestic animals kept as pets.

Kindergarten means any place operated on a regular basis for the purpose of providing state-certified instruction for children at least five years of age by December 1st of the entry year and less than six years of age by the same date.

Land development activity means construction activity including *clearing*, *grading*, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one-half acre, or activities disturbing less than one-half acre of total land area that is part of a larger common plan of *development* or sale, even though multiple separate and distinct *land development activities* may take place at different times on different schedules.

Landform means one of the attributes or features that make up the Earth's surface, such as a plain, hill/mountain, ridgeline, or valley.

Landowner means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Landscape means an area composed of interacting ecosystems that are repeated because of geology, landform, soils, climate, biota, and human influences throughout that area.

Landscape character or *Landscape composition* means particular attributes, qualities, and traits of a *landscape* that give it an image and make it identifiable or unique. *Landscape compatibility* means the elements of *color*, *form*, *line*, and *texture* that typically determine *landscape character*.

Large tree means a live deciduous tree that is a minimum of twelve (12) inches diameter breast height (dbh).

Lawn and garden equipment sales means the *use* of a *lot* or *structure* or any part thereof for the display, sale, lease and/or repair of equipment and/or new or used vehicles not licensed for *use* on a public *road* and for the display and sale of materials, each of which is designed and intended for: (a) establishing and maintaining a lawn and/or garden; and/or (b) residential small scale snow removal.

Library means any facility in which literary and artistic materials, such as books, periodicals, newspapers, pamphlets, prints, or audio-visual materials, are kept for reading, reference, or lending. Such a facility may be a stand-alone *use* or in conjunction with a school, *museum*, or cultural facility.

Line means anything that is arranged in a row or sequence. In *landscapes* ridges, skylines, *structures*, changes in vegetation, or individual trees and branches may be perceived as a *line*.

Line-of-sight profile. A profile is a graphic depiction of the depressions and elevations one would encounter walking along a straight path between two selected locations. A straight *line* depicting the path of light received by the eye of an imaginary viewer standing on the path and looking towards a predetermined spot along that path constitutes a *line-of-sight*. The locations along the path where the viewer stands and looks are the *control points* of the *line-of-sight profile*.

Loading berth means a dedicated area for the receipt or distribution of materials or merchandise by motor vehicles, including space for standing, loading, and unloading.

Lot means a measured unit of contiguous land, whether improved or unimproved, having fixed boundaries and designated on a plat or *survey* devoted to a specific *use* or occupied by a *building* or a *building group*, united by a common interest, *use* or *ownership*, which abuts and is accessible from a *road* or *drive*, and that is not divided by any *watercourse*, existing *road* or public *right-of-way*.

Lot area means the total area within the *lot lines* excluding any area within a *right-of-way* and any area within twenty-five (25) feet of the centerline of a *private road*.

Lot, Corner means a *lot* situated at the junction of and adjacent to two or more intersecting *roads* when the interior angle or intersection does not exceed one hundred thirty-five (135) degrees.

Lot, Coverage. See *Coverage*.

Lot depth means the mean distance from the *front lot line* to rear *lot line*.

Lot line means the *lines* bounding a *lot*.

Lot line, Front means a *lot line*, which is coincident with the *right-of-way* boundary *line* of a *road*, other than a *private road*, or which is measured twenty-five (25) feet from the centerline of a *private road*.

Lot, Through means a *lot*, which faces on two *roads* at opposite ends of the *lot* and which is not a *corner lot*.

Lot width means the width of a *lot* measured along the *front yard setback*.

Maintenance agreement means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of *stormwater management* practices.

Mall means an individual *building* or group of *buildings* under common management that is/are greater than twenty-five thousand (25,000) square feet in total size containing a combination of three or more separate *retail uses* or an individual *building* or group of *buildings* under common management that is/are greater than one hundred thousand (100,000) square feet in total size containing a combination of three or more separate office or *industrial uses*.

Medical clinic. See *health care clinic*.

Mini-storage facility means a *building* or *building* group designed and constructed with individual partitions or compartments for the storage of property. This definition shall not include a wholesale storage, warehouse/*distribution center*, *truck terminals*, and/or other transfer facilities for goods, wares, or merchandise.

Mitigation means any action taken or not taken to avoid, minimize, rectify, reduce, or eliminate actual or potential adverse environmental impact, including *adverse visual impact*.

Mixed-use building means a *building* that contains two or more allowable *principal use* types in a multi-story *building*. For example, a *building* with at least one floor devoted to allowed nonresidential *uses* and at least one devoted to allowed residential *uses* would be considered a *mixed use building*.

Manufactured home means a *structure*, transportable in one or more sections and while being transported is eight body feet or more in width or forty (40) body feet or more in length or, when installed on a *lot*, is at least three hundred twenty (320) square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. The term shall include any *structure* which meets the size requirements herein set forth, and for which the manufacturer has filed the certification required by the United States Department of Housing and Urban *Development* (HUD) and which *structure* complies with the National *Manufactured Home* Construction and Safety Standards. A *manufactured home* should not be confused with a *travel trailer* which is towed by a motor vehicle and which can be operated independently of utility connections and is limited in width while being transported to eight body feet, in length to thirty-two (32) body feet and is designed to be used principally as a *temporary dwelling* and does not require a HUD seal. A *manufactured home* shall include a double wide *manufactured home*. A *manufactured home* is identified as such by the existence of the seal required by HUD. A *manufactured home* should not be confused with a *modular home*.

Manufactured home park. See *Alternative dwelling park*.

Modular home means a *dwelling unit* constructed off-site, consisting of one or more segments and designed to be affixed to and supported by a foundation, as part of the real estate, and the one or more segments having each horizontal overall exterior dimension of at least twenty (20) feet.

Monopole means a freestanding *tower* consisting of a single pole designed to support an *antenna*.

Museum means a *building*, place, or institution primarily devoted to the acquisition, conservation, study, exhibition, and educational interpretation of objects having scientific, historical, or artistic value. Such facilities may include limited *retail*, restaurant,

catering, or conference facilities to serve *museum* patrons.

New York State licensed professional means a professional, licensed by the state of New York under Article 145 of the New York State Education Law. This includes but is not limited to engineer, architect and interior designer.

Native species means a species that was not introduced and historically, or currently, occurs in a given ecosystem.

Nature center means a type of *museum* or visitors center designed to educate people about nature and the environment. Classrooms, trails, habitat areas, and conference facilities may be a part of a *nature center*. Additionally, lodging and camping areas for users of the *nature center* may be available.

Night club means a place of entertainment whose *principal use* is provision of music and space for dancing by patrons on a *lot*, regardless of whether alcoholic beverage, food, or other entertainment are provided as *accessory use*.

Nonpoint source pollution means pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Notice of compliance means a notice issued by a zoning officer upon completion of construction, *alteration*, or change in occupancy classification pursuant to the NYS Uniform Fire Prevention and *Building Code* of a *building* and/or *lot*. The notice shall acknowledge satisfactory compliance with the requirements of this law, any conditions of approval attached to such *use* by an *authorized board* of the town, and any adjustments thereto granted by the zoning board of appeals. The notice is a permit to *use* the *structure* and/or *lot* in accordance with the approval.

Nursery school/pre-kindergarten means a *private school* organized for the purpose of educating three or more children less than seven years of age for less than three hours per day (although two sessions may be held daily), and shall be registered and certified by the NYS Education Department. (See also *Day care center*.)

Nursing home means a facility with a *principal use* of nursing care as defined and regulated by New York State.

Office, General business means a business, office, or *agency* providing service to the general public or other offices and agencies, such as insurance brokers, real estate agents, computer programming, consulting organizations, or similar service businesses.

Office, Professional means an office principally occupied by a professional licensed by the state of New York such as a lawyer, engineer, architect, accountant, physician, chiropractor, therapist, dentist, or similar occupation.

Outdoor lighting means outdoor electrically powered illuminating device, lamps, light, or reflective surface used or designed to be used for illumination of a *structure*, *sign*, improvement and/or *lot*.

Parcel. See *Lot*.

Parking area means an area for the *parking* and/or storage of *motor vehicles*.

Parking lot, Commercial means any *lot* or *structure* where the *principal use* is a *parking area*.

Paving means a smooth, hard, dense semi pervious or impervious surface, which is durable and well-drained under normal *use* and weather conditions. For purpose of a public/dedicated *road* or street, see Chapter 12.04 of the town of Big Flats Town Code.

Permanent impact means the potential long-term effects on the characteristics, or functions and values of the *resource* that result from a regulated activity.

Phasing means *clearing* a *parcel* of land in distinct pieces or parts, with the *stabilization* of each piece completed before the *clearing* of the next.

Permit, Building means a permit issued by the code enforcement officer in conformance with this title, the New York State Uniform Fire Prevention and *Building Code* and/or any other *building code* requirements adopted by the town.

Personal service establishment means a non-retail use providing service related to an individuals' care and upkeep need, such as a manicurist, barber shop or beauty parlor, and the upkeep of personal attire, such as tailor, seamstress, or shoe repair. This definition shall not include facilities used for appliance, vehicle, small engine repair or similar use, nor shall it include a *body modification facility*.

Place of worship means a *building* or *lot* used predominantly for public worship by members or representatives of a religious sect, group, or organization as recognized by state statute and any other use must be de minimis.

Planned unit development means an independent, freestanding zoning *district*, wherein the zoning regulations need not be uniform for each class or type of land use, but where the use of land shall be in accordance with a preliminary *planned unit development* plan approved by the town board.

Plant nursery. See *Agricultural plant*.

Plaza means an individual *building* or *building group* under common management that is/are less than twenty-five thousand (25,000) square feet in total size containing a combination of three or more separate *retail; uses* or an individual *building* or *building group* under common management that is/are less than one hundred thousand (100,000) square feet in total size containing a combination of three or more separate office or *industrial uses*.

Pollutant of concern means sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the *development* activity.

Practicable means available and feasible considering cost, existing technology, and logistics based on the overall purpose of the activity.

Project means *land development activity*.

Reasonably foreseeable future activities means that the activity will proceed or there is a high probability that the activity will proceed, i.e., valid permits have been granted for *projects* in the vicinity of the proposed *project; projects* are constructed or under construction, or; applications for permits to construct *projects* in the vicinity of the proposed *project* are currently under consideration.

Recreation, Amusement means a site containing permanent or *temporary structures* or events for traveling carnivals, circuses, amusement parks, driving ranges, batting cages, mini-golf, go kart tracks, paintball courses, bowling centers, roller skating facilities, and similar indoor or outdoor recreational gaming activities.

Recreational facility means a public, commercial, or noncommercial *building*, place, site, or field for leisure use where such use may include, but are not limited to, swimming, tennis, court games, baseball and other field sports, riding academies, and playground activities, and excluding mechanical devices.

Recreational vehicle (RV) means a motorized vehicle or trailer that can be registered by the NYS Department of *Motor Vehicles*, which is designed to be primarily used for *temporary* living or sleeping purposes while traveling and which is customarily standing on wheels or removable rigid supports.

Recharge means the replenishment of underground water reserves.

Research facility means a business facility where the primary focus is on product advancement and innovation. Such facilities may be on stand-alone *lots* or a part of an office or business park.

Resource means the individual protected natural *resource* specific to the activity proposed in an application.

Restaurant, Fast food. A *fast food restaurant* describes an establishment where food and/or beverages are sold in a *form* ready for consumption by design, packaging, and sales techniques; significant revenue is derived from food sales where a large percentage of consumption takes place off-*lot*. At such a restaurant, patrons are served at a counter and a *drive* through window is commonly present.

Restaurant, Standard. A *standard restaurant* describes any full-service establishment whose *principal use* is the on-site preparation and sale of food for consumption by patrons at such a restaurant, patrons are served by a wait staff. Such an establishment may or may not sell alcoholic beverages.

Retail means a business or commercial *use* or activity involving primarily the sale or exchange of goods, wares and merchandise or stock-in-trade to the public which may include some fabrication on-site of goods or merchandise that are sold on the *lot* containing such *use* or activity.

Retail, Small scale means a *structure* with no more than two distinct business *uses* that is no greater than ten thousand (10,000) square feet in size.

Right-of-way means property under public control, ownership, or *easement*, by deed or by operation of law, and used or intended to be used for travel by *persons* and/or vehicles.

Road means an existing public or private way which has been improved to afford vehicular access to a *lot*.

Road, Local means a *road* designed primarily to provide vehicular access only to a *lot* which abuts it.

Road, Marginal Access means a local *road* that is parallel and adjacent to a *primary road*, that is connected to the *primary road* by another short *local road*.

Road, Primary means a state, *county*, or town *road* which serves or is designed to serve heavy flows of vehicular traffic and which is used primarily as a route for vehicular traffic between communities and/or other heavy traffic areas.

Road, Private means an improved way that is used or designed to be used to provide access to *lots* which abut it, that is built to town specifications, and remains in the ownership of and is maintained by the *developer* or *development* association, and is not dedicated to the town.

Road, Secondary means a *town road* which serves or is designed to serve as a vehicular traffic way within a neighborhood or as a feeder to a *primary road*.

Road, Town means a *road* that is controlled, maintained, and owned by the town by deed or by operation of law.

Roadside stand means a direct marketing operation without a permanent *structure*, only offering outdoor shopping. Such an operation is seasonal in nature and features on-site and locally produced *agricultural plant* products. Operation is located on an agricultural site or adjacent farm residence as an *accessory use* to the *principal use* of the *lot(s)*.

Salvage yard means a *lot* with or without a *building* used or occupied for the storage, sale, or salvage of junk material, including processing, such as sorting, baling, packing, disassembly, exchange, purchase and/or sale of materials, and including scrap metals or other scrap, used, or salvaged *building* materials, or the dismantling or demolition of automobiles or other vehicles, tires, machinery or parts thereof. This term shall not include the storage, *uses* or salvage of agricultural machinery in *agricultural plant*, *agricultural animal*, *agri-business* and *feedlot uses*.

Scale contrast means the degree to which an activity or object dominates or intrudes into a *landscape* or confined setting.

Scenic resource means public natural *resources* or public lands visited by the general public, in part for the *use*, observation, enjoyment, and appreciation of natural or cultural visual qualities. The attributes, characteristics, and features of the *landscape* of a *scenic resource* provide varying responses from and varying degrees of benefits to, humans.

School, Private means an elementary or secondary school facility operated by a *person*, firm, corporation, or organization (other than a public school *district*), giving academic instruction in the ten (10) common learning areas of arithmetic, reading, spelling, writing, the English language, geography, history, civics, hygiene and physical training, registered and/or certified under the requirement of the Commissioner of the NYS Department of Education or chartered by the Regents of the University of the state of New York.

Scientific perspective means the reduction in the apparent size of objects as the distance from the observer increases. An object appears smaller and smaller as an observer moves further and further from it. At some distance, depending upon the size and degree of *contrast* between the object and its surroundings, the object may not be a point of interest for most people. At this hypothetical distance it can be argued that the object has little impact on the *composition* of the *landscape* of which it is a tiny part. Eventually, at even greater distances, the human eye is incapable of seeing the object at all.

Sediment control means measures that prevent eroded sediment from leaving the site.

Sensitive areas means cold water fisheries, shellfish beds, swimming beaches, groundwater *recharge* areas, water supply reservoirs, habitats for threatened, endangered or special concern species.

Setback means a *line* generally parallel to a *lot line* and spaced equidistant therefrom by a distance specified in Section 17.16.020 or a *line* generally parallel to an edge of a *drive* or *internal drive* and spaced equidistant therefrom by a distance specified in Chapter 17.20.

Sign means any letter, number, mark, symbol, figure, picture, exemplary device and/or banner (each and/or all hereafter referred to as "symbol") used or designed to be used to express, advertise or display an idea, instruction, product, commodity, business, service and/or entertainment. The term includes any structural or surface area where the symbol is displayed or attached.

Sign area means the area within the fewest and shortest straight *lines* that can be drawn around the outside perimeter of a *sign* including all decorations and lights but excluding the supports if they are not used for advertising purposes. Each separate face of a *sign* shall be counted as part of the *sign area*, except that any neon tube, string of lights, or similar device shall be considered as a two dimension *structure* and deemed to have minimum width dimension of six inches.

Sign, Accessory means a *sign*, other than an identification *sign*, that advertises goods or services available upon the *lot* where such *sign* is located.

Sign, Flashing means an *illuminated sign* which is not stationary or constant in intensity and/or *color*. An electronically activated changeable *sign* shall not be considered a *flashing sign* when used in compliance with 17.52.020(B)(18)(b). *Flashing signs* are prohibited in the town of Big Flats as per 17.52.030(A)(8).

Sign, Illuminated means a *sign* that incorporates any artificial lighting produced by electrical, technical, thermal or chemical means or *uses* light reflective materials to draw attention to or light the *sign*.

Sign, Off-Lot means a *sign* which directs attention to, advertises or expresses an idea, product, business activity, service, or entertainment which is not conducted, sold, or offered upon the *lot* where such *sign* is located.

Sign, Identification means a *sign* containing the name of and/or directing attention to a particular business, profession or other *principal use* on a *lot*, as well as any and all *accessory use(s)* that exist on a *lot*. A "For Sale" *sign* or "Lease" *sign* relating to the *lot* on which it is displayed shall be deemed an *identification sign* when a *building* and/or *lot* is unoccupied or vacant and offered for sale or lease.

Sign, Temporary means a *sign* displayed for a limited period of time. Such *signs* are typically constructed of, but not limited to light materials and whose *duration* is limited by its construction functionality.

Significant wildlife habitat (SWH) means the habitat frequented by endangered and threatened species.

Single ownership means possession of a *lot* under single or unified control, whether by sole, joint, common or other ownership or by a lease having a term of not less than ten (10) years, regardless of any division of such *lot* into separate *parcels* for the purpose of financing or tax purposes.

Site plan means a map, plan, and supporting information required pursuant to Chapter 17.32 for *uses* specified in Section 17.12.010.

Situation means the position of the activity or object within the *landscape*.

Slaughterhouse means a *lot* on which or a *building* in which *agricultural animals* are slaughtered for sale, gain, or commercial purpose.

Solar collector means a device or *structure*, or combination of devices or *structures*, including supports, which transform direct solar energy into thermal, chemical, or electrical energy, and that contribute to a *structure's* on-site energy supply.

Solar collector, Detached means a *solar collector* physically detached from the *structure* for which solar energy is to be supplied.

Solar energy system means a complete design or assembly consisting of a *solar collector*, an *energy storage facility* (where used) and components for the distribution of transformed energy provided that the system is independent of any conventional energy system. Passive *solar energy systems* may be included in this definition.

Solar reflector means a device used or designed to be used to increase the solar radiation received by the *solar collector*.

Solid waste disposal facility means any facility as defined, permitted and regulated by New York State Department of Environmental Conservation (NYSDEC).

Spatial dominance means the degree to which an activity or object dominates the *landscape*; is prominently situated within the *landscape*; or dominates landform, *waterform*, or *sky backdrop*.

SPDES general permit for construction activities GP-02-01 means a permit under the New York state pollutant discharge elimination system (SPDES) issued to *developers* of construction activities to regulate disturbance of one or more acres of land.

SPDES general permit for stormwater discharges from municipal separate stormwater sewer systems GP-02-02 means a permit under the New York state pollutant discharge elimination system (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify *stormwater* control standards.

Specialized repair means a *building* or *lot* used primarily for the indoor repair of highly technical specialized equipment, such as: electronic equipment, electrical systems, computer systems and circuits and other similar operation and support systems. This definition does not include a principal or *accessory uses* that involve mechanical and body repair, painting or refinishing of *motor vehicles*, small engines, appliances, or similar products.

Stable, Commercial means any *lot* or *structure* used or maintained for the boarding, breeding, sale, training, riding, or driving of horses, mules or donkeys for compensation or incidental to the operation of any club, association or similar organization.

Stable, Private means an *accessory structure* to a residential *use* in which horses, mules or donkeys are kept for private *accessory use* and not for remuneration.

Stabilization means the *use* of practices that prevent exposed soil from eroding.

Steep slope means any geographic area of the town having natural topography with slopes of a ratio of fifteen (15) percent, one and one-half feet rise in ten (10) feet horizontal distance, or greater.

Stop work order means an order issued which requires that all construction activity on a site be stopped.

Storage facility means a *building* or *building group* designed and constructed for the common, long-term, and/or seasonal interior storage of individual or business property. This definition does not include a warehouse/*distribution center*, *truck terminal* or other transfer facility for goods, wares or merchandise.

Stormwater means rainwater, surface runoff, snowmelt and drainage.

Stormwater hotspot means a *land use* or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical *stormwater runoff*, based on monitoring studies.

Stormwater management means the *use* of structural or nonstructural practices that are designed to reduce *stormwater runoff* and mitigate its adverse impacts on property, natural *resources* and the environment.

Stormwater management facility means one or a series of *stormwater management practices* installed, stabilized and operating for the purpose of controlling *stormwater runoff*.

Stormwater management officer means an employee or officer designated by the town of Big Flats to accept and review *stormwater* pollution prevention plans, forward the plans to the town planning board and inspect *stormwater management practices*.

Stormwater management practices (SMPs) means measures, either structural or nonstructural, that are determined to be the most effective, *practical* means of preventing flood damage and preventing or reducing point source or *nonpoint source pollution* inputs to *stormwater runoff* and water bodies.

Stormwater pollution prevention plan (SWPPP) means a plan for controlling *stormwater runoff* and pollutants from a site during and after construction activities.

Stormwater runoff means flow on the surface of the ground, resulting from precipitation.

Story means a portion of a *building* which is between one floor and the next higher floor level or roof.

Structure means a static construction of *building* materials, composed of one or more parts, including but not limited to a *building*, heating-ventilating-air conditioning (HVAC) system, stadium, platform, *tower*, *antenna*, shed, display stand, storage bin, *sign*, *fence*, reviewing stand and gasoline/fuel pump.

Structure, Accessory means a *structure* detached from, on the same *lot* with and subordinate to a *principal structure*, used for purposes customarily incidental to those of the *principal structure*. *Accessory structure* includes, but is not limited to, portable, removable or permanent enclosure, shade *structure*, carport, garage and storage shed.

Structure height means the vertical distance measured from the mean *finished grade* to the highest point of a roof or otherwise to the top of a *structure*.

Structured parking means *parking* spaces provided within the footprint area of a *structure*, such as a *building*, including rooftop, at-grade, or below grade spaces.

Structure, Principal means a *structure* where the *principal uses* of a *lot* are conducted. Such *structure* includes any open or enclosed porch, carport, garage, or similar *structure* attached to such *structure*.

Surface waters of the state of New York means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the state of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition are not waters of the state. This exclusion applies only to manmade bodies of water which neither were originally in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

Temporary means a type of period of time allowed by law or determined to be appropriate for the facts and circumstances relating to a condition or *situation* under consideration for permit or approval by a town official or an *authorized board* of the town.

Temporary impacts means the potential short-term effects on the characteristics, or functions and values of the *resource* that result from a regulated activity or the periodic *use* of a *structure*. *temporary* effects are also those potential effects that can be overcome or avoided through implementation methods during an activity or restoration of the *resource* following completion of an activity.

Texture means the grain of a *landscape* or repetitive pattern of tiny *forms*. Visual *texture* can range from smooth to coarse.

Theater, Drive in means a seasonal outdoor facility devoted to the showing of motion pictures. Restaurants and amusement

recreation facilities may be *accessory uses* to a *drive in theater*.

Theater, Motion picture means an enclosed *building* or part of a *building* primarily devoted to showing motion pictures.

Theater, Stage means a facility that is primarily utilized for dramatic musical or live performances and which may include dinner theaters. A *stage theater* may be operated as a stand-alone *use* or as part of an *art center*, cultural facility, school, or *museum*.

Tower means a *structure* other than a *building* vertically projecting up from ground upon which it is positioned and designed to support an *antenna* or other *structure* that is not a *building*.

Town Center Area means the area defined by the Town Center, Town Center Residential, and Town Center 2 zoning *districts*.

Townhouse means a *building* consisting of three or more attached *one-unit dwellings* each having separate entrances and common vertical party walls. (See also *Building, Semi-Detached*.)

Traditional uses means the dominant cultural *uses* of the *resource* that have occurred in the recent, rather than historical, past.

Transient guest means any *person* who shares a *dwelling unit* on a nonpermanent basis for not more than thirty (30) days. (See the New York State Sanitary Code.)

Transition yard means an area of land forming a physical separation between a *district* boundary and a yard *setback* or *buffer yard*.

Travel Trailer. See *Recreational vehicle*.

Truck terminal means a *building* or *lot*, part of a *building* or *lot*, used for the short-term storage, transfer and/or transit of goods, wares and merchandise for the *owner* or others by truck or rail transport.

Use means an activity on a *lot*.

Use, Accessory means a *use* which is controlled by the person exercising a *principal use*, incidental to and customarily associated with the *principal use* and located on the same *lot* as the *principal use*.

Use, Adult means a public or private business or establishment or any part thereof, which excludes *persons* under eighteen (18) years of age and which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portions of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental and/or display of materials, products, entertainment or services which are of a sexually explicit nature.

Use, Extractive means the removal and sale of any soil, gravel or earth product from a property. *Grading* in preparation for site construction under approved plans, where earth material is moved on-site or removed off-site incidental to construction activities, shall not be deemed an *extractive uses*.

Use, Nonconforming means the *use* of *structure* or *lot*, legally existing at the time of enactment of this title, which does not conform to the zoning requirements of the *district* in which it is situated.

Use, Principal means a main or primary *use* of a *lot* or *structure*.

Vehicle detailing facility means a business that performs an extremely thorough cleaning and polishing of an automobile, both inside and out, to produce a show-quality level of detail above and beyond that provided by a *car wash*.

Vehicle filling station means a *lot*, including any *structure* thereon or any part thereof, that is used primarily for the sale of fuel, oil and other petroleum products for *motor vehicles* on-site, and may include *accessory uses* for the sale of *motor vehicle* accessories, facilities for lubricating, washing, and *motor vehicle repair*, but shall not include auto body work, welding, or painting.

Vehicle maintenance facility means a *lot* or *structure* containing three or more of the following *uses*: *Vehicle filling station*,

Vehicle repair, Vehicle detailing, Auto parts sales, Car wash, and/or Vehicle rental.

Vehicle rental means a *lot* and/or a *structure* or any part thereof used for the rental and for the display for rental of only passenger automobiles (including minivans and sport utility vehicles).

Vehicle repair means a *lot* including any *structure* thereon or any part thereof, that may have as a *principal use* a *vehicle filling station*, and may also include welding, painting, and vehicular body and/or engine work and the accessory sale of related vehicle parts, maintenance products, and accessories. A *salvage yard* is not to be considered as meeting this definition.

Vehicle sales and/or repair, Heavy equipment means a *lot* and/or *structure* or any part thereof used for the display, sale, lease or repair of new or used tractor trailers, heavy construction equipment, and large scale agricultural equipment.

Vehicle sales/lease means a *lot* and/or a *structure* or any part thereof used for the sale and/or lease, and for the display for sale and/or lease, of new or used automobiles (including minivans and sport utility vehicles), trucks (five tons GVW or less) or trailers (eighteen (18) feet in length or less), motorcycles, recreational vehicles, snowmobiles, boats, and light industrial vehicles.

Veterinary hospital means a *lot* and/or *structure* thereon or any part thereof used for the treatment and/or examination of animals' illness including facilities for boarding animals receiving examination or treatment. This definition is deemed to include animal *hospital* or clinic.

Viewshed means the geographic area as viewed from a scenic *resource*, which includes the proposed activity. The *viewshed* may include the total visible activity area from a single observer position or the total visible activity area from multiple observers' positions. A map that shows the geographic area from which a proposed action may be seen is a *viewshed*.

Visual assessments means a variety of analytical techniques that employ *viewsheds*, and/or *line-of-sight profiles*, and descriptions of aesthetic *resources*, to determine the impact of *development* upon aesthetic *resources*; and potential *mitigation* strategies to avoid, eliminate or reduce impacts on those *resources*.

Visual elements means the *landscape* components that make up the overall visual character of a *landscape*.

Visual impact means what occurs when the mitigating effects of perspective do not reduce the visibility of an object to insignificant levels. Beauty plays no role in this concept. A *visual impact* may also be considered in the context of *contrast*. For instance, all other things being equal, a blue object.

Visual quality means the essential attributes of the *landscape* that when viewed elicit overall benefits to individuals and, therefore, to society in general. The quality of the *resource* and the significance of the *resource* are usually but not always, correlated.

Warehouse/distribution center means a *lot* and/or *structure* thereon or any part thereof used for short term or *temporary* storage of goods, wares, and/or merchandise, whether for the *owner* of the *warehouse/distribution center* or for others, prior to shipment thereof to a wholesale and/or *retail* business, whether it is in public or private ownership, or to a not-for-profit organization.

Warehouse/distribution center, Small scale means a *lot* and/or *structure* thereon or any part thereof used for short term or *temporary* storage of goods, wares, and/or merchandise, whether for the owner of the *warehouse/distribution center* or for others, prior to shipment thereof to a wholesale and/or *retail* business, whether it is in public or private ownership, or to a not-for-profit organization built in strict compliance with the town of Big Flats *Development Design Guidelines* and not exceeding ten thousand (10,000) square feet of *floor area* dedicated to the *use*.

Watercourse means a permanent or intermittent stream or other body of water, either natural or manmade, which gathers or carries surface water.

Waterform means one of the attributes or features that make up the earth's surface, such as a pond, lake, stream, river, waterfall, estuary, or ocean.

Waterway means a *channel* that directs surface runoff to a *watercourse* or to the public storm drain.

Wholesale business means a business or establishment which is engaged in selling primarily to retailers or jobbers rather than

directly to the public.

Wireless telecommunication means any personal wireless service as defined in the Federal Telecommunications Act of 1996 which includes Federal Communication Commission (FCC) licensed commercial wireless telecommunication services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services.

Wireless telecommunication facility (WTF) means an unstaffed facility for transmission and/or reception of *wireless telecommunication* and comprising an *antenna* or *antenna* array plus connection cables on a *tower* or support *structure* to achieve necessary elevation for such transmission and/or reception and associated operating equipment.

Workshop means a small workspace intended for the creation of handcrafts. Products created in a *workshop* are not intended for sale to the general public. If products created in a *workshop* are intended for sale to the general public, then a *workshop* like space shall be considered a *home occupation* or *cottage industry*.

WOSS means *Wetlands of Special Significance*.

Yard, Front means an open area bounded by: (1) a *front lot line*; (2) a *front yard setback*, and (3) either: (a) two *side lot lines*, or (b) a *side lot line* and another *front lot line*, or (c) two other *front lot lines*. (See Figure 1 on next page)

Yard, Rear means an open area bounded by: (1) a *rear lot line*; (2) a *rear yard setback* related to the *rear lot line*; and (3) two *side yard setbacks*. (See Figure 1 on next page)

Yard, Side means an open area bounded by: (1) a *side lot line*; (2) a *side yard setback* related to the *side lot line*; (3) a *front yard setback*; and (4) either: (a) *rear lot line*, or (b) another *side lot line*, or (c) another *front yard setback*.

GRAPHIC UNAVAILABLE: [Click here](#)
(LL No. 2, 2004 § 2: LL No. 2, 2003 (part)) (See Figure 1 below)
(LL No. 6, 2009)

17.04.070 Application of requirements.

No *building* or *lot* shall hereafter be used or occupied, and no *building* or *structure* or part thereof shall be erected, constructed, altered or reconstructed unless in conformity with the requirement in this chapter specified for the *district* in which it is located, except as hereinafter provided.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.04.080 General requirements.

A. No *structure* shall hereafter be erected, constructed, altered, or reconstructed except in conformance with the requirements and procedures of this title.

B. No part of a required yard or other open space around any *structure* required for the purpose of complying with the provisions of this title shall be included as part of a yard or other open space required for another *structure*.

C. No *lot* shall be reduced in size so that its area or any of its dimensions or open spaces would be smaller than required by this title.

D. No *structure* or *lot* shall be used for any *uses* other than those *uses* permitted for the *district* as set forth in Section 17.12.010 or 17.21.030 where applicable.

E. This title shall be interpreted and applied so that it provides the minimum requirements for the promotion of the public health, safety, and general welfare.

F. A *use* not specifically permitted shall be deemed to be prohibited.

G. Regardless of any other provisions of this title, any *use* that is noxious or offensive and constitutes a public nuisance by reason of emission of odor, dust, noise, vibration, smoke, gas, fumes or radiation or which presents a hazard to public health or safety is prohibited.

H. Approval of a *use* under this title shall not abrogate an *applicant's* responsibility to obtain all other required local, *county*, state, or federal permits or approvals as appropriate.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.08

DISTRICTS ESTABLISHED*

Sections:

17.08.010 *Districts.*

17.08.020 *Zoning map.*

17.08.030 *Interpretation of district boundaries.*

17.08.040 *Use districts.*

* Prior history: LL No. 2, 1997 and LL No. 1, 1999.

17.08.010 *Districts.*

In order to fulfill the purpose of this zoning law, the law establishes the following *districts*:

RU - Rural;

R1 - Residential - moderate *density*;

R2 - Residential - high *density*;

TC - Town Center;

TC2 - Town Center 2;

TCR - Town Center Residential;

BN - Business Neighborhood;

BN2- Business Neighborhood 2;

BNR - Business nonretail;

BR - Business regional;

ABD - *Airport business development*;

CL - Commercial or light industrial;

I - Industrial;

C - Conservation;

RCD - Recreation Conservation *District*.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.08.020 Zoning map.

The location and boundaries of the *districts* are established on a map designated "Zoning Map of the town of Big Flats" which is kept on file and will be available for public viewing in the office of the town clerk, and such map is declared to be part of this zoning law.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.08.030 Interpretation of *district* boundaries.

Where uncertainty exists with respect to the boundary of any of the aforesaid *districts* as shown on the zoning map, the following rules shall apply:

- A. **Centerline and *Right-of-Way Lines*.** Where *district* boundaries are indicated as approximately following the centerline or *right-of-way lines* of a *road*, public utility *easement* or *watercourse*, the boundaries shall be construed to be coincident with such lines. Such boundaries shall be deemed to be automatically moved if a centerline or *right-of-way* of such *road*, public utility *easement*, or *watercourse* is moved not more than twenty (20) feet.
- B. ***Lot* or *Boundary Lines*.** Where *district* boundaries are indicated as approximately following the town boundary *line*, property *lines*, *lot lines*, or projections thereof, said boundaries shall be construed to be coincident with such *lines* or projections thereof.
- C. Where *district* boundaries are so indicated that they are approximately parallel to the town boundary *line*, property *lines*, *lot lines*, *right-of-way lines* or projections thereof, the boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the zoning map or as shall be determined by *use* of the scale shown on the zoning map.
- D. In the event of a questionable *district* boundary, the questionable boundary shall be referred to the zoning board of appeals, and they shall, to the best of their ability, establish the exact boundary.
- E. Precise *district* boundary determinations made by the zoning board of appeals in accordance with the above rules shall be considered final and conclusive, and may only be altered by amendment of the zoning map by the town board.
- F. ***Lots Divided by *District Lines**.** Where a *lot* is divided by a *district* boundary *line*, the requirement for each respective *district* shall apply except:
 1. In all cases where a *lot* in one ownership, other than a *through lot*, is divided by a *district* boundary so that fifty (50) percent or more of such *lot* lies in the less restricted *district*, the requirement prescribed for such less restricted *district* shall apply to the more restricted portion of the *lot* for a distance of thirty (30) feet from the *district* boundary. For purposes of this title, the more restricted *district* shall be deemed that *district* that prohibits a particular intended *use* of a *lot* or that sets a higher standard with respect to *setback*, *coverage*, yards, screening, landscaping and/or similar requirements.
 2. In all cases where a *district* boundary *line* is located not farther than fifteen (15) feet away from a *lot line* of record, the requirement applicable to the greater part of the *lot* shall apply to the entire *lot*.
- G. ***Buildings Divided by *District Lines**.** Where a strict boundary *line* divides a *building* existing on the effective date of the local law codified in this title, so that fifty (50) percent or more of such *building* lies within the less restricted *district*, the requirement prescribed by this title for such less restricted *district* (as defined in subsection F of this section) shall apply to the entire *building*. Such provisions shall apply only if, and as long as, the *building* is in

single ownership and its structural characteristics prevent its *uses* in conformity with the requirements of each *district*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.08.040 Use districts.

A. Rural (RU) Intent. This *district* delineates those existing substantially undeveloped areas of the town that exhibit a rural character due to the lack of public services to support *development*, such as *road* networks, water and sewer service, and where serious limitations to *development* such as *steep slopes*, bedrock exposed or at shallow depth, poor drainage soils, wetlands and other natural features which may restrict denser *development*; are significant factors. This *district* serves to conserve these areas for less intensive, low *density* residential *use* and, where appropriate in conformance with the natural and manmade limitations existing in these areas, for certain general and/or business *uses* characteristic of rural areas.

B. Residential Moderate *Density* (R1) Intent. This *district* delineates those areas where predominantly *one-unit dwellings* are located, moderate *density* residential *development* has or is likely to occur, and it is necessary to protect the integrity of these residential areas by prohibiting the intrusion of any *use* that is not compatible with this predominant type and intensity of *use* exists.

C. Residential High *Density* (R2) Intent. This *district* delineates the developed residential areas where predominantly *one-unit dwellings* within moderate to high *density* residential subdivisions has occurred and allow similar additional in-fill residential *development* to occur at the same *density*, while protecting the integrity of these residential areas by prohibiting the intrusion of any *use* that is not compatible with this predominant type and intensity of *use*

D. Town Center (TC) Intent. This *district* establishes areas within the traditional hamlet where commercial *uses* are desired, either in combination with housing or as separate *uses*. It is the intent of the town to promote and preserve this area as a small community center where residential and commercial *uses* can co-exist through the *use* of *district* wide design guidelines and requirements to ensure the compatibility between *uses* and adjoining residential *districts* to preserve the unique character of the Town Center.

E. Town Center 2 (TC2) Intent. The Town Center 2 zoning *district* is meant to serve as a service oriented area within the *Town Center Area*. While some services associated with the Town Center zoning *district* will be allowed, additional *uses* similar to those already in the *district* will be allowed.

F. Town Center Residential (TCR) Intent. This *district* consists of a section of the Big Flats hamlet that is primarily residential in nature. In this area, *one-unit dwellings* are the prevalent housing *form*. New residences to be constructed within the *district* should be compatible with the existing neighborhood areas. It is the intent of the town to preserve residential neighborhood housing and community facilities that are compatible with this housing type in the TCR *district*.

G. Business Neighborhood (BN) Intent. This *district* establishes areas within the town where limited business *development* of a low-profile scale and character consistent with the adjoining residential *use* can occur. The town has determined that to be consistent with the adjacent residential *use*, such business *development* shall include *uses* that meet the following objectives:

1. With the exception of regulated *signs* and *parking* areas, there shall be no major exterior *accessory use* or appurtenance.
2. A *building* shall be designed to be at a scale consistent with the adjacent residential *use*; no more than two stories and of an individual size and mass that is consistent with the adjacent residential areas.
3. The *development* shall not create noise, dust or other such conditions that would adversely impact on the adjacent residential *use*.
4. The *development* shall be designed to serve the needs of residential neighborhoods of the town.
5. Residential *uses* shall be allowed on the second floor of *structures* in the BN zoning *district*.

To meet these objectives, the town has located this business zoning designation on a *primary road* adjacent to existing residential area. The town finds that the introduction of numerous *drive* access points on a *road* may conflict with the safe and efficient movement of traffic. It is the town's intent to limit the number of curb cuts or *drive* accesses on *roads*.

H. Business Neighborhood 2 (BN2) Intent. The purpose of this *district* is to delineate an area in the town that is very unique in relation to other areas of the town. The BN2 *district* abuts, extends along, and is accessible to Interstate 86, a four-lane limited access highway. The BN2 *district* is located along Daniel Zenker *Drive*, a primary, *county* maintained *road* that provides vehicle access to regional destinations such as the Elmira-Corning Regional *Airport*, the hamlet of Big Flats, and *Airport* Corporate Park. The BN2 zoning *district* also abuts the ABD zoning *district* located immediately to the east of Hibbard Road. The location of this *district* in the town and its proximity to, and direct access from, a limited access Interstate highway warrants a broader variety of permitted *principal uses* than those assigned to the Town Center and Neighborhood Mixed *Use* areas. However, its proximity to residential *uses* also warrants the exclusion of certain *principal uses* that are currently permitted in the ABD and zoning *districts* in the town that abut Interstate 86. Additionally, businesses located in the BN2 zoning *district* are intended to be of a smaller scale than businesses in the BR zoning *district*. Therefore, this *district* is to accommodate certain *principal uses* that may be compatible with the surrounding residential neighborhoods to the west while recognizing the *district's* location in relation to the ABD *district* and Interstate 86.

I. Business NonRetail (BNR) Intent. This *district* delineates that area that is either situated between the two *primary road* networks and active rail *lines*; is located in the major flight path for the Elmira-Corning Regional *Airport*; or is located to act as a *buffer* between incompatible types of *use*. Due to its location, these areas are not well suited to low *density*, single-unit dwelling residential *development*, and cannot support a more intensive business *development* due to the lack of adequate access and services. The town's intent in establishing this *district* is to provide for and accommodate certain low intensity, nonretail business *use* that, by their nature, will be compatible with the lack of services. The *district* may also support certain higher-*density* residential *use* outside of the direct *airport* flight paths and where some *form* of public water and sewer service can be provided. This *district* also encompasses certain prime agricultural lands that are currently in farming operations. It is the town's intent to preserve and support the continuation of these viable agricultural operations as permitted land *use* within this *district*, and to protect and preserve those natural features that exist, such as wetlands, ponds, and recreational opportunities.

J. Business Regional (BR) Intent. This *district* delineates that area in the town that has, by the nature of the existing business *development* and availability of a large-scale transportation network, public water, and public sewer service; become a major regional business center. The extent of existing *development*, availability of services, substantial investment provided in service upgrades and the extent of vacant land leads the town to seek to preserve this area for additional major *retail* business *development* that is consistent with and supports existing *development* patterns. Additionally, the presence of access to transportation networks and existing utilities provides rationale for the encouragement of multi-unit residential *development* within the BR *district*. The town will ensure that the transportation network and other services will continue to accommodate additional major business *development* through establishing minimum requirements for all business *uses* that will include limiting the number of future access points to the *road* network and the careful consideration of the potential *use* of joint access *drive* and *marginal access road*, as appropriate.

K. *Airport Business Development* (ABD) Intent. The town has the advantage of having the regional commercial *airport* located in its approximate center. This facility is an asset to both the town and *county* and should be preserved and protected from inappropriate or nonconforming types of land *uses* or land *uses* that would negatively affect the ability of the *airport* to fulfill its purpose. Accordingly, this *district* encompasses all of the *airport* property, much of the lands that are located within the flight and glide paths and other such adjoining lands that can either be impacted by or impact on the *airport* operation. These areas reserved for industrial and business *use* that supports *airport* operations and provides traveler services, as well as other *use* that may be considered accessory to and compatible with this overall *airport use*. The ABD *district* is provided with requirements to assure and establish the intended compatibility and intensity of *development*. This *district* also encompasses areas of prime agricultural soils that are currently being utilized for active agricultural operations. This agricultural *use* is also considered to be compatible with the *airport use* and *district* designation.

L. Commercial Light Industrial (CL) Intent. This *district* delineates those areas of the town that by their location along and adjoining major *primary roads* that can support a range of business *uses* which cater to the essential traveler services, and to make provision for certain *industrial use* that by their nature require direct access to and support of such road network and/or that may be compatible with such *uses*.

M. Industrial (I) Intent. This *district* delineates those areas in the town that are utilized for and appropriately suited for *industrial use*, and to preserve these areas for such *use* and related *uses* that will not create a detrimental or significant adverse impact

on the environment and the welfare of the community. Areas of the town designated for *adult uses* are also located within the Industrial zoning *district*.

N. Conservation (C) Intent. This *district* delineates those open, public-owned, agricultural and/or environmentally sensitive land and water areas of the town that because of their current *use*, critical relationship to the Chemung River, agricultural potential or extreme environmental sensitivity, should be preserved and utilized only for less intensive and carefully considered *development* that is compatible with the sensitive nature of such lands; and to ensure that the existing character, nature and benefits derived from such lands are preserved and retained.

O. Recreation Conservation *District* (RCD) Intent. In accordance with the Comprehensive Plan, this *district* delineates certain open areas of value to the public within the town represented in their natural, undeveloped, or unbuilt condition. It is recognized by the town that the *principal use* of certain open areas is and ought to be the *development*, management, and utilization of the natural *resource* base possessed by these areas. In order that this value be maintained and this *use* encouraged, a zoning *district* is established to regulate the location of *buildings* and *structures* and the *use* of *parcels* and *lots*, in order to protect and enhance the natural *resources*, natural amenities, natural habitats of wildlife, watershed areas, agricultural capabilities, public recreation areas, and the public health, safety and welfare by reducing the hardship and financial burdens imposed upon the town by the wanton destruction of *resources*, and the improper and wasteful *use* of open land and wooded areas. It is further the intent of this *district* to permit compatible *uses*, *buildings*, and *structures* only at a low *density* and low impact as an added guarantee of compatibility with surrounding land *uses*.

(LL No. 8, 2007 § 1 (part); LL No. 2, 2003 (part))

(LL No. 6, 2009)

Chapter 17.12

DISTRICT USE* REQUIREMENTS

Sections:

17.12.010 *Use* requirement table.

17.12.020 **Activities prohibited in all *districts*.**

17.12.030 **Exceptions in all *districts*.**

*Prior history: LL No. 2, 1997 and LL No. 1, 1997.

17.12.010 *Use* requirement table.

The *use* requirement table for *uses* permitted in each *district* is as follows:

USE	DISTRICT															
	RU	R1	R2	TC	TC2	TCR	BN	BN2	BNR	BR	ABD	CL	I	C	RCD	
Residential - As Principal Use																
Alternative dwelling park	S															
Assisted living facility	S	S		S	S				S							
Boarding house				S												
Convalescent home	S			S	S				S							
Dwelling, multi-unit	S/F	F ³		F			S		F ³	X						
Dwelling, one-unit	P/F	P/F	P/F	P	P	P	P		F ³							
Dwelling, two-unit	P/F	F	S/F	S/F	P		S		F ³							
Dwelling with a business				S			S									
Nursing home	S			S	S				S							
Seasonal dwelling or hunting cabin	P															S
General--As Principal Use																
Airport or heliport	X										S					
Campground	S															S
Club, membership	S			S			S	S	S							
Club, rod and gun	S															
Cultural, museum, library, or art center	S			S	S		S	S	S	S						

<i>Day care center or nursery school</i>	S			S	S		S	S	S	S	S	S			
<i>Government</i>	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
<i>Nature center</i>	S			S	S									S	S
<i>Place of worship</i>	S	S	S	S	S	S	S	S	S	S	S	S			
<i>Private school</i>	S	S	S	S	S	S			S	S					
<i>Public utility building, e.g., electric, switch or pump station</i>	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S
<i>Wind energy conversion system</i>	S													S	
<i>Zoo</i>	S													S	
<i>Business - As Principal Use</i>															
<i>Adult use</i>												X	X		
<i>Agricultural animal*</i>	S													S	
<i>Agricultural plant*</i>	S							S	S		S			S	
<i>Agri-business*</i>	S													S	
<i>Amusement center or indoor recreation</i>	S			S	S					S					
<i>Antenna</i>	S			S	S		S	S	S	S	S	S	S	S	
<i>Antique and craft shop</i>				S	S		S	S		S					
<i>Art gallery</i>				S			S	S	S	S					

<i>Auction facility, Farm</i>	S													S	
<i>Auction facility, Non farm</i>	S			X	X			X	X						
<i>Bakery</i>				S	S		S	S	S	S	S				
<i>Bank, financial institution</i>				S			S	S	S	S	S				
<i>Bar or night club</i>							S			S					
<i>Body modification facility</i>										S			S		
<i>Car wash</i>				S			S ⁵			S		S			
<i>Catering facility or service</i>				S			S	S		S		S			
<i>Convenience mart</i>				X			S	S		S					
<i>Crematory</i>												S			
<i>Dry cleaning, off-site</i>				S	S					S		S			
<i>Dry cleaning, on site</i>												S	S		
<i>Factory farm</i>															
<i>Farm market</i>	S			S	S		S	S	S	S	S	S	S	S	
<i>Feedlot</i>	X													X	
<i>Fitness center, health club, or gymnasium</i>	S			S	S		S	S	S	S	S				
<i>Flea market</i>	X				X							X	X		

<i>Funeral service</i>				S	S		S	S				S			
Golf or ski facility	S								S					S	S
<i>Health Care Clinic</i>				S	S		S	S	S	S					
<i>Hotel/motel or conference center</i>										S	S				
<i>Ice cream parlor</i>	S			S	S		S	S	S	S					
<i>Kennel</i>	S														
Laundry, Self Service				S	S		S	S		S		S	S		
Laundry, Not Self Service							S	S		S		S			
<i>Lawn and garden equipment sales and service</i>					S		S	S				S			
<i>Mall</i>										S					
Mini storage					S		S	S	S			S			
<i>Motor vehicle filling station</i>				X						S		S			
Office, general business				S	S		S	S	S	S	S	S	S		
Office, professional				S	S		S	S	S	S	S				

Outdoor recreation or amusement park	S							S	S						S
Parking lot, Commercial				S				S			S	S			
Personal service establishment				S	S		S	S	S	S					
Pharmacy				S			S	S	S	S					
Photographic studio				S			S	S	S	S					
Plaza				X				S	S	S	S				
Printing and publishing					S							S	S		
Restaurant, fast food				X			S			S					
Restaurant, standard				S	S		S	S		S	S				
Retail other than that listed in this table										S					
Retail, Small Scale				S			S	S		S					
Specialized repair					S		S	S	S	S	S				
Stable, commercial	S							S							S
Storage facility	S				S		S	S	S			S			

Theater, Motion Picture, <i>drive-in</i>						X		S						
Theater, Motion Picture, single or multiplex			X	X		X		S	S					
Theater, Stage			S					S	S					
<i>Tower</i>	S													
Vehicle detailing				S		S			S		S			
Vehicle maintenance facility			X						X	X				
<i>Vehicle rental</i>				S					S	S				
<i>Vehicle repair</i>			X	X					X	X	X			
<i>Vehicle sales/lease</i>									X		X			
Vehicle sales and/or repair, heavy equipment												X	X	
Veterinary <i>hospital</i>	S			S		S	S	S						
Wireless telecommunication facility	S		S ⁴				S ⁴	S ⁴	S	S	S	S	S	
Industrial--As Principal Use														
<i>Extractive use, soil mining</i>									X ¹	X ¹	X ¹		S	X ¹

KEY:

<i>Districts:</i>		
RU	-	Rural
R1	-	Residential - Moderate <i>Density</i>
R2	-	Residential - High <i>Density</i>
TC	-	Town Center
TC2	.	Town Center 2
TCR		Town Center Residential
BN	-	Business Neighborhood
BN2	-	Business Neighborhood 2
BNR	-	Business NonRetail
BR	-	Business Regional
ABD	-	<i>Airport</i> Business <i>Development</i>
CL	-	Commercial Light Industrial
I	-	Industrial
C	-	Conservation
RCD	-	Recreation Conservation <i>District</i>

<i>Use Designations:</i>		
P	-	Permitted as of right.
S	-	Permitted under <i>site plan</i> approval.
P/S	-	Permitted as of right where associated with <i>principal</i> <i>use</i> that is permitted as of right or permitted under <i>site plan</i> approval where associated with a <i>principal</i> <i>use</i> that is permitted under <i>site plan</i> approval.
X	-	Permitted under <i>site plan</i> approval and upon grant of a special permit by the Town Board.
F	-	Permitted under approval of a floating zone.
Blank	-	Not permitted in <i>district</i> .
*	-	Such agricultural <i>uses</i> proposed or existing in a Certified Agricultural <i>District</i> created in accordance with the applicable provisions of the NYS Agricultural and Markets Law shall be exempt from regulations under the provisions of this section as provided under Agricultural and Markets Law Section 305-a.

NOTES:

1. As site preparation only, to make site suitable for future *development*.
2. *Accessory use* accompanying this *principal use* excluding *vehicle sales/lease*.
3. Only in SHRMRD.
4. Wireless telecommunication facility is only permitted in this *district* when the *antenna* is constructed or installed on a *building* in compliance with the requirements of Section 17.36.180(D)(4).
5. Permitted only with connection to public water supply as sole source of water.
(LL No. 8, 2007 §§ 1 (part), 2, 3; LL No. 2, 2004 § 3; LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.12.020 Activities prohibited in all *districts*.

- A. No effluent or matter of any kind shall be discharged into any *watercourse* or body of surface water which:
 1. Violates established *watercourse* requirements of the NYS Department of Environmental Conservation or otherwise causes odors or fumes or which is poisonous or injurious to human, plant or animal life; or
 2. Causes an increase in projected flood heights.
- B. The practice of soil stripping shall be limited to incidental filling of areas within the town to bring them up to grade, except insofar as is necessary for typical agricultural practices or incidental to excavation for *cellar* and other *structure*.
- C. Unless conducted under proper and adequate requirements, no *use* shall be permitted which will produce corrosive, toxic or noxious fumes, gas, materials, glare, fire, explosion, electromagnetic disturbance, radiation, smoke, odors, dust, waste, noise, vibration, or other objectionable features so as to be detrimental to the public health, public safety, or general welfare.
- D. *Dumping* or storage of material in a manner that facilitates the breeding of vermin or endangers health in any way.
- E. No new *development* of a *use* requiring *site plan* approval shall occur or be allowed until such *site plan* approval has been granted, except that the planning board may authorize specific limited site preparation as that board finds necessary to facilitate its thorough *site plan* review upon which that board shall render a decision on the question of *site plan* approval. The CEO may give written authorization or permit for excavation specifically limited to performing environmental audit of land, testing of soils to determine any condition thereof and testing for potential, character and volume of underground water to determine its quality.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.12.030 Exceptions in all *districts*.

- A. Public Properties. Nothing in this title shall restrict construction or *use* in the exercise of governmental *use* of a governmental *building* or *lot*.
- B. Public Utilities. Nothing in this title shall restrict the construction or *use*, of underground or overhead distribution facilities of public utilities operating under the laws of the state of New York. Other facilities may be constructed subject to a *site plan* approval.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.16

BULK AND DENSITY CONTROL REQUIREMENTS*

Sections:

- 17.16.010 Intent.**
- 17.16.020 Bulk and density control schedule.**
- 17.16.030 Yard requirements.**
- 17.16.040 Projection into yard.**
- 17.16.050 Compliance with density.**
- 17.16.060 Distance between principal structures on same lot.**
- 17.16.070 Through lot.**
- 17.16.080 Transition yard requirements.**
- 17.16.090 Special requirements relating to yards in RU district.**
- 17.16.100 Special requirements relating to yards in the Town Center Area.**

* Prior history: LL No. 2, 1997 and LL No. 1, 1999.

17.16.010 Intent.

This chapter is established in the interest of promoting public health, safety, and welfare by providing open space for: the access of light and air circulation, preventing conflagration, facilitating firefighting, meeting current and future septic disposal needs, protecting water supplies and environmentally sensitive areas, providing noncongested traffic movements, and protecting views. (LL No. 2, 2003 (part)) (LL No. 6, 2009)

17.16.020 Bulk and density control schedule.

The bulk and density control schedule of required conditions is shown for each individual district as follows:

- A. Rural (RU) Zoning District.
 - 1. Bulk and Density Control Schedule.

	One unit dwelling or <i>Bed and Breakfast</i>	Two unit dwelling	<i>Multi-unit dwelling</i>	Agriculture Crops or Livestock (May include residential use)	Public Utility, Electric Station, Stitch Station, or Pump House	Other General or Business Use
Minimum Lot Dimensions						
Area	Traditional Subdivision; 10 Acres, see note (P)3.	Traditional Subdivision; 15 Acres	Traditional Subdivision 20 Acres plus 5 Acres for each additional unit	10 Acres	0.5 Acres	2 Acres
	Cluster Residential Development: See § 17.28	Cluster Residential Development See § 17.28	Cluster Residential Development See § 17.28			
Width (in feet)	Traditional: 400	Traditional: 400	Traditional: 800	300	50	200
	Cluster Residential Development: See § 17.28	Cluster Residential Development: See § 17.28	Cluster Residential Development: See § 17.28			
Minimum Yard Requirements (Setbacks) for traditional subdivision lots. For CRD lots, see § 17.28.						
Front (feet)	50	50	50	70	25	50
Side (feet)	50	50	50	50	25	50
Rear (feet)	60	60	60	100	25	50
Maximum Lot Coverage 10 percent for residential, 25 percent for agricultural, and 40 percent for all other uses						
Density (Dwelling Units/Acre)	0.1	0.13	0.15 (based on 3 units)			
Maximum Building Height for nonagricultural structures: 35 feet or 2 stories.						
Minimum Habitable Area Per Dwelling Unit: 1,200 square feet						

B. Residential Moderate *Density* (R1) Zoning *District*.

1. *Bulk and Density* Control Schedule.

	One unit, no public sewer and no public water; or <i>Bed and Breakfast</i>	One unit with public water no public sewer	One unit with public sewer and public water	Public Utility, Electric Station, Stitch Station, or Pump House	Other General <i>Use</i>
Minimum <i>Lot</i> Dimensions for <i>lots</i> in existing platted subdivisions or existing <i>lots</i> not meeting the requirements of Section 17.28.080 (A)					
Area	30,000 Sq. ft.	25,000 Sq. ft.	25,000 Sq. ft.	0.5 Acres	2 Acres
Width (in feet)	100	100	100	100	200
Minimum Yard Requirements (<i>Setbacks</i>) for <i>lots</i> in existing platted subdivisions or existing <i>lots</i> not meeting the requirements of Section 17.28.080 (A).					
Front (feet)	40	30	30	25	50
Side (feet)	25	20	10	25	50
Rear (feet)	60	60	30	25	50
Maximum <i>Lot</i> Coverage 40 percent					
<i>Density</i> (<i>Dwelling Units/Acre</i>)	1.74	2.18	2.9		
Maximum <i>Building</i> Height: 35 feet or 2 stories					
Minimum Habitable Area Per <i>Dwelling Unit</i> : 1,400 square feet.					

2. For existing *lots* meeting the requirements of 17.28.080 (A), see Section 17.28 (Cluster Residential Subdivisions).

C. Residential High *Density* (R2) Zoning *District*.

1. *Bulk and Density* Control Schedule.

	One or two unit, no public sewer and no public water	One or two unit with public water no public sewer	One or two unit with public sewer and public water	Public Utility, Electric Station, Stitch Station, or Pump House	Other General <i>Use</i>
Minimum <i>Lot</i> Dimensions					
Area	17,500 Sq. ft.	15,000 Sq. ft.	10,000 Sq. ft. (See note 2)	0.5 Acres	2 Acres
Width (in feet)	80	60	60	50	200
Minimum Yard Requirements (<i>Setbacks</i>)					
Front (feet)	25	20	10	25	50
Side (feet)	15	15	10	15	50
Rear (feet)	30	30	30	25	50
Maximum <i>Lot</i> Coverage 60 percent					
<i>Density</i> (<i>Dwelling Units/Acre</i>)	2.49	2.9	4.36		
Maximum <i>Building</i> Height: 35 feet or 2 stories for Residential/3 Stories for General <i>Use</i>					
Minimum Habitable Area Per <i>Dwelling Unit</i> : 1,200 square feet					

D. Town Center (TC) Zoning *District*.

1. *Bulk and Density* Control Schedule.

	One or two unit no public sewer and no public water	One or two unit with public water no public sewer	One or two unit with public sewer and public water	All Other Permitted <i>Uses</i>
Minimum <i>Lot</i> Dimensions				
Area	20,000 Sq. ft.	15,000 Sq. ft.	7,500 Sq. ft.	7,500 Sq. ft.

Width (in feet)	80	70	60	See § 17.36.340 (D)
Yard Requirements (<i>Setbacks</i>)				
Maximum Front (feet)	20	20	20	See § 17.36.340 (D)
Minimum Side (feet)	10	10	5	See § 17.36.340 (D)
Minimum Rear (feet)	30	30	30	See § 17.36.340 (D)
Maximum <i>Lot Coverage</i> 60 percent				
<i>Density (Dwelling Units/Acre)</i>	2.18	2.9	5.8	
Maximum <i>Building Height</i> : 35 feet or 2 stories for one or two unit. 35 feet or 2 stories for all other permitted <i>uses</i>				
Minimum Habitable Area Per <i>Dwelling Unit</i> : 1,000 sq. ft.				

2. For Mixed Use projects, see note 5.

E. Town Center 2 (TC2) Zoning District.

1. Bulk and Density Control Schedule.

	One or two unit, no public sewer and no public water	One or two unit with public water, no public sewer	One or two unit with public sewer and public water	All Other Permitted <i>Uses</i>
Minimum <i>Lot Dimensions</i>				
Area	20,000 Sq. ft.	15,000 Sq. ft.	7,500 Sq. ft.	7,500 Sq. ft.
Width (in feet)	80	70	60	See § 17.36.340 (D)
Yard Requirements (<i>Setbacks</i>)				
Maximum Front (feet)	20	20	20	See § 17.36.340 (D)
Minimum Side (feet)	10	10	5	See § 17.36.340 (D)
Minimum Rear (feet)	30	30	30	See § 17.36.340 (D)
Maximum <i>Lot Coverage</i> 60 percent				
<i>Density (Dwelling Units/Acre)</i>	2.18	2.9	5.8	
Maximum <i>Building Height</i> : 35 feet or 2 stories				
Minimum Habitable Area Per <i>Dwelling Unit</i> : 1,000 square feet				

2. For Mixed Use projects, see note 5.

F. Town Center Residential (TCR) Zoning District.

1. Bulk and Density Control Schedule.

	One unit, no public sewer and no public water	One unit with public water, no public sewer	One unit with public sewer and public water	General <i>Use</i>
Minimum <i>Lot Dimensions</i>				
Area	20,000 Sq. ft.	15,000 Sq. ft.	7,500 Sq. ft.	0.5 Acres
Width (in feet)	80	70	60	See § 17.36.340 (D)
Yard Requirements (<i>Setbacks</i>)				
Maximum Front (feet)	20	20	20	See § 17.36.340 (D)
Minimum Side (feet)	10	10	5	See § 17.36.340 (D)
Minimum Rear (feet)	30	30	30	See § 17.36.340 (D)
Maximum <i>Lot Coverage</i> 60 percent				
<i>Density (Dwelling Units/Acre)</i>	2.18	2.9	5.8	
Maximum <i>Building Height</i> : 35 feet or 2 stories.				
Minimum Habitable Area Per <i>Dwelling Unit</i> : 1,200 square feet				

G. Business Neighborhood (BN) Zoning District.

1. *Bulk and Density Control Schedule.*

	One or two unit no public sewer and no public water	One or two unit with public water, no public sewer	One or two unit with public sewer and public water	Multi unit, no public sewer and no public water	Multi unit with public water, no public sewer	Multi unit with public water, and public sewer	All Other Permitted <i>Uses</i>
Minimum Lot Dimensions							
Area	15,000 Sq. ft.	12,500 Sq. ft.	7,500 Sq. ft.	See Note 4	See Note 4	See Note 4	30,000 Sq. ft.
Width (in feet)	80	80	80	See Note 4	See Note 4	See Note 4	100
Minimum Yard Requirements (<i>Setbacks</i>)							
Front (feet)	10	10	10	See Note 4	See Note 4	See Note 4	25
Side (feet)	10	10	10	See Note 4	See Note 4	See Note 4	15
Rear (feet)	10	10	10	See Note 4	See Note 4	See Note 4	25
Maximum Building Coverage 50 percent							
<i>Density (Dwelling Units/Acre)</i>	2.9	3.48	4.36	See Note 4	See Note 4	See Note 4	
Maximum Building Height: 35 feet or 2 stories							
Minimum Habitable Area Per Dwelling Unit: 1,000 square feet. for one or two unit dwellings, Refer to Note 4 for minimum habitable area for multi-unit dwellings.							

2. For Mixed Use projects, see note 5.

H. Business Neighborhood 2 (BN2) Zoning District.

1. *Bulk and Density Control Schedule.*

	All <i>Uses</i> as permitted in Chapter 17.12
Minimum Lot Dimensions	
Area	1 Acre
Width (in feet)	100
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet)	25
Side (feet)	15
Rear (feet)	25
Maximum Lot Coverage 50 percent	
<i>Density (Dwelling Units/Acre)</i>	Not applicable
Maximum Building Height: 35 feet or 2 stories	
Minimum Habitable Area Per Dwelling Unit: Not Applicable	

I. Business Non-Retail (BNR) Zoning District.

1. *Bulk and Density Control Schedule.*

	All Permitted <i>Uses</i>
Minimum Lot Dimensions	
Area:	1 Acre
Lot Width (in feet):	100
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet):	25
Side (feet):	15
Rear (feet):	25
Maximum Lot Coverage	50 percent

Density (Dwelling Units/Acre)	Not Applicable
Maximum Building Height	35 feet or 2 stories unless otherwise stated
Minimum Habitable Area Per Dwelling Unit	Not Applicable

J. Business Regional (BR) Zoning District.

1. Bulk and Density Control Schedule.

	Multi-unit dwelling with public water and sewer	All other permitted <i>uses</i>
Minimum Lot Dimensions		
Area:	See Note 4	85,000 sq. ft.
Lot Width (in feet):	See Note 4	200
Minimum Yard Requirements (<i>Setbacks</i>)		
Front (feet):	See Note 4	25
Side (feet):	See Note 4	15
Rear (feet):	See Note 4	25
Maximum Lot Coverage	See Note 4	70 percent
Density (Dwelling Units/Acre)	See Note 4	
Maximum Building Height	See Note 4	Lesser of 60 feet or 4 stories
Minimum Habitable Area Per Dwelling Unit	See Note 4	Not Applicable unless otherwise stated

2. For Mixed Use projects, see note 5.

K. Airport Business Development (ABD) Zoning District.

1. Bulk and Density Control Schedule.

	All Permitted <i>Uses</i>
Minimum Lot Dimensions	
Area:	3 Acres
Width (in feet):	300
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet):	25
Side (feet):	15
Rear (feet):	25
Maximum Lot Coverage: 50 percent	
Density (Dwelling Units/Acre)	Not Applicable
Building Height: 40 feet or 3 stories	
Minimum Habitable Area Per Dwelling Unit: Not Applicable	

L. Commercial Light Industrial (CL) Zoning District.

1. Bulk and Density Control Schedule.

	All Permitted <i>Uses</i>
Minimum Lot Dimensions	

Area:	1 Acre
Lot Width (in feet):	100
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet):	25
Side (feet):	15
Rear (feet):	25
Maximum Lot Coverage: 70 percent	
Density (Dwelling Units/Acre)	Not Applicable
Maximum Building Height: 40 feet or 2 stories	
Minimum Habitable Area Per Dwelling Unit: Not Applicable	

M. Industrial (I) Zoning District.

1. Bulk and Density Control Schedule.

	All Uses
Minimum Lot Dimensions	
Area:	1 Acre
Lot Width (in feet):	100
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet):	25
Side (feet):	15
Rear (feet):	25
Maximum Lot Coverage: 70 percent	
Density (Dwelling Units/Acre)	Not Applicable
Maximum Building Height: 40 feet or 3 stories	
Minimum Habitable Area Per Dwelling Unit: Not Applicable	

N. Conservation (C) Zoning District.

1. Bulk and Density Control Schedule.

	All Permitted Uses
Minimum Lot Dimensions	
Area:	3 Acres
Lot Width (in feet):	200
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet):	25
Side (feet):	15
Rear (feet):	25
Maximum Lot Coverage: 5 percent	
Density (Dwelling Units/Acre)	Not Applicable
Maximum Building Height: 30 feet or 2 stories	
Minimum Habitable Area Per Dwelling Unit: Not Applicable	

O. Recreation Conservation (RCD) Zoning District.

1. Bulk and Density Schedule.

	All Permitted <i>Uses</i>
Minimum <i>Lot</i> Dimensions	
Area	3 Acres
<i>Lot</i> Width (in feet)	200
Minimum Yard Requirements (<i>Setbacks</i>)	
Front (feet):	25
Side (feet):	15
Rear (feet):	25
Maximum <i>Lot</i> Coverage 5 percent	
<i>Density</i> (<i>Dwelling Units/Acre</i>)	Not Applicable
Maximum <i>Building</i> Height: 30 feet or 2 stories	
Minimum Habitable Area Per <i>Dwelling Unit</i> : Not Applicable	

P. Notes applicable to the *density* or *bulk* control schedule.

1. Overall exterior dimension means overall exterior lineal length and width of a *structure*.
2. The Chemung *county* Health Department may require new *development* using on-lot sewage disposal systems to have larger than the minimum *lot* sizes stated in this chapter.
3. Owners of property in the rural zoning *district* as of the date of passage of this ordinance shall retain the right to a one time subdivision of their property into no more than two total *parcels* to provide a homestead property for a *family* member, as defined by the New York State Division of Housing and Community Renewal. The newly created *parcel* shall be no smaller in size than the minimum *lot* size allowed in the R1 Zoning *District* for properties without public sewer or water service.
4. *Multi-unit Dwelling*. The requirements for each *multi-unit dwelling* and the *lot* for the *multi-unit dwellings* within the BN and BR Zoning *Districts* shall be as established by the planning board in the *site plan* review and approval process, but shall comply with the following special requirements:
 - A. Maximum *lot coverage*: sixty (60) percent;
 - B. Minimum *lot* area:
 1. BN *District*: thirty thousand (30,000) square feet plus two thousand five hundred (2,500) square feet for each *dwelling unit*.
 - i. Requires approval from the Chemung *county* Department of Health.
 2. BR *District*: eighty-five thousand (85,000) square feet.
 3. *Front Yard*: twenty (20) feet.
 4. *Side Yard*: ten (10) feet.
 5. *Rear Yard*: twenty-five (25) feet.
 - D. Maximum *building* height: forty-two (42) feet and three stories;

E. Minimum habitable dwelling area:

1 bedroom	700 square feet
2 bedroom	900 square feet
3 bedroom	1,100 square feet

additional bedroom	add 100 square feet
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5. For mixed *use projects* greater than one *story* in height, where there is a conflict in *lot* dimensions, the less restrictive dimension shall be used.
6. The requirements of the *Bulk and Density Control Schedule* in the TC, TC2, BR, BN, BN2, BNR, ABD and I *Districts* may be reduced by no more than fifty (50) percent if the planning board finds that the *applicant* has, to the greatest extent possible, submitted an application which is in strict compliance with the town of Big Flats *Development Design Guidelines*.

(LL No. 1, 2008 (part); LL No. 8, 2007 § 7 (part); LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.16.030 Yard requirements.

Except as provided in this chapter, no *structure* shall be erected or altered, or *lots* used, except in accordance with the requirements set forth in this chapter and the *bulk and density control schedule*. No principal *building* shall be erected or altered in a *setback*.

A. Special Requirement Relating to *Front Yard*.

1. No part of any *lot* that has two or more *front yards* shall be deemed to be a *rear yard*.
2. On any *lot* with more than one *front yard*, all yards, other than *front yard*, shall be deemed to be a *side yard*.
3. The minimum *front yard setback* on an undeveloped *lot* may be reduced under the following conditions:
 - a. *Lots* adjoining the two sides of the undeveloped *lot* have principal *buildings* located within less than the minimum *front yard setback* established for the *district*;
 - b. The *lot* width of the undeveloped *lot* is two hundred fifty (250) feet or less; and
 - c. The reduced *front yard setback* on the undeveloped *lot* shall be no less than a distance equal to the average distance between the front *lot line* and the *building line* on the adjoining *lots*.

B. Special Requirement Relating to *Inside Yard*.

1. A *structure* having semi-detached, *townhouse*, or *multi-unit dwelling* shall meet *side yard setback* only at the end of the *structure* facing the *side yard*.
2. Where the side wall of a *building* is not parallel to the side *lot line* or the side *lot line* is broken or otherwise irregular, the *side yard* may be varied. In such case, the average width of the *side yard* shall not be less than the otherwise required minimum width; provided, however, that such yard shall not be narrower at any one point than one-half the otherwise required minimum width *setback*.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.16.040 Projection into yard.

Only the following shall be permitted to *project* into a minimum yard *setback*:

- A. Awnings and canopies may *project* a maximum of six feet.
- B. Cornices, eaves, passive solar devices, other such architectural features and roof-mounted *antenna* may *project* a maximum of two feet.

- C. Exterior uncovered and unenclosed handicap access facilities may *project* up to the *lot line* if required to meet the access requirements of Americans with Disabilities Act (ADA).
- D. Except as provided in Chapters 17.36 through 17.52, unroofed and unenclosed paved surfaces may *project* up to the *lot line*.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.16.050 Compliance with *density*.

A. No subdivision of a *lot* shall create a *lot* that is not in compliance with any provision of the *bulk* and *density* control schedule.

B. There shall be no more than one *principal structure* containing any *dwelling unit* on a *lot* except as may be approved under *site plan* review and approval.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.16.060 Distance between *principal structures* on same *lot*.

Where there are two or more *principal structures* on a *lot* in any *district*, the space between such *structures* shall be at least equal to the *structure height* of the taller *structure*.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.16.070 *Through lot*.

In the case of a *lot* running through from one *road* to another *road*, the front of such *lot* shall for the purposes of this title, be considered that frontage upon which the majority of the *buildings* in the same block front, but in case there has been no clearly defined frontage established, the owner may, when applying for a *building permit*, specify on the permit application which *lot line* shall be considered the *front lot line*. The rear portion of such a *lot* shall, however, be a *front yard* for the purposes of determining required *setback* and locations of permitted *structure* and *use*.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.16.080 *Transition yard* requirements.

A. Where a R1, R2, or TCR *district* abuts any other *district* without an intervening *road*, a minimum side or *rear yard setback* in the other *district* that is measured from a *lot line* coincident with the boundary of the abutting *district* shall be increased more than the minimum yard *setback* specified in Section 17.16.020 for the other *district* by the number of feet as follows: (except where the TCR abuts the TC and TC2)

Other <i>District</i> :	Abuts a R1, R2, or TCR <i>District</i> , increase added to Required <i>setback</i> :
RU, TC, C, and RCD	Ten (10) Feet
BN and BN2	Fifteen (15) Feet
BNR and TC2	Twenty (20) Feet
BR	Thirty (30) Feet
ABD and I	Forty (40) Feet

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.16.090 Special requirements relating to yards in RU *district*.

A. Notwithstanding any other provision of the BFZL, other than subsections (B) and (C) of this section, *agricultural plant use*, except *structures* thereof other than *fences* and/or plant-supporting *structures*, may extend to any and all *lot lines* of the *lot* on which the *agricultural plants* are raised.

B. No *agricultural plant use* shall be within:

1. Ground surface distance of one hundred (100) feet from any *watercourse*, spring, existing well on a *lot* abutting the *lot* containing the *agricultural plant use*, or other surface water body used to provide potable water, and
2. The required *buffer* and *transition yard*, as set forth in Section 17.36.200, along the *lot line* of the *agricultural plant use* that is coincident with a R1, R2, TCR, PUD, or PMRD *district boundary line*.

C. No business *use* other than *agricultural plant*, *agricultural animal*, and *commercial stable* shall be within five hundred (500) feet of a *boundary line* of a R1, R2, or PMRD *district*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.16.100 Special requirements relating to yards in the Town Center Area.

A. In the TC, TC2, and TCR zoning *districts*, no minimum front or side *setback* is required.

B. The maximum front and side *setback* may not exceed the average front or *side yard* of the nearest two *lots* on either side of the subject *lot*.

C. If one or more of the *lots* required to be included in the averaging calculation are vacant, such vacant *lots* will be deemed to have a yard depth of zero feet.

D. *Lots* fronting a different street than the subject *lot* or separated from the subject *lot* by a street or alley may not be used in computing the average.

E. When the subject *lot* is a *corner lot*, the average *setback* will be computed on the basis of the two adjacent *lots* that front on the same street as the subject *lot*.

F. When the subject *lot* abuts a *corner lot* fronting on the same street, the average *setback* will be computed on the basis of the abutting *corner lot* and the nearest two *lots* that front on the same street as the subject *lot*. Calculating *setbacks* shall be conducted by using the example provided below:

GRAPHIC UNAVAILABLE: [Click here](#)

Figure 2: Average Setback

G. Exceptions to the above standards are:

1. A portion of the *building* may be set back from the maximum *setback line* in order to provide an articulated facade or accommodate a *building* entrance feature, provided that the total area of the space created must not exceed one square foot for every linear foot of *building* frontage.
2. A *building* may be set back farther than the maximum *setback* in order to accommodate an outdoor eating area. In order to preserve the continuity of the street wall, the *building* may be set back no more than twelve (12) feet from the front or street side property *line* or at least forty (40) percent of the *building* facade must be located at the maximum *setback/line*. The total area of an outdoor eating area that is located between a public sidewalk and the *building* facade may not exceed twelve (12) times the *building's* street frontage in linear feet.

3. The minimum rear *setback* must be zero to thirty (30) percent of the *lot depth*.
4. No side *setback* is required in the TC and TC2 *districts*, except when a property abuts a residential-zoned property outside of the *Town Center Area*, in which case the minimum *side yard setback* required in the TC or TC2 *district* must be the same as required for a residential *use* on the abutting Residential-zoned *lot* in accordance with Section 17.16.020, *Bulk* and *Density* Control Schedule.

(LL No. 6, 2009)

Chapter 17.20

PLANNED-MULTIPLE RESIDENTIAL *DISTRICT* (PMRD)*

Sections:

17.20.010 Intent.

17.20.020 Floating zone.

17.20.030 Applicable *districts*.

17.20.040 Permitted *uses*.

17.20.050 Cooperative planning and design option.

17.20.060 General requirements governing PMRD.

17.20.070 Special requirements governing PMRD.

17.20.080 General requirements governing senior housing PMRD (SHPMRD).

17.20.090 Special requirements governing SHPMRD.

17.20.100 Procedures for establishing a PMRD or SHPMRD.

* Prior history: LL No. 2, 1997.

17.20.010 Intent.

It is the intent of this chapter to provide flexible land *use* and design requirements through the *use* of performance criteria so that small-to-large neighborhoods or portions thereof may be developed that incorporate a variety of residential *density* and *building* types. A PMRD may contain both individual *dwelling unit building* sites and common property which is planned and developed as a unit. In order to carry out the purpose of this chapter, a PMRD *development* shall achieve the following objectives:

- A. A maximum choice at all economic levels in the types of environment, occupancy, housing, *lot* sizes and community facilities available to existing and potential town residents;
- B. Create more usable open space and recreation areas;
- C. The preservation of *large trees* and outstanding natural features;
- D. Creative *use* of land and related physical *development*;
- E. An efficient *use* of land resulting in smaller networks of utilities and *roads*, thereby lowering the costs of construction and maintenance;
- F. A *development* pattern in harmony with the objectives of the Comprehensive Plan for the town;
- G. Compatibility with all applicable guidelines and requirements set forth in Chapters 17.36 through 17.52;
- H. Maintenance or creation of acceptable traffic patterns and levels of service on the existing *road* network, especially in established residential areas.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.20.020 Floating zone.

The PMRD is a floating zone that shall be superimposed on an underlying *district* and subject to *site plan* approval and zoning amendment.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.20.030 Applicable *districts*.

A. A PMRD may be permitted in the RU, R1, BR, TC, TC2, and BNR underlying *districts* in accordance with the procedures for establishing a PMRD hereafter set forth in Section 17.20.100.

B. A senior housing PMRD (SHPMRD) may be permitted in the RU, R1, BR, TC, TC2 and BNR underlying *districts* in accordance with the procedures for establishing a PMRD hereafter set forth in Section 17.20.100.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.20.040 Permitted *uses*.

One-unit, two-unit, and *multi-unit dwellings* and their *accessory uses* are permitted subject to *site plan* review and approval. Such *dwelling units* may be in the *form* of *condominiums* or rental units.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.20.050 Cooperative planning and design option.

As part of the PMRD review process, the planning board may offer the services of its planning and design consultant to assist the *applicant* in creating a concept plan for the *project*. The intent of the option is to offer early facilitation of creative design solutions, operating outside of the more rigid process of typical plan review and comment. The option would include coordination with town staff and boards as appropriate. The cost of this option would be borne by the *applicant* and only upon agreement by the *applicant*. The option is available as a supplement to typical staff town consultant review services with the goal of creating an enhanced *project* design and a more efficient and cost effective review process. for the *applicant*.
(LL No. 6, 2009)

17.20.060 General requirements governing PMRD.

Any *development* proposal to be considered as a PMRD allowing such *density* increases as outlined in this chapter shall conform to the following requirements, which are regarded as minimum requirements, in addition to applicable requirements in other subsections of this chapter:

- A. PMRD *Lot Area*. The minimum *lot* area required to constitute a PMRD *lot* shall be five contiguous acres.
- B. PMRD *Access*. A minimum of two vehicular *drives*, approved and constructed in accordance with Section 17.36.050 shall be required for each PMRD *lot*. Such *drives* shall originate from a *road* with a minimum classification as *secondary road*.
- C. *Water and Sewer Service*. A PMRD shall be serviced by public water and public sanitary sewer systems.
- D. PMRD *Density*. The planning board shall determine in each case the appropriate *dwelling unit density* and location. The gross *density* shall be calculated using the total acreage of the proposed PMRD *lot*. Such gross *density* shall in no instance exceed ten (10) *dwelling units* per acre.
- E. *Maximum Number of Units*. The maximum number of one-unit and in a PMRD shall be no more than thirty (30) percent of the total number of allowable *dwelling units* per the *density* calculation for the *development* in accordance with subsection 17.20.060(D).
- F. *Recreation Requirements*. A PMRD *development* shall have a minimum of ten (10) percent of the entire PMRD *lot* set aside and developed, as appropriate, for recreational *use* in accordance with Section 17.36.100.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.20.070 Special requirements governing PMRD.

In addition to compliance with the general requirements set forth in Section 17.20.060 the following special requirements shall apply to PMRD:

- A. **One-Unit and *Two-Unit Dwelling*.** The requirements for each one-unit and *two-unit dwellings* and its *lot* within the PMRD shall be as established by the planning board in the *site plan* review and approval process, but shall comply with the following special requirements:
 1. Maximum *lot coverage*: fifty (50) percent;
 2. Minimum *lot area*: seven thousand (7,000) square feet;
 3. Minimum *lot width*: fifty (50) feet;
 4. Minimum *setbacks*:
 - a. *Front yard* as measured from pavement edge of *drive* or interior *drive*: ten (10) feet,
 - b. *Side Yard*: ten (10) feet,
 - c. *Rear Yard*: twenty-five (25) feet;
 5. Maximum *building height*: thirty-five (35) feet and two stories;
 6. Minimum habitable dwelling area:
 - a. One thousand (1,000) square feet in each *one-unit dwelling*,
 - b. Nine hundred (900) square feet in each *two-unit dwelling*;
 7. *Parking*: Shall be in conformance with Section 17.48.010;
 8. An accessory *building*, including detached garage, shall be located no less than ten (10) feet from any rear or side *lot line* and shall not be located in *front yard*, and shall be located at least ten (10) feet from the principal *building*.
- B. ***Townhouse*.** The requirements for each *townhouse* and its *lot* within the PMRD shall be as established by the planning board in the *site plan* review and approval process, but shall comply with the following special requirements:
 1. Maximum *lot coverage*: fifty (50) percent;
 2. Minimum *lot area*: three thousand five hundred (3,500) square feet;
 3. Minimum *lot width*: twenty (20) feet;
 4. Minimum *setbacks*:
 - a. *Front yard* as measured from pavement edge of *drive* or interior *drive*: ten (10) feet,
 - b. *Side Yard*: five feet (at end of *townhouse*);
 - c. *Rear Yard*: twenty-five (25) feet;

5. Maximum *building* height: forty (40) feet and three stories;
 6. Minimum habitable dwelling area: eight hundred (800) square feet in each dwelling;
 7. *Parking*: Shall be in conformance with Section 17.48.010;
 8. An accessory *building*, including detached garage, shall be located no less than ten (10) feet from any rear or side *lot line* and shall not be located in *front yard*, and shall be located at least ten (10) feet from the principal *building*.
- C. *Multi-unit Dwelling*. The requirements for each *multi-unit dwelling* and the *lot* for the *multi-unit dwelling* within the PMRD *lot* shall be as established by the planning board in the *site plan* review and approval process, but shall comply with the following special requirements:

1. Maximum *lot coverage*: sixty (60) percent;
2. Minimum *lot area per dwelling unit*:

For each one bedroom *dwelling unit*: four thousand (4,000) square feet,

For each two bedroom *dwelling unit*: four thousand two hundred (4,200) square feet,

For each three bedroom *dwelling unit*: four thousand four hundred (4,400) square feet,

For each four bedroom *dwelling unit*: four thousand six hundred (4,600) square feet,

3. Minimum *lot width*: two hundred (200) feet;

4. Minimum *setbacks*:

a. *Front yard* as measured from pavement edge of *drive* or interior *drive*: twenty (20) feet,

b. *Side Yard*: ten (10) feet (at ends of *buildings*),

c. *Rear Yard*: twenty-five (25) feet;

5. Maximum *building* height: forty-two (42) feet and three stories;

6. Minimum habitable dwelling area:

1 bedroom	700 square feet,
2 bedroom	900 square feet,
3 bedroom	1,100 square feet,
additional bedroom	add 100 square feet.

7. *Parking*: Shall be in conformance with Section 17.48.010.

8. Accessory *building*, including detached garage, shall be located no less than ten (10) feet from any rear or side *lot line* and shall not be located in *front yard*, and shall be located at least twelve (12) feet from the principal *building*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.20.080 General requirements governing senior housing PMRD (SHPMRD).

Any *development* proposal to be considered as a SHPMRD allowing such *density* increases as outlined in this chapter shall conform to the following requirements, which are regarded as minimum requirements, in addition to applicable requirements in other subsections of this title as well as the requirements of the Federal Fair Housing Act.

- A. SHPMRD *Lot Area*. The minimum *lot* area required to constitute a SHPMRD *lot* shall be five contiguous acres.
- B. SHPMRD *Access*. A minimum of two *drives*, approved and constructed in accordance with Section 17.36.100 shall be required. Such *drives* shall originate from a *road* with a minimum classification as *secondary road*.
- C. Water and Sewer Service. Each SHPMRD shall be serviced by public water and public sanitary sewer systems.
- D. *Density*. The planning board shall determine in each case the appropriate *dwelling unit density* and location. The gross *density* shall, be calculated using the total acreage of the proposed *development*. Such gross *density* shall not exceed the following requirements:
 - 1. *Multi-unit dwelling units* shall be permitted at a maximum *density* of twelve (12) *dwelling units* per acre.
 - 2. One-unit and *two-unit dwellings* shall be permitted at a maximum *density* of 3.5 *dwelling units* per acre.
 - 3. No *dwelling unit* in a SHPMRD shall have more than two bedrooms, with the exception of a caretaker's or manager's *dwelling unit* which may have up to four bedrooms.
- E. Minimum habitable space shall be as established in Section 17.16.020, *bulk* and *density* control schedule.
- F. Recreation Requirement. All *development* proposals shall have a minimum of five percent of all lands set aside and developed in accordance with Section 17.36.100 for the private recreational *use* of the SHPMRD residents.
- G. Other Permitted *Use*. To further the objectives of the SHPMRD the town establishes and permits the following additional principal and *accessory use*:
 - 1. *Principal Use*. The following *principal uses* shall also be permitted in a SHPMRD. Each such *use* shall be required to have a minimum *lot* area of one acre. The planning board shall determine at the time of *site plan* review if a larger *lot* area is required to support the *use*:
 - a. Assisted care living units, which for the purposes of this section, shall be living units that do not constitute the definition of a *dwelling unit*, but may contain separate living and sleeping space, and includes central eating facilities at which residents take meals;
 - b. *Nursing home* or *convalescent home*, health care services facility, home for the aged, and other health care related facilities in combination with assisted care living units with central facilities duplicating those centrally provided for congregate care units and assistance with daily living services including but not limited to bathing, dressing, mobility and medication supervision;
 - c. Any combination of subsection (G)(1)(a) or (b) of this section.
 - 2. *Accessory Use*. Certain related ancillary facilities shall be permitted, either in a separate *building* or in combination with assisted and/or congregate care units. Such ancillary facilities are deemed to be and shall function as an *accessory use* and shall be compatible with the residential character of the *development* and are as follows:
 - a. Cafeteria;
 - b. Laundry, with off-site dry cleaning;
 - c. Lounge;

- d. Game room;
- e. Recreation room;
- f. Exercise or multipurpose room;
- g. *Workshop*;
- h. *Library* or reading room;
- i. Sauna or spa, exercise rooms, whirlpool;
- j. *Medical clinic* and/or emergency medical center, physical and speech therapy areas, first aid station, principally for the benefit of residents of the *development*;
- k. Community and smaller private dining rooms, *bar*, or *standard restaurant* facility;
- l. Small *retail* stores, convenience store, *personal service establishments*, *bank*, post office, areas for crafts, games, and other activities;
- m. Chapel or other *place of worship*;
- n. Rental units and/or guest rooms for visitors;
- o. Social services office. Such office shall be for *use* by social service providers or others offering direct assistance to residents of the *development*;
- p. Playground (outdoor and/or indoor);
- q. Adult day care facilities;
- r. Twenty-four (24) hour security;
- s. Maintenance facilities.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.20.090 Special requirements governing SHPMRD.

In addition to compliance with the general requirements set forth in Section 17.20.080, the following special requirements shall be applied to all SHPMRD and shall be regarded as minimum requirements:

- A. One-Unit and *Two-Unit Dwelling* Requirements. The dimensional requirements for one-unit and *two-unit dwellings* shall be as established by the planning board in the *site plan* review and approval process, except that in no instance shall they be less than the following requirements:
 - 1. Maximum *lot coverage*: fifty (50) percent;
 - 2. Maximum *density*: six *dwelling units* per acre;
 - 3. Minimum *lot area*: seven thousand (7,000) square feet per *dwelling unit*;
 - 4. Minimum *lot width*: fifty (50) feet;
 - 5. Minimum *setback* requirements:

- a. *Front yard* as measured from the pavement edge of *drive* and interior *drive*: ten (10) feet,
 - b. *Side yard*: ten (10),
 - c. *Rear yard*: twenty-five (25) feet,
 - d. Exception: Awning, canopies, single *story* decks and single *story* covered porches may *project* a maximum of six feet into the required yard *setbacks*. Such awning, canopies, single *story* decks and single *story* covered porches shall not exceed one hundred forty (140) square feet of *structure* area within the required yard set forth above;
6. Maximum *building* height: thirty-five (35) feet and two stories;
 7. Minimum habitable dwelling area:
 - a. One thousand (1,000) square feet in each *one-unit dwelling*.
 - b. Nine hundred (900) square feet in each *two-unit dwelling*.
 8. *Parking*: Shall be in conformance with Section 17.48.010;
 9. An accessory *building*, including detached garage, shall be no more than three hundred (300) square feet in size and shall be located no less than ten (10) feet from any rear or side *lot line*, shall not be located in a *front yard setback*, and shall be located at least ten (10) feet from the principal *building*.
- B. *Townhouse Dwelling*. The requirements for *townhouse* dwellings shall be as established by the planning board in the *site plan* review and approval process, except that in no instance shall they be less than the following specific requirements:
1. Maximum *lot coverage*: fifty (50) percent;
 2. Minimum *Lot Area*: three thousand five hundred (3,500) square feet per *dwelling unit*;
 3. Minimum *lot width*: twenty (20) feet;
 4. Minimum *setback* requirement:
 - a. *Front yard* as measured from the pavement edge of *drive* and interior *drives*: ten (10) feet,
 - b. *Rear Yard*: twenty-five (25) feet,
 - c. *Side Yard*: five feet (at ends of *buildings*);
 5. Maximum *building* height shall be three stories or forty (40) feet, whichever is the lesser;
 6. Minimum habitable dwelling area: eight hundred (800) square feet;
 7. *Parking* Requirements:
 - a. Minimum *Parking*: 1.0 space per *dwelling unit* and in accordance with all other requirements of Section 17.48.010;
 - b. Maximum *parking*: two spaces per *dwelling unit* and in accordance with all other requirements of Section 17.48.010;
 8. Any accessory *building*, including a detached garage, shall be no more than three hundred (300) square feet

in size and shall be located no less than ten (10) feet from any rear or *side yard*, shall not be located in a *front yard setback*, and shall be located at least ten (10) feet from the principal *building*.

C. *Multi-unit Dwelling Development*. The dimensional requirements for *multi-unit dwellings* shall be as established by the planning board in the *site plan* review and approval process, except that in no instance shall they be less than the following specific requirements:

1. Maximum *lot coverage*: sixty (60) percent;

2. Minimum *lot area per dwelling unit*:

For each one bedroom *dwelling unit*: four thousand (4,000) square feet,

For each two bedroom *dwelling unit*: four thousand two hundred (4,200) square feet,

For each three bedroom *dwelling unit*: four thousand four hundred (4,400) square feet,

For each four bedroom *dwelling unit*: four thousand six hundred (4,600) square feet,

3. Minimum *lot width*: two hundred (200) feet;

4. Minimum *setback* requirement:

a. *Front yard* as measured from pavement edge of *drive* and interior *drive*: twenty (20) feet,

b. *Rear Yard*: twenty-five (25) feet,

c. *Side Yard*: ten (10) feet (at ends of *building*),

d. No principal *building* shall be located less than thirty (30) feet from any interior *lot line*,

5. Maximum *building height* shall be three stories or forty (40) feet, whichever is the lesser;

6. Minimum habitable dwelling area:

1 bedroom	700 square feet,
2 bedroom	900 square feet,
3 bedroom	1,100 square feet,
additional bedroom	add 100 square feet

7. *Parking Requirements*: A maximum of 1.5 spaces per *dwelling unit* and in accordance with all other requirements of Section 17.48.010;

8. An accessory *building*, including detached garage, shall be located no less than ten (10) feet from any *rear* or *side yard* and shall not be located in a *front yard setback*, and shall be located at least ten (10) feet from the principal *building*.

(LL/No. 1, 2004 § 2: LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.20.100 Procedures for establishing a PMRD or SHPMRD.

A. *Application Requirements*. A request for establishing a PMRD or SHPMRD shall sequentially comprise: (1) a concept plan pursuant to Chapter 17.32 and (2) a *site plan* application pursuant to Chapter 17.32 and a proposed zoning amendment pursuant to Chapter 17.68.

B. Concept Plan Requirement. A concept plan for a proposed PMRD or SHPMRD, prepared in accordance with Chapter 17.32 shall be submitted to the town board and to the planning board.

C. Action on the Concept Plan.

1. The planning board shall evaluate the concept plan and make a recommendation to the town board. The recommendations shall be either conditional acceptance of the concept plan or disapproval of the request and shall include findings for such recommendation.
2. Then the town board shall evaluate the concept plan and the recommendation by the planning board. The town board shall make a decision of either conditional acceptance of the concept plan or disapproval of the request and shall include findings for such decision.

D. Application for *Site Plan* and Zoning Amendment. Upon conditional acceptance of the concept plan by the town board, the *applicant* may initiate a *site plan* application in accordance with Chapter 17.32 for a PMRD or SHPMRD by submitting to the planning board a preliminary plan together with a proposed zoning amendment.

E. Action on Preliminary Plan of *Site Plan* and Zoning Amendment. The planning board shall act on the preliminary plan and proposed zoning amendment as follows:

1. Evaluate potential environmental impact, compliance with this title and any other applicable law, rule or regulation, and any other significant concern;
2. Make findings based on the evaluation according to 17.32.100(A);
3. Make a decision based on the findings according to 17.32.110(A) to either:
 - a. Accept the preliminary plan and proposed zoning amendment for consideration by the town board and make a recommendation to the town board that the town board, make a determination of significant environmental impact by the proposed PMRD or SHPMRD and enact the proposed zoning amendment, or
 - b. Refuse to accept the preliminary plan and proposed zoning amendment and make a recommendation to the town board that the town board disapprove or modify the proposed zoning amendment.

F. Action on Zoning Amendment.

1. After the receipt of the planning board's recommendation to accept the preliminary plan and proposed zoning amendment, the town board shall, in accordance with Chapter 17.68, set and hold a public hearing on the proposed zoning amendment for the PMRD or SHPMRD.
2. After the public hearing pursuant to Chapter 17.68, the town board shall enact, with or without modification, or disapprove the proposed zoning amendment and record the reason for the action.

G. Action on *Site Plan* Application. After enactment of the zoning amendment, the planning board shall process and make a decision on the *site plan* application for the PMRD or SHPMRD in accordance with Chapter 17.32.

H. Subdivision Approval Requirement. If the PMRD or SHPMRD proposal involves a subdivision of land:

1. Any subdivision of land shall be included in the concept plan.
2. An application for subdivision approval shall, concurrent with the *site plan* application, be initiated by the applicant and processed with decisions thereon by the planning board.

I. Modification or Amendment of Approved PMRD or SHPMRD. Any proposed modification or change to an approved *site plan* for a PMRD or SHPMRD requires submission, processing, and decision on an amendment to the approved *site plan* in accordance with Chapter 17.32.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.21

PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

Sections:

17.21.010 Legislative purpose.

17.21.020 Authority.

17.21.030 Use regulations.

17.21.040 General requirements.

17.21.050 Cooperative planning and design option.

17.21.060 Procedure.

17.21.070 Decisions.

17.21.080 Performance standards.

17.21.010 Legislative purpose.

The town of Big Flats hereby finds and determines that:

1. When coordinated with the town of Big Flats Comprehensive Plan, the town of Big Flats Town Center Strategic Plan, and the town of Big Flats *Development Design Guidelines*, the creation of *planned unit developments* can be an effective tool for guiding *development* in ways that support community goals and priorities.
2. *Planned unit developments* provide a means by which different land *uses* within an area covered by a single *development* plan may be combined to achieve compatibility among such *uses*. Unattainable with traditional municipal zoning techniques, *planned unit development* provides flexibility in the regulation of land *use development* in order to:
 - a. Encourage innovation in land *use* variety and design, in the layout and type of new *structures* and in their integration with existing *structures*;
 - b. Enhance efficiency in the *use* of land, natural *resources*, energy, community services, and utilities;
 - c. Encourage open space preservation and protection of natural *resources*, historic sites, and *structures*;
 - d. Facilitate the provision of housing and improved residential environments;
 - e. Enhance the ability of municipalities to promote business and employment opportunities;
 - f. Allowing a diversity of *uses* in close proximity in the *district* within a limited area, including residential, institutional, *professional office* and general business establishments;
 - g. Preserving and restoring the overall character of the *district*;
 - h. Promoting a balance of land *uses*;
 - i. Promoting the opportunity for people to work, meet, and utilize services in the vicinity of their residences;
 - j. Providing opportunities for a mixture of *uses* in the same *building*;
 - k. Promoting a positive pedestrian environment in the *district*;
 - l. Facilitating integrated physical design;
 - m. Promoting a high level of design quality; and

- n. Encouraging the *development* of flexible space for small and emerging businesses;
- o. Facilitating *development* proposals responsive to current and future market conditions.

(LL No. 6, 2009)

17.21.020 Authority.

The power to establish *planned unit development* is provided for in Section 261-C of Article 16 of the NYS Town Law. In addition to any other powers and authority to plan and regulate by zoning, the town of Big Flats hereby enacts requirements for the review of *planned unit development* plans and the establishment and simultaneous mapping of a *planned unit development district* pursuant to the provisions of this local law.

(LL No. 6, 2009)

17.21.030 Use regulations.

A. Permitted *Uses*.

Small-scale light industrial (*Building* size not to exceed twenty-five thousand (25,000) square-foot)

Medical facility, to include a *health care clinic* or *hospital*

Office, professional

Office, general business

One-unit dwellings

Two-unit dwellings

Multi-unit dwellings

Day care center or nursery school

Assisted living facilities

Convalescent Home

Nursing home

Club, membership

Museum

Government facility

Place of worship

School

Public utility *building*

Car wash

Fitness Center

Parking lot, commercial

Research facility

Plaza

Restaurant, Standard

Retail, Small Scale

Bakery

Ice Cream Parlor

Hotel/Motel or Conference Center

B. Prohibited *Uses*.

1. A *use* not specifically permitted in 17.21.030(A) shall be deemed prohibited except as approved under 17.21.030(C)

C. *Uses* permitted with *Site Plan* Approval/Special Permit.

1. Any other *use* compatible with the above-allowed *uses*.

2. Application for determination for an approved *use* shall include a detailed description of the *use*, approximate number of employees and estimated volume of traffic to be generated, as well as the criteria set forth in the Section 17.21.060 Procedure.

3. Enlargement or expansion of existing *buildings* whether residential, institutional or professional and general office service establishments.

D. Same-*structure*/On-site Mixed *Use*.

1. Within the *district*, there shall be no restriction on combining different categories of *use* within the same *building* except any imposed by the New York State *Building Code* or other federal, state, or local regulations.

2. *Uses* must follow the Performance Standards in Section 17.21.080 Performance Standards.

(LL No. 6, 2009)

17.21.040 General requirements.

A. Permitted *Uses*. *Uses* within an area designated as a *planned unit development district* are determined by the provisions of this section as well as the conditions of the approval of any actual *planned unit development project*.

1. Mixed-use *planned unit development*. A mixed-use *planned unit development* may incorporate a variety of housing types, such as detached, attached, one unit, two unit, multi-unit, or any combination thereof. *Accessory uses*, including mixed-use *structures*, religious institutions, educational facilities, and private and public membership clubs may be allowed as determined appropriate by the planning and town boards. In addition, the mixed-use *planned unit development* shall permit principally business *uses* of a variety of types, such as research and *development facilities*, high-technology assembly, *professional offices*, commercial recreation facilities and such other *uses* as may be deemed appropriate by the planning and town board for the area under construction. *accessory uses* are allowed when exclusively intended and designed for *use* by the users of the permitted *principal use*.

B. Minimum Area.

1. In all applicable zoning *districts* outside of the *Town Center Area*, the minimum area requirement for consideration

of a *planned unit development district* designation shall be ten (10) contiguous acres of land

2. In the *Town Center Area*, the minimum area required for a *planned unit development district* shall be five contiguous acres.

C. Location. The *planned unit development district* is a floating zone. The *planned unit development* shall be applicable only in areas of the town of Big Flats where public sewer and water service are available or on *parcels* immediately adjacent to existing public sewer and water service where sewer and water can be extended to.

D. *Density*. Because land is used more efficiently in a *planned unit development*, improved environmental quality can usually be produced with greater *density* than is usually permitted in traditional zoning *districts*. The planning board shall determine in each case the appropriate land *use* intensity and/or *dwelling unit density* for individual *projects*. The determination of land *use* intensity or *dwelling unit density* shall be thoroughly documented, including all facts, opinions and judgments justifying the selection.

E. Open Space. A minimum of thirty (30) percent open space is required for all PUD proposals. Clustering of *dwelling units*, institutional and general business or *professional office uses*, and small-scale light *industrial uses* are strongly encouraged, provided *buffers*, common open space, and emergency access are adequately planned. *Buffers* are required in order to eliminate or minimize potential interference and nuisances on adjacent properties. The size of the *buffer* shall be determined through the PUD review process, based on its ability to achieve appropriate separation and conform to the performance standards contained herein.

F. *Lot Coverage*. For all *uses*, the maximum *lot coverage* shall be seventy (70) percent.

G. *Setbacks*.

1. Unless otherwise expressly provided in this Section, the front, side, and *rear yard setbacks* for individual *structures* within the PUD shall be determined in conjunction with the final approval of the *planned unit development plan*.

H. Height Restrictions. The height of *structures* shall be determined in conjunction with the review and approval of the master plan of the *planned unit development*.

I. Spacing of *Buildings*. The location of all *structures* shall be as shown on the final *planned unit development plan*. The proposed location and arrangement of *structures* shall not be detrimental to existing or prospective *structures*, or existing or prospective neighborhoods. Every one or two unit dwelling shall have access to a public street, court, walkway, or other area dedicated to public *use*.

J. *Parking*. Unless otherwise expressly provided in this Section, PUDs shall be subject to the off-street *parking* and loading standards of Chapter 17.48.

K. Street Standards and Modification. The design of public streets within a PUD shall comply with all applicable town standards as provided in Title 12 of the town of Big Flats Municipal Law.

L. *Development Assurances*. The planning board may require adequate assurance, in a *form* and manner that it approves, that the common open space, amenities, and public *improvements* shown in the final *planned unit development plan* will be provided and fully developed and shall comply with the provisions below:

M. Performance Bond. Prior to final *planned unit development plan* approval, the *applicant* shall file with the town clerk, in an amount to be set by the town board, a certified check to cover the full cost of all required *improvements* or a performance bond to cover the full cost of all *improvements*. The performance or completion bonds shall comply with Section 277 of the Article 16 of the NYS Town Law, and shall be satisfactory to the town board, town attorney, and *director of planning* as to *form*, sufficiency, manner of execution and surety, to insure installation of all *improvements* shown on the final plan. A period of at least one year of filing of the plan, in accordance with the standards and specifications of the town but no more than three years shall be set forth in the bond within which time all required *improvements* shall be completed. The time limit may be extended by the board, upon written application made not less than sixty-two (62) days prior to the expiration of the period in accordance with NYS Town Law Section 277.

N. Inspection of *Improvements*. The *applicant* shall provide for the inspection of required *improvements* during and

after construction to assure that all town specifications and requirements shall be met during the construction of the required *improvements*, and to assure satisfactory completion of the *improvements* and utilities as required by the planning board. The *applicant* shall pay an inspection fee as set by the town board. Such fee shall be paid to the town prior to final *planned unit development* plan approval.

O. As-Built Record Drawings. The *applicant* shall deliver and file with the town a set of as-built final maps, plans and drawings conforming to those submitted for the final *planned unit development* plan receiving final *planned unit development* plan approval, and certified by a duly licensed professional engineer that all construction of *improvements* was accomplished in accordance with such final plan approval, and the certification shall run specifically in the favor of the town.

P. Acceptance of *Improvements*. The *applicant* shall complete all required *improvements* to the satisfaction of the *director of planning* and/or town approval authority with jurisdiction over the improvement, who shall file with the town board a report documenting the satisfactory completion of all required *improvements*, including all rights-of-way and *easements*, in the *form* of an acceptable deed filed with the town clerk.

Q. Ownership. The tract of land under application for consideration 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 the owners or their agent(s) of all property included in the *project*. In the case of multiple ownership, the approved plan shall be binding upon all property owners, and such owners shall provide written certification of such binding agreements. All land included for the purpose of *development* within a PUD shall be owned by or be under the complete control of the *applicant* for such PUD, whether the *applicant* be an individual, partnership, corporation, or other entity, and shall be planned and developed as a whole in a single *development* operation or a definitely programmed series of *development* operations or phases. The *applicant* shall provide to the *director of planning* all of the necessary documents and information that may be required by the town attorney to assure the town that the *development project* may be lawfully completed according to the plans sought to be approved.

R. Recreation Requirements. A PUD *development* containing a residential component shall have a minimum of five percent of the entire PUD *lot*, exclusive of open space areas, set aside and developed, as appropriate, for recreational *use* in accordance with Section 17.36.100.

S. Compliance with *Development Design Guidelines*. *Development* of a *planned unit development* shall, to the greatest extent practicable, comply with the applicable recommendations included in the town of Big Flats *Development Design Guidelines*.

T. Adherence to Town Center Requirements. At the discretion of the planning board, all *planned unit developments* shall be developed in accordance with Section 17.36.340 (Town Center Requirements).
(LL No. 6, 2009)

17.21.050 Cooperative planning and design option.

As part of the PUD review process, the planning board may offer the services of its planning and design consultant to assist the *applicant* in creating a concept plan for the *project*. The intent of the option is to offer early facilitation of creative design solutions, operating outside of the more rigid process of typical plan review and comment. The option would include coordination with town staff and boards as appropriate. The cost of this option would be borne by the *applicant* and only upon agreement by the *applicant*. The option is available as a supplement to typical staff town consultant review services with the goal of creating an enhanced *project* design, and a more efficient and cost effective review process for the *applicant*.
(LL No. 6, 2009)

17.21.060 Procedure.

An application for a PUD approval shall consist of a preliminary *planned unit development* plan and a final *planned unit development* plan. The PUD review process involves the coordinated review and approval of the planning board (PUD recommendation and *site plan* approval) and the town board (PUD approval).

1. Pre-Application Conference. A request for a pre-application conference shall be submitted along with the appropriate application fee to the *director of planning* in accordance with the requirements set forth in Section 17.64.050. The intent of the pre-application conference is for the *applicant* to obtain a general awareness of the town's planning rationale, the compatibility of the proposed PUD with existing and anticipated land *uses* in the

vicinity, and a familiarity with the town's PUD procedures. The conference assists the *applicant* in determining the suitability of a proposed PUD in the proposed location, without incurring the expense of preparation of a PUD conceptual *development* plan. The conference will be an informal meeting with the planning board at a *workshop* session or a regularly scheduled meeting, open to the public, and included on their agenda in advance of the meeting. The pre-application meeting is mandatory, but does not require the filing of a preliminary *planned unit development* plan or plat.

2. Preliminary *Planned Unit Development* Plan Submission. A preliminary *planned unit development* plan is a generalized plan that shows the proposed *use* and maximum scale, *density*, and intensity of *use* for all *uses* of all lands within the proposed PUD in accordance with the information requirements in subsection D below. An application for approval of the preliminary *planned unit development* plan shall be submitted along with the appropriate application fee to the *director of planning* as set forth in the current fee schedule adopted by the town board. The *director of planning* shall ascertain that all filing requirements have been met, and if so, shall forward the application document to the planning board.
3. Planning Board Review of Preliminary *Planned Unit Development* Plan. The planning board shall review the application for compliance with the performance standards set forth in Section 17.21.080 of this chapter. At its first regular meeting after timely submission of application documents, the planning board will entertain a presentation of the *project* by the *applicant*, review the application materials and the preliminary *planned unit development* plan, and review the EAF or DEIS submitted by the *applicant*. All PUD applications shall be considered Type I actions under SEQRA requiring coordinated review. After evaluating the preliminary *planned unit development* plan according to the performance standards set forth in Section 17.21.080, the planning board shall prepare an itemized list of written findings of fact which supports a recommendation of approval, approval with conditions, or denial of the preliminary *planned unit development district* and accept the preliminary *planned unit development* plan. Upon receipt of a complete application, the written findings and recommendation of the planning board shall be forwarded to the town board within sixty-two (62) days.
4. Town Board Review. The town board shall review the preliminary *planned unit development district* and the written findings of fact from the planning board. It shall conduct a public hearing at its regular or special meeting of the board within sixty-two (62) days after receiving all of the above materials. Public notice shall be required in the same manner as provided in Section 16.08.040(D) of the town of Big Flats Municipal Code. The town board will, within sixty-two (62) days of close of the public hearing, approve, approve with conditions, or deny the preliminary *planned unit development district* based upon the criteria set forth in Section 17.21.060(A)(4)(a). The decision of the town board shall be final and shall be supported by written findings. The decision of the town board shall be forwarded to the planning board for further action.
 - a. The town board may approve with or without conditions, provided that it finds that all of the following standards have been met for the proposed *district*:
 - i. The location, size, and *use* of any *structure(s)*, nature and intensity of operations involved, size of the site in relation to the proposed *structure(s)*, and the location of the site with respect to *roads* giving access to it are such that the proposed *uses* will be in harmony with orderly *development* of the neighborhood.
 - ii. The location, nature and height of *buildings*, walls and *fences* will not discourage the appropriate *development* and *use* of adjacent land and *buildings*, or impair their value.
 - iii. The proposed *use* shall not conflict with the intent of the town of Big Flats Comprehensive Plan (2006), or any part thereof.
 - iv. A *use* within the proposed *district* shall not have an adverse effect on the agricultural *resources* of the area.
 - v. The proposed *uses* will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances.

- vi. The proposed *uses* will not cause significant traffic congestion, impair pedestrian safety, or overload existing *roads* considering their current width, surfacing, condition, and any proposed *improvements* made to them by the *applicant*.
 - vii. The proposed *uses* will be suitable for the proposed action considering the property's size, location, topography, vegetation, soils, protected natural habitat, hydrology, and if appropriate, its ability to be *buffered* or screened from neighboring properties.
 - viii. The proposed *uses* will be subject to such conditions on operation, design, and layout of *structures* and provision of *buffer* areas as may be necessary to ensure compatibility with surrounding *uses* and to protect the natural, historic, and scenic *resources* of the town.
 - ix. Any proposed *uses* be designed in compliance with the recommendations set forth in the town of Big Flats *Development Design Guidelines*.
5. Planning board review of final *planned unit development* plan. Upon receiving the town board's preliminary *planned unit development district* approval; with or without conditions, the *applicant* shall submit a final *planned unit development* plan to the planning board for approval and recommendation of approval, approval with conditions, or denial of the final *planned unit development district* to the town board. The final *planned unit development* plan is a detailed *development* plan prepared to scale showing accurately and with complete dimensioning the boundaries of a site and the location of all *buildings*, *structures*, land *uses*, and principal site *development* features. The submittal requirements are set forth in the following section.
 6. Town board PUD *district* final approval. The town board shall review the final *planned unit development district* and the written findings of fact from the planning board. The town board will approve, approve with conditions, or deny the final *planned unit development district*.

(LL No. 6, 2009)

17.21.070 Decisions.

A. Final approval of a PUD by the town board shall be considered a binding commitment on the *applicant* and all subsequent owners to develop the property in accordance with the approved final PUD plan and conditions of approval. A final PUD plan approval does not in any way mandate or require performance of the *applicant* to proceed with the approved *developmental* plans or *project*.

B. A final *planned unit development* plan shall be approved in the same *form* and manner as a *site plan* pursuant to Chapter 17.32, and the provisions therein shall be fully applicable to PUD approvals. Any approval of a PUD shall incorporate the findings required under SEQRA and shall be made in written *form* that includes each of the following:

1. Identification of each *use* consistent with the *use* classifications of this chapter;
2. The maximum scale, *density*, and intensity of *use* applicable to each such *use*;
3. The manner in which the proposed PUD supports and is consistent with the statement of land *use* policies, principles, and goals in the Comprehensive Plan;
4. The manner in which the *site plan development* proposed for the PUD is found to be suitable for that particular *district*;
5. The manner in which the physical *improvements* will satisfy the *site development* standards applicable to the *district* in which the proposed *use* is located, and to the extent practicable will comply with the performance standards for such *district*;
6. The particular elements of the *site plan* that are subject to planning board approval during *site plan* review;

7. Any conditions which shall become restrictions for the approved PUD with the same force as if they were included in the regulations provided in Chapter 17.32;
 8. Any required *dedication* or reservation, which must include a determination that such *dedication* or reservation is related both in nature and extent to the impact of the proposed *project*; and
 9. Modifications of site *development* elements necessary to ensure that any physical *improvements* meet the performance standards established in Section 17.21.080 Performance Standards.
- C. Any denial of a PUD *district* must be in writing and must address the specific reasons for the denial.

D. Performance standards procedure. An application for a *site plan*, special *use* permit, *building permit* or a certificate of occupancy for a *use* subject to performance standards procedures shall include a plan of the proposed construction and a description of the proposed machinery, operations and products, and specifications for the mechanisms and techniques to be used in restricting the emission of any dangerous and objectionable elements listed under this section. The *applicant* shall also file with such plans and specifications an affidavit acknowledging his or her understanding of the applicable performance standards and stating his or her agreement to conform with same at all times. Upon the satisfactory filing of the required plans, specifications and affidavit, the code enforcement officer shall proceed to issue a *building permit* and/or certificate of occupancy in accordance with the procedures set forth in Section 17.64.020.

E. *Development Phasing Plan Required*. For any commercial or institutional *use* that is proposed to be constructed in phases, the *applicant* shall submit a *development phasing* plan that specifies the chronology of *development* including required land *use* components, *structures*, public facilities, and infrastructure. The schedule for the *development* of such stages or units shall be submitted stating the approximate beginning and completion date for each such stage or unit and the proportion of the total PUD public or common open space and *dwelling units* to be provided or constructed during each such state and overall chronology of *development* to be followed from stage to stage. *Projects* shall be phased so that supporting public facilities and infrastructure will be provided concurrent with their need and completed before occupancy of the *structures*.

F. Timely Provision of Infrastructure and Public Services. The construction and provision of all common open space and public facilities that are shown on the *development* plan must proceed at the same rate or faster as the construction of the other infrastructure *improvements*.

G. Substantial Public Benefit. Substantial public benefit shall mean the provision of public facilities that are both unusual in character and serve the needs of an area greater than the immediate *development* and contributes toward the town and regional jobs/housing balance as well as to address housing demands induced by *development* adjacent to and within the PUD. *Development* impact bonuses or credits may be allowed to offset impacts only if public facilities such as street *improvements*, substantial public transportation *improvements*, certain park and recreation facilities which currently do not exist or are limited in the town, sewer, water, or utilities are provided that are in excess of those required under the provisions of this code. The infrastructure elements shall be constructed at the time of the initial PUD *development*, and shall meet the applicable town or *county* public improvement standards.

H. *Building Permit Required*. In the event that the *applicant* does not request a *building permit* within one year of the town board approval pursuant to Section 17.21.060(6), the approval granted pursuant to Section 17.21.060(6) is automatically rescinded. If a permit is granted, it shall be subject to all of the terms of Section 17.21.080 Performance Standards.

I. Expiration. A PUD approval shall be deemed to authorize only the particular *uses* specified in such approval and shall expire if substantial construction of the PUD is not commenced within two years from the date of the final signature of the plan maps. The planning board may, at its discretion, after conducting a public hearing, grant an extension to an approved PUD. The *applicant* shall submit a written request sixty (60) days prior to the date of expiration of the PUD approval, requesting an extension for a specified time and the reason therefore. In granting the extension, the planning board may require revision of the previously approved PUD to comply with current regulations and conditions. The planning board shall render a decision, in writing, to the *applicant* and the other appropriate agencies within forty-five (45) days of closing the public hearing. The time within which the planning board must render its decision may be extended by mutual consent of the *applicant* and the planning board.

J. Termination. Failure of an *applicant* or *developer* to comply with any conditions of approval for an approved *planned unit development* plan shall make the approval null and void.

K. Abandonment or Failure to Proceed.

1. If the *applicant* or owner of record chooses to abandon an approved preliminary *planned unit development* plan or an approved final *planned unit development* plan, he or she shall so notify the planning board in writing.
2. If the *applicant* or owner of record fails to submit a final *planned unit development* plan to the planning board within one year of the approval date of the preliminary *planned unit development* plan; and has not applied for an extension to the above time limits from the planning board, the planning board shall revoke its approval of the preliminary plan and shall so notify the *applicant* or owner of record in writing. If within thirty (30) days of receipt of the notice of such revocation, the *applicant* or owner of record does not present to the planning board an application for reinstatement of the preliminary *planned unit development* plan, the planning board shall consider that the *applicant* or owner of record has abandoned the plan and said original petition or application shall be deemed null and void.
3. Following any action to abandon the proposed PUD, whether it be through failure to proceed or through formal notice of abandonment by the *applicants*, owners of record or their successors, the town board shall take action to rescind their previous preliminary or final *planned unit development* plan approvals, and to invalidate any related agreements necessary to revert to underlying zoning *district(s)*.

L. Amendments. Minor changes to a *development* plan may be approved administratively, as provided in Section 17.32.170. Major changes shall include all modifications and quantities in conflict with the limitations and provisions as reflected in the minor amendment criteria set forth below. Upon initiation of the amendment as established by the original petition, all major amendments to the *development* shall be submitted to the town board for public hearing and recommendation to the planning board as required for the original application and approval. Provided further, all property owners within the prescribed notification area as set forth in the rules of the planning board shall be notified of said amendments and further the proposed amended plan shall only be approved by the planning board in a like manner as prescribed in Section 17.21.060.

1. Minor Amendment Criteria: Amendments shall not be deemed as minor if the cumulative revisions to the most recent approved final *planned unit development* plan of record which was considered at a public hearing include:
 - a. A change to the *use* and character of the *development*.
 - b. The possible creation of obstacles, *barriers* and service problems to traffic circulation, fire protection, public safety, and public utility services due to the revision(s).
 - c. A reduction by greater than five percent of the designated open space.
 - d. An increase by greater than five percent in the approved number of residential *dwelling units*.
 - e. Increase the *floor area* proposed for non-residential *use* by more than five percent.

M. Variances. The board of zoning appeals is solely empowered to grant variances to the provisions of this section under conditions for variances set forth in Chapter 17.60.
(LL No. 6, 2009)

17.21.080 Performance standards.

- A. No *use* shall be permitted that causes or results in dissemination of dust, smoke, gas or fumes odor, noise, vibration or excessive light under standards set forth in the performance criteria in this section.
- B. Any other performance standards of the town shall apply to the PUD in addition to these.
- C. Access and Traffic Impacts:
 1. Traffic and safety impacts to the existing and proposed *roads* shall be minimized.

2. Access shall be provided to the extent feasible through an existing side street or a shared *driveway* or shared access; curb cuts shall be limited.
3. Pedestrian and vehicular traffic shall be separated; walkways shall be provided for access to adjacent properties and between businesses.
4. For public convenience, a pedestrian and/or bicycle way shall connect various *uses* and otherwise provide appropriate circulation or continuity to an existing pedestrian or bicycle circulation system. These *uses* include, but are not limited to residential, *parking*, transit, bicycling, industrial, recreation, and commercial.
5. Walkways must conform to requirements of the American with Disabilities Act (ADA).

D. *Parking* and Loading, and Shared *parking* Requirements.

1. Minimum number of spaces required for all *development* shall comply with the *parking* standards provided in Section 17.48.010.
2. *Parking* shall be located to the side or rear of *buildings*. In no case shall *parking* be allowed in the planting strip adjacent to the sidewalk or within the front *setback* of any *lot*.
3. *Parking* spaces may be located either on or off the *lot*. *Applicant* must show proof of space, its location in relation to the *dwelling unit* or non-residential *uses*, and indicate if the space is owned or leased.
4. *Buildings* that do not have frontage on a street must provide access for emergency and service vehicles through the layout and design of *driveways*, interior service *roads*, or pedestrian and bicycle circulation corridors.
5. In no circumstances will cul-de-sacs be permitted pursuant to Section 12.04.050 (5) of the town of Big Flats Municipal Code.
6. Where there is more than one category of *use*, then the number of spaces required shall be seventy (70) percent of the sum of required spaces for each category of *use*.
7. The planning board may reduce the number of required *parking* spaces for the general business or *professional office building*/industrial portion of the *building* by fifty (50) percent.
8. Off-street loading requirements are: Small-scale light *industrial uses* require one bay per every twenty-five thousand (25,000) square feet of *floor area*; residential or general business, or *professional office uses* require one bay per every fifty thousand (50,000) square feet of *floor area*.

E. Noise:

1. Residential units shall be constructed so that interior noise levels do not exceed an Ldn of forty-five (45) dB in any habitable room.
2. The maximum permissible sound pressure level of any continuous, regular, or frequent source of sound produced by any *use* or activity shall not exceed the following limits at the property *line* of the sound source:

<i>District</i>	7am-- 10pm	10pm-- 7am
General Business or <i>Professional Offices</i>	65	50
Small-scale Light Industrial	65	40
Residential	55	55

Source Pressure Level Limits Measured in dB (A's)

3. Sound pressure level shall be measured at all major *lot lines*, at a height of at least four feet above the ground surface. Noise shall be measured with a sound level meter meeting the standards of the American Standards Institute, ANSI SI.4-1961 "American Standard Specification for General Purpose Sound Level Meters." The instrument shall be set to the A-weighted response scale. Measurements shall be conducted in accordance with ANSI SI.2-1962 "American Standard Meter for the Physical Measurement of Sound."
 4. Sound levels specified shall not be exceeded for more than fifteen (15) minutes in any one day, except for *temporary* construction or maintenance work, *agricultural activity*, timber harvesting, traffic, *church* bells, emergency warning devices, parades, or other special circumstances.
 5. No person shall engage in or cause very loud construction activities on a site abutting residential *use* between the hours of 9 p.m. and 7 a.m.
 6. General business, *professional offices*, or small-scale light *industrial uses* shall be designed and operated, and hours of operation limited where appropriate, so that neighboring residents are not exposed to offensive noise, especially from traffic or late-night activity. No amplified music shall be audible to neighboring residents.
 7. Common walls between residential and non-residential *uses* shall be constructed to minimize the transmission of noise and vibration.
 8. Residential *buildings* to be constructed or rehabilitated shall be designed or retrofitted to filter out noise through construction employing, but not limited to: such techniques as applying soundproofing material between *dwelling units* laterally and vertically, and between different *uses*; employing staggered joists, and insulation.
- D. Vibration, Smoke, Heat, Glare, and Odor:
1. Vibration shall not be discernible to any human's sense of feeling for three minutes in any one hour or a total of fifteen (15) minutes in any one day, or producing an acceleration of more than 0.1 G.
 2. Smoke shall not be visible beyond a shade darker than No. 1 on the Ringelmann Smoke Chart.
 3. Heat and glare shall not be discernible from the outside of any *structure*.
 4. Odor, dust, and fumes shall be effectively confined to the premises or so disposed as to avoid air pollution.
- E. Lighting:
1. All *outdoor lighting* shall be designed in accordance with Section 17.36.240 and with the additional requirements set below so as not to adversely impact surrounding *uses*, while also providing a sufficient level of illumination for access and security purposes. Such lighting shall not blink, flash, oscillate, or be of unusually high intensity of brightness.
 2. *Parking* areas shall be illuminated to provide appropriate visibility and security during hours of darkness.
 3. Any *outdoor lighting* fixture that is newly installed or replaced shall be shielded so that it does not produce a strong, direct light beyond the property boundaries, and shall be directed toward the object to be illuminated. Light shall be directed away from residences.
 4. Lighting of the site shall be adequate at ground level for the protection and safety of the public in regard to pedestrian and vehicular circulation. The glare from the installation of outdoor lights and *illuminated signs* shall be contained on the property and shall be shielded from abutting properties. Lighting *structures* shall be integrated with the site and surrounding *uses*.
 5. An exterior lighting plan is required including the following items plus any additional information required by the planning board if needed to determine compliance with these provisions:

- a. A lighting plan showing existing and proposed exterior lighting, including *building* and ground lighting; locations, supports, mounting heights, and orientation of all lighting units.
 - b. For all external lighting units, descriptions and diagrams of physical configuration and photometric data, such as those available from manufacturers, indicating fixtures, lamps, reflectors and filters and showing the angle of light cut-off and light distribution patterns.
6. All *parking* areas and pedestrian facilities serving non-residential *uses* and open to the general public shall be provided with illumination during all hours from dusk to dawn that those facilities are open to the general public. Such illumination shall provide not less than 0.2 average maintained horizontal foot-candles, and an illumination ratio (brightest/darkest) of not more than 4:1. However, the planning board may approve alternative arrangements if it determines that, because of special circumstances or alternative provisions, the specified illumination is not necessary or appropriate for the protection of the public safety.
7. To avoid lighting impacts, *outdoor lighting* fixtures shall be mounted no higher than fifteen (15) feet, directed inward to the greatest extent feasible, or otherwise oriented and shielded to avoid glare on adjoining premises and plantings or other screening used to block headlight glare from *drives* and *parking lots* onto adjacent properties or roadways.
- F. Storage:
1. All materials, supplies, and equipment shall be stored in accordance with Fire Code of New York State and Property Maintenance Code of New York State. They shall be screened from view from public ways and abutting properties. Exterior storage of materials, goods, and equipment shall be screened entirely from view by a solid *fence*, or, alternatively, by solid vegetative plantings as approved by the *director of planning* or designee. Storage shall not exceed five percent of the total *lot* area and shall not occur within the *front yard* or *side yard setbacks*.
- G. Waste Disposal:
1. Waste disposal shall follow New York State Department of Health regulations.
 2. Storage of waste and waste facilities shall be screened from view from public ways and neighboring properties.
 3. Appropriate provisions shall be made for the disposal of trash, which may include, but shall not be limited to, the provision of trash compactors within the *building* or on site, as well as a submission of a signed annual contract for rubbish removal.
- H. Loading/Unloading:
1. The town of Big Flats may require that operations, including loading and unloading shall be limited to weekdays between the hours of 7 am and 9 pm only.
- I. *Signs* shall conform in accordance to Chapter 17.52.
- J. Landscaping Requirements.
1. Landscaping plans should specifically address streetscape aesthetics, so that as *development* occurs, an attractive streetscape will be ensured along the main *roads* and large expanses of *parking* will be broken up and hidden from view at all times
 2. Screening of mechanical equipment, trash, and loading areas shall be provided through the *use* of walls, *fences*, and/or dense, evergreen plant materials.
 3. *Parking* area landscaping.

- a. *Parking* areas shall be screened from adjacent residential *uses*, streets, and walkways using trees and shrubs adapted to the region, of specimen quality conforming to the American Standard for Nursery Stock, American Standards Institute, Inc., 230 Southern *Building*, Washington, DC 20005, and shall be planted according to accepted horticultural standards. Berms may be used for screening along the street in conjunction with plant materials.
 - b. The *landscaped* perimeter area shall be at least five feet wide.
 - c. Landscaping shall be provided for interior vehicular *use* areas to provide visual and climatic relief from broad expanses of pavement and to channelize and define logical areas for pedestrian and vehicular traffic.
 - d. The *parking* area shall be *landscaped* with sufficient shade trees to provide fifty (50) percent shade within fifteen (15) years of installation.
 - e. The *use* of porous pavement and/or perforated brick or block shall be used to the extent feasible to increase on-site water retention for plant material, groundwater supplies, and to reduce problems associated with runoff.
4. Completion of the landscaping requirements may be postponed due to seasonal weather conditions for a period not to exceed six months from the time of *project* completion.
- K. Maintenance of Landscaping and Screening.
- 1. All landscaping and screening shall be maintained by the property owner.
 - 2. Landscaping and screening plant materials shall not encroach on the public walkways or roadways in a way that impedes pedestrian or vehicular traffic.
 - 3. Shrubs or trees that die shall be replaced within one growing season.
 - 4. If the property owner fails to do so, the town reserves the right to maintain the landscaping and screening after notifying the owners, agents, renters, or lessees by certified mail at their last known address or at the subject property address, that it shall be removed or trimmed within seven days of the notice by the *director of planning* or a code enforcement officer.
 - 5. The town shall assess the owners, agents, renters, or lessees for the cost of trimming or removal plus an additional amount of up to twenty (20) percent of the charges for administrative costs, to the owner and to the lessee, agent, occupant, or other person in possession and control of the property.
 - 6. If any property owner fails or refuses to pay when due any charge imposed under this section, the *director of planning* or a code enforcement officer may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the town to be levied against the person's property for collection by the *county* in the same manner as delinquent general taxes upon such property are collected as provided by town law.
- L. Appearance/Architectural/Site Design
- 1. Architectural design shall be compatible with the character and scale of *building* in the town of Big Flats and in compliance with the town's *development design guidelines* through the *use* of appropriate *building* materials, screening, breaks in roof and wall *lines* and techniques.
 - 2. Variation in detail, *form*, and siting shall be used to provide visual interest and avoid monotony.
 - 3. Proposed *buildings* shall relate harmoniously to each other with adequate light, air circulation, and separation between *buildings*.
 - 4. Proposed *buildings* shall be compatible within the context of the PUD congruent with *color*, scale and character of

the existing natural and built environment.

5. Existing *buildings* shall remain compatible with the historic character and scale of contiguous *buildings* within the PUD for the purposes of reconstruction or rehabilitation.
6. Site *development* plans should address the pedestrian environment for residents, visitors, and employees, creating an outdoor environment where the *buildings* and open spaces work together to create meaningful public spaces and walkability from one *building* to another.
7. Designs which integrate and protect existing wetland areas into the *landscape* without disturbing them are encouraged through the *use* of trails, public access, or recreation areas. New construction design shall be in harmony with the existing *district* and surrounding character.
8. *Buildings* or *structures* that are listed or eligible for inclusion on the National Register of Historic Places and/or the New York State Register of Historic Places shall be converted, constructed, reconstructed, restored or altered to maintain or promote the status of the *building* or *structure* on, or eligibility for inclusion on the State or National Register of Historic Places.

(LL No. 6, 2009)

Chapter 17.24

OVERLAY DISTRICTS*

Sections:

17.24.010 Flood damage prevention overlay *district* (FDPOD).

17.24.020 Aquifer protection overlay *district* (APOD).

17.24.030 Ridgeline overlay *district* (RLO).

* Prior history: LL No. 2, 1997.

17.24.010 Flood damage prevention overlay *district* (FDPOD).

A. Intent. The town finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the town and that such damage may include: destruction or loss of private and public housing, damage to public facilities and injury to and/or loss of human life. In order to minimize the threat of such damage and achieve the purposes and objectives set forth in the Flood Damage Prevention Local Law this overlay *district* is established.

B. Applicable Area. The provisions of this chapter shall be applicable to all areas of special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Rate Map and Flood Boundary-Flood Way Map, all panels dated August 18, 1993 or the most recent updated version.

Special Requirements. The specific provisions as set forth in the Flood Damage Prevention Local Law, town of Big Flats, shall be applicable to all areas in this overlay *district*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.24.020 Aquifer protection overlay *district* (APOD).

A. Intent. The intent of the *aquifer* protection overlay *district* (APOD) is, in the interest of public health, safety, and general welfare, to preserve the quality and quantity of the town's groundwater *resources* in order to ensure a safe and healthy drinking water supply. This purpose will be accomplished by regulating certain *uses* that have been determined to be potentially damaging to groundwater quality, and by establishing minimum documentation and submittal requirements to ensure that other *uses* will not adversely affect the groundwater quality and quantity.

B. The *aquifer* protection overlay *districts* are named and described as follows:

1. Area I *District*. Zone of contribution type of *aquifer* which is a highly permeable area that primarily serves as a

public water supply for a municipal water system, private water company, water *district* and water authority.

2. Area II *District*. Primary *aquifer* type of *aquifer* which is a potentially productive area not yet intensively used as sources of public water supply, but that is composed of moderately permeable material that may have the potential to be a source of public water supply and that serves as a significant source of water for individual wells and/or has an area extent greater than one square mile in size.
3. Area III *District*. That upland area of the town tributary to the *aquifer* protection overlay *district*.

C. Applicable Area. The *aquifer* protection overlay *district* shall have three areas that are considered as overlaying other *districts* as defined in subsection B of this section and as indicated on the zoning map as Area I, Area II, and Area III. Any *use* permitted in the portions of the *district* so overlaid shall be permitted, subject to all the provisions of this subsection. The APOD consists of *aquifers* and *aquifer recharge* areas shown on the figure entitled *aquifer* protection areas of the town of Big Flats Comprehensive Plan (2006). The *aquifer* protection overlay *district* map is an approximate delineation of the boundaries of the unconsolidated sand and gravel deposits, *recharge* areas with sand and gravel at the surface, and probable high-yield bedrock well locations as identified. In any cases where conflicts arise between these supplemental requirements and any other existing requirement, the more restrictive shall apply.

D. Permitted *Use*. All *uses* permitted under this title and listed in Section 17.12.010, or 17.21.030 where applicable, for the various *districts* are permitted in the *aquifer* protection overlay *district* except as follows:

1. Prohibited *uses* and activities in all areas of the APOD:
 - a. The discharge, land application, or disposal of any hazardous material, toxic substance, or radioactive material;
 - b. Any *principal use* that is the production or processing of any hazardous material or toxic substance;
 - c. Any *form* of underground injection of hazardous materials or toxic substances is prohibited;
 - d. The *use* of septic system cleaners which contain toxic substances or hazardous materials;
 - e. The disposal of toxic substances or hazardous materials by means of discharge to a septic system;
 - f. Land spreading of septic waste.
2. Prohibited *use* in *aquifer* Areas I and II:
 - a. The open storage of pesticides, herbicides, or fungicides. All other storage of such material is prohibited unless authorization has been obtained from the New York State Department of Environmental Conservation as provided in the New York Environmental Conservation Law;
 - b. *Solid waste disposal facility*;
 - c. The *bulk storage* of coal or salts, except in a water-tight *structure*, or cover constructed on an impervious material;
 - d. *One-unit dwelling* using septic tanks on a *lot* of less than thirty-five thousand (35,000) square feet, except as otherwise permitted by the Chemung *county* Health Department;
 - e. *Two-unit dwelling* using septic tanks on a *lot* of less than fifty thousand (50,000) square feet, except as otherwise permitted by the Chemung *county* Health Department.
3. Prohibited *uses* in *aquifer* Area III:
 - a. The open storage of pesticides, herbicides, fungicides and artificial fertilizers within fifty (50) feet linear

distance of any *watercourse*;

b. The open storage of coal or salt within fifty (50) feet linear distance of any *watercourse*.

E. Applicability.

1. An *applicant* for any proposed action requiring subdivision approval, special *use* permit, *site plan* approval, zoning amendment, or zoning variance, under this chapter or Chapter 16, Subdivisions, shall be subject to the restrictions contained herein. *Applicants* for special *use* permit or a major subdivision shall additionally be subject to the *aquifer* impact assessment provisions of subsection F of this section. Compliance shall be required as a condition of approval of any action within the APOD. The *applicant* shall show on any required submissions, the location of any portion of the subject property which lies within the APOD *district* as identified on the town of Big Flats *aquifer* protection overlay *district* map.
2. Existing *development, uses*, or activities located within the APOD *district* are not subject to the requirements of this section and are considered permitted, pre-existing *nonconforming uses* or activities. Any significant change in a permitted pre-existing *nonconforming use* or activity shall be subject to the requirements of the APOD *district* regulations except for routine maintenance, repair, replacement, or minor *improvements* to such existing permitted *nonconforming uses* and facilities.

F. *Aquifer* Impact Assessment. All applications for subdivision, *site plan*, or special *use* permit, zoning variances, and zoning amendments under the town of Big Flats Municipal Code shall include an *aquifer* impact assessment, unless waived by the planning board for good cause shown, based on the methodology developed by the town of Big Flats planning and zoning department. Said assessment shall be prepared by a qualified professional (e.g., licensed engineer, water engineer, geohydrologist). The following *use* restrictions and requirements shall apply to all land in the APOD *district* and which is within one mile of community water supply wells or springs. These *use* restrictions are not intended to supersede the New York State Agriculture and Markets Law or the New York State Environmental Conservation Law governing acceptable agricultural practices.

G. Supplemental Requirement in Areas I, II, and III.

1. All commercial, industrial, home occupation, and *cottage industry uses* shall comply with all local, state and federal requirement concerning storage, *use* and disposal of toxic substances, hazardous materials, and hazardous wastes.
2. Petroleum *bulk storage* facilities installed above or below ground shall comply with New York State Department of Environmental Conservation requirement.
3. Commercial, industrial, home occupation, and *cottage industry uses* shall provide to the *director of planning*, or designee, lists of all toxic substances, hazardous materials, or hazardous wastes known to be used or stored on a *lot* together with sufficient detail to apprise the town of the method of storage and the amount of toxic substances, hazardous materials or hazardous wastes on the *lots*. In the case of *existing uses*, this information shall be supplied within six months of enactment of the local law codified in this title. In the case of proposed *use*, this information will be supplied as part of the plans prepared for *site plan* approval.
4. When the existing or proposed *use* includes the *bulk storage* of toxic substances, hazardous materials, or hazardous waste and it is determined to have a potential negative impact on groundwater quality, the planning board, as part of its *site plan* review and approval procedure, may require plans showing all features of a system necessary for proper storage and monitoring in the event of leak or spill of these substances and such plans be prepared by a design engineer.
5. When a proposed *use* includes the *use* of toxic substances or hazardous materials and it is determined to have a potential negative impact on groundwater quality, the planning board may require, as part of their *site plan* review and approval procedures, plans prepared by a licensed architect or engineer showing all features of the systems necessary for satisfactory conveyance, distribution and *use* of the materials, operating plans and monitoring in the event of leak or spill of these substances.
6. The planning board may require that certain commercial and *industrial uses* provide on-going groundwater

monitoring as follows:

- a. A commercial or *industrial use*, for which the planning board requires groundwater monitoring, which commences on or after the effective date of the Local Law codified in this title shall install and maintain a minimum of one groundwater monitoring well in a direction up gradient from on-site activities and one groundwater monitoring well in a direction down gradient from on-site activities. The specific location of these groundwater monitoring wells shall be determined by a professional geologist, hydrologist, engineer or other qualified expert trained and experienced in hydrogeology.
 - b. Frequency of required water quality sampling from monitoring wells shall be determined on a site-specific basis.
 - c. Access to monitoring wells shall be provided to the town for purposes of inspecting and monitoring water quality sampling deemed as appropriate.
 - d. The sampling analysis shall include, as a minimum, pH, total dissolved solids, total carbon, and total organic carbon.
7. *Vehicle filling station, vehicle repair*, vehicle sales, lease and/or repair; heavy equipment, and *salvage yard* including but not limited to: *vehicle repair*, body repair, disassembly, and rust proofing operations:
- a. Floor drains shall be connected to a holding tank or sanitary sewer equipped with an oil and grit separating tank.
 - b. Wastes collected in a holding tank shall be disposed of through a licensed waste hauler.
 - c. Waste degreasing solvents shall be stored in drums or a holding tank and disposed of through a licensed waste hauler.
 - d. Waste oil shall be stored in tanks or drums for disposal by a licensed waste hauler.
 - e. Storage facilities for tanks and/or drums shall require coated, sealed concrete floors, and containment areas to retain accidental spills or leaks; a permanent roof to protect tanks or drums and that prevents precipitation from entering dikes. Drums shall be sealed, and shall be located away from floor drains.
 - f. Large drip pans shall be kept beneath drums, which have spigots and are stored in horizontal position on racks.
 - g. Potentially contaminated scrap, including but not limited to scrap parts, batteries and used filters shall be stored in proper containers to prevent environmental release of contaminants.
8. Commercial application of pesticides, herbicides, fungicides, or chemical fertilizers:
- a. Application of pesticides, herbicides, fungicides, or chemical fertilizers shall be performed in accordance with the recommendations and label of the manufacturer.
 - b. Property owners who enlist the services of a commercial pesticide, fungicide, or herbicide applicator shall ensure that the applicator is certified and licensed by the New York State Department of Environmental Conservation.
 - c. No pesticides or herbicides shall be stored or applied except in compliance with this section. All storage of pesticides and herbicides within the APOD shall be within a *building*. Application of pesticides and herbicides within *aquifer recharge* areas or probably high-yield bedrock wells, as identified on the APOD map, shall be subject to issuance of a special *use* permit as required by Chapter 17.32 Special Use Permit Review and Criteria with the exception of commercial agricultural *uses*, which are exempted from this requirement. All such *use*, storage, or application shall be in accordance with the requirements of the New

York State Environmental Conservation Law and its implementing regulations.

9. Whenever there is a question as to the groundwater contamination potential of a proposed *use*, the expert opinion of the United States Environmental Protection Agency (EPA), the New York State Department of Environmental Conservation (NYSDEC), or the state or *county* health departments may be requested.
10. The *dumping* or disposal of snow or ice collected off-site from roadways or *parking* areas within fifty (50) feet linear distance of *watercourse* is prohibited.
11. Any outside area used for loading, handling, or mixing of coal or salts, shall be designed so as to prevent seepage and runoff from entering the groundwater or any *watercourse*.
12. Disposal Wells. The installation or *use* of disposal wells is prohibited.
13. *Infiltration Basins*. *Stormwater infiltration* practices shall be designed in accordance with the standard in the "New York State *Stormwater* Design Manual." The bottom of the *infiltration* facility shall be separated by at least four feet vertically from the seasonally high water table or bedrock. Runoff from hotspot land *uses* or activities, such as heavy industry or auto recycling, must not be directed to a formal *infiltration* facility.
14. Animal Wastes. Manure piles shall not be permitted unless provision has been made to prevent seepage into groundwater. Suitable storage facilities shall be required when it is not possible to spread or dispense of wastes on a daily basis.
15. Industrial Sludge and Toxic Chemicals. No toxic or hazardous substances, defined as such by the United States Environmental Protection Agency or the New York Department of Environmental Conservation, shall be stored except under permit from those agencies.
16. Wastewater Lagoons and Pits. *Use* of wastewater lagoons and pits for *temporary* storage of wastewater is prohibited. All storage facilities shall be watertight, located above ground and under permit by the NYS DEC.
17. Disposal. Disposal of toxic chemicals, industrial sludge, or radioactive materials is prohibited.
18. Fertilizer Storage. All *bulk storage* of fertilizers for agricultural or commercial *use* must be within a *building* or *structure*, which will prevent any seepage or runoff.
19. Storage Tanks and Pipelines.
 - a. The installation, construction, placement, or replacement of new or existing underground storage tanks or containers of one thousand one hundred (1,100) gallons or less for petroleum products is prohibited in connection with all *uses* subject to this law, including home fuel storage tanks for residential purposes. All above underground storage tanks of one thousand one hundred (1,100) gallons or less for petroleum products, pipelines, and transfer areas shall, to the maximum extent feasible, be designed to minimize the risk of groundwater contamination by incorporating backup containment *structures*, impervious surfaces, catchment areas and other features.
 - b. The town reserves the right to prohibit installation or expansion of above ground storage tanks of one thousand one hundred (1,100) gallons or less for petroleum products or installation or expansion of above ground storage tanks, pipelines, or containers for any other toxic chemical, where consistent with the purpose and standards of this section. This subsection is intended to be consistent with the requirements of the New York State Petroleum *Bulk Storage* Code found in 6 NYCRR 612, 613, and 614 which regulates storage tanks holding one thousand one hundred (1,100) gallons or more.
20. Salt and Coal Stockpiles. The storage of salts or coal is prohibited except in a completely enclosed *building* or *structure*, which will prevent any seepage or runoff containing such materials.
21. Water Wells. All water supply wells shall be constructed in accordance with the requirements of the Chemung

county Department of Health and NYS Department of Health.

22. Abandoned Wells. All abandoned wells shall be sealed in accordance with the requirements of the Chemung *county* Department of Health and NYS Department of Health.
- H. Supplemental Requirement in Wellhead Protection Areas.
 1. The following *uses* shall require special permit by the planning board:
 - a. The discharge, land application, or disposal of any septic, sewage sludge and/or food waste by-product(s);
 - b. Any *use* that involves the production, processing, or *use* of any hazardous material, toxic substances, or radioactive material.
 2. All new *development* within five hundred (500) feet of a wellhead protection area shall be subject to *site plan* review and approval by the planning board.
 3. Prohibited *uses* within five hundred (500) feet of a public water supply well:
 - a. All on-site sewage disposal systems.
 - b. All earth material *extractive uses*.

I. Delineation of Wellhead Protection Area. Upon delineation of any wellhead protection area boundaries for the town and subsequent approval, they shall become separate wellhead protection areas under this subsection and shall be subject to all applicable rules and requirement established in this chapter and promulgated by the approval authority at the time such areas are delineated.

(LL No. 2, 2007; LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.24.030 Ridgeline Overlay *District* (RLO).

A. Findings. The Big Flats Town Board considers scenic character to be one of the town's most important assets. Therefore, in accordance with the goals, objectives, and strategies laid out in the town of Big Flats Comprehensive Plan (2006), the town board finds that:

1. The natural open character of the town's ridgelines is a critical feature whose conservation enriches and benefits both residents and visitors, as documented in the town's 2006 Comprehensive Plan.
2. The protection of the scenic character of the town's ridgelines is important to maintaining and protecting rural character, a sense of place, and scenic *landscapes*, all of which contribute to the town's quality and attractiveness for residential and commercial *development*, as well as for tourism.
3. The *development* of areas covered by this overlay *district* may be appropriate, but only if such *development* is carefully planned and designed to maintain, conserve and enhance the scenic features of the area and the views of the *landscape* from public roadways, and *waterforms*.
4. Implementation of the RLO will protect important wildlife habitat and environmentally fragile areas as well as preserve open space (See town of Big Flats Comprehensive Plan (2006), Chapter 5, Section 5.5 Environmental Identified Need; Goal No. 10.1.1 Land *Use Development* Objectives and Strategies; and Goal No. 10.3.1 Natural Environment Strategies and Objectives).

B. Purpose. The purpose of the Ridgeline Overlay *District* (hereafter the "RLO") is to:

1. Establish clear *development* guidelines so that future *development* activities do not interfere with the scenic, aesthetic, and recreational *uses* utilized and enjoyed by residents and visitors;

2. Protect the town's ridgelines, which are found at higher elevations, and include some of the most environmentally *sensitive areas* of the town; and
3. Preserve the town's important scenic features including, but not limited to, individual healthy trees within open fields that are at least eighteen (18) inches in diameter at breast height (DBH), historic *structures*, wetlands, ponds, hedgerows, public or private unpaved country *roads*, and stone walls.

C. **Applicability.** Any *parcel*, partially or wholly in one of the RLO areas are included in the RLO. The RLO is comprised of land located in the scenic view-shed with an elevation of one thousand one hundred (1,100) feet or more above mean sea level. The RLO areas are shown on "town of Big Flats Zoning Map" which was prepared by Staff and dated 12-09-2009 and is incorporated by reference and made a part of the town of Big Flats zoning map.

1. For any property wholly or partially in the RLO, prior to the application for a *building permit*, the *applicant* or designee shall meet with the *director of planning* or designee. If it is demonstrated that the proposed construction will not take place within an RLO area, the *applicant* shall proceed with *site plan* approval in accordance with Section 17.32 of the Big Flats Municipal Code or *building permit* application, as applicable.
2. For any property in the RLO where it is determined that construction will take place within an RLO area, prior to the issuance of any *building permit*, a RLO special permit and *site plan* approval must be received from the planning board (board). In the review of an application for a permit, the board must evaluate the potential for unreasonable *adverse visual impacts* resulting from a proposed activity.
3. The requirements of this chapter shall not apply to dwelling additions and *accessory structures* less than three hundred (300) square feet in *structure* area, provided no new area is cleared. Furthermore, an elevation survey, prepared and stamped by a licensed surveyor, may be submitted to the board to show that no part of the site is in the RLO.
4. Inconsistency. The RLO requirements shall not be used to lessen the underlying zoning *district density* applicable to the *development*. The most restrictive requirements under this chapter or the applicable requirements for the *development* set forth in the town code shall apply to such *development*. Except as provided herein, if any conflict arises between the provisions of this chapter and any other requirements set forth in the Town Code and BFZL, this chapter shall control.

D. **Scope of Review.** The potential impacts of a proposed activity will be determined by the board considering the presence of the scenic *resource*, the significance of the scenic *resource*, the existing character of the surrounding area, the expectations of the typical viewer, the extent and intransience of the activity, the *project* purpose, and the context of the proposed activity. Unreasonable *adverse visual impacts* are those that are expected to unreasonably interfere with the general public's visual enjoyment and appreciation of a scenic *resource*, or those that otherwise unreasonably impair the character or quality of such a place. During the RLO special permit process, the planning board will determine whether the proposed *development* will have an unreasonable adverse effect on the scenic character of the surrounding area.

1. The board shall review the *project's visual impact* on the scenic *viewshed* using the Basic *Visual Impact Assessment Form* and the *Visual Impact Analysis Matrix* provided in the Appendix to this law.
2. The board shall consider all relevant evidence to that effect, such as evidence that:
 - a. The design of the proposed *development* takes into account the scenic character of the surrounding area;
 - b. A *development* which is not in keeping with the surrounding scenic character will be located, designed and *landscaped* to minimize its *visual impact* to the fullest extent possible; and
 - c. *Structures* will be designed and *landscaped* to minimize their *visual impact* on the surrounding area.
3. If the board finds that the proposed *development* will have an unreasonable adverse effect on the scenic character of the surrounding area and that effects cannot be mitigated, the board shall deny the *project*.

4. If the board finds that the proposed *development* has an unreasonable adverse effect on the scenic character of the surrounding area, but that the effects can be mitigated, the board may impose any reasonable conditions upon the approval of a *development*, so long as the conditions fulfill or enhance the overriding findings and purposes of this chapter. Such conditions may include, but are not limited to, limiting illumination of the site, limiting *clearing* or cutting, requiring architectural or vegetative screening, regulating the *use* of *color* and or materials used in construction, or any other reasonable conditions developed during the review of the application. Any condition imposed under this paragraph shall be clearly noted on the final plat, plan, or permit issued for the *development* and/or filed with the Chemung *county* clerk.

E. **Application Submissions.** Applications for approval of proposed *developments* shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area. Basic evidence must be provided to ensure that visual concerns have been fully addressed in each application. In addition to a *visual impact* assessment as described in subsection F of this section, the *applicant* must submit a complete *site plan* application and landscaping and lighting plans prepared by a registered *landscape* architect. Depending on the scope of the *project* and its potential impact, the board may require a lighting engineer. The *applicant* must also submit the SEQR Visual Environmental Assessment *Form Addendum* (V-EAF) pursuant to 6 NYCRR 617.20 Appendix B. The *applicant* may request a pre-application meeting during which the planning department or a committee of the planning board can provide guidance.

F. **Visual Impact Assessment.** The *applicant* must complete a *visual impact* assessment (VIA). An *applicant's visual impact* assessment should visualize the proposed activity and evaluate potential adverse impacts of that activity on existing scenic and aesthetic *uses* of a protected natural *resource* within the *viewshed* of a scenic *resource*, and to determine effective *mitigation* strategies, if appropriate. The VIA must be prepared by a design professional trained in visual assessment procedures.

In all *visual impact* assessments, scenic *resources* within the *viewshed* of the proposed activity must be identified and the existing surrounding *landscape* must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed *mitigation* measures. The radius of the impact area to be analyzed must be based on the relative size and scope of the proposed activity given the specific location. Areas of the scenic *resource* from which the activity will be visible, including representative and worst-case viewpoints, must be identified. *Line-of-sight profiles* constitute the simplest acceptable method of illustrating the potential *visual impact* of the proposed activity from viewpoints within the context of its *viewshed*. A *line-of-sight profile* represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the *landscape*. For activities with more sensitive conditions, photo simulations and computer-generated graphics may be required.

A *visual impact* assessment must describe the location of the activity and provide an inventory of scenic *resources* within the *viewshed* of the proposed activity. It shall include narratives to describe the significance of any potential impacts, the level of *use* and viewer expectations, measures taken to avoid and minimize *visual impacts*, and steps that have been incorporated into the activity design that may mitigate any potential *adverse visual impacts* to scenic *resources*. It shall also describe the activity relative to its location and scale within the *viewshed* of any scenic *resource*, including a description of the existing *visual quality* and landscape characteristics and it will indicate how the *development* fits into the scenic character of the area.

G. **Mitigation.** In a case where the board determines that the proposed activity will have an *adverse visual impact* on a scenic *resource*, *applicants* may be required to employ appropriate measures to mitigate the adverse impacts to the extent practicable. *Mitigation* should reduce or eliminate the visibility of the proposed activity or alter the effect of the activity on the scenic or aesthetic *use* in some way. The board will determine when *mitigation* should be proposed and whether the *applicant's mitigation* strategies are reasonable. The board may require *mitigation* by requesting that the *applicant* submit a design that includes the required *mitigation* or by imposing permit conditions consistent with specified *mitigation* requirements.

In determining whether the *projects* impact on scenic and aesthetic *uses* are unreasonable, the board will consider whether the *applicant's* activity design is visually compatible with its surroundings, incorporating environmentally sensitive design principles and components according to the general strategies described below (specific design standards are listed in subsection I of this section):

1. **Planning and Siting.** Properly siting an activity may be the most effective way to mitigate potential *visual impacts*. *Applicants* are encouraged, and may be required, to site a proposed activity in a location that limits its *adverse visual impacts* within the *viewshed* of a scenic *resource*.

2. Design. When circumstances do not allow siting to avoid *visual impacts* on a scenic *resource*, elements of particular concern should be designed in such a way that reduces or eliminates *visual impacts* to the area in which an activity is located, as viewed from a scenic *resource*. *Applicants* should consider a variety of design methods to mitigate potential impacts, including screening, *buffers*, earthen berms, camouflage, low profile, downsizing, non-standard materials, lighting, and other alternate technologies.
3. Offsets. Correction of an existing visual problem identified within the *viewshed* of the same scenic *resource* as the proposed activity may qualify as an offset for *visual impacts* when an improvement may be realized. Offsets may be used in sensitive locations where significant impacts from the proposal are unavoidable or other *forms* of *mitigation* might not be practicable. An example of an offset might be the removal of an existing abandoned *structure* that is in disrepair to offset impacts from a proposal within visual proximity of the same scenic *resource*. Offsets can also include *visual improvements* to the affected *landscape*, such as tree plantings or *development* of scenic overlooks.
- H. Design Standards. All *development* subject to this chapter shall comply with the following requirements:
 1. Placement of *Structures*.
 - a. To ensure the placement of *structures* outside of the exposed ridgeline area on proposed *building lots*, *building* sites, including areas of cleared vegetation, shall be clearly designated on the *site plan*. Constructed *structures* shall not differ in any direction from *building* site locations shown on an approved subdivision and/or *site plan* at the time of *building permit* application.
 - b. *Structures* shall be sited at the lowest elevation possible to be as visually inconspicuous as possible when seen from a distance and from lower elevations. In no case shall *development* occur along and/or *project* above ridgelines when viewed from the locations identified in subsection L of this section.
 2. Restrictions on Height. Within the RLO, no principal or *accessory structure* with a *building* height of greater than twenty-five (25) feet shall be constructed unless visual cross sections or other appropriate methods demonstrate that the subject *structure* could be constructed with a *building* height greater than twenty-five (25) feet, in conformance with the *bulk* and *density* control schedule requirements identified within Section 17.16.020 without unduly impacting ridgelines and scenic view sheds.
 3. Visibility. All *structures* shall be sited to avoid, eliminate, or alter the *project's* effect on the scenic or aesthetic *resource*, or which occupy or obstruct public views of land within the RLO to the greatest extent practicable. Public views shall be considered to be from any location listed in subsection L of this section. These locations are frequented by the public and offer unobstructed views of the town's ridgeline *landscapes*. Visibility shall be measured using a condition of no leaves on trees.
 4. *Colors*. *Structures* should blend in with natural surroundings through preferred *use* of stone and/or natural wood siding. In all cases, *structures* shall be constructed and maintained so predominating exterior wall *colors* (including the *colors* of *basement* walls on the downhill side of the *structure*) and roof surfacing materials repeat the *colors* found most commonly in the land and vegetation around the *building* (earth tone) and have a light reflective value of no more than sixty (60) percent.
 5. Vegetation. Existing vegetation within ridgeline areas shall be preserved to the maximum extent practicable. Every attempt shall be made to limit cutting necessary for either construction or the opening of views from the subject site so as to maintain native vegetation as a screen for *structures*, as seen from public *roads* or parks or other public views. This section is not intended to limit forest management in ridgeline areas when practiced in accordance with environmentally sound and sustainable silvicultural principles.
 6. Landscaping. The *applicant* must submit for approval, a *landscape* plan prepared by a licensed *landscape* architect, showing the satisfaction and location of all vegetation requirements on the site. An *applicant* may request alternative placement of landscaping on certain *lots* if such placement provides adequate *mitigation* of the *visual impact* of the roofline of the *principal structure*.
 - a. The area around each principal and *accessory structure* shall include at least one tree of a species with a

mature height of at least thirty-five (35) feet for each two thousand five hundred (2,500) square feet of *lot*; provided, however, that this requirement shall not require any *one-unit dwelling lot* to contain more than eight trees unless growing naturally on the site.

- b. Trees installed to meet the requirements of this section must be of coniferous species, shall be a minimum of twelve (12) feet tall when planted, shall be planted a maximum of twenty (20) feet on center, and shall be planted before a certificate of occupancy is issued for the *principal structure*. If planting is not possible due to planting season or weather conditions, a *temporary* certificate of occupancy (CO) may issued by the *building* inspector, however, the *temporary* CO will expire one month into the planting season when all final planting must occur.
 - c. Shrubs will be planted with a twenty-four (24) inches minimum size for those specified for spread, and thirty-six (36) inches minimum for those specified for height.
 - d. Landscaping survivability shall be assured by bond determined by the planning board, for at least two years.
7. Tree Cutting. All timber harvesting in the RLO shall comply with Chapter 5.16 (Timber Harvesting) of the Town Code.
- a. If the regulations of the RLO *district* conflict with Chapter 5.16, the RLO regulations shall apply.
 - b. Clear-cutting of all trees in a single contiguous area in an RLO *district* in excess of one-fourth of an acre in area shall be prohibited.
 - c. Exceptions. This section shall not apply to:
 - i. Christmas tree culture or other existing tree plantation;
 - ii. Harvests conducted in accordance with a timber harvesting plan prepared pursuant to Section 480-a of the New York State Real Property Tax Law;
 - iii. Tree *clearing* for farm purposes within agricultural *districts* established pursuant to New York State Agriculture and Markets Law;
 - iv. Severe natural disturbances, which include fire, insect infestation, disease, ice and wind;
 - v. Removal of timber stands that, if partially harvested according to accepted silvicultural practice, are at high risk for wind throw due to factors such as soils, rooting depth, crown ratio, or stem quality;
 - vi. Ecologically appropriate improvement or creation of wildlife habitat, with accompanying prescription and justification from a certified wildlife professional, a New York State Department of Environmental Conservation Forester, a member of the New York Institute of Consulting Foresters, or a cooperating consultant forester.
8. Lighting. Exterior lighting in the RLO shall be controlled in both height and intensity and shall be in conformance with the following requirements:
- a. The preparation of a complete lighting plan by a registered *landscape* architect, or by a lighting engineer if required by the planning board.
 - b. Under no circumstances shall the light level at any *lot line* exceed 0.2-foot candle, measured at ground level.
 - c. Floodlights shall not be used to light any portion of a principal or *accessory structure* facade, and all

outdoor light sources mounted on poles or *buildings* or trees to illuminate *driveways*, sidewalks, walkways, *parking lots*, or other outdoor areas shall *use* fully shielded cutoff light fixtures.

- d. For purposes of this section, a "full cutoff light fixture" is one in which no more than two and one-half percent of the total output is emitted at ninety (90) degrees from the vertical pole or *building* wall on which it is mounted. All such fixtures shall be installed or shielded so that part of the light bulb or light source is not visible beyond the property boundaries and all such fixtures must come from the directory of fixtures approved by the International Dark Sky Association.

9. *Parking.*

- a. *Parking lots* for nonresidential and multi-unit residential *uses* shall be provided with screened *parking* wholly at the side and/or rear of the *structures*, provided such an arrangement does not create a significant visual effect.
- b. *Parking* is provided at the side of the *structures*, at least a ten-foot-wide *landscaped* area (exclusive of that required for sidewalks or utility *easements*) shall be provided between the *road right-of-way* and the *parking lot*, to be planted with shade or ornamental trees and at least a three-foot-high evergreen hedge, wall or *fence*.
- c. At least one tree and three shrubs shall be provided for each eight *parking* spaces in interior areas of a *parking lot*, whether such *lot* is provided at the side or rear of the *structures*.
- d. *Parking* for single-family dwellings shall be provided at the side and/or rear of the *principal structure*, provided such an arrangement does not create a significant visual effect.

10. Screening. Vegetation, topography and architectural features shall be used to *buffer* and screen.

- a. *Clearing* of existing vegetation at the edge of the *road* shall be minimized, except to create *road* and *driveway* entrances with adequate sight distance. Curved *driveways* shall be used to increase the screening of *buildings*.
- b. *Buildings* shall be sited so that they do not protrude above treetops or the ridgelines of hills as seen from public places and *roads*. This shall not be interpreted to mean that the *buildings* should not be seen, only that they should not protrude above the trees or the hilltops.
- c. All electric, telephone, television, and other communication *lines*, both main and service connections, servicing new *development*, shall be provided by underground wiring within *easements* of dedicated public rights-of-way, installed in accordance with the prevailing standards and practices of the utility or other companies providing such services.

11. Dimensional Regulations. The following dimensional regulations shall apply to *development* within the RLO:

- a. All subdivisions of land within the RLO, shall, whenever possible, be developed in accordance with the town's Cluster Residential *Development* regulations, in accordance with this chapter, Chapter 17.28, and New York State Town Law.
- b. Nonresidential *buildings* and *multi-unit dwellings* shall be sited in clusters.
- c. No *building* shall exceed seven thousand five hundred (7,500) square feet unless the *structure* is to be used exclusively for agricultural purposes.
- d. The maximum *lot coverage* on any *parcel* proposed for subdivision or *development* shall be twenty (20) percent. Such restrictions shall be shown on any subdivision plat.
- e. Maximum *building* height requirements shall apply to the peak of the roofline except for cupolas or turrets

as well as silos or barns when used in conjunction with agricultural operations, which may exceed the maximum *building* height.

12. Drainage and Prevention of Soil Erosion. No *site plan*, *building permit*, or subdivision plat shall be approved unless such approval includes soil erosion and *sediment control* measures, prepared in accordance with the standards described in Section(s) 17.36.090 and 99.02.010 Appendix I, *Stormwater Management* Guidelines for New *Developments* of the Town Code, or manuals in common usage, such as the New York State Department of Environmental Conservation's Reducing the Impacts of *Stormwater Runoff* from New *Development* or the New York State Soil and Water Conservation Committee's New York Guidelines for Urban Erosion and *Sediment Control*. *Landowners* shall bear full responsibility for the installation, construction, and maintenance of all erosion control measures required as a condition or approval.

I. Referral. The town of Big Flats' ridgeline areas contain *significant wildlife habitats*, including those frequented by endangered and threatened species. To receive assistance in its review of applications, the applicable reviewing board may refer the proposed plan to the New York State Department of Environmental Conservation and/or the New York Natural Heritage Program for its review and recommendations. To receive further assistance, such reviewing board may refer the proposed plans to any such agencies or officials of the town, *county*, state, or federal government as the board may deem appropriate.

J. Waiver. The planning board, may waive some or all of the regulatory requirements of this section in the RLO under any of the following circumstances:

- a. The *structure* or area within the RLO is situated so the *structure* does not create a significant *visual impact* that needs to be mitigated, when viewed from visually *sensitive areas*, including public view locations identified as important views in the town of Big Flats Comprehensive Plan or subsection I of this section;
- b. The work to be done is of a minor nature and is consistent with the design standards set forth herein.
- c. The *use* involves commercial agricultural operations and pursuits as defined by the New York State Department of Agriculture and Markets.

K. Determination. It is the responsibility of the *applicant* to demonstrate that the proposed design does not unreasonably interfere with existing scenic and aesthetic *uses*, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic *resource*, and that any potential impacts have been minimized. The board's determination of impact is based on the following *visual elements* of the *landscape*:

- a. *Landscape* compatibility, which is a function of the sub-elements of *color*, *form*, *line*, and *texture*. Compatibility is determined by whether the proposed activity differs significantly from its existing surroundings and the context from which they are viewed such that it becomes an unreasonable adverse impact on the *visual quality* of a protected natural *resource* as viewed from a scenic *resource*;
- b. *Scale contrast*, which is determined by the size and scope of the proposed activity given its specific location within the *viewshed* of a scenic *resource*; and
- c. *Spatial dominance*, which is the degree to which an activity dominates the whole *landscape composition* or dominates landform, water, or sky *backdrop* as viewed from a scenic *resource*.

In making a determination within the context of this rule, the board considers the type, area, and intransience of an activity related to a scenic *resource* that will be affected by the activity, the significance of the scenic *resource*, and the degree to which the *use* or viewer expectations of a scenic *resource* will be altered, including *alteration* beyond the physical boundaries of the activity. In addition to the scenic *resource*, the board also considers the functions and values of the protected natural *resource*, any proposed *mitigation*, *practicable* alternatives to the proposed activity that will have less *visual impact*, and *cumulative effects* of frequent minor *alterations* on the scenic *resource*. An application may be denied if the activity will have an unreasonable impact on the *visual quality* of a protected natural *resources* as viewed from a scenic *resource* even if the activity has no practicable alternative and the *applicant* has minimized the proposed *alteration* and its impacts as much as possible through *mitigation*. An "unreasonable impact" means that the standards, purpose, and intent of this law will or cannot be met.

L. Scenic *Resources*. The following public natural *resources* and public lands are usually visited by the general public, in part with the purpose of enjoying their *visual quality*. Under this law, the board considers a scenic *resource* as the typical point from which an activity in, on, over, or adjacent to a protected natural *resource* is viewed. This list of scenic *resources* includes, but is not limited to, locations of national, state, or local scenic significance. A scenic *resource* visited by large numbers who come from across the country or state is generally considered to have national or statewide significance. A scenic *resource* visited primarily by people of local origin is generally of local significance. The list of places where the intent of this section is to protect the *viewshed* includes, but not limited to:

1. The National Soaring *Museum* and Harris Hill;
 2. The Palisades area;
 3. The Chemung River and future Chemung River Greenway;
 4. Community Park, Miniers' Fields and Sperr Park;
 5. Elmira/Corning Regional *Airport*;
 6. New York State Route 352;
 7. New York State Route 17/Interstate 86;
 8. Tanglewood *Nature Center*;
 9. Any Rails to Trails areas;
 10. Any National or State Parks located in the town;
 11. A property on or eligible for inclusion in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended;
 12. Public natural *resources* or public lands visited by the general public, in part for the *use*, observation, enjoyment, and appreciation of natural or cultural visual qualities.
- M. Appeal. Article 78 proceedings:
1. The *applicant* or any interested person may appeal a decision of the planning board on a RLO permit.
 2. The appeal shall be made to the Supreme Court of New York State for review by a proceeding under Article 78 of the Civil Practice Law and Rules of New York State.
 3. Any such proceeding shall be commenced within thirty (30) days of the approval with or without conditions or denial of the RLO permit that is subject to such review proceeding.

(LL No. 7, 2007)

(LL No. 6, 2009)

Chapter 17.28

CLUSTER RESIDENTIAL *DEVELOPMENT**

Sections:

17.28.010 Intent.

17.28.020 Applicable *districts*.

17.28.030 Permitted *uses*.

17.28.040 Dimensional requirements.

17.28.050 Authorization.

- 17.28.060 Cooperative planning and design option.
 - 17.28.070 Standards for cluster residential *developments*.
 - 17.28.080 Requirements governing CRD.
 - 17.28.090 Permanent open space.
 - 17.28.100 Review and approval of CRD plan.
 - 17.28.110 Public hearing on CRD.
- * Prior history: LL No. 2, 1997.

17.28.010 Intent.

A *cluster residential development (CRD)* subdivision is intended to enable and encourage flexibility in the design and *development* of land in such a manner as to promote the most appropriate *use* of land, to facilitate adequate and economical provision of services, to preserve those areas in the town that are suitable for agricultural *use*, to protect and conserve open space *use* and environmentally sensitive features, and to preserve scenic qualities, while allowing *development* to take place on areas of a property best suited for a neighborhood. The *use* of cluster residential *development* principles can result in the preservation of contiguous open space and important scenic *resources* and environmental *resources*, while allowing compact *development*, more walkable and bikeable neighborhoods, and more design flexibility than conventional *developments*.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.28.020 Applicable districts.

Cluster residential development (CRD) shall be considered applicable in the RU and R1 *districts*.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.28.030 Permitted uses.

All one-unit, two-unit, and *multi-unit dwelling* and *accessory uses* as specified in Section 17.12.010, *Use Requirements* Table, for the applicable *districts* are permitted.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.28.040 Dimensional requirements.

A. Located within the RU *District*: If the *applicant* is proposing a minimum of fifty (50) percent permanent open space, the physical and dimensional requirements may be reduced to the following requirements (per residential unit):

Min. *Lot Area*: 1/2 acre

Min. *Front Yard*: 25 ft.

Min. *Side Yard*: 25 ft.

Min. *Rear Yard*: 60 ft.

Max. *Lot Coverage*: 40 percent

In order for such a reduction to occur, the planning board, at their discretion, shall conclude that the proposed cluster residential *development* is designed to preserve and protect the natural and scenic qualities of the permanent open space(s) to the greatest extent practicable and all necessary approvals from the Chemung *county* Department of Health shall be obtained prior to final approval of the CRD.

B. Located within the R1 *District*: If the *applicant* is proposing a minimum of fifty (50) percent permanent open space, then the physical and dimensional requirements identified in 17.16.020(B)(1), excluding minimum habitable area, may be reduced by not more than seventy (70) percent. In order for such a reduction to occur, the planning board, at their discretion, shall conclude that

the proposed cluster residential *development* is designed to preserve and protect the natural and scenic qualities of the permanent open space(s) to the greatest extent practicable and all necessary approvals from the Chemung *county* Department of Health shall be obtained prior to final approval of the CRD.

(LL No. 6, 2009)

17.28.050 Authorization.

A. In accordance with subsection 278 of Article 16 of the New York State Town Law, the town board authorizes the planning board, simultaneously with the approval of a plat or plats, to approve Cluster Residential *Development* subdivisions, subject to the conditions hereinafter set forth. In no instance shall the number of proposed *dwelling units* exceed the number permitted, as if the land were to be subdivided in accordance with the minimum *lot* size and *density* requirements of the *district*, unless otherwise permitted.

B. The town board, pursuant to Section 278 of Article 16 of the New York State Town Law, authorizes the planning board to require that the *developer* submit an application which reflects and incorporates the objectives stated in this chapter and/or in Chapter 17.04 are met to a greater degree than if the *development* were permitted to occur in a conventional manner. The planning board shall comply with all procedures and requirements set forth in this chapter where implementing such power.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.28.060 Cooperative planning and design option.

As part of the CRD review process, the planning board may offer the services of its planning and design consultant to assist the *applicant* in creating a concept plan for the *project*. The intent of the option is to offer early facilitation of creative design solutions, operating outside of the more rigid process of typical plan review and comment. The option would include coordination with town staff and boards as appropriate. The cost of this option would be borne by the *applicant* and only upon agreement by the *applicant*. The option is available as a supplement to typical staff-town consultant review services with the goal of creating an enhanced *project* design and a more efficient and cost effective review process for the *applicant*.

(LL No. 6, 2009)

17.28.070 Standards for cluster residential *developments*.

A. Determining Base *Density*: "Base *Density*" is measured as the number of *lots* permitted on one acre of the parent tract.

1. *Density* Calculation Method - For the purpose of establishing the base *density* within the RU zoning *district* the following sliding scale shall be used:

Percentage of land permanently preserved	Base <i>Density</i>
50-60 percent	0.3
60-70 percent	0.5
> 70 percent	1.0

a. Round down fractional units of 0.5 or less and round up fractional units greater than 0.5. The resulting number is the "base *density*" allowed on the site.

2. Yield Plan Method - For the purpose of establishing the base *density* within the R1 zoning *district*, the yield plan method shall be utilized to determine the maximum number of *dwelling units* allowed on a site. Yield plans shall meet the following requirements:

a. A yield plan shall be prepared as a concept plat, in accordance with Chapter 16.08, containing proposed *lots*, streets, rights-of-way, and other pertinent features. Although it must be drawn to scale, it need not be based on a field survey. However, it must be a realistic layout reflecting a *development* pattern that could reasonably be expected to be implemented, taking into account the presence of wetlands, floodplains, *steep*

slopes, existing *easements* or encumbrances and, if no public sewer is available, the suitability of soils for subsurface sewage disposal.

- b. For the purposes of preparing the yield plan the minimum *lot* area utilized shall be such area as defined within the *Bulk* and *Density* Control Schedule (Chapter 17.16).

The planning board, at its sole discretion, must determine whether the layout shown on the yield plan is realistic, reflecting a *development* pattern that could reasonably be expected to be implemented under conventional subdivision review. The number of *dwelling units* identified on the yield plan then becomes the "base *density*" allowed on the site.

3. Once the number of *lots* for a proposed CRD has been established, this number may be increased by up to fifteen (15) percent if permanent public access will be granted to the permanent open land and any associated *improvements* as delineated in this section. Also, a ten (10) percent increase may be granted if the *applicant uses* the minimum *lot* area as described in 17.28.040 as a maximum *lot* area in the proposed *development*.
4. The *density* permitted by this section may be reduced as a result of the necessary land needed for septic and water systems as per Chemung *county* Health Department regulations.

B. Conservation Analysis.

1. As part of its preliminary plat submission, an *applicant* shall prepare a conservation analysis, consisting of inventory maps and photographs, a description of the land, and an analysis of the conservation value of the various site features. The conservation analysis shall show all lands with conservation value, including but not limited to the following:
 - a. "*Constrained land*";
 - b. Open space and environmental *resources*;
 - c. *Buffer* areas necessary for screening new *development* from adjoining *parcels*;
 - d. Land exhibiting present or potential recreational, historic, ecological, agricultural, water *resource*, habitat, scenic, or other natural *resource* value;
 - e. Land, that when considered together with land on adjoining *parcels*, would constitute a contiguous area or network of open space for the benefit of conserving the *resources* identified in sections (a) through (d) above.
2. The planning board, town staff, and/or appropriate professionals retained by the town, shall conduct a site visit to review the *applicant's* conservation analysis for completeness and accuracy. The site visit may also be used by the planning board to help determine which of the lands identified as being of conservation value are most important to preserve.
3. The conservation analysis shall describe the importance and the current and potential conservation value of all land on the site. In the course of its initial preliminary plat review, the planning board shall indicate to the *applicant* which of the lands identified as being of conservation value are most important to preserve.
4. The outcome of the conservation analysis and the planning board's determination shall be incorporated into the approved preliminary plat showing land to be permanently preserved by a conservation *easement*. The preliminary plat shall also show preferred locations for intensive *development* as well as acceptable locations for less dense *development*.
5. The final determination as to which land has the most conservation value and will be protected from *development* by a conservation *easement*, deed restrictions or other acceptable instrument shall be made by the planning board. Whenever the planning board approves a plat with protected open space, it shall make written findings identifying the specific conservation values protected and the reasons for protecting such land (the "conservation findings").

The planning board shall deny an application that does not include a complete conservation analysis sufficient for the board to make its conservation findings.

6. If the planning board deems the proposed site to not include any *constrained land*, said application shall be denied. (LL No. 6, 2009)

17.28.080 Requirements governing CRD.

Any CRD shall conform to the following requirements which are regarded as minimum requirements:

A. The CRD shall apply only to lands as specified in Section 17.28.020. It shall be determined that such *development* will not be detrimental to the health, safety or welfare of persons residing in the vicinity, or to property or *improvements* in close proximity. The proposed *development* shall create an attractive residential environment that is in conformity with the intent of this chapter and the town of Big Flats Comprehensive Plan (2006). A proposed CRD shall have a minimum contiguous acreage of:

Zoning <i>District</i>	Minimum Contiguous Acreage
R1 with water and sewer	2.0
R1 with water and no sewer	6.0
R1 with no water and no sewer	10.0
RU	10.0

- B. Such *development* shall be *buffered* in accordance with Section 17.36.200.
- C. All CRD plans shall be prepared with the competent professional assistance of a design engineer and shall be consistent with the spirit and intent of the BFZL.
- D. In areas without public water and sewer, any reduction in *lot* size allowed under this chapter shall be dependent on approval of the on-*lot* potable water and sewage disposal system by either NYS Department of Health, NYS Department of Environmental Conservation, or the Chemung *county* Department of Environmental Health.
- E. All the land not contained in the *lot* or the *road right-of-way* shall be of such size and shape as to be usable for recreation or agriculture or natural *buffer* areas. Such land shall either be permanently preserved in accordance with Section 17.28.090 or:
 - 1. Offered for *dedication* to and accepted by the town; or
 - 2. Be held in corporate ownership by the owners of the *lots* within the *development* via a homeowners association or other means. As part of this method, the *developer* shall incorporate into all of the deeds of the properties within the *development*, a clause giving to the owners an interest in such open land which shall be used for recreation, cultural or agricultural purposes only; or
 - 3. Be retained under separate ownership as an agriculture *use*, *nature center*, *rod and gun club*, government or stable. If retained under separate ownership, a clause shall be incorporated into the deed restricting the land to be used for recreation, cultural or agriculture *use* only. No *structure* save those incidental to the recreational, cultural or agricultural *use* shall be permitted thereon.
- F. The permanent open land left undeveloped after *development* shall be maintained in accordance with the *development* plan. *Applicants* shall provide copies of deed covenants for the prospective purchasers, or conservation *easement* with the town, describing land management practices to be followed by whichever party or parties are responsible for maintenance.
- G. Further subdivision of residual land, or its *use* for other than recreation, conservation or agriculture, except for

easements for utilities, shall be prohibited. *Accessory structures* to recreation, conservation, or agriculture may be erected on residual land, subject to the provisions of Chapter 17.32, *site plan* approval procedures.

- H. Construction shall start within one year of the date of approval and shall be completed within a time frame agreed to by the *developer* and the planning board. If such time frame is not met by the *developer*, no further *building permits* will be issued for the *development* unless an extension is approved by the town of Big Flats Planning Board prior to the expiration of the approved time frame.
- I. In the event that an organization established to own and maintain common property fails to maintain such property as prescribed, the town board may take action as prescribed by law.
- J. In accordance with subsection 278 of Article 16 of the NYS Town Law, when the final plat is filed with the *county* clerk, a copy of said plat shall be filed with the town clerk. The town clerk shall make appropriate notations and references thereto on the town zoning map. The town clerk shall make such notations and references as needed, but not less frequently than semi-annually.
- K. *Lots* shall be arranged in a manner that protects land of conservation value and facilitates pedestrian and bicycling circulation. Permitted *building* locations or areas (*building envelopes*) shall be shown on the final plat.
- L. *Roads* built within the CRD shall conform to the construction requirements outlined in Chapter 12 of the Town Code. These standards may be reduced at the discretion of the planning board and with approval of the town department of public works.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.28.090 Permanent open space.

Open space set aside in a cluster residential *development* subdivision shall be permanently preserved as required by this section. Any *development* permitted on land located in a CRD that is not protected as open space shall not compromise the conservation value of such open space land.

- A. Conservation Value of Open Space: The open space protected pursuant to this Section must have "conservation value," which shall be determined in the course of the conservation analysis described in 17.28.070(B) above.
- B. Permanent Preservation by Conservation *Easement*:
 - 1. A perpetual conservation *easement* restricting *development* of the open space land and allowing *use* only for agriculture, forestry, passive recreation, protection of natural *resources*, or similar conservation purposes, pursuant to Section 247 of the General Municipal Law and/or Sections 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the town, with the approval of the town board, and/or to a qualified not-for-profit conservation organization acceptable to the town board. Such conservation *easement* shall be approved by the planning board and shall be required as a condition of final plat approval. The planning board shall require that the conservation *easement* be enforceable by the town if the town is not the holder of the conservation *easement*. The conservation *easement* shall be recorded in the *county* clerk's office, and recording information (liber and page) shall be shown on the final plat prior to filing of the final plat in the *county* clerk's office.
 - 2. The conservation *easement* shall prohibit residential, industrial, or business *use* of open space land (except in connection with agriculture, forestry, and/or passive recreation), and shall not be amendable to permit any such *use*. At the discretion of the planning board, the conservation *easement* may permit public access, outdoor active recreation on the portion of protected open space comprised of *unconstrained land*, or may be amendable to permit such *use* in the future, provided that the planning board finds such *use* would be compatible with the surrounding neighborhood and that it would not impair the conservation value of the land. *Driveways*, wells, underground sewage disposal facilities, (including constructed wetlands), local utility distribution *lines*, *stormwater management* facilities, trails, and agricultural *structures* shall be permitted on preserved open space land, provided that they do not impair the conservation value of the

land. Forestry shall be conducted in conformity with applicable best management practices as described by the NYS Department of Environmental Conservation's Division of Lands and Forests.

3. A land management plan, approved by the planning board, shall be included in the conservation *easement*. The conservation *easement* shall provide that if the town board finds that the management plan has been violated in a manner that renders the condition of the land a public nuisance, the town may, upon thirty (30) days' written notice to the owner, enter the premises for necessary maintenance, and that the cost of such maintenance by the town shall be assessed against the *landowner(s)* or, in the case of an HOA, the owners of properties within the *development*, and shall, if unpaid, become a tax lien on such property or properties. Preserved open space may be included as a portion of one or more large *lots*, or may be contained in a separate open space *lot*. The conservation *easement* may allow dwellings to be constructed on portions of *lots* that include preserved open space land, provided that the total number of dwellings permitted by the conservation *easement* in the entire subdivision is consistent with applicable *density* limitations as determined under 17.28.070.
- C. Notations on Final Plat: Preserved open space land shall be clearly delineated and labeled on the subdivision final plat as to its *use*, ownership, management, method of preservation, and the rights, if any, of the owners of *lots* in the subdivision and the public to the open space land. The final plat shall clearly show that the open space land is permanently preserved for conservation purposes by a conservation *easement* required by this section, and shall include deed recording information in the *county* clerk's office for the conservation *easement*.
- D. Ownership of Open Space Land.
1. Open space land shall under all circumstances be protected by a perpetual conservation *easement*, but may be owned in common by a homeowner's association (HOA), offered for *dedication* to town, *county*, or state governments, transferred to a non-profit organization acceptable to the planning board, held in private ownership, or held in such other *form* of ownership as the planning board finds appropriate to properly manage the open space land and to protect its conservation value.
 2. If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:
 - a. The HOA application must be submitted to the NYS Attorney General's Office before the approved subdivision final plat is signed, and must comply with all applicable provisions of the General Business Law. The HOA must be approved by the NYS Attorney General's Office prior to issuance of the first certificate of occupancy from the code enforcement officer.
 - b. Membership must be mandatory for each *lot* owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, *private roads*, and other common facilities.
 - c. The HOA must be responsible for liability insurance, property taxes, and the maintenance of recreational and other facilities and *private roads*.
 - d. Property owners must pay their pro rate share of the costs in (b) above, and the assessment levied by the HOA must be able to become a lien on the property.
 - e. The HOA must be able to adjust the assessment to meet changed needs.
 - f. The *applicant* shall make a conditional offer of *dedication* to the town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the town, at the discretion of the town board, upon the failure of the HOA to take title to the open space from the *applicant* or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
 - g. Ownership shall be structured in such a manner that real property taxing authorities can satisfy

property tax claims against the open space lands by proceeding against individual owners in the HOA and the *dwelling units* they each own.

- h. The town attorney shall find that the HOA documents presented satisfy the conditions in subsections (a) through (g) above, and such other conditions as the planning board shall deem necessary.

(LL No. 6, 2009)

17.28.100 Review and approval of CRD plan.

The approval procedure shall be the same as that for the approval of subdivisions as defined in Chapter 16 of the Town Code. In addition, the *developer* shall conduct a concept plat review with the *director of planning* prior to the submission of an application and at each level of approval provide the following information:

- A. Conservation Analysis, as described in Section 17.28.070;
- B. A tabulation of the total number of acres in the proposed *project*; the percentage designated for each *use* area;
- C. Proposed location and acreage for a recreation area, natural *watercourse* and/or other open space;
- D. Proposed *lots* shall be laid out, to the greatest extent feasible, to achieve the following objectives:
 - 1. Focus *development* on site soils that are best suited for *development* and that can accommodate *stormwater management* and control and/or subsurface septic disposal in areas not provided with public sewer,
 - 2. Avoid disturbance of mature wood-*lot* and/or hedgerows,
 - 3. Preserve environmentally *sensitive areas* and/or unique site features,
 - 4. Located to least likely block or interrupt scenic vistas,
 - 5. Located where the greatest number of units could be designed to take maximum advantage of solar heating opportunities,
 - 6. Promote a more efficient and economical provision of utility services; and
 - 7. Shall conform with other criteria listed in Chapter 17.32.
- E. The planning board shall review the proposed cluster residential *development* for overall compliance with this section prior to the approval of the final plat.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.28.110 Public hearing on CRD.

A public hearing, as specified in subsection 278 of Article 16 of the NYS Town Law, shall be held by the planning board regarding the CRD subdivision plat.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

Chapter 17.32

SITE PLAN REVIEW AND APPROVAL*

Sections:

17.32.010 Intent.

- 17.32.020 Authorization.**
 - 17.32.030 Application for area variance.**
 - 17.32.040 Conditions of *site plan* approval.**
 - 17.32.050 Waiver of requirements.**
 - 17.32.060 Cooperative planning and design option.**
 - 17.32.070 Concept plan.**
 - 17.32.080 *Site plan* application.**
 - 17.32.090 Preliminary plan requirements.**
 - 17.32.100 Action on preliminary plan.**
 - 17.32.110 Findings and decision on preliminary plan.**
 - 17.32.120 Final plan requirements.**
 - 17.32.130 Approval of *site plan*.**
 - 17.32.140 Resubmittal of a concept or preliminary plan.**
 - 17.32.150 Appeal.**
 - 17.32.160 Expiration and termination of *site plan* approval.**
 - 17.32.170 Deviation from approved *site plan*.**
 - 17.32.180 Amendment of an approved *site plan*.**
 - 17.32.190 Maintenance of property.**
- * Prior history: LL No. 2, 1997.

17.32.010 Intent.

The intent of *site plan* review and approval is to determine compliance with the purpose and provisions of this title. The further intent of this chapter is to evaluate conditions and environmental impact that may cause conflict between existing and proposed *uses* or be in conflict with natural site conditions. The evaluation is intended to minimize the adverse affects concerning health, safety and overall welfare of the residents of the community through a collaborative process between the town and *developers* of properties in the town.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.32.020 Authorization.

The power to approve, approve with modification and/or conditions, or disapprove a *site plan* for a *use* is vested in the planning board pursuant to Section 274-a of Article 16 of the NYS Town Law. Where a *site plan* approval is required, no *building permit* shall be issued until *site plan* approval is granted. The planning board may impose conditions on a *site plan* approval that are to be fulfilled prior to the issuance of a *building permit*, certificate of compliance or occupancy. The planning board in their review of any *site plan* shall be guided by the provisions set forth in this chapter and elsewhere in this title the planning board may require that the *site plan* be prepared by a design engineer. Such requirement shall be based on the complexity of the site features and of the proposed *structure* or land *use* as related to same.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.32.030 Application for area variance.

A. Notwithstanding any provision of law to the contrary, where a proposed *site plan* contains one or more features which do not comply with the *bulk* and *density* requirements of this title or other physical or dimensional requirements, application may be made to the zoning board of appeals for an area variance pursuant to Chapter 17.60 of the BFZL.

B. Such application shall be made part of the application for such *site plan* approval;

C. The fee for such application shall be in addition to that required for said *site plan* approval.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.32.040 Conditions of *site plan* approval.

The *developer* is required to comply with all conditions of *site plan* approval.
 (LL No. 6, 2009)

17.32.050 Waiver of requirements.

The planning board in its discretion, may waive any requirements of this chapter deemed not necessary for review of an application for *site plan* review and approval.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.060 Cooperative planning and design option.

As part of the *site plan* review process, the planning board may offer the services of its planning and design consultant to assist the *applicant* in creating a concept plan for the *project*. The intent of the option is to offer early facilitation of creative design solutions, operating outside of the more rigid process of typical plan review and comment. The option would include coordination with town staff and boards as appropriate. The cost of this option would be borne by the *applicant* and only upon agreement by the *applicant*. The option is available as a supplement to typical staff town consultant review services with the goal of creating an enhanced *project* design and a

more efficient and cost effective review process for the *applicant*.

(LL No. 6, 2009)

17.32.070 Concept plan.

An *applicant* may submit a concept plan for discussion and comment by the planning board or its designated committee as prescribed by the rules of the planning board. The purpose of the concept plan is to facilitate the preparation of an adequate preliminary plan. The concept plan shall be submitted in accordance with the rules of the planning board.

- A. Concept Plan Contents. The concept plan shall comprise the following data which shall be clearly labeled with the name of the proposed *development*, name of the *applicant*, and tax *parcel* number of the *lot* proposed for *development*:
 1. An area map showing:
 - a. All *lots* proposed for *development* by the *applicant*,
 - b. All of the following data within one thousand (1,000) feet of the boundary *line* of the *lot* specified in this subsection:
 - i. Existing and proposed *lots* and their ownership,
 - ii. Existing and proposed *uses*,
 - iii. Existing and proposed *districts*,
 - iv. Existing and proposed *roads*,
 - v. Existing and proposed subdivisions,
 - vi. Existing and proposed *easements*,
 - vii. Existing and proposed *structures*,
 - viii. All existing natural features such as water bodies, *watercourses*, wetlands, wooded areas, special flood hazard areas, and individual *large trees*,
 - ix. *District* boundaries including zoning, fire, school, sewer, and water, and

- x. All soil classifications;
- 2. An area map of the site topography, at a scale of not less than one inch to two thousand (2,000) feet, showing the entire proposed site area and the location of the *lots* for the proposed *development*;
- 3. A scaled site *development* map of the concept plan showing existing and proposed:
 - a. *Structures*,
 - b. Public and private *improvements*;
- 4. Additional data:
 - a. Name, address, and telephone number of *applicant*,
 - b. Concise written description of the proposed *development*, including:
 - i. Purpose, nature, and magnitude of the *use*,
 - ii. Projected time frame for the proposed *development*,
 - iii. Notation of the acreage of the *lot* proposed for *development*,
 - iv. Square footage of each proposed *structure*,
 - v. Proposal for the source of water supply and method for sewage disposal.

B. Action on the Concept Plan. The planning board or its designated committee shall:

- 1. Review the concept plan with the *applicant*; and
- 2. Give its written comments thereon to the *applicant*.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.32.080 Site plan application.

A. A *site plan* application shall comprise:

- 1. Completed *forms* of the planning board required of the *applicant* by the rules of the planning board;
- 2. Preliminary plan in accordance with Section 17.32.090;
- 3. Final plan in accordance with Section 17.32.120;
- 4. Environmental assessment *form* required of the *applicant* by the rules of the planning board;
- 5. Supplemental engineering and technical reports as appropriate to the contents of the preliminary and final plans and required by the planning board; and
- 6. Other information required by the planning board.

B. A *site plan* application shall be submitted to the planning board in accordance with the rules of the planning board.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.32.090 Preliminary plan requirements.

The preliminary plan shall comprise:

- A. The documents required in Section 17.32.070;
- B. Report and plan regarding any potential environmental impact associated with the proposed *development*;
- C. The *mitigation* offered or proposed for any environmental impact;
- D. Preliminary plan drawing that includes the following information:
 1. Title drawing(s), including name, address and telephone number of *applicant* and the tax *parcel* number of the *lot* proposed for *development*,
 2. North point, scale and date, all revision dates (include month, day, and year),
 3. Boundaries of the *development* plotted to scale of not more than one hundred (100) feet to one inch on a survey map prepared by a design professional,
 4. Existing natural features such as *watercourse*, water body, wetland, wooded area and individual *large trees*, and a notation of features to be retained,
 5. Existing contours at intervals of not more than five feet of elevation and proposed contours at intervals of not more than two feet of elevation,
 6. Location of proposed *use* and the location, area, and the height of all *structures*,
 7. Location of all existing and proposed *improvements*, whether public or private, including *roads*, *drives*, *internal drives*, *driveways*, *stormwater management* system, culverts, retaining walls, *fences* and *easements*,
 8. Preliminary design of sewage disposal and water supply systems and location of such systems,
 9. Location and design of all energy distribution facilities, including electrical, gas and *solar energy system*,
 10. Location of any proposed *buffer* areas, *barrier(s)*, and/or landscaping,
 11. Delineation of the extent of each residential area, description of *dwelling unit* type, and a calculation of the residential *density* in *dwelling units* per acre for each such area,
 12. Location of each *parking* area and vehicle loading area, with access and egress to a *drive*, *internal drive*, or *driveway*,
 13. Location, design, and size of all *signs* and *outdoor lighting*,
 14. The approximate location and dimension of the area proposed for a neighborhood park or playground, or other recreation open space,
 15. *Building* orientation and site design for energy efficiency,
 16. *Grading* plan and erosion control plan, including the description and location of control measures,
 17. Location and design of a *stormwater management* system, and
 18. The *lines* and dimensions of any *lot* which is offered, or is to be offered, for *dedication* to a government for

public use, with the purpose indicated thereon, and of any lot proposed to be reserved for the common use of the occupants of the proposed development;

- E. A stormwater management analysis and plan consistent with the requirements of The Standards for Stormwater Management in the town of Big Flats, including all design data and computations used as a basis for the design capacities and the performance of the stormwater management system and the erosion control plan.
- F. The planning board may require such additional information that appears necessary for a complete assessment of the development under this title and the State Environmental Quality Review Act (SEQRA).

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.100 Action on preliminary plan.

The planning board:

- A. Shall review and evaluate potential environmental impact, compliance with this title and any other applicable law, rule, or regulation, and any other significant concern;
- B. May confer with any consulted agency;
- C. Shall consider the following when reviewing a preliminary plan:
 - 1. Adequacy and arrangement of vehicular traffic, including public transportation and bicycle access and circulation, including on-site circulation,
 - 2. Location, arrangement, appearance, and sufficiency of off-road vehicular parking and loading,
 - 3. Adequacy of pedestrian access, circulation, convenience, and safety,
 - 4. Location, arrangement, size and design of building, outdoor lighting, and signs,
 - 5. Relationship of the various uses on the project site to one another and their scale,
 - 6. Adequacy of a buffer and barrier between adjacent uses and adjoining lots,
 - 7. Adequacy of any stormwater management system,
 - 8. Adequacy of structures, roads, drives, internal drives, driveways, and buffers in areas susceptible to flooding, ponding, and/or erosion,
 - 9. Adequacy of flood damage prevention measures consistent with Chapter 17.24,
 - 10. Compatibility of development with natural features of the site and with surrounding land uses,
 - 11. Adequacy of open space for play area, recreation and natural area such as wildlife habitat, wetland and wooded area,
 - 12. Adequacy of orientation of a structure and the site design for energy efficiency, the extent to which the proposed plan conserves energy and energy resources in the community, and the protection of adequate sunlight for a solar energy system,
 - 13. Adequacy of fire protection, water supply, and site design to accommodate emergency vehicle access,
 - 14. Consistency of building design, scale, mass, and site location with surrounding development and district intent,

15 Adherence to the concepts set forth in the town of Big Flats *Development Design Guidelines*; and

16. Any other relevant matter;

D. Shall determine if the preliminary plan is complete and sufficient to make findings pursuant to Section 17.32.110, and if not, require additional information to make the preliminary plan complete and sufficient;

E. Shall accept the completed preliminary plan when it finds the preliminary plan is complete and sufficient pursuant to subsection D of this section; and

F. Upon acceptance of the preliminary plan pursuant to subsection E of this section, a public hearing may be scheduled within sixty-two (62) days from the date of such acceptance.

(LL No. 6, 2009)

17.32.110 Findings and decision on preliminary plan.

The planning board:

A. Shall make findings based on the evaluation according to Section 17.32.100(A);

B. Shall make a decision based on findings according to subsection A of this section to approve, with or without conditions, or disapprove the preliminary plan; and

C. Shall provide the *applicant* with a copy of the findings and decision pursuant to subsections A and B of this section.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.120 Final plan requirements.

A. The final plan shall comprise of:

1. The approved preliminary plan with any modifications thereof and/or additions thereto required by the planning board; and

2. Every necessary permit from a governmental authority relating to the *development* pursuant to the *site plan* or a written assurance from such governmental authority that it is willing to issue such permit upon the performance by the *developer* of an action that is or will be required of the *developer*.

B. Action on the Final Plan. When the planning board finds the final plan is complete pursuant to subsection A of this section, it shall approve, with or without conditions, or disapprove the final plan, and record the reason for disapproval. A copy of the decision and reason shall be given to the *applicant*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.130 Approval of *site plan*.

A. Approval of a final plan, with or without conditions, constitutes approval of the *site plan*, subject to any and all conditions of the approved final plan.

B. Pursuant to the rules of the planning board, an approval endorsement shall be affixed on a copy of the title drawing of the approved *site plan*. A copy of the endorsed title drawing shall be given to the *applicant*.

C. *Stormwater Pollution Prevention Plan*. A *stormwater pollution prevention plan (SWPPP)* consistent with the requirements of this chapter (the *Stormwater Management and Erosion and Sediment Control Law* of the town of Big Flats (Chapter 17.37 of the town of Big Flats Municipal Code)) shall be required for *site plan* approval. The SWPPP shall meet performance and

design criteria and standards set forth in Chapter 17.37 of the town of Big Flats Municipal Code. The approved *site plan* shall be consistent with the provisions of this chapter (the *Stormwater Management* and Erosion and *Sediment Control* Law of the town of Big Flats).

(LL No. 9, 2007 § 2 (part); LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.140 Resubmittal of a concept or preliminary plan.

- A. The planning board may require the re-submittal of a concept plan for a proposed *development* if:
 - 1. More than six months has lapsed since the date of giving the planning board's written comments on the concept plan for the proposed *development* pursuant to subsection 17.32.070(B);
 - 2. A submitted preliminary plan contains substantial changes in the scope of the proposed *development* in comparison with the concept plan commented on; or
 - 3. An *applicant* who submitted a preliminary plan is different than the *applicant* who submitted the concept plan commented on for the proposed *development*.
- B. The planning board may require re-submittal of a preliminary plan if:
 - 1. More than one year has lapsed since the date of approval of a preliminary plan for a proposed *development* pursuant to Section 17.32.110;
 - 2. A submitted final plan contains substantial changes in the scope of the proposed *development* in comparison with the preliminary plan approved for a proposed *development*; or
 - 3. An *applicant*, who submitted a final plan is different than the *applicant* who submitted the preliminary plan approved for a proposed *development*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.150 Appeal.

The *applicant* or any interested person may appeal a decision of the planning board on a *site plan*. The appeal shall be made to the Supreme Court of New York State for review by a proceeding under Article 78 of the Civil Practice Law and Rules of New York State.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.32.160 Expiration, termination, and extension of *site plan* approval.

- A. Expiration and Termination of *Site Plan* Approval.
 - 1. Approval of a *site plan* for a *development* shall be valid for a period of one year from the date of the date of endorsement of the drawing of the approved final plan.
 - 2. Failure to secure a *building permit* or to begin construction or installation of required *improvements* during the one year period shall cause a *site plan* approval to become null and void.
 - 3. Failure of an *applicant* or *developer* to comply with any conditions of approval for an approved *site plan* shall make the approval null and void.
- B. Extension of *Site Plan* Approval. Upon written application to the planning board, the board may extend the time of validity of the *site plan* approval for a period of not more than three years from the date of approval endorsement pursuant to subsection 17.32.130(B).

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.32.170 Deviation from approved *site plan*.

A. A proposed deviation from an approved *site plan* that produces no significant change in performance of the *development*, as documented in the approved *site plan* and any conditions thereof, may be approved by the *director of planning* and a code enforcement officer provided such action is concurred in by a member of the planning board as prescribed in the rules of the planning board.

B. Any deviation from an approved *site plan* granted pursuant to this section shall be noted on an as-built drawing submitted to the town for inclusion in the *site plan* approval record. The as-built drawing shall be received by the town prior to the issuance of any certificate of compliance or occupancy.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.32.180 Amendment of an approved *site plan*.

A. No proposed change of and/or addition to an approved *site plan*, other than as provided in Section 17.32.170 shall be executed without approval thereof by an approved *site plan* containing such *site plan* amendment.

B. Any proposed change of and/or addition to an approved *site plan*, other than as provided in Section 17.32.170 shall require a *site plan* application addressing such *site plan* amendment and decision on that application by the planning board pursuant to this chapter.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.32.190 Maintenance of property.

A. In addition to violations of the town's *Building Code* and the New York State Uniform Code, under Title 15 of the Town Code, the failure to maintain landscaping, lighting, *parking* facilities, *stormwater management* facilities, or signage in accordance with an approved *site plan* shall be construed as a violation of an approved *site plan*. Unless an amendment to the approved *site plan* is approved in accordance with Section 17.32.180 or a deviation from the approved *site plan* is granted in accordance with Section 17.32.170, if it is found that upon a site visit by the code enforcement officer or other local official conducted under the terms of Chapter 1.12 (Right of Entry for Inspection) of the Town Code that maintenance of *development* has not taken place in accordance with the terms stated in the approved *site plan*, in addition to the penalties described in Chapter 1.08 and Section 15.04.040, the town board, at their discretion, shall have the right to rescind any certificate of occupancy related to the property until such time as the facilities are restored to proper working order in accordance with the terms of the approved *site plan*.

(LL No. 6, 2009)

Chapter 17.33

SPECIAL USE PERMIT REVIEW AND APPROVAL

Sections:

17.33.010 Authorization.

17.33.020 Applicability.

17.33.030 Procedure.

17.33.040 Standards.

17.33.050 Decision.

17.33.010 Authorization.

Pursuant to Section 274-b of Article 16 of the NYS Town Law and in accordance with the procedures, standards, and conditions herein specified, the town board is authorized to grant special *use* permits for the establishment of one or more of the *uses* for which a special *use* permit must be secured as specified in this chapter. Under the authority of Section 10 of the Municipal Home

Rule Law, this section supersedes Section 274-b of Article 16 of the NYS Town Law.
(LL No. 1, 2007 (part))
(LL No. 6, 2009)

17.33.020 Applicability.

- A. A special *use* permit shall be required for:
 - 1. Reestablishment of a prior nonconforming *structure, use, and/or lot*. See Chapter 17.56.
 - 2. Expansion of a prior *nonconforming use*. See Chapter 17.56.
 - 3. Change in *use* of a *structure* with a prior *nonconforming use*. See Chapter 17.56.
 - 4. Any and all *uses* requiring a special *use* permit under the *district use* requirements of this chapter. See Section 17.12.010.
- B. Prior to the submission of any application for a *building permit* or certificate of occupancy for any *use* requiring a special *use* permit under this chapter, an application shall be made to the *director of planning* or his or her designee for a special *use* permit in the manner and *form* specified in Section 17.33.030 of this chapter.
- C. Any revision of an approved special *use* permit or any reconstruction, enlargement, extension, moving or structural *alteration* of an existing special *use* shall require approval and submission of a new application for approval.
- D. All *buildings, structures, and uses* that require a special *use* permit under this chapter must also obtain *site plan* approval pursuant to Chapter 17.32 *Site Plan* Review and Approval.
(LL No. 1, 2007 (part), LL No. 2, 2008 (part))
(LL No. 6, 2009)

17.33.030 Procedure.

- A. Application. Any application for a special *use* permit shall be consistent in the manner and *form* prescribed Chapter 17.64 Administration and Enforcement.
 - B. SEQRA.
 - 1. Any *use* requiring a special *use* permit shall be deemed to be either a Type I or unlisted action.
 - 2. If there is any other involved agency, the action shall undergo coordinated review.
 - 3. An application for a special *use* permit shall not be deemed final until the planning board or another involved agency serving as lead agency shall have completion of a DEIS or have found and made a negative declaration significant environmental impact based upon documentation including but not limited to an Environmental Assessment *Form*.
 - C. Public Hearing. A public hearing shall be required for every special *use* permit. The public hearing and official notice shall comply with the requirements of Section 274-b of Article 16 of the NYS Town Law, and may be combined with a public hearing held pursuant to SEQRA. The notice shall contain an agriculture data statement required by Section 283-a of Town Law.
 - D. Area Variance. Notwithstanding any provision of law to the contrary, where a proposed *site plan* contains one or more features which do not comply with the *bulk* and *density* requirements of this title or other physical or dimensional requirements, application may be made to the zoning board of appeals for an area variance pursuant to Chapter 17.60 of the BFZL.
 - 1. Such application shall be made part of the application for such special *use* permit;
 - 2. The fee for such application shall be in addition to that required for said special *use* permit.
- (LL No. 1, 2007 (part))

(LL No. 6, 2009)

17.33.040 Standards.

The town board may grant a special *use* permit, provided that it finds that all of the following conditions and standards have been met for each proposed *use* or *structure*:

- A. The proposed action shall comply with the applicable requirements contained in Sections 17.33.020, 17.33.030, and will be consistent with the purposes of the *district* in which it is located.
- B. The location, size, and *use* of any *structure(s)*, nature and intensity of operations involved, size of the site in relation to the proposed *structure(s)*, and the location of the site with respect to *roads* giving access to it are such that the proposed *use* will be in harmony with orderly *development* of the *district*.
- C. The location, nature and height of *buildings*, walls and *fences* will not discourage the appropriate *development* and *use* of adjacent land and *buildings*, or impair their value.
- D. The proposed *use* shall not conflict with the intent of the town of Big Flats Comprehensive Plan (2006), or any part thereof.
- E. Operations of any special *use* shall not be more objectionable to nearby properties than would be the operations of any unconditionally permitted *use*.
- F. A special *use* permit shall not be issued for a *use* on a property where there is an existing violation of this local law.
- G. The *use* shall not have an adverse effect on the agricultural *resources* of the area.
- H. The proposed *use* shall be in strict compliance with the requirements of Chapter 17.36.
- I. The proposed *use* will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances.
- J. The proposed *use* will not cause significant traffic congestion, impair pedestrian safety, or overload existing *roads* considering their current width, surfacing, condition, and any proposed *improvements* made to them by the *applicant*.
- K. The proposed *use* will be suitable for the proposed action considering the property's size, location, topography, vegetation, soils, protected natural habitat, hydrology, and if appropriate, its ability to be *buffered* or screened from neighboring properties and public *roads*.
- L. The proposed *use* will be subject to such conditions on operation, design, and layout of *structures* and provision of *buffer* areas as may be necessary to ensure compatibility with surrounding *uses* and to protect the natural, historic, and scenic *resources* of the town.
- M. That any *building* or site housing a proposed *use* be designed in compliance with the recommendations set forth in the town of Big Flats *Development Design Guidelines*.

(LL No. 1, 2007 (part))

(LL No. 6, 2009)

17.33.050 Decision.

The town board may approve the application, approve with conditions, or deny the application.

- A. Decision. Any decision by the town board to grant or deny a special *use* permit shall include either a negative declaration of environmental significance or a written findings statement consistent with the requirements of SEQRA, and in addition shall contain a statement of its findings regarding the appropriateness of the *use* so

authorized and the conditions required in the special *use* permit, or its reasons for denial. In granting any approval, the town board shall impose any conditions that may be necessary to ensure that the proposed *use* will be compatible with its surroundings.

- B. Filing. Within five business days from the date of adoption of a resolution approving the special *use* permit, the town supervisor or other duly authorized member of the town board shall cause a copy of such resolution to be filed in the office of the town clerk. Simultaneously with the filing with the town clerk, an additional copy of such resolution shall be delivered to the *director of planning* or designee and such resolution shall be deemed to authorize the issuance of a *building permit*.
- C. Conditions. The town board shall attach to the special *use* permit such conditions and restrictions as are deemed necessary and appropriate. Upon its granting of said special *use* permit, any such conditions must be met in connection with the issuance of permits by the *director of planning* and/or a code enforcement officer. The town board shall attach a condition that *site plan* approval is obtained prior to the issuance of any *building permit* or certificate of occupancy, when the town board report contains a recommendation for such approval.
- D. Expiration.
 - 1. A special *use* permit shall be deemed to authorize only the particular *use* or *uses* specified in such permit and shall expire if:
 - a. A certificate of occupancy is not issued within two years from the date of approval of such special *use* permit;
 - b. If the certificate of occupancy is revoked for any reason;
 - c. If the authorized *use* or *uses* shall cease for more than one year for any reason; or
 - d. If the required *improvements* are not maintained and all conditions and standards complied with throughout the *duration* of the *use*.
 - 2. Extension of Expiration. Upon written application to the town board, the board may extend the time of validity of special *use* approval for a period of time no more than three years from the date of approval of such special *use* permit.
- E. Revocation. In accordance with the provisions of Chapter 15.04 and Section 17.32.190, a special *use* permit may be revoked by the *director of planning* or designee as a permit related to the certificate of occupancy.

(LL No. 1, 2007 (part))

(LL No. 6, 2009)

Chapter 17.36

DEVELOPMENT REQUIREMENTS GENERALLY*

Sections:

17.36.010 Intent.

17.36.020 General requirement.

17.36.030 Lot requirements.

17.36.040 Road arrangement and access design requirements.

17.36.050 Drive, internal drive and *driveway* requirements.

17.36.060 Fence requirements.

17.36.070 Clear vision zone requirements.

17.36.080 Valley wall development requirements.

17.36.090 Stormwater management and erosion control requirements.

17.36.100 Recreation parks, playgrounds and open space requirements.

17.36.110 Utility requirements.

17.36.120 Damaged and unsafe building or structure requirements.

- 17.36.130 *Industrial use* requirements.
 - 17.36.140 *Solar energy system* and solar access requirements--Plan requirements.
 - 17.36.150 *Wind energy conversion systems (windmill)* requirements.
 - 17.36.160 *Home occupation* requirements.
 - 17.36.170 *Cottage industry* requirements.
 - 17.36.180 *Wireless telecommunication facility (WTF)* requirements.
 - 17.36.181 *Accessory antenna*.
 - 17.36.190 *Vehicle filling station, vehicle repair*, vehicle sales or lease and heavy equipment vehicle sales and/or repair, and/or vehicle maintenance facility requirements.
 - 17.36.200 *Transition yard, buffer yard, landscaping and barrier* requirements.
 - 17.36.210 *Fast food restaurant* requirements.
 - 17.36.220 *Drive-through use* requirements.
 - 17.36.230 *Adult use* requirements.
 - 17.36.240 *Outdoor lighting* requirements.
 - 17.36.250 *Outdoor recreational and/or amusement park use* requirements.
 - 17.36.260 *Sound control* requirements.
 - 17.36.270 *Manufactured home as a temporary second principal dwelling on a lot* requirements.
 - 17.36.280 *Commercial parking lot or structure* requirements.
 - 17.36.290 *Flea market* requirements.
 - 17.36.300 *Airport* and *heliport* requirements.
 - 17.36.310 *Rod and gun club* requirements.
 - 17.36.320 *Equipment storage area* requirements.
 - 17.36.330 *Drive-in theater* requirements.
 - 17.36.340 *Town Center Area* requirements.
- * Prior history: LL No. 2, 1997 and LL No. 3, 2002.

17.36.010 Intent.

The intent of this chapter and Chapters 17.40 through 17.52 is to establish requirements for all *development* to assure compliance with this title and the town of Big Flats Comprehensive Plan.
 (LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.36.020 General requirement.

Every *development* shall comply with the applicable provisions of this chapter and Chapters 17.40 through 17.52.
 (LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.36.030 Lot requirements.

- A. A *lot* shall be sized and arranged to not create any degree of nonconformance with this title.
- B. *Lot Access*.
 - 1. Insofar as possible, a *lot* shall not have direct access with a *primary road*. Access shall be from a *marginal access road* or a *road* other than a *primary road*.
 - 2. Where a *watercourse* separates a buildable area of a *lot* from a *road* with which the *lot* has vehicle access, installation of a bridge or other *structure*, spanning the *watercourse*, shall be subject to the same design criteria and review as all other *stormwater* drainage facilities in a *development*.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.36.040 Road arrangement and access design requirements.

A. Intent. It is the intent of this section to assure that all *development* provide for safe and adequate access to a *lot* proposed for *development*. This intent is furthered by requiring that all *development* that proposes to contain a new *town road, private*

road, and/or *internal drive* be designed to:

1. Provide for:
 - a. Convenient traffic access and circulation;
 - b. Traffic control and safety;
 - c. Pedestrian and bicycle access, circulation, and safety;
 - d. Access for fire fighting, snow removal, and street maintenance equipment;
 - e. *Stormwater* drainage;
 - f. Utility location; and
2. Arranged to:
 - a. Separate through traffic from neighborhood traffic insofar as *practical*;
 - b. Be coordinated to compose a connected system;
 - c. Be laid out to provide suitable future *road* connections with adjoining *lots*; and
 - d. Conform to the requirements of the Americans with Disabilities Act (ADA).

B. *Road* and *Drive* Requirements.

1. A *development* proposal, subject to *site plan* review as provided in Chapter 17.32, shall show and detail all design features for a *town road*, *private road*, and/or *internal drive* sufficient to document compliance with the intent of this section and Chapter 12.04 of the Town Code.
2. A traffic study or analysis may be required to support design considerations and/or to validate the *mitigation* of any traffic impacts associated with a *development*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.050 *Drive*, *internal drive*, and *driveway* requirements.

A. Intent. It is the intent of this section to assure that all *development* provides for safe and adequate access to a *lot* proposed for *development*. This intent is furthered by requiring that all *development* that proposes to contain a new *internal drive* and/or *driveway* be designed to comply with the requirements of a highway work permit for all work conducted in a *right-of-way*.

B. General Requirement.

1. A *development* plan shall show and detail design features for an *internal drive* and/or *driveway* sufficient to document compliance with the intent of this section and the standard for *internal drive* and *driveway* construction in the town of Big Flats.
2. A plan for an *internal drive* and/or *driveway* prepared by a design engineer may be required to fully support design considerations and/or to validate the *mitigation* of any traffic impacts associated with a *development*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.060 *Fence* requirements.

A. General Requirement. *Grading* of a site for the purpose of raising the elevation of a *fence* contrary to this section is prohibited, except as shown in an approved *site plan*.

B. A *fence* on a *lot* shall comply with the following requirements:

1. Height Restrictions.

a. RU, R1, R2, C, TC, TCR, and RCD *districts*:

i. Maximum height of four feet above *finished grade* shall be permitted for a *fence* located in a *front yard*. A *fence* located in a *front yard*, near a *right-of-way*, shall be established and maintained in accordance with the provisions of Section 17.36.070.

ii. Maximum height of seven feet above *finished grade* shall be permitted for a *fence* located not within a *front yard*.

b. ABD, BN, BN2, BNR, TC2, BR, CL and I *districts*:

i. The height and location of a *fence* shall be approved in a *site plan*.

ii. A *site plan* is not required for a *fence* located on a *lot* containing an existing residential *use* listed in Section 17.12.010; provided, that the existing residential *use* is continued and the *fence* construction complies with the requirements of this section.

2. Location. A *fence* shall be constructed entirely within the boundaries of a *lot*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.070 Clear vision zone requirements.

A. Intent. It is the intent of this section to assure that all *development* provides for safe and adequate access to and from a *lot* proposed for *development*. This intent is furthered by requiring that all *development* that proposes to contain a new *road*, *drive*, *internal drive*, or *driveway* be designed to provide a *clear vision zone*.

B. General Requirement.

1. A *development plan* shall show and detail design features for a *drive*, *internal drive*, and *driveway* sufficient to document compliance the intent of this section and the standard for *clear vision zone* in the town of Big Flats.

2. A plan for a *road*, *drive*, *internal drive*, or *driveway* prepared by a design engineer may be required to fully support design considerations and/or to validate the *mitigation* of any traffic impacts associated with a *development*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.080 Valley wall development requirements.

A. *Steep Slope Requirements*. The topography of the town includes many *steep slopes* that benefit the community by providing scenic views, *aquifer recharge* areas, wooded areas, and substantial protection against flooding and erosion. If these areas are not carefully protected, the benefits of these areas will be irreparably lost and extensive erosion and flooding is likely to occur. *Road* construction, *building site development*, and other construction activity proposed for these areas require special design consideration to prevent erosion, minimize *stormwater runoff*, and preserve *large trees*, natural terrain and scenic views.

B. General Requirements.

1. Each *development proposal* shall, show, in a plan, all site work, cut and fill, erosion, and drainage control measures and any proposed *road*, *drive*, *internal drive*, and/or *driveway* cross-subsections. The detail of the plan shall be

sufficient to determine if *steep slopes* exist on the proposed *development* site and the extent which such *steep slopes* affect the proposed site work. The preparation of these plans by a design engineer may be required.

2. Constructing or *grading development* sites to be level, otherwise known as padding, shall be permitted only when it can be clearly demonstrated, by exhibits presented in a *site plan* that the final treatment of the site meets the requirements of this subsection.

C. Design Requirements. Design principles and criteria used in the review of a *site plan* application shall include, but is not limited to, the following:

1. Landscaping of areas around a *structure* making such areas compatible with the natural terrain;
2. Shaping, grouping, and placement of manmade *structures* to complement the natural *landscape*;
3. Arrangement of *structures* so they complement one another to promote visual interest;
4. Shaping of essential grades to conform to the existing contours and prohibit the appearance of successive padding, terracing, or other similar *form of grading* for a *building* site in *steep slope* areas;
5. Encouragement of split-level *development* sites;
6. *Use of one-way roads* when consistent with traffic safety, circulation needs, and natural topography. This guideline may allow for smaller *road right-of-way*, less cut-and-fill within a given area, and a *road* network consistent with the natural terrain. A *road* shall be parallel with the hillside wherever possible and may require variable width of *right-of-way*. This shall not only provide the most economical routing, but also minimize the amount of *grading* required.

D. Slopes Greater than Twenty-Five (25) Percent. A slope greater than twenty-five (25) percent (2.5 feet of vertical rise in a ten (10) feet horizontal distance) shall not be developed except as approved in a *site plan*. When an application is received by the *director of planning* or designee for a *development* that proposes to affect, in any way, a slope greater than twenty-five (25) percent, the application shall be referred to the planning board as a *site plan* application under Chapter 17.32.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.090 Stormwater management and erosion control requirements.

A. Intent. It is the intent of this section to assure that all *development* provides for adequate protection against the impacts associated with *stormwater* and that *development* does not create added *stormwater runoff* from a *development* site. This intent is furthered by requiring that all *development* plans include provisions for *stormwater management* and that such plans comply with the standard for *stormwater management* in the town of Big Flats indicated in Chapter 17.37.

B. General Requirement.

1. A *development* plan shall show and detail design features for a *stormwater management* system sufficient to document compliance the intent of this section and the standard for *stormwater management* in the town of Big Flats.
2. A plan for a *stormwater management* system prepared by a design engineer may be required to fully support design considerations and/or to validate the *mitigation* of any *stormwater* impacts associated with a *development*.

C. Special Site Plan Requirement. When an application for *building permit*, highway work permit, variance and/or special permit, includes a *lot* where, in the determination of the *stormwater* officer, a significant impact associated with *stormwater management* and/or erosion is likely to occur as a result of a *development* the application shall be referred to the planning board as a *site plan* application under Chapter 17.32.

D. *Stormwater Pollution Prevention Plan*. A *stormwater pollution prevention plan* consistent with the requirements of

this chapter (the *Stormwater Management* and Erosion and *Sediment Control* Law of the town of Big Flats (Chapter 17.37 of the town of Big Flats Municipal Code)) shall be required. The SWPPP shall meet performance and design criteria and standards set forth in Chapter 17. The approved preliminary subdivision plat or *site plan* shall be consistent with the provisions of this chapter (the *Stormwater Management* and Erosion and *Sediment Control* Law of the town of Big Flats).

(LL No. 9, 2007 § 5; LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.100 Recreation parks, playgrounds, and open space requirements.

- A. For an *alternative dwelling park*, PMRD, PUD, or *multi-unit dwelling development*.
 - 1. Consistent with the town of Big Flats Comprehensive Plan, a park, playground, and/or open space is required for an *alternative dwelling park*, PMRD, any PUD that includes a residential component, or *multi-unit dwelling development*. The required park, playground, and/or open space shall meet the following minimum requirements:
 - a. Such land shall be either held in private or corporate ownership, maintained in perpetuity by an established organization, or deeded to the town.
 - b. The location of such land on a *lot* shall be determined with the following considerations:
 - i. Maximizing the safety of residents walking or bicycling between such facilities and their homes;
 - ii. Providing for safe traffic circulation and *parking* at the park, playground, and/or open space site;
 - iii. Minimizing the interaction between traffic to and from the *principal use* of the *lot* and the traffic to and from the park, playground, and/or open space site(s) on the *lot*;
 - iv. The suitability of the park, playground, and/or open space site and its location for the intended recreational purpose.
 - 2. A preliminary subdivision plat or *site plan* shall include the following minimum details regarding a park, playground, and/or open space:
 - a. A dimensional drawing showing boundaries of the park, playground, and/or open space, its size in square feet, the location, and a description of any equipment to be installed or *buildings* to be constructed in the park, playground, and/or open space;
 - b. A maintenance plan for the area;
 - c. A detailed description of future ownership of the land for the park, playground, and/or open space or a deed offering *dedication* of such land to the town;
 - d. The details of the plan shall show how the entire area is to be graded, drained, and *landscaped* to make it a useful and attractive feature of the *development*.
- B. Park and/or Playground Area Requirements.
 - 1. In an *alternative dwelling park* and *multi-unit dwelling development*: A minimum of nine hundred (900) square feet per *dwelling unit*.
 - 2. In a PMRD: As prescribed in Chapter 17.20.
 - 3. In a PUD: As prescribed in Chapter 17.21
- C. Alternative for a Park, Playground, and Open Space Requirement.

1. When it is determined by the planning board in an *alternative dwelling park, multi-unit dwelling development*, PUD, or PMRD, a park and/or playground is not *practical* due to the size, shape and/or the character of the *development* and the *site plan* shall be:
 - a. Referred to the town park commission for review and report to the planning board regarding any public park and/or playground *resource* likely to be impacted and the effect the *development* may have on such public *resource*:
 - b. Referred to the town assessor who shall make a report to the planning board with a cost estimate of the per square foot value of the land being considered for an *alternative dwelling park, multi-unit dwelling development*, PUD, or PMRD based on current assessment data.
 2. The information provided in the report received in accordance with subsection (C)(1) of this section shall be utilized by the planning board to validate any impact associated with an *alternative dwelling park, multi-unit dwelling development*, PUD, or PMRD on an existing public park and/or playground *resource* and to calculate a payment in lieu of park and/or playground land.
 3. To calculate a required payment in lieu of park and/or playground land, multiply the required area in square feet of park and/or playground required in subsection B of this section times the per square foot value of the land as determined by the Assessor in subsection (C)(1)(b) of this section.
 4. When the provisions of subsection C of this section are invoked, the payment in lieu of park and/or playground land shall be made to the town prior to an approval of a preliminary subdivision plat or *site plan*.
- D. Open Space in All *Development*.
1. Areas, on a *lot* proposed for a *development* that requires a subdivision approval or *site plan* in accordance with Section 17.12.010 that are determined to be of importance to the community based on their environmental setting, scenic view, historical, or archeological significance may be set aside and not be developed as a condition of subdivision or *site plan* approval. Such a determination shall depend upon the magnitude and character of the *development* and the potential that the environmental setting, scenic view, historical, or archeological site would be irreparably lost if not preserved.
 2. The planning board may consider these areas, when reserved for recreation purposes, in lieu of any portion of a park and/or playground required in subsections A through D of this section.
 3. Lands proposed for open space purposes shall be either held in private or corporate ownership and maintained in perpetuity by an established organization or may be deeded to the town. The ownership of such land shall be determined in consideration of the following:
 - a. The severity of the constraints and the impact these constraints have on the potential for further *development* of a *lot*;
 - b. The importance of the land area to the town and the persons using the *development*;
 - c. The lands scenic quality, potential for wildlife habitat, and the potential for protecting adjacent properties from any potential adverse impact that may result from *development* of the area of an open space;
 - d. The likelihood that residents in the *development* and/or the town would utilize and/or benefit from the set aside of such land.
 4. When it is determined by the planning board that open space is required, a detailed plan shall be provided with a preliminary subdivision plat or *site plan* for the open space and at minimum include:
 - a. A dimensional drawing showing boundaries of the open space;

- b. A maintenance plan for the open space area;
- c. Either a detailed description of future ownership of the land or a deed offering *dedication* of such land to the town;
- d. A description of any *improvements* planned for the land.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.110 Utility requirements.

A. Electric, Telephone, and Cable. With the exception of individual service to *one-unit and two-unit dwellings*, the telephone and television cable, electric and gas *lines* or similar utility services shall be installed underground unless full documentation supporting other methods as the most feasible approach is provided to and accepted by the planning board in an approved subdivision or *site plan*.

B. Water Supply and Sewage Disposal. The installation of and specifications for public water and sewer *lines* shall comply with the rules, regulations, and requirements of the Town Water *District*, Chemung *county* Sewer *District*, Chemung *county* Health Department, NYS Department of Environmental Conservation and/or NYS Department of Health.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.120 Damaged and unsafe *building* or *structure* requirements.

A. General Requirements.

- 1. The owner of a *structure* or *building* that has been damaged by fire, flood, or other cause shall notify the *code enforcement officer (CEO)* of the damage within seventy-two (72) hours of when the damage occurred. Any damaged *building* or *structure* shall be made safe and secure in accordance with the NYS Uniform Fire Prevention and *Building Code*.
- 2. The *use* of fire as a method for razing a damaged or unsafe *structure* or *building* is prohibited unless specifically authorized by the NYS Department of Environmental Conservation, Chemung *county* Emergency Management Office, the fire chief for the jurisdictional fire *district*, and the town *code enforcement officer (CEO)*.

B. Repair, Replacement and/or Razing.

- 1. The owner of a *building* or *structure* which has been damaged by fire, flood, or other cause to an extent of more than fifty (50) percent of its replacement value shall comply with the following requirements:
 - a. Arrange for the damaged *building* or *structure* to be evaluated by a design engineer and/or the CEO.
 - b. Shall apply for a *building permit* for the work recommended by the design engineer and/or CEO and which may include repair, reconstruction or razing of the damaged *building* or *structure*. The owner shall perform such work within one hundred eighty (180) days of the date of an order to remedy from the CEO.
- 2. The owner of a *building* or *structure* which has been damaged by fire, flood or other cause to an extent of less than fifty (50) percent of its replacement value shall apply for a *building permit* for the work required to either repair, reconstruct or raze the damaged *building* or *structure* and perform such work within two hundred seventy (270) days of the date the damage occurred.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.130 Industrial use requirements.

A. General Requirements. No *industrial use* shall be permitted, established, maintained or conducted which is likely to

cause or have:

1. Fumes, gases, dusts, particulate, odors or any other atmospheric pollutant beyond the boundaries of the *lot* whereon an *industrial use* is located;
2. Excessive smoke or similar atmospheric pollutant beyond the boundaries of a *lot* on which the *industrial use* is located. Excessive smoke shall be determined according to the Ringelmann's Scale for *Grading the Density of Smoke*, published by the U.S. Bureau of Mines. When the shade or appearance of such smoke is darker than No. 2 on the Ringelmann Smoke Chart, it is then excessive;
3. Noise levels greater than seventy (70) decibel (db) measured at a boundary of a *lot* occupied by an *industrial use*;
4. A discharge of any industrial effluent into any *watercourse*, open ditch, or on a land surface unless specifically permitted under the authority of the NYS Department of Environmental Conservation;
5. A discharge of any industrial effluent into a public sanitary sewer system except in accordance with the rules of and under the control of public health authorities or the public body controlling such sewer system;
6. Open storage or stocking of any waste materials;
7. Glare or light levels in excess of the requirements set in Section 17.36.240;
8. Vibration perceptible beyond the *lot lines* whereon such *industrial use* is conducted;
9. Any other nuisance, activity, or action that may be harmful to a person or property.

B. *Buffer, Barrier, and Landscape Requirements.*

1. *Buffer and barrier* shall be provided in accordance with Section 17.36.200.
2. All portions of the *lot* proposed for industrial *development* and not occupied by *structure, parking area, drive, internal drive*, pedestrian ways or storage shall be *landscaped* with lawn, trees, shrubs, or other plant material in accordance with Section 17.36.200.

C. *Other Industrial Use Activity.*

1. **Outdoor Storage.** Materials, supplies, or products shall not be stored in a *front yard* and such storage located in the side or *rear yard* shall be screened in conformance with Section 17.36.200.
2. **Off-Road Loading and Unloading Berths.** Off-road loading and unloading berths shall be provided in accordance with Section 17.48.020 and the following minimum requirements:
 - a. An off-road loading and unloading berth located on or along a *drive* shall be located a minimum of one hundred (100) feet from a *road*.
 - b. The handling of all freight shall occur either on those sides of a *building* which do not face a *road* or be suitably *landscaped* and screened in accordance with Section 17.36.200.
3. **Accessory Use.** *Accessory uses* shall conform to the minimum requirements set forth in Chapter 17.40 and as prescribed in an approved *site plan*.

D. **Design Requirement.** A *site plan* for an *industrial use* shall include design elements that includes sufficient documentation to determine compliance with the requirements of this section and all other applicable sections of this title.

E. **Access.** Access to a *lot* containing an *industrial use* shall:

1. Be designed by a design engineer;
2. Be designed not to route traffic directly through a R1, R2, or TCR *district* on other than a *primary road*;
3. Be designed to access a *road* other than a *town road* located within a R1, R2, or TCR *district*; and
4. Have a design based on a traffic study that includes provisions for access for all vehicles expected or intended to *use* the site.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.140 Solar energy system and solar access requirements--Plan requirements.

A *site plan* for new residential *development* that includes either ten (10) or more acres of *site development* area and/or more than fifty (50) *dwelling units*, shall consider designs to promote the maximum number of *buildings* receiving direct sunlight sufficient for using a *solar energy system*. Such *site plan* shall include a solar access plan that considers the following:

- A. Solar access shall be protected between the solar azimuths of -45 degrees east of due south and +45 degrees west of due south.
- B. For solar access *roads*, *lots* and *building setbacks* should be designed so that the *buildings* are oriented with their long axes running from east to west for one-unit *development* and north to south for multi-unit *development*.
- C. In order to maximize solar access, the higher *density development* units should be placed on a south-facing slope and lower *density dwelling units* sited on a north-facing slope.
- D. *Structures* should be sited as close to the north *lot line* as possible to increase yard space to the south for reduced shading of the south face of a *structure*.
- E. A tall *structure* should be sited to the north of a short *structure*.
- F. A description of any legal mechanisms, such as deed restrictions, covenants, etc., that are to be applied to protect or provide for solar access shall be provided as documentation in a subdivision plat or *site plan*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.150 Wind energy conversion systems (windmill) requirements.

The intent of this section is to regulate the placement of and access to wind for an energy conversion system and to protect the health and safety of individuals on adjacent *lots*.

- A. General Requirements. A *site plan* approval and *building permit* are required for the construction of a wind energy conversion system.
- B. Dimensional Requirements.
 1. The total height for a vertical axis rotor installation of a wind energy conversion system is the *tower* height plus one-half the rotor diameter, and for a horizontal rotor installation of a wind energy conversion system is the distance from the base at *finished grade* to the top of the unit.
 2. A wind energy conversion system *setback* shall be a distance that is the greater of either the total height of the wind energy conversion system or the required *setback*.
 3. A maximum allowable total height for a wind energy conversion system shall be one hundred five (105) feet unless otherwise restricted or prohibited by federal, state or local laws, rules, or regulations.

4. Minimum allowable height above *finished grade* at the lowest point of the arc of a rotor blade shall be fifteen (15) feet.
- C. Safety Requirements. All wind energy conversion systems shall be designed, installed, and maintained in accordance with the following:
1. The foundation and supports for a wind energy conversion system shall be as designed by a design engineer.
 2. At least one *sign* shall be posted at the base of the wind energy conversion system warning of high voltage.
 3. *Tower* climbing ladders, stairs or similar devices shall be no lower than twelve (12) feet from the ground.
 4. All wind energy conversion system(s) shall be installed with braking systems approved by the manufacturer.
- D. Sound Control Requirements. The maximum level of sound created by the wind energy conversion system as measured at the *lot line* shall be no greater than fifty-five (55) decibels (db).
- E. Design Requirements.
1. All electric transmission *lines* serving the installation shall be installed underground.
 2. No wind energy conversion system with guy wire support shall be permitted.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.36.160 Home occupation requirements.

- A. Restrictions. The following *uses* shall not be permitted as a home occupation:
1. A business which has a primary function of wholesale or *retail* sale of goods or articles produced off-site on a *lot*;
 2. Any *form* of motor *vehicle repair* including vehicle body work;
 3. Motor vehicle sales or lease;
 4. Any small engine or appliance repair;
 5. A veterinary *hospital*;
 6. A *kennel*;
 7. A *bar* and/or restaurant;
 8. Any *use* or activity defined as a *cottage industry* under Section 17.36.170 of the BFZL; and
 9. Any *use* that, under the provisions of the New York State Uniform Fire Prevention and *Building Code* is not permitted based on the type of construction or a *use* prohibited based on any other federal, state or local law, rule or regulation.
- B. General Requirements. A *home occupation use* shall comply with the following minimum requirements:
1. No more than two home occupations shall be conducted as an *accessory use* to a *dwelling unit*.
 2. In a *dwelling unit* the lesser of either twenty-five (25) percent of the total *floor area* or five hundred (500) square

feet, may be used for or dedicated to the *use(s)*.

3. The *use(s)* shall be conducted within the enclosed walls of *dwelling unit*.
4. There shall be no external evidence of such *use(s)* except for a *sign* installed in accordance with Chapter 17.52. No stock, merchandise, packaging, equipment or displays related to the *use* shall be visible from outside the *dwelling unit*.
5. Except for articles produced on the premises, no stock in trade shall be displayed or sold on the premises.
6. The *dwelling unit* in which the *use* is located shall not be altered or extended in a manner not customary or typical to a residential *building* to accommodate the *use*.
7. The *use* shall not result in or cause vehicular traffic volumes of greater than four cars per hour or otherwise create a nuisance to abutting *lots*.
8. There shall be no sharing, letting or subletting of space, for *use* by non-residents in the conduct of their profession, trade, or business.
9. No additional *parking* facilities shall be required to be constructed to accommodate the *use(s)*.
10. The *use* shall not change the residential character of the adjoining *lots*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.170 Cottage industry requirements.

A. Restrictions. The following *uses* shall not be permitted as a *cottage industry use*:

1. A business which has a primary function of wholesale or *retail* sale of goods or articles on a *lot* except as provided in subsection (B) of this section;
2. Any *form* of motor *vehicle repair* including vehicle body work;
3. Motor vehicle sales or lease;
4. Veterinary *hospital*;
5. *Bar* and/or restaurant;
6. Any *use* that, under the provisions of the New York State Uniform Fire Prevention and *Building Code* is not permitted based on the type of construction or a *use* prohibited based on any other federal, state, or local law, rule, or regulation.

B. General Requirements. A *cottage industry use* may be permitted when an approved *site plan* documents compliance with the following minimum requirements:

1. No more than one *cottage industry use* may be permitted on a residential premises
2. In a *dwelling unit*, the lesser of thirty (30) percent of the total *floor area* or seven hundred fifty (750) square feet is to be used for or dedicated to the *use*.
3. No more than one thousand five hundred (1,500) square feet of an *accessory structure* is used for or dedicated to the *use*.
4. The *use* is to be conducted within the enclosed walls of the *dwelling unit* and/or *accessory structure*.

5. There is no external evidence of such *use* except for a *sign* installed in accordance with Chapter 17.52. No stock, merchandise, packaging, equipment, or displays related to the *use* is visible from outside the *dwelling unit* and/or *accessory structure*.
 6. A *dwelling unit* in which the *use* is located is not altered or extended in a manner not customary to or typical of a residential *building* in order to accommodate the *use*. Construction and/or modification of an *accessory structure* to accommodate the *use* is permitted.
 7. The *use* shall not result in or cause vehicular traffic volumes of greater than six cars per hour or otherwise create a nuisance to abutting properties.
 8. A maximum of ten (10) percent of any area devoted to or used for the *use* may be for display, and/or wholesale and *retail* sales.
 9. There shall be no sharing, letting or subletting of space, for *use* by others in the conduct of their profession, trade, or business.
 10. The *use* shall remain compliant with all conditions of *site plan* approval.
- (LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.36.180 Wireless telecommunication facility (WTF) requirements.

A. Intent. The town has received and anticipates receiving additional applications for WTF that will include the construction of *antennas* and *towers*. It is the intent of the town to establish an orderly process for managing the accommodation of the communication needs of the residents and businesses consistent with applicable federal and state regulations, while protecting the health safety and general welfare of the residents of the town of Big Flats by:

1. Facilitating the provision of wireless telecommunication and other communication services to the residents and businesses of the town, while simultaneously preserving the character, appearance, and aesthetic *resources* of the town;
 2. Minimizing the adverse visual effects of wireless telecommunication *towers* and facilities through *development* of site and approval criteria;
 3. Protecting the scenic, historic, environmental, natural, and manmade *resources* of the town;
 4. Preserving property values of the town;
 5. Minimizing the undue proliferation and height of wireless telecommunication *towers* throughout the town;
 6. Avoiding potential harm to adjacent persons and properties from *tower* failure, noise, falling objects, and attractive nuisance through the establishment of site standards; and
 7. Encouraging shared *use* of existing and approved *towers* in order to reduce the number of *towers* needed to serve the community where reasonably possible, so as to minimize and mitigate the *adverse visual impacts* of *towers* and their facilities.
- B. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:
1. They do not prohibit, or have the effect of prohibiting, the provision of personal wireless services;
 2. They are not intended to be used to reasonably discriminate among providers of functionally equivalent services;
 3. They do not regulate personal wireless services on the basis of the environmental effects of radio frequency

emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

C. Approval Procedures.

1. *Site Plan Approval*. As specified in Section 17.12 of the town of Big Flats Municipal Code, all WTF shall require *site plan* approval in accordance with the procedures and requirements of Town Municipal Code Section 17.32.
 2. *Additional Submittal Requirements*. In addition to the standard submittal requirement for a *site plan* as specified in Section 17.32, an application for a WTF shall include the following documentation, except that the planning board may waive the submittal of certain of the following documentation in the instance of an *antenna* that is to be located on an existing *structure* or *tower*:
 - a. *Necessity of Service*. A documentary demonstration supported by standard engineering practices, signed by a licensed NYS professional engineer with expertise in WTF, that the proposed WTF is necessary to provide service to locations that cannot be served by an existing WTF within or outside the town, and/or by alternate technologies, such as repeaters.
 - b. A copy of the FCC license for the *applicant's* service in the proposed area.
 - c. A five year build-out plan for the proposed site and other sites within the town adjacent municipalities, clearly demonstrating the *applicant's* plans for other *structures*, proposed application and *building* dates.
 - d. *Structural Integrity Certification*. A certification by a NYS licensed professional engineer that the supporting *structure* will meet the New York State *Building Code* wind load requirements for the proposed facility and any additional users identified in the co-location *antenna* certification.
 - e. *Co-Location Antenna Certification*. A documentary demonstration by standard engineering practices, signed by a licensed NYS professional engineer, that the *tower* would accommodate *co-locators*. Such data shall identify the maximum number of *co-locators*, or alternative co-location *antenna* strategies, which could be supported on the *tower*.
 - f. *Visual Impact Assessment*. The *applicant* shall provide a documentary *visual impact* assessment, including a photo simulation, that supports with clear and convincing evidence that the visual, aesthetic, and community character intrusion impacts have been minimized to the greatest extent possible.
 - g. *Bulk and Density Documentation*. The *applicant* shall provide clear and convincing documentary evidence that the proposed *structure height* of the *antenna* or *tower* is the minimum necessary to provide licensed communications to the locations in the town that the *applicant* is unable to serve with an existing facility or with a *structure* with a lower *structure height*.
 - h. *Emission Certification*. A report signed by NYS licensed professional engineer with expertise in WTF and/or a health physicist with expertise in radio frequency emissions, that the proposed maximum equipment output at the proposed site will comply with all emission standards adopted by the FCC, such certification may be required to be updated periodically.
 - i. *Non-Interference Certification*. A certification and supporting evidence signed by NYS licensed professional engineer with expertise in WTF that the proposed WTF will not cause interference with existing communication devices.
- D. *Standards for WTF*. A new or the alteration of an existing WTF shall meet the following minimum standards:
1. Minimum *lot* area shall be as specified in Section 17.16.
 2. An *antenna* or a *tower* for a WTF shall have a *setback*, from all property *lines*, from above ground power *lines* and/or from other *structures* not used in support of the WTF, the greater of: (a) either the required *setback* set forth

in Section 17.16, or; (b) no less than the maximum distance from the center of the *monopole antenna* to the perimeter of the fall zone of the *antenna* or *tower*, as certified by a NYS licensed professional engineer.

3. A WTF shall be located no nearer than five hundred (500) feet to a *dwelling unit, day care center, place of worship, school, or a road or drive* used by the public.
4. *Structure Height Limits.* The *structure height* of any *antenna* or *tower* shall be the minimum required to establish and maintain adequate service as supported by the documentation submitted in the *site plan* review and approval application. In no instance shall the *tower* exceed a *structure height* that is the lesser of either one hundred twenty (120) feet or a maximum of fifty (50) feet above any immediately adjacent tree *line*.
5. A WTF shall be a *monopole*, unless otherwise authorized by the planning board for good cause as shown in the submittal documentation.
6. Signal lights shall be prohibited unless required by the FCC or Federal Aviation Administration.
7. A WTF shall be sited to have the minimum *adverse visual impact* on the surrounding areas and *roads*. WTF and *towers* shall be designed and constructed of materials that are harmonious with natural setting.
8. The maximum area to be cleared for a WTF shall be no more than fifty (50) feet in extent from the footprint of the WTF and its *accessory structure*. Only the very minimum amount of vegetative *clearing* shall be permitted to accommodate construction.
9. All equipment and *accessory structures* shall be sited to minimize *adverse visual impact* on the surrounding areas and *roads*. The planning board may require that these facilities be located completely or partially underground.
10. All equipment not located within a *building* shall be designed and/or treated with materials to blend with the surrounding natural setting.
11. *Signs* shall be prohibited unless required by the planning board or an applicable regulation or law.
12. *Co-location antenna* arrangements are required of all new WTF unless substantial documentation shows that:
 - a. The *applicant* has provided clear and compelling evidence in accordance with subsection 17.36.180(B);
 - b. Co-location cannot achieve the minimum reasonable technical needs of the proposed facility;
 - c. The inability to secure permission of owner of existing site and/or facility at a reasonable cost to allow additional installation; and/or
 - d. Structural and other engineering limitations, absent reasonable refurbishment, are demonstrated.
13. The *applicant* shall document additional capacity for future shared *use* of the *tower* and shall certify that such additional capacity shall be available for future *applicants* providing wireless telecommunication services, subject to good faith negotiations.
14. The clustering of *antennas* or *towers* on the same *lot* shall be considered if *co-location antennas* cannot be arranged.
15. Each WTF shall be protected against unauthorized access. Security fencing shall be required. The planning board shall determine the area extent of fencing required based on the *site plan* application submittal. All security fencing shall be a minimum of twelve (12) feet in height.

E. *Discontinued Use.* An *antenna* or *tower* not operated for the provision of wireless telecommunication services for a continuous period of twelve (12) months or more may be deemed abandoned. Upon receipt of notice of determination from the town, the operator shall remove the *antenna* or *tower* within ninety (90) days of the date of such notice of determination.

F. Exempt Facilities. Provided compliance with Section 17.36.181 is maintained by the property owner, the following transmitting and/or receiving WTF's are exempt from regulation by this section of the town of Big Flats Municipal Code:

1. Amateur radio and satellite facilities provided that such facilities are operated by a licensed amateur;
2. Civil, emergency, and other facilities under the control of or operated by a government agency; or
3. Home satellite facilities where installed on residential premises solely for the *use* by the residents of that premise and not offered for service to off-premise locations.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.181 Accessory antenna.

A. Residential *Antennas*. *Antennas* for transmitting and/or receiving telecommunication that are listed in subsection 17.36.180(F) as exempt from the provisions of Section 17.36.180 and that are constructed or installed on a *lot* with a residential *principal use* and are used as an *accessory use* to an existing residential *use*, shall be constructed and maintained as follows:

1. That the *antenna* or any supporting *structure*, such as a *tower*, is constructed or installed behind the front of the principal *building* on the *lot* and to not encroach on any portion of any required side, *front or rear yard*.
2. A freestanding *antenna* or any part thereof including the supporting *structure* for such *antenna* shall not exceed forty (40) feet in height.
3. An *antenna* attached to any portion or part of a *building* including a chimney, shall not extend above the roof *line* to lesser of either: (a) the *structure height* as permitted by Section 17.16.020 for the *district* and *use* applicable to the *lot* or (b) no more than five feet above the highest point of the roof of the principal *building* on the *lot*.
4. Any guy wire supports for an *antenna* that are within eight feet to the ground, a walkway or any habitable space of a *building* shall be clearly marked to the extent as to make the guy wires visible to pedestrians.

B. Commercial *Antennas*. *Antennas* for transmitting and/or receiving telecommunication that are listed in subsection 17.36.180(F) as exempt from the provisions of Section 17.36.180 and that are constructed or installed on a *lot* with a general, business, or industrial *principal use* and are used as an *accessory use* to an exiting general, business, or *industrial use*, shall require approval pursuant to Chapter 17.32 of this title and as a minimum be constructed and maintained as follow:

1. That the *antenna* or any supporting *structure* such as a *tower*, is constructed or installed behind the front of the principal *building* on the *lot* and to not encroach on any portion of any required side, *front, or rear yard*.
2. A free-standing *antenna* or any part thereof including the supporting *structure* for such *antenna*, shall not exceed forty (40) feet in height.
3. A free-standing *antenna* or *tower*, including any guy supports, constructed or installed at ground level shall be enclosed in a *fenced* area of such area and height as permitted in an approved *site plan*.
4. An *antenna* attached to any portion or part of a *building* including a chimney, shall not extend above the roof *line* to lesser of either: (a) the *structure height* as permitted by Section 17.16.020 for the *district* and *use* applicable to the *lot* or (b) no more than eight feet above the highest point of the roof of the principal *building* on the *lot*.
5. Any guy wire supports for an *antenna* that are within eight feet to the ground, a walkway or any habitable space of a *building* shall be clearly marked to the extent as to make the guy wires visible to pedestrians.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.190 Vehicle filling station, vehicle repair, vehicle sales or lease and heavy equipment vehicle sales and/or repair, vehicle maintenance facility and/or *convenience mart*.

A. Dimensional Requirements.

1. Minimum *Lot* Size.

- a. Minimum *lot* size for *vehicle filling station, vehicle repair, vehicle sales or lease and heavy equipment vehicle sales and/or repair vehicle maintenance facility and/or convenience mart uses* shall be the greater of either one acre or the minimum *lot* area requirement prescribed in Section 17.16.020.
 - b. In those instances where a *vehicle filling station, vehicle repair, vehicle sales or lease and heavy equipment vehicle sales and/or repair, vehicle maintenance facility and/or convenience mart uses* is proposed as part of a *mall* or *plaza*, there shall be dedicated for such *use* a minimum *lot* area of one acre.
 - c. In addition to any required *lot* area and/or *setback*, a *developer* may be required to provide any additional space necessary, as determined by an approved *site plan*, to mitigate any potential impact on surrounding *lots* or *uses*.
2. The minimum *lot* width shall be the greater of two hundred (200) feet or the minimum *lot* width prescribed in Section 17.16.020.
3. Fuel dispensing devices shall be located to the side or rear of the *principal structure* and at least seventy-five (75) feet from any *front lot line* and thirty-five (35) feet from any side or rear *lot line*. This distance shall be measured from the outer most edge of the fuel island *structure*.

B. General Requirements.

1. Automobile parts, including tires, frames, hubcaps, motors, and dismantled or unregistered motor vehicles; are to be stored within a *structure* or otherwise screened from view from any adjoining *lot* or *road*. Accessory products that are offered for sale may be placed outside during normal business hours provided such items are stored or displayed in a rack.
2. All repair work shall be performed within a *building*. Vehicles waiting to be serviced or stored on the *lot* shall not be parked or stored in any required *buffer* and/or *transition yard*. Wrecked vehicles being held for insurance adjustment or other legal purpose shall be stored behind the rear wall of the *building* and/or screened from view from an adjoining *lot* or *road*.
3. *Parking*.
 - a. No vehicle shall be parked, stored, or left standing within fifteen (15) feet of a *road right-of-way*.
 - b. *Parking* area requirements shall be as set forth in Section 17.48.010. Such *parking* areas shall not conflict with the traffic pattern to and from any fuel pump. In addition to any required *parking*, a *developer* may be required to provide any additional *parking* areas necessary, by an approved *site plan*, to mitigate any potential impact on a surrounding *lot* or *use*.
 - c. Where *parking* areas abut a residential *use* as set forth in Section 17.12.010 or a residential *district* boundary, they shall be screened from such *use* or *district* and include a *barrier* that shall:
 - i. Be composed of densely planted plant material no less than ten (10) feet in depth, eight feet in height from *finished grade*;
 - ii. Include an opaque *fence*;
 - iii. Be of materials consistent with the character of adjacent residential *lots*;
 - iv. Be maintained in perpetuity or to a time when the adjoining residential *use* no longer exists.

4. No vehicles offered for rent or sale shall be placed, stored or parked within fifteen (15) feet of a *road right-of-way*.
5. All storage and display areas shall be provided with a hard, dust-free surface and shall be adequately drained.
6. All *outdoor lighting* shall conform with Section 17.36.240.
7. No twenty-four-hour operation *use* shall be permitted within two hundred fifty (250) feet of an existing residential *use* and/or residential *district* boundary.
8. Fuel, oil, and other materials which are environmentally hazardous shall be stored, controlled and disposed of in accordance with the rules and regulations of the NYS Department of Environmental Conservation.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.36.200 Transition yard, buffer yard, landscaping, and barrier requirements.

A. Intent. The preservation and promotion of nature is a desirable and important means of protecting the public health, safety, and welfare and that a healthy environment indicates a healthy community, which is consistent with the town comprehensive plan. The *use of buffers and transition yards* is a method of preserving and enhancing nature while providing citizens an assurance of protection from negative intrusions such as visual and noise impacts from *uses* on adjoining *developments*. More specifically, this section is intended to provide requirements that will ensure greater compatibility between different characters of land *uses* by requiring a *transition yard* between residential and non-residential *districts* and a screen or *buffer* between the *uses* in order to minimize the harmful impact of noise, dust and other debris, motor vehicle headlight glare or other artificial light intrusion and other objectionable activities or impacts conducted on or created by an adjoining or nearby *use*. This section will provide consideration of those physical and *visual elements* of a *development* or *use* and to require treatment of the land with landscaping using plant materials and/or manmade features. Such plant materials and/or manmade features are to be arranged to enhance the appearance, to screen or effectively separate different types of *uses*, and to eliminate or minimize impacts on adjoining *uses*.

B. Application of *Transition Yards* and *Buffer Yards*.

1. When a *district* other than a R1, R2, or TCR *district* abuts a R1, R2, or TCR *district*, a *transition yard* shall be provided. (See Figure 4)
2. The *buffer yard* provisions of this section shall apply to all *uses* requiring *site plan* approval or as a *mitigation* for impacts associated with a *development* in any *districts* in the town. (See Figures 4 and 5)
3. When provisions of this section requires transition and *buffer yards* such yards shall be in addition to any *setback* required in Article 5. (See Figures 4 and 5)

C. *Transition Yard* Requirements. (See Figures 4 and 5)

1. Minimum Requirements. Where a R1, R2, or TCR *district* abuts any other *district* without an intervening *road*, a minimum side or *rear yard setback* in the other *district* that is measured from a *lot line* coincident with the boundary of the abutting *district* shall be increased more than the minimum yard *setback* specified in Section 17.16.020 for the other *district* by a *transition yard* which will have a depth equal to the number of feet as follows:

Other <i>District</i>	Residential <i>Districts</i>	<i>Transition Yard</i> Depth in Feet
RU	R1 & R2	25
TC	TCR	25
C	R1 & R2	25
RCD	R1 & R2	25
BN	R1 & R2	25
BN2	R1 & R2	25
TC2	R1, R2, & TCR	25

BNR	R1 & R2	50
BR	R1 & R2	50
ABD	R1 & R2	75
CL	R1 & R2	75
I	R1 & R2,	75

2. Where a R1, R2, RU, or TCR *district* abuts any other *district* along the centerline of a *road*, a *transition yard* shall be required in the other *district* that is a depth measured from a *front lot line* coincident with the *right-of-way* of the *road* which shall be a minimum of twenty-five (25) feet more than the minimum *front yard setback* specified in Section 17.16.020 for the other *district*.
3. A *transition yard* shall be treated as a *buffer yard* for purposes of determining landscaping and *barrier* requirements as provided in subsections E and F of this section.
4. No *principal structure*, *principal use*, *accessory structure*, or *accessory use* shall be located within any required *transition yard*.
5. No *drive* shall be located within a required *transition yard* if there is an adjoining *lot* in common ownership on which such *drive* may be located without being in a *transition yard*. Otherwise, a *drive* or *parking space* as an *accessory use* may be located within the required *transition yard* only as approved in a *site plan*.
6. Such *transition yard* depth requirements may be reduced by no more than fifty (50) percent if the planning board finds that the *applicant* has, to the greatest extent possible, submitted an application which is in strict compliance with the town of Big Flats *Development Design Guidelines*.

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D. *Buffer Yard* Requirements. (See Figure D-1)

1. Where a *lot* is proposed to contain a *use* listed in the *use* categories set forth in Section 17.08.040 and abuts a *lot* containing an existing or approved *use*, a minimum *buffer yard* shall be provided, for the proposed *use*, as follows:

<i>Use</i> Category	Existing or approved Residential <i>Use</i>	Existing or approved General <i>Use</i>	Existing or approved Business <i>Use</i>	Existing or approved Industrial <i>Use</i>
Proposed Residential <i>Use</i>	1	2	3	4
Proposed General <i>Use</i>	2	1	2	3
Proposed Business <i>Use</i>	3	2	1	2
Proposed Industrial <i>Use</i>	4	3	2	1

Buffer Yard Type Description (See Figures 4 and 5 for graphic representation)

1. The *buffer yard* shall be the minimum yard requirements (*setbacks*) for the proposed *principal use* and *structures use* as prescribed in Section 17.16.020.
2. The *buffer yard* shall be the total of the minimum yard requirements (*setbacks*) for the proposed *principal use* and *structures* as prescribed in Section 17.16.020 plus a *buffer yard* of fifteen (15) feet and such *buffer yard* shall be *landscaped* in accordance with subsection E of this section.
3. The *buffer yard* shall be the minimum yard requirements (*setbacks*) for the proposed *principal use* and *structures* as prescribed in Section 17.16.020 plus a *buffer yard* twenty-five (25) feet and such *buffer yard* shall be *landscaped* in accordance with subsection E of this section.

4. The *buffer yard* shall be the minimum yard requirements (*setbacks*) for the proposed *principal use* and *structures* as prescribed in Section 17.16.020 plus a *buffer yard* of seventy-five (75) feet and such *buffer yard* shall be *landscaped* in accordance with subsection E of this section.

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2. No *principal structure*, *principal use*, *accessory structure*, or *accessory use* shall be located within any required *buffer yard*.
3. A *drive* and *parking* spaces shall not be located within a required *buffer yard*.
4. The *buffer yard* shall be provided with landscaping as required in an approved *site plan* and the requirements set forth in subsection E of this section.
5. A *buffer yard* shall be shown on drawings required in an application for *site plan* approval.
6. A *buffer yard* required to mitigate an impact associated with a *development* shall be designed by a design professional and constructed in accordance with said design.
7. The requirements of Section 17.36.070 shall be considered in the design of any *buffer yard*.
8. The owner and all future owners shall maintain a required *buffer yard* in perpetuity. If a *buffer yard* is not maintained, the town reserves the right to take actions in accordance with Section 17.32.190.
9. Such *buffer yard* depth requirements may be reduced by no more than fifty (50) percent if the planning board finds that the *applicant* has, to the greatest extent possible, submitted an application which is in strict compliance with the town of Big Flats *Development Design Guidelines*.

E. Landscaping Requirements.

1. Where a *buffer yard* is required by this section, the *buffer yard* shall be provided with a *landscape* type as specified in the following table:

<i>Use</i> Category	Existing or approved Residential <i>Use</i>	Existing or approved General <i>Use</i>	Existing or approved Business <i>Use</i>	Existing or approved Industrial <i>Use</i>
Proposed Residential <i>Use</i>	1	2	3	4
Proposed General <i>Use</i>	2	1	2	3
Proposed Business <i>Use</i>	3	2	1	2
Proposed Industrial <i>Use</i>	4	3	2	1

Landscaping Type Description (See Figure 6 for graphic representation of *Landscape Density*)

1. *Buffers* may be *landscaped* with plantings of choice. No *landscape* plan is required.
2. Planting shall include shrubbery and/or small trees that at maturity will be a minimum of six feet or a height that will provide intervening vegetation to the full height of the proposed *use structure* as viewed from an eye level elevation of five feet six inches at any point on the abutting *use setback line*.
3. Planting shall include hedges, shrubbery, and/or small trees that at maturity will be a minimum of eight feet or a height that will provide intervening vegetation to the full height of the proposed *use structure* as viewed from an eye level elevation of five feet six inches at any point on the abutting *use setback line*.
4. Planting shall include hedges, shrubbery and/or small trees that at maturity will be a minimum of ten (10) feet or a

height that will provide intervening vegetation to the full height of the proposed *use structure* as viewed from an eye level elevation of five feet six inches at any point on the abutting *use setback line* and/or the second *story* of a residential *use*.

GRAPHIC UNAVAILABLE: Click here

Figure 6, Landscape *Density*

*Note: See subsection F3 of this section for plant type and minimum planted size.

2. *Landscape Plan.*

- a. Whenever landscaping is required pursuant to this section and a *site plan* approval is required, a *landscape plan* shall be submitted to the planning board.
- b. In those instances where a *landscape plan* is required to be submitted to the planning board, the *landscape plan* shall be prepared and stamped by a New York State licensed *landscape architect*, authorized to practice *landscape architecture* in accordance with New York State Law and shall be designed in accordance with the requirements of this section.
- c. A variety of plants may be substituted for plantings required under this section; however, the performance of the substitute vegetation shall be equal to that of those approved in any *site plan* and as follows:
 - i. Evergreen trees may be substituted for shade trees or small trees without limitations.
 - ii. Evergreen shrubs may be substituted for deciduous shrubs without limitation.
- d. The size and character of all plantings shall be in accordance with the provisions of the American Standard for Nursery Stock, (ASNS) latest edition (currently November 6, 1996), which is adopted by reference in this chapter.
- e. Plantings adjacent to *roads* or within *parking* areas shall be those recommended in the handbook *Urban Trees Site Assessment Selection for Stress Tolerance Planting*, published by Urban Horticulture Institute, Cornell University.
- f. *Invasive or Rampant Plants.* The *use* of invasive or rampant plants is prohibited. Examples of such plants include, but are not limited to: purple loosestrife, oriental bittersweet, kudzu, exotic wisterias, such as Chinese and Japanese wisteria, mile-a-minute weed, Russian olive, multi-flora rose, white poplar, and black locust.

3. *Plant Requirements.* Plant branching, root size, and proportions at time of planting shall be as described in the ASNS Standards according to the specified plant size. Minimum required planted size shall be as follows:

Plant Type (Per ASNS)	Minimum Size (approximate size when planted)	Mature Size
Shade Tree - Type 1 & 2	1.5" caliper	30'--80' ht.
Small Tree - Small Upright Tree, Type 3	6' height	20'--35' ht.
Small Tree - Small Spreading Tree - Type 4	5' height*	20'--30' ht.
Small Tree - Multi-Stem Tree	6' height	20'--30' ht.

Evergreen Tree - Coniferous Evergreen -- Cone - Type 4	5' height**	35'--75' ht.
Deciduous Shrub	15" height	3'--15' ht.
Evergreen Shrub - Coniferous Evergreen (CE) - Broad, Globe & Upright - Type 3	18" height	4'--15' ht.
CE -- Broad Upright - Type 5	18" height	15'--20' ht.
CE -- Columnar - Type 6	36" height	15'--20' ht.
Broadleaf Evergreens (BE) Semi-spreading - Type 2	15" height	4'--6' ht.
BE -- Broad Upright - Type 4 & 5	18" height	6'--15' ht.

* Callery Pear (*Pyrus Calleryana*) shall be sized as per Shade Tree, Type 1 and 2.

** Japanese Yew (*Taxus cuspidata*) shall be sized as per CE, Type 3.

Table Notes:

•Bare root stock may be allowed as a portion of the required planting upon review of planting plan and determination that the landscaping meets the intent of this section.

•Dwarf plants, vines, and ground covers may be used as part of an overall planting plan but will not be counted as part of the *buffer yard* planting requirements.

4. Landscaping Minimum Requirements. The following minimum requirements shall apply to the preservation, installation, and maintenance of all landscaping required by this section:
 - a. All disturbed soil areas of the site shall be replanted or re-seeded in accordance with the approved plan.
 - b. All planting will be done at an appropriate time of the year in accordance with the standards and policies of the Chemung *county* Soil and Water Conservation *District* (CCSWCD). No planting will be allowed if the ground is frozen and shall be completed in accordance with generally accepted horticultural practices for the town's geographic area.
 - c. Shade or evergreen trees shall not be planted closer than five feet to a property *line*.
 - d. Plantings required by this section shall fit with the character of the surroundings and be composed of native, naturalized and disease resistant species capable of survival without extraordinary measures and be cold hardy in accordance with USDA plant hardiness Zone 5.
 - e. The owner and future owners shall be responsible for the maintenance, repair and replacement of all landscaping required under this section in perpetuity and the area shall be kept free of refuse and debris. If the required landscaping is not maintained, the town reserves the right to take actions in accordance with Section 17.32.190.

5. Credit for Existing Vegetation. To the greatest extent possible, existing site vegetation shall be saved during construction and thereafter. Existing site vegetation may be used to meet some or all of the requirements of subsection E of this section provided that the existing site vegetation provides or exceeds the minimum level of protection afforded by the requirements of this section. If applicable, the planning board may consider credit for preservation of qualifying existing site vegetation on a one to one basis with the landscaping requirements of this section. New plantings where existing vegetation is used as part of the required landscaping shall be compatible with the existing *landscape* in character and type.

6. Alternative Designs. For good cause shown, the *developer* may submit alternative designs as part of a *landscape* plan provided the alternative design meets or exceeds the minimum requirements of this section and the applicable sections of the *Development Design Guidelines*, and that such alternative design is accepted and approved by the planning board.

F. *Barrier* Requirements.

1. When a specific impact is identified that cannot be practically mitigated under the landscaping requirements of this section, as determined by the planning board, a *barrier* may be required that meets or exceeds the following requirements:

<i>Use</i> Category	Existing or approved Residential <i>Use</i>	Existing or approved General <i>Use</i>	Existing or approved Business <i>Use</i>	Existing or approved Industrial <i>Use</i>
Proposed Residential <i>Use</i>	NA	1	2	4
Proposed General <i>Use</i>	1	NA	1	3
Proposed Business <i>Use</i>	2	2	NA	1
Proposed Industrial <i>Use</i>	4	3	1	NA

Barrier Description:

1. The *barrier* shall comply with the requirements of Section 17.36.070 and shall provide protection against impacts associated with a *development* to a minimum height above *finished grade* of six feet as measured at the common property *line* between the existing and proposed *use*.
2. The *barrier* shall comply with the requirements of Section 17.36.070 and shall provide protection against impacts associated with a *development* to a minimum height above *finished grade* of eight feet as measured at the common property *line* between the existing and proposed *use*.
3. The *barrier* shall comply with the requirements of Section 17.36.070 and shall provide protection against impacts associated with a *development* to a minimum height above *finished grade* of ten (10) feet as measured at the common property *line* between the existing and proposed *use*.
4. The *barrier* shall comply with the requirements of Section 17.36.070 and shall provide protection against impacts associated with a *development* to a minimum height above *finished grade* of twelve (12) feet as measured at the common property *line* between the existing and proposed *use*.
2. The *barrier* shall be provided for in the *buffer yard* or *transition yard*.
3. When a *barrier* is required, the *barrier* shall be illustrated on the drawings required in an application for *site plan* approval.
4. A *barrier* shall be designed to provide the degree of continuous protection to a *use* commensurate with the specific adverse impact associated with a *development*.
5. A *barrier* shall be designed by a design engineer such as a *landscape* architect and constructed in accordance with the design.
6. The requirements of Section 17.36.070 shall be considered in the design of any *barrier*.
7. The owner and future owners shall maintain a required *barrier* in perpetuity. If a *barrier* is not maintained in accordance with this section, the Town reserves the right to take actions as described in Section 17.32.190.

(LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.36.210 Fast food restaurant requirements.

A. Intent. A *fast food restaurant use* has operational characteristics that may include a significantly higher number of customers per day than those of surrounding *uses*. This *use* is likely to also have an accessory *drive-through use*. These characteristics have the potential for creating serious traffic conflicts, hazards to pedestrians, and congestion at peak hours. It is the intent of this section to provide reasonable controls to avoid, to the greatest extent possible the consequences of this congestion and traffic hazard.

B. Dimensional Requirements.

1. Minimum *Lot Size*.

- a. Minimum *lot size* for all *uses* shall be as defined in the *bulk density* requirement, Section 17.16.020.
- b. In those instances where a *use* regulated in this chapter is proposed as part of a *mall* or *plaza* and is located on an outparcel from the primary *mall* or *plaza lot*, there shall be dedicated for such *use* an area of the *lot* equal to one acre.
- c. To mitigate impacts on adjoining *lots* and/or *road* infrastructure, additional *lot area*, *setbacks* and/or *right-of-way* reserve strips may be required in an approved *site plan*.

2. Minimum *Lot Width*. The greater of one hundred (100) feet or the minimum *lot width* established in the *bulk density* requirement for the applicable *district*, Section 17.16.020.

C. Access and *parking*.

1. Access shall be designed by a design engineer in accordance with Sections 17.36.050 and 17.36.070 and the recommendations indicated in the town of Big Flats *Development Design Guidelines*.

2. *Parking*.

- a. The number of *parking* spaces shall be as specified in Section 17.48.010.
- b. *Parking* areas or *parking lots* shall be designed to provide for pedestrian safety. To the greatest extent possible, pedestrian access to the *principal structure* shall not cross primary circulation lanes.
- c. Whenever possible, *fast food restaurants* shall work with adjoining properties to provide shared *parking* and access for the *fast food restaurant* and the adjoining properties.

D. *Buffer*, landscaping and *barrier* requirements.

1. *Buffers*, landscaping and *barriers* shall be provided in accordance with Section 17.36.200.

2. Additional *barrier* shall be provided for areas used for *parking*, dumpsters, utilities, and *accessory structures* from an adjoining, *road* or *lot*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.220 *Drive-through use* requirements.

A. Intent. A *drive-through use* has many points of traffic conflict and the potential for creating congestion on *roads*, *drives* and *internal drives*. This section prescribes requirements to ameliorate such congestion and traffic conflicts.

B. Reference to Design Guidelines: Any *project* seeking to construct a *drive-through* facility shall refer to the appropriate section(s) of the town of Big Flats *Development Design Guidelines*.

C. General Vehicular Traffic Requirements.

1. A principal or *accessory use* which contains a *drive-through use* shall provide a *drive* or *internal drive* dedicated to the *drive-through use* and which complies with the requirements of Sections 17.36.050 and 17.36.070 as well as the following minimum requirements:
 - a. A *drive* or *internal drive* for a *drive-through use* shall be distinctly marked and shall be separate from other internal traffic circulation *drive* lanes and pedestrian ways.
 - b. *Drive* or *internal drive* for a *drive-through use* shall not cross any principal pedestrian access to the principal *building*.
 2. All *uses* shall maintain a minimum distance of forty (40) feet from the service window to a public *right-of-way* or any other *drive* or *internal drive*.
- D. Vehicular Traffic Stacking or Queuing Requirements. A *drive-through use*, for the following specific principal or *accessory uses* shall provide the following minimum vehicular traffic queuing or stacking distances:
1. For a *fast food restaurant* the minimum distance shall be one hundred forty (140) feet between start of lane to service window.
 2. For a *bank* and other business not using order stations the minimum distance shall be sixty (60) feet from start of lane to service window.
- E. Multiple *Drive-Through* Vehicular Traffic Lanes. The planning board may allow lesser distances than those specified in subsection D of this section for businesses with multiple *drive-through* lanes when substantial documentation supporting such reduction is provided in an approved *site plan*.
 (LL No. 2, 2003 (part))
 (LL No. 6, 2009)

17.36.230 Adult use requirements.

- A. Intent. This section recognizes that *adult uses*, by their very nature, have serious objectionable operational characteristics and deleterious effects on adjacent neighborhoods and businesses. The objectionable characteristics of these *uses* are heightened by their concentration and by being located inappropriately in proximity to residential neighborhoods, schools, parks, and other areas frequently used by the town's youth. The special purpose of this section is to regulate the creation, opening, commencement and/or operation of any *adult use*, as defined in this chapter, in order to achieve the following:
1. To preserve the character and the quality of life in the neighborhoods and business areas of the town;
 2. To control such documented harmful and adverse secondary effects of the *adult uses* on the surrounding areas which include decreased property values, attraction of transients, *parking* and traffic problems, increased crime, loss of business for surrounding businesses, and deterioration of neighborhoods;
 3. To keep such *uses* out of areas where youth routinely assemble;
 4. To maintain the general welfare and safety for the town's residents.
- B. *Adult Uses*. An *adult use* includes, but is not limited to, the following:
1. A business or establishment, or any part thereof, which excludes persons under eighteen (18) years of age and which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental and/or display of the following:
 - a. Books, magazines, periodicals or other printed materials; photographs, films, motion pictures, video cassettes or video reproductions, digital reproductions, slides, compact discs, computer software, or other visual representations which depict or display human sexual activity or human sexual anatomical areas, or

- b. Instruments, devices, or paraphernalia which are designed for *use* or marketed primarily for stimulation of human genital organs or for sexual gratification.

A business or establishment has a significant or substantial portion of its use in *adult uses* when twenty (20) percent or more of its stock-in-trade is devoted to *adult uses*, or it derives twenty (20) percent or more of its revenues from *adult uses* or it devotes twenty (20) percent or more of its interior display or advertising to the sale, rental and/or display of *adult uses*;

- 2. A *night club, bar, nonalcoholic or "juice" bar, restaurant or similar establishment* which excludes persons under eighteen (18) years of age and which features:
 - a. Persons who appear nude or in a state of semi-nudity,
 - b. Live performances which are characterized by the display or exposure of human genitalia, buttocks or breasts, or
 - c. Films, motion picture, video cassettes or video reproductions, digital reproductions, slides, compact disks, computer software, or other visual representations which depict or display human sexual activity or human sexual anatomical areas;
- 3. A hotel, motel, or similar establishment which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic or digital reproductions which are characterized by the depiction or description of sexual activities or contact with sexual, anatomical areas of human beings and has a *sign* visible from the public *right-of-way* which advertises the availability of this adult type of photographic reproductions; or offers sleeping rooms for rent on a regular basis for a period of time which is less than ten (10) hours.
- C. Criteria for Approval of Special Permit. An *adult use* shall only be permitted subject to the following requirements:
 - 1. Located in an I or CL *district*;
 - 2. Spaced at least one thousand (1,000) feet from another *adult use*;
 - 3. Spaced not less than five hundred (500) feet from the boundary of any R1, R2, RU, TC, TC2, TCR, or BNR *district*;
 - 4. Spaced not less than five hundred (500) feet from any of the following:
 - a. School,
 - b. *Place of worship*,
 - c. Park or playground,
 - d. School bus stop, or
 - e. Existing residential *dwelling unit*;
 - 5. Not conducted in any manner that permits the observation of the *adult use* or a picture or representation of the *adult use* from any *road, drive, internal drive, driveway* and/or pedestrian way, or from any adjoining *lot*;
 - 6. Complies with all other applicable provisions of this and other applicable laws.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.240 Outdoor lighting requirements.

A. Intent. It is the intent of this section to require that *outdoor lighting* conserves energy, provide security and utility and not adversely impact the night-time environment. Proposed *outdoor lighting* plans shall to the maximum degree possible show that they do not adversely impact the rural character of the community or cause excessive glare to traffic or pedestrians.

B. General Requirement.

1. A *development* plan shall show and detail design features for *outdoor lighting* sufficient to document compliance the intent of this section and the standard for *outdoor lighting* in the town of Big Flats.
2. A plan for *outdoor lighting* prepared by a design engineer may be required to fully support design considerations and/or to validate the *mitigation* of any lighting impacts associated with a *development*.

C. Special *Site Plan* Requirement. When an application for *building permit*, variance and/or special permit, includes a *lot* where, in the determination of the *director of planning* or a code enforcement officer, a significant impact associated with *outdoor lighting* is likely to occur as a result of a *development*, the application shall be referred to the planning board as a *site plan* application under Chapter 17.32.

D. Restrictions. Except for in an approved *site plan*, the following types of lighting are prohibited as *outdoor lighting*:

1. Mercury vapor lights;
2. Any light source created by a laser or any similar high intensity light is prohibited for *outdoor lighting*;
3. Searchlights or ground-based, upward-projecting spotlights.

E. Performance Standards for *Outdoor Lighting*. Appropriately regulated and properly installed *outdoor lighting* will contribute to the safety and welfare of the residents of the town. This section is intended to assist property owners in their efforts to provide a safe and secure environment, control energy costs and keep unnecessary direct light from shining onto abutting properties or streets. It is also intended to reduce the problems of glare, minimize light trespass, and help reduce the energy and financial costs of *outdoor lighting* by establishing regulations which limit the area that certain kinds of *outdoor lighting* fixtures can illuminate and by limiting the total allowable illumination of *lots* located in the town of Big Flats. In order to assure that walkways, *parking lots*, and other outdoor areas accessible to the general public are safely illuminated at night, the following minimum standards for *outdoor lighting* levels shall be adhered to. These *outdoor lighting* levels are the minimum levels that are generally considered adequate for the designated areas. Individual site lighting requirements can vary considerably, however, and property owners are ultimately responsible for ensuring that adequate illumination of outdoor areas is provided.

1. Minimum Required Outdoor Lighting Levels for *Development* Subject to *Site Plan* Approval or *Special Use* Permit

Area	Footcandles (fc)	Lux (lx)
a. Walkways	0.5	5
b. <i>Parking</i> areas: Regional shopping centers, fast-food facilities, convenience stores, and <i>retail</i> gasoline sales.	0.9	10
c. <i>Parking</i> areas: <i>Retail</i> stores or shopping centers open before 8:00 a.m. or after 5:30 p.m., office parks, <i>hospital parking lots</i> , cultural, recreational or civic complexes, and <i>parking</i> areas for apartment complexes.	0.6	6

d. <i>Retail</i> stores or shopping centers open after 8:00 a.m. and closing at or before 5:30 p.m., employee <i>parking</i> areas for industrial <i>development</i> , schools and other educational facilities; <i>churches</i> and other places of worship; and other public areas where there is generally very little nighttime activity.	0.2	2
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2. No artificial lighting shall shine directly upon any neighboring property or be so established that it shall shine directly upon any neighboring property or shall shine directly on or into any room or rooms, porches or patios of any neighboring *structure* or property as to be a nuisance. Nor shall any artificial lighting be maintained or operated from any *structure* or land in such a way as to be a nuisance to neighboring properties or impair vision through inordinate glare or to create a hazard to neighboring properties or as to interfere with the reasonable quiet, enjoyment, *use*, or comfort of the occupants of the neighboring properties.
3. Exterior lighting facing neighboring property shall be hooded or shielded so that it does not produce an objectionable or inordinate glare on the neighboring property.
4. Exterior lighting shall be controlled in both height and intensity and shall be in conformance with the requirements established herein. Under no circumstances shall the light level at any *lot line* exceed 0.2-footcandle, measured at ground level. All outdoor light sources mounted on poles or *buildings* or trees to illuminate *driveways*, sidewalks, walkways, *parking lots*, or other outdoor areas shall use fully shielded light fixtures. For purposes of this section, a "full cutoff light fixture" is one in which no more than two and one-half percent of the total output is emitted at ninety (90) degrees from the vertical pole or *building* wall on which it is mounted. All such fixtures shall be installed or shielded so that part of the light bulb or light source is not visible beyond the property boundaries.
5. Any lights used to illuminate the exterior of a multiple unit dwelling, dormitory or other group residence, or an *alternative dwelling park*, or a commercial, industrial, or other nonresidential or nonagricultural space or *parcel*, including *buildings*, *signs* and other *structures*, *parking* and pedestrian areas and landscaping, shall be designed and installed such that:
 - a. Any exterior lighting unit with a lamp or lamps rated at a total of more than one thousand eight hundred (1,800) lumens, and any flood or spot exterior lighting unit with a lamp or lamps rated at a total of more than nine hundred (900) lumens, shall not emit any direct light above a horizontal plane through the lowest direct light-emitting part of the exterior lighting unit;
 - b. Any exterior lighting unit with a lamp or lamps rated at a total of more than one thousand eight hundred (1,800) lumens, and any flood or spot exterior lighting unit with a lamp or lamps rated at a total of more than nine hundred (900) lumens, shall be mounted at a height equal to or less than the value $3 + (D/3)$, where *D* is the distance in feet to the nearest property boundary;
 - c. The maximum height of the exterior lighting unit may not exceed twenty-five (25) feet.
6. Exceptions to the above shall be:
 - a. Any exterior lighting unit with a lamp or lamps rated at a total of one thousand eight hundred (1,800) lumens or less, and any flood or spot exterior lighting unit with a lamp or lamps rated at nine hundred (900) lumens or less, may be used without restriction as to light distribution or mounting height, except that if any spot or flood exterior lighting unit rated nine hundred (900) lumens or less is aimed, directed, or focused such as to cause direct light from the exterior lighting unit to be directed toward residential *buildings* on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on

public ways, the exterior lighting unit shall be redirected or its light output controlled as necessary to eliminate such conditions.

(LL No. 5, 2006; LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.250 Outdoor recreational and/or amusement park use requirements.

A. Intent. The intent of this section is to control and regulate the impacts associated with an outdoor recreational and/or amusement park *use* to assure minimum adverse impact on surrounding *uses*. Outdoor recreational and/or amusement park *use* includes but is not limited to: A golf course; a football, polo, soccer, baseball or softball field; a tennis court; a race track; any outdoor show area; and any similar *use* or combination of *uses*. These facilities may be of a commercial or of a public nature, such as a town or *county* park.

B. General Requirements.

1. *Outdoor lighting* shall comply with Section 17.36.240.
2. An outdoor recreational and/or amusement park *use* located within five hundred (500) feet of a *lot line* for any existing residential *use* shall schedule all events to end prior to eleven o'clock p.m.
3. The *use* of an outdoor public address (PA) system shall comply with Section 17.36.260.
4. Where such *use* abuts an existing residential *use* and is designed or intended to be operated or open for business anytime after nine o'clock p.m., a *buffer*, in accordance with Section 17.36.200, equal to the requirements for an *industrial use* shall be provided on the *lot* with such *use*.

C. Sanitary Requirements.

1. An outdoor recreational and/or amusement park *use* shall provide for adequate and safe public rest room and/or toilet facilities in accordance with the requirements of the NYS Department of Health and the NYS Uniform Fire Prevention and *Building Code*.
2. When *temporary* and/or portable restrooms are to be used to comply with this subsection, no less than four shall be provided.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.260 Sound control requirements.

A. Intent. This section is intended to establish sound level requirements sufficient to permit the enjoyment and *use* of adjoining *lots* without the adverse impacts associated with unnecessary or unusually high levels of sound. The sound levels requirements established in this section are considered to be minimum requirements and more restrictive requirements may be imposed to mitigate any measurable adverse sound impact associated with a *development*.

B. General Requirements.

1. Unless specifically authorized in an approved *site plan* a *use* on a *lot* shall not produce a sound level that exceeds an average of seventy (70) decibels (db) over any twenty-minute period from eight o'clock a.m. to ten o'clock p.m. and of sixty-five (65) decibels (db) at all other times and measured at a *lot line* of the *lot*.
2. A sound level deemed by a public health authority to be a danger to the public at large in the vicinity of a *use* creating such sound shall be prohibited.
3. All construction equipment in *use* on a construction site shall be equipped with mufflers and used in such a manner as to control the creation of excessive noise.

4. An outdoor sound system located in either a R1, R2, TC, TC2, TCR, or BNR *district* or in another *district* within one thousand (1,000) feet of a R1, R2, TC, TC2, TCR, or BNR *district* boundary shall not be operated at any time after eleven o'clock p.m. or earlier than eight o'clock a.m. local time.

C. Exceptions.

1. Sound levels of construction activities for a *development* pursuant to an approved *site plan* or *building permit* may exceed the limits established in subsection (B)(1) of this section provided such sound does not occur in any of the following circumstances:

a. After ten o'clock p.m.;

b. After construction activity has been completed;

c. After a certificate of compliance or occupancy for the *development* has been issued; or

d. In violation of subsection (B)(2) of this section.

2. Specific sound levels in excess of the requirements of subsection B of this section may be approved in a *site plan*.

3. A governmental *use* is not restricted by the requirements of this section.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.270 Manufactured home as a temporary second principal dwelling on a lot requirements.

A *manufactured home* may be approved by the planning board with *site plan* approval for a *temporary second principal dwelling unit* on a *lot* or as an interim *dwelling unit* for the construction of a new *dwelling unit* or repair of an existing *dwelling unit* in zoning *districts* where *manufactured homes* are permitted under Chapter 17.12.

A. Time Limit Requirements. The planning board will, in each case, establish a maximum time limit for *site plan* approval for a *temporary dwelling unit* based on the needs and circumstances included in each application. The maximum time limit shall be as follows:

1. For a *manufactured home* as a *temporary second principal dwelling on a lot*, the maximum time limit is three years. The planning board may grant a single one year extension of this time limit upon the *applicant* making such request at least ninety (90) days prior to the expiration of the time limit established in the *site plan* approval. Such request shall include a statement that satisfactorily documents significant and exceptional circumstances that support the granting of any such extension.

2. For *manufactured home* as a *temporary interim dwelling* for the construction of a new *dwelling unit* or repair of an existing *dwelling unit* the maximum time limit is eighteen (18) months. The planning board may grant one extension of this time limit to not exceed an additional six months when it finds exceptional extenuating circumstances exist.

B. Plans and Documentation Requirements.

1. Plans and documentation required for an application for a *site plan* approval for a *manufactured home* as a *temporary second principal dwelling unit* or as an interim *dwelling unit* for the construction of a new *dwelling unit* or repair of an existing *dwelling unit* shall be those required for a concept plan prescribed in Chapter 17.32.

2. The planning board may require any other documentation it deems necessary for any required determination or decision on such application.

C. *Density Requirement*. The two *dwelling units* on the *lot* shall be located so as to conform with all *density* and *bulk*

requirements in the *bulk* and *density* control schedule, Section 17.16.020.

- D. Utility Requirement. Utilities shall comply with Section 17.36.110 and shall be provided to the proposed *dwelling unit* as follows:
1. Each unit proposed to be placed on a *lot* for more than two years shall have a potable water supply and sewage treatment system separate from that of the existing *dwelling unit*.
 2. The second *dwelling unit* may connect to the same electric and/or other utility source when the installation is approved by the utility company servicing the *lot* and inspected in accordance with the NYS Uniform Fire Prevention and *Building Code*.
- E. Construction Requirement. The *manufactured home* shall be installed and maintained in accordance with the requirements and conditions set by the planning board in the approval of the *site plan* and applicable provisions of the NYS Uniform Fire Prevention and *Building Code*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.280 Commercial *parking lot* or *structure* requirements.

A. *Density* Requirements.

1. Minimum *lot* size: two acres.
2. Minimum *lot* width: three hundred (300) lineal feet.

B. Access Requirements. Access shall be provided in accordance with Section 17.36.050 and such access shall comply with Section 17.36.070.

C. Prohibited Activity. The following activities or conditions are prohibited at a commercial *parking lot* or *structure*:

1. Storage or *parking* of unlicensed or unregistered motor vehicles;
2. Storage or overnight *parking* of *commercial vehicles*;
3. *Retail use*, auction, or *flea market*;
4. *Drive in theater*;
5. Overnight or long-term camping or occupancy.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.290 *Flea market* requirements.

A. *Density* Requirements.

1. Minimum *lot* size: ten (10) acres.
2. Minimum *lot* width: five hundred (500) feet.

B. *Buffer*, Landscaping and *Barrier* Requirements.

1. Landscaping Requirements.

- a. The entire *lot*, except for area covered by a *structure*, interior *drive* or surfaced as *parking* area and/or other

ancillary *use*, shall be seeded or planted with ground covers and suitable landscaping in accordance with an overall landscaping plan approved as part of an approved *site plan*.

b. All landscaping shall be maintained by the *developer* and future owners in perpetuity.

2. *Buffer Requirements.*

a. A *buffer*, landscaping and *barrier* in accordance with Section 17.36.200 and any conditions of an approved special *use* permit shall be maintained by the *developer* in perpetuity.

b. A minimum *buffer* of one hundred (100) feet in width shall be maintained between a *flea market use* and the *lot line* of an adjoining *lot* containing residential *use*.

c. No *structure*, vendor, or *parking* area shall be permitted within a *buffer*.

3. *Barrier Requirements.* Any material, incidental to the *flea market use* including trash, boxes, goods and wares and other materials stored outside a *building* shall be:

a. Screened from view from any adjoining *lot* or *road* by a *barrier* in accordance with Section 17.36.200 and at least eight feet in height as measured from *finished grade*; and

b. Located in accordance with a design approved in a *site plan*.

C. *Parking Requirements.*

1. No on-road *parking* is permitted.

2. *Parking* spaces and aisles shall be adequately delineated and separated from the vendor areas to ensure safe circulation.

3. The *parking* area shall meet the requirements of the Americans with Disabilities Act (ADA) and the applicable provisions of Section 17.48.010.

D. *Outdoor Sound or Public Address System Requirements.* Unless specifically approved with a special *use* permit, an outdoor sound or public address system is not permitted for a *flea market*.

E. *Sanitary Facility Requirements.*

1. A *flea market* shall provide for adequate and safe public rest room and/or toilet facilities in accordance with the requirements of the NYS Department of Health and the NYS Uniform Fire Prevention and *Building Code*.

2. When *temporary* and/or portable restrooms are to be used to comply with this subsection, no less than four shall be provided.

F. *Other Requirements.*

1. With the exception of a permitted *sign* and/or required rest room facilities, there shall be no permanent or *temporary accessory structure*.

2. All tables, stands and/or other display equipment and all vehicles shall be removed from the *lot* at any time that the *flea market* is not open to the public for any period of time greater than seventy-two (72) hours.

3. No overnight camping or permanent occupancy shall be permitted unless specifically authorized with a special *use* permit.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.300 Airport and heliport requirements.

A. *Density* and Runway Location Requirements.

1. A minimum *lot* size of twenty-five (25) acres is required for a privately owned *airport* and/or *heliport*.
2. To the greatest extent possible a runway shall be aligned and located so that the flight path as measured for distance of one thousand (1,000) feet from the end of the runway does not align directly over any existing residence or other occupied *building* other than those used in support of the *airport* or *heliport use*.

B. *Buffer*, Landscaping and *Barrier* Requirements.

1. Landscaping Requirements.

- a. The entire *lot*, except for area covered by a *structure*, interior *drive*, or surfaced as a *parking* area and/or other ancillary *use*, shall be seeded or planted with ground covers and suitable landscaping in accordance with an overall landscaping plan approved as part of an approved *site plan* or special *use* permit.
- b. All landscaping shall be maintained by the owner or future owners in perpetuity.

2. *Buffer* Requirements.

- a. *Buffer*, landscaping and *barrier* in accordance with Section 17.36.200 and any conditions of an approved *site plan* or special *use* permit shall be maintained by the *developer* in perpetuity.
- b. A minimum *buffer* of one hundred (100) feet in width shall be maintained on the *lot* of the *airport* or *heliport use* and the *lot line* of an adjoining *lot* containing residential *use*.
- c. No *structure* or *parking* area shall be permitted within a *buffer*.

3. *Barrier* Requirements. Any material incidental to the *airport* or *heliport use* including trash, boxes, aircraft parts and other materials stored outside a *building* shall be:

- a. Screened from view from any adjoining *lot* or *road* by a *barrier* in accordance with Section 17.36.200 and at least eight feet in height as measured from *finished grade*; and
- b. Located in accordance with a design approved in a *site plan* or special *use* permit.

C. Maintenance Facility Requirements. All aircraft repair and/or maintenance, with the exception of fueling, shall be conducted inside of a principal or *accessory structure* unless otherwise prohibited by local, state or federal law, rule or regulation.

D. Fuel or Tank Farm Requirements. Fuel or tank farm shall be located a minimum of two hundred (200) feet from any *lot line* and shall meet any applicable local, state or federal law, rule or regulation.

E. Operating Hour Requirement. Standard operations of aircraft shall be limited to between the hours five o'clock a.m. and ten o'clock p.m.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.310 Rod and gun club requirements.

A. *Density* Requirements.

1. Minimum *lot* size: twenty-five (25) acres.

2. Minimum *lot* width: one thousand (1,000) feet.
- B. *Buffer*, Landscaping, and *Barrier* Requirements.
 1. Landscaping Requirements.
 - a. The entire *lot*, except for area covered by a *structure*, interior *drive*, or surfaced as *parking* area and/or other ancillary *use*, shall be seeded or planted with ground covers and suitable landscaping in accordance with an overall landscaping plan approved as part of an approved *site plan*.
 - b. All landscaping shall be maintained by the *developer* in perpetuity.
 2. *Buffer* Requirements.
 - a. A *buffer*, landscaping and *barrier* in accordance with Section 17.36.200 and any conditions of an approved *site plan* shall be maintained by the *developer* in perpetuity.
 - b. A minimum *buffer* of one hundred (100) feet in width shall be maintained on the *lot* of the *rod and gun club use* and the *lot line* of an adjoining *lot* containing residential *use*.
 - c. No *structure* or *parking* area shall be permitted within a *buffer*.
 3. *Barrier* Requirements. Any material incidental to the *rod and gun club use*, including trash, boxes, and other materials, stored outside a *building* shall be:
 - a. Screened from view from any adjoining *lot* or *road* by a *barrier* in accordance with Section 17.36.200 and at least eight feet in height as measured from *finished grade*; and
 - b. Located in accordance with a design approved in a *site plan*.
- C. *Parking* Requirements.
 1. No on-road *parking* is permitted.
 2. A *parking* area shall meet the requirements of the Americans with Disabilities Act (ADA) and the applicable provisions of Section 17.48.010.
- D. Noise Control Requirement. Noise levels generated by such *use* shall be no greater than fifty-five (55) db as measured at the boundaries of the *lot* occupied by such *use* creating noise.
- E. Sanitary Facility Requirement.
 1. A *rod and gun club* shall provide adequate and safe public rest room and/or toilet facilities in accordance with the requirements of the NYS Department of Health and the NYS Uniform Fire Prevention and *Building Code*.
 2. When *temporary* and/or portable restrooms are to be used to comply with this subsection, no less than two shall be provided.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.36.320 *Equipment storage area.*

A. Intent. It is the intent of this section to establish requirements to assure that *equipment storage areas* as an *accessory use* to a residential, business, general, or *industrial use* are developed so as to minimize any foreseeable negative impacts on the neighborhood where they are located. Such an area may prove to deteriorate the quality of the neighborhood through the *development* of visual blight, unwarranted property taxes produced by unkempt property, and negative impacts to the aesthetic *resources*. It is the

intent of this section to, wherever possible; prevent such a *use* from creating a negative impact on the character of the neighborhood, aesthetic *resources*, and/or property values.

B. General Requirements.

1. Where a *lot* contains, or is proposed to contain, a *use* listed in the *use* categories set forth in Section 17.12.010 and wishes to *use* any space of the *parcel* as an accessory *equipment storage area*, shall abide to the requirements set forth in this section.
2. All equipment to be stored in such an area shall be screened either with a privacy *fence*, constructed in accordance with 17.36.060, or type 3 landscaping, as defined in 17.36.200, unless the existing landscaping can be shown to provide adequate visual screening.
3. *Parking*. In accordance with Chapter 17.48.010, off-road *parking area(s)* on the same *parcel* as a residential *use* shall be restricted to noncommercial vehicles only.
4. As defined herein *equipment storage areas* in residential *districts* that exist at the time of the enactment of the local law shall be removed or brought into compliance within three years of the effective date of such local law.
5. Such storage area is restricted to the side and/or rear of the *principal structure* on a *parcel* of land.
6. Such space on a *parcel* of land associated with an unexpired *building permit* shall follow the guidelines set forth in subsection E.

C. General Requirements associated with a residential *use*:

1. Such space, if less than a total of one hundred twenty (120) square feet, outside of a *structure*, if contiguous and/or in aggregate on a *parcel* of land, would not be considered an *equipment storage area*, unless otherwise stated.
2. Storage of equipment and machinery shall not exceed ten (10) feet in height and shall be maintained in a safe and secure condition and location.

D. General Requirements associated with a non-residential *use*:

1. Such space, if less than a total of one thousand five hundred (1,500) square feet or one percent of the *lot* area, whichever is greater, outside of a *structure*, if contiguous and/or in aggregate on a *parcel* of land, would not be considered an *equipment storage area*, unless otherwise stated.
2. Storage of equipment and machinery shall not exceed twenty (20) feet in height and shall be maintained in a safe and secure condition and location.

E. Guidelines for an "*Equipment Storage Area*" associated with an unexpired *building permit*:

1. Such space shall not be deemed an *equipment storage area* if such space is located the lesser of fifty (50) feet or one-quarter the *lot* width from the side and rear *lot lines* and not located in a *front yard*.
2. If such storage area is to be located within the above-mentioned *setbacks*, than such space shall be deemed an *equipment storage area* pursuant to the applicable procedure(s) as indicated in 17.12.010 "*Use Requirement Table*".

(LL No. 6, 2009)

17.36.330 Drive in theater requirements.

A. Allowed *accessory uses*: The following shall be allowed as *accessory uses* for a *Drive In Theater*:

1. Standard or *Fast Food Restaurant*.

2. *Ice Cream Parlor.*
3. Outdoor Recreation and/or Amusement Park *Uses.*
- B. Size: The minimum size requirement for a *drive-in* theater shall be:
 1. For a single screen theater, ten (10) acres.
 2. For each additional screen, five acres.
- C. *Setbacks:* The minimum *setbacks* for a *drive in* theater shall be:

Front: One hundred (100) feet.

Side: Fifty (50) feet.

Rear: Fifty (50) feet.

(LL No. 6, 2009)

17.36.340 Town Center Area requirements.

- A. Intent: It is the intent of this section to promote *development* patterns in the *Town Center Area*, as defined in the town of Big Flats *Development Design Guidelines* that are of a high-*density*, high-intensity, mixed-use nature.
- B. *Use districts:*
 - [1] The regulations described in this section are applicable to the following *zoning districts*:
 - a. TC, Town Center;
 - b. TC2, Town Center 2; and
 - c. TCR, Town Center Residential.
 2. Additionally, these requirements, at the discretion of the planning board, may be applied to any *planned unit development* in the town, as defined in Chapter 17.21 and for any mixed-use *project* within the Business Regional *zoning district*.
- C. Purpose.
 1. The purposes of the regulations in this section are to:
 - a. Provide flexibility in *development* standards for reuse or new *re-development* of vacant or underutilized *lots* within the *Town Center Area* that will protect the character of the hamlet;
 - b. Provide compatibility with residential and nonresidential existing character using architectural and design elements of scale, *color*, and *form* guidelines and standards;
 - c. Promote *development* of a compact, pedestrian-oriented *Town Center Area* consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and residential living environments that provide a broad range of housing types for an array of housing needs;
 - d. Promote a diverse mix of residential, business, commercial, office, institutional, educational, cultural and entertainment activities for workers, visitors, and residents;
 - e. Promote infill *development* and more efficient redevelopment of existing properties within the *Town Center*

Area.

- f. Encourage pedestrian-oriented *development* within walking distance of transit opportunities at densities and intensities that will help to support transit usage where it is achievable;
- g. Promote the health and well-being of residents, employees and visitors by encouraging physical activity, alternative transportation, and greater social interaction;
- h. Create a place that represents a unique, attractive, and memorable destination for residents, employees, and visitors;
- i. Utilize *buildings* and landscaping to create meaningful public spaces; and
- j. Enhance the community's character through the promotion of high-quality urban design.

D. *Lot Coverage and Lot Widths.*

- 1. All residential *development* in the *Town Center Area* is subject to the standards for *lot coverage* as provided in Section 17.16.020.
- 2. All other allowed *uses*, existing *development*, and proposed *development* are subject to the following standards for *lot coverage*:
 - a. The area covered by impervious surfaces (i.e., area covered by *buildings* and pavement) shall be minimized to the greatest extent practicable; best practices for surface water management shall be required pursuant to the *Stormwater Management* Guidelines of the town of Big Flats (Chapter 17.37 of the BFZL).
 - b. The *lot coverage* may be increased by no more than fifty (50) percent if the planning board finds that the *applicant* has, to the greatest extent possible, submitted an application which is in strict compliance with the town of Big Flats *Development Design Guidelines*.
- 3. *Lot widths* should create a relatively symmetrical street cross section that reinforces the public space of the street as a simple, unified public space.

E. *Building Height.*

- 1. All *development* is subject to the following maximum *building* height standards:
 - a. All *building* heights for proposed new *buildings* shall be consistent with the prevailing *building* heights of contiguous *lots* and properties so as to not create a disparate and disproportionate mix of heights. For example, if both properties on each side of the *lot* contain *one-story buildings*, it would not be disparate to create a *two-story building*; however, it would be disproportionately out of character of the neighboring properties to create a *three-story structure*. Or, if the adjacent properties were *two-story*, it would not be out of character to create a *three-story building* or *one-story building*.
 - b. New *structures* shall be no more than three stories.
 - c. In the *TC district*, within five hundred (500) feet of the intersection of Main and Canal Streets, new construction is encouraged to have a minimum of *two-story* façade height. Such second *story* frontage must contain habitable space of at least thirty (30) feet deep, measured from the front of the *building* to the back. Other portions, which compose the rear of the *building, structures* further than fifty (50) feet from the public *road*, or portions that are otherwise not visible from the main *road* are exempt. The intent of this provision is to create a stronger and more traditional public street wall within the traditional hamlet area.
 - i. If a *development* is found to be in compliance with this subdivision, the requirements of the *bulk and density* control may be reduced by no more than fifty (50) percent.

F. Frontage Buildout.

1. To reinforce the street edge, new *development* shall align the front of construction with the front of neighboring *buildings* that are also close to the front *setback line*.
2. The front façade should be kept parallel to the street.
3. Landscaping should be used to reinforce the façade frontage *line* in areas where there are gaps between *buildings*.
4. Additions and renovations to existing *structures* should attempt to increase the *building* frontage prominence whenever possible.
5. *Corner lots* should try to place as much *building* mass near the intersection as possible to help anchor the *lot* and take advantage of the high visibility.
 - a. The creation of a public space on the corner, such as a pocket park, sculptural element, or water feature such as a fountain shall be encouraged.
 - b. Vehicle intensive *uses*, such as gas stations, *drive thru* facilities, or vehicle maintenance facility shall locate the primary *building* at the front of the site to focus visual attention on the architecture of the *structure* itself while using it to shield vehicle areas and accessory *buildings* in the rear.
6. The primary *building* entry should be placed at the front of the *building* (facing the *front lot line*) and be clearly identifiable from the street.
 - a. To allow the main entry area to still be visible from a side or rear *parking lot*, a secondary entry may be provided which is more readily accessible to patrons from the rear or side if desired, provided it is clearly not the primary means of entry. Alternately, an entry or "entry element" such as a porch, gate, ramp, or covered walkway, etc may be used along the front or corner of the *building* so that it is visible in the front, but also visible when approaching from the side or rear *parking* areas.
 - b. If the planning board determines that it is not feasible or desirable to place the main *building* entry directly on the front façade, attempts should be made to ensure that it is still readily visible and faces the main *road* or internal street as much as possible.

G. *Setbacks*.

1. All *development* in the *Town Center Area* is subject to the following *setback* standards:
 - a. No minimum *front yard setback* are required in the *Town Center Area*.
 - b. The maximum *front yard setback* may not exceed the average *front yard* depth of the nearest two *lots* on either side of the subject *lot*.
 - c. If one or more of the *lots* required to be included in the averaging calculation are vacant, such vacant *lots* will be deemed to have a yard depth of zero feet.
 - d. *Lots* fronting a different street than the subject *lot* or separated from the subject *lot* by a street or alley may not be used in computing the average.
 - e. When the subject *lot* is a *corner lot*, the average *setback* will be computed based on the two adjacent *lots* that front on the same street as the subject *lot*.
 - f. When the subject *lot* abuts a *corner lot* fronting on the same street, the average *setback* will be computed based on the abutting *corner lot* and the nearest two *lots* that front on the same street as the subject *lot*.

Calculating *Setbacks* shall be conducted by using the example provided below:

- g. The minimum rear *setback* must be zero to thirty (30) percent of the *lot depth*.

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2. The following exceptions to the maximum front and *side yard setbacks* apply:

- a. A portion of the *building* may be set back from the maximum *setback line* in order to provide an articulated facade or accommodate a *building* entrance feature, if the total area of the space created does not exceed one square foot for every linear foot of *building* frontage, as shown in Figure 7.
- b. A *building* may be set back farther than the maximum *setback* in order to accommodate an outdoor eating area. In order to preserve the continuity of the street wall, the *building* may be set back no more than twelve (12) feet from the front property *line* or at least forty (40) percent of the *building* facade must be located at the maximum *setback line*. The total square footage of an outdoor eating area that is located between a public sidewalk and the *building* facade may not exceed twelve (12) times the *building's* street frontage in linear feet.
- c. Exceptions to Minimum *Side Yard Setbacks*.
 - i. *Side Yard Setbacks* in TCR. Provision for zero *lot-line one-unit dwellings* will be made, provided that a reciprocal access *easement* is recorded for both *lots* and *townhouses* or other attached dwellings, and provided that all dwellings have pedestrian access to the *rear yard* through means other than the *principal structure*.

H. Off-Street *Parking*. All *development* in The *Town Center Area* are subject to the following *parking* standards:

- a. One off-street *parking* space must be provided for each *dwelling unit*.
- b. Off-street *parking* for non-residential *uses* must be provided at a minimum ratio of one space per each one thousand (1,000) square feet of *gross floor area*, or two *parking* spaces, whichever is greater
- c. All off-street *parking* spaces must be located to the rear of the principal *building* or otherwise screened so as to not be visible from public *right-of-way* or residential zoning *districts*.

I. Indoor/Outdoor Operations. All permitted *uses* in the *Town Center Area* must be conducted within *buildings* unless otherwise expressly authorized. This requirement does not apply to off-street *parking* or loading areas, automated teller machines, or outdoor seating areas, alone or in connection with restaurants.

J. Doors and Entrances.

- 1. *Buildings* must have a primary entrance door facing a public sidewalk or a *front yard*, if a public sidewalk does not exist. Entrances at *building* corners may be used to satisfy this requirement.
- 2. *Building* entrances may include doors to individual shops or businesses, lobby entrances, entrances to pedestrian-oriented *plazas*, or courtyard entrances to a cluster of shops or businesses.

K. Roof Design. In considering the appropriate roof design for a *building*, all *applicants* shall refer to the appropriate section(s) of the *Development Design Guidelines*.

L. Vehicle and *Driveway* Access.

- 1. No curb cuts are allowed to cross sidewalks that disrupt pedestrian movements and pose safety threats.

2. Curb cuts will provide pedestrian primary access, clear zones, and circulation.

M. Landscaping Requirements.

1. *Parking Area Landscaping and Screening.* All *parking* and loading areas fronting public streets or sidewalks, and all *parking* and loading areas abutting residential *districts* or *uses* shall provide:

- a. A *landscaped* area at least five feet wide along the public street or sidewalk.
- b. Screening at least three feet in height and not less than fifty (50) percent opaque.
- c. One tree for each twenty-five (25) linear feet of *parking lot* frontage.

2. *Parking area interior landscaping.* The corners of *parking lots*, "islands," and all other areas not used for *parking* or vehicular circulation shall be *landscaped*. Vegetation can include turf grass, native grasses or other perennial flowering plants, vines, shrubs, or trees. Such spaces may include architectural features such as benches, kiosks, or bicycle *parking*.

3. In *parking lots*, an additional *landscaped* area of at least three hundred (300) square feet shall be provided for each twenty-five (25) spaces or fraction thereof, containing one canopy tree. The remainder shall be covered with turf grass, native grasses, or other perennial flowering plants, vines or shrubs.

4. Installation and Maintenance of Landscaping Materials.

- a. All *landscape* materials shall be installed to current industry standards.
- b. Maintenance and replacement of *landscape* materials shall be the responsibility of the property owner and all future owners. *Landscape* maintenance should incorporate environmentally sound management practices, including the *use* of water- and energy-efficient irrigation systems such as drip irrigation, and pruning primarily for plant health and public safety, as well as the replacing of dead materials annually.

5. Materials. All plant materials must meet the minimum standards set by the American National Standards Institute in ANSI Z60.1 American Standard for Nursery Stock. *Landscape* species shall be indigenous or proven adaptable to the climate, but shall not be *invasive species*. Plant materials shall comply with the following standards:

- a. Minimum plant size shall be as specified as indicated in the applicable section of the *Development Design Guidelines*.
- b. *Landscape* materials shall be tolerant of specific site conditions, including but not limited to heat, cold, drought, and salt.
- c. Existing healthy plant material may be utilized to satisfy landscaping requirements, provided it meets the minimum plant size specified above.
- d. *Landscape* materials that are used for screening shall be of a size that allows growth to the desired height and opacity within two years.

N. Pedestrian Circulation.

1. Convenient pedestrian circulation systems that minimize pedestrian-motor vehicle conflicts shall be provided continuously throughout the *Town Center Area*. Where feasible, any existing pedestrian routes through the site shall be preserved and enhanced. All public streets, except for alleys, shall be bordered by sidewalks on both sides of the street, in accordance with the specifications below:

- a. Sidewalks in the *TCR District*: Clear and well-lighted sidewalks, three to five feet in width, depending on

projected pedestrian traffic, shall connect all dwelling entrances to the adjacent public sidewalk.

- b. Sidewalks in the TC and TC2 *Districts*: Clear and well-lighted walkways shall connect *building* entrances to the adjacent public sidewalk and to associated *parking* areas. Such walkways shall be a minimum of five feet in width and comply to all ADA standards.

2. *Development* subject to *site plan* approval or special *use* permit shall post a bond, as determined by the town board, for the completion of sidewalks and shall set aside appropriate real property for a public *easement* for such sidewalk.
(LL No. 6, 2009)

Chapter 17.37

STORMWATER MANAGEMENT AND EROSION AND *SEDIMENT CONTROL*

Sections:

17.37.010 Title.

17.37.020 Findings of fact.

17.37.030 Purpose.

17.37.040 Statutory authority.

17.37.050 Applicability.

17.37.060 Exemptions.

17.37.070 Definitions.

17.37.080 Stormwater pollution prevention plans (SWPPPs).

17.37.090 Performance and design criteria for stormwater management and erosion and sediment control.

17.37.100 Maintenance, inspection and repair of stormwater facilities.

17.37.110 Construction and post construction inspections.

17.37.120 Performance guarantee.

17.37.130 Enforcement and penalties.

17.37.140 Fees for services.

17.37.010 Title.

This chapter shall be known as the *stormwater management* and erosion and *sediment control* law for the town of Big Flats, New York.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.020 Findings of fact.

It is determined that:

- A. Land *development* activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase *stormwater runoff* rates and volumes, flooding, stream *channel* erosion, or sediment transport and deposition;
- B. This *stormwater runoff* contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- C. *Clearing* and *grading* during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- D. Improper design and construction of *stormwater management* practices can increase the velocity of *stormwater runoff* thereby increasing stream bank erosion and sedimentation;
- E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater *recharge* and stream baseflow;

- F. Substantial economic losses can result from these adverse impacts on the waters of the town of Big Flats;
- G. *Stormwater runoff*, soil erosion and *nonpoint source pollution* can be controlled and minimized through the regulation of *stormwater runoff* from land *development* activities;
- H. The regulation of *stormwater runoff* discharges from land *development* activities in order to control and minimize increases in *stormwater runoff* rates and volumes, soil erosion, stream *channel* erosion, and *nonpoint source pollution* associated with *stormwater runoff* is in the public interest and will minimize threats to public health and safety;
- I. Regulation of land *development* activities by means of performance standards governing *stormwater management* and site design will produce *development* compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from *development*.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.030 Purpose.

The purpose of this chapter is to establish minimum *stormwater management* requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the town of Big Flats, and to address the findings of fact in Section 17.37.020 hereof. This chapter seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum Measures 4 and 5 of the SPDES general permit for *stormwater* discharges from municipal separate *stormwater* sewer systems (MS4s), Permit No. GP-02-02 or as amended or revised;
- B. Require land *development* activities to conform to the substantive requirements of the NYS Department of Environmental Conservation state pollutant discharge elimination system (SPDES) general permit for construction activities GP-02-01 or as amended or revised;
- C. Minimize increases in *stormwater runoff* from land *development* activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream *channels*;
- D. Minimize increases in pollution caused by *stormwater runoff* from land *development* activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of *stormwater runoff* which flows from any specific site during and following *development* to the maximum extent practicable; and
- F. Reduce *stormwater runoff* rates and volumes, soil erosion and *nonpoint source pollution*, wherever possible, through *stormwater management* practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.040 Statutory authority.

In accordance with Section 10(1)(ii)(a)(11) of the Municipal Home Rule Law of the state of New York, the town of Big Flats has the authority to enact local laws for the protection and enhancement of its physical and visual environment as well as to promote the health, safety and general welfare of the town. The town of Big Flats may include in such local law provisions for the appointment of any municipal officer, employee(s) or independent contractor to effectuate, administer and enforce such local law.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.050 Applicability.

This chapter shall be applicable to all land *development* activities as defined in Section 17.37.070.

The town of Big Flats shall designate a *stormwater management officer* who shall accept and review all *stormwater pollution prevention plans (SWPPPs)* and forward such plans to the planning board for approval. The *stormwater management officer* may: (1) review the plans; or (2) upon approval by the planning board of the town of Big Flats, engage the services of a New York State licensed professional engineer to review the plans, specifications and related documents pursuant to Chapter 2.12 of Title 2 of the town of Big Flats Municipal Code; or (3) accept the certification of a New York State licensed professional engineer that the plans conform to the requirements of this chapter. The *stormwater management officer* shall then forward the plans to the planning board for approval. For purposes of this chapter, the *stormwater management officer* shall be appointed by the town board. The fee for review of the SWPPP by the town of Big Flats shall be set by resolution of the town board. Fees for review of the SWPPP by a third party shall be passed on directly to the *applicant*.

All land *development* activities subject to review and approval by the town of Big Flats Planning Board under the town's *stormwater management* and erosion and *sediment control* law shall be reviewed subject to the standards contained in this chapter.
(LL No. 9, 2007 § 1 (part))
(LL No. 6, 2009)

17.37.060 Exemptions.

The following activities shall be exempt from review under this chapter:

- A. *Agricultural activity* as defined in this chapter;
- B. *Silvicultural activity* except that landing areas and log haul *roads* are subject to this chapter;
- C. Routine maintenance activities that disturb less than five acres and are performed to maintain the original *line* and grade, hydraulic capacity or original purpose of a facility;
- D. Repairs to any *stormwater management* practice or facility deemed necessary by the *stormwater management officer*;
- E. Any part of a subdivision if a plat for the subdivision has been approved by the town of Big Flats on or before the effective date of this chapter;
- F. Land *development* activities for which a *building permit* has been approved on or before the effective date of this chapter;
- G. *Cemetery* graves;
- H. Installation of *fence, sign, telephone, and electric poles* and other kinds of posts or poles;
- I. Emergency activity immediately necessary to protect life, property or natural *resources*;
- J. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for *use* by that person and his or her *family*;
- K. Landscaping and horticultural activities in connection with an existing *structure*.

(LL No. 9, 2007 § 1 (part))
(LL No. 6, 2009)

17.37.070 Definitions.

The terms used in this chapter or in documents prepared or reviewed under this chapter shall have the meaning as set forth in this section.

Department means the New York State Department of Environmental Conservation.

Design Manual means the New York State *Stormwater Management Design Manual*, most recent version including applicable updates, that serves as the official guide for *stormwater management* principles, methods and practices.

Stormwater management officer means the code enforcement office or any similar official as appointed a *stormwater management officer* by the town board.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.080 Stormwater pollution prevention plans (SWPPPs).

A. *Stormwater Pollution Prevention Plan Requirement.* No application for approval of a *land development activity* shall be reviewed until the planning board or the *stormwater management officer*, accordingly, has received a *stormwater pollution prevention plan (SWPPP)* prepared in accordance with the specifications in this chapter.

B. *Contents of Stormwater Pollution Prevention Plans.* All SWPPPs shall provide the following background information and erosion and *sediment controls*:

1. Background information about the scope of the *project*, including location, type and size of *project*;
2. Site map/construction drawing(s) for the *project*, including a general location map. At a minimum, the site map should show the total site area; all *improvements*; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of on-site material, waste, borrow or *equipment storage areas*; and location(s) of the *stormwater* discharge(s); site map should be at a scale no smaller than one inch equals one hundred (100) feet (e.g., one inch equals five hundred (500) inches is smaller than one inch equals one hundred (100) inches);
3. Description of the soil(s) present at the site;
4. Construction *phasing* plan describing the intended sequence of construction activities, including *clearing* and grubbing, excavation and *grading*, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and *Sediment Control (Erosion Control Manual)*, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
5. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in *stormwater runoff*;
6. Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to *stormwater*, and spill -- prevention and response;
7. *Temporary* and permanent structural and vegetative measures to be used for soil *stabilization*, runoff control and *sediment control* for each stage of the *project* from initial land *clearing* and grubbing to *project* close-out;
8. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and *sediment control* practice;
9. Dimension, material specifications and installation details for all erosion and *sediment control* practices, including the siting and sizing of any *temporary* sediment basins;
10. *Temporary* practices that will be converted to permanent control measures;
11. Implementation schedule for staging *temporary* erosion and *sediment control* practices, including the timing of initial placement and *duration* that each practice should remain;

12. Maintenance schedule to ensure continuous and effective operation of the erosion and *sediment control* practice;
13. Name(s) of the receiving water(s);
14. Delineation of SWPPP implementation responsibilities for each part of the site;
15. Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
16. Any existing data that describes the *stormwater runoff* at the site.

Land *development* activities as defined in Section 17.04.060 and meeting Condition "A," "B" or "C" below shall also include water quantity and water quality controls (post-construction *stormwater runoff* controls) as set forth in subsection (B)(3) below as applicable:

Condition A - *Stormwater runoff* from land *development* activities discharging a pollutant of concern to either an impaired water identified on the department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in *stormwater* have been identified as a source of the impairment.

Condition B - *Stormwater runoff* from land *development activities* disturbing five or more acres.

Condition C - *Stormwater runoff* from land *development activity* disturbing between one-half and five acres of land during the course of the *project*, exclusive of the construction of one or two unit dwellings and construction activities at agricultural properties.

SWPPP requirements for Conditions A, B and C:

1. All information in subsection B of this section;
2. Description of each post-construction *stormwater management* practice; site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction *stormwater management* practice;
3. Hydrologic and hydraulic analysis for all structural components of the *stormwater management* system for the applicable design storms;
4. Comparison of post-*development stormwater runoff* conditions with pre-*development* conditions;
5. Dimensions, material specifications and installation details for each post-construction *stormwater management* practice;
6. Maintenance schedule to ensure continuous and effective operation of each post-construction *stormwater management* practice;
7. Maintenance *easements* to ensure access to all *stormwater management* practices at the site for the purpose of inspection and repair. *Easements* shall be recorded on the plan and shall remain in effect with transfer of title to the property;
8. Inspection and *maintenance agreement* binding on all subsequent *landowners* served by the on-site *stormwater management* measures in accordance with Section 17.37.100 of this chapter; and
9. For Condition A, the SWPPP shall be prepared by a New York State licensed professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all *stormwater management* practices meet the requirements in this chapter.

C. Other Environmental Permit. The *applicant* shall assure that all other applicable environmental permits have been or will be acquired for the *land development activity* prior to approval of the final *stormwater* design plan.

D. Contractor Certification. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or *stormwater management* practice installation shall sign and date a copy of the following certification statement before undertaking any *land development activity*: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the *Stormwater Pollution Prevention Plan*. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

The certification statement(s) shall become part of the SWPPP for the *land development activity*.

E. A copy of the SWPPP shall be retained at the site of the *land development activity* during construction from the date of initiation of construction activities to the date of final *stabilization*.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.090 Performance and design criteria for *stormwater management* and erosion and *sediment control*.

All *land development activities* shall be subject to the following performance and design criteria:

A. Technical Standards. For the purpose of this chapter, the following documents shall serve as the official guides and specifications for *stormwater management*. *Stormwater management* practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this section:

1. The New York State *Stormwater Management* Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the Design Manual).
2. New York Standards and Specifications for Erosion and *Sediment Control*, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the *Erosion Control Manual*).

B. Equivalence to Technical Standards. Where *stormwater management* practices are not in accordance with technical standards, the *applicant* or *developer* must demonstrate equivalence to the technical standards set forth in subsection A of this section and the SWPPP shall be prepared by a New York State licensed professional engineer.

C. Water Quality Standards. Any *land development activity* shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in *surface waters of the state of New York*.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.100 Maintenance, inspection and repair of *stormwater* facilities.

A. Maintenance and Inspection During Construction. The *applicant* or *developer* of the *land development activity* or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the *applicant* or *developer* to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by fifty (50) percent.

For *land development activities* as defined in Section 17.04.060 and meeting Condition A, B or C in Section 17.37.080(B)(2), the *applicant* shall have a New York State licensed professional engineer conduct site inspections and document the effectiveness of all erosion and *sediment control* practices every seven days and within twenty-four (24) hours of any storm event producing one-half inch of precipitation or more. Inspection reports shall be maintained in a site log book.

The *applicant* or *developer* or their representative shall be on site at all times when construction or *grading* activity takes

place and shall inspect and document the effectiveness of all erosion and *sediment control* practices.

B. *Maintenance Easement(s)*. Prior to the issuance of any approval that has a *stormwater management* facility as one of the requirements, the *applicant* or *developer* must execute a *maintenance easement* agreement that shall be binding on all subsequent *landowners* served by the *stormwater management* facility. The *easement* shall provide for access to the facility at reasonable times for periodic inspection by the town of Big Flats to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The *easement* shall be recorded by the grantor in the office of the *county clerk* after approval by the counsel for the town.

C. *Maintenance after Construction*.

1. The owner or operator of permanent *stormwater management* practices installed in accordance with this chapter shall ensure they are operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes as a minimum, the following:

- a. A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
- b. Written procedures for operation and maintenance and training new maintenance personnel.
- c. Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Section 17.37.090(C).

D. *Maintenance Agreements*. The town of Big Flats shall approve a formal *maintenance agreement* for *stormwater management* facilities binding on all subsequent *landowners* and recorded in the office of the *county clerk* as a deed restriction on the property prior to final plan approval. The *maintenance agreement* shall be consistent with the terms and conditions of Schedule B of this chapter entitled *Sample Stormwater Control Facility Maintenance Agreement*. The town of Big Flats, in lieu of a *maintenance agreement*, at its sole discretion may accept *dedication* of any existing or future *stormwater management* facility, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by *easement* or otherwise, for inspection and regular maintenance.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.110 Construction and post-construction inspections

A. *Erosion and Sediment Control Inspection*. The town of Big Flats *stormwater management officer* may require such inspections as necessary to determine compliance with this chapter and may either approve that portion of the work completed or notify the *applicant* wherein the work fails to comply with the requirements of this chapter and the *stormwater pollution prevention plan (SWPPP)* as approved. To obtain inspections, the *applicant* shall notify the town of Big Flats code enforcement official at least forty-eight (48) hours before any of the following as required by the *stormwater management officer*:

1. Start of construction;
2. Installation of sediment and erosion control measures;
3. Completion of site *clearing*;
4. Completion of rough *grading*;
5. Completion of final *grading*;
6. Close of the construction season;
7. Completion of final landscaping;

8. Successful establishment of landscaping in public areas.

If any violations are found, the *applicant* and *developer* shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site *stabilization* until any violations are corrected and all work previously completed has received approval by the *stormwater management officer*.

B. *Stormwater Management Practice Inspections*. The town of Big Flats *stormwater management officer* or a qualified designee is responsible for conducting inspections of *stormwater management practices (SMPs)*. All *applicants* are required to submit "as built" plans for any *stormwater management practices* located on-site after final construction is completed. The plan must show the final design specifications for all *stormwater management* facilities and must be certified by a New York State licensed professional engineer.

C. *Inspection of Stormwater Facilities After Project Completion*. Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of federal water or sediment quality standards or the SPDES *stormwater* permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other *stormwater management* practices.

D. *Submission of Reports*. The town of Big Flats *stormwater management officer* may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.

E. *Right-of-Entry for Inspection*. When any new *stormwater management* facility is installed on private property or when any new connection is made between private property and the public *stormwater* system, the *landowner* shall grant to the town of Big Flats the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in subsection C of this section.

(LL No. 9, 2007 § 1 (part))

(LL No. 6, 2009)

17.37.120 Performance guarantee.

A. *Construction Completion Guarantee*. In order to ensure the full and faithful completion of all *land development activities* related to compliance with all conditions set forth by the town of Big Flats in its approval of the *stormwater pollution prevention plan*, the town of Big Flats may require the *applicant* or *developer* to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the *project* and names the town of Big Flats as the beneficiary. The security shall be in an amount to be determined by the town of Big Flats based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the town of Big Flats, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the town of Big Flats. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

B. *Maintenance Guarantee*. Where *stormwater management* and erosion and *sediment control* facilities are to be operated and maintained by the *developer* or by a corporation that owns or manages a commercial or industrial facility, the *developer*, prior to construction, may be required to provide the town of Big Flats with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all *stormwater management* and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the *developer* or *landowner* fails to properly operate and maintain *stormwater management* and erosion and *sediment control* facilities, the town of Big Flats may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

C. *Recordkeeping*. The town of Big Flats shall require entities subject to this chapter to maintain records demonstrating compliance with this chapter.

(LL No. 9, 2007 § 1 (part))
(LL No. 6, 2009)

17.37.130 Enforcement and penalties.

A. Notice of Violation. When the town of Big Flats determines that a *land development activity* is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the *landowner*. The notice of violation shall contain:

1. The name and address of the *landowner, developer or applicant*;
2. The address when available or a description of the *building, structure* or land upon which the violation is occurring;
3. A statement specifying the nature of the violation;
4. A description of the remedial measures necessary to bring the *land development activity* into compliance with this chapter and a time schedule for the completion of such remedial action;
5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.

B. *Stop Work Orders*. The town of Big Flats may issue a *stop work order* for violations of this chapter. Persons receiving a *stop work order* shall be required to halt all *land development activities*, except those activities that address the violations leading to the *stop work order*. The *stop work order* shall be in effect until the town of Big Flats confirms that the *land development activity* is in compliance and the violation has been satisfactorily addressed. Failure to address a *stop work order* in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter.

C. Violations. Any *land development activity* that is commenced or is conducted contrary to this chapter, may be restrained by injunction or otherwise abated in a manner provided by chapter.

D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine of at least fifty dollars (\$50.00) and not exceeding three hundred fifty dollars (\$350.00) for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars (\$350.00) nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed fifteen (15) days, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed fifteen (15) days, or both. Each week's continued violation shall constitute a separate additional violation.

E. Withholding of Certificate of Occupancy. If any *building* or *land development activity* is installed or conducted in violation of this chapter the *stormwater management officer* may prevent the occupancy of said *building* or land.

F. If a *stormwater management* facility is not maintained in accordance with the approved *stormwater management* plan, the town reserves the right to take actions in accordance with Section 17.32.190.

G. Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the town of Big Flats may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

(LL No. 9, 2007 § 1 (part))
(LL No. 6, 2009)

17.37.140 Fees for services.

The town of Big Flats shall require any person undertaking *land development activities* regulated by this chapter to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the town of Big Flats or performed by a third party for the town of Big Flats, pursuant to Chapter 2.12 of Title 2 of the town of Big Flats Municipal Code. The

fee for review of the SWPPP, inspections, and SMP maintenance performed by the town of Big Flats shall be set by resolution of the town board. Fees for review of the SWPPP by a third party shall be passed on directly to the *applicant*.
 (LL No. 9, 2007 § 1 (part))
 (LL No. 6, 2009)

Schedule A

Stormwater Management Practices Acceptable for Water Quality

(From: New York State *Stormwater Management* Design Manual, Table 5.1)

Group	Practice	Description
Pond	Micropool Extended Detention Pond (P-1)	Pond that treats the majority of the water quality volume through extended detention, and incorporates a micropool at the outlet of the pond to prevent sediment resuspension.
Wet Pond (P-2)	Pond that provides storage for the entire water quality volume in the permanent pool.	
Wet Extended Detention Pond (P-3)	Pond that treats a portion of the water quality volume by detaining storm flows above a permanent pool for a specified minimum detention time.	
Multiple Pond System (P-4)	A group of ponds that collectively treat the water quality volume.	
Pocket Pond (P-5)	A <i>stormwater</i> wetland design adapted for the treatment of runoff from small drainage areas that has little or no baseflow available to maintain water elevations and relies on groundwater to maintain a permanent pool.	
Wetland	Shallow Wetland (W-1)	A wetland that provides water quality treatment entirely in a shallow marsh.
Extended Detention Wetland (W-2)	A wetland system that provides some fraction of the water quality volume by detaining storm flows above the marsh surface.	
Pond/Wetland System (W-3)	A wetland system that provides a portion of the water quality volume in the permanent pool of a wet pond that precedes the marsh for a specified minimum detention time.	

Pocket Wetland (W-4)	A shallow wetland design adapted for the treatment of runoff from small drainage areas that has variable water levels and relies on groundwater for its permanent pool.	
<i>Infiltration</i>	<i>Infiltration</i> Trench (I-1)	An <i>infiltration</i> practice that stores the water quality volume in the void spaces of a gravel trench before it is infiltrated into the ground.
<i>Infiltration</i> Basin (I-2)	An <i>infiltration</i> practice that stores the water quality volume in a shallow depression before it is infiltrated into the ground.	
Dry Well (I-3)	An <i>infiltration</i> practice similar in design to the <i>infiltration</i> trench, and best suited for treatment of rooftop runoff.	
Filtering Practices	Surface Sand Filter (F-1)	A filtering practice that treats <i>stormwater</i> by settling out larger particles in a sediment chamber, and then filtering <i>stormwater</i> through a sand matrix.
Underground Sand Filter (F-2)	A filtering practice that treats <i>stormwater</i> as it flows through underground settling and filtering chambers.	
Perimeter Sand Filter (F-3)	A filter that incorporates a sediment chamber and filter bed as parallel vaults adjacent to a <i>parking lot</i> .	
Organic Filter (F-4)	A filtering practice that <i>uses</i> an organic medium such as compost in the filter in place of sand.	
Bioretention (F-5)	A shallow depression that treats <i>stormwater</i> as it flows through a soil matrix, and is returned to the storm drain system.	
Open Channels	Dry Swale (O-1)	An open drainage <i>channel</i> or depression explicitly designed to detain and promote the filtration of <i>stormwater runoff</i> into the soil media.
Wet Swale (O-2)	An open drainage <i>channel</i> or depression designed to retain water or intercept groundwater for water quality treatment.	

Schedule B

SAMPLE *STORMWATER* CONTROL FACILITY
MAINTENANCE AGREEMENT

Whereas, the Municipality of _____ ("Municipality") and the _____ ("facility owner") want to enter into an agreement to provide for the long term maintenance and continuation of *stormwater* control measures approved by the Municipality for the below named *project*, and

Whereas, the Municipality and the facility owner desire that the *stormwater* control measures be built in accordance with the approved *project* plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Municipality and the facility owner agree as follows:

1. This agreement binds the Municipality and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved *project* plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the *stormwater* control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The *stormwater* control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the *stormwater* control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the *stormwater* control measures, not less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the state of New York. The inspecting engineer shall prepare and submit to the Municipality within thirty (30) days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the *stormwater* control measures.
5. The facility owner shall not authorize, undertake or permit *alteration*, abandonment, modification or discontinuation of the *stormwater* control measures except in accordance with written approval of the Municipality.
6. The facility owner shall undertake necessary repairs and replacement of the *stormwater* control measures at the direction of the Municipality or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Municipality within thirty (30) days of the date of this agreement, a security for the maintenance and continuation of the *stormwater* control measures in the *form* of (a Bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the *county* Clerk, *county* of _____ together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to _____.
9. If ever the Municipality determines that the facility owner has failed to construct or maintain the *stormwater* control measures in accordance with the *project* plan or has failed to undertake corrective action specified by the Municipality or by the inspecting engineer, the Municipality is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the *stormwater* control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective _____.

_____	_____
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ACCESSORY STRUCTURE AND USE REQUIREMENTS*

Sections:

17.40.010 Intent.

17.40.020 Accessory structure requirements.

17.40.030 Accessory use requirements--General restrictions.

17.40.040 Special design.

* Prior history: LL No. 2, 1997.

17.40.010 Intent.

An *accessory structure* or *use* shall not create an impact on the environment that is any more significant than that of the *principal use*. The requirements established in this chapter are intended to provide for fire safety, open space, and accessibility to sunlight and views.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.40.020 Accessory structure requirements.

A. General Requirements.

1. When a *principal use* is permitted as of right in accordance with Section 17.12.010, an accessory *building* and/or *use* associated with the *principal use* and constructed in accordance with this chapter shall also be permitted as of right.
2. When a *principal use* is permitted under *site plan* approval in accordance with Section 17.12.010, an accessory *building* and/or *use* associated with the *principal use* shall also require *site plan* approval and be constructed in accordance with this section.
3. The construction or placement, on a *lot*, of an accessory *building* in excess of one hundred twenty (120) square feet in area shall require a *building permit* issued by the code enforcement officer.

B. Size and Number of Accessory Buildings.

1. An accessory *building* associated with the following specified *principal uses* shall comply with the following maximum requirements:

Specific <i>principal use</i> listed in Section 17.12.010	Maximum <i>building footprint of an individual accessory building</i>	Maximum accessory <i>building height</i>	Maximum number of accessory <i>buildings associated with a principal use</i>	Maximum permitted cumulative square feet of all accessory <i>buildings associated with a principal use</i>
<i>Alternative dwelling park, two-unit dwelling, or multi-unit dwelling</i>	150 sq. feet	20 feet	One for each <i>dwelling unit</i>	Total <i>dwelling units</i> times 150 sq. feet
<i>Airport</i> or <i>heliport</i>	10 percent of the <i>floor area</i> of <i>principal building</i>	35 feet	As permitted in an approved <i>site plan</i>	As permitted in an approved <i>site plan</i>
Agriculture plant or animal or <i>private stable</i>	As permitted under the NYS Uniform Fire Prevention and <i>Building Code</i>	35 feet	No restriction	As permitted under the NYS Uniform Fire Prevention and <i>Building Code</i>
<i>Agri-business, or commercial stable</i>	10 percent of the <i>floor area</i> of <i>principal building</i>	35 feet	As permitted in an approved <i>site plan</i>	As permitted in an approved <i>site plan</i>
Golf or ski facility	4,000 sq. feet	20 feet	Two	6,000 sq. feet

Government	As permitted under the NYS Uniform Fire Prevention and <i>Building Code</i>	35 feet	No restriction	No restriction
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2. An accessory *building* associated with a *principal use* other than as specified in subsection (B)(1) of this section shall comply with following maximum requirements:

<i>District</i>	Specific <i>principal use</i> listed in Section 17.12.010	Maximum <i>building footprint of an individual accessory building</i>	Maximum accessory <i>building height</i>	Maximum number of accessory <i>buildings associated with a principal use</i>	Maximum permitted cumulative square feet of all accessory <i>buildings associated with a principal use</i>
R1, R2, TC & TCR	Residential <i>use</i>	900 sq. feet	20 feet	Two	1,000 sq. feet
R1 & R2	General <i>use</i>	1,000 sq. feet	20 feet	Two	1,000 sq. feet
TC, TC2, TCR, BN, BN2 & BNR	General or business <i>use</i>	1,000 sq. feet	24 feet	One for each general or business <i>use</i> on a <i>lot</i>	Number of general or business <i>use</i> on a <i>lot</i> times 1,000 sq. feet
RU	Residential <i>use</i>	1,500 sq. feet	24 feet	Three	3,000 sq. feet
RU, BR, ABD, CL & I	General <i>use</i>	5 percent of the <i>floor area</i> of principal <i>building</i>	30 feet	As permitted in an approved <i>site plan</i>	5 percent of the <i>floor area</i> of principal <i>building</i>
C & RCD	General or business <i>use</i>	1,000 sq. feet	30 feet	Two	2,000 sq. feet
BR, ABD, CL & I	Business <i>use</i>	10 percent of the <i>floor area</i> of principal <i>building</i>	35 feet	As permitted in an approved <i>site plan</i>	10 percent of the <i>floor area</i> of principal <i>building</i>
BNR, ABD, CL, & I	<i>Industrial use</i>	15 percent of the <i>floor area</i> of principal <i>building</i>	35 feet	As permitted in an approved <i>site plan</i>	15 percent of the <i>floor area</i> of principal <i>building</i>

C. 1. Accessory *Building Location*.

- a. An accessory *building* shall not be located between the front *building line* of a *structure* and the *front lot line*.
- b. An accessory *building* shall not be located in a *buffer*.
- c. An accessory *building* associated with a nonconforming residential *use* located in a BN, BR, ABD, CL, I or C *district* shall be located in accordance with the requirements for a residential *use* in a R1 *district* as set forth in subsection (C)(2) of this section.

2. Accessory *Building Setback*. An accessory *building* shall have a minimum *setback* distance from a *lot line* as specified below:

Accessory <i>Building Setback</i> Requirements				
<i>District principal use</i>	An accessory <i>building</i> 120 sq. feet or less in area		An accessory <i>building</i> more than 120 sq. feet in area	
<i>Side yard setback</i>	<i>Rear yard setback</i>	<i>Side yard setback</i>	<i>Rear yard setback</i>	
RU, C & RCD				
For a residential <i>use</i> listed in Section 17.12.010	10 feet	10 feet	20 feet	10 feet
For a general or business <i>use</i> listed in Section 17.12.010	10 feet	10 feet	20 feet	10 feet
R1, R2, TCR, TC, TC2, BN & BNR				

For a residential <i>use</i> listed in Section 17.12.010	5 feet	5 feet	10 feet	5 feet
For a general <i>use</i> listed in Section 17.12.010	5 feet	5 feet	10 feet	5 feet
BN2 BR, ABD, CL & I				
For a general <i>use</i> listed in Section 17.12.010	5 feet	5 feet	10 feet	10 feet
TC, TC2, BN, BN2, BNR, BR, ABD, CL & I				
For a business <i>use</i> listed in Section 17.12.010	5 feet	5 feet	10 feet	10 feet
BNR, BR, ABD, CL & I				
For an <i>industrial use</i> listed in Section 17.12.010	5 feet	5 feet	25 feet	25 feet

3. *Accessory Building setback from Principal Building.* An accessory *building* shall not be constructed closer to a principal *building* than either a distance of ten (10) feet.
 4. *Location of Certain Accessory Structures other than Buildings.* In any *district* an *accessory structure* associated with a residential *use* listed in Section 17.12.010 other than a *building*, and in the *form* of or similar to the following *accessory structures*, are prohibited in a front or *side yard*:
 - a. Swimming pool;
 - b. Sauna or hot tub;
 - c. Solid fuel burning stove or appliance;
 - d. Court for tennis, racquetball, or other sport;
 - e. Animal pen or enclosure; and
 - f. Above ground storage of solid or liquid fuel including wood, propane, and fuel oil.
 - g. Solar energy conversion system.
 - h. Wind energy conversion system.
- D. *Exceptions to Accessory Building Locations.*
1. *Exception to accessory building setback requirements with respect to a lot and adjoining lot having a common lot line* is as follows:
 - a. The minimum accessory *building setback* requirements as set forth in subsection (C)(2) of this section may be reduced under the following conditions:
 - i. When the adjoining *lot* has an existing accessory *building* located adjacent to the common *lot line* and within less than the minimum accessory *building setback* as set forth in subsection (C)(2) of this section;
 - ii. When a *lot* proposed to contain an accessory *building* adjacent to the common *lot line* is one hundred fifty feet (150) feet or less in *lot width*.
 - b. The minimum accessory *building setback* requirements as set forth in subsection (C)(2) of this section for the proposed, accessory *building* may be reduced to a minimum distance that is the average of:

- i. The unreduced required accessory *building setback* set forth in subsection (C)(2) of this section; and
 - ii. The actual distance between the common *lot line* and the existing accessory *building* located on the adjoining *lot*.
- 2. Exception to the Location of Certain *Accessory Structures* Other than *Buildings*. The following are exceptions to the requirements of subsection (C)(4) of this section:
 - a. Certain *accessory structures* located on a *lot* in accordance with an approved *site plan*;
 - b. An enclosure of any portion of a yard for a dog or cat, but not including a pen, dog run, or *kennel*; or
 - c. An animal pen or enclosure used in conjunction with the keeping of or maintaining agriculture livestock and/or horses, or an agriculture *use*.

(LL No. 2, 2003 (part))

17.40.030 Accessory use requirements--General restrictions.

A. An accessory *building* containing an *accessory use* shall comply with the requirements of Section 17.40.020.

B. An *accessory use* not involving a *structure* is prohibited in a *front yard* except as provided in an approved *site plan*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.40.040 Special design.

A detached garage or carport as part of a *building* group may be permitted in a *front yard* on a *lot* containing the *building* group in accordance with an approved *site plan*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

Chapter 17.44

ALTERNATIVE DWELLING PARKS*

Sections:

17.44.010 Alternative dwelling park defined.

17.44.020 Intent.

17.44.030 Special site plan requirement.

17.44.040 Requirements for a lot containing an *alternative dwelling park*.

17.44.050 Access requirements.

17.44.060 Vehicular and pedestrian circulation requirements generally.

17.44.070 Dead end road, drive, and/or internal drive requirements.

17.44.080 Buffer, landscape, and barrier requirement.

17.44.090 Fire protection equipment and design.

17.44.100 Solid waste storage and removal requirement.

17.44.110 Recreation parks, playgrounds and open space in an alternative dwelling park.

17.44.120 Facility maintenance requirements.

17.44.130 Sales or model dwelling unit requirements.

17.44.140 Accessory building and use requirements.

17.44.150 Utility requirements.

17.44.160 Individual dwelling unit site requirements.

17.44.170 Dwelling unit installation requirements.

17.44.180 Modification of an existing or approved alternative dwelling park.

* Prior history: LL No. 2, 1997.

17.44.010 Alternative dwelling park defined.

Any existing trailer or *manufactured home park*, previously approved under the provisions of an applicable local law or ordinance that is repealed in Article 17 of the local law codified in this title, is, for the purposes of this chapter, defined as an *alternative dwelling park*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.020 Intent.

The intent of this chapter is to ensure that those residents of Big Flats who may reside in an *alternative dwelling park* are provided with a safe and secure environment in which to live. The creation of reasonable *bulk* and *density*, traffic control, fire protection, and utility requirements will provide a degree of protection of health, safety, and welfare for these residents equal to that of any other style of residential living. These requirements are also provided to protect *existing uses* that may adjoin a proposed *alternative dwelling park* from significant adverse impacts associated with the *development* of an *alternative dwelling park*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.030 Special *site plan* requirement.

Any extension or significant modification of or change to the layout, *bulk*, *density*, utilities, *drives*, *internal drives*, or *roads* for an existing *alternative dwelling park* shall require a *site plan* amendment in accordance with Chapter 17.32 and the provisions of this chapter.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.040 Requirements for a *lot* containing an *alternative dwelling park*.

A. *Density* Requirements.

1. Minimum *lot* area for an *alternative dwelling park* is ten (10) acres.

2. *Lot coverage* shall be calculated using the total usable acreage for the entire *lot* proposed to contain an *alternative dwelling park*.

3. The total *lot coverage* shall not exceed forty (40) percent.

4. The *density* requirements for each individual *dwelling unit* site shall be in accordance with Section 17.44.160.

B. *Dwelling Unit Density* Requirement.

1. The planning board shall determine in a *site plan* if the *dwelling unit density* and placement on a *lot* is appropriate in consideration of natural land features, potential for environmental impact, traffic, and pedestrian movements and consistency with the town of Big Flats Comprehensive Plan.

2. The gross *dwelling unit density* shall be calculated using the total usable acreage and shall, in no instance, exceed five *dwelling units* for any acre, or maximum of one hundred fifty (150) *dwelling units*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.050 Access requirements.

A *site plan* for an *alternative dwelling park* shall include provisions for compliance with the following minimum access requirements:

A. A minimum of two vehicular *drives* shall be provided to an *alternative dwelling park*.

- B. The *drives* may originate from any *road* except a private or *primary road*.
- C. The intersection of one *drive* with a *road* shall be separated a minimum distance of five hundred (500) feet from any other *drive* servicing the *lot*.
- D. Each *drive* shall either directly align with an opposing *drive*, or shall be off-set at a minimum distance as established by a traffic study.
- E. Each *drive* shall be located a minimum distance of five hundred (500) feet from any intersection of *roads*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.060 Vehicular and pedestrian circulation requirements generally.

A. A *site plan* application for an *alternative dwelling park* shall document that there are adequate and safe provisions for internal vehicular and pedestrian traffic movements. A traffic study may be required as the basis of design for the site access and internal *road* and pedestrian access or circulation. The documentation in the *site plan* application shall, as a minimum, provide for:

1. Proper pavement width for emergency vehicles;
2. Safe pedestrian passage along and across *drives*, *internal drives* and *driveways*, either on sidewalks, internal trails, or on shoulders adjacent to *drives* and *internal drives*;
3. Adequate storage space for snow removal;
4. The *parking* of vehicles on locations other than *roads*, *drives*, and *internal drives*.

B. The documentation associated with internal vehicular movements, *parking*, and pedestrian circulation in an *alternative dwelling park* shall include as a minimum the following details:

1. *Drive*, *internal drive*, *driveway* and/or *road* construction drawings in compliance with Sections 17.36.040, 17.36.050 and 17.36.070 including details such as alignment, width, profile, construction cross section, wear surface specification, drainage, and traffic control device or *signs* and pavement marking;
2. *Parking* area construction drawing including surface design and markings;
3. Plans for emergency vehicle, public transportation, and school bus access;
4. Pedestrian access design including sidewalks, walkways, cross walks, *signs*, and pavement marking with details for access to any public or common area including school bus or public transportation stop, parks, and/or recreational *structure*;
5. A design for the access of U.S. postal delivery of mail and the access for tenants to receive or pick up their individual mail;
6. A *drive* and/or *internal drive* maintenance plan having provisions for maintaining the *drive* surface, snow removal and storage, continuous access for all emergency vehicles and *parking* control.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.070 Dead end road, drive, and/or internal drive requirements.

A. A *road* or *drive* located on a *lot* containing an *alternative dwelling park* and providing access to an individual *dwelling unit lot* within the *alternative dwelling park* shall be continuous and without end.

- B. An *internal drive* located on a *lot* containing an *alternative dwelling park* and that exceeds five hundred (500) feet in

length or provides access to more than five *dwelling units* shall be continuous and have two separate and distinct connections with a *drive*.

C. An *internal drive* located on a *lot* containing an *alternative dwelling park* and that is over one hundred and fifty (150) feet in length or provides access to more than three *dwelling units* shall be provided with a turn-around suitable for the expected vehicular traffic including emergency vehicles.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.080 Buffer, landscape, and barrier requirement.

A. A *lot* containing an *alternative dwelling park* shall have and maintain *buffers*, landscaping and *barriers* along perimeter of the *lot* that complies with the same requirements as those for a business *use* set in Section 17.36.200.

B. A *lot* containing an individual *dwelling unit* within an *alternative dwelling park* shall have and maintain *buffers*, landscaping and *barriers* along perimeter of the *lot* that complies with the same requirements as those for a residential *use* set in Section 17.36.200.

C. The planning board may, in an approved *site plan*, require greater *buffer*, *landscape*, and *barrier* requirements to mitigate those impacts associated with an *alternative dwelling park development* on an adjoining *lot*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.090 Fire protection equipment and design.

A. An *alternative dwelling park development site plan* shall include design provisions for firefighting. These provisions include:

1. Firefighting vehicle access;
2. *Building* spacing and *setbacks*;
3. Fire hydrant location and fire hose dimension;
4. Emergency shut off of utilities;
5. The local fire department's equipment and personnel limitations;
6. Fire lane location; and
7. Response time.

B. A *site plan* application shall include a detailed plan for all fire protection equipment to be provided in the *alternative dwelling park development*. This plan shall be prepared by a design engineer and the equipment shall be designed, constructed, installed, and maintained in accordance with all applicable standards including the National Fire Protection Association and the applicable provisions of the NYS Uniform Fire Prevention and *Building Code*.

C. Prior to approval of any preliminary plan, the planning board shall receive from the *applicant* a written response to a review for the plan prescribed in subsection B of this section by the fire department having jurisdiction for the *lot* proposed for an *alternative dwelling park development*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.100 Solid waste storage and removal requirement.

An approved *site plan* for an *alternative dwelling park* shall include adequate provisions for the storage and removal of solid

waste in accordance with the New York State Fire Prevention and *Building Code*, New York State Environmental Conservation Law, and the laws of the *county* of Chemung. Each *site plan* application shall include the following:

- A. A provision for either curbside pick-up, or a central dumpster location within the *alternative dwelling park*;
- B. The *applicant* shall include in a maintenance plan a procedure and responsibility for the policing of the area used for solid waste collection, which shall include provisions for cleaning up any solid waste improperly disposed of or otherwise scattered on the property.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.110 Recreation parks, playgrounds, and open space in an *alternative dwelling park*.

A. An *alternative dwelling park site plan* shall include provisions for recreation parks, playgrounds, and open space in accordance with Section 17.36.100.

B. The planning board may consider certain ancillary recreational facilities in lieu of the recreation parks, playgrounds, and open space. Such facilities shall be specifically approved by the planning board and shall be deemed to be and shall function as *accessory structures* and/or *uses* and as such comply with Chapter 17.40. These recreational facilities shall be compatible with the residential character of the *development* may include a:

- 1. Community room or lounge;
- 2. Game or recreation room;
- 3. Exercise or multipurpose room;
- 4. Sauna/spa, whirlpool;
- 5. Swimming pool;
- 6. Indoor playground; and/or
- 7. *Day care center*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.120 Facility maintenance requirements.

A. An *alternative dwelling park* approved in a *site plan* shall be subject to periodic inspection by the *director of planning* or a code enforcement officer to document compliance with this title, the conditions of *site plan* approval and the applicable provisions of the NYS Uniform Fire Prevention and *Building Code*.

B. An *alternative dwelling park* approved in a *site plan* shall be maintained in perpetuity, by the *developer* or any successors thereto, in such condition as intended by the approved *site plan* and in accordance with the provisions of such approval and any condition thereof.

C. It shall be a violation of this title to maintain an *alternative dwelling park* in noncompliance with this section.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.130 Sales or model *dwelling unit* requirements.

A. On a *lot* containing an *alternative dwelling park*:

- 1. The commercial sales of *dwelling units* shall not be permitted as another *principal use* or as an *accessory use*;

however,

2. As shown and permitted in an approved *site plan*, up to three model *dwelling units* may be setup and displayed on individual *dwelling unit* sites.

B. When the provisions of subsection (A)(1) of this section are permitted, such model *dwelling units* shall be included in any *bulk* and *density* calculation.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.140 Accessory *building* and *use* requirements.

Except for an accessory *building* and/or *use* associated with an individual *dwelling unit* as specified in Section 17.44.040(B), an accessory *building* and/or *use* shall comply with the requirements specified in Section 17.40.020 for a residential *use* in an RU *district*.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.150 Utility requirements.

A. An approved *site plan* shall include the design and construction specifications for all utilities, including electric, telephone, gas or other fuel source, water, sewer, and television, required to service the *alternative dwelling park* and each individual dwelling site. Such plans shall comply with the provisions of Section 17.36.110.

B. Television service to the *alternative dwelling park* shall be provided as a consolidated system for the entire site. No individual *antennas* shall be permitted on *dwelling unit* sites.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.44.160 Individual *dwelling unit* site requirements.

A. *Density* Requirements.

1. Minimum *lot* size: eight thousand (8,000) square feet.
2. Minimum *lot* width: fifty (50) feet.
3. Maximum *lot coverage*: forty (40) percent.
4. Minimum yard *setback* requirements: shall comply with 17.16.020(C)(1).

B. Accessory *Building* and *Use* Requirements.

1. Except as otherwise specified in this subsection, an accessory *building* and *use* shall comply with the requirements of Chapter 17.40.
2. An accessory *building* or *use* located on an individual dwelling *lot* in an *alternative dwelling park* shall:
 - a. Not require a *site plan* amendment pursuant to Section 17.40.020(A)(2),
 - b. In lieu of Section 17.40.020(C)(2) an accessory *building* may be *setback* from a side and rear *lot line* of an individual *dwelling unit* site a minimum distances of five feet, and
 - c. Shall not be located in the *front yard* of a dwelling *lot*.

C. Individual *Dwelling Unit* Site Access. An individual *dwelling unit* site shall be provided with *driveway* access from

drive or *internal drive* and such *driveway* shall comply with the applicable provisions of Section 17.36.050.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.44.170 Dwelling unit installation requirements.

A. Each individual *dwelling unit* site, pad, or foundation shall comply with the applicable provisions of and the generally accepted standards prescribed in the NYS Uniform Fire Prevention and *Building Code* for the construction of sites and the installation of *dwelling units*.

B. When the *dwelling unit* is a *manufactured home*, the reference standard for construction shall be as prescribed in the NYS Uniform Fire Prevention and *Building Code* specifically Subchapter D and Reference Requirement 68.

C. When the *dwelling unit* is not a *manufactured home*, the reference standard for construction shall be as prescribed in the NYS Uniform Fire Prevention and *Building Code* specifically Subchapter B.

D. A *site plan* for an *alternative dwelling park* must include certification by the design engineer that the *project* is compliant with the NYS Uniform Fire Prevention and *Building Code* specifically Subchapter B and/or D.

E. In addition to all the other requirements of this section, each individual *dwelling unit* and/or site shall meet the following minimum requirements:

1. The site shall be properly drained and compacted to support the weight imposed on the ground by the installed *dwelling unit*.
2. Each *dwelling unit* shall be stabilized either in accordance with the manufacturers' specification, the standards referenced in this section, or an engineering design completed by a design engineer specific to the *dwelling unit* and/or site.
3. Anchors and/or roll over protection, as provided for in the manufacturers' specification, the standards referenced in this section or an engineering design completed by a design engineer specific to the *dwelling unit* shall be provided for each *dwelling unit* installed.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.44.180 Modification of an existing or approved *alternative dwelling park*.

A. *Site Plan Requirement*. Other than as permitted in a previously approved *site plan*, a *site plan* or amendment thereto pursuant to 17.32.180 is required.

B. *Retroactive Compliance Requirement*. Any existing *alternative dwelling park* or any *alternative dwelling park* previously approved in a *site plan* shall comply with all applicable provisions of this title when such *alternative dwelling park* is proposed to have an extension, *alteration* or modification that:

1. Increases the number of *lots* by a number equal to or greater than fifty (50) percent of the number of existing *lots* or *lots* approved in a *site plan*;
2. Increases the *lot* area being dedicated to or used for an existing or approved *alternative dwelling park* by more than fifty (50) percent of that which is existing or approved in a *site plan*; or
3. Has a verified estimated cost of construction or installation for such extension, *alteration*, or modification that exceeds fifty (50) percent of the assessed property value of the *alternative dwelling park* at the time that such construction or installation is proposed.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.48

OFF-ROAD *PARKING* AND LOADING REQUIREMENTS*

Sections:

17.48.010 Off-road *parking* requirements.

17.48.020 Off-road loading and unloading berth requirements.

* Prior history: LL No. 2, 1997.

17.48.010 Off-road *parking* requirements.

All *development* shall provide for off-road *parking*.

A. General.

1. It shall be the responsibility of the owner of a *lot* to provide off-road *parking* spaces for any *use* which is created, enlarged, or altered after the effective date of the local law codified in this title.
2. A *parking* space shall be a minimum dimension of nine (9) feet by eighteen (18) feet, exclusive of pedestrian access, *drive*, or *internal drive*, and have access from a *drive* or *internal drive*.
3. *Parking* spaces for the handicapped shall be at least eight feet in width and shall have an adjacent access aisle at least eight feet in width or as otherwise required by the New York State Uniform Fire Prevention and *Building Code* and in compliance with the Americans With Disabilities Act of 1990, as amended. The minimum number of accessible spaces shall also be as required by State Code. An eight-foot-wide access aisle may be shared by two adjacent handicap *parking* spaces and shall be part of an accessible route to the *building* or *use* which it is designed to serve. Such spaces shall be appropriately located and clearly identified and limited in their *use* by appropriate signage and pavement markings.
4. The lighting of off-road *parking* areas shall comply with the requirements set forth in Section 17.36.240.
5. For the purpose of calculating required *parking* spaces for any *use* in which patrons and/or spectators occupy benches, pews, or other similar seating facility; each twenty (20) inches of linear dimension of such seating shall be counted as one seat.
6. Off-road *parking* area for a residential *use* shall be restricted to noncommercial vehicles only.
7. If a *use* on a *lot* and a *lot* are under separate ownership, the right to the joint *use* of a *parking lot* must be evidenced by a deed, lease, contract, or other appropriate document. Such a document shall be provided to the planning board for inclusion in the *site plan* record.
8. A required *parking* area, *drive*, and *internal drive* on a *lot* shall not be used for the display of merchandise, goods, or wares offered for sale or connected with the *use* of a *lot*.
9. The layout and landscaping for *parking* areas shall comply with applicable recommendations included in the town of Big Flats *Development Design Guidelines*.

B. Required Off-Road *Parking* Spaces. The minimum number of *parking* spaces in a *parking* area for a *use* shall be as follows:

1. *One-unit dwelling*: Two spaces for up to the first four bedrooms, plus one-half space for each additional bedroom.
2. *Two-unit dwelling*: Two spaces per *dwelling unit* for up to first four bedrooms, plus one-half space for each

additional bedroom.

3. *Multi-unit dwelling*: Two spaces per *dwelling unit* for up to first four bedrooms, plus one-half space for each additional bedroom.
4. *Alternative dwelling park*: One and one-half spaces per *dwelling unit*, plus one space for each approved *dwelling unit* to be developed in a common *parking area*.
5. *Hospital, convalescent or nursing home*: one space for each employee on the major shift plus 0.25 spaces per bed.
6. *Bed and breakfast*: One additional space for each bedroom that is rented within the dwelling.
7. *Hotel/motel or boarding house*: One space for each room offered for rent or lease, plus one space for every four employees, plus one space per one hundred fifty (150) square feet net area of restaurants and public meeting rooms.
8. Office, general business or professional: Two and one-half spaces for each one thousand (1,000) square feet of gross floor dedicated to the *use*.
9. *Health care clinic*: Three spaces fore each one thousand (1,000) square feet of *gross floor area* dedicated to the *use*.
10. *Retail, including malls or plazas*, three and one-half spaces for each one thousand (1,000) square feet of *gross floor area*.
11. Funeral home, veterinary *hospital, bank, body modification facility, or personal service use*: Three spaces for each one thousand (1,000) square feet of *gross floor area* dedicated to the *use*.
12. *Bar or restaurant, standard or fast food*: One space for each one hundred (100) square feet of customer *floor area*.
13. Membership club, *rod and gun club*, conference or convention center, or commercial recreation: One space for every two hundred (200) square feet of assembly space.
14. *Roadside stand*: One space for every one hundred (100) square feet of area devoted to sales or display.
15. Nursery, elementary, or middle school: One space per employee, plus two additional spaces per classroom.
16. High school or college: One space per employee plus five spaces for each classroom.
17. *Place of worship, auditorium, theater, stadium*: One space for every four assembly seats.
18. Vehicle sales or lease and/or repair and/or heavy equipment sales, contractor's equipment yard, outdoor sales and/or rental: One space for each three thousand (3,000) square feet of area devoted to the *use* including, outside display areas, equipment and/or sale yards.
19. *Vehicle filling station, vehicle maintenance facility, or convenience mart*, three spaces per one thousand (1,000) square feet of *gross floor area*.
20. *Cottage Industry*: One space per employee, plus one space per five hundred (500) square feet of area devoted to the *use*.
21. *Industrial use*:
 - a. One space for each one thousand (1,000) square feet of *floor area* devoted to manufacture;

including printing, publishing, laundry and dry cleaning plant;

- b. One space for each two thousand (2,000) square feet of *floor area* devoted to storage or stationary operating equipment;
 - c. One space for each three thousand (3,000) square feet of area devoted to storage, including outside storage yards; and/or
 - d. For any utility or *industrial use*, one additional space for each fleet or company vehicle.
22. Warehouse or *distribution center, truck terminal*: One space per three thousand (3,000) square feet devoted to storage or warehousing.
23. Each other *use* not specified above: the number of *parking* spaces shall be determined by the planning board in the *site plan* review process after considering the area of *use*, the number of employees, customers and suppliers of goods and services for the *use*.
- C. Within the *Town Center Area*.
1. One off-street *parking* space must be provided for each *dwelling unit* within the *Town Center Area*.
 2. For all *uses*, except residential, in the TC and TC2 zoning *districts*, off-street *parking* shall be located at the side or rear of the principal *building* or otherwise screened so as not to be visible from the *right-of-way* or residential zoning *districts*.
- D. Maximum Number of *Parking Spaces*. In the interest of protecting and preserving the groundwater quality and quantity, unless otherwise stated for a specific *use*, no *use* in the town shall be permitted to have more than five *parking* spaces per one thousand (1,000) square feet of *gross floor area* unless such *development* plans document the need for such additional *parking* and that, with quantifying analysis, such *parking* is determined to not adversely impact the *aquifer* or ground water. Such additional *parking* must be specifically approved by the planning board.
- E. Calculation of Required *Parking Spaces*.
1. In the case of a combination of *uses*, the total requirement for off-road *parking* spaces shall be no greater than the sum of the minimum requirements for all *uses*, unless it can be proven by substantive documentation that staggered hours or other operational activities of such *uses* would permit modification. The planning board may optionally mandate that such shared *parking* arrangements be instituted if it would reduce the number of *parking* spaces while serving multiple *uses*.
 2. Whenever a fraction of a space is required, a full space shall be provided.
- F. Adaptive Reuse. The planning board may require that redevelopment *projects* which include existing *parking* areas which are larger than that required for the newly proposed *use* are required to design the *lot* to meet current *parking* and landscaping standards and remove additional *parking* areas of asphalt which is no longer needed. The areas of *landscape* removal should be reclaimed as *landscaped* islands, medians, or perimeter *buffers*.
- G. Pervious *parking* surfaces. The planning board, at their discretion, can require that *parking* spaces above the minimum may be provided by pervious *parking* spaces in lieu of traditional asphalt.
- H. Banked *parking*. Additional *parking* spaces above the minimum may be permitted as banked *parking* with planning board approval and land shall be identified for the future construction of these spaces if necessary. If it is determined at a later date by the *director of planning* and the town board that additional spaces are needed, then the banked *parking* spaces shall be constructed as standard *parking* spaces.
- I. *Structured parking* shall include spaces provided within the footprint area of a *structure*, such as a *building*, including rooftop, at-grade, or below grade spaces. If such spaces are part of a multi-floor *parking* garage or deck

structure only, then all but the top most level shall be counted against the maximum number of spaces.

J. Dimensions for *Drives* and *Internal Drives* Within a *parking* Area.

1. Parallel curb *parking*: Twelve (12) foot aisle width for one-directional flow and twenty-two (22) foot aisle width for two-directional flow.
2. Thirty (30) degree *parking*: Thirteen (13) foot aisle width for one-directional flow and twenty-two (22) foot aisle width for two-directional flow.
3. Forty-five (45) degree *parking*: Sixteen (16) foot aisle width for one-directional flow and twenty-two (22) foot aisle width for two-directional flow.
4. Ninety (90) degree *parking*: Twenty-two (22) foot aisle width.

K. Location of Required *parking* Spaces in a *parking* Area.

1. RU, R1, R2, and TCR *Districts*. Required vehicle *parking* spaces shall be provided either in a garage, in a *drive*, or along the adjacent street frontage which is located on the same *lot* and is readily accessible to a *road* or *drive*.
2. ABD, TC, BN, BN2, TC2, BNR, BR, CL and I *Districts*.
 - a. Such spaces shall be provided on the same *lot*, along the street frontage, or not more than eight hundred (800) feet there from provided that the criteria in subsection A of this section are met.
 - b. Vehicles and equipment for display or for sale shall not be parked or stored within twenty-five (25) feet of a *road right-of-way*.
 - c. Where such *parking* is situated adjacent to a residential *use*, it shall be set back a minimum of ten (10) feet from the residential *lot line*, and an adequate *landscape buffer* in conformance with Section 17.36.200 shall be provided within such *setback* area.

L. Special Requirement for ABD, BN, BN2, BNR, BR, TC and TC2 *Districts*. The planning board shall, in the review of all *site plans*, consider the potential for synergism to exist between adjoining *uses* and may require that *parking* areas be designed to accommodate traffic movement between *lots* without re-entering the *road* system to lessen traffic volumes and turning movement conflicts and provide proper sight distances.

M. Off-Road *Parking* Waiver. Off-road *parking* requirements may be waived in whole or in part upon finding by the planning board that;

1. Satisfactory municipal off-road *parking* facilities are available within eight hundred (800) feet of the *lot* containing the subject *use* and with proper pedestrian access in accordance with subsection (A)(7) of this section;
2. Satisfactory off-site *parking* arrangements are proposed in compliance with subsection (A)(7) of this section;
3. The *applicant* document the specific *use* routinely requires less *parking* spaces than those required under this chapter.

N. Construction of Off-Road *Parking* Area. All off-road *parking*, with the exception of the *parking* area for a single or *two-unit dwelling* shall be provided with a suitable all-weather, dust-free surface and all individual *parking* spaces shall be visibly marked with paint or other durable and suitable material.

O. Landscaping.

1. In all off-street *parking* facilities which contain twenty-five (25) or more *parking* spaces, at least fifteen (15) percent of the total *parking* facility within the *parking* perimeter shall consist of raised *landscaped* islands, as follows, except that the planning board may waive or modify the requirement for good cause and in the interest of good design where there are fewer than fifty (50) *parking* spaces:
2. *Landscaped* islands shall be located at the ends of each *parking* bay which contains eight or more spaces, separating adjacent rows of *parking* spaces at least every second *parking* bay and elsewhere as determined appropriate by the planning board to properly guide vehicle movement, to provide for plant growth and vehicle overhang, to provide for pedestrian circulation and to otherwise help assure proper traffic circulation, pedestrian safety and aesthetics. Such *landscaped* islands and the plantings within them shall be designed and arranged so as to provide vertical definition to major traffic circulation aisles, entrances and exits; to safely *channel* internal traffic flow; to prevent indiscriminate diagonal movement of vehicles; to provide cooling shade and relief from the *visual impact*, monotony and heat of large expanses of paved areas; and, where appropriate, to accommodate *stormwater management* practices such as bioretention areas, swales, and sand filters
3. Unless modified by the planning board, the minimum width of *landscaped* islands shall be eight feet where located at the ends of *parking* bays and ten (10) feet where separating opposing rows of *parking* spaces or adjacent to circulation aisles. All corners shall be rounded with a curb radius of not less than three feet unless otherwise required by the planning board.
4. The landscaping of off-street *parking* areas shall include at least one shade tree of not less than three inches caliper for each six *parking* spaces. Main traffic circulation aisles shall be emphasized with such shade trees. Other *landscaped* islands may be planted with flowering trees and/or other plantings, as appropriate. This is in addition to ground cover, shrubs and hedges which are to be provided where appropriate to serve their intended function while not interfering with safe sight distance for pedestrians and vehicles.
5. The planning board may also permit non-*landscaped* islands, if appropriate for purposes such as pedestrian circulation, snow storage, and so forth. Such islands shall not be less than four feet in usable width.
6. Screening. In addition to the *buffer* requirements, all off-street *parking* and loading facilities shall also be attractively *landscaped* along their periphery. Such *landscaped* screening shall be a minimum of ten (10) feet in width. The *buffer* shall consist of evergreen planting of such type, height, spacing and arrangement as, in the judgment of the planning board, will serve the intended function. The planning board may allow or require a *landscaped* berm, wall or *fence* of location, height, design and materials determined suitable by the board to be substituted for or to supplement the required screen planting.
7. Species. New planting shall be comprised of appropriate *native species* and shall not incorporate *invasive species*.
8. Where feasible, the *use* of pervious or porous materials in the construction of *parking* facilities is highly encouraged, such as grass, crushed stone, porous asphalt and concrete mixtures and blocks or brick laid in sand. The porous or pervious surfaces can cover the entire *lot*, or certain areas, such as *parking* stalls. Porous surfaces should be designed to encourage the direct *infiltration* and cleansing of *stormwater*, thus reducing the adverse environmental impacts of large impervious *parking* areas. additionally, a plan shall be in place describing the maintenance to ensure the continued viability of pervious *parking* areas.
9. Snow Storage/Removal. Areas for snow storage shall be indicated on the submitted *site plan* and/or *landscape plan*. These areas should be provided in such a way to minimize damage to proposed vegetation. Snow storage space should be located on proposed pavement or perimeter *landscaped* areas, rather than internal *landscaped* areas. If internal *landscaped* areas are proposed to be used for snow storage, vegetation shall be selected and located in order to avoid damage.
10. The owner and all future owners shall maintain all *parking* facilities in proper working order. If *parking* facilities are not town reserves the right to take actions in accordance with Section 17.32.190.

(LL No. 6, 2009)

17.48.020 Off-road loading and unloading berth requirements.

A. Required Berths. In all *districts*, except for the TC and TC2 *districts*, a *lot* or *structure* which is to be occupied by industrial, commercial, business, or similar *uses* requiring the receipt and/or distribution by vehicles of materials or merchandise; there shall be provided and maintained, on the *lot*, off-road *loading berths* that are scaled to

delivery vehicles anticipated for the proposed *use(s)* as follows:

<i>USE</i>	GROSS SQUARE FEET OF <i>FLOOR AREA</i>	VEHICLE <i>LOADING BERTH</i> REQUIREMENTS*
<i>Retail</i> , wholesale, storage and other similar business <i>use</i>	3,000 -- 15,000	1
	15,001 -- 40,000	2
	each 25,000 additional	1
Hotel or motel, restaurants, office <i>building</i>	90,000 or less	1
	90,001 -- 300,000	2
	each 200,000 additional	1
<i>Industrial use</i>	15,000 or less	1
	15,001 -- 40,000	2
	40,001 -- 90,000	3
	each 40,000 additional	1

* These are considered minimum requirements; however, the planning board may modify the above requirements in the *site plan* approval process based on scale of business operation and supporting documentation analyzing the necessity for modification of these requirements.

B. Dimensions of Berths. Each *loading berth*, either open or enclosed, shall be a minimum of fifty-five (55) feet long, twelve (12) feet wide and fourteen (14) feet high; except business *uses* utilizing vehicles not larger than panel trucks may have berths which are a minimum of twenty (20) feet long, ten (10) feet wide and nine feet high.

C. Location of Berths. *Loading berths* are to be located in such a way vehicles occupying berths do not interfere with the movement of people and vehicles on public ways and within on-site *parking* areas.

D. Screening. Open off-street loading areas shall be screened from adjacent residential *lots* by walls, *fences*, evergreen trees, or evergreen hedges. The visual *buffer* shall be of sufficient height to prevent the viewing of parked vehicles from any point along the minimum side or *rear yard setback* of such adjoining residential *lots*.

E. Landscaping. Areas around *loading berths* shall be provided with *buffer* as required in Section 17.36.200. (LL No. 2, 2003 (part)) (LL No. 6, 2009)

Chapter 17.52

SIGNS*

Sections:

17.52.010 *Sign* requirements generally.

17.52.020 *Permitted sign* description.

17.52.030 *General requirements*.

17.52.040 *Signs* permitted in any *district*.

17.52.050 *Sign* requirements by *use and district*.

17.52.060 Aggregate *sign area* requirement.

17.52.070 Removal of certain *signs*.

* Prior history: LL No. 2, 1997.

17.52.010 *Sign* requirements generally.

A. No *sign* of any kind may be altered, erected or established in the town except in conformance with the requirements in this chapter.

B. The only *signs* permitted are those listed in Section 17.52.020.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.52.020 Permitted *sign* description.

A. *Identification Signs*.

1. **Awning:** A *sign* painted, printed, affixed or displayed on an awning attached to an exterior surface of a *building* containing a general, business or *industrial use* listed in Section 17.12.010.
2. **Facade:** A *sign*, painted on, inscribed on or attached to an exterior surface of a *building*, not exceeding ten (10) feet above the roofline of a *structure* and below the ridgeline of a *structure* where applicable, containing a general, business or *industrial use* or *accessory use* associated with the general, business or *industrial use* listed in Section 17.12.010 and without having any portion thereof extending more than eight inches from the *building* surface.
3. **Projecting:** A *sign* attached to and having any portion thereof extending more than eight inches from the surface of a *building* containing a general, business or *industrial use* listed in Section 17.12.010.
4. **Representational:** Any three-dimensional *identification sign*, which is either a projecting or free standing *sign* and constructed to physically represent the object advertised.
5. **Agricultural:** A *sign*, not illuminated, used to identify a farm, ranch, stable or other agricultural *use*.
6. **Freestanding:** A *sign* supported by a *structure* independent of a *building*, at least twelve (12) feet in height, and installed on a *lot* containing a general, business or *industrial use* listed in Section 17.12.010.
7. **Directory:** A *sign* that contains the names of the *principal uses* located in a *mall* or *plaza*.
8. **Residential:** A *sign*, not illuminated, identifying the name of the owner or occupant of or fanciful name of a residential *lot* or property.
9. **Real Estate:** A *temporary sign*, not illuminated, used to offer or advertise a *lot* or real property for sale, or lease.
10. **Mall/Plaza:** A *sign* installed on a *lot* or *building* of a *mall* or *plaza* and used to identify or landmark the name of the *mall* or *plaza*. Such *sign* shall be either a facade, free standing, awning *sign*, or monument *sign*.
11. **Development:** A *sign*, not illuminated, installed on a *lot* in an approved residential subdivision, *alternative dwelling park*, PMRD or *multi-unit dwelling development*, used to memorialize or landmark the name of the *development*.
12. **Monument:** A *sign* supported by a *structure* independent of a *building*, no greater than twelve (12) feet in height, and installed on a *lot* containing a general, business or *industrial use* listed in Section 17.12.010.

B. *Accessory Signs*.

1. **Directional:** A *sign* located near a *drive* entrance only indicating direction or calling attention to vehicular or pedestrian traffic entrances by displaying arrows or directional words and in accordance with 17.52.030 (A)(6).

2. Mandated: Any *sign*, not illuminated, required by a federal, New York State, Chemung *county* or local law or rule.
3. Memorial: A *sign*, not illuminated, authorized by the town board, Chemung *county* Legislature, or the Governor or Legislature of the state of New York to honor or identify a person, event, organization or place of local or regional historic interest or importance.
4. Portable: A *sign* that is *temporary* and not structurally attached to the ground, a *building*, a *structure* or another *sign*, including sidewalk *signs* regardless if such *sign* is on its own trailer, wheels or otherwise designed to be movable.
5. Real estate: A *temporary sign*, not illuminated, used to offer or advertise a *lot* or real property for sale, or lease.
6. Sandwich board: A two-sided "A" frame, *temporary sign*, not illuminated, placed on, without any physical attachment to, the ground.
7. Tourist Oriented Directional (TOD): A *sign*, not illuminated, that directs travelers to essential services such as gas, food and lodging, public services or a *hospital* and installed in a *right-of-way*, under the jurisdiction of a government authority.
8. Construction: A *temporary sign*, not illuminated, and used on property under construction to denote a contractor, design engineer/architect, financing institution and/or *developer* or *development*.
9. Poster: A *temporary sign*, not illuminated, used to advertise an event or show, political candidate or issue and/or an election and/or a sale or product.
10. Civic: A *sign*, not illuminated, used to identify a civic or religious organization, *place of worship*, social or membership club or an educational institution, and installed in a *right-of-way* under the jurisdiction of a government authority.
11. Community Promotion: A *sign*, not illuminated, designed to promote the town and welcome visitors to the town.
12. Occupation: A *sign*, not illuminated, used to identify an approved *home occupation* or *cottage industry*.
13. *Roadside stand*: A *temporary sign*, not illuminated, used to identify a *roadside stand*.
14. Awning: A *sign* painted, printed, affixed or displayed on an awning attached to an exterior surface of a *building* containing a general, business or *industrial use* listed in Section 17.12.010.
15. Facade: A *sign*, painted on, inscribed on or attached to an exterior surface of a *building*, not exceeding ten (10) feet above the roofline of a *structure* and below the ridgeline of a *structure* where applicable, containing a general, business or *industrial use* listed in Section 17.12.010 and without having any portion thereof extending more than eight inches from the *building* surface.
16. Window: A *sign*, or group of *signs* painted, printed, or otherwise displayed on a window of a *building* containing a general, residential, business or *industrial use* listed in Section 17.12.010.
17. Banner: A *temporary sign* made of flexible materials and supported along one or more sides or at two or more corners by staples, tape, wires, ropes, strings, or other supporting materials.
18. Changeable: A *sign*, permanent or *temporary*, with the capability of display change by means of manual or remote input. Includes the following types:
 - a. Manually Activated: Changeable *sign* whose display can be changed manually on a display surface
 - b. Electronically Activated: Changeable *sign* whose display can be changed by means of remote electrically energized on-off switching combinations or alphabetic or pictographic components arranged on a display

surface. A display on an electronically activated changeable *sign* shall remain static for a period of time not less than twenty (20) minutes and the only appearance of movement permitted is the transition from one display to another which shall occur in a time period not to exceed two seconds.

- c. Electronic Time/Temperature/Date *Sign*: A *sign* which only displays time, temperature, and/or calendar date shall not flash and shall be exempt from 17.52.020(B)(18)(b).
19. Representational: Any three-dimensional *accessory sign, temporary* or permanent, constructed to physically represent the object advertised.
20. Private Owner Merchandise Sale (POMS): A *temporary sign*, erected not longer than four calendar days, used to depict the sale of personal and private merchandise located upon the *lot* where such *sign* is located.
21. Freestanding: A *sign* of which is co-located on an identification freestanding *sign*, as described in Section 17.52.020 (A) (6).

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.52.030 General requirements.

- A. All *signs* shall comply with the following requirements:
 1. The installation of a *sign*, except for a residential, occupation, agricultural, *temporary*, window *sign*, memorial, tourist-oriented-directional, real estate, sandwich board, construction, civic, *roadside stand*, banner, private owner merchandise sale, and as provided in Section 17.52.040, shall require a *building permit*.
 2. A *sign* shall be constructed and installed in compliance with applicable provisions of the NYS Uniform Fire Prevention and *building Code*.
 3. No *sign* shall be located at or near an intersection in violation of Section 17.36.070, *clear vision zone*, or in any manner which may cause a traffic hazard at the intersection. A *sign* shall not be located where, by reason of the position, shape or *color* of the *sign*, it may interfere with or obstruct the view of or be confused with any authorized traffic sign, signal or device, nor shall any *sign* make use of the word "Stop," "Look," "Drive-In," "Left" or "Right," or any other word, phrase, symbol or character in such a manner as to distract, mislead or confuse traffic.
 4. No *sign* shall be placed on a roof or on a cupola or similar roof mounted *structure* or on top of a parapet or similar architectural element of a *building*.
 5. No *sign* shall be more than twenty-four (24) feet in height above the *finished grade* or the grade shown on a *grading plan* of a *site plan* approved by the planning board, unless otherwise stated. *Grading* of a site for the purpose of raising the elevation of a *sign* contrary to this section is prohibited, except as shown in an approved *site plan*.
 6. Each *sign* on a *lot* shall be set back a minimum of five feet from the edge of any *road*, unless otherwise stated.
 7. No *sign* shall be permitted in any *road right-of-way*.
 8. Any *flashing sign* is prohibited.
 9. Any *off-lot sign* is prohibited.
 10. No *sign* is permitted for a wind energy conversion system, except as required in 17.36.150.
 11. A *sign* for any residential *use*, either as listed in Section 17.12.010 or as nonconforming pursuant to Chapter 17.56, occurring in a BR, ABD, CL or I *district* shall comply with the provisions of Section 17.52.050.12. All *signs, sign finishes, supports and electric work* shall be maintained, kept clean, neatly painted and free from all hazards, such as but not limited to faulty wiring, loose supports, braces, guys and anchors.

13. No utility pole or tree, or the like, located in any public *right-of-way* or public *easement* shall be used for the posting of *signs*.
14. No trailer or vehicle shall be intentionally parked on the premises in a manner to serve as a *sign*.
15. Refer to 17.12.010 for the list of residential, general, business, industrial, and *accessory uses*.
- B. The following requirements apply to an *identification sign*:
 1. A projecting or free standing *sign* projecting over a pedestrian way shall have a clearance of not less than ten (10) feet above the way or *finished grade*. A projecting or free standing *sign* shall not *project* over a *lot line* or *right-of-way*. No projecting or free standing *sign* shall *project* over a *drive*, *internal drive* or *parking* area unless the *sign* has a clearance from *finished grade* of fifteen (15) feet.
 2. An *identification sign* on a *lot* containing a general, business or *industrial use* listed in Section 17.12.010 may be illuminated.
- C. The following requirements apply to an *accessory sign*:
 1. Portable *sign*:
 - a. A portable *sign* may be allowed only for a cumulative time period not to exceed ninety (90) days in any consecutive twelve (12) month period.
 - b. A portable *sign* shall not exceed thirty-two (32) sq. ft. in *sign area* and shall not exceed six ft. in height.
 2. Wherever a tourist-oriented-directional and community promotion *sign* is installed, its *sign area* shall not exceed the permitted *sign area* for a free standing *sign* in the underlying *district* in which it is located.
 3. A construction *sign* shall be removed within fifteen (15) days of the completion of construction or the issuance of any certificate of occupancy or compliance, whichever occurs first.
 4. A *temporary sign* shall be limited to:
 - a. A maximum of ninety (90) cumulative days within any one calendar year
 - b. A maximum of seven cumulative days within any one calendar year, unless otherwise stated, for any *temporary sign* constructed of raw paper and/or raw paper products.
 5. Directional *Sign*:
 - a. Every directional *sign* shall not *project* more than four feet above the *finished grade* and shall not be located in such a manner as to violate any provisions of Section 17.36.070.
 - b. A directional *sign* shall not exceed six sq. ft.
 - c. The number of directional *signs* shall not exceed two for each *drive*.
 6. When computing time restrictions for each *temporary sign* any fraction of a day used shall be construed to be one full day.
 7. An *accessory sign* on a *lot* containing a general, business or *industrial use* listed in Section 17.12.010 may be illuminated, unless otherwise stated.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.52.040 Signs permitted in any *district*.

A. In accordance with 17.52.030(A)(1), no *building permit* shall be required for any *sign* listed in this section provided they are displayed and located as follows:

1. Residential and *Home Occupation sign*.
 - a. Maximum *sign area* per face:
 - i. Residential: Two sq. ft.
 - ii. *Home Occupation* in R1, R2, or TCR *districts*: Two sq. ft.
 - iii. *Home Occupation* in RU, C, TC, TC2, RCD, BN, BN2, BNR, BR, ABD, CL, I or RCD *districts*: four sq. ft.
 - b. Number of *signs* permitted: One.
 - c. Location permitted in R1 and R2 *districts*: Affixed to a *dwelling unit* or a post.
 - d. Location permitted in RU, C, TC, TC2, TCR, RCD, BN, BN2, BNR, BR, ABD, CL, I or RCD *districts*: Affixed to a *dwelling unit* or a post.
 - e. Maximum height permitted: Eight ft. above *finished grade*.
2. Poster.
 - a. Maximum *sign area* per face located in the R1, R2, RU, C, TC, TC2, TCR, RCD, BN, BN2 or BNR *districts*: twelve (12) sq. ft.
 - b. Maximum *sign area* per face located in a *district* not listed in 17.52.040 (A)(2)(a): Twenty (20) sq. ft.
 - c. No poster *signs* shall be placed between the edge of any *road* and the sidewalk, where sidewalks exist.
3. Window *Sign*.
 - a. Maximum *sign area* per face for a general or business *use*, except in a *mall* or *plaza*: The lesser of thirty (30) percent of each window area or one hundred (100) sq. ft. of aggregate area of all windows of the *use*.
 - b. Maximum *sign area* per face for each tenant within a *mall* or *plaza*: The lesser of forty (40) percent of each window area or one hundred (100) sq. ft. of aggregate area of all windows of the *use*.
 - c. Maximum *sign area* per face for a *mall* or *plaza*: The lesser of ten (10) percent of each window area or one hundred (100) sq. ft. of aggregate area of all windows of the *use*.
 - d. Maximum *sign area* per face for a residential *use*: The lesser of ten (10) percent of each window area or thirty-six (36) sq. ft. of aggregate area of all windows of the *use*.
4. Memorial *Sign*.
 - a. Maximum *sign area* per face: Twelve (12) sq. ft.
 - b. Number of *signs* permitted: One on a *lot*.
 - c. Location permitted: On a *lot* or in a *right-of-way* as permitted by the authority having jurisdiction.

- d. Maximum height permitted: Ten (10) ft. above *finished grade*.
5. Tourist Oriented Directional Sign:
 - a. Maximum *sign area* per face: As permitted by the authority having jurisdiction.
 - b. Number of *signs* permitted: As permitted by the authority having jurisdiction.
 - c. Location Permitted: in a *right-of-way* as permitted by the authority having jurisdiction.
 6. Real Estate Sign:
 - a. Maximum *sign area* per face for a residential *use* located in any zoning *district* and for general or business *use* located in the R1, R2, TC, TC2, or TCR *districts*: Ten (10) sq. ft.
 - b. Maximum *sign area* per face for a general *use*; or a business *use* located in the RU, C, RCD, BN, BN2, or BNR *districts*: Forty (40) sq. ft.
 - c. Maximum *sign area* per face for a business located in the BR, ABD, CL, and I *districts*, except in a *mall* or *plaza*; or an *industrial use* located in any zoning *district*: Sixty-four (64) sq. ft.
 - d. Maximum *sign area* per face for a *mall* or *plaza*: Sixty-four (64) sq. ft.
 - e. Maximum *sign area* per face for each tenant within a *mall* or *plaza*: Forty (40) sq. ft.
 - f. Number of *signs* permitted: Two for each *lot* offered for sale or lease or one for each block of *lot* area or *floor area*. A block is an area either over zero and up to five hundred thousand (500,000) sq. ft. or over five hundred thousand (500,000) and up to one million (1,000,000) sq. ft. or over one million (1,000,000) sq. ft.
 - g. Location permitted: On a *lot*, or *building*, offered for sale or lease
 - h. Time restriction: *Sign* shall be removed ten (10) days after the date of closing or signing of lease agreement.
 7. Sandwich Board:
 - a. Maximum *sign area* per face: Twenty (20) sq. ft.
 - b. Number of *signs* permitted: Two.
 8. Construction Sign:
 - a. Maximum *sign area* per face: Twelve (12) sq. ft.
 - b. Number of *signs* permitted: Two for any single construction site or *development*
 - c. Location permitted: On a *lot* where a construction activity is being performed.
 - d. Maximum height permitted: Eight ft. above *finished grade*.
 - e. All construction *signs* shall be removed within thirty (30) days of obtaining a certificate of occupancy
 9. Civic Sign:
 - a. Maximum *sign area* per face: Twelve (12) sq. ft.

- b. Number of *signs* permitted: One per event.
 - c. Location permitted: In a *right-of-way* as permitted by the authority having jurisdiction.
10. *Roadside Stand:*
- a. Maximum *sign area* per face: Sixteen (16) sq. ft.
 - b. Number of *signs* permitted: Two.
 - c. Location permitted: On a *lot* where said *roadside stand* is established.
11. *Banner:*
- a. Maximum *sign area* per face: Forty (40) sq. ft.
 - b. Number of *signs* permitted: Not to exceed two at the same time.
 - c. Location permitted: On the *lot*.
12. *Private Owner Merchandise Sale Sign:*
- a. Maximum *sign area* per face: Two sq. ft.
 - b. Number of *signs* permitted: Two per sale.
 - c. Location permitted: On the *lot* where such sale is being held

(LL No. 6, 2009)

17.52.050 Sign requirements by *principal use and district*.

A. *Sign* requirements for a residential *use* and an *accessory use* associated with the residential *use*, listed in Section 17.12.010 and located in a R1, R2, RU, C, TC, TC2, TCR, RCD or BNR *districts* are as follows:

Permitted <i>Sign</i> from Section 17.52.020	Maximum <i>Sign Area</i> per face in Square Feet	Number of <i>Signs</i> Permitted	Maximum <i>Sign Height</i>
<i>Development</i>	Twenty (20) sq. ft.	Two	Twelve (12) ft.

B. *Sign* requirements for general *use* and an *accessory use* associated with the general *use*, listed in Section 17.12.010 and located in any *district* are as follows:

Permitted <i>Sign</i> from Section 17.52.020	Maximum <i>Sign Area</i> Per face in Square Feet	Number of <i>Signs</i> Permitted	Maximum <i>Sign Height</i>
Facade	The lesser of ten (10) percent of the area of the side of the <i>building</i> the <i>sign</i> is installed on or one hundred (100) sq. ft. of the side.	Not to exceed two (2)	Twenty-four (24) ft.
Projecting	Twelve (12) sq. ft.	One	Twenty-four (24) ft.
Freestanding	40 sq. ft.	Not to exceed two (2) on a <i>lot</i>	Twenty-four (24) ft.

Monument	40 sq. ft.	Not to exceed two (2) on a lot	Twelve (12) ft.
Community Promotion	24 sq. ft.	One	Twenty-four (24) ft.

C. Sign requirements for a business use, except in a mall or plaza, and an accessory use associated with the business use, listed in Section 17.12.010 and located in a R1, R2, RU, C, TC, TC-2, RCD, BN, BN2, or BNR districts are as follows:

Permitted Sign from Section 17.52.020	Maximum Sign Area per face in Square Feet	Number of Signs Permitted	Maximum Sign Height
Facade	The lesser of ten (10) percent of the area of the side of the building the sign is installed on or one hundred (100) sq. ft. of the side.	Not to exceed two (2) for each principal use and one (1) for each accessory use.	
	Twenty-four (24) ft.		
Projecting	Twelve (12) sq. ft.	One for each principal use.	Twenty-four (24) ft.
Freestanding	Forty (40) sq. ft.	Not to exceed two (2)	Twenty-four (24) ft.
Monument	Forty (40) sq. ft.	Not to exceed two (2)	Twelve (12) ft.
Community Promotion	Twenty-four (24) sq. ft.	One	Twenty-four (24) ft.
Awning	The lesser of ten (10) percent of the area of the side of the building the sign is installed on or forty (40) sq. ft. of the side.	One for each principal use and one for each accessory use.	Twenty-four (24) ft.

D. Sign requirements for a business use, except in a mall or plaza, and an accessory use associated with the business use listed in Section 17.12.010 and located in the BR district are as follows:

Permitted Sign from Section 17.52.020	Maximum Sign Area per face in Square Feet	Number of Signs Permitted	Maximum Sign Height
Facade	The lesser of ten (10) percent of the area of the side of the building the sign is installed on or two hundred (200) sq. ft. of the side.	Not to exceed two (2) for each principal use and one (1) for each accessory use.	Fifty-six (56) ft.
Projecting	Twenty-four (24) sq. ft.	Not to exceed two (2) for each principal use and one (1) for each accessory use.	Twenty-four (24) ft.
Freestanding	Fifty (50) sq. ft.	Not to exceed two (2) on a lot	Thirty-six (36) ft.
Monument	Fifty (50) sq. ft.	Not to exceed two (2) on a lot	Twelve (12) ft.
Community Promotion	Twenty-four (24) sq. ft.	One	Twenty-four (24) ft.
Awning	The lesser of ten (10) percent of the area of the side of the building the sign is installed on or one hundred (100) sq. ft. of the side.	One for each principal use and one for each accessory use.	Twenty-four (24) ft.

E. Sign requirements for a mall or plaza located in a TC, TC-2, BN, BN2, BNR, BR, ABD, CL, or I district are as follows:

Permitted <i>Sign</i> from Section 17.52.020	Maximum <i>Sign Area</i> per face in Square Feet	Number of <i>Signs</i> Permitted	Maximum <i>Sign Height</i>
<i>Mall/Plaza</i>	One hundred (100) sq. ft.	Two (2) for each block of <i>floor area</i> .*	Thirty-six (36) ft. in BR, twenty-four (24) ft. in TC, TC-2, BN, BN2, BNR, ABD, CL, or I
Community Promotion	Twenty-four (24) sq. ft.	One	Twenty-four (24) ft.
Directory	Six hundred (600) sq. ft.	Two (2) for each block of <i>floor area</i> .*	Twenty-four (24) ft.

* A Block is an area either over zero and up to five hundred thousand (500,000) sq. ft. or over five hundred thousand (500,000) and up to one million (1,000,000) sq. ft. or over one million (1,000,000) sq. ft.

F. *Sign* requirements for each tenant *principal use* and an *accessory use* associated the tenant *principal use*, listed in Section 17.12.010, within a *mall* or *plaza* and located in the TC, TC-2, BN, BN2, BNR, BR, ABD, CL, or I *district* are as follows:

Permitted <i>Sign</i> from Section 17.52.020	Maximum <i>Sign Area</i> per face in Square Feet	Number of <i>Signs</i> Permitted	Maximum <i>Sign Height</i>
Facade	The lesser of ten (10) percent of the area of the side of the <i>building</i> the <i>sign</i> is installed on or three hundred fifty (350) sq. ft. of the side.	Two (2) for each <i>principal use</i> and one for each <i>accessory use</i> .**	Thirty-six (36) ft. in BR, twenty-four (24) ft. in TC, TC-2, BN, BN2, BNR, ABD, CL, or I
Projecting	Twenty-four (24) sq. ft.	One for each <i>principal use</i> .	Twenty-four (24) ft.
Awning	The lesser of ten (10) percent of the area of the side of the <i>mall building</i> the <i>sign</i> is installed on or two hundred (200) sq. ft. of the side.	One for each <i>principal</i> and one for each <i>accessory use</i> .**	Twenty-four (24) ft.

* A block is an area either over zero and up to five hundred thousand (500,000) sq. ft. or over five hundred thousand (500,000) and up to one million (1,000,000) sq. ft. or over one million (1,000,000) sq. ft.

** The aggregate facade *sign area* shall be the lesser of fifteen (15) percent of the area of the side of the *building* the *sign* is installed on or three hundred fifty (350) sq. ft. of the side for all *signs* on the side of the *building*.

G. *Sign* requirements for a business or *industrial use*, except in a *mall* or *plaza*, and *accessory use* associated with the business or *industrial use*, as listed in Section 17.12.010 and located in the ABD, CL or I *district* are as follows:

Permitted <i>Sign</i> from Section 17.52.020	Maximum <i>Sign Area</i> per face in Square Feet	Number of <i>Signs</i> Permitted	Maximum <i>Sign Height</i>
Facade	The lesser of ten (10) percent of the area of the side of the <i>building</i> the <i>sign</i> is installed on or two hundred (200) sq. ft. of the side.	Two (2) for each <i>principal use</i> and one for each <i>accessory use</i> .**	Twenty-four (24) ft.
Freestanding	Forty (40) sq. ft.	Not to exceed two (2) on a <i>lot</i> .	Twenty-four (24) ft.

Awning	The lesser of ten (10) percent of the area of the side of the <i>building</i> the <i>sign</i> is installed on or two hundred (200) sq. ft. of the side.	One <i>sign</i> for each <i>principal use</i> and one for each <i>accessory use</i> .**	Twenty-four (24) ft.
Projecting	Thirty-six (36) sq. ft.	One for each <i>principal use</i> .	Twenty four (24) ft.

* A Block is an area either over zero and up to five hundred thousand (500,000) sq. ft. or over five hundred thousand (500,000) and up to one million (1,000,000) sq. ft. or over one million (1,000,000) sq. ft.

** The aggregate *façade sign area* shall be the lesser of fifteen (15) percent of the area of the side of the *building* the *sign* is installed on or two hundred (200) sq. ft. of the side for all *signs* on the side of the *building*.

(LL No. 1, 2008 (part), LL No. 2, 2003 (part) and LL No. 4, 2009 (part))

(LL No. 6, 2009)

17.52.060 Aggregate *sign area* requirement.

A. The aggregate *sign area* is the sum of all *sign areas* on a *lot* except those of *signs* listed in Section 17.52.040. At no time are *signs* to be displayed that will cause an aggregate *sign area* to exceed the limits set forth in subsection B of this section.

B. Aggregate *Sign Area* Requirements by *Use* and *District*.

1. For a residential *use* and an *accessory use* associated with the residential *use* listed in Section 17.12.010 and located in a R1, R2, RU, C, TC, TC2, TCR, RCD, BN, BN2 or BNR *district*, the maximum aggregate *sign area*, excluding the *sign area* of any memorial *sign*, is thirty-six (36) square feet.
2. For a general *use* and an *accessory use* associated with the general *use* listed in Section 17.12.010 and located in any *district*, the maximum aggregate *sign area* is one hundred sixty (160) square feet.
3. For a business *use*, except for a *mall* or *plaza*, and an *accessory use* associated with the business *use* listed in Section 17.12.010 and located in a R1, R2, RU, C, TC, TC2, RCD, BN, BN2, or BNR *district*, the maximum aggregate *sign area* is two hundred fifty (250) square feet.
4. For a business *use*, except for a *mall* or *plaza*, and an *accessory use* associated with the business *use* listed in Section 17.12.010 and located in the BR *district*, the maximum aggregate *sign area* is seven hundred fifty (750) square feet.
5. For a *mall* or *plaza* located in the BN, BN2, BR or BNR *district*, the maximum aggregate *sign area* is one thousand (1,000) square feet.
6. For a *mall* or *plaza* located in the TC or TC2 *district*, the maximum aggregate *sign area* is two hundred (200) square feet.
7. For each tenant *principal use* and *accessory use* associated with a tenant *principal use* listed in Section 17.12.010 in a *mall* or *plaza* and located in the BN, BN2, or BR *district*, the maximum aggregate *sign area* is five hundred (500) square feet.
8. For each tenant *principal use* and *accessory use* associated with a tenant *principal use* listed in Section 17.12.010 in a *mall* or *plaza* and located in the TC or TC2, *district*, the maximum aggregate *sign area* is one hundred fifty (150) square feet.
9. For a permitted business or *industrial use* and *accessory use* associated with a permitted business or *industrial use* as listed in Section 17.12.010, located in the ABD, CL and I *district*, the maximum aggregate *sign area* is five hundred (500) square feet.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.52.070 Removal of certain signs.

Any *sign* now or hereafter existing which relates to a *use* no longer conducted on a *lot* shall be removed by the owner, agent or person having the beneficial *use* of the *lot* upon which such *sign* may be found and within ninety (90) days of cessation of the *use* except as provided to the contrary elsewhere in this chapter.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

Chapter 17.56

NONCONFORMING STRUCTURES, USES AND LOTS*

Sections:

17.56.010 Continuation of nonconforming structure, use and lot.

17.56.020 Discontinuance of nonconforming structure, use and lot.

17.56.030 Necessary maintenance and repairs of nonconforming structure, use and lot.

17.56.040 Construction started prior to this zoning law.

17.56.050 Existing nonconforming lots.

17.56.060 Extension, alteration or modification of a nonconforming structure, use and/or lot.

17.56.070 Reduction in lot area.

* Prior history: LL No. 2, 1997.

17.56.010 Continuation of nonconforming structure, use or lot.

Any lawful *structure, use or lot* existing at the time of enactment of the local law codified in this title, or any subsequent amendment thereof applying to such *structure, use or lot*, may continue, although such *structure, use or lot* does not conform to the provisions of this title provided:

- A. Nothing in this chapter contained shall be construed to render lawful any *use* not lawfully conforming to provisions of the town zoning ordinance repealed in Article 17, the local law codified in this title.
- B. A nonconforming *structure or use* is not expanded, enlarged or extended or increased.
- C. Every permanent *sign* other than *signs* approved in an approved *site plan* or those *signs* for which a *sign* variance has been granted and lawfully existing at the time of enactment of the local law shall comply with the requirements of Chapter 17.52. Such nonconforming *sign* shall be removed or altered in a manner to conform with Chapter 17.52 within five years of the effective date of the law.

(LL No. 2, 2003 (part), LL No. 4, 2009 (part))

(LL No. 6, 2009)

17.56.020 Discontinuance of nonconforming structure, use, or lot.

A. A *structure or lot* which is used for or occupied by a *nonconforming use* and which is changed to or replaced by a conforming *structure or use*, shall not thereafter be used for or occupied by a *nonconforming use or structure*.

B. When a *nonconforming use* has been discontinued for a period of one year, it shall not thereafter be re-established and the future *use* shall be in conformity with this title.

(LL No. 2, 2003 (part))

(LL No. 6, 2009)

17.56.030 Necessary maintenance and repairs of nonconforming structure, use and lot.

A. Except as specified in Section 17.56.060 a nonconforming *structure, use or lot* may be maintained, repaired or restored to a safe condition.

B. Nothing in this title shall prevent the strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe by the code enforcement officer.

C. Any maintenance, repair or restoration of a nonconforming *structure* shall comply with the applicable provisions of the NYS Uniform Fire Prevention and *building* Code.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.56.040 Construction started prior to this zoning law.

A *structure* for which a *building permit* was issued prior to the effective date of the local law codified in the law, or prior to the effective date of any subsequent amendment of the local law codified in this chapter, may be completed and used in accordance with approved plans and specifications for the *structure*.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.56.050 Existing nonconforming lots.

Any *lot* of record prior to the adoption of the local law codified in this chapter, and whose area is less than the specified minimum *lot* requirements in Section 17.16.020 may be considered as complying with such minimum *lot* requirements and no variance shall be required, provided that the following minimum conditions are met:

- A. Such *lot* does not adjoin any other *lot* or *lots* held by the same owner where the aggregate area of such adjoining *lot* is equal to or greater than the minimum *lot* area required in Section 17.16.020.
- B. A septic permit from the one of the following agencies is issued for the nonconforming *lot* and a copy of such permit is provided to the town prior to commencement of any construction thereon:
 - 1. NYS Department of Environmental Conservation;
 - 2. NYS Department of Health;
 - 3. Chemung *county* Health Department;
 - 4. Chemung *county* Sewer *District*.
- C. For residential *use* listed in Section 17.12.010, such *lot* shall have a minimum area of at least six thousand (6,000) square feet and minimum width of fifty (50) feet at the required *setback line* and have the following minimum yard *setbacks*:
 - 1. *Side yard*: Six feet.
 - 2. *Rear yard*: Fifteen (15) feet.
 - 3. *Front yard*: Twenty (20) feet.
- D. *Accessory structures* shall be located as follows:
 - 1. A minimum of three feet from any rear or side *lot line*;
 - 2. Behind the rear *line* of a residential *building*;
 - 3. In accordance with all other requirements specified in Chapter 17.40.

In any *district* where residences are permitted, such undersized nonconforming *lot* may be used for not more than one single-unit dwelling.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.56.060 Extension, *alteration* or modification of a nonconforming *structure, use and/or lot*.

A. Any existing nonconforming *structure, use and/or lot* or any nonconforming *structure, use and/or lot* previously approved in a *site plan* shall comply with all applicable provisions of this title when such nonconforming *structure, use and/or lot* is proposed to be extended, altered, or modified in a manner that:

1. Increases the *lot* area being dedicated to or used for an existing or approved nonconforming *structure, use and/or lot* by more than fifty (50) percent of that which is existing or approved in a previously approved *site plan*;
2. Has a verified estimated cost of construction or installation for such extension, *alteration* or modification that exceeds fifty (50) percent of the assessed value of the nonconforming *structure, use and/or lot* at the time that such construction or installation is proposed; or
3. A nonconforming *building* is renovated or structurally altered during its life to an extent exceeding, in aggregate, a value that is fifty (50) percent of the replacement cost of the *building*.

B. Repair or Reconstruction of Damaged Nonconforming *Structure*. A nonconforming *structure* damaged by fire, flood or other causes shall comply with Section 17.36.120. The applicable provisions of Chapters 17.36 through 17.52 shall be utilized when the reconstruction or repair costs for such damaged *structure* are estimated to be more than fifty (50) percent of the assessed value of such damaged *structure* at the time of such damage.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.56.070 Reduction in *lot* area.

A. *Building permit* shall not be issued for any *lot* that is reduced in area so that it creates a nonconforming *bulk* or *density* in violation of this title.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.60

ZONING BOARD OF APPEALS*

Sections:

17.60.010 Title.

17.60.020 Authority.

17.60.030 Establishment and duties.

17.60.040 Training and attendance requirements.

17.60.050 Lack of training not to affect validity of members' action.

17.60.060 Removal procedures.

17.60.070 Term of office.

17.60.080 Compensation.

17.60.090 Staff.

17.60.100 Powers and duties.

17.60.110 Use variance.

17.60.120 Area variance.

17.60.130 Grant of variance.

17.60.140 Referral of planning board.

17.60.150 Rules of procedure, by laws and forms.

* Prior history: LL No. 2, 1997, LL No. 2, 2003 and LL No. 3, 2006.

17.60.010 Title.

This chapter shall be known as the "town of Big Flats Zoning Board of Appeals Law."
(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.020 Authority.

This chapter is enacted pursuant to Article 16 of the NYS Town Law Section 267 and Municipal Home Rule Law Section 10.
(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.030 Establishment and duties.

Pursuant to Article 16 of the NYS Town Law, the town board shall appoint a zoning board of appeals consisting of five members, shall designate its chairperson, and also provide for such expenses as may be necessary and proper. A member of the zoning board of appeals shall not at the same time be a member of the town board.
(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.040 Training and attendance requirements.

All members of the zoning board of appeals shall be required to attend a minimum of seventy-five (75) percent of their board meetings scheduled within a calendar year.

Noncompliance with minimum requirements relating to attendance at meetings shall be deemed a proper cause for removal from office.

All members of the zoning board of appeals shall be required to attend a minimum of five hours in relevant courses every calendar year.

Noncompliance with minimum requirements relating to training shall be deemed a proper cause for removal from office.

The costs of such seminars, *workshops*, or continuing education courses so designated shall be a town charge. Members shall also be reimbursed for travel and meal expenses according to town policies. Such training session shall be approved in advance by the town board.

Training sessions which relate to the duties of members of the zoning board of appeals may include programs offered by the New York State Department of State, New York State Association of Towns, New York State Department of Environmental Conservation, the Chemung *county* Planning Department, the New York State Planning Federation, the Southern Tier Central Regional Planning and *Development* Board, and other such entities, as well as in-house updates or seminars. The town board, after discussion with the chairpersons of the zoning board of appeals, shall annually designate such seminars, *workshops*, or continuing education courses which may be offered within a reasonable distance and which may be helpful to or of assistance to the zoning board of appeals in carrying out its functions in a timely, fair and lawful manner.
(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.050 Lack of training not to affect validity of members' action.

Notwithstanding the foregoing, the failure of a member of the zoning board of appeals to attend the required percentage of meetings or obtain such training shall not affect said person's appointment to serve on such board, to entertain applications, to vote on such applications, or the validity of such member's actions.
(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.060 Removal procedures.

The chairperson of the zoning board of appeals shall notify the town board in writing on or about December 1 in any year, or

at any other time if warranted, of any member who fails to comply with the minimum requirements for meeting attendance and/or training in any calendar year. In the event a member of the zoning board of appeals has failed to complete the minimum attendance and/or training requirements set forth in this chapter, then the town board may remove such member for cause as herein provided:

- A. Notice. Such members shall be mailed a written notice specifying the nature of the failure of such member to meet the minimum requirements regarding training and attendance.
- B. Public Hearing. Such notice shall specify a date, not less than ten (10) or more than thirty (30) days from the date of mailing such notice, when the town board shall convene and hold a public hearing on whether or not such member should be removed from service on such board. Such notice shall also specify the time and place of such hearing.
- C. Public Notice. Public notice of such hearing shall be published in a paper of general circulation within the town at least ten (10) days prior to the date of the public hearing.
- D. Conduct of Hearing. The public hearing on the charges shall be conducted before the town board. The member shall be given an opportunity to present evidence and to call witnesses to refute the charges. A record of such hearing shall be made. The decision of the town board shall be reduced to writing, together with specific findings of the town board with respect to each charge against such member. Findings shall be filed in the town clerk's office and mailed to the member within five business days of such filing by certified mail, return receipt.
- E. Action by the Town Board. Following the hearing and upon a finding that such member has not met the minimum attendance and/or training established by this chapter, the town board may:
 - 1. Remove such member from the zoning board of appeals; or
 - 2. Issue a written reprimand to such member without removing such member from such board; or
 - 3. If the town board shall find the reasons for failing to meet the minimum meeting attendance and/or training requirements are excusable because of illness, injury or other good and sufficient cause, the town board may elect to take not action.
- F. Nothing contained herein shall be deemed to limit or restrict the town board's authority to remove a member from the zoning board of appeals for cause (i.e., for other than the reasons enumerated herein). The procedural rules established under this section shall govern any hearing to remove a member for such cause.

(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.070 Term of office.

A. Appointment. The town board shall appoint the members of the zoning board of appeals by resolution. the terms of the members of the zoning board of appeals shall be for five years.

B. Removal. The town board shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for noncompliance with minimum requirements relating to meeting attendance and training.

C. Vacancies. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term of the vacated office.

D. Alternate Member. Pursuant to Article 16 of the NYS Town Law Section 267(11)(a), the town board shall appoint, by resolution, up to two alternate members to the zoning board of appeals to substitute for a regular member of the zoning board of appeals in the event a quorum of the zoning board of appeals is not attained due to a conflict of interest, illness or other absence. Such alternate members shall be appointed for one-year terms.

(LL No. 3, 2007 (part))
(LL No. 6, 2009)

17.60.080 Compensation.

The town board, by resolution, may provide for compensation to be paid to zoning board members.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.090 Staff.

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

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.100 Powers and duties.

The zoning board of appeals shall have the following powers and duties:

- A. Appeals. The zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the *director of planning* or a code enforcement officer, and that end shall have all of the powers of the code enforcement officer.
- B. Variance. The zoning board of appeals, on an appeal from a decision or determination of the *director of planning* or a code enforcement officer shall have the power to grant area and *use* variances as defined herein.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.110 Use variance.

A. Definition. *Use* variance means the authorization by the zoning board of appeals for the *use* of *lot* for a purpose which is not otherwise allowed or is prohibited by this title.

B. Criteria for Review. No *use* variance shall be granted by the zoning board of appeals without a showing by the *applicant* that the requirements of this title have caused unnecessary hardship, in order to prove such unnecessary hardship the *applicant* shall demonstrate the following facts to the zoning board of appeals for each and every permitted *use* under this zoning law for the particular *district* in which the *lot* is located:

- 1. The *applicant* cannot realize a reasonable return; provided, that lack of return is substantial and demonstrated by competent financial evidence;
- 2. The alleged hardship relating to the *lot* in question is unique, and does not apply to substantial portion of the *district* or neighborhood in which the *lot* is located;
- 3. The requested *use* variance, if granted, will not alter the essential character of the *district* neighborhood in which a *lot* is located; and
- 4. The alleged hardship is not self-created.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.120 Area variance.

A. Definition. Area variance means the authorization by the zoning board of appeals for the *use* of *lot* in a manner which is not allowed by dimensional or physical requirements of this title.

B. Criteria for Review. In making the determination, the zoning board of appeals shall take into consideration the benefit to the *applicant*, if the area variance is granted, as weighed against the detriment to the health, safety, and general welfare of the neighborhood or community by such grant. In making such determination the board shall consider the following:

1. Whether an undesirable change will be produced in the character of the neighborhood or community or a detriment to nearby properties will be created by the granting of the area variance;
2. Whether the benefit sought by the *applicant* can be achieved by some method, feasible for the *applicant* to pursue, other than area variance;
3. Whether the requested area variance is substantial;
4. Whether the proposed area variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or *district*; or
5. Whether an alleged difficulty of compliance with this title was self-created, which is relevant to the decision, but shall not necessarily preclude the granting of the area variance.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.130 Grant of variance.

A. The zoning board of appeals, in granting an area variance or *use* variance, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship or balance proven by the *applicant*, and at the same time preserve and protect the character of the neighborhood and health, safety and general welfare of the community.

B. The zoning board of appeals shall, in granting an area variance or *use* variance, have the authority to impose such reasonable conditions and restrictions as are related to and incidental to the proposed *use* of property.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.140 Referral of planning board.

The zoning board of appeals shall refer every request for area variance and *use* variance to the town planning board at least thirty (30) days prior to the scheduled hearing date. The planning board shall report its recommendation to the zoning board of appeals at least five days prior to the hearing date.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

17.60.150 Rules of procedure, by laws and forms.

The zoning board of appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by laws, and *forms* as they may deem necessary for the proper execution of their duties and to secure the intent of this title.

(LL No. 3, 2007 (part))

(LL No. 6, 2009)

Chapter 17.64

ADMINISTRATION AND ENFORCEMENT*

Sections:

17.64.010 Enforcement.

17.64.020 Zoning permits.

17.64.030 Notice of compliance.

17.64.040 Violation.

17.64.050 Fee schedule.

* Prior history: LL No. 2, 1997.

17.64.010 Enforcement.

This title shall be enforced by the *director of planning* or a code enforcement officer,, who shall be appointed by the town board. No *building permit* shall be issued except where all the provisions of this title have been complied with. The *director of planning* or a code enforcement officer, shall keep the planning board and town board advised of all matters pertaining to the enforcement of this title other than routine duties, and shall submit a monthly report to the town board enumerating the applications received, inspections made, permits issued or refused and other actions taken.

Whenever a violation of this title occurs, any person having knowledge thereof may lay any information in regard thereto before a proper magistrate as provided by law, and the procedures thereafter shall be as set forth in the Code of Criminal Procedure. (LL No. 2, 2003 (part)) (LL No. 6, 2009)

17.64.020 Zoning permits.

No *structures* or land shall be used, no *building* or *structure* shall be erected, added to or structurally altered until a permit therefore as specified in this section has been issued by the code enforcement officer. Except on written order of the *director of planning* or a code enforcement officer, no such zoning permit shall be issued for any *building* where the construction, addition or *alteration* or *use* thereof would be in violation of any of the provisions of this title or any other applicable town laws.

- A. Application. There shall be submitted, with each application for a zoning permit, a fee as established by town board and two copies of a layout or plot plan drawn to scale showing the actual dimensions of the *lot* to be built upon, the exact size and location on the *lot* of any existing and/or proposed *building* and *accessory structures* to be erected and such other information as may be necessary to determine and provide for the enforcement of this title.
- B. Process.
 1. One copy of such layout or plot plan shall be returned when approved by the *director of planning* or a code enforcement officer, together with such permit to the *applicant*.
 2. Upon approval of the application, the *director of planning* or a code enforcement officer, shall issue a *building permit* to the *applicant* upon the *form* prescribed by him and shall affix his or her signature or cause his or her signature to be affixed thereto.
 3. Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "approved." One set of such approved plans and specifications shall be retained in the town files and the other set shall be returned to the *applicant* together with the *building permit* and shall be kept at the *building* site open to inspection by the *director of planning* or a code enforcement officer,.
 4. If the application together with plan, specifications and other documents filed therewith, describe proposed work which does not conform to all of the applicable requirements of this title, the *director of planning* or a code enforcement officer shall not issue the same and shall return the plans and specifications to the *applicant* with a written explanation outlining the reasons therefore.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.64.030 Notice of compliance.

No *building* or *structure* hereafter erected, structurally altered, or extended shall be used, or changed in *use* until a *notice of compliance* or occupancy shall have been issued by a zoning officer in accordance with this title.

All notices of compliance or occupancy for new or altered *structures* shall be applied for coincident with the application for a *building permit* therefore. Such certificate of compliance shall be issued within thirty (30) days after the erection or *alteration* shall have been approved as complying with the provisions of this title.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.64.040 Violation.

A. Penalty. Any person, firm, company or corporation owning, controlling or managing a *use, building, structure, or lot* on which there has been placed, or there exists anything in violation of any of the provisions of this title; and any person, firm, company or corporation who shall assist in the commission of any violation of this title or any conditions imposed by the planning board; or who shall build, contrary to the plans or specifications submitted to the planning board and certified as complying with this title shall be guilty of an offense and subject to a fine of not less than two hundred fifty (\$250.00) and not more than one thousand dollars (\$1,000.00). Every such person, firm, company or corporation shall be deemed guilty of a separate offense for each day such a violation, omission, neglect or refusal shall continue.

B. Alternative Penalty. In case of any violation or threatened violation of any of the provisions of this title, or conditions imposed by the town board or planning board, in addition to other remedies provided in this chapter, the town board may institute any appropriate action or proceeding to prevent such unlawful erection, structural *alteration*, reconstruction, moving and/or *use*, to restrain, correct or abate such violation, to prevent the occupancy of such *building, structure or lot*, or to prevent an illegal act, conduct, business or *use* in or about such *lot*.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.64.050 Fee schedule.

A. Fee Schedule Established. A schedule of fees for all permits and applications as required in this title shall be set by town board.

B. Fee Remittance.

1. An application for a permit or other action for which a fee has been established in accordance with subsection A of this section shall be accompanied with such appropriate fee in order for such application to be deemed complete.

2. No action such as to grant permission, comment on, approve or disapprove an application pursuant to this title shall be taken without receipt by the town of the appropriate fee.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.68

AMENDMENTS*

Sections:

17.68.010 Procedure.

17.68.020 Advisory report by planning board.

17.68.030 Petition by owners of fifty percent of frontage.

17.68.040 Public notice and hearing.

17.68.050 Protest by owners.

17.68.060 Decision by town board.

17.68.070 Notification of decision.

* Prior history: LL No. 2, 1997.

17.68.010 Procedure.

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

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.68.020 Advisory report by planning board.

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

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.68.030 Petition by owners of fifty percent of frontage.

Wherever the owners of *lots* having fifty (50) percent of the total cumulative *road* frontage in a *district* or a part thereof shall present a petition duly signed and acknowledged to the town board and requesting an amendment, supplement, change or repeal of the requirements prescribed for such *district* or part thereof, it shall be the duty of the town board to vote upon the petition within ninety (90) days after filing of the same by the petitioners with the town clerk.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.68.040 Public notice and hearing.

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

- A. By publishing notices of the proposed amendment and the time and place of the public hearing in a newspaper of general circulation in the town, not less than ten (10) days prior to the date of public hearing;
- B. By giving written notice of hearing to any required municipal, *county*, regional, metropolitan, state or federal agency in a manner prescribed by title.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.68.050 Protest by owners.

A zoning amendment shall be passed by the favorable vote of at least a three-fourths majority vote of the town board if a protest against the proposed amendment is presented to the town board, duly signed and acknowledged by:

- A. The owners of twenty (20) percent or more of the area of land included in such proposed amendment;
- B. The owners of twenty (20) percent or more of the area of land immediately adjacent and extending a distances of one hundred (100) feet there from; or
- C. By the owners of twenty (20) percent or more of the area of land directly opposite thereto and extending a distance of one hundred (100) feet from the street frontage of the land proposed for zoning amendment.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.68.060 Decision by town board.

The town board shall set the public hearing as required and shall render its decision within sixty (60) days of the receipt of the planning board's report. If the town board deems it advisable, it may require as a condition for approval of the amendment, that the amended area be put to *use* within a reasonable length of time.

(LL No. 2, 2003 (part))
(LL No. 6, 2009)

17.68.070 Notification of decision.

The town board shall provide notice of decision pursuant to town law.
(LL No. 2, 2003 (part))
(LL No. 6, 2009)

Chapter 17.72

TOWN OF BIG FLATS PLANNING BOARD LAW

Sections:

- 17.72.010 Title.**
- 17.72.020 Authority.**
- 17.72.030 Purpose.**
- 17.72.040 Establishment of the planning board.**
- 17.72.050 Eligibility.**
- 17.72.060 Term of office.**
- 17.72.065 Training and attendance requirements.**
- 17.72.067 Lack of training not to affect validity of members' actions.**
- 17.72.068 Removal procedures.**
- 17.72.070 Compensation.**
- 17.72.080 Procedures.**
- 17.72.090 Powers.**
- 17.72.100 Inconsistency.**
- 17.72.110 Unconstitutionality and illegality.**

17.72.010 Title.

This chapter shall be known as the "town of Big Flats Planning Board Law."
(LL No. 5, 2004 (part))
(LL No. 6, 2009)

17.72.020 Authority.

This chapter is enacted pursuant to Article 16 of the NYS Town Law Section 271 and Municipal Home Rule Law Section 10.
(LL No. 5, 2004 (part))
(LL No. 6, 2009)

17.72.030 Purpose.

This chapter is enacted to establish a planning board for the town of Big Flats for purpose of securing, planning for, and promoting the public health, comfort, convenience, safety, welfare, the environment, appropriate land *use*, and orderly *development* in and of the town of Big Flats.
(LL No. 5, 2004 (part))
(LL No. 6, 2009)

17.72.040 Establishment of the planning board.

There shall be a planning board of seven members, which shall have the powers and duties set forth in Town Law Section 271.
(LL No. 5, 2004 (part))
(LL No. 6, 2009)

17.72.050 Eligibility.

- A. Membership on Other Boards. No person who is a member of the town board shall be eligible for membership on

the planning board. No person shall be disqualified from serving as a member of the planning board by reason of serving as a member or employee of the Chemung *county* planning board or department.

B. Attendance and Training. Any planning board member who is absent, without excuse, for more than two consecutive meetings of the board shall be subject to removal for failure to attain minimum attendance requirements. All planning board members shall complete such training requirements, including seminars, conferences, videotapes, audiotapes, or reading, as may be prescribed by the town board by resolution or as required under Article 16 of the Town Law.
(LL No. 5, 2004 (part))
(LL No. 6, 2009)

17.72.060 Term of office.

A. Appointment. The town board shall appoint the members of the planning board by resolution. the terms of the members of the planning board shall be for seven years.

B. Vacancies. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term of the vacated office.

C. Alternate Member. Pursuant to Article 16 of the NYS Town Law Section 271(15)(a), the town board shall appoint, by resolution, up to two alternate members to the planning board to substitute for a regular member of the planning board in the event a quorum of the planning board is not attained due to a conflict of interest, illness or other absence. Such alternate members shall be appointed for one-year terms.
(LL No. 2, 2006 (part); LL No. 5, 2004 (part))
(LL No. 6, 2009)

17.72.065 Training and attendance requirements.

A. All members of the planning board shall be required to attend a minimum of seventy-five (75) percent of their board meetings scheduled within a calendar year.

B. Noncompliance with minimum requirements relating to attendance at meetings shall be deemed a proper cause for removal from office.

C. All members of the planning board shall be required to attend a minimum of five hours in relevant courses every calendar year.

D. Noncompliance with minimum requirements relating to training shall be deemed a proper cause for removal from office.

E. The costs of such seminars, *workshops* or continuing education courses so designated shall be a town charge. Members shall also be reimbursed for travel and meal expenses according to town policies. Such training session shall be approved in advance by the town board.

F. Training sessions which relate to the duties of members of the planning board may include programs offered by the New York State Department of State, New York State Association of Towns, New York State Department of Environmental Conservation, the Chemung *county* planning department, the New York State Planning Federation, the Southern Tier East Planning and *Development* Board, and other such entities, as well as in-house updates or seminars. The town board, after discussion with the chairpersons of the planning board, shall annually designate such seminars, *workshops*, or continuing education courses which may be offered within a reasonable distance and which may be helpful to or of assistance to the planning board in carrying out its functions in a timely, fair and lawful manner.
(LL No. 2, 2006 (part))
(LL No. 6, 2009)

17.72.067 Lack of training not to affect validity of members' actions.

Notwithstanding the foregoing, the failure of a member of the planning board to attend the required percentage of meetings or

obtain such training shall not affect said person's appointment to serve on such board, to entertain applications, to vote on such applications, or the validity of such member's actions.

(LL No. 2, 2006 (part))

(LL No. 6, 2009)

17.72.068 Removal procedures.

The chairperson of the planning board shall notify the town board in writing on or about December 1 in any year, or at any other time if warranted, of any member who fails to comply with the minimum requirements for meeting attendance and/or training in any calendar year. In the event a member of the planning board has failed to complete the minimum attendance and/or training requirements set forth in this chapter, then the town board may remove such member for cause as herein provided:

- A. Notice. Such members shall be mailed a written notice specifying the nature of the failure of such member to meet the minimum requirements regarding training and attendance.
- B. Public Hearing. Such notice shall specify a date, not less than ten (10) or more than thirty (30) days from the date of mailing such notice, when the town board shall convene and hold a public hearing on whether or not such member should be removed from service on such board. Such notice shall also specify the time and place of such hearing.
- C. Public Notice. Public notice of such hearing shall be published in a paper of general circulation within the town at least ten (10) days prior to the date of the public hearing.
- D. Conduct of Hearing. The public hearing on the charges shall be conducted before the town board. The member shall be given an opportunity to present evidence and to call witnesses to refute the charges. A record of such hearing shall be made. The decision of the town board shall be reduced to writing, together with specific findings of the town board with respect to each charge against such member. Findings shall be filed in the town clerk's office and mailed to the member within five business days of such filing by certified mail, return receipt.
- E. Action by the Town Board. Following the hearing and upon a finding that such member has not met the minimum attendance and/or training established by this chapter, the town board may:
 1. Remove such member from the planning board; or
 2. Issue a written reprimand to such member without removing such member from such board; or
 3. If the town board shall find the reasons for failing to meet the minimum meeting attendance and/or training requirements are excusable because of illness, injury, military deployment, or other good and sufficient cause, the town board may elect to take not action.
- F. Nothing contained herein shall be deemed to limit or restrict the town board's authority to remove a member from the planning board for cause (i.e., for other than the reasons enumerated herein). The procedural rules established under this section shall govern any hearing to remove a member for such cause.

(LL No. 2, 2006 (part))

(LL No. 6, 2009)

17.72.070 Compensation.

The town board, by resolution, may provide for compensation to be paid to planning board members.

(LL No. 5, 2004 (part))

(LL No. 6, 2009)

17.72.080 Procedures.

A. Chairperson. The town board shall, by resolution, designate the chairperson of the planning board. In the absence of a chairperson, the planning board may designate a member to serve as chairperson.

B. Meetings. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. The concurring vote of a majority of the members of the board shall be necessary for the planning board to act.

C. Oaths. The chairperson, or in absence of the chairperson, the acting chairperson, may administer oaths and compel the attendance of witnesses.

D. Meetings, Minutes, Record. Meetings of the planning board shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The planning board 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.

E. State Environmental Quality Review Act. The planning board shall comply with the provisions of the State Environmental Quality Review Act under Article Eight of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part 617 of the New York Codes, Rules and Regulations.

F. Hearings.

1. Time of Hearing. If a public hearing is required, the planning board shall schedule a hearing of all applications within the time permitted by the applicable ordinance, law, or regulation giving jurisdiction to the board in the manner.

2. Notice of Hearing. The planning board shall give notice of the hearing in the time and manner as provided by law. The board shall mail notices of the hearing to the parties, and if required by Section 239 of the General Municipal Law of the state of New York, to the *county* planning board.

3. *Form* of Notice. The notice shall state the name of the *applicant*, the location of the property involved, the general nature of the application involved, and the date, time and place of the hearing sought.

4. Proceedings. The planning board shall create its own rules and regulations pertaining to the conduct of such public hearings.

5. General Rules. Any party may appear in person or by agent or attorney.

6. Oaths. The chairman, or in his or her absence, the acting chairman, may administer oaths.

G. Procedures. The planning board shall create and adopt its own rules and regulations, subject to the town board's review and approval, concerning the procedures to be utilized for matters submitted to, or reviewed by, the planning board.

(LL No. 5, 2004 (part))

(LL No. 6, 2009)

17.72.090 Powers.

The planning board shall have all the powers allowed under Article 16 of the NYS Town Law and any provisions of the town code.

(LL No. 5, 2004 (part))

(LL No. 6, 2009)

17.72.100 Inconsistency.

All other local laws and ordinances of the town of Big Flats inconsistent with the provisions of this chapter are repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this chapter shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this chapter.

(LL No. 5, 2004 (part))

(LL No. 6, 2009)

17.72.110 Unconstitutionality and illegality.

If any clause, sentence, paragraph, word, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair, or invalidate any paragraph, word, section or part thereof not directly involved in the controversy in which such judgment shall have been rendered.

(LL No. 5, 2004 (part))

(LL No. 6, 2009)