

Town of Niagara Chapter 245: Zoning

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ARTICLE I. General Provisions

§245-1 Authority

- A. The Town Board of the Town of Niagara, County of Monroe, pursuant to the authority conferred by the Town Law of the State of New York hereby adopts and enacts this chapter.

§245-2 Short Title

- A. This chapter may be cited as the "Zoning Code of the Town of Niagara."

§245-3 General

- A. Pursuant to the authority conferred by Article 16 of the New York Town Law, and for each and every one of the purposes specified therein, the Town Board of the Town of Niagara has enacted and does hereby enact this chapter regulating and restricting the height, number of stories and size of buildings and other structures, the percentage of the lot that may be occupied, the size of yards, courts and other open spaces, density of population and the location and use of buildings, structures and land for trade, residence or other purposes.
- B. Nothing herein contained shall be construed to affect structures or subdivision plats which are now in existence, provided that they do not endanger the health, safety and movement of the residents of the Town or the general public, except as noted herein. Nothing in this provision shall be deemed to authorize the expansion or alteration of any nonconforming use.

§245-4 Rules of Interpretation

- A. The provisions of this code shall be interpreted as providing minimum requirements adopted for the purpose of promoting the health, safety, morale and general welfare of this community.
- B. It is not intended by this code to repeal (except as herein stated), to abrogate or impair existing conditions previously made, or permits previously issued, relating to the use of buildings or premises, nor to impair or interfere with any easements, covenants or agreements existing between parties; but wherever this code imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, regulations or permits, or by such easements, covenants or agreements, the provisions of this code shall control.

§245-5 Purpose and Intent

- A. The purpose of the code is to encourage the most appropriate use of the land throughout the Town and to conserve the value of property, with due consideration for the character of the zones and their peculiar suitability for particular uses; all in accordance with a comprehensive plan designed to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land, to avoid undue concentration of population, to encourage the flexible design and development of land so as to promote the most appropriate use of lands, to facilitate the adequate and economic provision of streets and utilities, to preserve the natural and scenic qualities of our lands and to enhance the quality of the Town.

§245-6 Conflict With Other Codes

- A. Whenever any provision of this code is at variance or conflict with any other provisions hereof or any other statute, ordinance or regulation covering any of the same subject matter, the more restrictive or the one imposing the higher standard shall govern.

§245-7 When Effective

- A. This code shall take effect immediately after the same shall have been published and posted as provided by § 264 of the Town Law or immediately upon personal service thereof as therein provided.

§245-8 Severability

- A. Prior to any action by a municipal board or official on any application made in accordance with the provisions of this Chapter, the Town shall satisfy the requirements of the State Environmental Quality Review (SEQR) regulations.

§245-9 Penalties for Offenses

- A. All violations of this code, or of any regulation or provision thereof, are punishable by a fine not less than \$150 and not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Violations of this chapter or of such local law, ordinance or regulation shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.

§245-10 Certified Copies

- A. A certified copy of this code with a certified copy of the Zoning Map attached shall be at all times accessible to any person applying to the Town Clerk in reasonable business hours for examination thereof; but no person other than officials of the Town shall be allowed to remove either the original copy or the copy herein provided for from the Town Clerk's office. The official certified copy of this Map and code shall be stored in the Town vault of the Town Hall on Lockport Road.

§245-11 Town Activities

- A. This code shall not apply to the activities of the Town of Niagara or Town-owned or leased property.

§245-12 General Requirements

- A. Minimum measurements. All minimum measurements pertaining to lots or spaces shall be exclusive of the rights-of-way of any and all highways, streets or roadways.
- B. Right-of-way. Where a building lot has frontage on a street which is proposed for right-of-way widening, the required front yard area shall be measured from such proposed right-of-way line.
- C. District use. All yards, open space, off-street parking and required landscaping must be contained within the district in which the use is required.

ARTICLE II. Word Usage and Definitions

§245-13 Word Usage

- A. For the purpose of this chapter, certain words and terms used herein shall be defined within this section and shall be used as directed in this article.
- B. All words used in the present tense include the future tense.
- C. All words in the plural number include the singular number and all words in the singular number include the plural number, except as to the number of permitted structures, unless the natural construction of the wording indicates otherwise.
- D. Unless otherwise specified, all distances shall be measured horizontally.
- E. The word "building" includes the word "structure."
- F. "Lot" includes the words "plot," "parcel," "tract" or "site."
- G. The word "premises" includes a lot and all buildings or structures thereon.
- H. To "erect," "to construct" and "to build" a building or structure each have the same meaning and also include "to excavate" for a building and "to relocate" a building by moving it from one location to another.
- I. "Used" shall be deemed also to include "designated, intended or arranged to be used or occupied."
- J. "Shall" is mandatory and not discretionary; "may" is discretionary and not mandatory.
- K. "He" shall include the feminine gender "she" as well.
- L. The word "Town" shall mean the Town of Niagara.

§245-14 Definitions

ACCESSORY AND/OR SUPPORT EQUIPMENT

An accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility, and located on the same lot as the communications tower. Examples of such structures include utility or transmission equipment storage sheds or cabinets.

ACCESSORY BUILDING OR STRUCTURE

The term applied to a building which:

1. Is customarily incidental and subordinate to and serves a principal building;
2. Is subordinate in area, extent and purpose to the principal building served;
3. Contributes to the comfort, convenience or necessity of occupants of the principal building use; and
4. Is located on the same parcel as the principal building.

ACCESSORY USE

A use incidental and subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. In residential zones accessory use is limited to the occupant of the premises.

AGRICULTURAL ACTIVITY

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

ALLEY

A way which affords only a secondary means of access to abutting property.

ACTION

Any project or physical activity, such as construction or other activity that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that requires a permit or approval from any board or official of the Town of Niagara.

ALLEY

A public or private way not more than 40 feet wide affording only secondary means of access to abutting property.

ALTERATIONS

As applied to a building or structure:

1. The change or rearrangement in the supporting members of a building or structure such as bearing walls, columns, beams or girders or in the exit facilities;
2. An enlargement of a building or structure, whether by extending on a side or by increasing in height;
3. The moving from one location or position to another; and

Any alteration whereby a structure is adapted to another or different use, including any separation into rooms or spaces by the installation of nonbearing partitions.

ANIMAL CARE ESTABLISHMENT

Any facility maintained for the treatment, care, grooming, or boarding of domestic animals. This includes kennels, animal hospitals, animal shelters and other similar uses which are further defined herein.

ANIMAL HOSPITAL OR VETERINARY CARE

Any facility maintained by or for the use of a licensed veterinarian in the diagnosis, treatment, or prevention of animal disease and injury wherein the animals are limited to dogs, cats, or other comparable household pets and wherein the overnight care of said animals is prohibited except when necessary in the medical treatment of the animal.

ANTENNA

A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication service (PSC) and microwave communications

APARTMENT

See "multi-unit home."

APPLICANT

A property owner or agent of a property owner who has filed an application for a land development activity, including for solar development.

APPLICANT, SOLAR DEVELOPMENT

The person or entity filing an application and seeking an approval under this article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar

energy system. Whenever the term "applicant" or "owner" or "operator" are used in this article, said term shall include any person acting as an applicant, owner or operator.

BASEMENT

The space of a building that is partly below grade, which has more than half of its height, measured from floor to ceiling, above the average established finished grade of the ground adjoining the building. For purposes of defining a basement, as further required under the National Flood Insurance Program (NFIP), the term shall mean that portion of a building having its floor subgrade (below ground level) on all sides. In addition to the above, a crawlspace that exists (or is proposed) below subgrade on all sides is also considered to be a basement under the NFIP.

BED-AND-BREAKFAST (B&B)

Owner-occupied one-family dwelling used for providing overnight accommodations and a morning meal to not more than 10 transient lodgers, containing at least three but not more than five bedrooms for such lodgers.

BERM

A raised form of earth to provide screening or to improve the aesthetic character.

BLOCK

The length of a street between two intersections.

BUFFER AREA

A continuous strip of land area covered with grass, vegetation, trees, fencing, embankments or berms, and designed to provide a physical screen preventing visual access from one use to another and to reduce the escape and/or intrusion of litter, fumes, dust, noise or other noxious or objectionable elements.

BUILDING

Any structure having a roof supported by columns or by walls and intended for shelter, housing, protection or enclosure of persons, animals or property. Depending upon its applicability, the use herein of "building" shall include the term "structures."

BUILDING HEIGHT

The vertical dimension measured from the average elevation of the finished grade level, touching the exterior walls of the building, to the height of a pitched, gabled, hip or gambrel roof, excluding bulkheads and other roof construction.

BUILDING-INTEGRATED PHOTOVOLTAIC SYSTEM (Tier 1)

A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS (Tier 1)

A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public.

BUILDING LINE

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

BUILDING PERMIT

A document issued by the Building Inspector of the Town of Niagara allowing the construction, reconstruction, remodeling, alteration or repair of a structure after review and approval of the submitted plans of said structure.

BUILDING, PRINCIPAL

A building in which is conducted the main or principal use of the lot on which said building is situated.

BUSINESS

Includes the purchase or sale or other transaction involving the handling of or disposition of any articles, substance or commodity, including enterprises conducted for profit, providing of any services.

CANTILEVER

The free part of a horizontal member of a structure projecting beyond a support.

CAR WASH

A structure or building designed for the washing, waxing or similar treatment of automotive vehicles as its principal function. A filling station having portable washing equipment shall not be deemed to be a car wash where such is an accessory service to the principal service of the filling station.

CELLAR

That portion of a building that is partially or entirely below grade and has more than 1/2 of its height (measured from floor to ceiling) located below the average finished grade of the ground adjoining the building.

CHANNEL

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

CLEARING

Any activity that removes the vegetative surface cover.

CERTIFICATE OF OCCUPANCY

A certificate issued by the Building Inspector upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of this code and such adjustments thereto granted by the Board of Appeals.

CLUB, PRIVATE

An organization catering exclusively to members and their guests, including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, provided that they are not conducting any vending stands, merchandising or commercial activities, except as required generally for the membership and purposes of such club or as permitted by separate ordinance or local law.

CLUSTER DEVELOPMENT

A development of residential lots, some of which may contain less area than the minimum lot area required for the zone within which such development occurs, while maintaining the density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

CODE ENFORCEMENT OFFICER

The officer(s) employed by the Town of Niagara to enforce the State Uniform Fire Prevention and Building Code adopted by local law.

COLLOCATED ANTENNAS

Telecommunications facilities which utilize existing towers, buildings or structures, as defined in this section, for placement of antenna(s) or replacement of existing towers which do not require construction of a new tower.

Replacement of an existing tower to accommodate collocation, provided that such new tower does not exceed the height of the existing tower, will not be deemed to be construction of a new tower as stated in this definition.

COMMUNICATION TOWER

A structure designed to support antennas or other equipment. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures which or which do not by themselves employ camouflage technology.

COMPATIBILITY

Harmony in the appearance of two or more external design features in the same vicinity.

CONDOMINIUM

An ownership arrangement in which the interior of a housing unit is individually owned, while the exterior, including land and facilities (common elements), is owned in common by all homeowners in the development. The owner has title to the interior individual dwelling and a shared interest in the common elements.

CORNER LOT

A piece of property that abuts two intersecting roads, or proposed road.

CUL-DE-SAC

A minor street intersecting another street at one end and terminated at the other end by a circular vehicular turnaround.

CURB LEVEL

The officially established grade of the curb in front of the mid-point of the lot. Where a building is on a corner lot, the curb level is the average of the mean levels of the curb on the two intersecting streets. Where no such grade has been established, the Superintendent of Highways shall establish same.

DAY-CARE CENTER

A facility duly permitted by the New York State Department of Social Welfare, for the care of either six or more children, or six or more adults, for less than 24 hours a day on a regular basis.

DEDICATION

The deliberate appropriation of land by its owner for any general public use.

DESIGN MANUAL

The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation), most recent version or its successor, including applicable updates, which serves as the official guide for stormwater management principles, methods and practices.

DETERIORATION

The condition or appearance of a building or structure characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, excessive use or lack of maintenance.

DEVELOPMENT

Any storage of equipment and materials, or man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations.

DEVELOPER

A person who undertakes land development activities.

DISTRICT

A certain area, delineated on the Zoning Map for a specific class of use.

DRIVE-THROUGH FACILITY

A facility providing service or delivery of goods to persons in a vehicle, the vehicle being driven to a position designed to provide that service or goods from inside a building.

DRIVEWAY

A roadway providing a means of access from a street to a property or off-street parking area. An accessway may also be deemed a driveway.

DWELLING

A building or structure designed exclusively or primarily for non-transient residential use.

DWELLING UNIT

A building or portion thereof providing complete living facilities and used for occupancy by a one or more people living as a single housekeeping unit.

DWELLING, TWO-UNIT

A detached residential building, containing two dwelling units. A duplex is a two-unit dwelling which is designed with a common wall.

DWELLING, MANUFACTURED

A factory-built residential dwelling unit designed to be occupied as a dwelling, complete and ready for occupancy except for minor and incidental unpacking and assembly operations and placement on a permanent foundation and connections to utilities. Manufactured housing built after June 15, 1976, shall meet the National Manufactured Home Construction and Safety Standards as set forth by the United States Department of Housing and Urban Development and applicable New York State codes. A recreational vehicle shall not be considered as a manufactured dwelling, nor may be it used as such.

DWELLING, MULTI-UNIT

- A. Building containing three or more dwelling units;
- B. Building containing living, sanitary and sleeping facilities occupied by one or two families and more than four lodgers residing with either one of such families.
- C. Building with one or more sleeping rooms, other than a single-unit or two-unit dwelling, used or occupied by permanent or transient paying guests or tenants;
- D. Building with sleeping accommodations for more than five persons used or occupied as a club, dormitory, fraternity or sorority house, or for similar uses.
- E. Building used or occupied as an senior residence; or
- F. Community residence.

DWELLING, SINGLE-UNIT

A detached residential dwelling unit designed for and occupied exclusively by one or more persons living as a single nonprofit housekeeping unit.

EROSION CONTROL MANUAL

The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004), most current version or its successor, commonly known as the "Blue Book."

ESSENTIAL SERVICES

The erection, construction, alteration or maintenance by public utilities, or any government department or commission, of underground or overhead gas, electrical, telecommunications or water transmission and/or distribution systems, including poles, wires, drains, sewers, pipes, conduits, cables, towers, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith,

reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies, or to the public health or safety or general facilities or sites for the disposal of waste materials associated with the provision of such services. Maintenance facilities, including storage yards and buildings, associated with the operation of essential services are also included within the definition of this term.

EXCAVATION

The process of the removal or stockpiling of sand, gravel, soil (including topsoil) or other natural deposits by stripping, digging or other means.

EXCAVATION SITE

A parcel of land used for the purpose of extracting stone, sand, gravel or topsoil for sale as an industrial or commercial operation. See also "mining permit."

EXTERIOR OF PREMISES

Open space on the premises outside of any building located thereon.

EXTERMINATION

The control and elimination of insects, rodents and vermin.

FAÇADE

An exterior wall of a building that is adjacent to or fronts on a public street, park, or plaza.

FALL-DOWN ZONE

The radius around a tower within which all portions of the tower and antenna(s) would fall in the event of a structural failure. Unless specifically set at a different level by the Town, the fall-down zone shall be the height of the tower plus 30 feet. Unless otherwise indicated, distances in this chapter shall be measured from the outer edge of the fall-down zone.

FARM

Any parcel of land, which is used in the raising of agricultural products, including crops, livestock, poultry or dairy products.

FARM BUILDING

Any building used for the housing of agricultural equipment, produce, livestock or poultry, or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with and necessary to the operation of the farm as defined by this article. The term "farm building" shall not include dwellings.

FENCE

An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials erected for the enclosure of yard areas.

FINISHED GRADE LEVEL

The level where the finished grade of the ground intersects the foundation walls. Height measurements shall be based from the average elevation of the finished grade level, along the wall to which the setback applies.

FLOOR AREA

The floor area within surrounding walls of a building, or portion thereof.

FLOOR AREA, GROSS

The sum of the gross horizontal areas of all of the floors of a building or buildings, measured from the outside faces of exterior walls or from the center line of walls separating two uses. For the purpose of applying the requirements for off-street parking and loading in the case of offices, merchandising or service types of uses, gross floor area shall not include areas used principally for nonpublic purposes such as storage, rest rooms, fitting or alteration rooms or general maintenance, or enclosed pedestrian malls or corridors.

FLOOR AREA, HABITABLE

The horizontal area of any floor of a building designed and intended for living purposes, which includes working, sleeping, eating, cooking or recreation or combination thereof. A floor used only for storage purposes is not a habitable floor. All dimensions shall be measured from the exterior faces of exterior walls or from the center line of the base of walls separating two dwelling units.

GARAGE, PRIVATE

An enclosed structure accessory to the principal building for the purpose of storing motor vehicles and/or items incidental to the principal building.

GARAGE, PUBLIC

Any garage building, other than a private garage, used for storage, repair and servicing of all types of motor vehicles for use by the general public.

GARAGE SALE

The periodic sale on a residential lot of household items or other tangible personal property which is advertised to the public at large. Also known as yard, household, or tag sale.

GARBAGE

Putrescible animal and vegetable waste resulting from the handling, preparation, cooking and/or consumption of food. (See also "refuse" and "rubbish.")

GARDEN APARTMENT

A building or group of buildings designed within an open lawn setting, designed to accommodate more than two dwelling units within a single structure and which is designed so that the group of dwelling units utilize such common facilities as pedestrian walks, parking and garage areas, open space, recreation areas and utility and service facilities.

GRADE, FINISHED

The natural surface of the ground, or surface of the ground after completion of any change in contour.

GRADE, STREET

The officially established grade of the street upon which the lot fronts. If there is no officially established grade, the existing grade of the street at the midpoint of the lot shall be taken as the street grade.

GRADING

Excavation or fill of material, including the resulting conditions thereof.

GROUP HOME

A use, structured as a single housekeeping unit and in accordance with the appropriate state code, rules and regulations, providing supervision and support in a family-like setting for persons, who by reason of mental or physical disability, addiction to drugs or alcohol or family and school adjustment problems, require specialized attention and care in order to achieve personal independence.

GROUND-MOUNTED SOLAR ENERGY SYSTEM (Tier 2)

A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public, and that generate up to 110% of the electricity consumed on the site over the previous 12 months (confirmed by information presented to the Town). Ground-mounted solar energy system not meeting the definition as outlined in this article will be treated as a large-scale or utility-scale solar energy systems and the requirements of such.

HOME OCCUPATION

The office of a member of a recognized profession when conducted on residential property; such occupation shall include but not be limited to those of doctors, lawyers, architects, engineers, artists, ministers, licensed real estate brokers or sales persons and other recognized professionals providing a personal service only and not sale of goods.

HOSPITAL

As defined by Article 28 of the New York State Public Health Law.

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.

HOTEL

A facility with guest rooms or suites with access from an interior hallway rented to the general public for overnight or temporary lodging for 30 days or less, and which may include accessory uses, such as a restaurant, kitchen facilities, swimming pool, gym, gift shop, and meeting rooms.

IMPERVIOUS COVER

Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT

A State Pollutant Discharge Elimination System (SPDES) permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INDUSTRY

Includes storage, repair, manufacture and preparation or treatment of any article, substance or commodity, and includes the operation of quarries.

INFILTRATION

The process of percolating stormwater into the subsoil.

JUNK

Any old, discarded and unusable objects of any kind, such as vehicles, building materials, scrap metal, machinery, appliances, furniture, equipment, etc., whether made of metal, fiber or plastics or any other material; old cordage, ropes, rags, fibers or fabrics; old rubber or other waste or discarded materials; or materials dangerous to health, regardless of their kind, form, shape or nature.

JUNKYARD

A yard, lot or any place of storage or deposit outdoors, in whole or in part, within the Town of Niagara where junk, as defined above, is kept or stored. For purposes of this chapter, junkyards include scrapyards. (Requirements for junkyards under this Zoning Code shall be in addition to any state requirements under 6 NYCRR Part 360.)

JURISDICTIONAL WETLAND

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

LAND DEVELOPMENT ACTIVITY

Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or construction activity disturbing less than one acre of

total land area that is part of a larger common plan of development or sale disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LARGE-SCALE SOLAR ENERGY SYSTEM (TIER 3)

Any solar energy system that is less than 30 acres in size (as measured by the fenced in area), that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for sale to the general public, or does not meet the definition of Tier 1, Tier 2 and Tier 4 solar energy systems.

LENGTH

The length of a building shall be the longest dimension through the main portion of such building and at right angles to an outside wall of the same.

LICENSED PROFESSIONAL

A landscape architect or professional engineer licensed to practice his or her profession in New York State.

LOADING SPACE, OFF-STREET



Space logically and conveniently located for public pickups and deliveries, scaled to delivery vehicles expected to be used and accessible to such vehicles.

LODGING HOUSE

A multiple dwelling used primarily for the purpose of furnishing lodging, with or without meals, to 15 or less transient occupants, for compensation.

LOT

A parcel of land occupied or capable of being occupied by one or more buildings and accessory buildings customary and incidental to it, including such open spaces as are arranged and designed to be used in connection with such buildings.

LOT AREA

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

LOT, CORNER

A parcel of land at the junction of, and fronting on, two or more intersecting streets. For determination of minimum setbacks, all corner lots shall be deemed to have two front yards, a side yard, and a rear yard. Rear yard shall be determined as the area behind the house, opposite of the main entrance door to the structure.

LOT DEPTH

The minimum horizontal distance from the front lot line of a lot to the rear line, measured at right angles (90°) to the front lot line.

LOT, FLAG

An approved lot having less lot width than otherwise normally required for the zone district. The portion of the lot that provides access to the interior portion of the lot shall not be less than 20 feet in width, shall not be considered buildable and shall not be used in the calculation of the minimum lot area requirements for the zone district. The interior portion of the lot shall meet the minimum lot area requirements for the zone district.

FLAG LOT ACCESS

The panhandle portion of a flag lot having at least 20 feet in lot width and which provides an access corridor between a public road, street or highway right-of-way to the interior portion of a flag lot.

FLAG LOT, INTERIOR

That portion of a flag lot having sufficient lot area, width and depth to meet the minimum requirements of the zone district.

LOT FRONTAGE

The front of a lot shall be construed to be the portion nearest the street. For the purposes of determining yard requirements on corner lots, all sides of a lot adjacent to streets shall be considered front yards.

LOT LINE, FRONT

The line separating the lot from the boundary of the highway or right-of-way upon which the lot abuts.

LOT LINE, REAR

The lot line opposite and most distant from the front lot line.

LOT LINE, SIDE

The lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a "side street lot line."

LOT LINE, STREET OR ALLEY

A lot line separating the lot from a street or alley.

LOT, THROUGH

A lot which is not a corner lot and which has frontage on two streets.

LOT WIDTH

The horizontal distance between the side lot lines measured parallel to the street line at the front setback line.

MAINTENANCE AGREEMENT

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

MANUFACTURED/MOBILE HOME

A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term shall include any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States code; and except that such term shall not include any self-propelled recreational vehicle.

MANUFACTURED/MOBILE HOME PARK

A mobile and manufactured home park means a contiguous parcel of privately-owned land which is used for the accommodation of multiple mobile or manufactured homes occupied for year-round living.

MOTEL

A multiple dwelling, intended primarily for motorists, not over two stories in height, in which the exit from each dwelling unit or sleeping room is directly to the exterior (includes but is not limited to the terms "motor court," "motor hotel" and "tourist court").

MIXED-USE BUILDING

A building within which residential as well as nonresidential uses occur. All mixed-use buildings shall have all residential uses on a second and/or third story of the building.

**MOBILE HOME LOT**

A parcel of land within a mobile home park reserved for the placement of a mobile home and the exclusive use of its occupants.

MOBILE HOME PARK

A parcel of land under single ownership which has been planned and/or improved for the placement of two or more mobile homes for nontransient use.

MOBILE HOME STAND

That part of the mobile home lot which has been reserved for the placement of a mobile home, appurtenant structure or additions, including driveway apron and patio. The mobile home stand is derived from the area of the lot which remains after all setbacks are met.

MOTEL

A building or buildings containing sleeping units for transient guests and providing accessory off-street parking facilities; and which may include restaurant facilities, and a dwelling unit for a bona fide caretaker or operator. The term motel includes: hotels, auto courts, motor lodges and similar terms. Each sleeping unit shall contain not less than 240 square feet of living space.

MOTOR VEHICLE

Any vehicle which is propelled by a power other than muscular power, except electrically driven invalid chairs being operated or driven by an invalid. Motor vehicles shall include, but not be limited to, motor vehicles, race cars, trucks, motorcycles, motor bikes, boats, all terrain vehicles, snowmobiles, recreational vehicles, trailers and tractors, including farm type tractors, etc.

MOTOR VEHICLE SALES FACILITY

The use of any building or portion thereof, or other premises or portion thereof, for the display, sale, rental, or lease of new motor vehicles, or used motor vehicles as an ancillary use of a zoning lot, and any warranty repair work and other repair service conducted as an accessory use.

MOTOR VEHICLE SERVICE STATION

A public automobile filling station used to supply motor vehicles with gasoline or other equivalent fuel, oils, greases and customary accessories, and may include a car wash, the service of which is to wash motor vehicles.

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.

NET METERING

A billing mechanism that credits solar energy system owners for the electricity they add to the grid. For example, if a residential customer has a PV system on their roof, it may generate more electricity than the home uses during daylight hours.

NONCONFORMING BUILDING OR STRUCTURE

Any building or structure lawfully existing at the date of enactment or amendment of this chapter, local laws or regulations which in its design or location upon a lot does not conform to the regulations specified in this chapter for the district in which it is located.

NONCONFORMING LOT

A lot of record lawfully existing at the date of the enactment or amendment of this chapter, local laws or regulations which does not have either the minimum width, depth or area specified in this chapter for the zone district in which it is located.

NONCONFORMING USE

A use, whether of a building or land, or both, which does not conform to the regulations respecting permitted uses as set forth in this chapter for the district in which it is situated, but which lawfully existed prior to the enactment of this chapter or any revision or amendment thereto and which is maintained after the effective date of this chapter or such revision or amendment.

NON-PARTICIPATING PROPERTY

A property that is not affiliated with a solar energy system project in any contractual way related to the solar project.

NUISANCE, ATTRACTIVE

Any nuisance which may prove detrimental to the health or safety of children, whether in a building, on the exterior of premises or upon an occupied lot. Attractive nuisances include, but are not limited to: abandoned wells, shafts, basements, excavations, abandoned swimming pools, abandoned ice boxes and/or refrigerators, motor vehicles and structurally unsound fences or structures, lumber, trash, fences, debris or vegetation such as poison ivy, oak or sumac, which may prove hazardous for inquisitive minors.

NURSING CARE HOME

Any place or institution for the aged, infirm, senile, chronic or convalescent, established to render, for compensation, domiciliary care, custody, treatment and/or lodging of two or more persons who require or receive special diet; assistance in feeding, dressing, walking, administering medicines or carrying out the treatment of a doctor licensed by the State of New York in any other ordinary daily activities of life; or are confined to a bed or a chair. This item does not include institutions for the treatment of the mentally ill, hospitals, sanitariums, boardinghouses and the like.

OBSOLETE TELECOMMUNICATIONS FACILITY

When no longer in use for the original intended purpose or which remains unused for its intended purpose for a period of more than six consecutive months due to a change in technology, loss of right to use a tower site or by any failure of the communications facility owner.

OPERATOR OR MANAGER

Any person who has charge, care or control of a building or part thereof.

OWNER

Includes any person having individual or joint title to real property in any form defined by the laws as an estate or interest therein, whether legal or equitable and however acquired.

OUTDOOR DISPLAY AND SALES

Includes uses which sell, rent or display merchandise or equipment predominantly outside of an enclosed building. Such uses do not include storage of inoperative vehicles or equipment, or other materials typically associated with a junkyard or salvage yard.

OUTDOOR STORAGE

The location of any goods, wares, merchandise, commodities, junk, debris, or any other item outside of a completely enclosed building for a continuous period longer than 24 hours.

OUTPARCEL

A parcel of land, generally located on the perimeter of a larger parcel of commercial land, that is subordinate to the larger parcel.

PARKING AREA, PRIVATE

An area for the same use as a private garage and subject to the same conditions.

PARKING AREA, PUBLIC

An area, other than a street or other public way, used for the parking of motor vehicles and available to the public.

PARKING SPACE, OFF-STREET

A space adequate for parking a motor vehicle, other than motor vehicles offered for sale on the site, and having an area of not less than 162 square feet per vehicle, exclusive of passageways and driveways appurtenant thereto.

PARTICIPATING PROPERTY

A property that is being leased for solar usage, or a property that has an agreement or lease related to the solar project.

PERMITTED USE

Any use listed in any zoning district as permitted.

PERSON

Includes an individual, a partnership, a joint venture, a corporation, limited-liability company, an association and any other organization recognized as an entity by the laws of the State of New York.

PHASING

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

PLAN

A drawing on a flat surface showing the requirements as specified by the Town of Niagara Code. This may be supported with written information where necessary for clarification.

PLAN, FINAL

A complete and exact subdivision or site plan, prepared for official recording as required by statute, to define property rights and proposed streets and other improvements.

PLAN, PRELIMINARY

A tentative subdivision or site plan, in lesser detail than a final plan, showing approximate proposed streets and lot layout as a basis for consideration prior to preparation of a final plan.

PLAN, SKETCH

An informal plan, not necessarily to scale, indicating salient existing features of a tract and its surroundings, and the general layout of the proposed subdivision or site.

PLANNING BOARD

The Town of Niagara Planning Board as established by the Town Board.

PLAT

A map, plan or layout of a section or subdivision indicating the location and boundaries of individual properties.

POLLINATOR

Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and managed insects.

POLLUTANT OF CONCERN

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

PREEXISTING TRANSIENT OR SHORT-TERM RENTAL

A transient or short-term rental that was in operation before the effective date of this Local Law No. 1 of 2023.

PRINCIPAL USE

The main or primary purpose for which a building, structure or lot is to be used.

PROFESSIONAL OFFICE

Professional or government offices including those for a person or persons generally classified as professionals, such as architects, engineers, attorneys, accountants, doctors, dentists, chiropractors, psychiatrists, psychologists, and the like.

PROHIBITED USE

A use of a building, structure, lot or land, or part thereof, which is not listed as a permitted use, accessory use or special permitted use.

QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING

A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

RECHARGE

The replenishment of underground water reserves.

RECREATIONAL VEHICLE

A vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by an automobile, SUV, or light-duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REFUSE

All putrescible and nonputrescible solid waste (except body waste), including, but not limited to, garbage, rubbish, ashes, street cleanings, dead animals and solid market and industrial wastes. (See also "garbage" and "rubbish.")

RESTAURANT

Any establishment, however designated, at which food is sold for consumption. However, a snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, playfield or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RESTAURANT, FAST-FOOD

A restaurant where patrons are not customarily served at tables or sit-down counters; where all or a portion of the food is prepared and wrapped, boxed, bagged or prepackaged or is prepared in a manner in anticipation of customers; and where the customer places an order at a common counter by waiting in line or by being served through a sequential numbering system. Such uses as soft drink parlors, ice cream and/or hot dog stands and the like shall be considered to be in this general classification.

RIGHT-OF-WAY OR HIGHWAY LINE

The line, present or proposed, which is the joint boundary line between a lot and the street or highway right-of-way.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM (Tier 1)

Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on said lot (net metering is allowed), potentially for multiple tenants.

RUBBISH

Nonputrescible solid waste consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass bedding, crockery and similar materials. (See also "garbage" and "refuse.")

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.

SENSITIVE AREAS

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

SETBACK

The distance between the street line, rear or side lines of the lot, and the front, rear and side lines of the building. All measurements shall be made at right angles to or radially from the lot lines to the nearest portion of the building lines. Setbacks from street lines to building lines are defined as "front setbacks." Setbacks from side lot lines are "side setbacks." Setbacks from rear lot lines are "rear setbacks." The required front setbacks exclude entrance steps or porches which are not more than seven feet in depth and which are not enclosed.

SIGHT DISTANCE

The maximum extent of unobstructed vision along a street from a vehicle located at any given point on the street.

SIGN

Any material, structure or part thereof, or any device attached to a building or structure or painted or represented thereon, composed of lettered or pictorial matter, or upon which lettered or pictorial matter is placed and is intended for display of an advertisement, notice, directional matter or name, and includes sign frames, billboards, sign boards, illuminated signs, pennants, fluttering devices, projecting signs or ground signs.

SITE BREAK

A structural or landscape device to interrupt long vistas and create visual interest in a site development.

SITE PLAN

A plan of a lot, subdivision or land development proposed on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

SKYSPACE (SOLAR)

The space between a solar collector and the sun through which solar radiation passes.

SOLAR ENERGY SYSTEM

An arrangement or combination of components and structures designed to provide heating, cooling, hot water or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation and distributing solar energy.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STABLE

A building or portion of a building for the shelter or care of horses, ponies, cattle, sheep, goats or other similar domestic animals.

PRIVATE STABLE

An accessory building limited to two such animals; provided, however, that the capacity of a private stable may be increased if the lot whereon such stable is located contains an area of not less than 8,000 square feet for each animal stabled.

PUBLIC STABLE

A stable other than a private stable, with a capacity for more than two animals.

STOP-WORK ORDER

An order issued which requires that all construction activity on a site be stopped.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT

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

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO)

An officer or employee designated by the Town Board to accept and review stormwater pollution prevention plans (SWPPPs), forward the plans to such employee, officer, or board of the Town of Niagara which is reviewing an application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices.

STORMWATER MANAGEMENT PRACTICES (SMP)

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground resulting from precipitation.

STORY

That portion of a building between the surface of any floor and the surface next above it; if there be no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a story, but a cellar shall not be counted as a story.

STORY, HALF

A story with at least two opposite exterior sides meeting a sloping roof not more than four feet above the floor of such story and having a ceiling height of at least 7 1/2 feet over not more than 1/2 the total floor space.

STREET

All lands, established by dedication or use, for highway purposes and accepted by the Town for such purposes.

STREET LINE

A common property line separating a public street from abutting property.

STREETSCAPE

The scene as may be observed along a public street or way composed of natural and man-made components.

STRUCTURE

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

STRUCTURE, TEMPORARY

A structure which is built of such materials and in such a way that it would commonly be expected to have a relatively short useful life, or is built for a purpose that would commonly be expected to be relatively short-term or which is only permitted by the Zoning Code to exist for a predetermined period.

SUBDIVISION

The division of a single lot, tract or parcel of land, or a part thereof, into two or more lots, tracts or parcels of land, including changes in street lines or lot lines, for the purpose, whether immediate or future, of transfer of ownership or of building development. The term "subdivision" shall also include "resubdivision."

SURFACE WATERS OF THE STATE OF NEW YORK

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

**SWIMMING POOL**

A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, and provided with a recirculation and/or controlled water supply.

**SWIMMING POOL, PUBLIC**

A public or privately owned swimming pool open to the general public or on a membership basis and having appropriate dressing room facilities and off-street parking areas.

TELECOMMUNICATIONS FACILITIES

Towers and/or antennas and accessory structures used in connection with the provision of cellular telephone service, personal communications services, paging services, radio and television broadcast services and similar broadcast services.

TEMPORARY USE

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

TOURIST OR TRANSIENT

Individuals occupying a dwelling unit or sleeping unit for less than 30 continuous days.

TOWER

A structure designed to support antennas or other equipment. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures which or which do not by themselves employ camouflage technology.

TOWN BOARD

The Town Board of the Town of Niagara.

TOWN CODE

The Code of the Town of Niagara, New York.

TOWNHOUSE

One of a series of attached one-family dwelling units, each having a common wall between adjacent sections and having direct access to a private, individual rear and/or front yard designed as an integral part of each one-family dwelling unit.

TOWNHOUSE CLUSTERS

A building, or group of buildings, with each building containing not more than eight townhouse dwelling units connected by common party walls.

TOWNHOUSE DEVELOPMENTS

A tract of land adequately sized to accommodate the construction of townhouse dwelling units in accordance with the density standards contained elsewhere in these regulations.

TRANSIENT OR SHORT-TERM RENTAL

A dwelling or dwelling unit, including associated appurtenant facilities, used for transient occupancy by one or more guests, boarders or tenants, where the record owner of the premises is not physically present upon the premises during the transient occupancy, and whether or not meals or cooking facilities are provided for the guests, boarders or tenants, but excluding hotel and motel uses.

TRAVEL TRAILER

A vehicular portable structure built on a chassis designed to be used primarily as a temporary dwelling for travel, recreation and vacation uses, having a body width not exceeding eight feet and a body length not exceeding 32 feet.

UNIFORM CODE

The New York State Uniform Fire Prevention and Building Code.

USE

The purpose for which a building, structure or premises or any part thereof is or are occupied, or if unoccupied, the purpose for which it or they may be occupied hereunder.

UTILITY-SCALE SOLAR ENERGY SYSTEM (Tier 4)

Any solar energy system that is 30 acres or more in size (as measured by the fenced in area), that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for sale to the general public or does not meet the definition of a Tier 1, Tier 2 or Tier 3 solar energy system.

VARIANCE, AREA

Authorization by the Zoning Board of Appeals for the use of land or buildings, in a manner which is not allowed by the dimensional or physical requirements of this chapter. Area variances involve matters such as setback lines, frontage requirements, lot size restrictions, density regulations and yard requirements.

VARIANCE, USE

Authorization by the Zoning Board of Appeals for the use of land or buildings for a purpose which is otherwise not allowed or is prohibited by this chapter.

VEHICLE

Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

WATERCOURSE

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water or electrical energy.

WATERWAY

A channel that directs surface runoff to a watercourse or to the public storm drain.

WIDTH, BUILDING

The distance between the main walls of the building at right angles to the length and measured through the widest part of the building. An enclosed veranda shall be considered as part of the building.

WIDTH, STREET

The right-angle distance between the two sides of the street.

YARD

An open space other than a court on the same lot with a building, unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

YARD, FRONT

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

YARD, REAR

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

YARD, SIDE

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

ZONING BOARD OF APPEALS

The officially established Zoning Board of Appeals of the Town of Niagara, Niagara County, New York.

ZONING OFFICER

The officially established Zoning Officer of the Town of Niagara.

ARTICLE III. Zoning Districts

§245-8 Establishment of Districts

- A. The zoning districts will be referred to hereinafter in this chapter and on the Zoning Map as follows:

Type of District	Designation
Neighborhood Residential	NR
Mixed Residential	MR
Neighborhood Mixed-use	N-MU
Corridor Mixed-use	C-MU
Commercial	C
Industrial	I
Mixed Industrial	MI
Natural Resources and Open Space	NRO

§245-9 Compliance with Code Requirements

- A. Except as herein provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the uses listed as permitted uses in each zone by this code and in conformity with the requirements set forth in Appendix A; ¹⁴nor shall any open space contiguous to any building be encroached upon or reduced in any manner, except in conformity with the area and bulk requirements, off-street parking requirements and all other regulations set forth in Appendix A.
- B. Requirements contained herein which apply to designations not shown on the existing map shall apply in the event of amendments to the Zoning Map consistent with the Master Plan, for those districts not now contained on the Zoning Map.
- C. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main tracks of said railroad line.

§245-10 Zoning Schedule

- A. A schedule of area, lot and bulk requirements, enclosed in Appendix A, are hereby established in minimum regulations of this code.

§245-13 Dimensional Requirements

RESIDENTIAL DISTRICTS	MINIMUM LOT SIZE	MINIMUM LOT WIDTH	MAXIMUM LOT COVERAGE	FRONT SETBACK	SIDE SETBACK	REAR SETBACK	MAXIMUM HEIGHT
Neighborhood Residential (NR)	7,500 sf	80'	25%	35'	7'	10'	35'
Mixed Residential (MR)	-	-	-	-	-	-	-
Single-Unit	7,500 sf	60'	30%	25'	5'	10'	35'
Two-Unit	9,000 sf	60'	30%	25'	5'	10'	35'
Three-Unit	10,000 sf	60'	30%	25'	5'	10'	35'
Four-Unit	11,000 sf	60'	30%	25'	5'	10'	35'
Five-Unit+	12,000 sf	60'	30%	25'	5'	10'	35'

COMMERCIAL DISTRICTS	MINIMUM LOT SIZE	MINIMUM LOT WIDTH	MAXIMUM LOT COVERAGE	FRONT SETBACK	SIDE SETBACK	REAR SETBACK	MAXIMUM HEIGHT
Neighborhood Mixed-use (N-MU)	10,000 sf	60'	50%	15'	10'	15'	35'
Corridor Mixed-use (C-MU)	10,000 sf	70'	40%	20'	10'	15'	35'
Commercial (C)	10,000 sf	70'	40%	25'	10'	15'	35'

INDUSTRIAL DISTRICTS	MINIMUM LOT SIZE	MINIMUM LOT WIDTH	MAXIMUM LOT COVERAGE	FRONT SETBACK	SIDE SETBACK	REAR SETBACK	MAXIMUM HEIGHT
Industrial (I)	1.5 acres	150'	30%	60'	15'	25'	35'
Mixed Industrial (MI)	1 acre	100'	30%	60'	15'	25'	35'

ARTICLE IV. Use Standards & Supplemental Regulations

§245-14 Master Land Use Table

- A. The following shall apply to all listed permitted and specially permitted uses:
1. Uses are allowed in each district according to the tables shown on the following pages.
 2. Uses identified with "P" in the table are permitted as-of-right in the subject zoning district, subject to compliance with all other applicable standards of this zoning chapter.
 3. Uses identified with "SP" in the table may be allowed if reviewed and approved in accordance with the special use permit procedures contained in Article ___ of this chapter and shall be subject to the approval of the _____.
 4. Uses not listed and those identified with "-" are expressly prohibited.

RESIDENTIAL	NR	MR	N-MU	C-MU	C	I	MI	NRO	Supplemental Regulations
Single-Unit Residential	P	P	P	P	-	-	-	-	
Two-Unit Residential	-	P	P	P	-	-	-	-	
Multi-Unit Residential	-	-	SP	SP	-	-	-	-	§245-25
Townhome	-	-	P	P	-	-	-	-	
Garden Apartment	-	SP	SP	-	-	-	-	-	§245-21
Home Professional Occupation	SP	SP	SP	SP	-	-	-	-	
Bed and Breakfast	SP	-	SP	-	-	-	-	-	§245-17
Cluster Residential Development	SP	SP	SP	-	-	-	-	-	§245-18
Day Care Facility, Child or Adult	SP	SP	SP	P	P	-	-	-	
Modular Home and Modular Home Park	-	SP	-	-	-	-	-	-	§245-24
Transient or Short-Term Rentals (STR)	SP	SP	SP	-	-	-	-	-	§245-31

COMMERCIAL	NR	MR	N-MU	C-MU	C	I	MI	NRO	Supplemental Regulations
Animal Care Establishments	SP	SP	-	-	-	-	P	-	§245-16
Animal Boarding and Training Facility	-	-	-	SP	-	-	SP	-	§245-16
Animal Hospital and Veterinarian Office	-	-	SP	SP	-	-	SP	-	§245-16
Brewery, Winery, Distillery	-	-	P	P	-	-	P	-	
Dance, Art, Photo, or Music Studio	-	-	P	P	P	-	-	-	
Gasoline Station	-	-	-	SP	SP	-	-	-	§245-22
Gym or Health Club	-	-	P	P	P	-	-	-	
Mixed-use Building	-	-	P	P	-	-	-	-	
Motel or Hotel	-	-	-	P	-	-	-	-	
Motor Vehicle Uses	-	-	-	-	SP	-	-	-	§245-24
Motor Vehicle Sales Lot	-	-	-	-	SP	-	-	-	§245-24
Motor Vehicle Service Station	-	-	-	-	SP	-	-	-	§245-24
Car Wash Establishment	-	-	-	SP	SP	-	-	-	§245-24
Personal Service Shop or Use	-	-	P	P	P	-	-	-	

Barber, Beauty Shop	-	-	P	P	P	-	-	-	
Funeral Home	-	-	P	P	P	-	-	-	
Dry-cleaning Store	-	-	P	P	P	-	-	-	
Recreation Facility, Indoor	-	-	-	P	P	-	-	-	
Retail Business Establishment	-	-	P	P	P	-	-	-	
Stores selling groceries, meats, baked goods and other such food items, including supermarkets and liquor stores.	-	-	P	P	P	-	-	-	
Drugstore	-	-	P	P	P	-	-	-	
Automotive Supply	-	-	P	P	P	-	-	-	
Variety and General Merchandise Store	-	-	P	P	P	-	-	-	
Restaurant or Bar	-	-	P	P	P	-	-	-	

OFFICE AND INSTITUTIONAL	NR	MR	N-MU	C-MU	C	I	MI	NRO	Supplemental Regulations
Banks and Financial Institutions	-	-	-	-	-	-	P	-	
Church or Place of Worship	P	P	P	P	P	P	P	-	
Educational Institution	-	-	P	P	P	-	-	-	
Hospital or Healthcare Facility	-	-	-	P	P	-	-	-	
Membership Club, Private	-	-	P	P	-	-	-	-	
Nursing Care Home	-	-	SP	SP	-	SP	SP	-	
Professional Office	-	-	-	-	-	P	P	-	
Administrative or Executive Office	-	-	-	-	-	P	P	-	
Architects, Engineers, Accountants, Lawyers, Financial Planners, etc.	-	-	-	-	-	P	P	-	
Offices and Clinics of New York State-licensed healthcare professions	-	-	-	-	-	P	P	-	
Public School, Library or Museum	-	-	P	P	-	P	P	-	
Public Utility	P	P	P	P	P	P	P	P	§245-29

INDUSTRIAL	NR	MR	N-MU	C-MU	C	I	MI	NRO	Supplemental Regulations
Airport or Heliport	-	-	-	-	-	-	P	-	
Communication System, Telecommunication Facility	-	-	-	-	-	SP	SP	-	§245-19
Laundry or Dry-Cleaning Plant	-	-	-	-	-	P	P	-	
Food Processing, Baking or Packaging Plant	-	-	-	-	-	P	P	-	§245-23
Manufacturing, Processing, Assembly	-	-	-	-	-	P	P	-	§245-23
Manufacturing, Assembly, Treatment of Goods	-	-	-	-	-	P	P	-	§245-23
Printing, Publishing and Bookbinding	-	-	-	-	-	P	P	-	§245-23
Handling of Noxious or Hazardous Materials	-	-	-	-	-	P	-	-	§245-23

No Handling of Noxious or Hazardous Materials	-	-	-	-	-	P	-	-	§245-23
Research and Development Facility	-	-	-	-	-	P	P	-	§245-23
Outdoor Industrial Operation	-	-	-	-	-	P	-	-	§245-23
Self-Storage Facility	-	-	-	-	-	P	P	-	
Extractive or Mining Operation	-	-	-	-	-	P	-	-	
Truck Terminal and/or Storage Structure	-	-	-	-	-	P	-	-	
Warehousing and Distribution Center	-	-	-	-	-	P	P	-	
Solid Waste	-	-	-	-	-	SP	-	-	§245-31
ACCESSORY	NR	MR	N-MU	C-MU	C	I	MI	NRO	Supplemental Regulations
Accessory Structure	P	P	P	P	P	P	P	P	§245-15
Deck, Porch, Storage Shed, Tennis Court, Detached Garage	P	P	P	P	P	P	P	P	
Drive-through Facility	-	-	-	-	-	-	SP	-	§245-20
Office Use, Industrial Office Use	-	-	-	-	-	P	P	-	
Outdoor Display	-	-	-	-	-	SP	SP	-	§245-27
Outdoor Storage Structure, Residential	P	P	P	P	-	-	-	-	§245-28
Outdoor Storage Structure, Nonresidential	-	-	SP	SP	SP	SP	SP	-	§245-28
Outdoor Storage, Temporary	P	P	P	P	P	P	P	-	
Private Garage, Vehicle Storage	-	-	-	-	P	P	P	-	
Private Swimming Pool	P	P	P	P	P	-	-	-	
Recreational Vehicle	P	P	P	P	P	-	-	-	
Solar Energy System	-	-	-	-	SP	SP	SP	SP	§245-30

§245-15 Accessory Building or Structure

- A. Accessory or storage buildings, including but not limited to a garage for the parking of passenger motor vehicles of residents on the premises, garden house, tool house, play house, and housing for domestic animals incidental to the residential use of the premises, are subject to the following:
 - 1. Accessory buildings attached to a principal building shall comply with the yard requirements of this chapter for the principal building unless otherwise specified.
 - 2. No detached accessory building or structure in the NR, MR, N-MU or C-MU Districts shall exceed 25 feet in height.
 - 3. With the exception of detached private garages, all detached accessory buildings shall be located in the rear yard and subject to the setback requirements of the schedule.
 - 4. An accessory garage may be located in a front yard which is in excess of a required front yard where the side and rear yards have insufficient area.
 - 5. The distance between the main building and the accessory building shall be in accordance with the Building Code.
 - 6. No residential front yard shall be used for the open storage of boats, motor vehicles, travel trailers or other equipment, except for vehicle parking on driveways.

§245-16 Animal Care Establishment

- A. The following regulations shall apply to all animal care establishments in residential districts and will include any establishment that provides veterinary offices, immunizations, diagnosis and treatment of animals, boarding of animals during convalescence, grooming facilities, and general boarding facilities such as kennels, as defined by this Chapter.
- B. Enclosed structures shall be provided for each animal which is boarded, regardless of the specific animal care establishment.
- C. No animal care establishment shall be closer than 100 feet to any side or rear property line.
- D. An enclosed structure shall be provided for each animal.
- E. No animal care establishment shall be located closer than 150 feet to a residential structure on an adjacent lot.
- F. No outdoor runs or open exercise areas shall be visible from any adjacent residential use. All openings from the enclosed structure to the exercise area shall be screened and buffered from any adjacent residential use.
- G. No outdoor storage of feed shall be permitted.
- H. No outdoor storage of animal waste shall be permitted.
- I. No deceased animals shall be buried on the premises.
- J. An exercise area shall be provided for any animal boarding facility. The size of such exercise area shall be based on standards accepted by a nationally recognized animal husbandry organization.
- K. Any outdoor run or exercise area shall be enclosed by a fence of at least 4 feet in height to contain animals being boarded or kenneled.

§245-17 Bed and Breakfast

- A. A bed-and-breakfast shall only be specially permitted in a single-family, detached dwelling in the NR and N-MU Districts.

- B. The residential character of the dwelling shall be preserved and no structural alterations, construction features, or site features of a nonresidential nature shall be incorporated.
- C. The owner/operator of the bed-and-breakfast shall live full-time on the premises.
- D. No more than 1 non-resident of the premises shall be engaged as employees of the operation.
- E. A bed-and-breakfast shall have a maximum of three guest rooms with no more than two guest rooms sharing a single bathroom.
- F. No more than 8 guests per night shall be permitted in any bed-and-breakfast establishment, and the Zoning Board may fix a lower maximum in the permit.
- G. The maximum length of stay for any guest is 15 consecutive days.
- H. Parking shall not be in the front yard.
- I. Only dwelling units existing at the time of enactment of this section shall be eligible for conversion to a bed-and-breakfast. Accessory buildings and accessory structures including garages shall not be utilized as a bed-and-breakfast.

§245-18 Cluster Residential Development

- A. Purpose. The purpose of the Cluster Residential Development Overlay District is to facilitate development of one-family detached dwellings in a manner that maximizes the use and preservation of open space without increasing the overall dwelling density.
- B. Procedure. Cluster Residential Development Overlay Districts are permitted in the A, R-1 and R-2 Districts. A Cluster Residential Development Overlay District may be created by the Town Board, following the procedure provided in this code, if the following additional standards are met:
 - 1. The minimum tract size shall be 20 contiguous acres suitable in location and condition for this type of development as determined by the Planning Board.
 - 2. The lot size, yard, area and height requirements shall conform to the zoning schedule of this code.
 - 3. The number of lots (density of development) in a cluster development shall not exceed that which could be created under a conventional development plan for the same tract of land.
 - 4. The applicant shall provide a tract of land of no less than 20% of the gross acreage of the tract to be devoted exclusively to permanent recreation areas and open space.
 - 5. All recreation areas shall be suitable for such use in the opinion of the Planning Board. The ownership and future maintenance of such recreation areas shall be subject to the approval of the Town Board, or such areas shall be offered for dedication to the Town of Niagara. Nothing in this section reduces or waives the requirements of dedication of land for recreational purposes or payment in lieu thereof as may be required by other provisions of this Zoning Code or state law.
 - 6. If a building permit application for the development in accordance with the approved rezoning and site plans and specifications has not been filed within one year after the date of the resolution authorizing rezoning or site plan approval, whichever is later, all approvals shall become null and void and the approvals shall be revoked and vacated. The property shall revert to the zoning classification existing prior to the rezoning.
 - 7. To the extent that the New York Town Law § 278 establishes a different methodology for approval of cluster developments, this code supersedes such requirements. However, nothing in this code reduces the powers granted to the Town by Town Law § 278. In the case of conflict of standards between state and local law, the stricter standards shall apply.

§245-19 Communication Tower


- A. The **Planning Board** may approve a permit for the creation and maintenance of communication towers within the I or MI districts, provided that the standards and conditions in this section are maintained.
- B. The minimum lot size for a tower shall be five acres, regardless of whether leased or owned in fee.
- C. No more than one communication tower shall be permitted on any parcel of land.
- D. The minimum setback of any tower part, including accessory facilities, from any property line for each communication tower shall be the height of the tower to be erected plus 20 feet.
- E. No communication tower shall exceed 200 feet above finished grade level.
- F. Communication towers shall be marked and lighted, as appropriate, to comply with standards and requirements of any governmental agency with jurisdictional authority. Whenever possible, towers should be designed and sited to avoid the application of Federal Aviation Administration (FAA) lighting and painting requirements.
- G. The Town of Niagara prefers the shared use of towers to the construction of towers for individual use. Where shared use is not possible the location of antenna on preexisting structures shall be considered. Applicants shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and the use of other preexisting structures as an alternative to the construction of a new tower. Government and emergency service use of towers shall be rent-free.
- H. Applicants intending to share use of an existing tower shall document intent from an existing tower owner to share use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening, and other changes including real property acquisition or lease required to accommodate shared use.
- I. Applicants proposing to build new towers shall submit a report demonstrating good faith efforts to secure shared use from existing towers as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.
- J. No communication towers shall contain any signage except that identifying a health, safety or general welfare message intended solely for the protection of the public.
- K. All commercial communication towers shall be completely enclosed by a fence, with suitable locking facilities, not less than eight feet in height above ground level.
- L. All towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment.
- M. Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green or black below the surrounding treeline unless other standards are required by the FAA.
- N. Accessory facilities shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
- O. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval of the special permitted use. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- P. Deciduous or evergreen tree plantings may be required by the Planning Board during site plan review.
- Q. An access road and sufficient off-street parking facilities shall be provided to assure adequate emergency and service access. Maximum use shall be made of existing roads. Road construction shall be consistent with standards established by the Town and shall minimize ground disturbance and the

- cutting of vegetation at all times. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- R. Site plan approval shall be granted by the Planning Board in accordance with the provisions of this chapter. In addition to the specific requirements, a site plan application for a communication tower shall include the following additional information:
1. The location of all structures and trees on the site and on any adjacent property within 50 feet of the subject property line.
 2. Documentation of the proposed intent and capacity of use as well as a justification for the height of any tower and antennas and justification for any proposed clearing of land or vegetation.
 3. All information prepared by the manufacturer of the tower, or the applicant for which a special permitted use permit is being sought, including, but not limited to, the following:
 - a. Type of tower to be erected.
 - b. Identification of any anti-climb device to be installed.
 - c. Identification of the levels of radiation to be emitted by or from the communication tower.
 - d. Identification of the effects that the operation of the tower will have on other existing communication towers or antenna within 1,000 feet of the proposed structure.
 4. The Zoning Board of Appeals and the Planning Board may consult with the Town Engineer or retain the services of a communications consultant to review the proposed site plans for a communication tower. All consultant costs incurred by the Town in the review of site plans and application documents shall be borne by the applicant.
- S. Exceptions. The following communication towers are **excepted** from the provisions of this section:
1. Facilities under the control or ownership and used exclusively by a public or governmental agency.
 2. Satellite dish antennas as regulated elsewhere in this chapter.
 3. Conventional television and radio antennas when used exclusively for private benefit and involving a structure with a height less than 15 feet above existing grade, or if attached to a structure, 15 feet above the maximum height of the building.
 4. Lawful or approved uses existing prior to the effective date of these regulations.
- T. Time limit. In consideration of a special permitted use permit for the erection and maintenance of a communication tower, the **Zoning Board of Appeals** may impose a specific time period for the operation of the use. Said time limit shall clearly stipulate the conditions imposed for granting the special permitted use permit and the basis for the **Zoning Board of Appeals** not to renew said permit for another specified time period.
- U. Removal. In the event that a communication tower becomes obsolete due to new technology, is no longer used for the purpose specified in the application, or the communication facility ceases operations for a period of 90 days, such tower, structures or facilities shall be dismantled and removed from the site within 30 days of receipt of written notice from the Town and based upon the Town's declaration to the effect specified herein.
- V. **Assurances.** The **Zoning Board of Appeals** may, as a condition of special permitted use permit approval, require the applicant to provide a letter of credit, performance bond or other financial guarantee to ensure that funds will be available for the Town's use to remove said structure in the event of noncompliance with the provisions of this chapter or if the structure is no longer used for the purpose for which the permit was granted.

§245-20 Drive-through Facility

- A. Drive-through facilities shall only be permitted in the C and C-MU districts.
- B. All drive-through facilities shall comply with the following regulations:
 - 1. Each drive-through facility and its associated use shall provide ingress and egress so as to minimize traffic congestion.
 - 2. Drive-through facilities, including any protective canopies, signage, drive-through travel lanes, or other associated elements, shall meet the setback requirements for the property.
 - 3. Drive-through facilities with an amplified audio/visual system shall be setback a minimum of 30 feet from the property line. These facilities shall not be located adjacent to residential uses or districts.
 - 4. Stacking space for these facilities shall not impede on- or off-site traffic movements. The stacking space shall be delineated from other internal areas using pavement markings that are identifiable during all seasons.

§245-21 Garden Apartment

- A. Apartment structures shall not exceed a density of 15 dwelling units per net acre of lot area.
-  B. Driveways for ingress and egress shall connect with other than minor streets, shall not be located within 200 feet of an existing street intersection and shall have a pavement width of at least 20 feet, except where they are within a parking area, in which case they shall be not less than 25 feet.
- C. The minimum yard requirements of Appendix A¹ apply only to the entire tract, and no buildings shall be located within such yard areas. The minimum distance between buildings in an apartment development shall be 25 feet, except that no wall containing an apartment shall be closer to another apartment building than 50 feet. No apartment building shall be closer to a preexisting single-family or two-family lot than a minimum 50 feet.
- D. Parking areas may be located in any yard other than the required front yard, but not closer than 20 feet to any property line and shall comply with all other requirements in this code.
- E. Every apartment building shall have a minimum setback of 20 feet from all interior roads, driveways and parking areas.
- F. Every apartment development shall be provided with garbage and refuse storage and collection areas completely screened from view, and away from the fronts of apartment buildings.
- G. In addition to any storage area within individual apartment dwelling units, a minimum of 100 square feet (or less if required by federal regulations) of storage shall be provided for each dwelling unit in a convenient, centrally located area in the basement or ground floor or elsewhere, where personal belongings and effects may be stored under lock and separated from the belongings and effects of other occupants.
- H. A wall of an apartment structure or parallel walls of adjacent apartment structures shall not continue in the same plane for a length of more than 75 feet without an offset of at least four feet.
- I. Each garden apartment development shall provide a surfaced playground area or areas at a standard of 500 square feet for each 10 dwelling units. Outdoor play equipment shall be installed in each playground in sufficient amount and variety to service the occupants of the development. No area shall be less than 1,000 square feet.
- J. The entire area of a garden apartment development not improved for driveways, parking areas or covered by buildings or walkways shall be attractively landscaped and seeded and properly maintained at all times.

- K. An evergreen buffer shall be planted and maintained to provide a visual screen where any parking lot, garage or maintenance area abuts any district, on the rear or side. Said buffer strips shall be as follows:
 - 1. Eight feet wide adjoining an R-1 or R-2 District;
 - 2. Ten feet wide adjoining a Business District; and/or
 - 3. Twenty-five feet wide adjoining any Industrial District.

§245-22 Gasoline Station

- A. Gasoline stations shall be limited to a maximum of 12 individual filling pumps.
- B. No sale of gasoline shall be permitted to be established on any lot within a distance of 500 feet of an existing gasoline or filling station or of any lot for which a building permit has been issued for the erection of such a station or any use which includes gasoline pumps.
- C. Gasoline pumps or lubricating or other devices shall be located not nearer than 20 feet to any street or other lot line. No traffic hazard affecting the public safety will be present.
- D. Entrance and exit driveways shall have an unrestricted width of not less than 12 feet (one-way); shall not be located nearer than 10 feet to any lot line; and shall be so laid out as to avoid the necessity of any vehicle backing into any public right-of-way.
- E. Where the lot on which the fuel sales will occur is within 100 feet of a residential district, architectural design of buildings and structures shall recognize and respect the architectural character of the existing adjacent neighborhood in terms of scale and proportion.
- F. The review by the **Planning Board** will be conducted with attention to proposed architectural features, details, materials and colors of buildings and structures and the Board may require modification of designs and may impose conditions in granting approval.

§245-23 Industrial Uses

- A. Design Standards
 - 1. Yard requirements for lots adjoining residential districts. On lots adjoining residential districts, no building, storage or assembly area shall be located closer than 100 feet to such district boundary. Parking areas shall not be located closer than 25 feet to such district boundary. This area shall include planted screening or a buffer strip as required and the remainder in lawn or ground cover, shrubbery and trees as may be deemed necessary by the Planning Board.
 - 2. Landscaping along public streets or roads. Each property shall be appropriately landscaped, particularly along its frontage upon a public street or road.
 - 3. Distance between buildings. The distance between buildings shall be governed by the Building Code.
 - 4. Entrances and exits. All entrances and exits upon a public street or road shall not be located within 100 feet of any street intersection. No entrance or exit, at the curblin only, shall be closer than 12 feet to a side lot line. Entrance and exit sizes, locations and construction shall also be in accordance with requirements of the governmental agency having jurisdiction over the facility upon which the permitted use has frontage.
 - 5. Loading docks and service areas. No loading dock or service area may be on any street frontage. Provision for handling all freight shall be on those sides of any building which do not face on any street or proposed streets.
- B. Storage
 - 1. No use or accessory use shall be constructed to permit the keeping of articles, goods or materials in the open or exposed to public view of adjacent residences or a residential district.

When necessary to store or keep such materials in the open, the area shall be fenced with a screen or buffer strip and be situated not closer than 50 feet to a residential district line.

2. No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground, with the exception of tanks or drums of fuel directly connected to energy devices, heating devices or appliances located on the same lot as the tanks or drums of fuel.
- C. Control of dust, dirt, fumes, vapors and gases.
1. The emission of dust, dirt, fly ash, fumes, vapors or gases which can cause any damage to human health, to animals or vegetation or to other forms or property, or which can cause any soiling or staining of persons or property at any point beyond the lot line of the use creating the emission, is herewith prohibited.
- D. Odor control
1. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive at any point on or beyond the lot boundary line within which the industrial operation is situated. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, in order that control will be maintained if the primary safeguard system should fail.
- E. Glare and heat control
1. No industrial use shall carry on an operation that would produce heat or glare beyond the property line of the lot on which the industrial operation is situated.
- F. Vibration control
1. Machines or operations which cause vibrations shall be permitted, but in no case shall any such vibration be perceptible beyond the district boundary of any industrial district.
- G. Electrical emission, radioactivity or electrical disturbance
1. No activities shall be permitted which emit dangerous radioactivity beyond enclosed areas. No electrical disturbances (except from domestic household appliances) shall be permitted to affect adversely, at any point, any equipment, other than that of the creator of such disturbance.
- H. Power distribution
1. Every use requiring power shall be so operated that any service lines, substation, etc., shall conform to the highest applicable safety requirements, shall be constructed, installed, etc., so that they will be an integral part of the architectural features of the plant or, if visible from abutting residential properties, shall be concealed by evergreen planting or screening with architectural materials common to the building(s).
- I. Industrial Park
1. In order to protect the common tenants of an industrial park, there shall be no uses permitted within this district which conflict with covenants and/or conditions of sales contained in deeds or contracts of sale by and between the initial or subsequent developer and the tenants and/or landowners of the industrial park and which conflict with the original approval of the Town Board or this code.
 2. All roadways within an industrial park shall be hard-paved surfaces and comply with the Town of Niagara Developer's Specifications, as amended. All walks, driveways and parking lots shall be paved with a hard asphalt or concrete surface and kept in a smooth, uniform condition.
 3. The **Town Board and Planning Board** shall set the side yard requirements, which shall be no less restrictive than the requirements contained in this code for Light Industrial Districts.
 4. The minimum lot size for each lot contained within an industrial park shall be 1.0 acre.
 5. The total park shall consist of no less than three acres.

§245-24 Motor Vehicle Use, Sales Lot or Service Station

- A. All sales and repairs of vehicles or equipment shall be conducted in a fully enclosed building located on the same lot, and having a building area of not less than 1,000 square feet devoted to the sales and servicing of such vehicles and equipment. All vehicle lifts or pits, dismantled vehicles and all parts and supplies shall also be located within a building enclosed on all sides.
- B. All service or repair of motor vehicles shall be conducted in a building enclosed on all sides. This requirement shall not be construed to mean that the doors to any repair shop must be kept closed at all times.
- C. Accessory to such building, the sale of such vehicles and equipment may be carried on in an unenclosed area, provided that:
 - 1. Such area is on the same or an adjacent lot to such building. If the enclosed area is on an adjacent lot, the lot shall be not more than 200 feet from the lot with the building and shall further be in the same ownership as said building; be in the C Commercial District; and be used for no other purpose.
 - 2. Such unenclosed area shall be paved and suitably drained subject to requirements established by the Planning Board. Such areas shall be maintained in a neat and orderly manner and in good order and condition.
 - 3. All exterior illumination shall be approved by the Planning Board during site plan review, and shall be shielded to reduce the glare that may negatively impact on surrounding properties and streets.
 - 4. The Planning Board, during site plan review, shall review and approve the amount and location of landscaping and buffer screening to be provided, consistent with conditions of the Planning Board approval of the special permitted use permit.
- D. A minimum area of 200 square feet shall be provided on the lot for each motor vehicle displayed, parked or stored in any unenclosed area. Each motor vehicle stored or displayed therein shall be placed or parked parallel to each other facing in the same direction and such motor vehicles shall be arranged in an orderly manner in such spaces.
- E. All vehicle parking and storage shall be on a rear or side parking lot and shall comply with all off-street parking requirements in this Chapter.
- F. Entrance and exit driveways shall have an unrestricted width of not less than 12 feet (one-way), shall not be located closer than 10 feet to any property line and shall be laid out as to avoid the necessity of any vehicle backing out into any public right-of-way.
- G. Gasoline or flammable oils in bulk shall be stored fully underground, not nearer than 10 feet to any lot line.
- H. No commercial sale of gasoline shall be permitted, nor shall any pump be located in a front or side yard.
- I. Car Washes
 - 1. The Planning Board may approve a special use permit for a car wash establishment within the C-MU and C districts, provided that the standards and conditions in this section are maintained.
 - 2. All car wash establishments shall be no closer than 300 feet to any residential district and shall be separated from a residential district by another nonresidential use.
 - 3. All washing facilities shall be within a completely enclosed building which shall be designed in keeping with the façades and setbacks of adjacent land uses.
 - 4. All vehicle wash operations shall be sound-proofed, and the entire development arranged and operated so that the noise emanating from the use, as measured from any point on the adjacent

property, shall be no more audible than the noise emanating from the ordinary street traffic and from other commercial uses measured at the same point on said adjacent property.

5. Vacuuming facilities may be located outside the building but shall not be in the front yard and shall meet the setback requirements for the C-MU or C Districts. Setback areas shall be buffered or screened as deemed necessary by the Planning Board during site plan review.
6. Adequate drainage facilities shall be provided to prevent standing water on-site.
7. The proposed hours of operation shall be approved by the **Planning Board**.

§245-25 Modular Home Park

A. License and Fees

1. A license fee shall be paid to the Town for each unit and **modular** home lot actually used or occupied during each month or any part thereof, such monthly fee to be paid in full for each unit so used or occupied during any fraction or part of the month, irrespective of the fact that such use or occupancy does not cover the entire month.
2. Each owner shall, on the first day of each month, determine the number of units in the park used or occupied and shall, on or before the tenth day of such month, file with the Town Clerk a written affidavit sworn to and verified before a notary public or other officer lawfully authorized to administer oaths stating the number of such units and lots so used or occupied on the first day of each month. At the time of filing such affidavits, the licensee shall pay to the Town Clerk the monthly license fee. In the event that other such units or lots shall be so used or occupied during such month following the first day thereof, the licensee shall be obligated to report such additional use or occupancy to the Town Clerk by like affidavit no later than the tenth day of the following month, and shall at the same time pay the additional monthly license fee.
3. In the event that any such monthly license fee is not paid within the time prescribed, a penalty of 10% shall be added thereto, and the licensee shall thereafter be obligated to pay the aggregated amount of the unpaid amount of such unpaid fees and penalty at the rate of 1% per month from the date on which such unpaid fees become delinquent until all of said sums shall have been paid in full.
4. The Building Inspector shall have the authority to enter and inspect any **modular home park** licensed under these provisions.

B. Performance standards.

1. Not more than one **modular home** may be parked on any one **mobile home** lot.
2. Fences within modular home parks shall not exceed three feet in height.
3. Visitor parking areas will be provided. Parking for individual lots shall be governed by Article VIII.
4. Internal street pavement width shall be a minimum of 24 feet.
5. All intersections, curves and turns within the park shall be wide enough to allow emergency vehicle and sanitary vehicle access.
6. Bulk refuse storage and pickup shall be provided.
7. **Modular home** lot minimum area and setback requirements are as follows:
 - a. Area: 6,000 square feet.
 - b. Lot width: 60 feet.
 - c. Front setback: 22 feet.
 - d. Side and rear setback: five feet.
 - e. Maximum lot coverage: 30%.

8. A security lamppost shall be installed on each lot.
9. All driveways shall be a minimum of 10 feet wide by 40 feet long and asphalt-covered.
10. A private fire service system shall be provided, with fire hydrants located every 350 feet within the park area.
11. No modular home shall be located closer than 100 feet to a public roadway or closer than 20 feet to a lot line.

§245-26 Multi-Unit Residential Development

- A. Special provisions for high-rise apartment buildings.
 1. High-rise apartment structures shall not exceed a density as established in Appendix A for multiple-family dwellings.^{1a}
 2. For each additional story above three, the side and rear yards shall be increased 10 feet from those indicated in Appendix A.^{1a}
 3. When any part of the front yard of a high-rise apartment building is directly opposite the front yard of a single-family or two-family dwelling, garden apartment or townhouse apartment or lot zoned for such use, the required front yard of the high-rise apartment building shall be increased 10 feet for each additional story above three.
 4. No high-rise apartment building shall exceed 12 stories in height, excluding basement, together with a penthouse, housing machinery, which may be erected to an additional height of 12 feet and shall not occupy more than 25% of the roof area.

§245-27 Outdoor Display of Goods

- A. Any outdoor display of goods shall not exceed 25% of the gross floor area of the primary structure.
- B. The display area shall not block automotive traffic, public or private sidewalks, fire lanes, or other travel lanes.
- C. Such displays shall be allowed adjacent to a principal building wall and extending to a distance no greater than 5 feet from the wall.
- D. Such displays shall not be permitted to block windows, entrances or exits and shall not impair the ability of pedestrians to use the building or surrounding sidewalk.
- E. The items for display are labeled for sale and said area shall not be used for storage purposes.
- F. No business establishment shall place or display goods for purposes of sale or permit any coin-operated vending machine of any type to be placed in any location which would infringe upon the required setbacks specified in this chapter.

§245-28 Outdoor Storage

- A. Outdoor storage shall not be allowed in the front yard.
- B. Outdoor storage structures shall not occupy more than 15% of the entire lot area.
- C. All outdoor storage structures shall be fully screened to ensure the area is not visible from the public right-of-way or adjacent residential districts or uses.
- D. Screening shall be of sufficient height and density to completely hide any storage structure from public view, including from streets and other public accessways. All screening shall be maintained in such a manner as to present a neat and orderly appearance.
- E. No lot shall be used for the commercial storage or disposal of solid or liquid waste without the prior approval of the Town Board. Duly approved individual sewage disposal systems shall be excepted

from this provision. Town Board approval shall be given only upon a finding that the proposed use shall not have a detrimental effect upon surrounding properties and evidence of any required permits necessary from the New York State Department of Health and/or Environmental Conservation, and the Monroe County Department of Health. The Town Board may require the submission of any documents necessary to make the foregoing finding. This provision shall not prohibit the storage of animal waste upon any farm.

§245-29 Public Utility

- A. Public utilities. Essential public utility uses, such as dial equipment centers and substations, but no service or storage yards, may be permitted in any district with a special permit and, if the facility is a telecommunications facility, a tower permit. No special permit shall be issued unless the Town Board determines that:
 - 1. The proposed installation in a specific location is necessary for the efficiency of the public utility system or the satisfactory provision of service by the utility to the area in which the particular use is to be located.
 - 2. The design of any building in connection with such facility conforms to the character of the immediate area and will not adversely affect the safe and comfortable enjoyment of property rights of the neighborhood in which it is located.
 - 3. Adequate and attractive fences and other safety devices will be provided, to a height sufficient to screen the installation's equipment.
 - 4. A buffer strip 10 feet in width (minimum) shall be provided around the perimeter of the property, suitably landscaped and maintained.
 - 5. Adequate off-street parking shall be provided.
 - 6. All of the area, yard and building coverage requirements of the respective zone will be met.
 - 7. The siting of telecommunications facilities, as defined in this code, to the extent telecommunications facilities are public utilities, shall be governed by § 245-18 of this code.

§245-30 Solar Energy System

- A. Authority
 - 1. This Zoning for solar energy systems is adopted pursuant to Sections 261-264 of the Town Law of the State of New York, which authorizes the Town of Niagara to adopt zoning provisions that advance and protect the health, safety, and welfare of the community and to make provisions for, so far as conditions may permit, the accommodations of solar energy systems and equipment.
- B. Findings/Statement of Purpose
 - 1. The Town Board of the Town of Niagara, recognizing that solar energy is a clean, readily available, and renewable energy source that decreases energy costs and provides local business and job opportunities, intends to accommodate, and encourage the use of solar energy systems.
 - 2. However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town of Niagara to protect residential, business areas and other land uses, to preserve the overall beauty, nature, and character of the Town of Niagara, to promote the effective and efficient use of solar energy resources, and to protect the health, safety, and general welfare of the citizens of the Town of Niagara.
 - 3. Solar energy systems, like all land uses, shall be regulated through the zoning of the Town and sited, in accordance with the Community's Comprehensive Plan and the Town's Zoning Map and Code. The larger solar energy systems can have significant impacts on the Town of Niagara and

the community's future. In accordance with the Town's Comprehensive Plan these systems will be sited to minimize impacts to the Town's Agricultural community, rural character, neighborhoods, important commercial corridors and other significant features. In considering these impacts, the Town will reference the Town of Niagara, Open Space, Niagara County and Regional Plans.

4. Solar energy systems need to be regulated for removal when no longer utilized.
- C. Applicability
1. The requirements of this article shall apply to all solar energy systems permitted, installed, or modified in the Town after the effective date of this article, excluding general maintenance and repair.
 2. Solar energy systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
 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 article.
 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"), NFPA, NEC, other Federal and State Codes, Niagara County regulations and the Town Code.
 5. Any application (including variance applications) pending (except those specifically excluded from the moratorium in place at that time) for solar energy systems on the effective date of this article shall be subject to the provisions of this article.
- D. General Requirements
1. A building permit shall be required for installation of all solar energy systems.
 2. Issuance of permits and approvals by the **Town 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 Niagara.
 4. Solar applications shall be referred to the applicable fire company for input.
- E. Permits and Approvals Required and Applicable Zoning Districts
1. Tier 1: Rooftop-mounted, building-mounted and building-integrated solar energy systems upon issuance of building permit (specific Town of Niagara building permit and requirements for rooftop mounted systems).
 2. Tier 2: Ground-mounted solar energy systems, through site plan approval issued by the Town of Niagara Board and upon issuance of a building permit, shall be subject to all provisions of this article.
 3. Large-scale solar energy systems (Tier 3) shall not be considered a permitted use unless shown to meet the requirements (and one is issued) of a special permit pursuant to this article and Article **X** of the Town of Niagara Zoning Code, and subject to site plan review by the Town Board and requiring issuance of a building permit within the C, I, MI, and NRO districts. These Tier 3 systems are also limited per the following:
 - a. To further reduce potential impacts, a Tier 3 system shall not be located on a property adjacent (including across the street) to a nonparticipating property in a residential district.

4. Utility-scale solar energy systems (Tier 4) shall not be considered a permitted use unless shown to meet the requirements (and one is issued) of a special permit pursuant to this article and Article IX of the Town of Niagara Zoning Code, and subject to site plan review by the Planning Board, approval by Town Board, and requiring issuance of a building permit within the C, I, MI, and NRO districts. These Tier 4 systems are also limited per the following:
 - a. To further reduce potential impacts, a Tier 4 system shall not be located on a property adjacent (including across the street) to a property in a residential district).
 - b. Tier 3 and Tier 4 systems are not allowed in the NR, MR, N-MU, C-MU districts.
 5. Any solar energy system to be used strictly for agricultural use purposes in accordance with NYS Agriculture and Markets Law, may have some requirements of this article waived by the Town Board and will include an expedited approval process, as necessary.
- F. General Criteria
1. Rooftop-mounted and building-mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three feet before the edge of the roof. All rooftop-mounted or building-mounted solar energy systems shall meet all building permit requirements (special Town of Niagara permit for rooftop solar units) including the NYS Uniform Fire Prevention and Building Code standards and the following standards:
 - a. Solar panels on pitched roofs shall be mounted with a maximum distance of eight inches between the roof surface the highest edge of the system.
 - b. Solar panels on pitched roofs shall be installed parallel to the roof surface on which they are mounted or attached.
 - c. Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. 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.
 - e. All solar panels shall have antireflective coating(s) and proof of such must be provided at permit application.
 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.
 3. Tier 2: Ground-mounted solar energy systems shall be subject to the following requirements:
 - a. The location of said solar energy system shall be placed the greater of two times the standard primary structure side yard setback requirement of the use district in which it is located or at a minimum of 20 feet from any side yard property line. The system shall also be located a minimum of 20 feet from any rear property line. This distance shall be measured from the panels and any associated equipment to the property line; and
 - b. The location of said solar energy system shall be only located in the side or rear yard (as defined in the Town Code); and
 - c. A remote disconnect must be provided and shown on the site plan.
 - d. The height of said solar energy system shall not exceed 12 feet when oriented at maximum tilt on a lot situated in a residential district; and
 - e. The height of said solar energy system shall not exceed 15 feet when oriented at maximum tilt on a lot situated in the C, I, MI and NRO districts; and

- f. The total area occupied by said solar energy system on a lot shall not exceed 500 square feet in a residential district (units proposed that exceed this area limitation will require a variance through the Town Zoning Board); and
 - g. The total area occupied by said solar system on a lot which is two acres or less situated in the C, I, MI and NRO districts shall not exceed 1,000 square feet (Units proposed that exceed this area limitation will require a variance through the Town Zoning Board); and
 - h. The total area occupied by said solar energy system on a lot which is greater than two acres and but less than five acres situated in the C, I, MI, or NRO districts shall not exceed 5% of the total square footage of the entire lot; and
 - i. The total area occupied by said solar energy system on a lot which is greater than five acres or more situated in the C, I, MI and NRO districts shall not exceed 10% of the total square footage of the entire lot.
- 4. Site plan requirements for a ground-mounted, Tier 2 solar energy system. Site plan approval is required by this article for ground-mounted Tier 2 solar energy systems and the applicant shall be required to submit a site plan drawn in sufficient detail as follows:
 - a. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any storm water or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - b. Property lot lines and the location and dimensions of all existing structures and uses on site within 200 feet of the proposed solar panels; and
 - c. Any proposed fencing and/or screening for said project; and
 - d. Any such additional information as may be required by the Town's professional engineer or consultant, Town of Niagara Planning Board, Town Attorney, Building Inspector, or Town Board; and
 - e. A public hearing on said site plan may be required by the Planning Board in accordance with the Town's site plan requirements (Chapter [135](#)).
- 5. Any solar energy system shall be accessible for all emergency service vehicles and personnel. All applications will be referred to the applicable emergency service providers and the Town Fire Company for input.
- 6. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- 7. Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- 8. If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within 30 days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned (and removed per this article).
- G. Special Permit Requirements (Tier 3 and 4)
 - 1. Applications for Tier 3 and 4 systems under this article shall be made in accordance with Town Zoning Code Article [IX](#), Special Use Permits and as follows. Applicants for a special permit to place, construct, and make a major modification to a large-scale or utility-scale solar energy systems within the boundaries of the Town of Niagara shall submit six sets (and an electronic

copy) of the following information to the Building Inspector, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

2. A completed State Environmental Quality Review Act (SEQRA) full environmental assessment form (FEAF), with the Town of Niagara Town Board to be designated as lead agency for the SEQRA process.
3. Necessary permit information:
 - a. Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner; and
 - b. Documentation of access to the project site(s), including location of all access roads (meeting state, town, and emergency service provider's requirements), gates, parking areas, etc.; and
 - c. Documentation of the clearing, grading, storm water and erosion control plans; and
 - d. Fire safety plan (to be reviewed by the Building Department and Fire Company).
 - e. Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming (or other methodologies), maintenance of access drives, maintenance of ditches or other waterways through the site (potential emergency access easement provided to the Town), and maintenance of the plantings for the required screening. This operation and maintenance plan shall reflect all lands that are being leased or owned by the applicant.
 - f. Utility interconnection data and a copy of written notification to the utility of the proposed interconnection; and
 - g. One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices; and
 - h. A property owner or applicant who has installed or intends to install a large-scale or utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace because of uses or development performed in accordance with Town Code.
 - i. Copy of the lease or contract of sale for the property (redacted as necessary).
 - j. A copy of a letter acknowledging Niagara County's solar panel Recycling Regulations.
4. A site plan drawn in sufficient detail meeting the Town of Niagara requirements and as follows:
 - a. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - b. Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the solar panels; and
 - c. Proposed fencing and/or screening for said project.

5. A decommissioning plan to ensure the proper removal of a large-scale or utility-scale solar energy systems. The decommissioning plan is to be submitted as part of the special use permit application to the Building Inspector for approval and must specify that after the large-scale or utility-scale solar energy system is no longer in use (as determined by the owner/operator or the Building Inspector per this article), it shall be removed by the applicant or any subsequent owner. The decommissioning plan shall identify the anticipated life of the project. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate for decommissioning prepared by a professional engineer or qualified contractor. Cost estimates shall take inflation into consideration and be revised every five years during operation of the system (recycle and salvage value shall be excluded in these estimates as they are unpredictable in nature). Removal of the large-scale or utility-scale solar energy system must be completed in accordance with the approved decommissioning plan and the standards provided as follows:
 - a. All structures and foundations associated with the large-scale or utility scale solar energy systems shall be removed;
 - b. All disturbed ground surfaces shall be restored to original conditions including topsoil and seeding as necessary; and
 - c. All electrical systems shall be properly disconnected, and all cables and wiring buried shall be removed.
6. A bond or other approved security shall be provided to cover the cost of removal and restoration of the area impacted by the solar system.
 - a. The deposit, execution, or filing with the Town Clerk of cash, bond, or other form of security reasonably acceptable to the Town Attorney and Town 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 or Tier 4 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. The bond shall be renewed every five years or, as necessary, to reflect adjustments in the projected costs of decommissioning.
 - b. 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 article.
7. All applications shall submit a proposal for a host community agreement (to be reviewed and approved by the Town Board prior to issuance of the SUP). The host community agreement should reflect a value of at least 50% of the estimated overall PILOT/allowed payments for the project.
8. Any such additional information as may be required by the Town's professional engineer or consultant, Town of Niagara Planning Board, Town Attorney, Building Inspector, or Town Board.
9. Applications for large-scale and utility-scale Tier 3 and 4 solar energy systems shall meet the following additional criteria:
 - a. Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specs

- and photos of the proposed solar energy system, solar collectors, and all other components. These photo simulations must include before and after simulations from locations where the solar energy system will be viewed from off-site locations as determined by the Planning Board. "After simulations" must include landscaping at the condition when first planted and another at maturity (see section on screening and visibility for other requirements).
- b. Any site containing a large-scale or utility-scale solar energy system shall contain fencing or another type of enclosure acceptable to the Town (and meeting State and National Code standards) enclosing all solar energy system components that present safety hazards. The style of fencing shall fit into the character of the area and be approved by the Town Board.
 - c. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, shall be provided along any property line that abuts an important community resource, an existing residence or any property zoned other than LI, PID, HI, or SW. See following paragraphs for additional information on screening.
 - d. After completion of a large or utility-scale solar energy system, the applicant shall provide a postconstruction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
10. Solar energy systems shall have views minimized from adjacent properties using architectural features, earthen berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.
 11. Solar energy systems shall be required to:
 - a. Conduct a visual assessment of the visual impacts of the solar energy system on public roadways and adjacent properties and as directed by the Planning Board. As required previously, this analysis must consider conditions at day one of operation and when the landscaping has matured. At a minimum, a line-of-sight profile analysis shall be provided, but photo-simulations are required for all areas that will have a view of the project site. Depending upon the scope and potential significance of the visual impacts, additional impact analyses, including, for example, a digital view shed report, may be required to be submitted by the applicant. The Town may hire an independent consultant, at the cost of the applicant, to review and/or conduct their own visual assessment.
 - b. Submit a screening and 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 Town Board will in good faith determine the adequacy of these measures in its sole and absolute discretion.
 - c. The screening and 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, at a minimum, be comprised of evergreen/coniferous trees (planted at recommended spacing for the type of tree), at least eight feet to 10 feet high at the time of planting (depending on site conditions and the result of the visualizations; may need to be installed in a zig-zag pattern to maximum screening), plus supplemental shrubs (deer resistant) placed in between the evergreen trees at the reasonable discretion of the Town Board. These plantings are to be planted, typically, within 10 linear feet of the solar energy system fencing or as directed by the Planning Board to achieve maximum screening. In some cases, existing vegetation located on participating properties, may be used to satisfy all or a portion of the required landscaped screening. Suitable evergreen tree and shrub species are to be determined by a professional arborist and approved by the Town. This minimum screening requirement will be reduced if adjoining properties are participating properties. All plantings shall come with a ten-year guarantee and must be replaced if dead

- or diseased (include this in operation and maintenance plan). This will be enforced by the Town through the required yearly inspections. Berms can also be utilized to reduce heights of proposed plantings, but the berms must not interfere with site drainage and must be properly designed to maintain vegetation.
- d. Landscape plans must be completed by a NYS registered landscape architect.
 - e. 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.
12. Additional application and permitting requirements for utility-scale Tier 4 solar energy systems:
- a. All the information/requirements listed for a Tier 3 system plus the following additional information/requirements.
 - b. Submittal of an agricultural impact statement to determine the impact to Agriculture in the Town and community. The Town Board, on a project-by-project basis, will work with the applicant on finalizing the requirements of this agricultural impact statement, but at a minimum will include whether the farmland is active (how long it has been farmed or not farmed) and if it is farmed by the property owner or leased. If leased, how the removal of this leased land will affect the farmer who leases this site and other farmlands and other leases that the farmer has in the Town. Include information on the improvements that have been made to the lands (tiling, irrigation, etc.), history of the farm and its products, number of workers, products purchased, and used for farming operations, etc.
 - c. Submittal of an economic impact analysis to determine the impact of the project on the economy of the Town. This includes the agricultural impacts in the agricultural impact statement and information as noted by the Town Board (Town to work with the applicant on the scoping of this study, but will include, at a minimum, the estimated PILOT and HCA payments to the Town).
 - d. Proposal for a host community agreement (to be reviewed and approved by the Town Board prior to any approvals granted by other boards or agencies) that reflects the large-scale impacts of the project.
13. Additional agricultural resources requirements. For projects located on agricultural lands:
- a. Tier 3 and 4 solar energy systems allowed to be located on farmland (through the processes described in this article) 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).
14. Noise. The Tier 3 or 4 project shall not result in any adverse noise impacts on any surrounding homes or other sensitive receptors (use of NYSDEC regulations concerning noise). Specifically, the project must be shown to not generate noise at 45 dBA or above at any nonparticipating property line.
15. Hazardous materials. The Tier 3 or 4 project components shall not contain any hazardous materials that could contaminate soils or the air by their release (units shall not contain cadmium or other hazardous substances). Specific material data information/specifications (SDS/MSDS sheets) shall be submitted on all components of the project. The applicant must ensure that no harmful chemicals will be leaked into the soils over the life of the project. For certain components of the project, information on spill containment systems will need to be provided. This required information shall be reviewed by the Planning Board, their consultants, and the fire company.
16. Airport impacts (NFARS encroachment issues). All Tier 3 or 4 solar energy projects must complete a study to be submitted to the Niagara Falls Air Reserve Station and the Niagara Falls International Airport that discusses the following:
- a. Distance from installation.

- b. Location relative to approach/departure and flight patterns associated with the base or special use/training areas.
 - c. Glare impact on airport sensitive receptors at Niagara Falls Air Reserve Station. Analysis should include a knowledge of sun position, observer location, and the solar module/array characteristics (e.g., tilt, azimuth or orientation, location, extent and if tracking those parameters for the entire path of the moving panels). Note: Though not required by the FAA it is strongly encouraged to utilize the Solar Glare Hazard Analysis Tool (SGHAT) to predict potential glare with assessed results relative to the FAA's Solar Policy and Ocular Hazard Standard (also adopted by the U.S. Department of Defense DoD) under Instruction (DODI) 4165.57 and implemented by US Air Force AFI 32-7063.
 - d. Any additional lighting of the field to include anti-collision.
 - e. Storm water runoff which may affect the base or the tributaries transitioning through the base or the creation of storm ponds which would attract wildlife and waterfowl.
 - f. Possible changes to wildlife habitat or migratory patterns that will affect aircraft flight path.
- H. Utility-grade solar energy system (Tier 3 and 4) liability insurance.
- 1. 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 as follows (unless waived by the Town Board for smaller Tier 3 systems):
 - a. Commercial general liability covering personal injuries, death, and property damage for \$5,000,000 per occurrence which shall specifically include the Town of Niagara and its officers, councils, employees, attorneys, agents and consultants as additional named insured.
 - 2. 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."
 - 3. Insurance policy cancellation. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town of Niagara with at least 30 days' prior written notice in advance of cancellation.
 - 4. Insurance policy renewal. Renewal or replacement policies shall be delivered to the Town of Niagara Town Clerk at least 15 days before the expiration of the insurance that such policies are to renew or replace.
 - 5. Copies of insurance policy. No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town of Niagara a copy of each of the policies or certificates representing the insurance in the required amounts.
 - 6. 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 Niagara shall not be deemed to comply with this article.
 - 7. Indemnification. Any application for a solar energy system within the Town of Niagara 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 Niagara and its officers, Town Board, 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 Niagara 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 Niagara.

I. Special Permit Criteria (Tier 3 and 4)

Special permits issued for large-scale or utility-scale solar energy systems shall meet the following conditions:

1. Minimum lot area: none.
2. Maximum lot area (as measured by the fenced in area): less than 30 acres for Tier 3 systems.
3. Lot coverage. There are no lot coverage requirements, except if the land is presently being farmed or has been farmed in the last five years, then the maximum lot coverage is 60%.
4. Setbacks. Any large-scale or utility-scale solar energy system shall adhere to the following setbacks (this setback distance shall be measured from the fence that surrounds all panels and equipment):
 - a. From any nonparticipating property lot line: a minimum of 200 feet from any property lot line, plus appropriate screening.
 - b. From any participating property lot line: a minimum of 50 feet from any property lot line, plus any screening required by the Planning Board (if necessary). If the property line separates two parcels that are being leased or purchased to have panels placed on them, the fifty-foot setback does not apply.
 - c. From buildings, structures, or homes (nonparticipating/participating):
 - (1) Nonparticipating: a minimum of 300 feet.
 - (2) Participating: a minimum of 50 feet.
 - d. From public roads:
 - (1) A minimum of 500 feet from any public road (measured from the fence to the road right-of-way or property line); and,
 - (2) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.
5. Maximum overall height. The height of a utility-scale solar energy system shall not exceed 15 feet when oriented at maximum tilt.
6. A large-scale or utility-scale solar energy system shall only be located in a rear yard if there is a principal structure or dwelling on said lot.
7. A large-scale or utility-scale solar energy system shall adhere to all applicable federal, state, county, and Town of Niagara laws, regulations, building, plumbing, electrical, and fire codes.
8. Development and operation of a large-scale or utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Niagara or other federal or state regulatory agencies.
9. The design, construction, operation, and maintenance of a large-scale or utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists. A glare study to Town requirements must be submitted to illustrate this. The Town may hire an independent consultant to review and verify this study at the cost of the applicant.
10. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.

11. All transmission lines and wiring associated with a large-scale or utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead (where necessary) and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
12. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection (proof to be provided).
13. Artificial lighting of large-scale or utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
14. Any signage shall be in accordance with the Town's signage regulations and meet the following:
 - a. No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and twenty-four-hour emergency contact information. Said information shall be depicted within an area no more than eight square feet.
 - b. 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, invertors, and substations.
15. Any site containing a large-scale or utility-scale solar energy system shall contain fencing or other device/structure acceptable to the Town and meeting Fire Safety and Electric Codes enclosing all solar energy system components that prevent safety hazards. Fencing shall be a minimum of seven feet in height as prescribed by the Code; this supersedes any other zoning requirement for fence heights.
16. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site may be required along any property line that abuts an existing residence.
17. After completion of a large-scale or utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State (agreed to by the Town of Niagara) that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. All costs for such inspection and certification shall be paid for by the applicant/owner.
18. The special permit approval will include the requirement that the applicant/owner shall return to the Town Board one year after construction is certified as being completed. The Town Board will review the project's special permit conditions, reports from the Building Inspector, Town Engineer, and other Town officials, and any complaints received on the project. The Town Board will then determine if the project is in accordance with the special permit and all conditions placed on that permit. If the Town Board finds that the project is in accordance with the special permit and all conditions, the applicant will not need to return to the Town Board. If the Town Board finds that the project is not operating in accordance with the special permit and the conditions of that permit, that applicant shall remedy those deficiencies to the satisfaction of the Town and/or be subject to fines and penalties (as set by the Town), and potential loss of the special permit. In this case, the applicant shall return again to the Town Board after one year of remedying these deficiencies for the Town Board to again review the project against the special permit and the conditions of that permit.
19. Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a large-scale or utility-scale solar energy system.

20. A bond or other appropriate form of security shall be offered by the applicant as part of their decommissioning plan (the bond/security and decommissioning plan is prescribed in this article) to cover the cost of the removal and site restoration by the Town of Niagara Town Board and said proof of appropriate form of security shall be filed prior to construction and on an annual basis with the Town Clerk.
 21. Clearing, grading, storm water and erosion control:
 - a. Before the Town of Niagara shall issue a clearing, grading, storm water or building permit for a large-scale or utility-scale solar energy system, the applicant shall submit a storm water and erosion control plan to the Town of Niagara for its review and approval; and
 - b. The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.
- J. Maintenance, Procedures, and Fees
1. Time limit on completion. After the granting of a special permit of a large-scale or utility-scale solar energy system with concurrent site plan approval or site plan approval of a freestanding or ground-mounted solar energy system by the Town Board, the building permit shall be obtained within six months, and the project shall be completed within 12 months. A six-month extension to obtain a building permit or the completion time can be issued by the Town Board upon application by the applicant. If not constructed, the special permit and/or site plan approval shall automatically lapse within 12 months after the date of approval by the Town of Niagara Town Board (unless an extension is granted).
 2. Inspections. Upon reasonable notice, the Town of Niagara Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected once every five years by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
 3. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a Tier 3 or Tier 4 solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
 4. Continued operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
 5. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Niagara Town Board, or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.
 6. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the

owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Niagara Zoning Board of Appeals within 30 days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay, or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

7. Application and annual fees.
 - a. Large-scale and utility-scale solar energy system. An applicant shall pay an initial application fee in the amount as set by the Town Board, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. Per sections of this article, if the Planning Board needs to hire specialists/consultants to review reports/materials submitted by the applicant, the Town will charge the costs of these reviews to the applicant (may require escrow money to be deposited). If the project is approved, the owner shall pay an annual fee in the amount as set by the Town Board, to cover the cost of processing and reviewing the annual inspection reports and for administration, inspections and enforcement, as well as the building permit fee and the special permit fee set by the Town Board.
 - b. Site plan application for ground-mounted solar energy systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
 - c. All fees contained in this article may be revised or changed from time to time by Town Board resolution.
 - d. The Town of Niagara reserves the right to, by local law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.
8. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
9. Special permits for a large-scale or utility-scale solar energy system granted under this article shall be issued only as required by the Town Zoning Law.
10. The planning board may:
 - a. For large-scale or utility-scale solar energy systems, recommend the granting of a special permit, deny a special permit, or grant a special permit with written stated conditions. The Town Board in making this decision shall make Findings in accordance with **§ 245-41 of Article IX of the Town Zoning Code**. Denial of a special permit shall be by written decision based upon substantial evidence considered by the Board. If a special permit is granted, the Town Board may grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a special permit and site plan approval, the applicant shall obtain a building permit for the large-scale or utility-scale solar energy system.
 - b. For ground-mounted (Tier 2) solar energy systems, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a site plan approval, the applicant shall obtain a building permit for the freestanding or ground-mounted solar energy system.

11. Any changes or alterations post construction to a large-scale or utility-scale, freestanding or ground-mounted solar energy system shall be done only by amendment to the special permit and/or site plan (if required) subject to all requirements of this code.
 12. Special permits for a large-scale or utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this article and all the conditions, and the Building Inspector is notified in writing at least 15 days' prior thereto. The Town shall notify the applicant of receipt of the notice and provide instructions for the new owners on meeting the requirements of the special use permit (bonds, decommissioning plans, etc.).
 13. In addition to the requirements of this article, the special permit application shall be subject to any other site plan approval requirements set forth in the Town Zoning Code.
- K. Revocation
1. If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state, or federal laws, rules, or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Niagara Town Board holds a hearing on same.
- L. Interpretation; Conflict with Other Law
1. In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations, or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.
- M. Enforcement
1. Any violation of this article 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 Code.
- N. Severability
1. If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.
- O. Waiver
1. Upon request, the Town Board may, in its sole discretion, waive any of the requirements of this article regulating solar electric energy systems.

§245-31 Solid Waste Management Facility

- A. No solid waste management facility, including junkyards, shall be constructed or expanded within the territorial boundaries of the Town of Niagara, with the exception that the **Town Board** may grant such a use with a special permit to a solid waste management facility in a Heavy Industrial (HI) Zone. Those solid waste management facilities now existing and operating under permits issued by the Town Board of the Town of Niagara shall be operated in accordance with Town Code Chapter **208**.

§245-32 Transient or Short-term Rental (STR)

- A. Short-term rentals, hereafter STR, shall be owner-operated.
- B. No more than 1 non-resident of the premises shall be engaged as employees of the operation.
- C. An STR shall have a maximum of 4 guest rooms with no more than 4 guest rooms sharing a single bathroom.

- D. The maximum length of stay for any guest is 30 consecutive days.
- E. Parking for STR guests shall not be located or permitted in the front yard of the property. The Planning Board shall approve the location and screening of all required parking.

§245-33 Additional Requirements for Some Uses

- A. Excavations. Applications for a special permit shall be in accordance with Town Code Chapter **147**.
- B. Nursing, convalescent, retirement and special placement residences. A site plan shall provide for adequate traffic control, both interior and exterior to the site.
- C. Motels and hotels. A site plan shall provide for adequate traffic control, both interior and exterior to the site.



ARTICLE V. Development Regulations

§245-34 Regulations Applicable to all Districts

A. Buildings, Structures and Lots

1. No building shall hereafter be erected, and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged, nor shall any land be used, for any purpose other than those included among the uses listed as permitted uses in each zone district of this chapter and meeting the requirements set forth herein. Open space contiguous to any building shall not be encroached upon or reduced in any manner, except in conformity to the area and bulk requirements, off-street parking requirements and all other regulations required by this chapter for the zone district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this chapter, and the certificate of occupancy or certificate of compliance, as appropriate, shall become null and void.
2. No building or structures shall hereafter be erected or altered to exceed the height, to house or accommodate a greater number of families, to occupy a greater percentage of lot area, to have narrower or smaller rear, front or side yards than is specified in this chapter for the district in which the building or structure is located, or to be less than one full story in height as defined in this chapter.
3. No lot shall be reduced in size if, as a result thereof, its area or any of its dimensions or open spaces shall be smaller than required by this chapter.
4. Except as specifically provided herein, no lot shall have erected upon it more than one principal building or be allowed more than one principal use.
5. Every principal building shall have access to a public street improved to meet Town requirements. Access may be either by a driveway or private road approved by the Town.
6. Where a building lot has frontage on a street which is proposed for right-of-way widening, the required front yard setback area shall be measured from such proposed right-of-way line.
7. For the purpose of regulating the location of buildings on corner lots, and on lots extending through between two parallel streets, all portions of a corner lot or a through lot which fronts on a public street shall be subject to the front yard requirements of the zone district in which said corner lot or through lot is located.

B. Roads, Intersections, Public Facilities and Right-of-Way

1. Where a private road or drive provides access to more than two principal buildings, said road or driveway shall have a right-of-way width of not less than 50 feet and a travelway width of not less than 12 feet, improved with a durable all-weather surface, subject to approval of the Planning Board during subdivision review. All structures shall be so located on lots so as to provide safe and convenient access for servicing, fire protection and required off-street parking.
2. All driveways from a state or county highway shall include sufficient space to turn a vehicle around. The Planning Board shall reserve the right to require a similar vehicle turnaround on Town roads. The need for a turnaround on Town roads shall be determined based on the location of the property and existing and projected traffic volumes.
3. At the intersection of two or more streets, no hedge, fence or wall (other than a single post or tree) which is higher than 3 feet above ground level measured at the edge of the pavement or at the curb, nor any obstruction to vision, including agricultural crops, shall be permitted within 50 feet of any intersecting street.
4. Nothing in this chapter shall restrict the construction, use or maintenance of public buildings, structures or facilities, parks or other publicly owned properties or the installation and

maintenance of such public utilities as may be required to service any district. All facilities shall be subject to the yard requirements of this chapter and to site plan review.

§245-35 Buffers

- A. A buffer strip 10 feet in width shall be provided upon all non-residential land uses which abut a residential land use at the side or rear lot line. This buffer strip may be included within the required side or rear yard setback.
- B. No parking area, building or other structure or paved area except walks, walls or fences shall be permitted in any buffer strip.
- C. No storage or display of goods shall be permitted in any buffer strip.
- D. Buffer strips shall include solid fencing and/or live, healthy vegetation of at least 5 feet in height.
- E. Each buffer strip shall be planted with at least 2 trees and/or shrubs every 10 linear feet. The remainder of each buffer strip shall be landscaped in grass, ground cover, other vegetation or a walk, wall or fence.

§245-36 Building Placement and Orientation

- A. The regulations in this section shall apply to all nonresidential buildings and uses in the C-MU and N-MU Districts.
- B. To the maximum extent practicable, all buildings shall be arranged to orient toward public streets and frame the corner at the intersection of any 2 streets.
- C. All buildings shall have front entrances which face public streets and shall include a sidewalk connecting the entrance to the public sidewalks.
- D. If a public sidewalk is not present, a sidewalk shall be installed parallel to the street or roadway in addition to the sidewalk connecting to the building entrance.

§245-37 Building Composition

- A. The regulations in this section shall apply to all nonresidential buildings and uses in the C-MU and N-MU Districts.
- B. Buildings shall exhibit a clearly defined base, mid-section and crown. This can be accomplished using a combination of architectural details, materials, and colors.
- C. Façades of buildings shall be broken down into a series of appropriately proportioned "structural bays" or components typically segmented by a series of columns, masonry piers, or pilasters that frame window, door and bulkhead components.
- D. A façade bay shall have a maximum width of 20 feet.
- E. Long, blank, unarticulated wall façades that face a major street are prohibited.
- F. Elevation features should have depth, avoiding a flush or flat appearance.
- G. Where a portion of a building façade without windows is necessary to front on a street, it shall be "broken" by vertical and horizontal articulation (e.g., sculpted, carved or penetrated) characterized by breaks (reveals, recesses) in the surface of the wall.

§245-38 Vision clearance and fences.

- A. Vision clearance. No wall, fence or other structure more than three feet in height above the street grade shall be erected in the area of a corner lot at the intersection of two street lines bounded by a distance of 15 feet from said intersection and a line connecting these two fifteen-foot points, nor shall

any foliage be allowed to grow above this height in said area. Trees with the lower branches 12 feet above the street intersecting at an acute angle shall have greater clearance area.

- B. Fences in all districts except the Industrial District shall not exceed four feet in height up to the front setback of the principal building and shall not exceed six feet in height on the remainder of the lot. Fences in Industrial Districts shall not exceed eight feet in height when used for industrial purposes. In no instance shall any fence be constructed to interfere with the light or air of any building. Barbed wire, used for a fence or upon any other structure, shall be not less than six feet above finish grade, except in Agricultural Districts for animal enclosures. The good/finished side of a fence must face outward from the property.
 - 1. Fences on corner lots shall not exceed four feet in height from the side building line to a public street.
 - 2. Fences on lots extending through between two parallel streets shall not exceed four feet in the area identified as the front setback on both streets.

§245-39 Landscaping

- A. This shall apply to all landscaping for nonresidential uses and lots in the C-MU and N-MU Districts.
- B. All plants (including grass) shall be living plants. Artificial plants shall be prohibited.
- C. Plants native to Upstate and Western New York are required.
- D. Front yard and Foundation Landscaping
 - 1. Front yard and foundation landscaping must be provided. Foundation landscaping shall be provided in the form of a continuous 5-foot (minimum) landscape area around the full perimeter of the building, excluding pedestrian and vehicle access points.
 - 2. Front yard landscaping and building foundation landscaping shall include a combination of trees, flowering shrubs, perennials, and ground covers.
 - 3. Foundation landscape areas shall be 80% planted along the front, 50% planted along each side and 25% planted in the rear.
- E. A minimum of 80% of surface area shall be covered by living materials for all areas where landscaping is required. Living materials shall not include mulch, bark, gravel or other non-living material.
- F. Deciduous trees shall be a minimum of 1.5-inch caliper at the time of planting, and 8 feet in height at the time of planting.
- G. Due to heat and drought stress and vision clearances, ornamental and evergreen trees are not recommended, unless advised by the Town based on site conditions or circumstances. If evergreen trees are utilized, they shall have a minimum height of 5 feet at the time of planting.
- H. Upright shrubs shall be a minimum of 24 inches in height and spreading shrubs, deciduous or evergreen, shall be a minimum of 15 inches in diameter.

§245-40 Off-street Parking and Loading

- A. Off-street parking space shall be provided and shall be furnished with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which it is situated and shall not be encroached upon or reduced in any manner and shall be adequately drained, all subject to the approval of the Town Engineer or Building Inspector.
- B. Exceptions. Off-street facilities that are required in this article shall not be required for any existing building or use, unless said building or use shall be enlarged, in which case the provisions of this chapter shall apply only to the enlarged portion of the building or use.
- C. Location. Except as noted elsewhere in this code, parking areas shall be located in any yard space for nonresidential uses but shall not be located closer than 20 feet to any street line. Parking areas may

- abut side and rear yard lines, except where the intended commercial uses abut residential zones or use. In such instances, no parking shall be permitted within 20 feet of any property line.
- D. Multiple uses. The collective provision of off-street parking area by two or more buildings or uses located on adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately, and further provided that the land upon which the collective facilities are located is owned or leased by one or more of the collective users.
 - E. Lighting. All parking areas and appurtenant passageways and driveways serving commercial uses shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation. Adequate shielding shall be provided by commercial users to protect adjacent residential zones from the glare of such illumination and from that of automobile headlights.
 - F. Parking space size. Parking spaces shall be a minimum of nine feet by 20 feet.
 - G. Parking Location
 - 1. Front yard parking shall be prohibited in the N-MU and C-MU Districts.
 - 2. Parking within the N-MU and C-MU Districts shall be in either the side or the rear yards of the property.
 - 3. Side yard parking shall be setback a minimum of 10 feet behind the front building façade.
 - 4. Off-street parking for single-unit and two-unit residential dwellings shall be provided on a driveway which provides access to such residences or a garage which is accessory to such residential uses.
 - 5. No driveway providing access to an off-street parking area shall be located within 20 feet of any side lot line, or within 50 feet of a street intersection measured along the curbline of the same street on which the driveway is located.
 - H. Shared Parking
 - 1. The collective provision of off-street parking areas by two or more buildings or uses located on adjacent lots may be approved by the Planning Board, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately.
 - 2. The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap in point in time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use. Said document shall bind the owner, his heirs and assigns to maintain the required joint use throughout the life of such uses and shall be approved by the Town Attorney.
 - I. Screening and Landscaping
 - 1. Whenever a parking area for a nonresidential building or use faces a street or a property line, a planting area of a minimum width of 8 feet with plantings at least 3 feet high planted at least 3 feet on center shall be provided between the parking area and the street line or property line. The planting plan for this strip shall be approved by the Planning Board as part of the site plan review.
 - 2. Whenever a parking area abuts a residential use or district, a planted buffer shall be provided. Landscaping utilized for this buffer shall not be less than 4 feet in height and spaced at least 3 feet apart on center. The planted buffer area shall not be less than 10 feet in depth.

J. Required Off-street Parking Spaces

1. When units of measurement determining the number of required parking spaces result in the requirement of a fractional space, any fraction shall require one parking space.
2. In any case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. In the case of a use not specifically mentioned in this chapter, the requirements for off-street parking facilities shall be determined by the Planning Board during the site plan review process. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for joint use.
3. The minimum number of off-street parking spaces for specific uses as regulated in this Chapter is contained in the table below.
4. If any proposed use is not specifically identified herein, the Planning Board shall determine the number of parking spaces to be required for such proposed use.

RESIDENTIAL**Parking Required**

Single-Unit Home	2 spaces per unit
Two-Unit Home	2 spaces per unit
Multi-unit Home	1.5 spaces per unit
Bed and Breakfast	3 spaces for guests + 1 for each nonresident employee
Home Business	2 spaces per unit; 1 space for client use + 1 for each nonresident employee
Short-term Rental (STR)	1 space per unit rented

NON-RESIDENTIAL**Parking Required**

Industrial Use	1 per 1,000 sf of building area
Membership Club or Social Center	1 per 200 sf of building area
Motor Vehicle Use	1 per 200 sf of building area
Personal Service Shop	1 per 500 sf of building area
Professional Office Use	1 per 500 sf of building area
Restaurant	1 per 200 sf of building area
Retail Use	1 per 500 sf of building area

PUBLIC AND INSTITUTIONAL USES**Parking Required**

Auditorium, Church, Theater, Assembly Hall	1 per 500 sf of building area
Hospital, Nursing Home, Convalescent Home	1 per 500 sf of building area
Public Facility	1 per 500 sf of building area
Parks and Outdoor Recreation	5 spaces for each gross acre of land up to 50 acres and 1 space per gross acre of land above 50 acres
School	1 per 2,000 sf of building area

K. Loading Regulations**1. Requirements.**

- a. Gross floor area exceeding 5,000 square feet shall have one identified area for loading/unloading and/or standing. Each area shall be a minimum of 12 feet wide by 35 feet long.
- b. For each additional 20,000 square feet, one additional space shall be provided.

2. Location. Each space shall be located to the side or rear of the structure.**3. Surfacing.** Off-street loading and unloading areas shall be surfaced with a dustless, all-weather pavement, which shall be adequately drained, all subject to the approval of the Town Department of Highways.**4. Screening.** Whenever an off-street loading and unloading area shall be located next to a residential zone, said loading and unloading area shall be screened and buffered.**§245-41 Stormwater Management Administration and Procedure****A. Findings.** It is hereby determined that:

1. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
2. This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
3. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
4. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation;
5. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
6. Substantial economic losses can result from these adverse impacts on the waters of the municipality;
7. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
8. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream

channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety; and

9. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.
- B. Purpose. The purpose of this article is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in this chapter. This article seeks to meet those purposes by achieving the following objectives:
1. Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
 2. Require land development activities to conform to the substantive requirements of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-0-10-001, or as amended or revised;
 3. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
 4. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
 5. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
 6. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.
- C. Applicability. This article shall be applicable to all land development activities subject to review for compliance with the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-0-10-001, or as amended or revised.
- D. Exemptions. The following activities shall be exempt from review under this article:
1. Agricultural activity;
 2. Silvicultural activity, except that landing areas and log haul roads are subject to this article;
 3. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
 4. Repairs to any stormwater management practice or facility deemed necessary by the SMO;
 5. Any part of a subdivision if a plat for the subdivision has been approved by the Town of Niagara on or before the effective date of this article;
 6. Land development activities for which a building permit has been approved on or before the effective date of this article;
 7. Cemetery graves;
 8. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
 9. Emergency activity immediately necessary to protect life, property or natural resources;

10. Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family;
 11. Landscaping and horticultural activities in connection with an existing structure.
- E. Procedure. The Town of Niagara shall designate an SMO who shall accept and review all SWPPPs. The SMO may:
1. Review the SWPPPs;
 2. Upon approval by the Town Board, engage the services of a New York State licensed professional engineer to review the SWPPPs, specifications and related documents at a cost not to exceed a fee schedule established by the Town Board; or
 3. Accept the certification of a licensed professional that the SWPPPs conform to the requirements of this article.
- F. For all land development activities subject to review and approval by the Code Enforcement Officer, MS4 Officer, Town Engineer, Planning Board, or Town Board of the Town of Niagara under subdivision, planned unit development, site plan, or development permit regulations, the applicant or developer shall be required to submit a SWPPP that complies with the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, to the SMO.
1. Initial review by SMO. Within 45 days of receipt of a SWPPP, the SMO shall forward the SWPPP, together with his or her written recommendation to approve, approve with modifications, or disapprove the SWPPP, to such employee, officer, or board of the Town of Niagara which is reviewing an application for approval of a land development activity requiring submission of a SWPPP. A recommendation of approval shall only be given if the SWPPP complies with the requirements of this article. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing.
 2. Review by final reviewing body. The employee, officer, or board of the Town of Niagara reviewing the application for approval of a land development activity shall review the SWPPP and recommendation of the SMO and shall act to approve, approve with modifications, or disapprove the SWPPP. Such reviewing body shall not act to approve the SWPPP unless it complies with the requirements of this article. If the reviewing body acts to approve with modifications or disapprove the SWPPP, the reasons for the decision shall be stated in writing. In order to be approved, the applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the reviewing body and shall submit the revised SWPPP to such body for review.^{[14](#)}

§245-42 Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed and no land development activity shall be commenced until the SMO or such employee, officer, or board of the Town of Niagara reviewing an application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP that complies with the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-0-10-001, or as amended or revised.
- B. Contents of stormwater pollution prevention plans.
1. All SWPPPs shall provide, at a minimum, the following information:
 - a. Background information about the scope of the project, including the location, type and size of the project.
 - b. Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. At a minimum, the site map

should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);

- c. Description of the soil(s) present at the site;
- d. Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
- e. Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- f. Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill-prevention and response;
- g. Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project closeout;
- h. A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- i. Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- j. Temporary practices that will be converted to permanent control measures;
- k. Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- l. Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- m. Name(s) of the receiving water(s);
- n. Delineation of SWPPP implementation responsibilities for each part of the site;
- o. Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
- p. Any existing data that describes the stormwater runoff at the site.
- q. Description of each postconstruction stormwater management practice;
- r. Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice;
- s. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
- t. Comparison of post-development stormwater runoff conditions with predevelopment conditions;

- u. Dimensions, material specifications and installation details for each postconstruction stormwater management practice;
 - v. Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;
 - w. Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
 - x. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with this article.
- C. The SWPPP shall be prepared by a licensed professional and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this article.
- D. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- E. Contractor certification.
 - 1. Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I hereby certify that I understand and agree to comply with the terms and conditions of the SWPPP and agree to implement any corrective action identified by the qualified inspector during a site inspection. I also understand that the owner or operator must comply with the terms and conditions of the New York State Pollutant Discharge Elimination System (SPDES) general permit for stormwater discharges from construction activities and that it is unlawful for any person to cause or contribute to a violation of water quality standards. Furthermore, I understand that certifying false, incorrect or inaccurate information is a violation of the referenced permit and the laws of the State of New York and could subject me to criminal, civil and/or administrative proceedings."
 - 2. The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
 - 3. The certification statement(s) shall be included with and become part of the SWPPP for the land development activity.
 - 4. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.
- F. Performance and design criteria. All land development activities shall be subject to the following performance and design criteria:
 - 1. Technical standards. For the purpose of this section, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this section:
 - a. The Design Manual; and
 - b. The Erosion Control Manual.
 - 2. Equivalence to technical standards. Where stormwater management practices are not in accordance with the technical standards set forth in this article, the applicant or developer shall demonstrate equivalence to such technical standards.

3. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.
- G. **Maintenance, inspection and repair of stormwater facilities.**
- H. Maintenance and inspection during construction.
1. The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this article. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
 2. For land development activities subject to § 245-41C of this chapter, the applicant shall have a qualified inspector perform site inspections in accordance with the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, Permit No. GP-O-10-001, or as amended or revised.
- I. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Niagara to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Niagara.
- J. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this article shall ensure they are operated and maintained to achieve the goals of this article. Proper operation and maintenance also include, as a minimum, the following:
1. A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this article.
 2. Written procedures for operation and maintenance and training new maintenance personnel.
 3. Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 245-42F of this article.
 4. Maintenance agreements. The Town of Niagara shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Appendix C of this chapter, entitled "Sample Stormwater Control Facility Maintenance Agreement." The Town of Niagara, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.
- K. Construction Inspection and Erosion and sediment control inspection.
1. The SMO may require such inspections as necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:
 - a. Start of construction;

- b. Installation of sediment and erosion control measures;
 - c. Completion of site clearing;
 - d. Completion of rough grading;
 - e. Completion of final grading;
 - f. Close of the construction season;
 - g. Completion of final landscaping; or
 - h. Successful establishment of landscaping in public areas.
- 2. If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the SMO.
- L. Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit as-built plans for any SMPs located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.
- M. Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.
- N. Submission of reports. The SMO may require monitoring and reporting from entities subject to this article as are necessary to determine compliance with this article.
- O. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Town of Niagara the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § [245-65A\(3\)](#) of this article.
- P. Performance guarantee.
 - 1. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Niagara in its approval of the SWPPP, the Town of Niagara may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Niagara as the beneficiary. The security shall be in an amount to be determined by the Town of Niagara based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Niagara, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to Town of Niagara. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

2. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Niagara with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Niagara may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
3. Recordkeeping. The Town of Niagara may require entities subject to this article to maintain records demonstrating compliance with this article.

Q. Enforcement and penalties.

1. Notice of violation. When the Town of Niagara determines that a land development activity is not being carried out in accordance with the requirements of this article, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
 - a. The name and address of the landowner, developer or applicant;
 - b. The address, when available, or a description of the building, structure or land upon which the violation is occurring;
 - c. A statement specifying the nature of the violation;
 - d. A description of the remedial measures necessary to bring the land development activity into compliance with this article and a time schedule for the completion of such remedial action;
 - e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
 - f. A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.
2. Stop-work orders. The Town of Niagara may issue a stop-work order for violations of this article. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Niagara confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.
3. Violations. Any land development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.
4. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this article shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

5. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this article, the SMO may prevent the occupancy of said building or land.
 6. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Niagara may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- R. Fees for services. In addition to any other fees required by law, the developer or applicant shall, upon submission of a SWPPP and at the start of any phase of construction after the first phase, pay a fee to the Town for the review of SWPPPs and related inspections, in accordance with § **139-8** of the Town Code.

ARTICLE VI. Nonconforming Uses

§245-69 General

- A. Applicability. Except as otherwise provided in this article, the unlawful use of land or buildings existing at the date of the adoption of this code may be continued although such use or building does not conform to the regulations specified by this code for the zone in which such land or building is located; provided, however, that:
 - 1. No nonconforming lot shall be further reduced in size.
 - 2. No nonconforming building shall be enlarged, extended or increased unless such enlargement, approved by the Zoning Board of Appeals, would tend to reduce the degree of nonconformance.
 - 3. No nonconforming use may be expanded.
- B. Changes in use. No nonconforming use shall, if once changed into a conforming use, be changed again to a nonconforming use.
- C. Extension of use. A nonconforming use shall not be extended, but the extension of a lawful use to any portion of the nonconforming building which existed prior to the enactment of this code shall not be deemed the extension of such nonconforming use.
- D. Reconstruction/alteration. A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate the cost of 50% of the assessed value of the building unless said building is changed to conform to the requirements of this code.
- E. 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 uses existing therein or created thereby.
- F. Discontinued use. Variances and special use permits previously issued by the Town for home occupations prior to the adoption of this amendment shall be discontinued upon:
 - 1. Abandonment under § **245-70** of this code;
 - 2. Transfer of ownership to a third party; or
 - 3. Failure to renew the annual Town business registration as required by the Town of Niagara Town Code, Chapter **125**, by January 30 of the following year.

§245-70 Abandonment

- A. A nonconforming use shall be considered abandoned when there occurs a cessation of any use or activity by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within a period of six months from the date of cessation or discontinuance.

ARTICLE VII. Special Permits

§245-81 General Provisions

- A. The special uses for which conformance to additional standards is required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this code. All such uses are hereby declared to have characteristics of such unique and special form that each specific use shall be considered as an individual case.
- B. All special permits are valid for one year and shall be issued by the Town Board after review and recommendation by the Planning Board.
- C. For any special use which requires an area variance, the Town Board shall act as lead agency for the State Environmental Quality Review Act (SEQRA). In such cases, the Town Board shall make its SEQRA determination, but will not consider the special permit until the Zoning Board of Appeals makes its variance decision.
- D. Special use permit renewals shall be issued by the Town of Niagara Town Board. The Town Board may approve renewal applications with such conditions as it deems reasonable.
- E. Renewal applications for special use permits shall be in writing on a form provided by or otherwise acceptable to the Building Inspector or Code Enforcement Officer. Such application shall include such information as the Building Inspector or Code Enforcement Officer deems sufficient to permit determination that the applicant conforms to all conditions of original special use permit approvals.
- F. Applications for permit renewal may be made 60 days prior to the date of expiration of the special use permit and shall be accompanied by a nonrefundable application fee in the amount as set forth from time to time by resolution of the Town Board.

§245-82 Standards for Special Permit Issuance

- A. No special permit shall be issued unless the Town Board determines that:
 - 1. The proposed use is permitted in the specific zone;
 - 2. All required site plan and/or variance approvals have been received;
 - 3. The proposed use is in compliance with the Town Zoning Code, with the orderly development of the district and will not adversely affect the neighborhood;
 - 4. Adequate landscaping and screening is provided to avoid negative aesthetic impacts;
 - 5. The use will not impair property values; and
 - 6. There are no delinquent Town tax or utility bills.
- B. Town Board waiver. Pursuant to Town Law § 274-b(5), the Town Board may waive any of the criteria for approving special permits.
- C. Town Board review.
 - 1. The Town Board may require the submission of expert reports, including appraisal reports, and such other information as it deems necessary to review the application.
 - 2. The Town Board may hire such consultants as it deems necessary to provide review of the permit. Except for home occupations, the cost of such expert review shall be borne by the applicant, in an amount the Board deems reasonable and necessary for such review. After the Board determines the review fee, the applicant shall deposit said fee with the Town, which shall hold the amount in escrow and return any unpaid amount to the applicant. Between the determination of the review amount and the deposit of the same, all time limits for review of the application shall be tolled.

3. The Town Board may approve an application with such conditions as it deems reasonable.

§245-83 Adoption

- A. This Article **VII** is adopted pursuant to the Municipal Home Rule Law § 10 and the Statute of Governments § 10, and specifically supersedes any provision of the New York State Town Law § 274-b conflicting with this chapter.

§245-84 Application Details

- A. Each application submitted to the Administrative Officer shall be accompanied by the following documentation/information:
 1. Application. Application form and fee.
 2. Letter of intent. Letter of intent, including detailed explanation of proposed project.
 3. Survey. Survey by a licensed surveyor or professional engineer.
 4. Environmental assessment form. A completed environmental assessment form in accordance with State Environmental Quality Review (SEQR).
 5. Drawings. Detailed plans must be supplied if the proposed action requires erection of a new structure and/or modification of an existing structure.
 6. Site plan. A site plan meeting the requirements of Appendix B.

ARTICLE VIII. Planned Unit Development

§245-92 Purpose

- A. In order to encourage sound planning and provide opportunity for coordinated community development, notwithstanding any other provision of this code, there may be planned unit development where appropriate conditions prevail.
- B. Intent. This article recognizes that while the standard zoning function (use and bulk) and the subdivision function (platting and design) are appropriate for the regulation of land use in areas or neighborhoods that are already substantially developed, these controls present a type of pre-regulation, regulatory rigidity and uniformity which may be inimical to the techniques of land development contained in the planned unit development concept. Further, this article recognizes that a rigid set of space requirements along its bulk and use specifications would frustrate the application of this concept.
- C. Objectives. In order to carry out the intent of this article, a planned unit development (PUD) shall achieve the following objectives:
 - 1. Provision of a maximum choice in the types of environment, occupancy tenure (e.g., cooperatives, individual ownership, condominium, leasing), types of housing, lot sizes and community facilities available to existing and potential Town residents at all economic levels.
 - 2. Conservation of usable open space and recreation areas.
 - 3. Development of more convenience in location of accessory commercial and service areas.
 - 4. The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion.
 - 5. A creative use of land and related physical development.
 - 6. An efficient use of land resulting in smaller systems of utilities and streets and thereby lower housing costs.
 - 7. A development pattern in harmony with the objectives of the Town Comprehensive Plan.
 - 8. A more desirable environment than would be possible through the strict application of other articles of this code.

§245-93 Permitted Uses

- A. All uses within an area designated as a PUD District are determined by the provisions of this section and the approval of the project concerned.
- B. The following are permitted uses:
 - 1. One-family dwellings.
 - 2. Garden apartments.
 - 3. Townhouses.
 - 4. Public and private parks, playgrounds, playfields and recreation areas.
 - 5. Public, private and parochial educational institutions.
 - 6. Churches and other similar places of worship.
- C. Private garages, storage spaces, and community activities, shall also be permitted as appropriate to the PUD.
- D. Planned accessory commercial, service and other nonresidential uses may be permitted (or required) where such uses are scaled primarily to serve the residents of the PUD. Consideration shall be given to the project as it exists in its larger setting in determining the appropriateness of such uses.

§245-94 Minimum Requirements

A. Area

1. The minimum required land for a planned unit development shall be 15 contiguous acres. If, however, the total number of contiguous acres exceeds 400 and if the Planning Board finds special reasons, conditions or circumstances which justify the consideration of additional areas which are not contiguous but under the same ownership as part of the overall planned development, then the Planning Board, with the approval of the Town Board, may allow the planned unit development to include the noncontiguous land; provided, further, that the entire area to be developed is fully serviced by a system of public services for water, sewage and drainage as set forth in this code and that all other provisions further set forth in this section for planned unit developments shall be extended to apply to the entire area so included.
2. An individual lot for a detached house shall contain a minimum of 7,500 square feet.
3. Lot coverage by buildings on individual detached housing lots shall not exceed 30% of the total area.
4. Residential buildings, except high-rise buildings, shall not exceed 35 feet in height.
5. Individual lots for townhouses shall have a minimum width of 18 feet, and have a depth of no less than eight feet.
6. Individual townhouse dwelling unit lots shall have a building coverage of the lot not in excess of 50% of the total individual lot.
7. Parking, landscaping, fence and access regulations pertaining to the typical business districts

B. Sanitary sewage. The developer shall provide within such planned unit development a sanitary sewage disposal system, which shall be of sufficient size and design to collect, dispose of or treat all sewage from all present and probable structures in said planned unit, and shall be otherwise constructed and maintained in conformity with the regulations of the state and county Health Departments.

C. Storm drainage. The developer shall provide within such planned unit development a storm drainage system, which shall be of sufficient size and design as will, in the opinion of the Town Engineer and/or Stormwater Management Officer, collect, carry off and dispose of all predictable surface water runoff within said planned unit development. The storm drainage system shall comply with any SWPPP approved by the Town in accordance with Article **V** of this chapter.

D. Water supply. The developer shall provide within said planned unit development a potable water system, which shall be of sufficient size and design to supply potable water to each of the structures to be erected in said planned development within a system to be approved by the Town Board and the New York State and county Health Departments. The developer shall also provide fire hydrants within 600 feet of each structure and provide for a pressure to be approved by the Town Board at each said hydrant.

E. Landscaping. The developer shall provide within the planned unit development a liberal and functional landscaping scheme, which shall comply with the minimum standards as set forth in this code.

F. Recreation sites. The developer shall provide land equal to not less than 20% of the total land area of the planned unit development to be devoted exclusively to permanent recreation sites, general open space and municipal uses. All lands set aside for permanent recreation sites and open space shall be of such location and nature to be, in the opinion of the Planning Board, suitable for such use. The ownership and future maintenance of all areas for such uses shall be subject to the approval of the Town Board, or such areas shall be offered for dedication to the Town. Said recreation sites and open space shall meet the standards set forth in this code.

§245-95 Application Procedures

- A. Preliminary proposal. The application shall explain and show the following information:
 1. The location and extent of all proposed land use, including open space.
 2. All interior streets, roads, easements and their planned public or private ownership, as well as all points of access and egress from existing public rights-of-way.
 3. A specific delineation of all uses, indicating the number of residential units and the density of each residential housing type, as well as the overall project density.
 4. The overall water and sanitary sewer system, with proposed points of attachment to existing systems; the proposed stormwater drainage system and its relation to existing systems; evidence of preliminary discussion and approval of the New York State Department of Health.
 5. A description of the manner in which any areas that are not to become publicly owned are to be maintained, including open space, streets, lighting and others according to the proposals.
 6. If the development is to be phased, a description and graphic representation of the phasing of the entire proposal in terms of length of time, type and number of units or activities completed per phase.
 7. Evidence, as required by the reviewing boards, of the applicant's ability to complete the proposed planned unit development.
 8. A description of any covenants, grants of easement or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including proposed easements for public utilities.
 9. A written statement by the landowner setting forth the reasons why, in his or her opinion, the proposal would be in the public interest and would be consistent with the Town's goals and objectives.
 10. If required for the proposed development under Article **V** of this chapter, a SWPPP, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to all relevant stormwater management provisions.
- B. Review standards. Within 60 days after receipt of the recommendation of the Town Planning Board, the Town Board shall hold one or more public hearings, as needed, public notice of which shall have been given in accordance with Chapter **62**, Article 16 of the Town Law, to determine the advisability of the proposal.
 1. The Town Board shall, within 45 days following the conclusion of the hearing(s), either:
 - a. Grant tentative approval of the planned unit development as submitted;
 - b. Grant tentative approval of the planned unit development subject to specified written conditions imposed by the Town Board; or
 - c. Deny tentative approval of the proposal.
 2. In the event that tentative approval is granted, either of the proposal as submitted or with conditions, the Town Board shall, as part of its resolution, specify the drawings, specifications and performance bond that shall be required to accompany an application for final approval. The landowner shall, within 30 days, notify the Town Board of his or her acceptance of or refusal to accept all specified conditions. If the landowner refuses to accept the conditions outlined, the Town Board shall be deemed to have denied tentative approval. If the landowner accepts, the proposal shall stand as granted. Tentative approval shall not qualify a proposal for recording nor authorize development or the issuance of building permits.
- C. Factors for consideration. The Planning Board's review of a preliminary development plan shall include, but is not limited to, the following considerations:

1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
 2. Adequacy and arrangement of pedestrian traffic access and circulation, including separation of pedestrian from vehicular traffic, walkway structures, control of intersections with vehicular traffic and pedestrian convenience, as recommended by the Town Public Vehicle Commission.
 3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
 4. Location, arrangement, size and design of buildings, lighting and signs; adequacy, type and arrangement of trees, shrubs and other landscaping constituting visual and/or noise-detering buffers between adjacent uses and adjoining lands.
 5. In the case of multiple-family dwellings, the adequacy of usable open space for playgrounds and informal recreation.
 6. Adequacy of stormwater management facilities and sanitary waste disposal facilities, in accordance with any SWPPP approved by the Town pursuant to relevant stormwater management provisions in Article **V** of this chapter.
 7. Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion.
 8. Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.
 9. The relationship of the proposed land uses to adjacent land uses and the use of buffer areas and open space to provide a harmonious blending of existing and proposed uses.
 10. Conformance with other specific recommendations of the Town Board which may have been required in the Town Board's examination of the proposed plan for development.
 11. Conformance with the requirements of Article **V** of this chapter.
- D. Application for final approval.
1. An application for final approval may be for land included in a plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the Town Board and to the Town Planning Board and within the time or times specified by the resolution granting tentative approval. The application shall include such drawings, specifications, covenants, easements, conditions and form of performance bond as were set forth by written resolution of the governing body at the time of tentative approval. A public hearing on the application for final approval of the plan, or part thereof, shall be required unless the plan, or the part thereof, submitted for final approval is, in the judgment of the Town Board, in substantial compliance with the plan theretofore given tentative approval.
 2. In the event that a public hearing is not required for final approval, and the application for final approval has been filed, together with all drawings, specifications and other documents in support thereof, and as required by the resolution of tentative approval, the Town Board shall, within 30 days of such filing and after receipt of a report thereon by the Town Planning Board, grant such plan as submitted. If a plan is filed containing variations from the plan given tentative approval, but remains in substantial compliance with the plan as submitted for tentative approval, the Town Board may, after a meeting with the landowner, refuse to grant final approval and shall, within 30 days from the filing of the application for final approval, so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the public interest. In the event of said refusal, the landowner may:
 - a. File his application for final approval without the variations objected to by the Town Board on or before the last day of the time within which he or she was authorized by the resolution granting tentative approval to file for final approval, or within 30 days from the date he or she received notice of said refusal, whichever date shall last occur; or

- b. Treat the refusal as a denial of final approval and so notify the Town Board.
- 3. In the event that the plan as submitted for final approval is not in substantial compliance with the plan as given tentative approval, the Town Board shall, within 30 days of the date the application for final approval is filed, so notify the landowner in writing, setting forth the particular ways in which the plan is not in substantial compliance. The landowner may:
 - a. Treat said notification as a denial of final approval; or
 - b. Refile his or her plan in a form which is in substantial compliance with the plan as tentatively approved; or
 - c. File a written request with the governing body that it hold a public hearing an application for final approval. If the landowner shall elect either Alternative (a) or (b) above, he or she may refile his or her plan or file a request for a public hearing, as the case may be, on or before the last day of the time within which he or she was authorized by his or her resolution granting tentative approval to file for final approval, or 30 days from the date he or she receives notice of said refusal, whichever date shall last occur. Any such public hearing shall be held within 30 days after request for the hearing is made by the landowner. Within 45 days after the conclusions of the hearing, the governing body shall by resolution either grant final approval to the plan or deny final approval of the plan.
- 4. A plan, or any part thereof, which has been given final approval by the Town Board shall be so certified without delay by the Town Clerk and shall be filed on record forthwith in the office of the Niagara County Clerk before any development shall take place in accordance therewith. Upon the filing of record of the plan, the zoning and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto. Pending completion within five years of said planned unit development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said plan, or part thereof, as finally approved, shall be made nor shall it be impaired by actions of the Town with or without the consent of the landowner.
- 5. In the event that a plan, or section thereof, is given final approval, and thereafter the landowner abandons said plan or the section thereof that has been finally approved, and so notifies the Town Board in writing; or, in the event that the landowner shall fail to commence and carry out the planned unit development within a reasonable period of time after final approval has been granted, no further development shall take place on the property included in the plan until after said property is resubdivided and is reclassified in accordance with the applicable provisions of law.
- E. County Planning Board review. Upon application for tentative or final approval of such plan, a copy shall be referred to the Niagara County Planning Board. If the County Planning Board recommends modifications of a plan so referred, the Town Board shall not act contrary to such recommendation, except after adoption of a resolution fully setting forth reasons for such contrary action.
- F. Changes after final approval. No changes may be made in the approved final plan during the construction of the planned development except upon application to the appropriate agency under the procedures provided below:
 - 1. Minor changes in the location, siting and height, length and width of buildings and structures may be authorized by the Planning Board if required by engineering or other circumstances not foreseen at the time the final plan was approved. No change authorized by this section may increase the cube of any building or structure by more than 10%.
 - 2. All other changes in use, any rearrangement of lots, blocks and building tracts, any changes in the provision of common open spaces and all other changes in the approved final plan must be approved by the Town Board under the procedures authorized by this code for the amendment of the Zoning Map. No amendments may be made in the approved final plan unless they are shown to be required by changes in the development policy of the community.

ARTICLE IX. Administration and Enforcement

§245-103 Enforcement

- A. The provisions of this Code shall be administered and enforced by the Zoning Officer appointed by the Town Board. The Zoning Officer is hereby empowered to inspect any building, other structure or tract of land and to order, in writing, the remedying of any condition found to exist therein or threat in violation of any provision of this code. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to comply with such order. Notwithstanding the foregoing, § 245-41 § 245-42 of this chapter shall be administered and enforced as provided therein.
- B. Inspections. The Zoning Officer shall make periodic inspections of any construction to ensure that the provisions of this code are being complied with in accordance with his or her approval.
- C. Records. The Zoning Officer shall keep a record of all approvals or rejections he or she may make pursuant to this code and such other records as the Town Board may require.

§245-104 Building Permit

- A. No building or structure shall be erected, extended or structurally altered until a building permit therefor has been issued by the Enforcement Officer in accordance with Town Code Chapter **155**.

§245-105 Certificate of Occupancy

- A. No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Enforcement Officer in accordance with Town Code Chapter **155**.

§245-106 Zoning Board of Appeals

- A. Operation and organization. The Board of Appeals, consisting of five members as constituted and empowered under § 267, as amended, of the Town Law on the effective date of this code, shall be continued. Vacancies occurring in such Board shall be filled in accordance with the Town Law. The Board of Appeals shall have all the powers and perform all the duties prescribed by statute and by this code.
- B. Permitted action. The Board of Appeals may reverse or affirm, wholly or partly, 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 in the matter by the administrative official charged with the enforcement of such ordinance or local law, and to that end shall have all the powers of the administrative official from whose order, requirement or decision the appeal is taken.
- C. Use variance.
 - 1. The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant a use variance, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this code or local law.
 - 2. No such variance shall be granted by the 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 Board of Appeals that:

- a. Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
 - b. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
 - c. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. The alleged hardship has not been self-created.
 - 3. The 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.
- D. Area variances.
- 1. The Board of Appeals shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of such ordinance or local law, to grant area variances from the area or dimensional requirements of such ordinance or local law.
 - 2. In making its determination, the 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 Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - 3. The 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.^{[14](#)}
 - 4. Imposition of conditions. The 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, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood community. Also, such variances shall become null and void unless exercised within one year from the date so granted.
- E. Procedures.
- 1. Meetings, minutes, records. Meetings of such Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. Such Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.
3. Assistance to Board of Appeals. Such Board shall have the authority to call upon any department, agency or employee of the municipality for such assistance as shall be deemed necessary and as shall be authorized by the Town Board.
4. Jurisdiction. Unless otherwise provided by local law or ordinance, the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals, reviewing any order, requirement, decision, interpretation or determination made by an administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such Board shall have the authority to call upon any department, agency or employee of the municipality for such assistance as shall be deemed necessary and shall be authorized by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.
5. Time of appeal. Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative officer charged with the enforcement of such ordinance or local law by filing with such administrative official and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal.
6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of action appealed from unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
7. Hearings. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice thereof by the publication in a paper of general circulation in the Town at least five days prior to the date thereof. The Zoning Officer shall, at least five days prior to the date of hearing, give written notice to the Board of Appeals that all property owners within 250 feet of the property to be affected have been notified of said appeal. The written notice may be a document signed by the respective landowners, or a copy of the correspondence the applicant sent to the landowners with the return receipt affixed to same.
8. Time of decision. The Board of Appeals shall decide upon the appeal within 62 days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.
9. Filing of decision. The findings of facts and the decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
10. State Environmental Quality Review Act (SEQRA). The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations.

§245-107 Planning Board

- A. Appointment. The Town Board authorizes the appointment of a five- or a seven-member Planning Board as more fully described in Town Law § 271. Terms of all Planning Board members shall be staggered as the law requires.
- B. Officers, rules and expenses.
 - 1. The Town Board may select a Chairman of the Planning Board, or on failure to do so, the Planning Board shall elect a Chairman from its own members.
 - 2. The Planning Board shall have a Secretary appointed by the Town Board. The Planning Board Secretary shall notify the Town Board of all actions coming before the Planning Board for review.
 - 3. The Planning Board may adopt rules or bylaws for its operation.
 - 4. The Town Board shall provide an appropriation to the Planning Board to cover necessary expenses, including the means for the Planning Board to maintain a written record of its meetings and public hearings.
- C. Functions. The Planning Board shall:
 - 1. Prepare or revise a Comprehensive Plan for the Town.
 - 2. Review and comment on all proposed zoning amendments after referral to the County Planning Board.
 - 3. Conduct site plan review as required elsewhere in this code.
 - 4. Render recommendations on all requests for rezonings.
 - 5. Render assistance to the Zoning Board of Appeals upon request.
 - 6. Research and report on any matter referred to it by the Town Board.
 - 7. Initiate investigations, maps, reports and recommendations in matters related to planning and development.