

# **TOWN OF ALABAMA**

# **ZONING LAW**



<b>ADOPTED:</b>	<b>JUNE 8, 1987</b>
<b>AMENDED THROUGH:</b>	<b>NOVEMBER 27, 2006</b>
<b>AMENDED:</b>	<b>DECEMBER 13, 2010</b>
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<b>AMENDED:</b>	<b>AUGUST 12, 2013</b>
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**TOWN OF ALABAMA  
ZONING LAW**

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# **TOWN OF ALABAMA**

## **ZONING LAW**

### **ARTICLE I**            **ENACTING CLAUSE, TITLE, PURPOSES, APPLICATION** **VALIDITY**

#### **SECTION 101**        **ENACTING CLAUSE**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Alabama hereby adopts and enacts as follows:

#### **SECTION 102**        **TITLE**

This Local Law shall be known as the “Zoning Law of the Town of Alabama”:

#### **SECTION 103**        **PURPOSES**

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

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

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

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

D. To protect the character and the social and economic stability of all parts of the Town, and to encourage the orderly and beneficial development of all parts of the Town of Alabama to bring about the gradual conformity of the uses of land and buildings through the comprehensive zoning plan set forth in this Local Law, and to minimize the conflicts among the uses of land and buildings.

E. To promote the most beneficial relation between the uses of land and buildings and the circulation of traffic throughout the Town, having particular regard to the avoidance of congestion in the

streets and the provision of safe and convenient vehicular and pedestrian traffic movement appropriate to the various uses of land and buildings throughout the Town.

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

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

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

**SECTION 104            APPLICATIONS OF REGULATIONS**

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

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

This Local Law shall not apply to uses which were legal, prior, existing, non-conforming uses as defined here.

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

All buildings under construction at the time this Local Law is adopted shall conform to the Zoning Ordinance in effect at the time construction was commenced.

**ARTICLE II**            **DEFINITIONS**

**SECTION 201**            **INTERPRETATIONS OF TERMS AND WORDS**

Except where specifically defined herein, all words used in this Local Law shall carry their customary meanings. Words used in the present tense shall include the future tense and the plural includes the singular, the word “lot” includes the word “plot,” the word “building” includes the word “structure,” the word “shall” is always mandatory, the words “occupied” or “used” shall be construed to mean and shall be considered as though followed by words “or intended, arranged or designed to be used or occupied”.

**SECTION 202**            **DEFINITIONS**

Accessory Building: A building situated on a lot, subordinate to the main building on the same lot, and used for purposes customarily incidental and subordinate to said main building.

Accessory Use: Use customarily incidental and subordinate to the principal use of buildings, and located on the same lot (i.e. a garden is accessory to a residence). For the purposes of this Zoning Law a Family Day Care Home, Group Family Day Care home, Roadside Stand and Home Occupation (as defined herein) shall be considered accessory uses to a principal use on a lot, however, they and other accessory uses may be subject to additional requirements and review provisions set forth in this Zoning Law (i.e. a Home Occupation II requires issuance of a special use permit).

Accessory Structure: A structure the use of which is incidental to the principal use of the main structure and which is attached thereto or located on the same lot.

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

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

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

Agricultural Use: Any parcel of land containing at least five (5) acres used for the raising of food products or other useful or valuable growths of the field or garden for sale, together with dairying, raising of livestock and poultry, and other generally accepted agricultural practices, where the same is carried on as a business or otherwise for profit.

Such uses shall include the establishment of necessary farm structures within the prescribed limits, and the storage of equipment used in connection therewith.

Agricultural uses shall exclude the raising of furbearing animals, riding academies, public stables or dog kennels.

Alteration: Structural changes, rearrangements, change of location or addition to a building, other than repairs and modifications in building equipment.

Amusement Game: Any mechanical, electric or electronic device used or designed to be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device or juke boxes.

Animal Shelter: Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

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

Antenna: An arrangement of wires or metal rods using in transmitting or receiving electromagnetic waves.

Apartment House: See Dwelling, Multi-Family

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

Arterial Highway: A highway which collects and distributes traffic to and from minor highways. For the purposes of the Zoning Law, the following highways shall be considered arterial highways within the Town: NYS Routes #63 and 77.

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

Bio-Remediation: The use of an ex-situ bio remediation process for the treatment of petroleum contaminated soils.

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

Buffer Strip: See Section 402.

**Building:** Any structure having a roof supported by columns or by walls, and intended for the shelter, housing or enclosure of persons, animals, machinery, equipment or other material.

**Building, Front Line Of:** The line of that face of the building nearest the street line, or if there are street lines on two (2) or more sides of the building, it is the line of that face of the building fronting on that street line, where the principal entrance is located. This face includes decks and porches but does not include steps.

**Building, Height Of:** The vertical distances measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

**Building Permit:** A permit issued by the Code Enforcement Officer, stating that the plans for the proposed construction of a building are in conformance with the Uniform Fire Prevention and Building Code.

**Building, Temporary:** A “temporary building” or “temporary structure” erected, constructed or placed upon the premises, for a period not exceeding nine (9) months. All other buildings or structures shall be deemed permanent for the purposes of this Zoning Law.

**Neighborhood Business:** A small commercial establishment, containing no more than 2,500 square feet in gross floor area, catering primarily to nearby residential areas or tourists and providing convenience and/or specialty goods and services including but not limited to grocery store, gift shop, beauty salon and barber shop. That is visually integrate themselves into the existing rural setting in a comfortable compatible manner using high quality building materials. Residence on the property is not required for such a business.

**Campground:** Land on which is located one or more cabins, trailers, shelters, houseboats or other accommodation for seasonal or temporary living purposes, excluding mobile homes.

**Certificate of Compliance:** A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and any adjustments thereto granted by the Board of Appeals.

**Certificate of Occupancy:** A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

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

Child day care does not refer to care provided in:



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

(2) A facility providing day service under an operating certificate issued by the NYS Department of Social Services.

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

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

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

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

Club: An organization established pursuant to the New York Not-For-Profit Corporation Law for a social, educational, or recreational purpose, catering exclusively to members and their guests, whose activities are not conducted primarily for profit.

Cluster Development: A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commercial Excavation (Mining): A lot or part thereof used for the purpose of excavation processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process of grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into categories based on the scale and type of operation as follows:

1. Major Excavation: All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations.

2. Minor Excavation: All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavation.

Commercial Wind Energy System – A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of 195 ft. or less. Other minimum building/structure height restrictions within other sections of this Zoning Law are not applicable.

Community Center: Meeting Hall or place of assembly, not operated primarily for profit.

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

Contractor's Yard: Businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services.

Convalescent Home or Extended Care Facility: See "Hospital".

Coverage: That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

Development: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations, which change could lead to increased flood damage, excluding normal maintenance to farm roads.

Disposal: The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, radioactive, hazardous waste, or wastewater into or on any land or water so that such solid waste, radioactive, material, hazardous waste, or wastewater will remain on the land or water and will not be removed.

Disposal Transfer Station: A solid waste management facility, other than a Recyclable Handling and Recovery Facility exclusively handling no-putrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

Drive in Business: A drive-in business includes drive-in restaurant, refreshment stand, bank, car wash and the like where patrons are typically served in, or near, their motor vehicles.

Dwelling: A building, including a modular home, designed or used exclusively as permanent living quarters for one or more families; the term shall not be deemed to include automobile court, hotel/motel, boarding house, mobile home, tourist home, tent or recreational vehicles.

Dwelling unit: A building, or portion thereof, providing complete housekeeping facilities (kitchen, bath, living and sleeping areas) for one family.

Dwelling, One Family: A building containing one dwelling unit only. [Double-wide or triple wide mobile homes designed and built at the factory to be combined on site and with a minimum width of twenty feet (20) and minimum area of seven hundred twenty (720) square feet shall be deemed to be one-family dwellings for purpose of this Zoning Law].

Dwelling, Two- Family: A dwelling containing two dwelling units only.

Dwelling, Multi-Family: A dwelling containing three or more dwelling units.

Dwelling Unit, Primary: A dwelling, or portion thereof, providing complete living facilities for one family, and which occupies a space equal to or greater than fifty percent (50%) of the total available living space within a structure.

ECHO (Elderly Cottage Housing Option) Unit: A separate, detached, temporary dwelling unit, with its own cooking, sanitary and sleeping facilities, accessory to a single family dwelling, for the use of and occupied by the elderly relatives of the occupants of the one-family dwelling. Such unit shall be constructed and installed in accordance with the requirements of Chapter B if the NYS Uniform Fire Prevention and Building Code and shall not be a mobile home.

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

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

Family Day Care Home: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for and registered by NYS Department of State. The Name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

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

Farm: See Agricultural use.

Fence: An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of material, or natural plantings (i.e. living fence) other than temporary uses such as snow fences or rabbit fences.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas, resulting from the overflow of inland waters and/or the unusual and rapid accumulation of, or runoff of, surface waters from any source.

Flood Insurance Rate Map (FIRM): Means an official map of the community, on which the FEMA has delineated the area of special flood hazard and the risk premium zones applicable to the community.

Flood Plain Overlay Zone: That area of the Town identified on the Flood Insurance Rate Map (FEMA Community Number 3610G7C) as being subject to flood and/or mudslide hazards, which area is delineated on the Zoning Map and for which special flood plain management requirements and criteria are enumerated in the Town's Flood Damage Prevention Local Law.

Flood Area of a Building: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Floor, Lowest: Floor of lowest enclosed level including basement, crawl space, or garage.

Frontage: The extent of a building or a lot along one public street as defined herein measured along the front property line.

Game Room: A building or place containing five (5) or more amusement games as defined herein (see Amusement).

Garage, Private: An enclosed space for the storage of one (1) or more motor vehicles, provided that no business, occupation or service is conducted for profit therein, nor is space for more than two (2) cars leased to a nonresident of the premises.

Garage, Public: Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, adjusting or equipping of automobiles or other motor vehicles.

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

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

commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Grade, Finished: Natural surface of the ground, or the surface of the ground, lawn, walks or roads after the completion of any change in contour.

Group Family Day Care: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for and registered by NYS Department of State. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Habitable Floor Space: Any floor usable for living purposes, which includes working sleeping, eating, cooking or recreation or combination thereof. A floor used only for storage purposes is not “habitable”.

Hazardous Waste: A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous waste, because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed.

Home Business: An accessory use, other than a “Home Occupation” as defined herein, that is conducted within an occupied dwelling or an attached or detached accessory structure (including a barn) for gainful employment and involved the manufacture, provision or sale of goods and/or services principally on the premises.

Home Occupation: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. Home occupations are further classified as being either category I or II, depending upon on whether or not non-resident individuals are working on-site and whether more than one customer visit is expected at a time (see descriptions below).

In particular, a home occupation may include, but is not limited to, the following: Art studio; barber shop/beauty parlors (limited to two work stations); cleaning services, contractors, computer programmer; cook; day nursing; direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman; dressmaker or tailor; electrical/radio/television repair; financial planning and investment services; insurance agent; musician; photographer; professional offices of a physician, dentist, lawyer, accountant, engineer, or architect; real estate office; teaching or tutoring (limited to two students at one time); telephone answering; upholsterer; school-age child care and family-type home.

However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants or furniture refinisher (involving “dip tanks” or stripping).

Home Occupation I: A home occupation which employs on-site, only resident members of the family and which expect not more than one customer visiting the site at any given time.

Home Occupation II: Any home occupation which is not considered a Home Occupation I as set forth above.

Hospital: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

Hospital, Animal: An establishment for the medical and/or surgical care of animals.

Hotel/Motel: A building providing overnight accommodation for more than four (4) transient people, which building need not be owner occupied and may provide eating, restaurant and related facilities.

Indoor Recreation: Includes, but is not limited to, health club, bowling alley, tennis court, table tennis, pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor recreation.

Industrial Park: A large tract of land that has been planned, developed and operated as an integrated facility for a number of individual industrial uses, with special attention to circulation, parking, utility needs, aesthetics, and compatibility.

Junkyard: Outside storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purposes, such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together equal in bulk two or more such vehicles. In addition, a junkyard shall include any land or structure used for collecting, storage or sale of waste paper, rags, scrap metal, pallets, other discarded material, or ten or more used and unmounted tires other than within a fully enclosed building. The term junkyard shall include salvage operations, second-hand parts collection and areas for the processing or recycling of second-hand or used materials.

Kennel: Building or land used for harboring six (6) or more dogs over six (6) months old.

Landfill Sanitary: The depositing of refuse in a natural or man-made depression or trench, or dumping it at ground level, then compacting to the smallest practical volume, and covering with earth or other material in a systematic and sanitary manner.

Light Industrial: The processing, fabrication, assembly or packaging of previously prepared or refined materials.

Lot: Land occupied or which may be occupied by a building and its accessory uses, together with required open spaces, having not less than minimum area, width and depth required for a lot in the district in which such land is situated and having frontage on a street, or other means of access as may be determined by the Planning Board to be adequate as a condition for issuance of a building permit.

Any land included in a public road, street or highway right-of-way shall not be considered part of the lot for zoning purposes.

Lot Area: Total area within property lines. Any land included in a public road, street or highway right-of-way shall not be included in calculating lot area.

Lot Corner: A lot located at the junction of and fronting on two or more intersecting streets (also definition "Lot Line Front").

Lot Depth: Mean horizontal distance from street right-of-way line of the lot to its opposite rear line measured at right angles to the street right-of-way line.

Lot, Frontage: The horizontal distance between the side lot lines, measured at the street right-of-way line.

Lot Width: The horizontal distance between the side lot lines, measured at right angles to the lot depth.

Lot Lines: The property lines bounding a lot as defined herein.

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

Lot Line, Rear: The lot line which is generally opposite the front lot line. If the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

Lot Line, Side: The property line or lines extending from the front lot line to the rear lot line, except in the case of corner lots which have no rear lot line.

Manufacturing: Establishments engaged in the mechanical or chemical transformation of materials of substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

Mass Vehicle Storage: A commercial enterprise comprised primarily of the temporary storage of four (4) or more whole and saleable motor vehicles. Such uses do not include motor vehicle dismantling or permanent disposal (such as a junkyard), or the retail sale of motor vehicles from the premises.

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

Mobile Home Park: A parcel which has been improved for the rental or lease of two or more lots and the provision of services for mobile homes for non-transient residential use.

Motel: See Hotel.

Motor Vehicle Repair Shop: Any building or land used for gain, wholly or partially, engaged in the business of service, repair or diagnosing motor vehicle malfunctions or repairing bodies, fenders or other components damaged by accidents or otherwise.

Non-commercial wind energy systems – A wind energy system that is operated primarily (51% or more) for on-site (may be more than one (1) parcel) consumption, and has a nameplate capacity of 50 kW or less, and/or a total height of 195 feet or less.

Non-Conforming Building: A building legally existing at the time it was created which in its design or location upon a lot does not conform to the current regulations of this Zoning Law for the district or zone in which it is located.

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

Non-Conforming Use: Use of building or of land legally existing at the time it was created, but not conforming to the current zoning regulations of the district which it is located.

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Office Building: A building used primarily for conducting the affairs of a business, profession, service, industry, or government, or like activity, that may include ancillary services for office works such as a restaurant, coffee shop, newspaper or candy stand.

Outdoor Recreation: Includes, but is not limited to, golf courses, golf driving range, trap, skeet and archery range, swimming pool, skating rink, tennis court, recreation stadium, baseball and softball fields, skiing facility, hunting preserve, and similar places of outdoor recreation.

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

Owner: An individual or individuals, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.



Parking Space: An off-street space available for the parking of one (1) motor vehicle on a transient basis and having a width of ten (10) feet, and an area of not less than two hundred (200) square feet, exclusive of passageways and driveways and having access to a street. Handicapped parking spaces may be larger and therefore require more space, however, regardless of their size; such space shall constitute a single parking space.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

Planning Board: The officially designated Town of Alabama Planning Board as established by the Town Board in accordance with Section 271 of the Town Law.

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

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

Recreational Vehicle: A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by a motor vehicle (see also Sport Recreational Vehicle). The basic entities are:

A. Travel Trailer: A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motor vehicle.

B. Camp Trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by a motor vehicle.

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

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

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

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

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

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Residential Care Facility: A residential facility operated by either a public or private agency and regulated by the NYS Department of Social Services, exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent children, homes or shelters for unmarried mothers, residential programs for victims of domestic violence, or adult care facilities.

Restaurant: Any establishment, however designed, at which food is sold for consumption on the premises to patrons seated within an enclosed building and where the taking of food and drink from said building is incidental. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Retail Trade: Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Roadside Stand: Structure of a nonpermanent nature (movable and temporary) located on the owner's property utilized during the harvest season for the sale of agricultural products grown primarily by the owner.

Satellite Dish: A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geostationary satellites.

School: Schools shall include parochial, private and public institutions providing New York State approved educational services, including preschool and vocational programs, together with private and public schools and colleges and universities.

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

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

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

Shopping Center: A group of businesses occupying adjoining structures, having adequate space for loading and unloading and adequate off-street parking.

Sign: Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or

advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious, political or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

Business Sign: A sign which directs attention to a business, profession and/or industry conducted or to products manufactured or sold upon the same lot.

Directional Sign: A sign limited to providing information on the location of an activity, business or event.

Off-Premise Advertising Sign: A sign which advertises an establishment, merchandise, service or entertainment, which is not sold, produced, manufactured or furnished at the property on which said sign is located (e.g. “billboards” or “outdoor advertising”).

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

Temporary Sign: A sign related to a single activity or event having duration of no more than sixty (60) days.

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

Site Plan: A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Law, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan.

Sketch Plan – A sketch of a proposed non-commercial wind energy system showing information specified in SECTION 622 NON-COMMERCIAL WIND ENERGY SYSTEMS of this Zoning Law to enable the applicant and the Planning Board to expeditiously reach general agreement as to the form of the layout and objectives of this Zoning Law.

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

Sporting Club: A Club (see definition) or business involved in the organized use of property for trap shooting, skeet shooting, sporting clay shooting, and archery and fishing.

Stable, Private: A building in which horses or other livestock are kept for private use and not for hire, remuneration, or sale.

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

Stabling of Agricultural Animals: A concentration of animals, permitted under agricultural use, private stable and public stable, within a building, structure or other defined area for the purpose of housing or feeding.

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

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

Structure: Anything constructed or erected, the use of which requires location on or in the ground, or attachment to something having location on or in the ground.

Swimming Pool: A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a recirculating and/or controlled water supply with a depth of greater than two (2) feet.

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

Total Height – The vertical distance from ground level to the top of a wind turbine blade when the tip is at its highest point or, if blades are contained, to the highest point of the housing.

Town Board: Shall mean the Town Board of the Town Of Alabama, New York.

Trailer: Trailer shall include any towed vehicle used for carrying goods, equipment, and/or machinery.

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

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

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

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

Wind Energy Conversion System: Production model equipment installed for primarily farm use that converts and then stores or transfers energy from the wind into usable forms of energy in which the output is primarily consumed within the farm operation. The system includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire substation, maintenance or control facility, or other component used in the system.

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

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

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

Yard: An unoccupied open space, on the same lot with any principal or accessory buildings or structures.

Yard, Front: The unoccupied, open space within and extending the full width of the lot from the front lot line to the front line of the principal building which is nearest to such front lot line.

Yard, Rear: The unoccupied, open space within and extending the full width of the lot from the rear lot line to the part of the principal building which is nearest to such line.

Yard, Side: The unoccupied, open space within the lot extending the full distance from the front yard to the rear yard and from the side lot line to the part of the principal building which is nearest to such side lot line.

Zoning Board of Appeals: That board appointed by the Town Board, specifically to hear all appeals as provided by the regulations and other duties specifically set forth in this Zoning Law, NYS Town Law or as assigned to it by the Town Board.

Zoning Enforcement Officer: The Zoning Enforcement Officer of the Town of Alabama as appointed by the Town Board.

Zoning Permit: A permit issued by the Zoning Officer, stating that the purpose for which a building or land area is to be used is in conformance with the uses permitted and all other requirements of this Zoning Law.

**ARTICLE III**            **ESTABLISHMENT OF ZONING DISTRICTS**

**SECTION 301**            **ZONING DISTRICT CLASSIFICATION**

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

- R**       Residential District
- A-R**    Agricultural-Residential District
- C**       Commercial District
- I**       Industrial District
- LC**     Land Conservation
- FP**     Flood Plain Overlay District
- PUD**    Planned Unit Development District

**SECTION 302**            **ZONING MAP ESTABLISHED**

Said zoning districts are bounded and defined as shown in a map entitled “Zoning Map of the Town of Alabama, NY.” The official copy of the zoning map is hereby made a part of this Local Law and is on file with the Town Clerk.

**SECTION 303**            **INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

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

- A.       Zoning district boundary lines are intended to follow streets, right-of-way, water courses or lot lines, or be parallel or perpendicular thereto, unless such district boundary lines are fixed by dimensions, as shown on the zoning map.
- B.       Where zoning district boundaries are indicated as following approximate streets, right-of-way, or water courses, the center lines thereof shall be construed to be such boundaries.
- C.       Where zoning district boundaries are so indicated that they follow the edge of lakes, ponds, reservoirs of other bodies of water, mean high water lines thereof shall be construed to be the zoning district boundaries.
- D.       Where zoning district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be such boundaries.
- E.       If, after the application of the foregoing rules, uncertainty exists as to the exact location of a district boundary, the Board of Appeals shall determine the location of said lines.

**SECTION 304**      **OVERLAY DISTRICTS**

- A. In an overlay zoning district, property is placed simultaneously in two districts and the requirements of both districts apply.
- B. The requirements of the overlay zone modify those of the basic district.

**SECTION 305**      **LOTS IN TWO OR MORE DISTRICTS**

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

**SECTION 306**      **RESIDENTIAL USES ON PRE-EXISTING LOTS**

A single-family dwelling, customary accessory building(s) and structure(s) on lots or parcels created on and after the effective date of this Zoning Law if altered or constructed shall be in compliance with the minimum area requirements for lot size, lot width, front, side and rear yard setbacks listed in Table I, Row C below.

If the lot or parcel was created between 6/8/87 and the effective date of this Zoning Law a single-family dwelling, customary accessory building(s) and structure(s) if altered or constructed shall conform to Table I, Row C for lot size, lot width, front, side and rear yard setbacks if all said requirements can be met; otherwise, said alteration or construction shall meet all the area requirements in Table I, Row B.

If the lot or parcel was created prior to 6/8/87, a single-family dwelling, customary accessory building(s) and structure(s) if altered or constructed shall conform to Table I, Row C for lot size, lot width, front, side and rear yard setbacks if all such requirements can be met, otherwise, said alteration or construction shall meet all the area requirements in Table I, Row A.

The date upon which all lots or parcels were created shall be governed by the date the same was filed in the Office of the Genesee County Clerk. It shall be the responsibility of the applicant to provide the Zoning Enforcement Officer with adequate verification as to when a specific lot was created and all applicable Genesee County Health Department Approvals.

Compliance with the current area requirements for maximum building height and maximum lot coverage shall be required regardless of the creation date of the lot. The setback requirements for accessory buildings and structures for a single-family dwelling are further addressed in Section 403.

**TABLE I**

ROW	LOT CREATION DATE	ZONING DISTRICT	MINIMUM AREA REQUIREMENTS				
			Lot Size (Sq. Ft.)	Lot Width (Feet)	Yard Setback (ft.)		
					Front	Side	Rear
A	Prior to 6/8/87	R & A-R	20,000	100	40	15	40
B	6/8/87 to the effective date of the current Zoning Law	R	20,000	100	75	15	35
		A-R	40,000	150	75	25	50
C	Effective date of the current Zoning Law forward	R	40,000	200	75	15	35
		A-R	40,000	200	75	25	50

**SECTION 307      ENTRANCES AND EXITS ONTO HIGHWAYS**

A.      Written Permission Required

If otherwise required by applicable law, rule or regulation, no person, firm or corporation shall, after the effective date of this Zoning Law, cut, construct or locate any driveway entrance into or exit from a highway in the Town of Alabama without having first received written permission to do so from the Highway Department having jurisdiction, namely the NYS Department of Transportation, Genesee County Highway Department or the Town of Alabama Highway Department. Three (3) copies of such written permission shall be submitted, one to each of the following: Town of Alabama Highway Superintendent, Town Zoning Enforcement Officer, and Town Clerk. If the proposed driveway is in a designated DEC wetland, protected Federal Wetland or Flood Hazard Zone as designated by the Federal Emergency Management Agency (FEMA) then the appropriate respective permits shall also be required and three (3) copies provided as above.

B.      Standard Driveway Entrance and Exit Requirements – Town Highways

The standards set forth herein below are considered the minimum acceptable for installation of a new driveway on a Town Highway. The Highway Superintendent of the Town of Alabama may impose any “Special Requirements” which the particular situation at the location where such driveway is sought to be located requires in his judgment under the circumstances.

1. The applicant shall furnish all material and bear all costs of construction within the Town highway right-of-way, pay the cost of all work done and materials furnished as required to meet the conditions of any permit issued by the Town Highway Superintendent.
2. No alteration or addition shall be made to any driveway or be relocated without first securing a new permit from the Town Highway Superintendent.



3. No more than two driveways to a single commercial establishment entering on one highway shall be permitted.

4. The maximum width for a single combined entrance to exit shall be no more than 60 feet for commercial use and shall be thirty (39) feet for residential use. The maximum width for each driveway when two or more are permitted shall not be more than sixty (60) feet.

5. The angle of the driveway with respect to the pavement shall not be less than 45 degrees.

6. No driveway will be permitted where sight distance at pavement edge is less than 350 feet in each direction.

7. No driveway shall be permitted within 50 feet of any public highway intersection boundary line.

8. A fully dimensioned plan of the proposed driveway shall be attached to each application for a permit required hereunder.

9. Any culvert pipe required to be installed at such driveway entrance or exit shall be of a shall be of a type (i.e. corrugated metal, solid plastic core, etc.), specifications and diameter determined by the Town Highway Superintendent and a minimum of 30 feet in length.

10. No head walls above surface of driveway shall be permitted.

11. No concrete surface closer to the traveled highway than the edge of the highway property lines.

12. Asphalt concrete may connect with traveled roadbed under strict directions of the Highway Superintendent.

13. A culvert pipe shall be placed so as to allow it to run full without spilling out onto the highway either on the high or low side of the pipe.

#### **ARTICLE IV            GENERAL REGULATIONS**

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

**SECTION 401            BUILDINGS, USES AND LOTS**

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

1.     An approved multifamily dwelling project,
2.     A single family dwelling accompanying a non-residential use, or uses, permitted on a lot in Agricultural-Residential (A-R) and Residential (R) Districts, provided there is only one use of a commercial nature on the lot, or
3.     A single family dwelling accompanying a non-residential use, or uses, requiring a Special Use Permit in Agricultural Residential (A-R) and Residential (R) Districts, if approved by the Planning Board as part of the Special Use Permit Application Process, provided there is only one use of a commercial nature on the lot.

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

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

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

E.     Lots Under Water or Subject to Flooding

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

4. Where any part of a lot is separated by the main body of water, such separate land shall not be included in computing lot area.

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

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

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

I. Yards on Corner Lots - Any yard adjoining a street shall be considered a front yard for the purpose of this Zoning Law and shall comply with all requirements for a front yard in the District in which it is located. The remaining yards shall be considered side yards.

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

A. Porches and Decks - shall be considered part of a building insofar as yard requirements are concerned. A porch shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

B. Projecting Horizontal Architectural Features – Architectural features, such as window sills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than three (3) feet into any required yard.

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

D. Visibility at Intersections - On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height, shall be erected, placed or maintained within the triangular area formed by the intersecting road lines and a straight line joining said road lines at points which are forty (40) feet in distance from the point of intersection, measured along said road lines. This paragraph shall not apply to existing trees, provided that no branches are closer than six (6) feet to the ground.

E. Swimming Pools - Swimming pools shall be considered accessory structures within the provisions of Section 403 of this Zoning Law, and shall be set back from lot lines at least the minimum distance required for other buildings and structures. Swimming pools shall be enclosed with adequate fencing and gates as required by the NYS Uniform Code.

F. Buffer Strip - Wherever a buffer strip is required by this Local Law, it shall meet the following standards:

1. Be at least ten (10) feet in width along any business or industrial lot line abutting a lot in a Residential or Agricultural-Residential District.
2. Be of evergreen planting of such type, height and spacing as, in the judgment of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining residential lot. The plans and specifications for such planting shall be filed with the approved plan for the use of the lot.
3. A wall or fence of which the location, height, and design has been approved by the Planning Board, may be substituted for the required planting.

G. Open Space-Commercial and Industrial Districts - Where a Commercial or Industrial District abuts a Residential or Agricultural-Residential District, there shall be at least one hundred (100) feet of open space within the Commercial or Industrial District along such abutting line, which open space shall include a buffer strip pursuant to the provisions of Subsection F of this Section.

H. Top Soil - No person shall within a distance of five hundred (500) feet of any road, strip, excavate or otherwise remove topsoil for sale or for use other than on the premises from which the topsoil was taken, except in connection with the construction or alteration of a building or structure on such premises and excavating or grading incidental thereto.

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

## **SECTION 403**      **LOCATIONS OF ACCESSORY BUILDINGS AND STRUCTURES**

A. Accessory Buildings are permitted as follows:

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

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

1. Accessory structures (other than buildings) equal to or less than

Fifteen (15) feet in height, including satellite dishes with a diameter of forty (40) inches to thirteen (13) feet, shall not be located closer than fifteen (15) feet to the side and/or rear lot line and shall not be located within the minimum required front yard. Satellite dishes less than forty (40) inches in diameter may be located anywhere on a lot and may be installed without the issuance of a zoning permit.

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

## **SECTION 404      NONCONFORMING USES, STRUCTURES AND LOTS**

### **A.      Lawful Existing Uses or Structures**

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

1. That no conforming lot shall be further reduced in size.
2. That no nonconforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.
3. That no nonconforming use may be expanded.
4. No existing conforming use shall be changed to a nonconforming use.

### **B.      Abandonment**

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

### **C.      Restoration and Repair**

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

### **D.      Reversion**

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

E. Alterations

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

F. District Changes

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

**SECTION 405**      **USES NOT PERMITTED**

Uses which are not allowed by this Local Law are prohibited.

**SECTION 406**      **MINIMUM HABITABLE FLOOR AREA**

A. One-family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) of at least seven hundred and fifty (750) square feet.

B. Two-family dwellings shall have a minimum enclosed living area of at least seven hundred and fifty (750) square feet for the first unit and the second as follows:

C. Multiple family dwellings shall have a minimum enclosed living area per unit as follows:

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
Efficiency	300
1 Bedroom	550
2 Bedroom	650
3 Bedroom	800
4 Bedroom	1,000
5+ Bedroom	As determined by Planning Board

**SECTION 407**      **DWELLING FRONT YARD GRADE**

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one foot above the elevation of the road's center line, unless adequate site drainage is provided otherwise and approved by the Highway Department(s) which has responsibility for the highway(s) involved.

**SECTION 408**      **STABLING FARM ANIMALS**

A. Outside of a NYS Ag. & Markets Agricultural District there shall be no stabling of farm animals or storage of manure, fertilizer, or similar odor or dust producing substance within the R District. Such stabling or storage shall be permitted in the A-R, C or I Districts provided the following restrictions are observed.

1. No such stabling or storage shall take place within five hundred feet of an R District.
2. No such stabling or storage shall take place within one hundred feet of a lot containing a dwelling or other residence.

**SECTION 409**      **HEIGHT MODIFICATIONS**

A. Height Exceptions

1. District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten percent (10%) of the roof area of the building.
2. District building height regulations shall not apply to radio or television antennas and commercial communications towers.
3. Public and quasi-public buildings, schools, churches and other similar permitted uses may exceed the maximum height specified for the zone district provided that the minimum front, side and rear yard setbacks are increased by two (2) feet for each one (1) foot of such additional height up to a maximum height of fifty (50) feet and provided that on-site fire protection facilities approved by the local fire company are installed.
4. The Authorizing board may require avoidance lighting on towers and other structures which exceed district height limits, as it deems necessary to protect the public health and safety.

**SECTION 410**      **MINIMUM DIMENSIONAL CRITERIA**

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum outside width of at least twenty (20) feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than twenty (20) feet wide) provided a twenty (20) foot minimum width is clearly established for the overall unit.

**SECTION 411**      **FENCES**

The installation, or replacement, of a fence does not require a permit provided the following criteria are met:

A.      All Fencing

1.      All fencing must be installed, or replaced, in conformance with the NYS Uniform Code. Fencing shall be located on an individual’s own property and not on adjoining property or directly upon a property line.
2.      No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.
3.      The “finished” (or “good”) side of the fence shall face the adjoining properties.
4.      It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e. grass, weeds) around a fence is regularly mowed. Failure on the part of a property owner to maintain his fence in accordance with these provisions shall constitute a violation of this zoning ordinance.

B.      Fencing - Front Yard

1.      Fencing located within front yards shall be located not closer than one (1) foot to the edge of the right-of-way of a public highway.
2.      Fencing located in the front yard shall not exceed three (3) feet in height for closed fencing, or four (4) feet for open fencing. For the purposes of this Section, the term open fencing shall refer to fencing which is at least 75% open (i.e. chain link type fencing), fencing which is less than 75% open shall be considered closed fencing.
3.      Plantings and bushes used in lieu of a man made fence as set forth above (i.e. a hedge) shall not exceed three (3) feet in height.

C.      Fencing – Side and Rear Yards

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

**SECTION 412**      **OUTSIDE SOLID FUEL BURNING DEVICES**

Outside solid fuel burning devices shall not be installed in an R District or within 500 feet of such district. When installed outside the R District (and the required 500 foot buffer), such units shall be installed and operated in accordance with the manufacturer’s instructions so as to not allow smoke or fumes to enter buildings on surrounding properties.



**ARTICLE V**

**ZONING DISTRICT REGULATIONS**

**SECTION 501**

**AGRICULTURAL-RESIDENTIAL DISTRICT A-R**

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

A. Permitted Uses

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

1. Farms and all usual agricultural operations.
2. One and two-family dwellings.
3. Single mobile homes in accordance with the provisions of Section 701.
4. Churches and other places of worship, parish houses, convents, rectories and parsonages.
5. Schools, public parks, playgrounds, libraries, municipal buildings and water systems and similar public uses.
6. Farm water supply, conservancy and fire protection ponds located not less than one hundred (100) feet from any street or property lines.
7. Private stables.
8. Home Occupation I (see Section 610).
9. Roadside stands (see Section 615).
10. Accessory uses and buildings.
11. Contractor’s Yard.
12. Non-Commercial Wind Energy Systems (See Section 622)

B. Uses Requiring Special Use Permit

The following uses are permitted in an Agricultural-Residential District upon the issuance of a special use permit authorized by the Planning Board (see Section 808):

1. Multi-family dwelling(s).
2. Home occupation II (see Section 610).
3. Outdoor recreation facility.
4. Indoor recreation facility.
5. Club.
6. Airport landing strip.
7. Dog/Board Kennel.
8. Motor vehicle repair shop (see Section 604).
9. Community center.
10. Professional offices.
11. Nursing home.
12. Public utility (see Section 605).
13. Public stable.
14. Commercial greenhouse.
15. Mobile home park.
16. Junkyard (see Section 609).
17. Cluster residential development (see Section 608).
18. Animal shelter.
19. Adult care facility.
20. Animal waste storage facility outside NYS Ag. & Markets Agricultural Districts (see Section 616).
21. Child day care center.
22. Self-service storage facility.

23. Commercial communication tower (see section 614)
24. Home Business Class I or II (see Section 617)
25. Recreational vehicles and campgrounds (see Section 611).
26. ATV, Snowmobile, Go-Kart, Motorcycle Race Courses (see Section 612).
27. Sporting club (see Section 618).
28. Landscaping and topsoil business (excluding stripping of topsoil from premises).
29. Bio remediation (see Section 619).
30. Commercial Wind Energy Systems (see Section 621)
31. Neighborhood Business (see Section 623)

**SECTION 502      RESIDENTIAL DISTRICT - R**

The Residential District is designed to accommodate primarily residential uses on lots with a minimum area of 50,000 square feet. The purpose of this district is to encourage residential growth in areas of the Town which have existing concentrations of residential uses. The residential district will allow for more economical provision of public services such as water and sanitary sewer should the need arise at some future date.

A.      Permitted Uses

The following uses are permitted in the Residential District.

1. One family dwelling.
2. Churches and other places of worship, parish houses, convents, rectories, and parsonages.
3. Schools, public parks, playgrounds, libraries, municipal buildings and water systems and similar public uses.
4. Farms and all usual agricultural operations, excluding stabling of farm animals.
5. Roadside stands (see Section 615).
6. Accessory uses and buildings.
7. Non-Commercial Wind Energy Systems (see Section 622)

B. Uses Requiring Special Permit

The following uses are permitted in a Residential District upon issuance of a special use permit authorized by the Planning Board (see Section 808).

1. Two family dwellings.
2. Multi-family dwellings.
3. Wind Energy Conversion System-Production Model.
4. Home occupation I or II (see Section 610).
5. Outdoor recreation facility.
6. Temporary mobile homes in accordance with the provisions of Section 701.
7. Professional office.
8. Community center.
9. Nursing home.
10. Public utility (see Section 605).
11. Adult care facility.
12. Child day care facility.
13. Cluster residential development (see Section 608)
14. Home Business Class I or II (See Section 617)
14. Neighborhood Business (See Section 623)

**SECTION 503**      **COMMERCIAL DISTRICT - C**

The Commercial District is designed to accommodate commercial uses.

A. Permitted Uses

1. Retail uses and services.
2. Restaurant.
3. Motel.

4. Commercial greenhouse.
5. Professional office.
6. Personal service business.
7. Wholesale trade.
8. Offices, banks.
9. Adult uses (see Section 613).
10. Non-Commercial Wind Energy Systems (See Section 622)

**B. Uses Requiring Special Use Permit**

The following uses are permitted in the Commercial District upon issuance of a special use permit authorized by the Planning Board (see Section 808)

1. Drive-in business.
2. Motor vehicle repair shop (see Section 604).
3. Gasoline station (see Section 604).
4. Gasoline station-market (see Section 604).
5. Indoor recreation facility.
6. Light industry limited to assembly operations and warehousing.
7. Motor vehicle sales (see Section 604).
8. Recreational vehicle and mobile home sales and service.
9. Public utility (see Section 605).
10. Contractor's yard.
11. Child day care center.
12. Recyclables handling and recovery facility.
13. Self-service storage facility.
14. Commercial Communication tower (see Section 614).

15. Bio remediation (see Section 619).

## **SECTION 504      INDUSTRIAL DISTRICT - I**

The Industrial District is designed to accommodate industrial uses.

### **A.      Permitted Uses**

The following uses are permitted in the Industrial District.

1.      Manufacturing industries.
2.      Warehouse or wholesale use.
3.      Public utility (see Section 605).
4.      Machinery and transportation equipment, sales, service and repair.
5.      Freight and/or trucking terminal.
6.      Motor vehicle repair shop (see Section 604).
7.      Adult use (see Section 613).
8.      Non-Commercial Wind Energy Systems (See Section 622)

### **B.      Uses Requiring Special Use Permit**

The following uses are permitted in the Industrial District upon issuance of a special use permit authorized by the Town Board (see Section 809).

1.      Commercial excavation (see Section 607).
2.      Contractor's yard.
3.      Recyclables handling and recovery facility.
4.      Self-service storage facility.
5.      Commercial communication tower (see Section 614).
6.      Junkyard (see Section 609).
7.      Bio remediation (see Section 619).

8. Mass Vehicle Storage (see Section 620).
9. Commercial Wind Energy Systems (see Section 621)

**SECTION 505**      **LAND CONSERVATION - LC**

The purpose of the Land Conservation District is to delineate the Federal and State wildlife refuge areas and other areas where substantial development of the land is prohibited because of natural conditions which might threaten structures or humans, and the lack of proper facilities or improvements for development. For permitted uses, appropriate lot and building regulations set forth in the A-R District shall apply.

A. Permitted Uses

1. Wildlife refuge areas.
2. Farms and related farming activities provided that no off-premise manure shall be stored within one hundred (100) feet of a property boundary.
3. Farm water supply, conservancy and fire protection ponds located not less than one hundred (100) feet from any street or property line.
4. Accessory uses and buildings incidental to and on the same lot as the principal use, as follows:
  - a. Customary farm buildings for the storage of products or equipment located on the same parcel as the primary use.
  - b. Customary farm buildings for housing farm animals shall not be located less than one hundred (100) feet from an adjoining zone.
5. Outdoor recreation.

**SECTION 506**      **PLANNED UNIT DEVELOPMENT – PUD**

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or non-residential uses, and to preserve natural and scenic qualities of the site during the development process.

A. Procedure for Creation of a PUD District

1. The owner of any tract of land in the Town of Alabama consisting of a minimum of five (5) contiguous acres, may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.

2. The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.

3. A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this Section.

B. Procedure for Approval

1. Pre-Application Conference

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

2. Preliminary Plan (Rezoning)

a. Planning Board Review and Approval – A preliminary plan application shall be submitted to the Planning Board at least fifteen (15) days prior to a regularly scheduled meeting. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.

b. Submission Requirements – The applicant shall submit four (4) sets of such plans, and drawings. These four (4) sets shall be submitted to the Zoning Enforcement Officer.

The preliminary plans shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Board to make an impartial judgment on the suitability and impact of the proposed PUD on the Town. Such material shall include, but not be limited to the following:

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



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

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

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

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

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

### 3. Final Plan

a. Ownership – Before final approval of the PUD, the applicant must show evidence of the full legal ownership in the land.

b. Planning Board Review and Approval – Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least fifteen (15) days prior to

the next regularly scheduled meeting of the Planning Board. Within forty-five (45) days of the next regularly scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board.

c. Submission Requirements – The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat.

d. Town Board Review and Approval – The Town Board shall make final approval in accordance with official Town development policies and may impose reasonable conditions relating to that plan.

C. Design Standards

1. Area Requirements

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

2. Traffic and Circulation

All proposed public roads should meet municipal design and construction specifications.

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

3. Common Open Space

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

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

4. Performance and Maintenance Bonds

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

**SECTION 507**            **FLOOD PLAIN OVERLAY ZONE – FPO (Information only)**

The Flood Plain Overlay Zone is shown on the zoning map of the Town of Alabama for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency’s (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Town of Alabama (Community Number 3610G7C).

In addition to the Zoning Law, areas within special flood hazard areas are regulated by the ECL Article 36, 6 NYCRR Part 500 Flood Plain Management Regulations Development Permits which are administered by the New York State Department of Environmental Conservation. These requirements are in addition to those contained in the underlying zoning district.

**ARTICLE VI**            **SUPPLEMENTARY REGULATIONS**

**SECTION 601**            **OFF-STREET PARKING SPACE REQUIREMENTS**

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

A.     Residential Uses

1.     One and two-family dwellings: Two (2) parking spaces for every dwelling unit.
2.     Multiple family dwelling: Five (5) parking spaces for every three (3) dwelling units.
3.     Home occupations: The number of parking spaces required of the existing residential uses (see above), plus whatever additional parking spaces deemed necessary by the Planning Board.

B.     Motel

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

C.     Places of Public Assembly

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

D.     Professional Offices

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

E. Commercial

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

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

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

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

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

H. Unspecified Uses

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

**SECTION 602**      **OFF-STREET LOADING SPACE REQUIREMENTS**

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

**SECTION 603**      **MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board, under its powers of site plan review and approval, may modify requirements for parking and loading spaces.

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

A. Gasoline stations, gasoline station/markets, motor vehicle repair shop, motor vehicle sales agencies and drive-in businesses shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library, or religious institution. Measurement shall be made between the nearest respective lot lines.

2. Lot size shall be at least forty thousand (40,000) square feet.

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

**SECTION 605**      **PUBLIC UTILITY FACILITY**

Public utility installations shall comply with the following:

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

**SECTION 606**

**SIGNS**

**A. Statement of Purpose.** The purpose of this section is to promote the public health, safety and welfare of the community by regulating the placement and size of outdoor signs and advertising displays. It is intended to protect all property values by ensuring that individual signs do not detract from the overall appearance and safety of the community.

**B. Applicability.**

- (1) Permit required. It is unlawful for any person to erect, enlarge, relocate or change the copy of any sign other than those identified as exempt in this section, without first obtaining a sign permit and paying the fee therefor as provided in this section. Routine maintenance of existing signs, not involving erection, enlargement, relocation or change of copy, shall not require a permit.
- (2) All signs must be located on the same lot as the permitted use.

**C. Application for Permit.** Application shall be made in writing to the Zoning Enforcement Officer on forms prescribed and provided by the Town of Alabama and shall contain the following information:

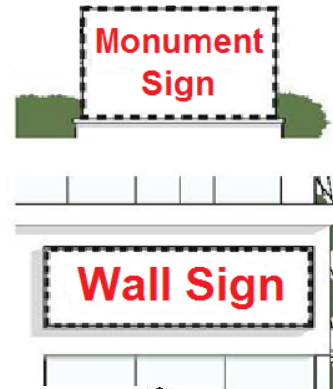
- (1) Name address and telephone number of applicant and property owner.
- (2) Location of building, structure or land upon which the sign now exists or is to be erected.
  - (a) If a new sign is to be erected, elevation and plan drawings should be included. A clear description of the placement and appearance of the proposed sign should include the following:
    - [1] Location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines.
    - [2] The method of illumination, and position of lighting.
    - [3] Graphic design, including symbols, letters, materials, and possible color combinations.
  - (b) If the sign is in compliance, the Zoning Enforcement Officer shall issue a permit for the proposed or existing sign. The Zoning Enforcement Officer shall give written notice to the applicant if the sign application has been denied.



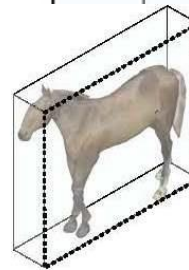
**D. Common Sign Plan.** A common sign plan must be filed with the Zoning Enforcement Officer for all sites occupied by more than one tenant. After the filing of a common sign plan, all tenant signs must meet the requirements of the common sign plan.

**E. Computation of Sign Type Area.** The area of a sign type is determined as follows:

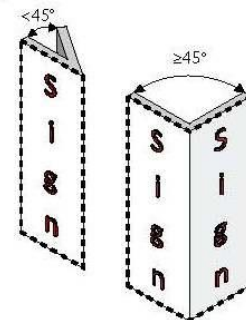
(1) For wall signs and signs on a background, the entire area of the background is calculated as sign area, including any material or color forming the sign face and the background used to differentiate the sign from the structure against which it is mounted. Sign area does not include any supports or bracing.



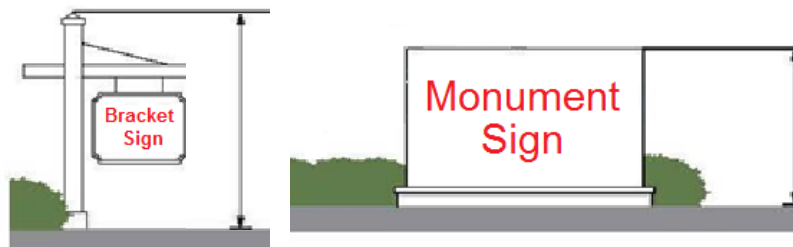
(2) The sign area of a three-dimensional sign is calculated as total area of the smallest rectangle, circle or square that fully encloses the largest profile of the three-dimensional sign.



(3) The area for a sign with more than one face is computed by adding together the area of all sign faces, except where the angle at which the two sign faces are placed does not exceed 45 degrees.



**F. Measurement of Sign Height.** The total height of a freestanding sign is measured from the highest point of the sign or supporting structure to the adjacent grade.



**G. Fees.** Fees for sign permits shall be as set by resolution of the Town Board.

**H. Permitted Signs.** All signs which comply with the provisions and conditions set forth in this Section and obtain a permit shall be allowed, and all signs not so compliant are specifically prohibited.

**I. Exempt Signs.** The following signs are considered to be exempt from obtaining a permit, but not exempt from the provisions of this section. Exempt signs of a temporary nature shall not be attached to fences, utility poles or the like and shall not impair traffic visibility. Exempt signs, not in compliance with the provisions of Subsections (1) through (5) below may not continue after the effective date of any amendment of this section.

- (1) Historical markers, tablets and statues, memorial signs or plaques; when cut into masonry surface or when constructed of bronze, stainless steel or similar material and not exceeding six square feet.
- (2) Flags
- (3) Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two square feet per face.
  - (a) "Warning," "private drive," "posted" or "no trespassing" signs shall not be in excess of four feet in height and shall not be in excess of two square foot per face. A maximum of one posted, "warning" or "no trespassing" sign shall be permitted to be placed along the perimeter of property lines at intervals not less than 100 feet apart. This restriction will not apply to properties owned by public entities or utility companies.
- (4) Five or fewer temporary signs (window, posters, lawn, and directional) not exceeding 60 days, and per the overall area allocation in Sec. M below.
- (5) Signs required by Federal, State, County or Town regulations (i.e. NYS registered motor vehicle shop and NYS inspection stations).

**J. Prohibited Signs.**

- (1) No off-premises signs shall be allowed.
- (2) Wall signs shall not consist of freestanding letters or logos.
- (3) No sign shall be illuminated by or contain flashing, rotating, scrolling, strobing, or moving lights.
- (4) No sign shall impair or cause confusion of vehicular or pedestrian traffic, in its design color or placement.
- (5) No sign shall be placed upon the roof of any building.
- (6) No pennants, ribbons, streamers, spinners or other similar moving, fluttering or revolving devices, as well as strings of lights with bulbs larger than 2.5 volts, shall be permitted.
- (7) No advertising message shall be extended over more than one sign placed along a street or highway.
- (8) No signs shall be attached to utility poles in all zones of the Town of Alabama. No permanent, temporary or exempt signs shall be attached, placed, painted or drawn upon fences, trees or man-made or natural features, including permanent, temporary or exempt signs.
- (9) No signs shall be placed anywhere within the Town, County or State rights-of-way without the permission of the Zoning Enforcement Officer, excepting awning signs, and shingle signs in commercial, industrial and technology districts not exceeding six square feet and sidewalk signs not exceeding 20 square feet in commercial industrial and technology districts. All signs must be a minimum of 18 inches inside the street line.



**K. Portable Signs.**

- (1) Portable signs, if powered by electric, must meet all the construction standards of the New York State Uniform Fire Prevention and Building Code.
- (2) Portable sign size shall not exceed 16 square feet and shall be limited to five feet above grade and shall not be located closer than five feet to any lot line.
- (3) Portable signs must be removed after 60 days. Another portable sign permit can be applied for 30 days after removal of a portable sign.

**L. Sign Types Allowed by District.** Signs are allowed by district as set forth below. Specific requirements for each sign are shown on the following pages.

Sign Types	Zoning Districts							
	A-R	R	C	I	TD-1	TD-2	TD-3	LC
Wall Sign	•	•	•	•	•	•	•	
Awning Sign		•	•	•			•	
Canopy Sign			•	•	•	•	•	
Projecting Sign			•	•			•	
Shingle Sign	•	•	•	•			•	
Window Sign		•	•	•			•	
Monument Sign	•	•	•	•	•	•	•	•
Iconic Sign	•	•	•				•	
Bracket Sign	•	•	•	•			•	•
Sidewalk Sign	•	•	•				•	
Portable Sign	•	•	•	•	•	•	•	•
Temporary Sign	•	•	•	•	•	•	•	•
Main Entrance Sign						•		

KEY: • = Sign type allowed Blank Cell = Sign type not allowed

**M. Allocation of Overall Sign Area** The maximum sign area allocation for each sign type is determined by the district and is established below. For each cell, there is a maximum sign area allocation that may be utilized with any combination and any number of signs associated with that cell, except for only one free standing sign per 200 feet of street frontage and one building mounted sign per establishment per building wall visible from a public right-of-way is allowed (awning and window signs excluded). The total area of wall or canopy signs shall not exceed what would be allowed on the largest wall visible from the public right-of-way. Sign area is measured in square feet or percentage of wall area and total window space for window signs.

Sign Types	Zoning Districts							
	A-R	R	C	I	TD -1	TD -2	TD-3	LC
Wall Sign	6 sf	6 sf	10%	10%	10%	10%	10%	
Awning Sign		6 sf	10%	10%			10%	
Canopy Sign			10%	10%	10%	10%	10%	
Projecting Sign			10 sf	10 sf			10 sf	
Shingle Sign	6 sf	6 sf	10 sf	10 sf			10 sf	
Window Sign		25%	25%	25%			25%	

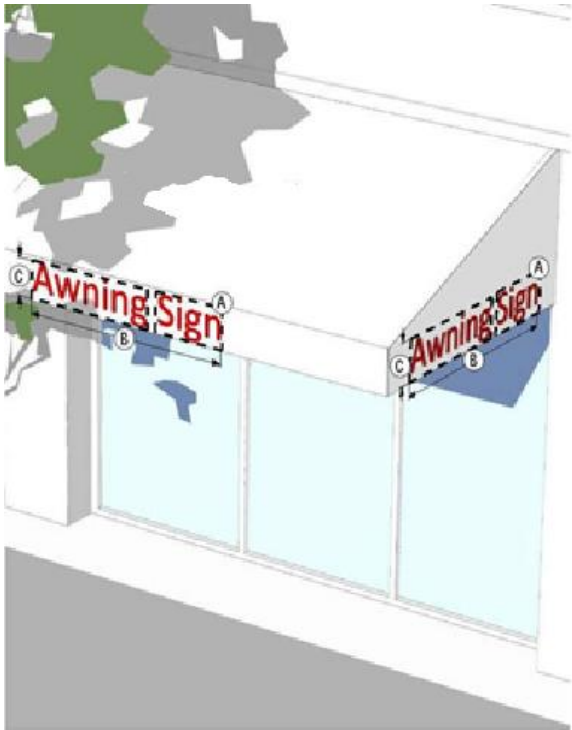
Monument Sign	6 sf	6 sf	25 sf	25 sf	25 sf	25 sf	25 sf	6 sf
Iconic Sign	8 sf	8 sf	15 sf				15 sf	
Bracket Sign	6 sf	6 sf	10 sf	10 sf			10 sf	6 sf
Sidewalk Sign	10 sf	10 sf	10 sf				10 sf	
Portable Sign	16 sf	16 sf	16 sf	16 sf	16 sf	16 sf	16 sf	16 sf
Temporary Sign	16 sf	16 sf	16 sf	16 sf	16 sf	16 sf	16 sf	16 sf
Main Entrance Sign						90 sf		

**N. Wall Signs.**



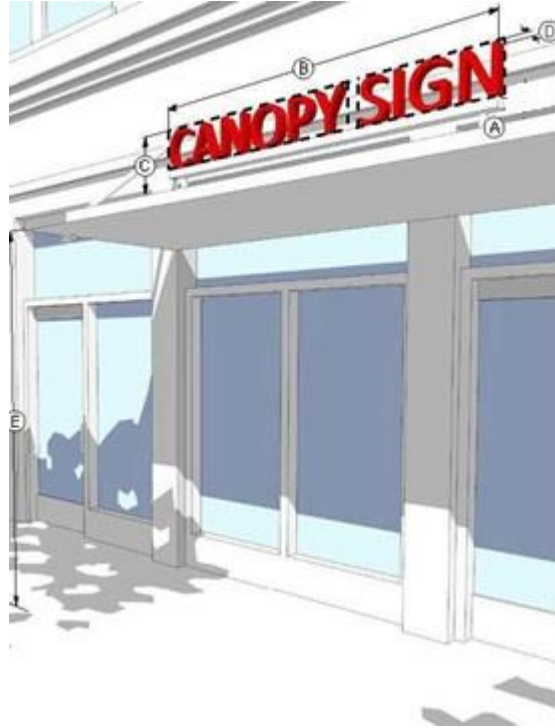
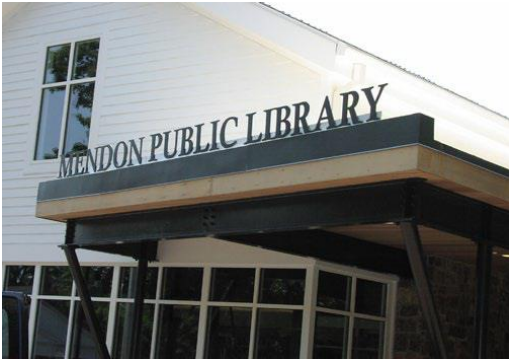
<b>Description</b>	
A sign placed or painted against a building and attached to the exterior front, rear or side so that the display surface is parallel to the plane of the wall.	
<b>General Provisions</b>	
<ol style="list-style-type: none"> <li>1. No portion of a wall sign may extend beyond the ends, above the roof line, above a parapet wall of a building with a flat roof, or above the second story in a building with more than two stories.</li> <li>2. No portion of a wall sign may extend above the lower eave line of a building with a pitched roof.</li> <li>3. A wall sign cannot cover windows or architectural details.</li> <li>4. A wall sign may be illuminated in accordance with <u>Sec. X below</u>.</li> </ol>	
<b>Standards</b>	
Overall area allocation (max)	<u>Sec. M above</u>

**O. Awning Signs.**



<b>Description</b>		
A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.		
<b>General Provisions</b>		
<ol style="list-style-type: none"> <li>1. An awning sign cannot extend outside the awning.</li> <li>2. Only awnings over ground story doors or windows may contain signs.</li> <li>3. A maximum of one sign is allowed per awning face per establishment.</li> <li>4. Signs are only allowed in the vertical areas of the awning.</li> <li>5. An awning sign may not be illuminated in accordance with <u>Sec. X</u> below.</li> </ol>		
<b>Standards</b>		
A	Overall area allocation (max)	<u>Sec. M</u> above
B	Width (max % of awning width/depth)	75%
C	Height of text and graphics on valance (max)	2 ft.

**P. Canopy Signs.**



<b>Description</b>		
A sign placed on a canopy so that the display surface is parallel to the plane of the wall.		
<b>General Provisions</b>		
<ol style="list-style-type: none"> <li>1. A canopy sign cannot extend outside the overall length or width of the canopy. However, a canopy sign may extend above or below the canopy.</li> <li>2. A maximum of one sign is allowed per canopy per establishment.</li> <li>3. A canopy sign must be located over an accessible building entrance.             <ol style="list-style-type: none"> <li>5. A canopy sign may be illuminated in accordance with <u>Sec. X</u> below.</li> </ol> </li> </ol>		
<b>Standards</b>		
A	Overall area allocation (max)	<u>Sec. M</u> above
B	Width (max % of canopy width)	75%
C	Height of text and graphics (max)	2 ft.
D	Depth (max)	1 ft.
E	Clear height above sidewalk (min)	10 ft.

**Q. Projecting Signs.**



**Description**

A sign attached to the building facade at a 90-degree angle, extending more than 15 inches. A projecting sign may be two or three-dimensional.

**General Provisions**

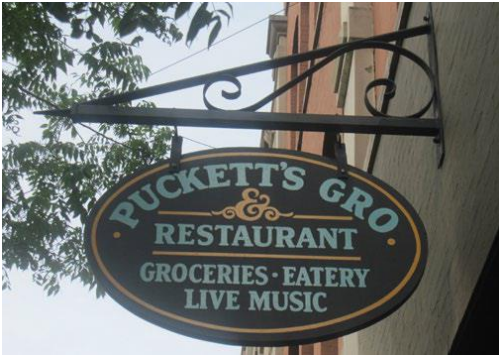
1. A projecting sign must be located at least 25 feet from any other projecting sign.
2. A projecting sign may be erected on a building corner when the building corner adjoins the intersection of two streets. Allocation of sign area from both streets may be used; however, in no case can the sign exceed the maximum height and width standards.
3. The top of a projecting sign can be no higher than the top of the building. However, on one story buildings, the top of a projecting sign may have a maximum of 20% of the sign height above the top of the building.
4. Buildings four stories and higher, a projecting sign must be located below the window sills of the 4th story.
  6. A projecting sign may be illuminated in accordance with Sec. X below.

**Standards**

A	Overall area allocation (max)	<u>Sec. M above</u>
B	Height <sup>(1)</sup> (max)	
	Mounted below 2nd floor	4 ft.
	Mounted on 2nd or 3rd floor	8 ft.
C	Spacing from building facade (min/max)	1 ft./2 ft.
D	Projection width (max)	6 ft.
E	Depth (max)	1 ft.
F	Clear height above sidewalk (min)	10 ft.

(1) If a sign is mounted across two floors then the maximum height is the average of the maximum heights for each respective floor.

**R. Shingle Signs.**



<b>Description</b>		
A small projecting sign that hangs from a bracket or support.		
<b>General Provisions</b>		
<ol style="list-style-type: none"> <li>1. A shingle sign must be located within 5 feet of an accessible building entrance.</li> <li>2. The hanging bracket must be an integral part of the sign design.</li> <li>3. A shingle sign must be located below the window sills of the second story on a multi-story building or below the roof line on a single-story building.</li> <li>4. <u>A shingle sign may be illuminated in accordance with Sec. X below.</u></li> </ol>		
<b>Standards</b>		
A	Overall area allocation (max)	<u>Sec. M above</u>
B	Height (max)	3 ft.
C	Spacing from building facade (min/max)	6 in./12 in.
D	Projection width (max)	3.5 ft.
E	Depth (max)	6 in.
F	Clear height above sidewalk (min)	10 ft.

**S. Window Signs.**



<b>Description</b>	
A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, or located inside within four feet of the window, but not including graphics in connection with customary window display of products.	
<b>General Provisions</b>	
<ol style="list-style-type: none"> <li>1. Window signs are only allowed on ground and second story windows and doors, except that second story windows signs are only allowed if for a different establishment than that of the ground story and if no other sign is attached to the building for that establishment.</li> <li>2. Overall area allocation shall be calculated for all windows per floor, per establishment, per side of the building.</li> </ol>	
<b>Standards</b>	
A	Overall area allocation (max) <span style="float: right;"><u>Sec. M above</u></span>

**Ta. Monument Signs.**



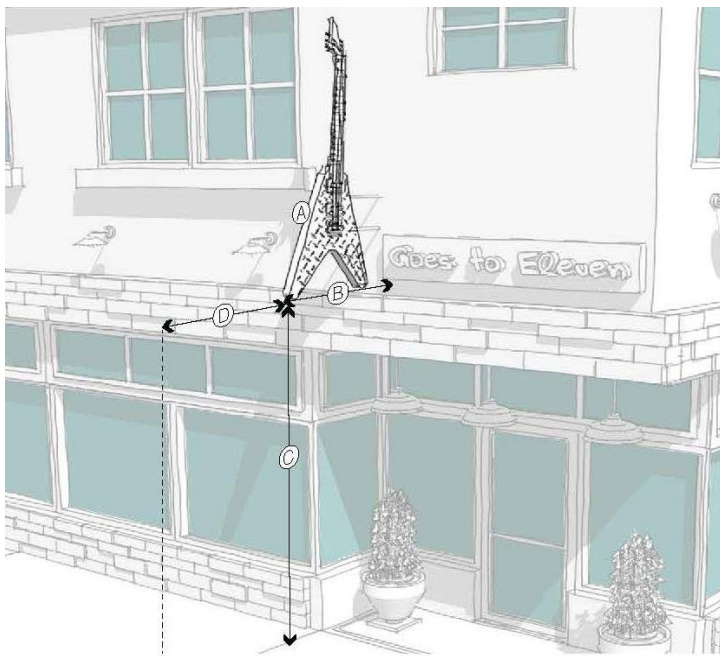
<b>Description</b>		
A freestanding sign attached to the ground along its entire length to a continuous pedestal. A monument sign is horizontally oriented or is square.		
<b>General Provisions</b>		
<ol style="list-style-type: none"> <li>1. One monument sign is allowed per street frontage, except that one additional monument sign is allowed for properties with 200 feet or more of street frontage. Where more than one monument sign is permitted, signs along the same street frontage must be spaced a minimum of 150 feet apart.</li> <li>2. A monument sign must be set back at least 5 feet from any property line, except for signs in the Land Conservation (LC) District where the sign has to be 10 feet from any property line.</li> <li>3. A sign erected on a retaining wall is required to meet the standards for a monument sign. The height of the wall is included in the overall height calculation.</li> <li>4. A monument sign may be illuminated in accordance with <u>Sec. X</u> below.</li> </ol>		
<b>Standards</b>		
A	Overall area allocation (max)	<u>Sec. M</u> above
B	Height (max)	6 ft.
C	Depth (max)	18 in.



**Tb. Main Entrance Sign**

<b>Description</b>	
A freestanding sign attached to the ground along its entire length to a continuous pedestal. The Main Entrance Sign must be horizontally oriented or is square.	
<b>General Provisions</b>	
1. One Main Entrance Sign is allowed to be constructed along the main entrance road from Route 63/77.	
2. The Main Entrance Sign must be located adjacent to a utility Right-Of-Way along the main entrance road.	
3. The purpose of the Main Entrance Sign is to be visible from Route 63/77 to mark the main entrance to the STAMP site, encouraging employees and site traffic to use that entrance.	
<b>Standards</b>	
A. Overall area allocation (max)	Sec. M above
B. Height (max)	12 feet
4. Depth (max)	20 inches

**U. Iconic Signs.**



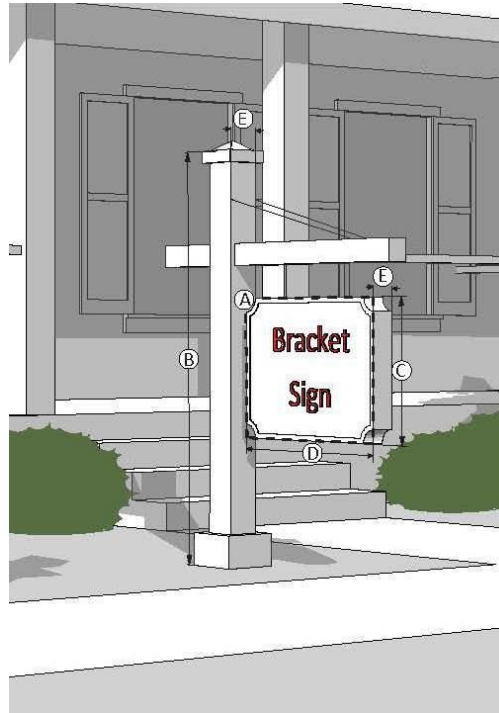
<b>Description</b>	
A sculptural, typically three-dimensional sign whose form suggests its meaning, and which can either be building-mounted or freestanding.	
<b>General Provisions</b>	

1. A maximum of one iconic sign is permitted per establishment.
2. An iconic sign may contain only iconographical elements representing a product or service offered on site, and may not contain any other items of information.
3. The top of an iconic sign can be no higher than the top of the building. However, on one story buildings, the top of an iconic sign may have a maximum of 20% of the sign height above the top of the building.
4. Buildings four stories and higher, an iconic sign must be located below the window sills of the 4th story.
5. An iconic sign may be illuminated in accordance with Sec. X below.

**Standards**

A	Overall area allocation (max)	<u>Sec. M above</u>
B	Projection from wall (max, including supports)	5 ft.
C	Vertical clearance from sidewalk level (min)	10 ft.
D	Setback from curb line (min)	18 n.

**V. Bracket Signs.**



**Description**

A freestanding sign attached to the ground by one or more support structures that is not higher than 5 feet and hangs from a bracket or support.

General Provisions		
<ol style="list-style-type: none"> <li>1. Only one bracket sign is allowed per building.</li> <li>2. A bracket sign must be located at least 25 feet from any other bracket sign.</li> <li>3. The hanging bracket must be an integral part of the sign design.</li> <li>4. A bracket sign can only be externally illuminated in accordance with <u>Sec. X</u> below.</li> </ol>		
Standards		
A	Overall area allocation (max)	<u>Sec. M</u> above
B	Sign structure height (max)	5 ft.
C	Sign area height (max)	3 ft.
D	Sign area width (max)	3 ft.
E	Sign structure/area depth (max)	6 in.

**W. Sidewalk Signs.**



<b>Description</b>
A moveable sign not secured or attached to the ground or surface upon which it is located.
<b>General Provisions</b>

1. Sidewalk signs do not require a permit but must be taken inside the place of business at the close of business.
2. A sidewalk sign must be located at least 25 feet from any other sidewalk sign.
3. Sidewalk signs cannot obstruct vehicular, bicycle or pedestrian traffic and must comply with ADA clearance and accessibility.
4. A sidewalk sign cannot be illuminated.

**Standards**

A	Overall area allocation (max)	<u>Sec. M above</u>
B	Height (max)	5 ft.
C	Width (max)	4 ft.

**X. Sign illumination.**

Illumination of signs must be in accordance with the following requirements.

(1) External Illumination

- (a) Lighting must be directed downward toward a sign and must be shielded so that it illuminates only the face of the sign and does not shine directly onto public right-of-way or adjacent properties.



External light sources

- (b) Projecting light fixtures used for externally illuminated signs must be simple and unobtrusive in appearance, and not obscure the sign.

(2) Prohibited Light Sources.

The following light sources are not allowed:

- (a) Exposed neon
- (b) Backlit
- (c) Bare bulb
- (d) Blinking, flashing and chasing
- (e) LED, video and other electronic message boards

**Y. Sign Materials.**

- a. Recommended materials include: Wood (hardwoods), metal (such as brass, bronze, aluminum and stainless steel)
- b. The following sign construction materials are prohibited: Fiberglass, Polycarbonate Lexan, photopolymer, polypropylene or polyethylene (but not limited to other materials as determined by the Zoning Enforcement Officer/Planning Board)

**Z. Nonconforming Signs.**

- a. Any sign not conforming to the regulation of the district in which it is located at the time of adoption of this chapter shall be nonconforming.

- b. Any sign or other advertising structure in existence on the date this amendment to this section is enacted or the effective date of any amendment to this section may continue and shall be maintained.
- c. An existing sign may change the face or panel of the sign that does not meet the area or height standards of this law. However, there shall be no increase in the degree of nonconformity. All new panels must conform to all illumination standards of Sec. X above.
- d. A sign must be brought into compliance with this law if at any time the sign is altered, repaired, restored or rebuilt to the extent that the cost exceeds 50% of the estimated replacement cost of the sign (in current dollar value). All sign permits within any 6 consecutive calendar months will be aggregated for purposes of measuring the 50% standard.
- e. If the repair is caused by involuntary damage or casualty and not deferred maintenance, the sign may be repaired to any extent.

**AA. Removal of Signs.** Any sign, existing on or after the effective date of this amendment to this section, which is no longer associated with the establishment upon which such a sign is located, or is unsafe shall be removed within 30 days upon written notice from the Zoning Enforcement Officer. Upon failure to correct, the Town shall remove or cause to be removed said sign and shall cause to be assessed against the property all costs and expenses incurred.

**BB. Maintenance.** All signs shall be maintained in such a condition so as to not constitute a danger to the public health, safety or welfare.

- a. Frames, poles, braces, supports, etc. must be kept painted and maintained free of weeds, brush and debris.
- b. The Zoning Enforcement Officer shall inspect and have the authority to order the painting, repair and alteration or removal of signs which become dilapidated or are abandoned, or which constitute physical hazard to the public safety.

**CC. Construction Standards.** All signs shall be constructed and installed in conformance with the New York State Uniform Fire Prevention and Building Code. Separate certification may be required for illuminated signs indicating compliance with the National Electrical Code (NFPA 70). The Zoning Enforcement Officer shall have the option to require a review by the Town Engineer. If the Town Engineer finds the mounting technique questionable, a professional review by a New York State registered engineer would be required.

**DD. Appeal procedures.** Any person aggrieved by a decision of the Zoning Enforcement Officer relative to dimensional provisions of this section may appeal such decision by applying for an area variance. The Zoning Enforcement Officer shall refer the application to the Zoning Board of Appeals for approval or denial. In granting a variance, the Zoning Board of Appeals must determine that the sign is in harmony with the general purposes of this section, does not harm the neighborhood character, and is not detrimental to public health, safety or welfare. The

Zoning Board of Appeals should also consider the benefit to the applicant versus the detriment to the community in the granting of any variance.

EE. **Substitution Clause.** The owner of any sign which is otherwise allowed by this law may substitute noncommercial copy in lieu of any other commercial or non-commercial copy. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring of any particular non-commercial message over any other non-commercial message. This provision prevails over any more specific provision to the contrary.

FF. **Severability Clause.** Should any section or provision of this law be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the law as a whole or any part thereof, other than the part so declared to be invalid.

## **SECTION 607            COMMERCIAL EXCAVATION**

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

In its consideration of an application for a permit the Town Board shall find that such excavation will not endanger the stability of adjacent land or structures or constitutes a detriment to public health, safety, convenience, or welfare by reason of excessive dust, noise, traffic, erosion, siltation or other condition. In granting a permit the Board shall specify any reasonable requirement including the following:

A.     **State Permit**

The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.

B.     **Minimum Lot Area**

The minimum lot area for any such case shall be ten (10) acres.

C.     **Minimum Setback Requirements**

All buildings shall be located not less than one hundred (100) feet from any street or property lines. The toe of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used for any use in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and parking.

D. Slope

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

E. Drainage

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

F. Dust

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

G. Roadside Landscape

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

H. Fencing

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

I. Topsoil

All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the restoration plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property. This provision shall be applied to all operations except that of topsoil removal.

J. Erosion

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

K. Hours of Operation

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

L. Required Plans

The applicant shall submit the following three plans:

1. Life of Mine Plan: means the applicant's plan for the ultimate use of the entire site.
2. Mining Plan: means the applicant's proposal for mining, including a graphic and written description of the mine, the affected land and the mining method.
3. Reclamation Plan: means the applicant's proposal for reclaiming the affected land, including a graphic and written description of the proposed use for all affected land, the method of reclamation and a schedule for performing reclamation.

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

M. Performance Bond

A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out. This requirement may be waived if the NYS Department of Environmental Conservation requires a performance bond for the same operation.

N. Duration of Permit

The permit for operation of the excavation area shall be for a period of one year, subject to annual review and recertification by the Town Board based on a written request for continuance.

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



**SECTION 608**

**CLUSTER RESIDENTIAL DEVELOPMENT**

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

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

B. The developer shall dedicate all subdivided lands to permanent open space. In no case shall such lands be less than twenty-five (25) percent of the total project area. All such lands shall be suitable, in the opinion of the Planning Board, for the intended use. Such lands shall be offered for dedication of the Town Board of the Town of Alabama.

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

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

**SECTION 609**

**JUNKYARDS**

A. Establishment

No person shall establish, operate, or maintain a junkyard until he has obtained a special use permit in compliance with Section 809.

B. Location Requirements

Said use shall not be located within two hundred (200) feet from any highway, right-of-way; one hundred (100) feet from any body of water or property line; or five hundred (500) feet from any existing dwelling (excluding a dwelling on the lot), church, school, hospital, public building, or place of public assembly.

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

C. Aesthetic Considerations

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

Required yards shall be mowed as needed and shall be kept free of unsightly growth. The planting of trees and shrubs to naturally screen the junkyard shall be encouraged.

D. Fencing

Before use, a new junkyard shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens said area and shall have a suitable gate which shall be closed and locked except during the working hours of said use. Such fence shall not be erected nearer than two hundred (200) feet from the right-of-way of a public highway, nor closer than one hundred (100) feet to any other property line. All materials stored or deposited at the site shall be kept within the enclosure of the fence and below the top of the fence, except during transportation of same in the reasonable course of business. All storage, wrecking, or other work shall be accomplished within the area enclosed by the fence.

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

E. Existing Junkyards

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

F. Annual Review and Recertification

Pursuant to Section 809, the Zoning Enforcement Officer shall inspect at least annually the operation of a junkyard to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the authorizing board when issuing the special use permit.

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

**SECTION 610**      **HOME OCCUPATIONS**

A.     Purpose

The purpose of this provision is to allow for home occupations which are compatible with the neighborhoods in which they are located.

Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

B.     Process

An applicant shall apply to the Zoning Enforcement Officer for a determination as to whether his/her proposed home occupation is a Category I or II. Home occupations classified as Home Occupation I are considered permitted uses in the A-R and C Districts and may be issued a zoning permit by the Zoning Enforcement Officer. In the R District a Home Occupation I shall require the issuance of a special use permit by the Planning Board. Home Occupation II uses shall require the issuance of a special use permit in all Districts where home occupations are allowed. Expansion of an existing Home Occupation I use to a Home Occupation II shall require the issuance of a special use permit by the Planning Board.

C.     Conditions

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

1.     The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2.     No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3.     Nonresident family members shall not be employed in any Home Occupation I and no more than two (2) nonresident persons shall be employed actually on-site at the residence in a Home Occupation II.
4.     Not more than 25% of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (not including accessory buildings and structures) shall not exceed five hundred (500) sq. ft.
5.     There shall be no exterior advertising of the home occupation, except for a sign no larger than six (6) square feet for which a permit has been obtained pursuant to the provisions of Section 606.

6. There shall be no exterior storage of materials used in the home occupation.
7. No home occupation shall result in:
  - a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the buildings in which such use is conducted.
  - b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.
  - c. Radiation or interference with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
8. Adequate parking shall be provided as set forth in Section 601. Such off-street parking shall be located not less than ten (10) feet from any property line.
9. No residential lot shall contain more than one (1) home occupation. No residential lot shall contain a home occupation together with a skilled trade shop or any other non-residential use requiring a special use permit.

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

A. Recreation Vehicles

1. Recreation vehicles may be occupied as a dwelling only as follows:
  - a. As provided in Subsection 611-B of this Zoning Law.
  - b. For not more than two separate periods, per year, not exceeding two weeks each, one recreational vehicle may be used as temporary lodging while parked on the same lot with a dwelling.
  - c. With a temporary permit, issued by the Planning Board, one recreational vehicle may be used for a period of six (6) months each and subject to the following conditions:
    - (1) Approval shall be granted by the Genesee County Health Department.
    - (2) Any connections must be removed and the recreational vehicle moved to an approved parking location upon expiration of such permit.

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

B. Campgrounds/Recreational Vehicle Parks

1. Location

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

2. Existing Campgrounds/Recreational Vehicle Parks

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

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

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

(a) Site

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

(b) Lots

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

(c) Setbacks

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

- Twenty-five (25) feet from an adjacent property line, except residential property.
- One hundred (100) feet from any adjacent residential property line.
- One hundred (100) feet from the right-of-way of a public street or highway.
- Ten (10) feet from the nearest edge of any roadway located within the park.

d. Recreational Vehicle/Tent Site

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

e. Accessibility

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

f. Street System

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

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

3. All streets shall have the following minimum width:

- One-way traffic movement - twelve (12) feet.
- Two-way traffic movement – twenty (20) feet.

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

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

g. Utilities

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

h. Open Space

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

i. Improvements

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

j. Management

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

k. Removal of Wheels

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

l. Campground/Recreational Vehicle Park Special Use Permits

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

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

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

A.     Establishment

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

B.     Definitions

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

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

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

C.     Location Requirements

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

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

D.     Minimum Lot Area

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

E.     Operation of Race Track or Course

1.     No person shall operate or permit the operator of a race track or course in such manner as to cause unreasonably loud or disturbing noises of such a character, intensity, or duration as to be detrimental to the peace, welfare, or good order of the people of the Town of Alabama or in such a manner as to cause disturbing, noisy, riotous, or tumultuous conduct within the Town.



Loudspeakers, announcing devices, horns, and other noise producing devices shall not at any time be operated in such a manner as to disturb the occupants of the premises in the vicinity of the race track and

shall be so toned down, muffled or subdued that the sound therefrom shall not carry more than two-thousand, five-hundred (2,500) feet from the perimeter of the track in all directions.

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

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

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

2. No person shall operate a vehicle on a race track or course after the hour of nine o'clock in the evening on any day, except on Friday and Saturday, when no person shall operate a vehicle on a race track after the hour of eleven in the evening within the Town of Alabama.

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

G. Operation of Vehicles without Mufflers Permitted

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

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

H. Duration of Permit

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

**SECTION 613**      **ADULT USES**

A.      Purposes

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

B.      Definitions

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

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

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

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

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

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

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

2.      Films, motion pictures, videocassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or “specified sexual activities”, and

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

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

1. Films, motion pictures, videocassettes, slides, or other visual representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”; or,

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

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

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

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

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

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

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

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

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

For the purpose of determining whether a bookstore has a “substantial portion” (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

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

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

### C. Restrictions Affecting Adult Establishments

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

1. No such adult establishment shall be within one hundred (100) feet of another existing adult establishment.

2. No such adult establishment shall be located within one hundred (100) feet of the boundaries of any Residential or Agricultural-Residential zoning district or within five hundred (500) feet of any existing residential use located on another lot.

3. No such adult establishment shall be located within one thousand (1,000) feet of a pre-existing school, place of worship or children’s playground.

4. No such adult establishment shall be located in any zoning district except the Commercial (C) or Industrial (I) Districts.

5. Only one adult establishment shall be permitted on a zoning lot.

D. Prohibition Regarding Public Observation

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

**SECTION 614**      **COMMERCIAL COMMUNICATION TOWERS**

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

A. Shared Use of Existing Towers and/or Structures

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

1. The existing structure is not increased in height or otherwise modified so as to change its visual appearance.

a. The antenna(s) do not extend above such structure more than ten (10) feet, and

3. The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.

4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

The authorizing board may, in its sole discretion, consider a new or altered (including tower or structure which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the authorizing board that shared

usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

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

C. Supporting Documentation

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

D. Shared Usage of Site with New Tower

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

E. New Tower at a New Location

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

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived

provided that the applicant demonstrates, in the sole discretion of the authorizing board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

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

G. Setbacks for New Towers

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

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

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

H. Visual Impact Assessment

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

1. Assessment of the “before and after” views from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other

public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.

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

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

I. New Tower Design

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

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

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

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

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

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

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

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



J. Existing Vegetation

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

K. Screening

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

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

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

N. Fencing

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

O. Maintenance and/or Performance Bond

Prior to approval of any application, the authorizing board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the authorizing board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the

applicant and/or owner shall cooperate with the authorizing board in supplying all necessary construction and maintenance data to the authorizing board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/ Unused Facilities

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

**SECTION 615**      **ROADSIDE STANDS**

1. Roadside stands may be located in the A-R, R and C Districts when operated by the family residing on the lot.
2. Goods sold shall primarily be home grown.
3. There shall be a front yard setback of at least twenty (20) feet and side yard setbacks of at least twenty-five (25) feet each.
4. Stands shall be of a portable nature and must be removed when not in use.
5. Off-street parking shall be provided for a minimum of two (2) vehicles with additional provisions if traffic warrants.
6. One sign of not more than six (6) square feet each may be permitted, located not less than ten (10) feet from a lot line. Such sign shall be removed when the roadside stand is not operating and/or open for business.

**SECTION 616**      **ANIMAL WASTE STORAGE FACILITIES**

All proposals for installation and/or modification of animal waste storage facilities and associated facilities located outside of a NYS Ag & Markets Agricultural District shall require a special use permit and shall be designed, constructed and operated in compliance with the following U.S. Natural Resource Conservation Service (NRCS) Conservation Practice Standards: Waste Management System NY312, Waste Storage Facility NY 313, Nutrient Management (Supplement) NY 590, Record Keeping NY 748 and Manure Pile Area NY 749. If a proposal located outside of an Ag & Markets Agricultural District meets these standards then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

All proposals for installation and/or modification of animal waste storage facilities and associated facilities located within a NYS Ag & Markets Agricultural District shall be considered a permitted use and shall be located a minimum of one hundred (100) feet from any well.

**SECTION 617**      **HOME BUSINESS**

A.      **HOME BUSINESS CLASS I**

The Planning Board may approve a special use permit for Home Businesses in any district where residences are permitted, provided that the following standards and provisions are maintained:

1.      **Intent**

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. All businesses established pursuant to this section are expected to blend in with the existing character of the area in which it is located.

2.      **Type of Business**

A variety of commercial and manufacturing uses may be permitted, provided that the requirements of this section are met.

3.      **Neighborhood Character**

a.      The appearance of the structure shall not be altered and the business shall not be conducted in a manner that would cause the premises to differ from its' existing residential/agricultural character, either by colors, material, construction, lighting, signs, or emission of sounds, noises or vibrations.

b.      The use shall not generate noise, dust, vibration, smell, smoke, glare, odors or electrical interference, fire hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

4.      **Operation and Employees**

a.      The operator of the Home Business shall reside in the Dwelling located on the same lot as the Home Business.

b.      No more than two (2) persons, other than members of the immediate family occupying such dwelling shall be employed in such home business at any time.

5.      **Floor Space**

a. No more than 40% of the gross floor area of a dwelling shall be used for the conduct of a home business, up to a maximum of 1,000 square feet, provided that the portion of the dwelling used for residential purposes shall comply with all applicable laws and codes.

b. No more than 1,000 square feet of gross floor area of no more than one (1) detached accessory structure may also be permitted for use of a home business in addition to space within the dwelling.

6. Outdoor Storage and Materials

a. No outside storage of material used in the Home Business shall be permitted except in the AR District. In the AR District, any outside storage shall be adequately screened from view from public streets and neighboring property. Such screening may consist of vegetation, fencing or a combination.

b. A maximum of two (2) pieces of equipment, other than commercial vehicles, may be parked outdoors on the lot. Such equipment shall be operable and necessary for the conduct of the Home Business.

c. Outdoor storage of equipment used for the Home Business shall only be permitted in the rear yard. Such equipment shall be completely screened from view of neighboring properties and public roads.

7. Outdoors Display of Goods

No outdoor display of goods for sale shall be permitted unless approved by the Planning Board. A sketch of location, size and number of proposed display items shall be included in the site plan.

8. Signage

Refer to SECTION 606-D, "Signs", of the Town of Alabama Zoning Law.

9. Commercial Vehicles

In the R District, no more than two (2) licensed Commercial Vehicles may be used in connection with a Home Business. Such vehicles may be parked outside but at the rear of the structure.

10. Number of Clients

With the exception of family day care, the Home Business shall be conducted in such a manner that at one time, the maximum number of vehicles of clients, customers, and others (except for employees) at the site of the Home Business is not greater than off-road parking spaces provided for under Sections 601, 602, and 603 of the Town of Alabama Zoning Law.

11. Hours of Operation

The Home Business shall be conducted in such a manner that all clients, customers and others coming to do business shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m. (Exceptions may be made in the case of family day care when a dependent must be dropped off or picked up outside of those specified hours).

12. Number of Home Businesses Permitted

More than one (1) Home Business may be permitted for each residential property, provided that the combined impact of such Home Business does not exceed any of the thresholds established by this section.

13. Parking and Access

a. Off-street parking shall be permitted as long as adequate space is provided with a turn-around area so that the vehicles do not have to back out into a public roadway. The off-street parking for the Home Business shall be in addition to the parking required for the employees and residents. Off-street parking shall be provided in accordance with Sections 601, 602, and 603 of the Town of Alabama Zoning Law.

b. No Home Business shall be permitted where access is provided only by a shared private road.

14. Setbacks

Any accessory building used in connection with the Home Business, shall be set back in compliance with the existing regulations of the Zoning Districts in which it is located.

15. Deliveries

No Home Business shall be permitted that requires tractor-trailer deliveries on a regular basis, (i.e. more than once a week) unless the Planning Board determines that the site can provide an adequate access and turning around space.

16. Motor vehicle repair shops shall not be deemed Home Businesses.

B. HOME BUSINESS CLASS II

The Planning Board shall permit Home Businesses (Class II) with a special use permit provided the following requirements and conditions are maintained:

The Zoning Enforcement Officer shall review, for compliance, the premises operating under the Special Use Permit, a minimum of once every five (5) years, and within six (6) months of a change of ownership.

1. Intent

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. Each business established pursuant to this section is expected to blend in with the existing character of the area in which it is located.

2. Type of Business

A variety of commercial and manufacturing uses may be permitted, provided that the requirements of this section are met. Several businesses are listed as uses that require special use permits in multiple districts. Those that are included only in the Commercial or Industrial Zoning Districts may not be permitted as Home Business.

3. Neighborhood Character

a. The appearance of the structure shall not be altered, and the business shall not be conducted in a manner that would cause the premises to differ from its existing residential/agricultural character.

b. The use shall not generate noise, dust, vibration, and smell, smoke, glare, odors, smoke or electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

4. Operation and Employees

a. The operator of the Home Business shall reside in the dwelling located on the same lot as the Home Business. However, the Planning Board may waive this requirement.

b. No more than eight (8) persons, other than members of the immediate family occupying such dwelling shall be employed in such home business at any time.

5. Floor Space

a. No more than forty (40) percent of the gross floor area of a dwelling shall be used for the conduct of a home business provided that the portion of the dwelling used for residential purposes shall comply with all applicable laws and codes.

b. No more than two (2) detached accessory structures may also be permitted for use in a Home Business in addition to space within the dwelling. The total gross floor area of the detached accessory structures used for the Home Business shall not exceed 7,500 square feet.

6. Outdoor Storage and Materials

a. Outdoor storage of material used in the Home Business may be permitted. Such storage shall be adequately screened from view from public streets and neighboring property. Such screening may consist of vegetation, fencing or a combination of plantings and fencing.

b. Outdoor storage of equipment used for the Home Business shall only be permitted in the rear yard. Such equipment shall be operable and necessary for the conduct of the Home Business.

7. Outdoor Display of Goods

Outdoor display of goods may, at the discretion of the Planning Board, be permitted, provided that the goods are displayed in a neat and orderly fashion. The area displayed in must be limited to 200 square feet, and shall be 70 feet from the road right-of-way and 50 feet from the nearest property.

8. Signage

Refer to SECTION 606-D, SIGNS, of the Town of Alabama Zoning Law.

9. Commercial Vehicles

Licensed commercial vehicles used in connection with the Home Business may be parked outside, but must comply with the setbacks in SECTION 601, Off-street Parking Space Requirements, item G of this section. The Planning Board may require appropriate screening to minimize the visual impact of such vehicles on neighboring properties.

10. Number of Clients

With the exception of family day care, the Home Business shall be conducted in such a manner that at one time, the maximum number of vehicles of clients, customers, and others (except for employees) at the site of the Home Business is not greater than off-road parking spaces provided under SECTIONS 601, 602, and 603 of the Town of Alabama Zoning Law.

11. Hours of Operation

The Home Business shall be conducted in such a manner that all clients, customers and others coming to do business shall arrive and depart between the hours of 7:00 a.m. and 9:00 p.m. (Exceptions may be made in the case of family day care when a dependent must be dropped off or picked up outside of those specified hours).

12. Number of Home Businesses Permitted

More than one (1) Home Business may be permitted for each residential property,

provided that the combined impact of such Home Businesses does not exceed any of the thresholds established by this section.

13. Parking and Access

Off-street parking shall be provided in order to safely require all vehicles to safely enter and leave the premises. Adequate parking and turning space must be displayed in a site plan review, which also includes location of structures and spaces utilized for storage, etc. The off-street parking for the Home Business shall be in addition to the parking for the employees and residents. Off-street parking shall be provided in accordance with Sections 601, 602, and 603 of the Town of Alabama Zoning Law.

14. Setbacks and Frontage

Any accessory building used in connection with the Home Business shall be set back in accordance with Section 403, page 26, of the Town of Alabama Zoning Law.

15. Deliveries

Tractor-trailer deliveries shall be permitted, unless the Planning Board determines that the site does not provide adequate access and/or turning around space.

**SECTION 618**      **SPORTING CLUB**

The purpose of this provision is to allow for operation of sporting clubs within the A-R District. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant shall apply to the Planning Board for a special use permit to establish a sporting club in an A-R District. Such applicant must be organized as a Club (see Section 202) or as a recognized business.

B. Conditions

The following conditions are intended to insure both that the sporting club is secondary to the residential use and that it is compatible with the residential character of the neighborhood.

1. All operations must be set back not less than 500 feet from all property lines and from edge of highway.

2. Days and hours of operation may be regulated by the special use permit not to exceed from 9:00 a.m. to 8:00 p.m., but not to exceed legal sunset.



3. Natural or man-made berms will be required to protect the public welfare and provide for normal and/or acceptable noise abatement and control projectiles.

**SECTION 619**      **BIO REMEDIATION**

The purpose of this provision is to allow for use of bio remediation for the treatment of petroleum contaminated soils within the C, I, and A-R Districts. It is recognized that operation of such uses without adequate regulations and conditions may pose adverse impacts upon neighboring residential uses.

A. Process

An applicant shall apply to the authorizing board for a special use permit to establish a bio remediation cell(s) in a C, I, or A-R District.

B. Conditions

The following conditions are intended to insure the use of bio remediation will not adversely affect surrounding land uses or pose unnecessary risks to residents and the environment.

1. All operations must be set back not less than 1,000 feet from any neighboring residential use or place(s) of public assembly.

2. All contaminated soils to be treated must have originated from within the Town of Alabama. No contaminated soils from property located outside of the Town of Alabama shall be used in a bio remediation process located within the Town.

3. Prior to approval of any special use permit, the authorizing board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk, a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the clean up and/or remediation said bio remediation cell(s) during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the authorizing board, based upon the unique characteristics of the bio remediation cell(s) and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the authorizing board in supplying all necessary construction, sampling, maintenance and reclamation data to the authorizing board prior to approval of any application to accomplish the foregoing.

**SECTION 620**      **MASS VEHICLE STORAGE**

A. Establishment

No person shall establish, operate, or maintain a mass vehicle storage business or operation until he has obtained a special use permit in compliance with Section 809.

B. Location Requirements

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

C. Aesthetic Considerations

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

D. Fencing

Although no specific fencing requirement will be mandated, the authorizing board shall consider whether or not fencing, screening, the planting of trees and shrubs or other landscaping shall be necessary to promote the aesthetic considerations set forth herein.

E. Other Conditions and Considerations

The authorizing board shall consider other factors as necessary to impose any other allowable conditions pursuant to Section 809 D, including, but not limited to, the maximum number of vehicles to be allowed for temporary storage.

F. Annual Review and Recertification

Pursuant to Section 809, the Zoning Enforcement Officer shall inspect at least annually the operation of a mass vehicle storage facility to make sure it complies with the provisions of this Zoning Law and any and all conditions prescribed by the authorizing board when issuing the special use permit.

The permit for operation of the mass vehicle storage facility shall be for a period of one (1) year, subject to annual review and recertification by the Town Board based on a written request for continuance.

**SECTION 621**      **COMMERCIAL WIND ENERGY SYSTEMS**

The purpose of this Section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for

the orderly development of land, protect property values, and aesthetic conditions. This section does not repeal, annul, impair, or interfere with any existing ordinance or local law.

It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Law.

A. Permit Requirements

1. Special Use Permit. A Special Use Permit is required for a wind farm system and for any commercial wind energy system, or a component thereof.
2. Zoning Permit. A Zoning Permit and Site Plan Review are required for the installation of a wind tower that is part of any commercial wind energy system or for commercial wind energy systems considered a part of a farm operation.
3. Expiration. A permit issued pursuant to this Zoning Law expires if:
  - a. the commercial wind energy system is not installed and functioning within 2 years from the date the permit is issued; or
  - b. the commercial wind energy system is out of service or otherwise unused for a continuous 12-month period.
4. Fees. The application for a Special Use Permit for a commercial wind energy system must be accompanied by the fee required for a Special Use Permit.
5. Financial Assurance. The owner of a commercial wind energy system must provide a Performance bond, completion bond, or other financial assurance that guarantees the performance of the complete restoration of the land developed for the commercial wind energy system.

B. Restoration Requirement. (see also Restoration Section under Agricultural Mitigation)

1. A commercial wind energy system that is out of service for a continuous 12-month period or any commercial wind energy system found to be unsafe by the Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment in the form of a letter to the owner of a commercial wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the Notice of Abandonment if the owner provides information within 30 days from the date of the Notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.
2. The owner of a commercial wind energy system must provide the Zoning Enforcement Officer with a written Notice of Termination of Operations if the operation of a commercial wind energy system is terminated.

3. Within 3 months of receipt of Notice of Abandonment or within 6 months of providing Notice of Termination of Operations, the owner of a commercial wind energy system must:

- a. remove all wind turbines, aboveground improvements, and outdoor storage;
- b. remove all foundations, pads, and underground electrical wires to a depth of 4 feet below the surface of the ground; and
- c. remove all hazardous material from the property and dispose of the hazardous material in accordance with federal and state law;
- d. all disturbed area will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible.

C. Special Use Permit or Zoning Permit Requirements. In addition to those criteria set forth under other Sections of this Zoning Law, the Town shall consider the following factors when setting conditions upon Special Use Permits or Zoning Permits issued for all commercial wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicants expense:

1. Proposed ingress and egress.
2. Proximity to transmission lines to link the system to the electric power grid.
3. Number of wind turbines and their location.
4. Nature of land use on adjacent and nearby properties.
5. Location of other wind energy systems in the surrounding area.
6. Surrounding topography.
7. Proximity to residential structures, residential zoning districts, or areas Identified for future residential use.
8. Design characteristics that may reduce or eliminate visual obtrusiveness.
9. Possible adverse effects on migratory birds, and other animals and wildlife.
10. Possible adverse effects of stray voltage, interference with broadcast signals, shadow effect, and noise.
11. Impact on the orderly development, property values, and aesthetic conditions.
12. Recommendations of the Town Board.

13. Any other factors that are relevant to the proposed system.

D. Standards.

1. Location.

a. A commercial wind energy system may only be located in areas that are zoned Agricultural-Residential (A-R) and Industrial (I).

b. A wind tower may not be located within one-quarter mile (1,320 ft.) of any State Forest, public park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal, or local government designation; or within 1,000 feet of a State-identified wetland.

2. Set Backs. A wind tower in a commercial wind energy system and each wind tower in a wind farm system must be set back (as measured from the center of the base of the tower):

a. from the property line of the parcel on which the wind tower is located by a minimum distance equal to twice the total height of the wind tower, unless waived in writing by the abutting landowner.

b. from any residence or building that is on any parcel by a minimum distance of 1,200 feet, unless waived in writing by the owner of such structure.

c. from any public building that is on any parcel by a minimum distance of 1,200 feet.

d. from the right-of-way of any public road by a minimum distance of 1,000 feet or twice its total height, whichever is greater.

E. Spacing and Density. A wind tower must be separated from any other wind tower, or adjacent wind farm system by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.

F. Structure. A wind tower must be of monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed as long as it is a single turbine and not a part of a Wind Farm System.

G. Height. The total height of a wind energy system must be 195 feet or less. Other minimum building/structure height restrictions within other sections of this Zoning Law are not applicable.

H. Clearance. The vertical distance from ground level to the top of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.

I. Access and Safety.

1. Security. A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.
2. Climbing Aids. Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.
3. Operational Safety. Wind towers shall have an automatic braking, governing or other feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure rotor blades and turbine components.
4. Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.
5. Access Roads. All commercial wind energy systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

J. Electrical Wires.

1. Location. All electrical wires associated with a commercial wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction Section under Agricultural Mitigation).
2. Transmission Lines. All commercial wind energy systems shall combine transmission lines and points of connection to local distribution lines.
3. Substations. All commercial wind energy systems shall connect the facility to existing sub-stations, or if new substations are needed, minimize the number of new substations.

K. Lighting. A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.

L. Building and Outdoor Storage. Any ancillary buildings and any outside storage associated with a commercial wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping, that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.

M. Aesthetics.

1. Appearance, Color, and Finish. The exterior surface of any visible components

of a commercial wind energy system must be a nonreflective, neutral color. Wind towers and turbines that are located within view, or within one mile of each other must be of a uniform design, including tower type, color, number of blades, and direction of blade rotation.

2. Visual Impact Assessment. The applicant shall complete a Visual Environmental Assessment Form (Visual EAF – SEQR), as well as a visual impact assessment of any proposed commercial wind energy systems or any proposed modifications to existing commercial wind energy systems. The visual impact assessment shall include:

a. “Before and after” photos or computer simulations from key view-points both inside and outside the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.

b. Alternative tower designs.

c. Assessment of visual impact from abutting properties and streets of the tower base, accessory buildings and any other element of the commercial wind energy system identified by the Planning Board.

d. A viewshed map of the proposed commercial wind energy system with a radius of seven (7) miles from any portion of the commercial wind energy system.

e. An inventory of all aesthetic resources in the viewshed defined in item d.

3. Visual Impacts Offset Plan. The applicant may be required to prepare and implement a visual impacts offset plan to mitigate negative impacts on aesthetics of a proposed commercial wind energy system. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

N. Signs. No wind turbine, tower, building, or other structure associated with a commercial wind energy system may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 sq. ft. in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or one the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a commercial wind energy system so as to be visible from any public road.

O. Agricultural Mitigation. The following shall apply to construction areas for commercial wind energy systems located in County-adopted, State-certified Agricultural Districts. The applicant is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag. And

Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. For larger projects, the applicant shall hire an Environmental Monitor to oversee the construction and restoration in agricultural fields at the applicant's expense.

1. Siting.

- a. Minimize impacts to normal farming operations by locating structures along field edges where possible.
- b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
- c. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
- d. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

2. Construction.

- a. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- b. Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
- c. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and laydown area. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.
- d. Topsoil from work areas (tower sites, parking area, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site "working set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- e. In cropland, hayland and improved pasture a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six inches of cover will be required. In areas



where the depth of soil over bedrock ranges from zero to forty-eight inches 48, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.

f. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.\*

g. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

h. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.\*

i. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.

j. Excess concrete will not be buried or left on the surface in active Agricultural areas. Concrete trucks will be washed outside of active agricultural areas.\* Concrete trucks will not be cleaned or dumped along public highways within the Town.

\*Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

### 3. Restoration.

a. Restoration scheduling will be consistent with the seasonal Limitations identified by Ag. And Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (general permit).

b. Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a site-specific basis by the landowner in consultation with Ag. And Markets. All parties involved should be cognizant that areas restored after October 1<sup>st</sup> may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1<sup>st</sup>, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

c. All access roads will be regarded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

d. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

e. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

f. Following restoration, all construction debris will be removed from the site.

4. Two Year Monitoring and Remediation.

a. The applicant will provide a monitoring and remediation period of no less than two years immediately following the completion of initial restoration. The two year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.

b. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.

c. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.

d. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not obviate the applicant's responsibility to fully redress all project impacts.

e. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the designed mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

P. Noise. Audible noise due to the operation of any part of a wind energy system shall not exceed 50 dBA for any period of time, when measured at any residence, school, hospital, church, public park or public library.

Q. Insurance. Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, upon which the Planning Board will make a referral and recommendation to the Town Board, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

R. Shadow Flicker.

1. Shadow Flicker Maps. Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school hospital, church or public library.

2. Shadow Flicker Duration. Shadow flicker for all sensitive areas/locations within the project area shall be limited to 30 hours per year and shall not exceed 30 minutes per day.

S. Electromagnetic Interference (EMI). All commercial wind energy systems shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any commercial wind energy system or the applicant shall mitigate any such interference.

## **SECTION 622**      **NON-COMMERCIAL WIND ENERGY SYSTEMS**

The purpose of this section is to preserve and protect public health and safety without significantly increasing the cost of decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, and aesthetic conditions.

It is unlawful for any person to construct, install, maintain, modify, or operate a non-commercial wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Law.

A. Permit Requirements

1. Zoning Permit. A Zoning Permit and Sketch Plan review are required for the installation of a Non-Commercial Wind Energy System or any component thereof. The property owner, or designated agency, shall submit the following to the Town Planning Board for sketch plan review prior to installation.

2. Completion of Part I of Short Environmental Assessment Form (EAF) in accordance with 6 NYCCR PART 617.

3. Fees. The application for a Zoning Permit for each Non-Commercial Wind Energy System must be accompanied by the Fee required for a Zoning Permit, upon review of the Planning Board.

B. Zoning Permit Requirements. The following sets forth the information required for Sketch Plan Review of Non-Commercial Wind Energy Systems:

1. Sketch of the Parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel involved and identifying contiguous properties and any known easements or rights-of-way and roadways. Show the existing features of the site including land and water areas, water or sewer systems, utility lines, and the approximate location of all existing structure on or immediately adjacent to the site.

2. Show the proposed location and arrangement of small wind energy production facilities to the site.

3. Include copies of plans or drawings prepared by the manufacturer.

4. Provide a description of the project and a narrative of the intended use of the proposed wind energy production facility, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.

5. List safety measures to prevent unauthorized climbing on the tower.

6. Prescribe requirements for automatic braking, governing, or feathering system to prevent uncontrolled rotation of the rotor blades and turbine components.

7. The wind tower be setback the combined height, plus 50%, of each tower and blades, from existing structures and property not owned by the applicant.

C. Standards

1. Setbacks. Each tower in a non-commercial wind energy system must be set back the combined height, plus 50%, of each tower and blades, from existing structures and property not owned by the applicant.

2. Height. The total height of a non-commercial wind energy system must be 195 feet or less.

Roof mounted turbines extending to a height of less than or equal to 13 feet above the roof line are permissible.

3. Electromagnetic Interference. Non-commercial wind energy Systems shall be properly sited, altered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, television or television signals caused by a non-commercial wind energy system or the applicant shall mitigate any such interference.

4. Clearance. The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet unless the blades are enclosed within a housing, with the exception of roof mounted turbines.

5. Safety.

a. Operational Safety. Wind towers shall have an automatic braking governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

b. Lightning. All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

c. Lighting. Lighting shall be consistent with requirements of the Federal Aviation Administration, FAA.

6. Signs. No wind tower, turbine, building, or other structure associated with a Non-commercial Wind Energy System may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 square feet in size containing the name of the current owner or operator, emergency phone number, and current address of such owner/operator may be located on that exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation other than manufacturer's original markings or appropriate warning signs may be placed on a wind turbine, tower, building, or other structure associated with a Non-commercial Wind Energy System so as to be visible from any public road.

7. Noise. Audible noise due to the operation of any part of a Non-Commercial Wind Energy System shall not exceed 50 decibels (dBA) for more than 5 minutes out of any one-hour time period, when measured at any neighboring property line not owned by the applicant.

8. Code Compliance. All non-commercial wind energy systems, including tower, shall comply with all applicable State Construction and Electrical Codes, and the National Electric Code.

9. Installation Requirements. In conformity with the New York State Uniform Fire Prevention and Building Code.

10. Expiration. A permit issued pursuant to this Zoning Law expires if:

- a. The Non-commercial Wind Energy System is not installed and functioning within two (2) years from the date the permit is issued, unless project requires more time, due to grant money issues, (proof required) and not to exceed three (3) years. The extended timeframe for two (2) to three (3) years to be determined by the Zoning Enforcement Officer.
- b. The Non-commercial Wind Energy System is out of service or otherwise unused for a continuous twelve month period.

## **SECTION 623**

## **NEIGHBORHOOD BUSINESS**

### 1. Intent

The purpose of this section is to provide opportunities for the economic advancement among residents of the Town and to protect the character of residential and agricultural areas of the Town. All businesses established pursuant to this section are expected to blend in with the existing character of the area in which it is located.

### 2. Type of Business

A variety of small commercial establishments may be permitted, provided that the requirements of this section are met.

### 3. Neighborhood Character

- a. The appearance of the structure shall not be altered and the

business shall not be conducted in a manner that would cause the premises to differ from its' existing residential/agricultural character, either by colors, material, construction, lighting signs, or emission of sounds, noises or vibrations.

b. The use shall not generate noise, dust, vibration, smell smoke, glare, odors or electrical interference, fire hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the applicable zoning district.

4. Signage

Refer to SECTION 606-d "Signs", of the Town of Alabama Zoning Law.

5. Hours of Operation

The Neighborhood Business shall be conducted in such a manner that all clients, customers and others coming to do business shall arrive and depart between the hours of 7:00 a.m. and 9:00p.m.

6. Number of Neighborhood Businesses Permitted

No more than one (1) Neighborhood Business may be permitted for each residential property.

7. Parking and Access

a. Off-street parking shall be permitted as long as adequate space is provided with a turn-around area so that the vehicles do not have to back out into a public roadway. The off-street parking for the Neighborhood Business shall be in addition to the parking required for the employees and residents. Off-street parking shall be provided in accordance with Section 601, 602, and 603 of the Town of Alabama Zoning Law.

8. Setbacks

Any accessory building used in connection with the Neighborhood Business, shall be set back in compliance with the existing regulations of the Zoning Districts in which it is located.

9. Deliveries

Tractor-trailer deliveries shall be permitted, unless the Planning Board determines that the site does not provide adequate access and/or turning around space.

## **SECTION 624 SOLAR ENERGY**

### **624-1. Authority**

This Solar Energy Local Law is adopted pursuant to Sections 261-263 of the Town Law for the State of New York, which authorizes the Town to adopt zoning provisions that advance and protect the health, safety and welfare of the community, and, in accordance with the Town Law of New York State, “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefore.”

### **624-2. Statement of Purpose**

This Solar Energy Local Law is adopted to advance and protect the public health, safety, and welfare of the Town by creating regulations for the installation and use of solar energy generating systems and equipment, with the following objectives and intent:

1. To take advantage of a safe, abundant, renewable and non-polluting energy resource;
2. To decrease the cost of electricity to the owners of residential and commercial properties, including single-family houses;
3. To invest in a locally generated source of energy to increase employment and business development in the Town of Alabama to the extent reasonably practical by furthering the installation of solar energy systems;
4. To provide other benefits to the Town and its residents to mitigate impacts from the solar project;
5. To mitigate the impacts of Solar Energy Systems on environmental resources such as important Agricultural lands, forests, wildlife and other protected resources. The use of small-scale, on-farm sources alternative to energy generation is beneficial to local farmers allowing them the ability to cut utility costs and/or supplement their income;
6. To protect adjoining/surrounding property owners by mitigating the potential impacts from large scale solar installations;
7. To aid in the energy independence of the community as well as the country.

8. To create zoning regulations in accordance with the Town’s Comprehensive Plan, its Agriculture and Farmland Protection Plan, and other Regional Planning documents;

9. To allow for a total of up to 2,500 acres of Tier 3 and 4 Solar Energy Systems within the Town. This acreage calculation is based on the area within the fenced in area of the project site (includes panels, battery storage, and other Solar Energy Equipment).

### **624.3. Definitions**

**BUILDING-INTEGRATED SOLAR ENERGY SYSTEM:** A combination of Solar Panels and Solar Energy Equipment integrated into any building envelope system such as vertical facades, semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

**DWELLING UNIT:** Any residence/house/apartment that may be occupied or vacant

**FARMLAND OF STATEWIDE IMPORTANCE:** Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that is of state wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by state law.

**GLARE:** The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System that is anchored to the ground via a pole or other mounting system, detached from any other structure that generates electricity for onsite or offsite consumption.

**HOST COMMUNITY AGREEMENT –** A contract between a developer and a local governing body, whereby the developer agrees to provide the community with certain benefits and mitigate specified impacts of the solar project.

**NATIVE PERENNIAL VEGETATION:** Native wildflowers, forbs, and grasses that serve as habitat, forage, and migratory way stations for pollinators and shall not include any prohibited or regulated invasive species as determined by the New York State Department of Environmental Conservation.

**NON-PARTICIPATING PROPERTY;** A property that is not affiliated with a Solar Energy System project.



**PARCEL(S):** A tract of land owned by an individual or entity leased or otherwise controlled by an applicant upon which a Solar Energy System is proposed to be constructed.

**PARTICIPATING PROPERTY:** A property that is being leased for solar usage, or a property that has an agreement or lease but is not having solar related improvements constructed upon it.

**POLLINATOR:** bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

**PRIME FARMLAND:** Land, designated as “Prime Farmland” or “Prime Farmland where drained” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

**ROOF-MOUNTED SOLAR ENERGY SYSTEM:** A Solar Energy System located on the roof of any legally permitted building or structure that produces electricity for onsite or offsite consumption.

**SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive Solar Energy Systems on individual properties.

**SOLAR ENERGY EQUIPMENT:** Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic equipment associated with the production of electricity.

**SOLAR ENERGY SYSTEM:** The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. A Solar Energy System in the Town of Alabama is classified as a Tier 1, Tier 2, Tier 3 or Tier 4 Solar Energy System as follows.

A. Tier 1 Solar Energy Systems include the following:

1. Roof-Mounted Solar Energy Systems
2. Building-Integrated Solar Energy Systems

B. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems up to 1,500 square feet in size (defined as the actual square footage of panels) and that generate no more than 110% of the electricity consumed on the site over the previous 12 months.

C. Tier 3 Solar Energy Systems are systems that do not meet the definition of a Tier 1 or Tier 2 Solar Energy Systems and do not meet the requirements of a Tier 4 Solar Energy System.

D. Tier 4 Solar Energy Systems meet the definition of a Tier 3 Solar Energy System but are over 50 acres in size (defined as the fenced in area that encloses the panels and other related solar energy equipment).

**SOLAR PANEL:** A photovoltaic device capable of collecting and converting solar energy into electricity.

**STORAGE BATTERY:** A device that stores energy and makes it available in an electrical form.

**WETLANDS:** Any areas designated as such by the NYS Department of Environmental Conservation or the US Army Corps of Engineers

#### **624-4. Applicability**

1. The requirements of this Local Law shall apply to all Solar Energy Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
2. Solar Energy Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
3. Modifications to an existing Solar Energy System that increase the Solar Energy System area by more than 5% of the original area of the Solar Energy System (exclusive of moving any fencing) shall be subject to this Local Law.
4. All Solar Energy Systems shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code (“Building Code”), the NYS Energy Conservation Code (“Energy Code”), and the Town Code.

#### **624-5. General Requirements**

1. A Building permit shall be required for installation of all Solar Energy Systems.
2. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).
3. This Article shall take precedence over any inconsistent provision of the Zoning Law of the Town of Alabama.

#### **634-6. Permitting Requirements for Tier 1 Solar Energy Systems**

All Tier 1 Solar Energy Systems shall be permitted in all zoning districts and shall be exempt from site plan review under the local zoning code or other land use regulation, subject to the following conditions for each type of Solar Energy Systems:

1. Roof-Mounted Solar Energy Systems.

a. Roof-Mounted Solar Energy Systems shall incorporate, when feasible, the following design requirements:

*i.* Solar Panels on pitched roofs shall be mounted with a maximum distance of 8 inches between the roof surface the highest edge of the system.

*ii.* Solar Panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.

*iii.* Height: Tier 1 Solar Energy Systems shall have the following height restrictions for all zoning districts: 2 feet above roof of highest existing structure, but shall not be higher than the allowed height in the underlying zoning district, unless a variance is received.

*iv.* Solar Panels on flat roofs shall not extend above the top of the surrounding parapet, or more than 24 inches above the flat surface of the roof, whichever is higher.

b. Glare: All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.

c. Fire safety: All Roof mounted systems shall be designed and installed in accordance with the Uniform Fire Prevention and Building Code Standards.

2. Building-Integrated Solar Energy Systems - Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for the building containing the system.

**624-7. Permitting Requirements for Tier 2 Solar Energy Systems**

All Tier 2 Solar Energy Systems shall be permitted in all zoning districts as an accessory use and require site plan review in accordance with the Town of Alabama zoning code and other Town land use regulations. The Site Plan application shall include a site plan and address the following requirements:

1. Glare - All Solar Panels shall have anti-reflective coating(s) and proof of such must be provided with the building permit application.

2. Setbacks - Tier 2 Solar Energy Systems shall be setback a minimum of 50 feet from any side or rear property line. All Ground-Mounted Solar Energy Systems shall only be installed in the side or rear yards. In all cases, the solar panels shall be located a minimum of 75 feet from any dwelling unit on an adjoining non-participating property.

3. Height - Tier 2 Solar Energy Systems shall be less than 12 feet in Residential and Ag-Residential Districts. Height shall be less than 15 feet for all remaining districts.

4. Screening and Visibility.

- a. All Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable (as determined through the site plan process).
- b. Solar Energy Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

**624-8. Permitting Requirements for Tier 3 Solar Energy Systems**

All Tier 3 Solar Energy Systems are permitted through the issuance of a special use permit within Agricultural Residential Zone, Commercial Zone, Industrial Zone, and subject to site plan application requirements set forth in this Section. In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Alabama requires the applicant to enter into a Solar Energy System PILOT and Host Community Agreement with the Town of Alabama.

1. Applications (Process) for the installation of Tier 3 Solar Energy System shall be:

- a. Received by the Zoning Enforcement Officer (ZEO) and checked to make sure the appropriate documents have been submitted. The ZEO will then forwarded to the Planning Board, by having it placed on the next available agenda, for them to determine completeness of the application. Applicants shall be advised within 10 business days of the first Planning Board meeting of the completeness of their application or any deficiencies that must be addressed prior to substantive review of the Special Use Permit and Site Plan.

- b. Once the application is deemed complete and while the Planning Board is completing their reviews, the project/application shall be referred to the Town Board to begin completion of the Host Community Agreement. This agreement will need to be finalized before the Planning Board acts on the Special Use Permit.

- c. Subject to a public hearing to hear all comments for and against the application. The Town shall complete all public notice requirements in accordance with the Special Use requirements of the Town.

- d. Referred to the Genesee County Planning Department pursuant to General Municipal Law § 239-m if required.

- e. Acted upon by the Planning Board, once the required steps are completed and the Planning Board has completed the SEQR process.

2. Design and Application Requirements

Applications for Tier 3 Solar projects shall address and include the following:

- a. Vehicular Paths. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction.

b. Signage.

*i.* No signage or graphic content shall be displayed on the Solar Energy Systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information. Said information shall be depicted within an area no more than 8 square feet.

*ii.* As required by National Electric Code (NEC), disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

c. Glare. All Solar Panels shall have anti-reflective coating(s) and proof of such submitted.

d. Lighting. Lighting of the Solar Energy Systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast (dark sky compliant) from abutting properties.

e. Noise. Information on any noise producing equipment (as determined by the Town based on application materials) shall be submitted. If necessary, the Planning Board will require analysis of the noise on any sensitive receptors, including single family homes.

f. Tree-cutting. Removal of existing trees larger than 6 inches in diameter should be minimized to the extent possible.

g. Decommissioning.

*i.* Solar Energy Systems that have been abandoned and/or not producing electricity (defined as operated at a minimum of 50% capacity for a period of at least 6 months) shall be removed at the Owner and/or Operator's expense, which at the Owner's option may come from any security made with the Town as set forth in this law. The Owner and/or Operator shall submit detailed annual reports reflecting energy production.

*ii.* A decommissioning plan (see Appendix 1) signed by the owner and/or operator of the Solar Energy System shall be submitted by the applicant, addressing the following:

(a) The cost of removing the Solar Energy System (no allowance for recycle value).

(b) The time required to decommission and remove the Solar System and any ancillary structures.

(c) The time required to repair any damage caused to the property by the installation and removal of the Solar Energy System.

*iii.* Security

(a) The deposit, executions, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and/or engineer and approved by the Town Board, shall be in an amount sufficient to ensure the good faith performance of the terms and conditions of the permit issued pursuant hereto and to provide for the removal and restorations of the site subsequent to removal. The amount of the bond or security shall be 125 % of the cost of removal of the Tier 3 Solar Energy System and restoration of the property with an escalator of 2 % annually for the life of the Solar Energy System. The decommissioning amount shall not be reduced by the amount of the estimated salvage value of the Solar Energy System.

(c) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.

(c) In the event of default or abandonment of the Solar Energy System, the system shall be decommissioned as set forth in this law.

h. Application Fees: All applications for Tier 3 (and Tier 4) solar energy systems shall include the appropriate fees as set by the Alabama Town Board.

i. Maintenance Plan: applications shall include a maintenance plan for all leased lands (including required setbacks/buffers).

j. Safety; applications shall include a safety plan (including communication with emergency service providers).

k. Environmental and cultural resources; information on the environmental and cultural resources (as identified through the NYSDEC Mapping system and by the Town of Alabama) on the subject property and surrounding properties.

3. Site plan application - For any Solar Energy system requiring a Special Use Permit, site plan approval shall be required. This required site plan application shall include a site plan and the following information:

a. A Plan illustrating property lines and physical features, including roads, for the project site.

b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures

a. A one- or three-line electrical diagram detailing the Solar Energy System layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

- c. A preliminary equipment specification sheet that documents all proposed solar panels, significant components, mounting systems, and inverters that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- d. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Solar Energy System. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- e. Name, address, contact information, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the Solar Energy System.
- f. Zoning district designation for the parcel(s) of land comprising the project site.
- g. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming (or other methodologies).
- h. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- i. Engineering documents must be signed and sealed by a New York State (NYS) Licensed Professional Engineer or NYS Registered Architect.
- j. A completed SEQR Full Environmental Assessment Form.
- k. A Landscape Plan in accordance with the Special Use Permit requirements of this law.
- l. A calculation of the area of the solar energy system in acres (as defined in the definition of Tier 3 and Tier 4 systems). The Town will add this to the existing approved acreage of Tier 3 and 4 systems to determine if the project does not exceed the 2,500 acre threshold. If it is determined by the Town that the proposed project would exceed the 2,500 acre threshold, the application will be returned to the applicant and the project will not be allowed to proceed.

## **624-9. Special Use Permit Standards**

### **1. Specific Standards**

- a. Lot size – There are no lot size requirements; the project must be shown to meet all setback and other requirements of this law.
- b. Setbacks - All Tier 3 Solar Energy Systems shall be setback a minimum of 50 feet from the fence surrounding the solar panels and equipment to all property lines and to the edge of any road ROW. Additionally, the setback from the fence line shall be a minimum of 300 feet from the side or rear of a dwelling unit on an adjoining non-participating property. The setback to any off-site participating dwelling unit shall be 100 feet from the side or rear of the dwelling unit.

c. Height - The Tier 3 Solar Energy Systems shall be less than or equal to 20 ft. The height of systems will be measured from the highest natural grade below each solar panel. This height requirement can be waived by the Planning Board if the panels are being raised to accommodate agricultural purposes.

d. Fencing Requirements - All mechanical equipment, including any structure for storage batteries, shall be enclosed by a fence, and meet any other regulatory requirements such as NEC, with a self-locking gate to prevent unauthorized access.

e. Screening and Visibility.

*i.* Solar Energy Systems smaller than 5 acres shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

*ii.* Solar Energy Systems larger than 5 acres shall be required to:

(a) Conduct a visual assessment of the visual impacts of the Solar Energy System on public roadways and adjacent properties. At a minimum, a line-of-sight profile analysis shall be provided. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including for example a digital viewshed report, may be required to be submitted by the applicant.

(b) Submit a screening & landscaping plan to show adequate measures to screen through landscaping, grading, or other means so that views of Solar Panels and Solar Energy Equipment shall be minimized as reasonably practical from public roadways and adjacent properties to the extent feasible. The Planning Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.

(c) The screening & landscaping plan shall specify the locations, elevations, height, plant species, and/or materials that will comprise the structures, landscaping, and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The landscaped screening shall be comprised of a minimum of 1 evergreen tree, at least 6 feet high at time of planting, plus 2 supplemental shrubs at the reasonable discretion of the Town Planning Board, all planted within each 10 linear feet of the Solar Energy System (. Existing vegetation may be used to satisfy all or a portion of the required landscaped screening. A list of suitable evergreen tree and shrub species should be provided by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties.

(d) For any buildings or structures (not panels) to be placed on the site, the applicant shall be required to submit plans illustrating how these structures will blend into the character of the area. For example, buildings can be made to look like agricultural structures such as barns.

f. Agricultural Resources. For projects located on agricultural lands:

*i.* Any Tier 3 Solar Energy System located in areas that consist of Prime Farmland soils or Farmland



soils of Statewide Importance shall not exceed 50% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel upon which panels and other Solar Energy Equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual Agricultural uses.

*ii.* Tier 3 Solar Energy Systems located on Prime Farmland shall be constructed in accordance with the construction requirements of the New York State Department of Agriculture and Markets (See NYS Agriculture and Markets Guidelines).

*iii.* Tier 3 Solar Energy System owners shall develop, implement, and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds, and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, the owners shall use native plant species and seed mixes. Once established, other agriculture uses such as pasturing livestock and apiculture are permissible and encouraged. Input from the local farmers and Town Agricultural Committee will be needed to make these determinations.

*iv.* Agricultural Restoration Requirements: once the system is decommissioned, the site shall be restored and remediated in accordance with the NYS Agriculture and Markets Guidelines (this will be a condition of the Special Use Permit).

*g.* Noise: The project shall be shown to not have any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise).

*h.* Hazardous Materials: The project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium).

*i.* Solar Energy System Liability Insurance:

*i.* The Holder of a Special Use Permit for a Solar Energy System Shall Agree to secure and maintain for the duration of the permit, public liability insurance with policy limit amounts determined by the Town of Alabama based on the Permit Holder's project specifications/scope of work and associated exposures.

*ii.* Insurance Company: The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

*iii.* Insurance Policy Cancellation: The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Alabama with at least thirty (30) days prior written notice in advance of cancellation.

- iv. Insurance Policy Renewal: Renewal or replacement policies shall be delivered to the Town of Alabama at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- v. Copies of Insurance Policy: No more than fifteen (15) days after the grant of the permit before construction is initiated, the permit holder shall deliver to the Town of Alabama a copy of each of the policies or certificates representing the insurance in the required amounts.
- vi. Certificate of Insurance: A certificate of insurance states that it is for informational purposes only and does not confer sufficient rights upon the Town of Alabama shall not be deemed to comply with this Law.
- vii. Indemnification: Any application for a Solar Energy System within the Town of Alabama shall contain an indemnification provision. The provision shall require the Applicant/Owner/Operator to at all times defend, indemnify, protect, save, hold harmless and exempt the town of Alabama and its officers, councils, employees, attorneys, agents and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom either at law or in equity which might arise out of or are caused by the placement, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said Solar Energy System, excepting however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town of Alabama or its employees or agents. With respect to the penalties, damages, or changes referenced herein, reasonable attorneys' fees, consultant' fees and expert witness fees are included in those costs that are recoverable by the Town of Alabama.

#### **624-10. Permitting Requirements for Tier 4 Solar Energy Systems**

All Tier 4 Solar Energy Systems are permitted through the issuance of a special use permit within the Agricultural Residential Zone, Commercial Zone, Industrial Zone, and subject to site plan and special use permit requirements set forth in this Section for Tier 3 projects (all requirements in Sections 624-8 and 624-9). In order to ensure that the benefits of the community solar energy resource are available to the entire community, the Town of Alabama shall require all Tier 4 applicants to enter into a Solar Energy System PILOT and Host Community Agreement.

These Tier 4 systems are very large systems that have a potential to significantly impact the Town of Alabama, its citizens and the economy of the community. Therefore, the Tier 4 systems shall require the following additional (in addition to those in the Tier 3 level) submittals and requirements, or revisions to Tier 3 requirements:

1. Submittal of an Agricultural Impact Statement to determine the impact to Agriculture in the Town. The Town of Alabama has a standard Agricultural Impact Statement Table of Contents that will be provided to the applicant. The Planning Board, on a project by project basis, will work with the applicant on finalizing the requirements of this Agricultural Impact Statement.

2. Submittal of an Economic Impact Analysis to determine the impact to the economy of the Town. This includes the agricultural impacts in the Ag Impact statement and information as noted by the Town Planning Board (Town to provide scoping of this study)

3. Any Tier 4 Solar Energy System located on lands that consist of Prime Farmland soils or Farmland soils of Statewide Importance shall not exceed 50% of the area of Prime Farmland or Farmland of Statewide Importance on the parcel or project site as a whole (if multiple parcels are included) upon which panels and other solar energy equipment (the fenced in area) are to be installed. Any program in which the applicant participates that provides for the use of the land within the fenced in area as farm related uses may be excluded from this 50% coverage threshold calculation based on the amount of space actually occupied by the farm use. This exclusion will only be allowed based on a Planning Board's determination that these lands are being used for actual Agricultural uses.

4. For Tier 4 systems, if the project proposes to impact more than 50% of these Prime or Statewide Important soils, the applicant may purchase or lease (for the lease period of the proposed project) development rights, of an equal amount of land over the 50% threshold, of another farm within the Town of Alabama with Prime or Statewide Important soils located on that land to offset the farmland used or leased in the primary project area.

#### **624-11. Ownership Changes**

If the owner or operator of the Solar Energy System changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within 30 days of the ownership change.

#### **624-12. Safety**

1. Solar Energy Systems and Solar Energy Equipment shall be certified under the applicable electrical and/or building codes as required.

2. Solar Energy Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 3 Solar Energy System is located in an ambulance district, the local ambulance corps.

3. If Storage Batteries are included as part of the Solar Energy System, they shall meet the requirements of any applicable Local Law, fire prevention and building code when in use and, when no longer used, shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.

#### **624-13. Permit Time Frame and Abandonment**

1. The Special Use Permit and site plan approval for a Solar Energy System shall be valid for a period of

18 months, provided that construction has commenced. In the event construction is not completed in accordance with the final site plan as may have been amended and approved, as required by the Planning Board, within 18 months after approval, the applicant or the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 24 months, the approvals shall expire.

2. Upon cessation of electricity generation of a Solar Energy System on a continuous basis for 12 months, the Town may notify and instruct the owner and/or operator of the Solar Energy System to implement the decommissioning plan. The decommissioning plan must be completed within 360 days of notification.

2. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, utilize the bond and/or security for the removal of the Solar Energy System and restoration of the site in accordance with the decommissioning plan.

#### **624-14. Enforcement**

Any violation of this Solar Energy Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

#### **624-15. Severability**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

### **APPENDIX 1: EXAMPLE DECOMMISSIONING PLAN**

Date: [Date]

Decommissioning Plan for [Solar Project Name], located at: [Solar Project Address]

Prepared and Submitted by [Solar Developer Name], the owner of [Solar Farm Name]

As required by [Town/Village/City], [Solar Developer Name] presents this decommissioning plan for [Solar Project Name] (the "Facility").

Decommissioning will occur as a result of any of the following conditions:

1. The land lease, if any, ends
2. The system does not produce power ~~for (12) months~~ at a minimum of 50% capacity for a period of at least 6 months.
3. The system is damaged and will not be repaired or replaced.

4. The conditions of the Special Use Permit are not met.

The owner of the Facility, as provided for in its lease with the landowner, shall restore the property to its condition as it existed before the Facility was installed, pursuant to which may include the following:

1. Removal of all operator-owned equipment, concrete, conduits, structures, fencing, and foundations to a depth of 36 inches below the soil surface.
2. Removal of any solid and hazardous waste caused by the Facility in accordance with local, state and federal waste disposal regulations.
3. Removal of all graveled areas and access roads unless the landowner requests in writing for it to remain.

All said removal and decommissioning shall occur within [12] months of the Facility ceasing to produce power for sale.

The owner of the Facility, currently [Solar Developer Name], is responsible for this decommissioning.

Facility Owner Signature:

Date:

**Section 625 Battery Energy Storage System Law**

**1. Authority**

This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, § 10 (1) and (7); sections 261-263 of the Town Law section 10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

**2. Statement of Purpose**

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Alabama by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
- B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.
- D. To allow for battery storage of energy generated within the Town of Alabama.

### 3. Definitions

As used in this Article, the following terms shall have the meanings indicated: ANSI: American National Standards Institute.

**BATTERY(IES):** A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

**BATTERY ENERGY STORAGE MANAGEMENT SYSTEM:** An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

**BATTERY ENERGY STORAGE SYSTEM:** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to including a stand alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

- A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

**CELL:** The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

**COMMISSIONING:** A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

**DEDICATED-USE BUILDING:** A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- 1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- 2) No other occupancy types are permitted in the building.
- 3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system

and other energy systems.

- 4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
  - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
  - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

**DWELLING UNIT:** Any residence/house/apartment that may be occupied or vacant.

**ENERGY CODE:** The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

**FIRE CODE:** The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NEC:** National Electric Code.

**NFPA:** National Fire Protection Association.

**NON-DEDICATED-USE BUILDING:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

**NON-PARTICIPATING PROPERTY:** Any property that is not affiliated with the project.

**NON-PARTICIPATING RESIDENCE:** Any residence located on Non-participating Property.

**OCCUPIED COMMUNITY BUILDING:** Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

**PARTICIPATING PROPERTY:** A battery energy storage system host property, or a property that has an agreement or lease but is not having battery storage related improvements constructed upon it.

UL: Underwriters Laboratory, an accredited standards developer in the US.

UNIFORM CODE: the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

#### **4. Applicability**

A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in Town of Alabama after the effective date of this Local Law, excluding general maintenance and repair.

B. Battery energy storage systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

C. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law.

#### **5. General Requirements**

A. A building permit shall be required for installation of all battery energy storage systems.

B. Issuance of permits and approvals by the Alabama Planning Board shall include review pursuant to the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ('SEQRA')).

C. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.

#### **6. Permitting Requirements for Tier 1 Battery Energy Storage Systems**

Tier 1 Battery Energy Storage Systems shall be permitted in Agricultural Residential Zone, Commercial Zone, and Industrial Zone, subject to the Uniform Code, and the "Battery Energy Storage System Permit," and exempt from site plan review.

#### **7. Permitting Requirements for Tier 2 Battery Energy Storage Systems**

Tier 2 Battery Energy Storage Systems are permitted in Agricultural Residential Zone, Commercial Zone, and Industrial Zone through the issuance of a special use permit and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section. Tier 2 Battery Energy



Storage Systems associated with a Solar or Wind Energy project shall also conform with the Town Laws associated with these types of projects.

A. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

- 1) reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within 10 business days (of the first Planning Board meeting on the application) of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
- 2) subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation in the Town in accordance with the Town's special use permit requirements. Applicants shall also have delivered the notice by first class mail to adjoining landowners or landowners within 200 feet of the property at least 10 days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
- 3) referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.
- 4) Upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing (or after the SEQR process is completed, if not completed on the day of the public hearing), which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and Applicant.

B. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

C. Signage.

- 1) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
- 2) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all

pad-mounted transformers and substations.

D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

E. Vegetation and tree cutting. Areas within 10 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

F. Noise. The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 40 dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

### **G. Decommissioning.**

- 1) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
  - a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
  - b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
  - c. The anticipated life of the battery energy storage system;
  - d. The estimated decommissioning costs and how said estimate was determined;
  - e. The method of ensuring that funds will be available for decommissioning and restoration;
  - f. The method by which the decommissioning cost will be kept current;
  - g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  - h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- 2) Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town

Attorney for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

H. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

- 1) Property lines and physical features, including roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- 3) A [one- or three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- 4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- 5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- 6) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
- 7) Zoning district designation for the parcel(s) of land comprising the project site.
- 8) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.
- 9) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

- 10) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- 11) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- 12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
- 13) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
  - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
  - b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
  - c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
  - d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
  - e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
  - f. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
  - g. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
  - h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

I. Special Use Permit Standards.

- 1) Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the Solar or Wind Energy Systems they are associated with.
- 2) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations of Solar or Wind Energy Systems they are associated with.
- 3) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
- 4) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

J. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of Alabama of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

## **8. Safety**

A. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards as applicable:

- 1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
- 2) UL 1642 (Standard for Lithium Batteries),
- 3) UL 1741 or UL 62109 (Inverters and Power Converters),
- 4) Certified under the applicable electrical, building, and fire prevention codes as required.
- 5) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

B. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.

C. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

## **9. Permit Time Frame and Abandonment**

The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction [and/or] construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.

The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

## **10. Enforcement**

Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town.

## **11. Severability**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

## **ARTICLE VII**

## **MOBILE HOMES AND MOBILE HOME PARKS**

**SECTION 701**      **SINGLE MOBILE HOMES**

A.     Single Mobile Homes-Permanent Residence

1.     Criteria

A single mobile home may be permanently occupied as a one-family residence on any lot in an A-R District provided the following criteria are met and a zoning permit is issued:

a.     The mobile home unit shall comply with the current Construction and Safety Standards set forth by the United States Department of Housing and Urban Development, and have a minimum floor area of seven hundred and fifty (750) square feet exclusive of any porches, additions or other extensions, and shall meet all other requirements of this Zoning Law for dwelling units (i.e. Section 410, Minimum Dimensional Criteria).

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

B.     Single Mobile Homes – Temporary Residence

1.     Restrictions

Single mobile homes may be temporarily occupied as a one family residence on any lot in an R or AR District for a maximum period of two (2) years under the following circumstances and upon the issuance of a special use permit.

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

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

2.     Criteria

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

a.     The mobile home units shall comply with the current Construction and Safety Standards set forth by the United States Department of Housing and Urban Development, and have a minimum floor area of seven hundred and fifty (750) square feet exclusive of any porches, additions or other extensions.

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

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

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

e. The applicant shall provide documentation from the Genesee County Health Department that the proposed water supply and wastewater treatment systems are acceptable.

## **SECTION 702      MOBILE HOME PARKS**

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

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

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

#### 1. Site, Size, Density and Setback Requirement

a. The minimum size for mobile home parks shall be five (5) acres.

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

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

d. A setback of sixty (60) feet shall be observed from the right-of-way of any public road bordering the site to any mobile home in the park.

e. A setback of thirty (30) feet shall be observed from any property line excluding the right-of-way of any public road to any mobile home in the park.

f. The site shall be located and laid out so that no mobile home shall be closer than one hundred (100) feet to any existing single family or two family dwelling.

#### 2. Lot Size, Density and Setback Requirements



a. The minimum lot in a mobile home park shall be eight thousand (8,000) square feet, with a minimum width of seventy (70) feet and a minimum depth of one hundred (100) feet.

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

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

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

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

f. Maximum height for buildings shall be twenty-five (25) feet.

### 3. Site Layout and Design Requirements

#### a. Streets

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

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

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

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

All streets shall be provided with a smooth, hard and dense all-weather surface which shall be durable and well drained under normal use and weather conditions. The surface shall be maintained free of cracks and holes and its edges shall be protected by suitable means to prevent traveling and shifting of the base. The base course for the street shall consist of 12" R-0-B gravel laid in two lifts. Street construction shall be approved by the Town Highway Superintendent.

Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight (8) percent. Short runs with a maximum grade of ten (10) percent may be permitted, provided traffic safety is insured.

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

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

b. Parking

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

At least one parking space be situated on each unit, and the remainder may be located in adjacent parking bays along the park streets. Parking may be in tandem.

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

c. Storm Water Drainage

All mobile home parks shall be well drained and constructed so as to eliminate the accumulation of standing surface water for extended periods of time. The drainage system shall consist of buried corrugated steel pipe to carry storm water only.

OR

A series of well-constructed and properly maintained open ditches to carry surface runoff to off-site drainage channels or on-site drywell(s).

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

4. Lot and Mobile Home Requirements

- a. Each lot shall front on an approved interior street.
- b. Interior lots shall not be permitted to front on more than one street.

- c. No more than one (1) mobile home may be placed on any lot.
- d. No mobile home shall be located within a park except in an authorized space.
- e. All mobile homes shall comply with the current Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and have a minimum habitable floor area of six hundred (600) square feet, exclusive of any porches, additions or other extensions.
- f. Mobile homes shall be installed in compliance with the New York State Uniform Fire Prevention and Building Code.
- g. No addition shall be made to a mobile home except for a canopy and/or porch open on three sides.
- h. One (1) accessory building, not to exceed one hundred (100) square feet in dimension, may be located on each lot.
- i. Each lot shall be provided with approved connections for water and sewer in accordance with the regulations of the Genesee County and New York State Departments of Health.
- j. All utilities shall be underground.
- k. No front or side yard shall be used for storage.

5. Required Site Improvements

- a. Water Supply System – All water supply systems shall be approved by the Genesee County Health Department.
- b. Sewerage Disposal and Treatment – All sewerage disposal systems shall be approved by the Genesee County Health Department and/or NYS Department of Environmental Conservation.

6. Electrical Systems

- a. Except as otherwise permitted or required by this standard, all electrical installations in mobile home parks shall be underground, residential distribution designed and constructed in accordance with local electric utility and with the National Electrical Code. The point of the electrical connection for the mobile home shall be within the area of the mobile home stand.
- b. The mobile home park secondary electrical distribution system to mobile home lots shall be single phase, 120/240 nominal.

c. For the purpose of this section, where the park service exceeds two hundred forty (240) volts, transformers and secondary distribution panel boards shall be treated as services.

Mobile home lot feeder circuit conductors shall have adequate capacity for the load supplied, and shall be rated at not less than one hundred (100) amperes at 120/240 volts.

d. Provisions may be made for connecting a mobile home power supply assembly by a permanent wiring method, and the mobile home service equipment may provide for installation for at least one (1) fifty (50) ampere receptacle.

Mobile home service equipment may also be provided with a means for connecting a mobile home accessory building or structure or additional electrical equipment located outside a mobile home by a permanent wiring method.

#### 7. Gas Distribution System

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

#### 8. Service Buildings

Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the New York State Uniform Fire Prevention and Building Code and the New York State Sanitary Code and/or all other applicable ordinances and statutes regulating buildings, electrical installations, and plumbing and sanitation systems.

#### 9. Refuse Disposal

The park owner is responsible for provision of refuse pick-up and disposal.

#### 10. Mobile Home Park Special Use Permits

a. Pursuant to Section 809, the Zoning Enforcement Officer shall inspect at least annually the operation of a mobile home park to make sure it complies with the provisions of this Local Law and any and all conditions prescribed by the Planning Board when issuing the special use permit.

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

**ARTICLE VIII**      **ADMINISTRATION AND ENFORCEMENT**

**SECTION 801**      **ENFORCEMENT**

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

**SECTION 802**      **DUTIES OF THE ZONING ENFORCEMENT OFFICER**

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

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

C.     Appearance Ticket.

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

D.     Revocation of Certificate of Compliance.

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

E.     Records.

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

1.     Application File. An individual permanent file for each application for a permit provided by this Zoning Law shall be established at the time the application is made. Said file shall

contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer.

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

## **SECTION 803**            **CERTIFICATES AND PERMITS**

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

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

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

C. Emergency Housing. The Zoning Enforcement Officer may grant a non-renewable temporary housing permit for a period of time not exceeding ninety (90) days in conformance with Section 701.B.1.b.

D. Special Use Permit. Upon written direction of the authorizing board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Zoning Law.

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

## **SECTION 804**            **APPLICATION PROCEDURES**

A. Application. Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be built upon, the size and location of all

buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots as may be necessary to determine and provide for the enforcement of this Zoning Law. Three (3) copies of applications, together with a layout sketch shall be submitted. The Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Zoning Law and either issue or deny the zoning permit applied for.

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

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

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

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

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

**SECTION 805**            **FEES FOR PERMITS, AMENDMENTS, VARIANCES, SPECIAL USE PERMITS, OTHER ADMINISTRATIVE AND/OR ENFORCEMENT ACTIVITIES**

Fees may be charged for permits issued, and processing of applications for amendments, variances, special use permits and other costs associated with administration and enforcement of this Zoning Law. The fee schedule shall be set by resolution of the Town Board and may be changed from time to time in the same manner.

**SECTION 806**            **CERTIFICATES OF COMPLIANCE**

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

**SECTION 807**            **BOARD OF APPEALS**

A. Organization

The Town Board shall appoint members to the Zoning Board of Appeals as authorized by the provisions of Section 267 of the Town Law. The Town Board shall also designate the Chairperson thereof. In the absence of a chairperson the Board of Appeals may designate a member to serve as Acting Chairperson. The present Board of Appeals consists of five (5) members; any future changes by the Town Board to the number of members shall comply with the provisions of NYS Town Law Section 267 and/or any other applicable laws.

B. Meetings, Minutes and Records

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

C. Filing Requirements

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

D. Hearing Appeals

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

E. Time of Appeal

Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Town Clerk prior to the hearing of such appeal.

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



by the Zoning Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Public Hearing Notice and Referrals

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal, such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

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

G. Time of Decision

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

H. Filing of Decision and Notice

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

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

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

2. Use Variances

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

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

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

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

### 3. Area Variances

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

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

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

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

4. Imposition of Conditions

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

J. Solar Access

Pursuant to Chapter 742 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

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

**SECTION 808**      **PLANNING BOARD**

A. Organization

The Planning Board shall consist of five (5) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so; the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

B. Powers and Duties

1. Site Plan Review

Review of site plans in accordance with NYS Town Law Section 274-a as set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless specifically exempted by this Zoning Law.

2. Special Use Permits in A-R, R and C Districts

Granting of special use permits in A-R, R and C Districts in accordance with NYS Town Law Section 274-b as set forth in this Zoning Law based upon the criteria set forth in Section 809 of this Zoning Law.

3. Review Use Variances

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

4. Temporary Uses and Structures

Grant permits for temporary uses and structures only as follows.

a. Except as otherwise provided in Section 803.C, the Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:

1. Temporary uses incidental to a construction project.
2. Temporary real estate sales office incidental to a subdivision.
3. Other similar temporary incidental uses which:

a. Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and

b. Contribute materially to the welfare and well being of the Town.

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

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

C. Site Plan Review

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

1. Notice and Public Hearing

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is received by it and such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

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

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

- i. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- j. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- k. Location, design, and construction materials of all energy generation and distribution facilities, including electrical, gas and solar or other renewable energy.
- j. Together with any other information requested by the Planning Board.

3. Site Plan Review Criteria

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

- a. Harmonious relationship between proposed uses and existing adjacent uses and the natural environment.
- b. Maximum safety of vehicular circulation between the site and street, including emergency vehicle access.
- c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
- d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
- e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.
- f. The adequacy of stormwater and drainage facilities in preventing flooding, erosion, and improper obstruction of drainage ways.

4. Drainage, Grading, Erosion

a. To the extent practicable, site development shall employ Better Site Design (BSD) and Low Impact Development (LID) Practices in order to protect water quality, preserve and enhance existing natural features, reduce overall site impervious cover, and reduce runoff through green infrastructure techniques. The developer shall refer to the New York Standards and Specifications for Erosion and Sediment Control and the New York State Stormwater Management Design Manual for guidance.

b. Based on the size and location of proposed site plan development projects, may be subject to additional permits, which include but are not limited to a DEC wetland, stream crossing, or stormwater permits; or requirements and permits of the Town of Alabama Floodplain Development regulations.

c. In reviewing the proposed site development plan, the Planning Board may, as appropriate, consult the Genesee County Soil & Water Conservation District, NYSDEC, or other qualified assistance providers to help ensure the environmental integrity of the site is preserved, as practicable and as required by law. If the applicant must secure a permit from another agency, the Planning Board may request evidence that such permit(s) has been secured or, if the permit is under review, the Planning Board may condition its approval of the site plan upon the granting of such necessary permits.

#### 5. Preservation of Site Features and Landscaping

a. The existing natural vegetation cover shall be maintained wherever possible, during construction of the development and throughout the duration of the use.

b. Landscaping shall minimize erosion and stormwater runoff, provide necessary buffering and generally seek to blend the proposed use with the character of the Town.

c. c. A landscape plan shall include plant selections suitable for the specific site. Native species of plants must be included in the plan whenever possible; plants identified to be invasive should be avoided.

d. Pedestrian pathways shall be covered with crushed stone, bark gravel, brick, stone, or paved as appropriate, to allow drainage and prevent erosion.

e. Site design, whenever possible, should take advantage of opportunities to screen and buffer the proposed development from adjacent site. Adequate screening and buffering through the use of plant materials or other means (e.g. earthen berm, wall, or fence) may be required by the Planning Board to mitigate visual and noise impacts to adjacent sites and roadways. Screening may also be required to hide visual impacts of site features, such as dumpsters and loading docks.

#### 6. Area Variances

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

#### 7. Modifications and Conditions

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

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said

site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.

8. Waiver of Requirements

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

9. Reservation of Park Land on Site Plans Containing Residential Units

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

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

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

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

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

The planning Board may require, as a condition of site plan approval, that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with



accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.

11. Performance Standards

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

12. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a site plan review is subject to review under General Municipal Law Section 239.m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

13. Changes and Revisions

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

**SECTION 809**      **SPECIAL USE PERMIT**

The authorizing board (Planning Board or Town Board, depending on the zoning district involved) at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed and the authorizing board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the authorizing board as set forth in Subsection D of this Section.

A. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Four (4) copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the authorizing board. One (1) copy shall be retained by the Zoning Enforcement Officer. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law. In those instances when the Town Board is the authorizing board, a special use permit shall not be subject to the site plan review process set forth in Section 808. When the Town Board is the authorizing board, it shall refer all special use permit applications to the Planning Board for its informal recommendation. Failure of the Planning Board to render such informal recommendation within thirty (30) days after requested shall mean the Planning Board has no such recommendation on the proposal.

B. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 274.b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.

C. Notice of Public Hearing

The authorizing board shall hold a public hearing as part of the special use permit review process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and such public hearing shall be advertised in accordance with Section 813 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the authorizing board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

D. Conditions

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

E. Waiver of Requirements

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

F. Decisions

The authorizing board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the authorizing board and the applicant. Prior to rendering its decision, the authorizing board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239.m, a majority plus one (1) vote of the entire authorizing board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. All decisions shall be in writing stating the decision, the facts found and the reasons for the decision. The decision of the authorizing board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

G. Abandonment of Special Use Permit

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

H. Standards Applicable for all Special Use Permits

When the Planning Board is the authorizing board, it may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this Zoning Law. When the Town Board is acting as the authorizing board, it may use the following standards and conditions as guidelines but may include other issues it finds relevant.

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

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

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

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

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

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

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

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

9. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards.

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

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

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

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

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

I. Annual Review by Zoning Enforcement Officer

The Zoning Enforcement Officer shall at least annually inspect the use of the property in question to insure compliance with conditions that have been imposed by the authorizing board in issuing such special use permit and other applicable provisions of this Zoning Law.

J. Revocation of a Special Use Permit

1. A special use permit may be revoked by the authorizing board, which has issued said permit. Said board shall hold a public hearing to consider whether or not the special use permit grantee has violated the terms and conditions of said special use permit. Said public hearing shall be held only after the permit grantee has been notified by the Zoning Enforcement Officer of said violations, and has failed to correct said violations within the time period established by the Zoning Enforcement Officer to be not less than fifteen (15) days.

2. At least ten (10) days before said public hearing, a legal notice of said hearing shall be published in a newspaper of general circulation in the Town. Written notice of said hearing shall be mailed to the special use permit grantee by certified mail, return receipt requested, and by regular first class mail, directed to the last known address of the permit grantee.

**SECTION 810**            **VIOLATION AND PENALTY**

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

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

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any building to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

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

E. The Zoning Enforcement Officer may request that the Town Attorney initiate the legal action necessary to enforce provisions of this Zoning Law. (amended 12/13/2010)

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

**SECTION 811**            **COMPLAINT OF VIOLATION**

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

**SECTION 812**            **STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)**

A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR

regulations in detail and should be reviewed for compliance prior to undertaking any of the above mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified as follows:

- |                            |  |
|----------------------------|--|
| Zoning Text amendments     | - Town Board                                       |
| Zoning District Amendments | - Town Board                                       |
| Special Use Permits        | - Authorizing Board (Planning Board or Town Board) |
| Site Plan                  | - Planning Board                                   |
| Variances                  | - Zoning Board of Appeals                          |

When a project involves two or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete until a determination of no significance has been made or until a draft environmental impact statement is completed.

## **SECTION 813**      **PUBLIC HEARING AND NOTICE REQUIREMENTS**

When a public hearing is required by this Zoning Law the requirements set forth in this Section as well as the applicable requirements of the NYS Town Law shall be followed. All costs for the public hearing including, but not limited to, the legal ad(s), required mail notifications, and posting of signs, shall be paid by the applicant.

### A. Legal Advertisement

Each notice of a public hearing shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing for all zoning public hearings conducted by the Planning Board and Zoning Board of Appeals, and for those public hearings conducted by the Town Board under Section 809 (Special Use Permits). Public hearing notices conducted by the Town Board for zoning law amendments and zoning map amendments shall be published at least ten (10) days prior to the date of the hearing.

### B. Notices To Surrounding Property Owners

Notice of a required public hearing shall be mailed by first class mail service to all owners of property located within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an R, C or I District, or five hundred (500) feet when the involved property is located in any other district, at least ten (10) days before the date of

the hearing. For this purpose, the names and addresses of owners as shown on the latest assessment records of the Town of Alabama shall be used.

C. Sign Postings

At least ten (10) days prior to the date set for a public hearing on a conditional use, variance or site plan application, the applicant shall post their property with a sign(s) containing the following information:

1. The nature of the application being presented at the public hearing.
2. The date, time and location of the public hearing.
3. A sign shall be prominently displayed along each five hundred (500) feet of road footage, no closer than eight (8) feet and no further than fifteen (15) feet from the front property line. A minimum of one (1) sign is required along each road frontage.
4. The sign(s) required by this Section shall be made in accordance with specifications approved by the Town Board by separate resolution, and shall be provided to the applicant by the Town Clerk. Up to two (2) signs shall be provided to the applicant without charge, with each additional sign provided at a cost provided in the Town's fee schedule.
5. Failure by the applicant to maintain the required signs for the full ten day period prior to the date of the public hearing may result in the tabling of the application until the next regular meeting of the appropriate board. All signs posted pursuant to this section shall be removed by the applicant within five (5) days after the conclusion of the public hearing.
6. The sign shall be posted in such a manner so as to not blow or fall down and to not be obscured by grass, shrubs, snow, trees, vehicles etc. nor shall it impair traffic safety.

D. Recess or Adjournment of a Public Hearing

The Planning Board, Town Board or Zoning Board of Appeals may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or to persons it decides may be interested in the proposal being considered. Upon recessing or adjournment, the time and date when the hearing is to be resumed shall be announced. No further notice of publication will be necessary.

**ARTICLE IX**      **AMENDMENTS**

**SECTION 901**      **INITIATING AMENDMENTS**

A. Initiating Amendments

The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law.

B. Petitions

Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

C. State Environmental Quality Review (SEQR)

Amendments of the Zoning Law may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action the zone change is according to SEQR regulations. Depending on the size of the zone change and several other factors it may be a TYPE I or an UNLISTED action. To make a decision, the Board should consult Part 617 of Article 8 of Environmental Conservation Law (New York).

If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed.

**SECTION 902**            **REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD**

A. Referral to Town Planning Board

All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its recommendation thereon. The Planning Board shall submit its report prior to the public hearing. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.

B. Referral to County Planning Board

Where required by Section 239.m of the General Municipal Law or other applicable statute a proposed amendment shall be referred to the Genesee County Planning Board, which Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. Failure of the Genesee County Planning Board to report within thirty (30) days may be construed to be approval by the Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.



**SECTION 903**            **HEARING ON PROPOSED AMENDMENT**

Before adopting any amendments to this Zoning Law, the Town Board shall conduct a public hearing and such public hearing shall be advertised in accordance with Section 812 of this Zoning Law.

**SECTION 904**            **PETITION PROTESTING AMENDMENT**

In case of a protest against such change signed by the owners of twenty per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet therefrom or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths of the members of the Town Board.

**SECTION 905**            **PERIODIC REVIEW BY PLANNING BOARD**

From time to time, at intervals of not more than three (3) years, the Planning Board shall re-examine the provisions of the Zoning Law and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

**ARTICLE X**            **LEGAL STATUS PROVISIONS**

**SECTION 1001**        **PROVISIONS ARE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this Local Law shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular;

- A. To promote the purposes set forth in the preamble to this Local Law and in the statements of legislative intent for the respective districts or groups of districts.
- B. To provide a gradual remedy for existing conditions which are detrimental thereto.

**SECTION 1002**        **CONFLICT WITH OTHER LAWS**

Whenever any provision of this Local Law and any other provision of law, whether set forth in this Local Law or in any other law, ordinance, or regulation of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

**SECTION 1003**      **EXISTING ZONING PERMITS**

In all cases where:

A.      A zoning permit has been lawfully issued on the basis of an application showing

complete plans for the proposed construction of a new building or other structure, or for an enlargement of an existing building or other structure which requires construction of foundation, and

        i.      The adoption of this Local Law or for any subject amendment thereto, would make the

completed building or other structures nonconforming or noncomplying construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or noncomplying building or other structure.

**SECTION 1004**      **EXISTING PRIVATE AGREEMENT**

This Local Law is not intended to abrogate or annul any easement, covenant, or any other private agreement.

**SECTION 1005**      **SEPARABILITY CLAUSE**

It is hereby declared to be the legislative intent that, if any provision or provisions of this Local Law or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the lot, building or other structure, or tract of land immediately involved in the controversy. All other provisions of this Local Law shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

**SECTION 1006**      **REPEALER**

The ordinance entitled “The Zoning Ordinance for the Town of Alabama,” adopted on March 22, 1972, together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

**SECTION 1007**      **EFFECTIVE DATE**

This Local Law was originally adopted by the Alabama Town Board on June 8, 1987 and amended on June 13, 2011, and this amendment shall take effect upon its filing with the Secretary of State.

**ARTICLE XI**      **INCENTIVE ZONING**

**SECTION 1100**      **PURPOSE AND INTENT**

The purpose and intent of these provisions are to offer incentives to applicants who provide amenities that assist the Town to Implement specific physical, cultural and social policies in the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.

**SECTION 1101**      **DISTRICTS DESIGNATED FOR INCENTIVES**

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

**SECTION 1102**      **AMENITIES FOR WHICH INCENTIVES MAY BE OFFERED**

- A. The following amenities may be either on or off the subject application:
  - 1. Affordable housing.
  - 3. Passive and active open space and related improvements.
  - 3. Parks.
  - 4. Child-care or elder-care facilities.
  - 5. Utilities.
  - 6. Road improvements.
  - 7. Health or other human-service facilities.
  - 8. Cultural or historical facilities.
  - 9. Other facilities or benefits to the residents of the community.
  - 10. Any combination of amenities and/or cash in lieu of any amenity(ies).

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Zoning Law.

**SECTION 1103**      **INCENTIVES PERMITTED**

The following incentives may be granted by the Town Board to the applicant on a specific site:

- A. Decreases in required minimum lot sizes.
- B. Changes of use or zoning classifications.
- C. Changes in setbacks or height.

- D. Reduction to open space.
- E. Any other changes in the provisions of the Zoning Law.

**SECTION 1104**      **CRITERIA AND PROCEDURE FOR APPROVAL**

A. Applications for incentives in exchange for amenities shall be submitted to the Town Board. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:

- 1. The requested incentive.
- 2. The proposed amenity.
- 3. The cash value of the proposed amenity.
- 4. A narrative which:

a. Describes the benefits to be provided to the community by the proposed amenity.

b. Gives preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.

c. Explains how the amenity helps implement the physical, social or cultural policies of the Master Plan as supplemented by the local laws and ordinances adopted by the Town Board.

B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board.

- 1. The first sketch plan:

a. The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of Section 808 of the Zoning Law, the plan shall also show existing development, property owners names and tax account numbers for all property within two hundred (200) feet of the property lines of the proposed project or such other distance as specified by the Town Board.

b. If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.

2. The second sketch plan should meet the requirements of Section 808 of the Zoning Law, show existing development, property owners' names and tax account numbers for all properties within two hundred (200) feet of the property lines of the project site or such other distance as specified by the Town Board, but shall only show how the site would be developed exclusive of any amenity or incentive.

3. The applicant shall also submit such additional information and plans as may be Required by the Planning Board, including such additional information and plans as may be required under Section 808 of the Zoning Law, which in its judgment, are necessary in order to perform a through evaluation of the proposal.

C. The Planning Board will review the proposal and report to the Town Board with its evaluation of adequacy with which the amenity(ies)/ incentive(s) fit the site and how it relates to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with the project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within seventy (70) days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be exceeded/suspended upon the consent of the applicant or for good cause by the Town Board.

D. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall hold a public hearing thereon. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing at least five (5) days prior to the date of the hearing.

E. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:

1. First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal: and

2. Then, serve the on-site amenity and incentive, given the development scenario in subsection E 1. above.

F. Following the hearing and in addition to compliance with all SEQR requirements, the Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other Town's Boards and officials for review and comment.

G. In order to approve an amenity/incentive proposal, the Town Board shall determine that

The proposed amenity provides sufficient public benefit to provide the requested incentive. In no circumstances, however, shall the Town Board be compelled to approve any amenity/incentive proposal and it may deny any such proposal in its sole and absolute discretion. The Town Board may also impose such conditions upon its approval as it may deem appropriate to promote the health, safety and welfare of the community.

H. Following the approval by the Town Board, the applicant may proceed to apply for any additional permits or approvals as may be required by the Zoning Law or any other law or regulation, including, where appropriate, site plan approval under Article IX of the Zoning Law. No Such additional permit or approval by any board or agency of the town Shall materially alter any condition imposed by the Town Board under Paragraph G thereof and, in the event that any permit or approval by any agency outside the Town materially alters any such condition; the project may not proceed until and unless the Town Board approves of the modification.

#### **SECTION 1105**

#### **CASH PAYMENT IN LIEU OF AMENITY**

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.