Chapter 229

ZONING

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[HISTORY: Adopted by the Town Board of the Town of Clarence 3-9-2005 by L.L. No. 3-2005. Amendments noted where applicable.]

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GENERAL REFERENCES

Conservation easements — See Ch. 8

Planning Board — See Ch. 45.

Zoning Board of Appeals — See Ch. 54.

Building construction and fire prevention — See Ch. 67.

Comprehensive Plan — See Ch. 81.

Excavations — See Ch. 93.

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Signs — See Ch. 181.

Special events — See Ch. 187.

Subdivision of land — See Ch. 193.

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ARTICLE I
Purpose and Applicability

§ 229-1. Authority.

This local law is hereby adopted pursuant to the authority conferred by Article 16 of the Town Law and Section10 of the Municipal Home Rule Law of New York State.

§ 229-2. Purpose.

A. The Town of Clarence Zoning Law is established for the purpose of promoting the public health, safety and welfare, and the most appropriate use for which the land in each district may be adapted; for conserving the value of buildings; and for enhancing the value of land throughout the Town.

B. The purpose of this chapter is to provide the minimum regulations necessary to facilitate safe and orderly growth and to ensure that growth forms an integral part of a community of functional neighborhoods and town centers; increases collective security and community identity to promote civic awareness and responsibility; and enhances the quality of life for the entire Town to ensure the greatest possible economic and social benefits for all residents.

C. To these ends, the Zoning Law, districts, and maps have been prepared with due consideration of future growth; the promotion of a sensibly built environment which respects local and regional architecture; the promotion of an integrated and balanced transportation system based on pedestrian, transit and automobile use; the adequate provision of water and sewer infrastructure, schools, parks and other public necessities; and for the preservation and enhancement of the natural environment through the protection and replenishment of forests by landscaping of the public realm and supplemental plantings for projects which reduce existing tree cover resources.

D. This law was prepared based on the goals as adopted in the Comprehensive Plan of the Town of Clarence in accordance with New York State Town Law § 263 and is established to implement the goals identified therein.

§ 229-3. Title.

This chapter is officially titled as "The Zoning Law of the Town of Clarence, New York," and shall be known as the "Zoning Law." The official map designating the various zoning districts shall be titled, "Town of Clarence, New York, Official Zoning Map," and shall be known as the "Zoning Map" or "Official Zoning Map."

§ 229-4. Jurisdiction.

This chapter governs the development and use of all land and structures within the corporate limits of the Town of Clarence, New York, said territory being indicated on the Official Zoning Map as is on file at the Planning and Zoning Department. This Map and its boundaries shall be incorporated and made part of this chapter.

§ 229-5. Separability.

If any section or specific provision or standard of this chapter or any zoning district boundary that may exist in the future is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall

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remain in full force and effect.

§ 229-6. Effective date.

This chapter shall become effective upon the date of adoption by the Clarence Town Board. Upon such date, this chapter shall replace the previous Town of Clarence Zoning Law, adopted August 18, 1942, and any amendments to said Law made after said date.

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ARTICLE II
General Provisions

§ 229-7. Applicability.

The following provisions shall apply throughout the jurisdiction of this chapter, regardless of the underlying regulating district.

§ 229-8. Lot standards.

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located.

A. No yard or lot existing at the time of passage of this chapter shall be reduced in size or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter.

B. Every building hereafter erected, moved or structurally altered shall be located on a lot and in no case shall there be more than one principal building and its customary accessory building(s) on any lot, except in appropriate zoning districts which permit a lot to contain both residential and commercial uses in one or more principal structures or within the same structure.

C. Nothing in this chapter shall be deemed to require any change in the plans, construction or designed use of any building or structure upon which a building permit was secured prior to the adoption of this chapter, so long as said building permit remains valid.

D. All nonresidential lots shall have access available from a public street or a thirty-six-foot maintained easement for use by service or emergency vehicles.

E. Any group of five or more residential lots must have access available from a paved public street with a minimum sixty-foot right-of-way, except that a private driveway may be allowed to service developments that meet the open development area regulations, open space design development requirements, and other developments that the Town Board determines that a public benefit cannot be derived.[1]

§ 229-9. Irregular lot setbacks.

The Zoning Enforcement Officer shall determine the location of required front, side and rear yards on irregularly shaped lots. The determination will be based on the spirit and intent of this chapter to achieve an appropriate spacing and location of buildings and structures on individual lots, subject to review and approval of the Zoning Board of Appeals.

§ 229-10. Stormwater runoff.

Any site of disturbed ground over one acre in size shall adhere to the following provisions:

A. All proposed stormwater management facilities shall be analyzed, designed, and constructed in accordance with the New York State Stormwater Management Design Manual (October 2001 or most current edition), be compliant with all Environmental Protection Agency Stormwater Phase II regulations and requirements, and be compliant with requirements of the Building and Engineering

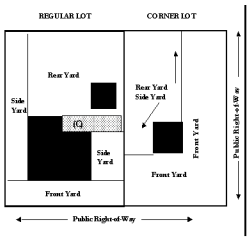
1. **Editor's Note: Former Subsection F, regarding the right-of-way for up to four residential lots, which immediately followed this subsection, was repealed 2-14-2007 by L.L. No. 1-2007.**

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Departments.

§ 229-11. Required yards.

All lots shall provide required yards as shown:



A. Rear yards extend from the corner of a structure forming the primary rear wall facade of the structure to the back lot line.

B. Structures with staggered rear facade walls shall measure rear yards from the corner of the wall with the longest facade facing the rear lot line.

C. Structures with two staggered rear walls of equal length may measure the rear yard from either facade corner.

D. Side yard lots at street corners have no corner side yard requirement. Corner lots have a V-shaped front yard along all highway rights-of-way to the closest point of the principal structure.

§ 229-12. Temporary structures.

Temporary structures and uses, when in compliance with all applicable provisions of this chapter and all other laws, ordinances, and regulations of the Town of Clarence, shall be allowed. The following temporary structures and uses shall be permitted:

A. Construction trailers used in conjunction with construction projects, provided that the following conditions are met:

   (1) Such construction trailers may be located at a building site where there is a valid building permit for the construction project or, in the case of a residential subdivision, a valid building permit for at least one of the residential units being constructed.

   (2) All construction trailers shall be located at least 10 feet off any street right-of-way and not be placed in any required rear or side yard setback.

   (3) Any construction trailer must be removed before an occupancy permit may be issued for the premises on which it is located.

B. Certain uses of a temporary nature (i.e., less than 90 days in duration one time per calendar year) which would not otherwise be permitted in a particular zoning district may be issued a temporary permit as herein provided. Upon completion and submittal of a peddler's, hawker's, and solicitor's license application or a special event application, the Zoning Enforcement Officer may grant a zoning permit for the following temporary uses:

   (1) Christmas tree sales.

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(2) Seasonal agricultural produce stands.

(3) Pumpkin sales.

(4) Other sales activities in conjunction with the Peddlers, Hawkers, and Solicitors Ordinance of the Town of Clarence (Chapter 147 of the Code of the Town of Clarence) or the Special Events Law (Chapter 187 of the Code of the Town of Clarence).

The permit shall be valid for a specified period only, not to exceed 90 days in duration and only for normal business hours. A permit for a temporary use under this section may not be issued in the Single-Family Residential Zoning District.

C. Structures, whether temporary or permanent, located in a subdivision and used as sales offices for the subdivision development are permitted in accordance with the following conditions:

(1) Any temporary structure used as a sales office shall be located on a lot which is in compliance with the regulations of this chapter and shall meet all yard requirements for the applicable zoning district. A minimum of three off-street parking spaces shall be provided on the lot to accommodate persons using the sales office. A landscape plan approved under the Landscape Ordinance (Chapter 131 of the Code of the Town of Clarence) shall be provided to create an aesthetically pleasing appearance.

(2) At the completion of the sales in a tract, or one year from the date the temporary sales office began operation, whichever is sooner, said sales office shall cease operation unless the body with final approval authority, either Town Board or Planning Board, determines that substantial progress is being made in the selling and/or marketing of the lots and/or homes in the subdivision. In such case, one or more extensions (each not to exceed one year in duration) may be so authorized by the body with final approval authority, either the Town Board or Planning Board. **[Amended 12-1-2010 by L.L. No. 5-2010]**

D. Residential storage and refuse containers, when being placed in association with a construction activity or temporary storage of property, are allowed in accordance with the following conditions: **[Added 8-22-2018 by L.L. No. 8-2018]**

(1) To be placed on private property.

(2) To be removed within 60 days of placement. Residential storage and refuse containers that are present in excess of the stated time limits shall be deemed permanent accessory structures and must to comply with all relevant Town Code and permitting.

(3) Where construction activity is taking place, and to be removed within 30 days of completion of said construction. Residential storage and refuse containers that are present in excess of the stated time limits shall be deemed permanent accessory structures and must to comply with all relevant Town code and permitting.

§ 229-13. Temporary conditional permits.

A. Uses designated as "permitted uses" and "uses permitted with special exception use permits" can be considered and may be applied for through the Planning and Zoning Department. The Town Board,

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pursuant to this chapter, may allow any application for uses not listed only after the provisions of this section have been met.

B. It is recognized that new types of land use will develop and forms of land use not anticipated may seek to locate in Clarence. To provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

(1) For any use not listed in this chapter, the Zoning Enforcement Officer shall refer the use permit application to the Town Board to determine if said use can reasonably be interpreted to fit into a use category where similar uses are described in the Zoning Law.

(2) Uses preexisting the adoption of this chapter that are not listed as permitted uses are allowed to remain as nonconforming uses in accordance with this chapter. Unless a use is allowed as a "permitted," "special exception use," "temporary conditional," or "nonconforming use," then such use is expressly prohibited in that district by this chapter.

C. The Town Board may authorize the granting of a temporary conditional permit for uses not specifically enumerated within a zoning district. Such permits may be issued in all zoning districts, except the Residential Single-Family District, and are designed for nonpermanent uses and are subject to conditions as established by the Town Board.

(1) Applications.

(a) Applications shall be made through the Planning and Zoning Office to the Town Board.

(b) Temporary conditional permits may only be issued after a public hearing thereon and may be referred to the Planning Board for site plan review and compatibility with the Town's Comprehensive Plan.

(c) The Town Board shall set conditions on the proposed use to ensure compatibility with the surrounding residents.

(2) Permits.

(a) Initial approval for temporary conditional permits shall be for a period not to exceed one year. Subsequent renewals may be extended at the discretion of the Town Board for a term not to exceed five years.

(b) Consideration shall be given to the quiet enjoyment of the surrounding residents. The Town Board may deny an application based upon a finding that the proposed use would negatively impact the quiet enjoyment of the surrounding residents and is not compatible with the Town's Comprehensive Plan.

(3) Conditions.

(a) The Town Board shall set conditions on the proposed use to ensure compatibility with the surrounding residents.

(b) Any violation of such conditions shall constitute a violation of the Zoning Law. The Zoning Enforcement Officer will then execute the enforcement section of this chapter.

(c) The Town Board, after a public hearing and notice, shall have the authority to revoke a temporary conditional permit upon discovery of a violation of the conditions established to allow such permit.

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(4) Nontransferability. Temporary conditional permits shall be tied to a specific use upon a property and may not be transferred from one owner to another or changed in any manner without approval of the Town Board.

§ 229-14. Vibration, noise, odor, and lighting.

A. Vibration. No established use in any district shall be operated so as to generate inherent or recurring ground vibrations detectable at the property line which create a nuisance to any person of ordinary sensitivities on another property.

B. Noise. Every use of land shall be operated in such a way that regularly recurring noises are not disturbing or unreasonably loud and do not cause injury, detriment, or nuisance to any person of ordinary sensitivities. Every nonresidential use in any zoning district which adjoins a residential district must be operated in such a way that any noise which may be detected by the human senses without instruments at the district boundary line is no louder than the noise which could be expected from uses permitted in those residential districts.

C. Odor. Every use of land shall be operated in such a way that regularly recurring odors are not disturbing and do not cause injury, detriment or nuisance to any person of ordinary sensitivities on another property.

D. Lighting. No use on any property shall incorporate lighting that exposes adjoining residential properties to excessive exposure after 11:00 p.m. on any night. Any commercial property shall employ shield lighting of downcast intensity. The lighting requirements are specifically described in Article XVI, § 229-151, of this chapter (Site Plan Review Criteria).

§ 229-15. Yard and garage sales.

Yard, garage, tag, patio and apartment sales are permitted without a permit as an accessory use on any residentially or institutionally developed lot in any zoning district under the Special Events Law (Chapter 187 of the Code of the Town of Clarence). Such sales shall be limited to no more than 10 days, two times per calendar year. Temporary signs announcing such sales may not be placed on any utility poles or street signs and must be removed immediately upon completion of the sale.

§ 229-16. Parking of commercial and recreational vehicles.

A. Recreational vehicles.

(1) For purposes of this chapter, a recreational vehicle shall not be deemed a dwelling unit and the usage of a recreation vehicle for living, sleeping or housekeeping purposes and the connection of such vehicle to utility services (other than for periodic maintenance and/or repair purposes) shall be prohibited unless the vehicle is located in a camping and recreational vehicle park so designed to accommodate recreational vehicles.

(2) No more than one recreational vehicle may be stored on any residentially zoned lot.

(3) Any recreational vehicle that is parked on a property must be owned and registered within the last year to the owner or occupant of the property where it is placed.

B. Commercial vehicles. On any lot of less than one acre in size, which is located in any single-family residential or agricultural zoning district, one commercial vehicle of no greater than 10,000 pounds and one rear axle may be parked on an overnight basis and shall be limited to vans and pickup trucks.

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All other commercial vehicles are prohibited. The vehicle must be owned and registered within the last year to the owner or occupant of the property where it is placed. The requirement shall not be interpreted to prohibit vehicles from loading and unloading household goods in any zoning district for a period of up to 24 hours. **[Amended 2-14-2007 by L.L. No. 1-2007]**

C. Prohibited vehicles. No residentially zoned lot may be used as the base of operation for any freight hauling truck and commercial passenger vehicles.

D. Location and screening. Any recreational vehicle placed upon property in any residential zoning district shall be placed on a paved driveway or in the side or rear yard of a property. If the vehicle is placed in the side or rear yard area, then it must be set back at least three feet from any property line and shall be screened from view of adjoining properties. No recreational vehicle may be placed in the front yard of any residence, unless it is placed on the paved driveway.

E. Conformance with Abandoned Vehicles Ordinance. Any vehicle parked outside of a wholly enclosed building must meet the requirements of the Abandoned Vehicles Ordinance (Chapter 209 of the Code of the Town of Clarence).

§ 229-17. Private vehicle sales.

Every property owner has a vested right to sell his or her personal or commercial vehicles from his or her property under the following requirements:

A. The vehicle must be owned by the property owner or his or her immediate family member.

B. One vehicle may be sold at any one time.

C. A total of four vehicles may be sold in any three-hundred-sixty-five-day period. A total of 30 days maximum shall be permitted for the vehicle to be displayed for sale outside of a wholly enclosed structure. **[Amended 2-14-2007 by L.L. No. 1-2007]**

D. All vehicles displayed for sale must meet the requirements of the Abandoned Vehicle Ordinance, Chapter 209 of the Code of the Town of Clarence.

§ 229-18. Produce stands.

Local farmers operating within the Agricultural-Flood and Agricultural-Rural Residential Zoning Districts may have produce stands to retail their produce grown on site. Produce stands not located in a permanent structure shall adhere to the following provisions:

A. Must have property owner permission to operate on a lot.

B. Permit shall be good for the time period May through October only.

C. Trailers shall not be used as temporary structures.

D. All parking shall be accommodated on site.

E. All structures shall comply with the setback provisions of the district and all signs shall be in conformance with the Town of Clarence Sign Law (Chapter 181 of the Code of the Town of Clarence).

§ 229-19. Customary home occupations.

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A. Owners or occupants of residential living units may operate an occupation following these provisions in order to ensure that the residential character of the unit remains intact:

(1) Not more than 25% of the net floor area of the home is used for the occupation.

(2) No nonresidents are employed therein, except as permitted in Subsection B below.

(3) Only household appliances and equipment are used.

(4) There is no outside display of merchandise and no on-premises outdoor advertising in excess of the provisions granted in the Sign Law (Chapter 181 of the Code of the Town of Clarence).

(5) No use shall create a noise, dust, odor, fire or traffic nuisance or hazard.

B. One nonresident assistant may be employed in a professional office of a doctor, dentist, musician, teacher, lawyer, architect, artist, or member of some recognized profession in the principal building of the residents therein.

C. No building in the Single-Family Residential Zoning District shall be used as a tourist home and not more than two boarders may be kept by a resident family.

§ 229-20. Parking.

A. Permit required.

(1) No person, firm or business entity shall construct or alter an off-street parking area for a commercial use without first obtaining a permit in accordance with the site plan review procedures set forth in § 229-151 (Site Plan Review) of this chapter. **[Amended 12-1-2010 by L.L. No. 5-2010]**

(2) Any residential driveway cuts or parking areas shall meet the requirements of the highway work permit procedures of the agency with jurisdiction.

B. General design standards.

(1) Any off-street parking area shall be designed so that vehicles should be exiting forward out of such areas without backing onto a public street.

(2) Off-street parking areas of all developments shall be designed so that sanitation, snow removal, emergency, and other public service vehicles can serve such developments without restriction or obstruction.

(3) Every off-street parking area shall be designed so that vehicles cannot extend onto public rights-of-way, sidewalks, or tend to bump against or damage any wall, vegetation or other structure.

(4) Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians and without interfering with parking areas.

(5) No off-street parking area shall be located over an active or auxiliary septic tank field.

C. Parking space dimensions.

(1) Each parking space, (other than those designed for the disabled) shall contain a rectangular area at least 19 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain

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within them the rectangular area required by this section.

(2) Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than 20 feet long by eight feet wide.

D. Aisle and driveway widths.

(1) Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking.

	Angle of Parking (degrees)				
Aisle width (feet)	0	30	45	60	90
One-way traffic	13	13	13	18	20
Two-way traffic	19	19	20	22	24

(2) Driveways shall be not less than 10 feet in width for one-way traffic and 18 feet in width for two-way traffic, except that ten-feet-wide driveways are permissible for two-way traffic when: a) the driveway is not longer than 80 feet; b) it provides access to not more than 10 spaces; and c) sufficient turning space is provided so that vehicles need not back into a public street. In no case shall a driveway width exceed 30 feet, except as required by the New York State Department of Transportation or the Erie County Department of Public Works Division of Highways.

E. Handicap parking.

(1) In general, the Town of Clarence enforces the State of New York Building and Fire Prevention Code regarding handicap parking.

(a) Except for a lot containing a single-family or duplex dwelling, all uses shall be required to provide the following number of spaces designed for disabled persons.

Total Number of Required Off-Street Parking Spaces	Total Number of Spaces Required for Disabled
1-50	1
51-100	2
101 or more	2 plus one for every 50 spaces over 100

(b) The number of such spaces shall be in addition to any required spaces.

F. Minimum parking requirements.

(1) Certificates of occupancy shall not be issued until all provisions of this section have been met. All square footage is in gross square feet (GSF) of building area. One per 100 square feet or no

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parking minimum at the discretion of the board with approval authority, if designated ride hailing and ride sharing drop-off/pick-up areas are provided, and pedestrian accessibility within the property and to adjacent rights-of-way is provided. **[Amended 2-14-2007 by L.L. No. 1-2007; 8-22-2018 by L.L. No. 8-2018]**

Residential (all districts all types)	2 per unit
Institutions of higher learning	1.5 per two students/1 per two residents
All other schools	1.5 per classroom
Government institutions	1 per 300 square feet/1 per four seats of meeting area
General health and welfare institutions	1 per bed, plus 1 per 100 square feet of medical office
Religious institutions/cultural facilities	1 per 4 seats
Civic/social/fraternal organizations	1 per 200 square feet/1 per four seats
Group homes	1 per three residents
Child-care centers	1 per 10 children, 1 per employee
Nursing homes/retirement	1 per three beds
Manufacturing/warehousing/ light assembly	1 per employee of maximum shift, 1 per 200 square feet of office
All other industrial uses	1 per 400 square feet
Professional office	1 per 200 square feet
Medical office	1 per 100 square feet
Retail	1 per 150 square feet
Theaters/restaurants	1 per three seats
Night clubs/lounges/bars	1 per 100 square feet
Drive through (queuing lanes)	12 car lengths for first window; eight car lengths each additional window
Personal service shops	1 per 100 square feet
Beauty salons or barbershops	2 per operator station
All other commercial	1 per 200 square feet
Commercial uses in a TND	1 per 1,000 square feet
Bed-and-breakfast inns/hotels	1 per room, plus 2 for owner
Convention facilities	1 per 250 square feet

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(2) Any use not specifically addressed or referred to in this list shall have parking requirements recommended by the body with final approval authority, either Town Board or Planning Board, and approved by the body with final approval authority, either Town Board or Planning Board. The body with final approval authority, either Town Board or Planning Board, may deviate from the above parking requirements during site plan review. **[Amended 12-1-2010 by L.L. No. 5-2010]**

(3) Shared access and parking arrangements with adjoining properties shall be reviewed and approved by the body with final approval authority, either Town Board or Planning Board. Appropriate legal access agreements shall be provided by the applicant and approved by the Town Attorney prior to final approval by the body with final approval authority, either Town Board or Planning Board. **[Amended 12-1-2010 by L.L. No. 5-2010]**

(4) The body with final approval authority, either Town Board or Planning Board, may recommend that green space be substituted in lieu of the required parking area on a particular site plan, depending upon the proposed use. **[Amended 12-1-2010 by L.L. No. 5-2010]**

§ 229-21. Outside display of materials.

A. The visibility of the outside display of product must be regulated to ensure that the health, safety and general welfare of the citizens of the Town are protected. The following regulations are established to ensure that outside displays are reviewed and approved in a consistent manner and implemented to ensure the visual impacts associated with such displays are compatible to the character of the community.

B. Outside displays shall include any display of materials for sale outside of any enclosed structure.

C. Special exception use permit uses. Businesses which by the nature of the product sold desire outside displays shall receive initial approval for such displays via the special exception use permit process. Such businesses include, but are not limited to, motor vehicle sales, recreational vehicle sales, landscape and nursery product sales and lumber and building supply sales.

D. Other displays within permitted uses. Other than special exception use displays, all other businesses must apply for a permit from the Planning and Zoning Office to undertake outside displays and must meet the following regulations. No additional signs or other advertising devices, including balloons, lights, flashing lights, strings of flags or pennants or other similar devices with moving, fluttering or revolving items, shall be allowed.

(1) Outside display areas must meet all side and rear yard zoning setback requirements.

(2) Outside display areas must be set back at least 10 feet from any street or highway right-of-way line.

(3) If any outside display is proposed within an approved parking area, temporary fencing or other means of separation shall be utilized to enhance the safety of the display.

E. Permit process.

(1) Applicants shall submit a site plan, drawn to scale, depicting the location of the display. Such plans shall indicate setbacks from all property lines, parking plans and pedestrian flow patterns.

(2) In reviewing applications for outside displays, the Planning and Zoning Department shall not allow outside displays which negatively affect the health, safety and welfare of the residents of

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the Town. No outside display shall restrict:

(a) Vehicular traffic flow.

(b) Pedestrian access and safety.

(c) Fire lane access visibility.

(d) Existing lighting systems.

(e) Line of sight for incoming and outgoing vehicles.

(3) The Planning and Zoning Department shall have the authority to reject any application based upon its potential negative impact to any of the above listed items. Appeals of a decision of the Planning and Zoning Department shall be directed to the Town Board.

(4) Outside display permits shall be valid for a period of one year.

(5) Any person, group or corporation operating in contravention to the regulations described in this section shall be in violation of the Zoning Law.

§ 229-22. Zoning Map interpretation.

A. The map entitled "Town of Clarence, New York, Official Zoning Map," as certified as such by the Town Clerk, is hereby declared to be the proper zoning for said districts as of the effective date of this chapter.[2]

B. For purposes of interpretation of district boundaries as shown on the Official Zoning Map, the following rules shall apply:

(1) Boundaries indicated as approximately following the center line of streets, highways or alleys shall be construed to follow such center lines.

(2) Boundaries indicated as approximately following lot lines shall be construed as following such lot lines.

(3) Boundaries indicated as approximately following corporate limits shall be construed as following such corporate limits.

(4) Boundaries indicated as parallel to or extensions of features indicated in this section shall be construed as such. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the Map.

(5) Boundaries indicated as following the boundary limits of the Town of Clarence shall be construed as following such boundaries.

(6) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by this section, the Zoning Board of Appeals shall have the authority to interpret the district boundaries.

§ 229-23. Grade.

A. The Building Inspector, in conjunction with the Town Engineer, shall determine or approve the grade

2. **Editor's Note: The Official Zoning Map, as amended, is included at the end of this chapter.**

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of the top of the foundation wall of all buildings or structures before granting a building permit. The Building Inspector shall determine the top of foundation wall, which shall be used in determining the grade. The top of the foundation wall shall not be less than 1/4 inch or more than 1/2 inch above the crown of the abutting roadway for each foot of distance measured between the center of the abutting roadway and the center of the front building foundation wall with a maximum of 40 inches above the center of an abutting roadway.

B. If the natural grade exceeds 1/2 inch per foot, or if existing buildings on the same side of the roadway within 500 feet have grades in excess of 1/2 inch per foot, or if the existing buildings so located have setbacks materially different from the required setback, the Building Inspector may authorize and approve a different elevation which, in his judgment, will provide reasonable and uniform grades.

C. The determination of the Building Inspector and/or the Town Engineer establishing a grade of the top of foundation wall may, upon proper application, be subject to review and change or modification by the Zoning Board of Appeals.

D. Proposed structures exceeding 100 feet of setback from a highway right-of-way shall be approved by the Building Inspector with a maximum top of the foundation wall 24 inches over existing grades.

E. Daylight and walkout basement construction shall conform to the general provisions for grade and meet the technical requirements of the Town Engineer.

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ARTICLE III
Zoning Districts

§ 229-24. District enumerated. [Amended 6-27-2007 by L.L. No. 3-2007; 9-12-2012 by L.L. No. 3-2012; 1-17-2018 by L.L. No. 1-2018; 8-14-2024 by L.L. No. 1-2024]

A. The Zoning Districts of this chapter establish development provisions on a sliding scale from more rural to more urban. Together, the districts create the fabric of the Town.

A-FZ	Agricultural Flood Zone
A-RR	Agricultural Rural Residential
RSF	Residential Single-Family
	Sewered lots
	Unsewered lots
TND	Traditional Neighborhood District
CFD	Community Facilities District
LC	Lifestyle Center
RB	Restricted Business
C	Commercial
MA	Major Arterial
I	Industrial Business Park

B. The Overlay Districts provide a set of provisions applicable to all properties within the overlay, regardless of the underlying regulating district, and are aimed at creating and maintaining a desired character.

CH-O	Clarence Hollow — Overlay Zone
OSD-O	Open Space Design Development — Overlay Zone
AEF	Adequate Educational Facilities Overlay District Clarence Center Overlay District

C. Prohibited uses, generally. Any use not specifically set forth as a permitted use (whether permitted as of right, upon special exception use permit, or as an accessory use) in any zoning district or overlay district shall be prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district.

§ 229-25. Schedule I, Use Controls, and Schedule II, Lot Dimensions and Area Requirements.

Schedules I and II consolidate the information contained within this chapter into a tabular form for ease of use. The schedules are to be used as guides and any clarification of law should be referenced in the text.[3]

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3. **Editor's Note: Schedules I and II were removed from this chapter 3-11-2020 by L.L. No. 1-2020.**

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ARTICLE IV
A-FZ Agricultural Flood Zone

§ 229-26. Intent.

Agricultural zoning districts are intended to accommodate primarily agricultural operations and associated low-density residential development. Lot size and density is primarily determined by soil quality and the location of the Black Creek Density Floodway (BCDF). The intent of this district is to maintain a rural boundary, preserving agricultural and forested areas of Clarence.

§ 229-27. Permitted uses.

A. Agricultural operations.

B. Single-family homes.

C. Two-family homes. **[Amended 2-14-2007 by L.L. No. 1-2007]**

D. Modular homes.

E. Golf courses.

F. Churches (under 10,000 square feet).

G. Parks.

H. Playgrounds.

I. Public utility facilities.

J. Home occupations.

K. Riding academies.

L. Cemeteries.

M. Greenhouses or nurseries.

N. Schools.

§ 229-28. Uses permitted with a special exception use permit.

A. Bed-and-breakfast inns.

B. Expanded home occupations.

C. Rooming or boarding houses.

D. Churches (over 10,000 square feet).

E. Telecommunications towers (Chapter 173 of the Code of the Town of Clarence).

F. Beauty salons or parlors.

G. Secondary living units. **[Added 2-14-2007 by L.L. No. 1-2007]**

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§ 229-29. Lot area provisions. [Amended 2-14-2007 by L.L. No. 1-2007]

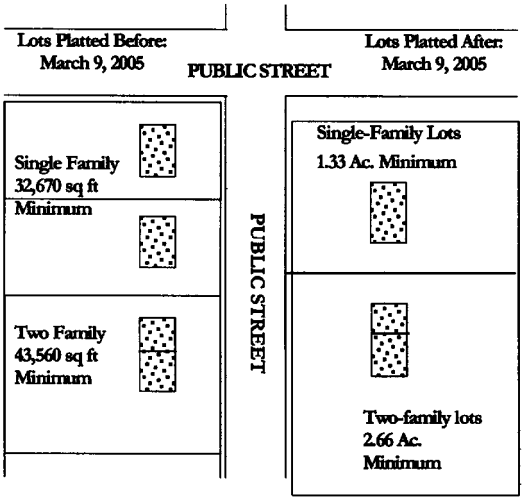
A. Lots platted prior to March 9, 2005 shall be a minimum of 32,670 square feet for single-family lots and one acre for two-family lots, subject to increase by the Erie County Health Department.

(1) All lots within the Black Creek Density Floodway must meet the requirements of the Flood Damage Prevention Law (Chapter 107 of the Code of the Town of Clarence).

B. All lots platted after March 9, 2005 shall adhere to the following lot size provision:

(1) Minimum: 1.33 acres for single-family lots and 2.66 acres for two-family lots, subject to increase by the Erie County Health Department.

(2) All lots located within the Black Creek Density Floodway shall conform to the requirements of the Flood Damage Prevention Law (Chapter 107 of the Code of the Town of Clarence).



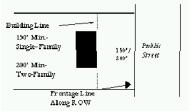
§ 229-30. Lot width.

A. All lots located within the Black Creek Density Floodway must meet the minimum requirements of the Flood Damage Prevention Law (Chapter 107 of the Code of the Town of Clarence).

B. All single-family lots must front along a minimum of 150 feet of publicly dedicated right-of-way. All two-family lots must front along a minimum of 200 feet of publicly dedicated right-of-way.

C. Minimum lot width at building line: 150 feet for single-family homes; 200 feet for two-family homes.

D. Exception: Lots widths for lots platted prior to the date of adoption of this chapter shall be of sufficient width to accommodate a home and required side yard setbacks in accordance with the Flood Damage Prevention Law, Chapter 107 of the Code of the Town of Clarence.



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§ 229-31. Setbacks.

Setbacks. Setbacks shall be equal to the average setbacks for principal buildings on the same side of the street within 500 feet. Building and street facades shall extend parallel to front property lines. The Zoning Board of Appeals shall determine frontage for irregularly shaped lots.

A. Where there are no such buildings, minimum setbacks shall be as follows:

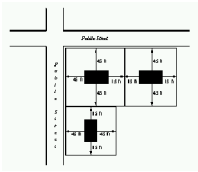
(1) Front: 45 to 200 (maximum) feet.

(2) Side: 15 feet.

(3) Rear: 45 feet.

(4) No front yard setback line established by the Code Enforcement Officer may vary more than 10 feet except upon application and approval of the Zoning Board of Appeals.

(5) Side yards which abut a public or private street shall have the same minimum setback as the front yard setback. Minimum side yards for side load garages shall extend no closer than 28 feet to the side lot line. There shall be a minimum of a three-foot setback requirement from any lot line along a driveway for required drainage.



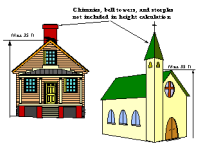
§ 229-32. Building size.

The minimum building size for principal structures shall be 1,000 square feet for a single-family unit. The minimum building size for a two-family unit shall be 2,000 square feet.

§ 229-33. Building height.

A. The vertical distance from the mean elevation of the finished grade of the frontage street to the ridgeline. All uses will be no more than 35 feet.

B. Exceptions: roof equipment and structures not intended for human occupancy and which are necessary to the building upon which they are placed.



§ 229-34. Accessory structures. [Amended 2-14-2007 by L.L. No. 1-2007]

A. The following uses are permitted within outbuildings:

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(1) Agricultural support structures.

(2) Greenhouses.

(3) Parking facilities.

(4) Gazebos.

(5) Pool houses.

(6) Equipment enclosures.

(7) Barns.

(8) Saunas.

(9) Workshops.

(10) Conservatories.

(11) Permitted home occupations.

B. Trash containers, mechanical equipment and outdoor storage shall be located only within the rear yard or side yard and be screened from public view.

C. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, school bus shelters, and pump covers may be placed in any front, side or rear yard. Doghouses may be placed in rear yards only.

D. A principle structure must be erected before an accessory structure will be permitted on any lot.

E. Accessory structures may only occur in side and rear yards.

F. Dimension and area requirements.

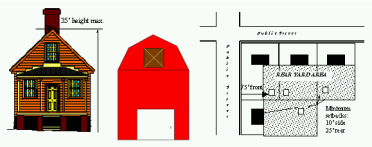
(1) Maximum height: 35 feet.

(2) Minimum side yard setback: 10 feet; five feet if 200 square feet or less.

(3) Minimum rear yard setback: 25 feet; five feet if 200 square feet or less.

(4) Minimum front yard setback: 75 feet, except private garages.

(5) Minimum setback from principal structure: six feet.



§ 229-35. Lot coverage.

The maximum building footprint for any residential lot shall not exceed 10% of the entire lot area. The building footprint shall include all aspects of the principal structure under a roof and over a foundation, excluding exposed porches and including attached garages. This footprint shall not include any accessory

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buildings or detached garages which meet requirements as herein stipulated.

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ARTICLE V
A-RR Agricultural Rural Residential

§ 229-36. Intent.

Agricultural Rural Residential Districts are intended to accommodate low-density residential development. Lot size and density is primarily determined by access to public or community water and sewer infrastructure. The intent of this district is to maintain a rural boundary, preserving agricultural, open space, and forested areas on the perimeter of Clarence in order to transition from vacant or idle land to rural residential uses consistent with the planned growth objectives of the Town.

§ 229-37. Permitted uses.

A. Single-family homes.

B. Modular homes.

C. Home occupations.

D. Customary agricultural operations.

E. Golf courses.

F. Churches (under 10,000 square feet).

G. Parks.

H. Playgrounds.

I. Schools.

J. Riding academies.

K. Cemeteries.

L. Greenhouses or nurseries.

§ 229-38. Uses permitted with a special exception use permit.

A. Bed-and-breakfast inns.

B. Turf farming.

C. Expanded home occupations.

D. Beauty salon or parlor.

E. Rooming or boarding houses.

F. Telecommunications towers.

G. Secondary living units.

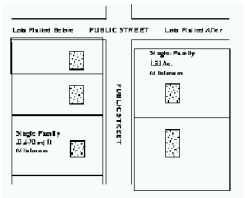
H. Churches (over 10,000 square feet).

§ 229-39. Lot provisions. [Amended 2-14-2007 by L.L. No. 1-2007]

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A. Lots platted prior to March 9, 2005 shall be a minimum of 32,670 square feet for single-family lots (subject to increase by the Erie County Health Department).

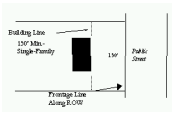
B. All lots platted after March 9, 2005 shall adhere to the following lot size provisions. Minimum: 1.33 acres for a single-family lot (subject to increase by the Erie County Health Department).



§ 229-40. Lot width. [Amended 2-14-2007 by L.L. No. 1-2007]

A. All lots must front along a minimum of 150 feet of publicly dedicated right-of-way in order to be built on. Corner lots must have a minimum of 200 feet of publicly dedicated right-of-way on each public street.

B. Minimum lot width at building line: 150 feet for single-family homes. (Exception: For any lot platted and recorded in the Erie County Clerk's office prior to March 9, 2005, minimum lot width shall be 100 feet.)



§ 229-41. Setbacks.

A. Setbacks shall be equal to the average setbacks for principal buildings on the same side of the street within 500 feet. Building and street facades shall extend parallel to front property lines. The Zoning Board of Appeals shall determine frontage for irregularly shaped lots.

B. Where there are no such buildings, minimum setbacks shall be as follows:

(1) Front: 45 to 200 (maximum) feet.

(2) Side: 15 feet.

(3) Rear: 45 feet.

C. No front yard setback line established by the Code Enforcement Officer may vary more than 10 feet except upon application and approval of the Zoning Board of Appeals.

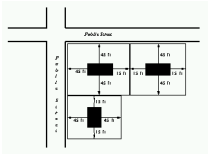
D. Side yards which abut a public or private street shall have the same minimum setback as the front yard setback.

E. Minimum side yards for side load garages shall extend no closer than 28 feet to the side lot line.

F. There shall be a minimum of a three-foot setback requirement from any lot line along a driveway for

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required drainage.



§ 229-42. Building size.

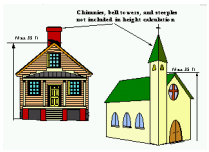
The minimum building size for principal structures shall be 1,000 square feet for a single-family unit.

§ 229-43. Building height.

A. The vertical distance from the mean elevation of the finished grade of the frontage street to the ridgeline.

(1) All uses: 35 feet.

B. Exceptions: roof equipment and structures not intended for human occupancy and which are necessary to the building upon which they are placed.



§ 229-44. Accessory structures. [Amended 2-14-2007 by L.L. No. 1-2007]

A. The following uses are permitted within outbuildings:

(1) Parking facilities.

(2) Gazebos.

(3) Pool houses.

(4) Equipment enclosures.

(5) Agricultural support structures.

(6) Saunas.

(7) Workshops.

(8) Conservatories.

(9) Permitted home occupations.

B. Trash containers, mechanical equipment and outdoor storage shall be located only within the rear yard or side yard and be screened from public view.

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C. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, pump covers, and school bus shelters may be placed in any front, side or rear yard. Doghouses may be placed in rear yards only.

D. A principle structure must be erected before an accessory structure will be permitted on any lot.

E. Accessory structures may only occur in side and rear yards.

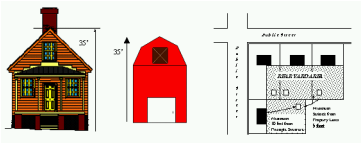
F. Dimension and area requirements.

(1) Maximum height: 35 feet.

(2) Minimum side yard setback: 10 feet; five feet if in rear yard and 200 gross square footage area or less.

(3) Minimum rear yard setback: 25 feet; five feet if in rear yard and 200 gross square footage area or less.

(4) Minimum setback from principal structure: six feet.



§ 229-45. Lot coverage.

The maximum building footprint for any residential lot shall not exceed 10% of the entire lot area. The building footprint shall include all aspects of the principal structure under a roof and over a foundation, excluding exposed porches and including attached garages. This footprint shall not include any accessory buildings or detached garages which meet requirements as herein stipulated.

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ARTICLE VI
R-SF Residential Single-Family

§ 229-46. Intent.

A. The Residential Single-Family District is designed to promote the health, safety, and general welfare of the Town's neighborhoods as well as providing for their expansion along the same traditional lines with which they were established.

B. It is anticipated that these regulations will ensure that new development is consistent with the adopted Comprehensive Plan.

C. The Residential Single-Family District is envisioned to contain any future large-scale developments and future sewer districts with large areas of open space preservation to maintain a more open suburban character.

§ 229-47. Permitted uses.

A. Permitted uses shall be as follows:

(1) Single-family dwellings.

(2) Home occupations.

(3) Cemeteries.

(4) Preexisting agricultural operations.

(5) Public utility facilities.

(6) Public service facilities.

(7) Parks or playgrounds.

(8) Schools.

(9) Churches (under 10,000 square feet).

B. Customary agricultural uses within the Residential Single-Family District shall be permitted only on lots that measure over five acres in size. Any agricultural use preexisting the adoption of this chapter that occurs on lots that measure less than five acres in size may continue as a preexisting nonconforming use.

§ 229-48. Uses permitted with a special exception use permit.

A. Bed-and-breakfast inns.

B. Expanded home occupations.

C. Telecommunication towers (Chapter 173 of the Code of the Town of Clarence).

D. Secondary living units.

E. Churches (over 10,000 square feet).

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§ 229-49. Lot area provisions. [Amended 7-9-2008 by L.L. No. 1-2008]

A. Lot area provisions shall be as follows:

Lot Description	Minimum Lot Size (square feet)	Incentive Lot Size (square feet)
Sewered large lot	20,000	15,000
Unsewered large lot	43,560	32,670

B. Incentive lots in this district can only be considered when 25% of the parent parcel is preserved as open space in perpetuity (for example, via a permanent conservation easement recorded in the property deed). Incentive lots may be granted only by the Town Board for major subdivisions and by the Planning Board for minor subdivisions. To be considered for an incentive lot size, the minimum parent parcel lot size must be at least five acres. All other district regulations shall apply. See § 229-108A to C for determination of the permitted number of dwelling units.

§ 229-50. Lot width.

A. All lots must front along a minimum of 125 feet of publicly dedicated road.

(1) Exception: Lots on public roads with curvature in excess of 30° must maintain a minimum 60 feet of public road frontage.

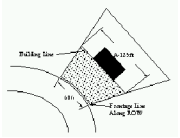
B. Corner lots must have a minimum of 200 feet of publicly dedicated rights-of-way on each public street. In areas served by public sewer service, the minimum may be reduced to 125 feet of publicly dedicated rights-of-way on each public street. **[Added 2-14-2007 by L.L. No. 1-2007[4]]**

C. Minimum lot width at the building line:

(1) Standard R-SF lot: 125 feet.

(2) Incentive lot: 100 feet.

D. For any lot platted prior to the adoption of this chapter and recorded in the Erie County Clerk's Office prior to the date of adoption, minimum lot width shall be 100 feet.



§ 229-51. Building size.

No building or buildings, exclusive of accessory buildings, porches, entries, garages and terraces, shall contain less than 1,350 square feet for a one-story building, nor less than 900 square feet of usable first floor living space if more than one story and a total of at least 1,500 square feet of usable space in all.

§ 229-52. Setbacks.

4. **Editor's Note: This local law also provided for the relettering of Subsections B and C as Subsections C and D, respectively.**

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A. Front yard:

(1) On lots with an established building setback line shown on a filed subdivision plat, no building or accessory building shall extend closer to a street or highway right-of-way than said established building setback line, nor shall any dwelling be erected or otherwise located so that the front building line lies more than 10 feet from the established building setback line.

(2) On lots in undeveloped areas not shown on a filed subdivision plat, no building or accessory building shall extend closer to the street or highway right-of-way than 45 feet, nor shall any dwelling be erected or otherwise located so that the front building line lies more than 100 feet from the street or highway right-of-way.

(3) On lots in developed areas not shown on a filed subdivision plat, no building or accessory building shall extend closer to a street or right-of-way than a building line established by the Zoning Code Enforcement Officer after review and examination of the existing structures within 500 feet of the proposed building. Said line shall in no case be closer than 35 feet from the street or highway right-of-way. No building in any such developed area shall be erected or otherwise located with its front building line more than 10 feet behind the building line so established by the Zoning Code Enforcement Officer. The determination of the Zoning Code Enforcement Officer establishing a building line may, upon proper application, be subjected to review and modification by the Zoning Board of Appeals (see Article XVI, Administration).

(4) The standard minimum setbacks shall be as follows:

(a) Front: 45 to 100 feet.

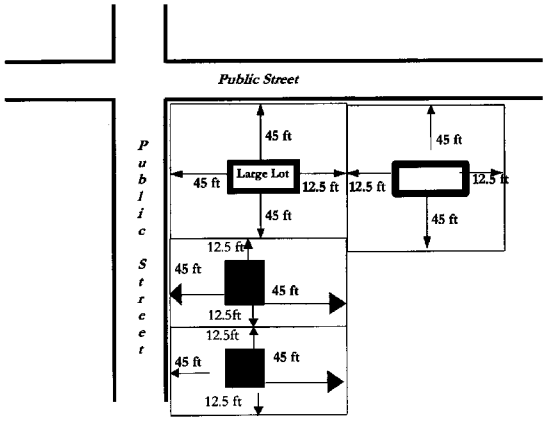
(b) Side: 12.5 feet. **[Amended 2-14-2007 by L.L. No. 1-2007]**

(c) Rear: 45 feet.

B. Side yard: Side yards which abut a public or private street shall have the same minimum setback as the front yard setback. Minimum side yards for side load garages shall extend no closer than 28 feet to the side lot line. There shall be a minimum of a three-foot setback requirement from any lot line along a driveway for required drainage. No principal building, exclusive of eaves or cornices, shall extend closer than 12.5 feet to either side lot line.

C. Rear yard: No principal building shall extend closer than 45 feet to the rear lot line, except that, on a lot extending through from street to street or highway to highway, the front yard requirements on each street or highway shall be observed.

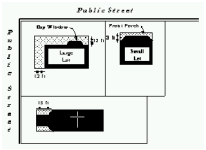
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§ 229-53. Encroachments.

A. Balconies, stoops, stairs, chimneys, open porches, bay windows and raised doorways shall be permitted to extend within the minimum front setback, to a maximum of 12 feet. Open patios and decks in rear yard may extend up to 12 feet into the setback area.

B. Side yards that abut a public street shall be treated as described above. Hedges, garden walls or fences may be built on property lines or as a continuation of building walls.

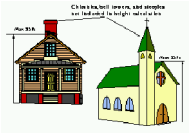


§ 229-54. Building height.

A. The vertical distance from the mean elevation of the finished grade relative to the frontage street to the ridgeline of the structure.

(1) All uses: 35 feet.

B. Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed.



§ 229-55. Accessory structures.

A. The following uses are permitted within outbuildings:

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(1) Parking facilities.

(2) Gazebos.

(3) Pool houses.

(4) Equipment enclosures.

(5) Saunas.

(6) Workshops.

(7) Conservatories.

(8) Sheds.

(9) Agricultural support structures (see below).

B. Standby home generators shall be allowed in the side and rear yard only and be exempt from accessory structure setback standards. The installation shall meet but not exceed the minimum installation guidelines as set forth within the manufacture specifications of the unit being installed. The periodic maintenance scheduling shall occur as per the manufacture recommendations and specifications, during daylight hours. Trash containers, mechanical equipment and outdoor storage shall be located only within the rear yard and be screened from public view. **[Amended 3-11-2020 by L.L. No. 1-2020]**

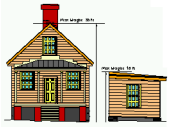
C. Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, pump covers, and school bus shelters may be placed in any front, side or rear yard. Doghouses may be placed in rear yards only. **[Amended 2-14-2007 by L.L. No. 1-2007]**

D. Attached accessory structures shall not exceed 40% of the total area of the principal structure or 960 square feet, whichever is smaller. Detached accessory structures shall not exceed 720 square feet. At no time shall the total area of an accessory use exceed 20% of the rear yard. Such uses shall only be permitted in the rear and side yards. **[Amended 2-14-2007 by L.L. No. 1-2007]**

E. Dimension and area requirements.

(1) Minimum side and rear setbacks: 10 feet; five feet if in rear yard. Minimum setback from principal structure: six feet. **[Amended 2-14-2007 by L.L. No. 1-2007]**

(2) Maximum height: 16 feet.



F. Accessory structures with a total area exceeding 400 square feet shall be constructed using materials and features similar to the principal structure.

G. Outbuildings in rear yards that abut a publicly dedicated street must have a minimum setback equal to the front yard setback.

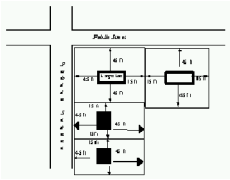
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H. Only one private garage is allowed, whether attached or detached, and two accessory buildings up to 200 square feet on any one lot where a principal building exists.

I. No overhead door shall exceed nine feet in height. **[Added 2-14-2007 by L.L. No. 1-2007[5]]**

J. No accessory building may be built without a principal building on the lot.

K. Customary agricultural outbuildings shall be permitted on any lot that has a permitted agricultural operation. There shall be no limitation on the size of an agricultural outbuilding, but it shall meet all other regulations in this section.



§ 229-56. Lot coverage.

The maximum building footprint for any residential lot shall not exceed 18% for a single-story structure and 13% for a two-story structure of the entire lot area for any principal structure. The building footprint shall include all aspects of the principal structure under a roof and over a foundation, excluding exposed porches and including attached garages. This footprint shall not include any accessory buildings or detached garages which meet requirements as herein stipulated.

5. Editor's Note: This local law also provided for the relettering of Subsections I and J as Subsections J and K.

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ARTICLE VII
TND Traditional Neighborhood

§ 229-57. Intent.

The purpose of this district is to require the usage of traditional neighborhood design criteria within the boundaries of the district in order to implement the principals of the Town's adopted Comprehensive Plan. This district is intended to achieve the following:

A. Provide incentives to encourage the adaptive reuse of existing structures.

B. Allow and encourage a mixture of uses and mixed-use structures.

C. Accomplish and continue a sense of community.

D. Provide a walkable, pedestrian-friendly environment.

E. Respect and preserve unique natural features within the district.

F. Provide design regulations that encourage compatible building arrangements, bulk, form, character and landscaping to establish a livable, harmonious and diverse environment.

G. Discourage the demolition of existing structures that possess significant historic or other essential elements that contribute to the character of the district.

H. Create a small-town, historic-style business district that limits large scale out-of-character commercial developments.

§ 229-58. Permitted uses.

The following uses are allowed as vested rights in facilities measuring no more than 10,000 square feet in gross area:

A. Personal service shops.

B. Small retail shops.

C. Banks.

D. Mixed-use buildings.

E. Community facilities.

F. Second-floor multifamily dwelling units.

G. Professional offices.

H. Diners or small restaurants.

I. Churches.

J. Single-family residences.

K. Two-family residences.

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§ 229-59. Uses permitted with a special exception use permit.

The following uses are only allowed if they meet the Town's special exception use permit requirements and any overlay zoning requirements:

A. Any permitted use in a new structure measuring between 10,000 and 30,000 square feet in gross area.

B. Expansions of existing structures requiring site plan approval that will result in a cumulative structure measuring between 10,000 and 30,000 square feet in gross area.

C. Drive-through establishments.

D. Multifamily dwelling units (maximum eight units/acre).

§ 229-60. Lot area provisions.

No lot shall be less than 15,000 square feet if used as a dwelling or dwellings, nor less than 5,000 square feet area per unit if used for multiple-family residential. Commercial lots must be a minimum of 8,400 square feet area. For all nonsewered lots in this district, the Erie County Health Department shall set the minimum requirements for on-site septic system installation and maintenance.

§ 229-61. Lot dimensions.

No lot shall be less than 70 feet in width and 120 feet in depth. Corner lots shall be no less than 120 feet on each street. Nonsewered lots must meet a minimum lot width of 150 feet and 220 feet in depth.

§ 229-62. Building size.

A. No building or buildings, exclusive of accessory buildings, porches, entries, garages and terraces, shall contain less than 800 square feet gross floor area. No building or buildings, exclusive of accessory buildings, porches, entries, garages and terraces, shall contain more than 10,000 square feet gross floor area, if used as a permitted use, nor more than 30,000 square feet gross floor area, if used as a special exception use.

B. Buildings used in whole or in part for residential purposes, exclusive of accessory buildings and exclusive of porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story building used as a one-family dwelling, nor less than 600 square feet of usable first floor living space if more than one story, provided that no such building shall contain a total of less than 1,000 square feet of usable living space if used as a one-family dwelling; and provided, further, that no such building shall contain a total of less than 600 square feet of usable living space for each one-bedroom family unit or apartment, 720 square feet of usable living space for each two-bedroom family unit or apartment and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.

§ 229-63. Setbacks.

A. Setbacks shall be as follows:

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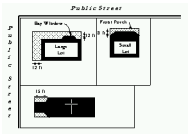
Yard	Distance (in feet)
Front	10
Side	10
Rear	25

B. All new buildings shall adhere to these setback lines for required yard areas. The established build-to line is 10 feet. Where there is a preexisting building setback line established, principal structures may vary up to 35 feet from the established build-to line as measured from structures within 300 feet of the proposed building. In no case may the front yard setback for a principal structure exceed 45 feet from the front property line.

§ 229-64. Encroachments.

A. Balconies, stoops, stairs, chimneys, open porches, bay windows and raised doorways shall be permitted to extend within the minimum front setback, to a maximum of 12 feet. Open patios and decks in rear yard may extend up to 12 feet. In no case shall the encroachment enter a public highway right-of-way or property line.

B. Side yards that abut a public street shall be treated as described above. Hedges, garden walls or fences may be built on property lines or as a continuation of building walls. Buildings should avoid long monotonous, uninterrupted walls or roof planes. Blank, windowless walls are generally not allowed along street frontage.



§ 229-65. Building height.

A. The vertical distance from the mean elevation of the finished grade relative to the frontage street to the ridgeline of the structure.

(1) All uses: 40 feet.

B. Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed.



§ 229-66. Accessory structures. [Amended 12-1-2010 by L.L. No. 5-2010]

Any commercial accessory structure that is placed in this district must be approved by the body with final approval authority, either the Town Board or Planning Board. Any residential accessory structure must not

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exceed 720 square feet and shall be placed no closer than five feet to any side or rear lot line if wholly within the rear yard. Otherwise, the principal building setbacks shall apply.

§ 229-67. Design standards.

A. General.

(1) All development and redevelopment requiring site plan approval must meet the requirements of any zoning overlay that exists in the area of development.

(2) The scale, proportions, massing and detailing of any proposed buildings or major renovation shall be in proportion to the scale, proportion, massing and detailing in the area.

(3) Connections shall be provided from the site to the existing sidewalk system. Pedestrian and bicycles shall be accommodated in the site design.

B. Parking lots.

(1) All parking shall be located at the side or rear of the building. No parking shall be located in the front yard of the building.

(2) If the parking is located in the side yard, it must be partially screened from the road by low walls, fences or hedges as approved by the Town's Landscape Committee.

(3) Parking lots shall not abut street intersections.

(4) Adjacent parking lots shall have internal vehicular connections.

(5) On-street parking directly fronting the lot shall count toward fulfilling the parking requirements of that lot.

C. Architecture.

(1) The architectural style of all new structures must be reviewed and approved by the Town Board and may be referred to the Planning Board for its review and recommendation.

(2) All proposed structures must conform to any overlay zoning requirements.

(3) Due to the visibility of the district, architectural compatibility is necessary in order to visually connect development and allow for proximity of varied uses.

(4) Materials. Walls shall be clad in stone, brick, marble, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. Metal paneling is prohibited.

(5) Configurations. Two wall materials may be combined (horizontally) on one facade. The heavier material must be below. Rooflines shall not be flat.

(6) Techniques. All rooftop equipment shall be enclosed in the building material that matches the structure or is visually compatible with the structure.

§ 229-68. Lot coverage.

A. All buildings and impervious surfaces, including but not limited to parking areas and public or private drives may not cover more than 60% of a project site. Where a property owner has shared access and shared parking arrangements with adjoining property owners in perpetuity (for example: via a

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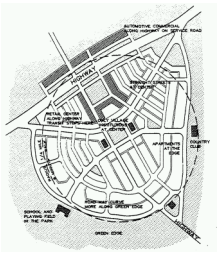
permanent easement recorded in the deed), the lot coverage requirements may be increased to 85% of the lot.

B. The Rural Neighborhood.

(1) Scale: 0.5 to one mile across.

(2) An example of a TND in the countryside is called a hamlet or village.

(3) Within a hamlet or village, the following land uses are arranged to service the needs of the resident population in a convenient walking environment: open space, civic buildings, low- and high-density residential, retail/commercial, business/workplace, and parking.



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ARTICLE VIII
CF Community Facilities

§ 229-69. Intent.

The intent of this district is to allow for the use and continued development of publicly owned and nonprofit institutional property.

§ 229-70. Permitted uses. [Amended 8-14-2024 by L.L. No. 1-2024]

A. Permitted uses shall be as follows:

(1) Churches.

(2) Parks.

(3) Governmental offices.

(4) Golf courses.

(5) Nature preserves.

(6) Public or private schools.

(7) Recreational trails.

(8) Cemeteries.

(9) Public utility facilities, and telecommunication towers (Chapter 173 of the Code of the Town of Clarence).

§ 229-71. Development provisions.

A. In general, buildings and structures within the Community Facilities District should match the character of the surrounding land uses.

B. There shall be no minimum lot size standard in this zoning classification.

C. The minimum development setbacks for principal structures shall be as follows:

(1) Front (defined as main entrance): 80 feet.

(2) All other setbacks (side and rear): 25 feet.

(3) Maximum height: 35 feet.

(a) Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed and steeples or spires and bell towers.

§ 229-72. Design standards.

A. Internal setbacks for buildings shall be such that circulation of auto and pedestrian traffic is accommodated and all fire safety issues are addressed.

B. Internal buildings shall be laid out in the form of quadrangles or other well-defined open areas to give

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prominence to important structures and to allow for gathering and pedestrian circulation.

C. All parking required by the uses in this district shall be provided on site and in sufficient number not to require on-street parking or encroachment on adjacent property.

D. Parking areas shall not encroach into any required development setback and shall be interconnected within the property.

E. Trash containers, storage areas, loading areas and mechanical equipment shall be screened from public view.

§ 229-73. Architectural standards.

Principal structures shall be built so that they terminate a vista, where possible, and shall be of sufficient design to create visual anchors for the property. All principal structures on a property shall maintain a consistent architectural style.

§ 229-74. Accessory structures.

A. The following are permitted accessory structures/uses:

(1) Parking facilities.

(2) Utility sheds.

(3) Gazebos.

(4) Pole barns.

(5) Recreational facilities.

(6) Greenhouses.

B. No accessory buildings designed, intended or used for community facility purposes shall extend closer than 25 feet to any side or rear lot line of any residential lot used wholly for residential purposes, nor closer than 25 feet to any residential district boundary, nor closer than 10 feet to any side or rear lot line wholly within any commercial zoning district. Accessory buildings lying wholly to the rear of the principal buildings shall not extend closer than 10 feet to the side or rear lot line, provided these lines do not designate a residential district boundary or are in common with a lot used wholly for residential purposes.

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ARTICLE IX
RB Restricted Business
[Amended 8-13-2008 by L.L. No. 2-2008]

§ 229-75. Intent.

The intent of this district is to allow for the continued and future use, expansion, and new development of professional offices and similar less intensive business uses. The regulations are designed to be more compatible with residential areas of the Town and are intended to be less traffic-generating than retail businesses. Professional office development is encouraged along the Sheridan Drive corridor, northern Transit Road, and small sections of Wehrle Drive and Bergtold Road. As most of the restricted business districts are located outside of areas serviced by public sewers, designs should reflect a more open character.

§ 229-76. Permitted uses. [Amended 3-11-2020 by L.L. No. 1-2020]

The following list of uses are allowed as vested rights in structures measuring up to 10,000 square feet in area or a cumulative total of 30,000 square feet of building area on an individual property:

A. Professional offices.

B. Nursing homes.

C. Bed-and-breakfasts.

D. Home occupations.

E. Day-care centers.

F. Mortuary/funeral homes.

G. Medical clinics.

H. Community facilities.

I. Public utility facilities.

J. Beauty salons.

§ 229-77. Uses permitted with special exception use permits.

A. Any permitted use that involves a structure in excess of 10,000 square feet or a cumulative total of 30,000 square feet of building area on an individual property and the following list of uses:

   (1) Telecommunications towers (Chapter 173 of the Code of the Town of Clarence).

   (2) Multiple-family dwellings.

   (3) Bank or financial institution.

§ 229-78. Accessory structures.

A. Permitted accessory structures:

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(1) Private garages.

(2) Sheds.

(3) Enclosures for dumpsters.

(4) Barns.

(5) Fences/walls.

(6) Private recreational facilities.

B. No accessory buildings designed, intended or used for business purposes shall extend closer than 25 feet to any side or rear lot line of any residential lot used wholly for residential purposes, nor closer than 25 feet to any residential district boundary, nor closer than 10 feet to any side or rear lot line wholly within the restricted business district. Accessory buildings lying wholly to the rear of the principal buildings shall not extend closer than 10 feet to the side or rear lot line, provided that these lines do not designate a residential district boundary or are in common with a lot used wholly for residential purposes.

C. Private garages, toolhouses and other accessory buildings used wholly in connection with private residences shall extend not closer than 10 feet to any side or rear lot line.

§ 229-79. Development and design provisions.

A. Minimum lot size. No lot shall be less than 100 feet of public road frontage and be at least 120 feet in depth. Corner lots shall be not less than 300 feet of public road frontage on each street. If the property has public sewer access, then no lot shall contain less than 20,000 square feet nor less than 5,000 square feet of area per family unit if used for multiple dwellings. If the property has no public sewer access, then no lot shall contain less than one acre (43,560 square feet) of land area and be subject to review and approval of the Erie County Health Department or New York State Department of Environmental Conservation for private wastewater treatment permits.

B. Minimum development setbacks:

(1) Front yard: 80 feet. Where there is an established front setback line between adjoining properties, that setback line would apply to the property to a minimum of 45 feet.

(2) Side yard: 25 feet.

(3) Rear yard: 25 feet.

(4) Setback to adjoining residential (minimum): 45 feet.

(5) Any commercial uses shall not be located adjacent to residential uses unless separated by a minimum forty-five-foot greenbelt.

(6) Arcades, awnings and open porches shall be permitted to encroach a maximum of 12 feet into front setbacks and side setbacks.

C. Size of buildings. No principal building shall contain less than 800 square feet of usable floor space. Buildings used in whole or in part for residential purposes, exclusive of accessory buildings and exclusive of porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story building used as a one-family dwelling, nor less than 600 square feet of

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usable first floor living space if more than one story, provided that no such building shall contain a total of less than 1,000 square feet of usable living space if used as a one-family dwelling, and provided further that no such building shall contain a total of less than 600 square feet of usable living space for each one-bedroom family unit or apartment; 720 square feet of usable living space for each two-bedroom family unit or apartment; and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.

D. Height.

(1) Maximum height: 35 feet.

(2) Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed.

§ 229-80. Site design standards.

A. Internal setbacks for buildings shall be such that circulation of auto and pedestrian traffic is accommodated and all fire and safety issues are addressed.

B. Internal buildings shall be laid out in the form of quadrangles or other well-defined open areas to give prominence to important structures and to allow for gathering and pedestrian circulation.

C. All parking required by the uses in this district shall be provided on site and in sufficient number not to require on-street parking or encroachment on adjacent property.

D. Parking areas shall not encroach into any required development setbacks and shall be interconnected within the property. Parking areas may be proposed within the development setbacks if, and only if, the following features are maintained: **[Amended 8-22-2018 by L.L. No. 8-2018]**

(1) Parking is buffered by a natural or architectural feature; and

(2) Parking is limited to a maximum of one drive aisle and two parking rows; and

(3) Pedestrian accommodations are prioritized to ensure ease of access between building, parking and ROW; and

(4) Parking design conforms to the community character of the surrounding area.

E. Trash containers, storage areas, loading and mechanical equipment shall be located within the parking area and shall be screened from public view. Dumpsters shall be properly secured.

§ 229-81. Architectural standards.

A. Due to the visibility of the district, architectural compatibility is necessary in order to maintain community character, visually connect development, and allow for proximity of varied uses.

B. Materials. Walls shall be clad in a mix of the following: stone, brick, marble, metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building.

C. Roof and top treatments. The use of sloped roofs, including gabled and hip roofs, is strongly encouraged in an effort to maintain a village-scale building style.

(1) The appearance of rooflines shall not be flat. A sloped roof must achieve a minimum four-foot

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rise for twelve-inch run for structures up to 10,000 square feet in size.

(2) Larger structures shall employ design standards to ensure that roof configuration matches the architectural appearance of the district. Buildings of this nature shall utilize a combination of roof elements and top treatments.

(3) Rooftop mechanical units, dishes, and other miscellaneous equipment should be screened or be properly integrated as part of the building design. Screen material should be of the same or compatible material, texture, and color to the building architecture.

(4) Roofing systems shall be comprised of materials appropriate to the architectural style and color palette of the building.

(5) Exposed flat roofing systems are to be concealed from view.

(6) Buildings greater than 10,000 gross square feet with a flat roof should have a recognizable "top" consisting of the following:

(a) Stepped parapets concealing flat roofs and rooftop equipment such as HVAC units from public view.

(b) Overhanging eaves on portions of the building.

D. Exterior wall design.

(1) Window and door treatments shall be compatible in style and design and should fit the overall appearance of the building.

(2) The use of reflective glazing, with over sixty-percent reflectivity, is prohibited.

E. Supplementary standards.

(1) Standard franchise design is not encouraged. Designs should be oriented toward matching the character of the community.

§ 229-82. Lot coverage.

All principal buildings, accessory structures, and impervious surfaces located on a restricted business district property may not exceed 70% of the gross area of the lot. Where a property owner has shared access and shared parking arrangements with adjoining property owners in perpetuity (for example, via a permanent easement recorded in the deed), the lot coverage requirements may be increased to 80% of the lot.

§ 229-82.1. Site lighting.

It is the intent of these standards and provisions to prevent, reduce or eliminate the problems created by improperly designed and installed outdoor lighting. Specifically, glare, light trespass, excessive energy usage and financial burden are all negative effects of poor site lighting design standards. The purpose of careful site lighting approaches is to ensure that outdoor lighting does not interfere with the reasonable use and enjoyment of property. These regulations are also designed to increase safety for both pedestrian and vehicular traffic.

A. Lighting design shall not create a nuisance to adjacent residences.

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(1) All external lighting sources shall be designed and shielded to avoid hazardous interference and direct glare onto adjacent streets and properties.

(2) The lenses in pole and wall-mounted lighting shall be recessed to control the adverse impacts of light spillout and glare.

(3) Parking area lighting fixtures shall not be illuminated after 11:00 p.m.

(4) Security lighting and other building lighting will be allowed to operate as long as it does not create a nuisance to adjacent residences.

B. Design standards should be utilized which accent existing community character and styling.

(1) Pole-mounted lighting shall not exceed a total height of 15 feet from finished grade to the top of the fixture.

(2) A mixture of lamp types on the same site shall be avoided.

(3) To provide optimum color rendition, lamps are preferred in the following order: high-pressure sodium, metal halide, low-pressure sodium.

C. Lighting plans shall be submitted and must include illumination footprints. The appearance and placement of lighting will be recommended on by the Planning Board as part of the site plan approval process.

§ 229-82.2. Access management.

Access management standards are put in place in an effort to reduce logistical traffic conflicts, particularly along roads with heavy traffic volume. Logical design standards assist with the strategic placement of access points along traffic avenues and thus reduce the number of conflict points. Achieving proper access management standards will allow for transportation components to be properly integrated into various land use arrangements. Projects which consider access management help to improve both safety and efficiency within the community.

A. The site layout, location and design of driveways and parking areas should be based on full buildout of the parcel. Future subdivision of the parcel or any future action that is contrary to an already approved plan cannot occur without prior Planning Board approval. Furthermore, site plans are a crucial component for understanding a site and project; they must illustrate the building location, elevation of all buildings and structures, building materials to be utilized on all facades, and the location of site lighting, signage, and traffic control features.

B. Access with properties having two or more road frontages should be determined by the body having final approval authority, either the Town Board or Planning Board. **[Amended 12-1-2010 by L.L. No. 5-2010]**

C. Curb cuts and driveway spacing for new development or redevelopment will be evaluated on a case-by-case basis to reduce conflicts and ensure traffic safety and efficiency.

(1) Driveways should be located so as to provide shared access and/or cross access with an abutting parcel or properties, wherever practical.

(2) Shared driveways and/or cross-access driveways shall be of sufficient width (minimum 20 feet) to accommodate two-way travel for automobiles and for service and loading vehicles.

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(3) Driveways should be located outside of the functional area of the intersection, or if this is not possible, driveways should be placed as far as possible from the intersection.

D. Driveway location.

(1) Driveway location will be based on a site plan that has been agreed upon by the Planning Board in consultation with the Town Engineer and, where appropriate, the Town Highway Superintendent.

(2) The Planning Board may allow the location of driveways outside of conventional standards if:

(a) A dual-driveway system, cross-access driveway system or shared driveway is proposed and this improves the safe and efficient movement of traffic between the parcel and the road;

(b) A driveway or driveways could be located so as to meet conventional standards, but the characteristics of the parcel or the physical or operational characteristics of the road are such that a change of location will improve the safe and efficient movement of traffic between the parcel and the road; or

(c) Conformance with conventional standards imposes undue and exceptional hardship on the property owner.

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ARTICLE X
C Commercial
[Amended 8-13-2008 by L.L. No. 2-2008]

§ 229-83. Intent.

Developments in the commercial districts are intended to achieve the high-quality site layout and use flexibility inherent in campus design. This is accomplished through attention to architectural compatibility with other buildings and the relationship of building facades to public roadways. These regulations are intended to encourage commercial facilities on Main Street between the hamlets of Harris Hill and Clarence Hollow, Wehrle Drive near Transit Road, certain parts of Sheridan Drive, and any other area designated as a commercial zone in the future to be designed so as to minimize traffic congestion, reduce conflict points, and maintain a pleasing community character. The Commercial Zone shall encourage a mix of uses, improved walkability, connectivity with adjoining uses and an overall enhancement of neighborhood appeal.

§ 229-84. Permitted uses.

A. The following list of uses are allowed as vested rights in facilities measuring up to 30,000 square feet in area: **[Amended 3-11-2020 by L.L. No. 1-2020]**

(1) Professional offices.

(2) Funeral homes.

(3) Convention facilities.

(4) Retail sales activities.

(5) Personal service shops, craft shops, antique shops, retail nursery or greenhouse.

(6) Trade or industrial school.

(7) Small animal hospital/veterinary clinic.

(8) Dry cleaners/commercial laundry.

(9) Printing shops.

(10) Community facilities.

(11) Permitted in-fill uses in existing structures.

(12) Medical offices.

(13) Nursing homes, dependent-living facilities.

(14) Motels, hotels.

(15) Grocery store/convenience store.

(16) Retail nursery or greenhouse.

(17) Restaurants.

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(18) Banks/financial institutions.

(19) Plumbing, heating, electrical shops.

(20) Day-care centers/nursery schools.

(21) Public utility facilities.

B. Exclusions: uses listed above which involve on-site manufacturing, outdoor storage of merchandise, hazardous materials, warehousing and/or storage necessitating truck travel, and mining.

§ 229-85. Uses permitted with special exception use permits. [Amended 10-11-2017 by L.L. No. 7-2017]

Any permitted use that involves a facility in excess of 30,000 square feet or any of the following list of uses:

A. Automotive sales, automotive equipment and implement sales, trailer sales.

(1) Main Street: such uses limited to the Commercial Zone between Transit Road and Westwood Road.

(2) Sheridan Drive: Such uses shall not be permitted.

B. Shopping plaza.

C. Drive-in/drive-through facilities.

D. Gasoline service station.

(1) Main Street: such uses limited to the Commercial Zone between Transit Road and Westwood Road.

(2) Sheridan Drive: Such uses shall not be permitted.

E. Multiple-family dwelling units.

F. Lumber/building supply companies.

G. Business/commercial parks.

H. Car wash.

(1) Main Street: such uses limited to the Commercial Zone between Transit Road and Westwood Road.

(2) Sheridan Drive: Such uses shall not be permitted.

I. Automotive service station, commercial garage.

(1) Main Street: such uses limited to the Commercial Zone between Transit Road and Westwood Road.

(2) Sheridan Drive: Such uses shall not be permitted.

J. Light manufacturing operations.

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K. Manufactured housing park.

L. Telecommunications towers (Chapter 173).

M. Parking facilities.

(1) Main Street: such uses limited to the Commercial Zone between Transit Road and Westwood Road.

(2) Sheridan Drive: Such uses shall not be permitted.

N. Theaters, assembly halls, bowling alleys, and all similar public recreation uses.

O. Indoor storage of hazardous materials.

§ 229-86. Accessory structures.

A. Permitted accessory structures:

B. Private garages.

C. Sheds and similar structures.

D. Enclosures for dumpsters, outdoor storage, etc.

E. Barns.

F. Fences/walls.

G. Private recreational facilities

H. No accessory buildings designed, intended or used for business purposes shall extend closer than 45 feet to any side or rear lot line bordering on any residential lot used wholly for residential purposes, nor closer than 45 feet to any residential district boundary, nor closer than 10 feet to any side or rear lot line wholly within a commercial zoning classification. Accessory buildings lying wholly to the rear of the principal buildings shall not extend closer than 10 feet to the side or rear lot line, provided that these lines do not designate a residential district boundary or are in common with a lot used wholly for residential purposes. Please note, the accessory structure may not be placed within the forty-five-foot greenbelt that is required for commercial properties abutting a residential use.

§ 229-87. Development and design provisions.

A. No lot shall have less than 100 feet of public road frontage nor be less than 120 feet in depth. Corner lots shall be not less than 300 feet of public road frontage on each street. If the property has public sewer access, then no lot shall contain less than 20,000 square feet nor less than 5,000 square feet of area per family unit if used for multiple dwellings. If the property has no public sewer access, then no lot shall contain less than one acre (43,560 square feet) of land area and be subject to review and approval of the Erie County Health Department or the New York State Department of Environmental Conservation for private wastewater treatment permits.

B. Lot of record. No lot shall have less than 70 feet of public road frontage and be at least 120 feet in depth. No lot shall contain less than 15,000 square feet in area if used for a dwelling or dwellings.

C. Minimum development setbacks.

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(1) Front yard: minimum of 10 feet to a maximum of 80 feet. Front yard development setback shall be determined based on the following considerations: **[Amended 8-22-2018 by L.L. No. 8-2018]**

(a) Compliance with the Comprehensive Plan, and all associated Master Planning documents.

(b) Subject to the recommendation of the Office of Planning and Zoning and approval by the board with approval authority.

(c) Integration with the existing community character of the surrounding area, except when existing conditions do not match the intended future community character, as outlined in the Comprehensive Plan and all associated Master Planning documents.

(d) Hierarchy of site uses to the right-of-way, where the principle use or structure features an architectural significance and prominence towards the public view, over secondary uses such as parking fields and accessory structures.

(2) Side yard: 25 feet.

(3) Rear yard: 25 feet.

(4) Any commercial uses shall not be located adjacent to residential uses unless separated by a minimum forty-five-foot greenbelt.

(5) Arcades, awnings, and open porches shall be permitted to encroach a maximum of 12 feet into front setbacks and side setbacks.

D. Interior road lot setbacks.

(1) Buildings located along main interior roads shall have unified front setbacks of at least 10 feet.

(2) Building side and rear setbacks shall be determined by the following:

(a) Parking, loading and storage needs for the use.

(b) Adequate internal circulation of all traffic, and all fire and safety concerns.

E. Size of buildings.

(1) No principal building shall contain less than 800 square feet of usable floor space. Buildings used in whole or in part for residential purposes, exclusive of accessory buildings and exclusive of porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story building used as a one-family dwelling, nor less than 600 square feet of usable first-floor living space if more than one story, provided that no such building shall contain a total of less than 1,000 square feet of usable living space if used as a one-family dwelling, and provided further that no such building shall contain a total of less than 600 square feet of usable living space for each one-bedroom family unit or apartment, 720 square feet of usable living space for each two-bedroom family unit or apartment and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.

(2) Structures shall incorporate design features, including facade treatments and rooftop treatments, to break up all lengthy facades into smaller elements. Architectural details such as cornices, awnings, and window casings shall be utilized to achieve a smaller neighborhood scale to larger buildings and plazas.

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F. Height.

(1) Maximum height: 45 feet.

(2) Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed. However, all rooftop equipment shall be screened from view.

G. Sidewalks. All facilities shall provide sidewalks to access existing sidewalks along the street corridor. If sidewalks do not exist along the front property line, then new sidewalks shall be constructed along each property line abutting public or private roads as a condition of approval.

(1) Sidewalk design shall be incorporated into a pedestrian access plan for the facility or development to encourage walkability in the overall design.

(2) New sidewalks shall be constructed in accordance with standard details approved by the Town Engineer.

§ 229-88. Parking and shared access.

A. All parking required by the uses in this district shall be provided on site and in sufficient number so as not to require on-street parking on adjacent streets or encroachment on adjacent property.

B. Parking areas shall be screened from view of the street to the greatest degree possible. Screening should be continuous and should conceal the parking area(s) from the street. Methods of screening may include stacked stone walls, picket fences, evergreen or deciduous hedges, other suitable landscape materials or a combination of materials. All screening should be located inside the applicant's property boundary and should not encroach onto the public sidewalk. Screening must not limit a driver's visibility of the sidewalk or street when exiting any off-street parking lot.

C. Where buildings or parking lots adjoin existing residential use, a greenbelt of at least 45 feet shall be provided with sufficient landscaping to eliminate the view of parking areas from residences and either fully or substantially block the view of buildings from the residences.

D. Islands shall be provided to separate parking stalls into banks of approximately 20 cars or less between islands. Islands shall be eight feet to 10 feet in width, shall be landscaped as stipulated herein, and must be curbed.

E. Shared access and interconnected parking lots between separate properties are encouraged. Facilities demonstrating an effective arrangement to share parking and access may reduce the total number of parking spaces required for each facility at the discretion of the body with final approval authority, either the Town Board or Planning Board. In addition, separate parking areas on one parcel shall be interconnected. **[Amended 12-1-2010 by L.L. No. 5-2010]**

F. Drive-through businesses such as banks or restaurants shall have car stacking areas limited to the rear and sides of the building and are to avoid layouts that cause conflicts with the crossing of traffic patterns between car stacking, parking areas, and driveway entrances.

G. Trash containers, storage areas, loading and mechanical equipment shall be screened from public view. Dumpsters shall be properly secured and all outdoor storage areas are to be limited to the rear yards, screened from adjoining properties, and, in general, not visible from public right-of-way.

§ 229-89. Architectural standards.

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A. Due to the visibility of the district, architectural compatibility is necessary in order to maintain community character and visually connect development. Designs shall be oriented toward matching the character of the community, visually connect development, and allow for proximity of varied uses.

B. Materials. Walls shall be clad in a mix of the following: stone, brick, marble, metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building.

C. Roof and top treatments. The use of sloped roofs, including gabled and hip roofs, is strongly encouraged in an effort to maintain a village-scale building style.

(1) The appearance of rooflines shall not be flat. A sloped roof must achieve a minimum four-foot rise for 12 inches run for structures up to 10,000 square feet in size.

(2) Larger structures shall employ design standards to ensure that roof configuration matches the architectural appearance of the district. Buildings of this nature shall utilize a combination of roof elements and top treatments.

(3) Rooftop mechanical units, dishes, and other miscellaneous equipment should be screened or be properly integrated as part of the building design. Screen material should be of the same or compatible material, texture, and color to the building architecture.

(4) Roofing systems shall be comprised of materials appropriate to the architectural style and color palette of the building.

(5) Exposed flat roofing systems are to be concealed from view.

(6) Buildings greater than 10,000 gross square feet with a flat roof should have a recognizable "top" consisting of the following:

(a) Stepped parapets concealing flat roofs and rooftop equipment such as HVAC units from public view.

(b) Overhanging eaves on portions of the building.

D. Exterior wall design.

(1) Window and door treatments shall be compatible in style and design and should fit the overall appearance of the building.

(2) The use of reflective glazing, with over sixty-percent reflectivity, is prohibited.

E. Convenience stores and gas stations.

(1) Canopies on such sites should not exceed the total height of, nor visually dominate, the principal building structure and should be architecturally integrated with the convenience store buildings and all other accessory structures on the site.

(2) The gross floor area of convenience stores and gas stations should include all of the area under the canopy and accessory structures.

F. Supplementary standards. Standard franchise design is not encouraged. Designs should be oriented toward matching the character of the community.

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§ 229-90. Lot coverage.

All principal buildings, accessory structures, and impervious surfaces located on a commercial district property may not exceed 70% of the gross area of the lot. Where a property owner has shared access and shared parking arrangements with adjoining property owners in perpetuity (for example, via a permanent easement recorded in the deed), the lot coverage requirements may be increased to 80% of the lot.

§ 229-90.1. Site lighting.

It is the intent of these standards and provisions to prevent, reduce or eliminate the problems created by improperly designed and installed outdoor lighting. Specifically, glare, light trespass, excessive energy usage and financial burden are all negative effects of poor site lighting design standards. The purpose of careful site lighting approaches is to ensure that outdoor lighting does not interfere with the reasonable use and enjoyment of property. These regulations are also designed to increase safety for both pedestrian and vehicular traffic.

A. Lighting design shall not create a nuisance to adjacent residences.

   (1) All external lighting sources shall be designed and shielded to avoid hazardous interference and direct glare onto adjacent streets and properties.

   (2) The lenses in pole and wall-mounted lighting shall be recessed to control the adverse impacts of light spillout and glare.

   (3) Parking area lighting fixtures shall not be illuminated after 11:00 p.m.

   (4) Security lighting and other building lighting will be allowed to operate as long as it does not create a nuisance to adjacent residences.

B. Outdoor site lighting shall accent existing community character and styling.

   (1) Pole-mounted lighting shall not exceed a total height of 15 feet from finished grade to the top of the fixture.

   (2) A mixture of lamp types on the same site shall be avoided.

   (3) To provide optimum color rendition, lamps are preferred in the following order: high-pressure sodium, metal halide, low-pressure sodium.

C. Convenience stores and gas stations. Lighting fixtures or sources of light that are a part of the underside of the canopy should be recessed into the underside of the canopy so as not to protrude below the canopy ceiling surface. Lighting fixtures which feature a central light spill, limiting unwanted lighting outside of the commercial property, shall be used. The materials and color used on the underside of the canopy should not be highly reflective, with the intent of minimizing the amount and intensity of light that reaches beyond the site boundaries.

D. Lighting plans shall be submitted and must include illumination footprints. The appearance and placement of lighting will be recommended on by the Planning Board as part of the site plan approval process.

§ 229-90.2. Access management.

Access management standards are put in place in an effort to reduce logistical traffic conflicts, particularly along roads with heavy traffic volume. Logical design standards assist with the strategic placement of

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access points along traffic avenues and thus reduce the number of conflict points. Achieving proper access management standards will allow for transportation components to be properly integrated into various land use arrangements. Projects which consider access management help to improve both safety and efficiency within the community.

A. The site layout, location and design of driveways and parking areas should be based on full buildout of the parcel. Future subdivision of the parcel or any future action that is contrary to an already approved plan cannot occur without prior Planning Board approval. Furthermore, site plans are a crucial component for understanding a site and project; they must illustrate the building location, elevation of all buildings and structures, building materials to be utilized on all facades, and the location of site lighting, signage, and traffic control features.

B. Properties with frontage on two or more roads do not have the right to provide driveway access to all such roads. Access in such cases shall be determined by the body with final approval authority, either the Town Board or Planning Board. **[Amended 12-1-2010 by L.L. No. 5-2010]**

C. Curb cuts and driveway spacing for new development or redevelopment will be evaluated on a case-by-case basis to reduce conflicts and ensure traffic safety and efficiency.

   (1) Driveways should be located so as to provide shared access and/or cross access with an abutting parcel or properties, wherever practical.

   (2) Shared driveways and/or cross-access driveways shall be of sufficient width (minimum 20 feet) to accommodate two-way travel for automobiles and for service and loading vehicles.

   (3) Driveways should be located outside of the functional area of the intersection, or if this is not possible, driveways should be placed as far as possible from the intersection.

D. Driveway location.

   (1) Driveway location will be based on a site plan that has been agreed upon by the Planning Board in consultation with the Town Engineer and, where appropriate, the Town Highway Superintendent.

   (2) The Planning Board may allow the location of driveways outside of conventional standards if:

      (a) A dual-driveway system, cross-access driveway system or shared driveway is proposed and this improves the safe and efficient movement of traffic between the parcel and the road;

      (b) A driveway or driveways could be located so as to meet conventional standards, but the characteristics of the parcel or the physical or operational characteristics of the road are such that a change of location will improve the safe and efficient movement of traffic between the parcel and the road; or

      (c) Conformance with conventional standards imposes undue and exceptional hardship on the property owner.

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ARTICLE XI
MA Major Arterial

§ 229-91. Intent.

The intent of these provisions is to encourage commercial enterprise in an area of Town that can adequately provide for a high volume of automobile traffic and to facilitate convenient access, minimize traffic congestion, reduce vehicle conflict points, and reduce visual clutter for those commercial uses. Major Arterial District includes all those areas along Transit Road (NYS Route 78) from Wehrle Drive to Swormville.

§ 229-92. Permitted uses.

A. The following list of uses are allowed as vested rights in facilities measuring up to 50,000 square feet in area:

(1) Shopping center or plaza.

(2) Permitted in-fill uses in existing structures.

(3) Hotels and motels.

(4) Banks and financial institutions.

(5) Funeral homes.

(6) Theaters and public assembly.

(7) Public recreational facilities.

(8) Retail sales activities.

(9) Nonprofit institutions of charitable, religious, cultural or civic purposes.

(10) Heating, plumbing and electrical shops.

(11) Convention facilities.

(12) Restaurants

(13) Professional, medical, executive offices.

(14) Dry cleaners/commercial laundry.

(15) Printing shops.

(16) Bowling alleys.

(17) Public utility facilities.

(18) Personal service shops, craft shops, antique shops.

(19) Day-care centers and nursery schools.

B. Exclusions: uses listed above which involve on-site manufacturing, outdoor storage of merchandise, hazardous materials, warehousing and/or storage necessitating truck travel, and mining.

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§ 229-93. Permitted with special exception use permit. [Amended 6-26-2013 by L.L. No. 2-2013]

A. Any permitted use that involves a facility in excess of 50,000 square feet and the following list of uses:

(1) Motor vehicle, equipment and implement sales and service.

(2) Commercial garages/gasoline service stations.

(3) Telecommunications towers (Chapter 173 of the Code of the Town of Clarence).

(4) Light manufacturing operations.

(5) Lumber and building supply operations.

(6) Drive-in/drive-through facilities.

(7) Drive-in theaters.

(8) Parking facilities.

(9) Car washes.

§ 229-94. Development and design provisions.

A. Minimum lot size: No lot shall have less than 100 feet of public road frontage nor be less than 200 feet in depth. Corner lots shall have not less than 300 feet of public road frontage on each street. No lot shall contain less than 20,000 square feet. If the lot is used for dwelling purposes, then it shall not be less than 5,000 square feet of area for each family dwelling unit.

B. Lot width (minimum): 100 feet.

C. Lot depth (minimum): 200 feet.

D. Front setback (minimum): 135 feet from center line of all public road rights-of-way.

E. Side setback (minimum): 25 feet to matching zone.

F. Rear setback (minimum): 25 feet.

G. Setback to adjoining residential (minimum): 45 feet.

H. Any commercial uses shall not be located adjacent to residential uses unless separated by a minimum forty-five-foot greenbelt.

I. Arcades, awnings and open porches shall be permitted to encroach a maximum of 12 feet into front setbacks and side setbacks.

J. Interior setbacks: Buildings located along main interior roads shall have unified front setbacks of at least 10 feet. Building side and rear setbacks shall be determined by the following:

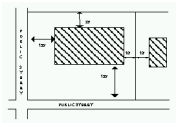
(1) Parking, loading and storage needs for the use.

(2) Adequate internal circulation of all traffic and all fire and safety concerns.

K. Size of buildings: No principal building shall contain less than 1,000 square feet of usable floor space.

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Buildings used in whole or part for residential purposes, exclusive of accessory buildings and exclusive of porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story building used as a one-family dwelling, nor less than 600 square feet of usable first floor living space if more than one story, provided that no such building shall contain a total of less than 1,000 square feet of usable living space if used as a one-family dwelling; and provided, further, that no such building shall contain a total of less than 600 square feet of usable living space for each one-bedroom family unit or apartment; 720 square feet of usable living space for each two-bedroom family unit or apartment; and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.



L. Building height:

(1) Building height shall be measured as the vertical distance from the mean elevation of the finished grade relative to the frontage street to the ridgeline of the structure.

(a) All uses: maximum 45 feet.

(2) Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed.

(3) Transmission and receiving towers (total height from ground level to top of tower): intervening buildings are included in total tower height.

§ 229-95. Accessory buildings.

A. Permitted accessory structures:

(1) Private garages.

(2) Sheds.

(3) Enclosures for dumpsters, outside storage, etc.

(4) Barns.

(5) Fences/walls (see Chapter 101).

(6) Private recreational facilities.

B. No accessory building designed, intended or used for business purposes shall extend closer than 45 feet to any side or rear lot line of any residential lot used wholly for residential purposes, nor closer than 25 feet to any side or rear lot line wholly within a Major Arterial District. Accessory buildings lying wholly to the rear of the principal buildings shall not extend closer than 10 feet to the side or rear lot lines, provided these lines do not designate a residential district or are in common with a lot used wholly for residential purposes.

C. Private garages, sheds and other accessory buildings used wholly in connection with private residence shall extend not closer than 10 feet to any side or rear lot line.

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§ 229-96. Additional parking requirements.

Parking may occur within the side or rear setbacks of the principal building. Parking within required setback areas must be a minimum of five feet from any property line. Adjacent parking lots and rear service lanes of lots shall have internal vehicular access. There shall be a minimum forty-five-foot greenbelt from any parking area to a residentially zoned property line.

§ 229-97. Architectural standards.

A. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building (see Subsection D, Materials, below).

B. Approved metal paneling may not exceed 40% of any facade of a structure visible from a right-of-way.

C. All walls not visible from a public right-of-way may be constructed of cinder blocks or approved metal paneling but shall be painted to match the overall color scheme of the rest of the building.

D. Materials.

(1) Walls shall be clad in stone, brick, marble, approved metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling.

(2) Pitched roofs shall be clad in wood shingles, slate, sheet metal, corrugated metal, or diamond tab asphalt shingles.

E. Configurations.

(1) Two wall materials may be combined horizontally on one facade. The heavier material must be below.

(2) Roof pitch may not vary within a development.

F. Techniques. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

§ 229-98. Lot coverage.

All principal buildings, accessory structures and impervious surfaces located on a Major Arterial District property may not exceed 75% of the gross area of the lot. Where a property owner has shared access and shared parking arrangements with adjoining property owners in perpetuity (for example: via a permanent easement recorded in the deed) the lot coverage requirements may be increased to 85% of the lot.

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ARTICLE XII
I Industrial Business Park

§ 229-99. Intent.

A. The purpose of this zoning district classification is to direct and encourage the growth of light manufacturing and assembly operations in appropriate areas of the Town. The Town must have areas available for business development and expansions in order to provide a balanced tax base for future growth.

B. The intent of these provisions is to facilitate convenient access, minimize traffic congestion, and reduce visual clutter within this district.

C. Industrial Business Parks are located in three general areas of Town. They are located along Roll Road at Harris Hill Road; County Road between Heise and Strickler Roads; and Wehrle Drive between Harris Hill and Shisler Roads.

§ 229-100. Permitted uses.

A. Permitted uses shall be as follows:

(1) Commercial uses, excluding any residential uses.

(2) Light manufacturing.

(3) Permitted in-fill uses in existing structures.

(4) Telecommunication towers (see Chapter 173).

(5) Landscape supply operations.

(6) Public utility facilities.

(7) Community facilities.

(8) Assembly operations.

(9) Mini storage/personal storage facilities.

(10) Lumberyards.

(11) Research and development operations.

(12) Warehousing.

B. Exclusions: uses listed above which involve outdoor storage of merchandise, equipment, or hazardous materials.[6]

§ 229-101. Uses permitted with special exception use permit.

A. Motor vehicle, equipment and implement sales and service.

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6. Editor's Note: Former Subsection C, regarding uses not specifically enumerated, which immediately followed, was repealed 8-14-2024 by L.L. No. 1-2024.

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B. Hazardous materials storage.

C. Commercial garages.

D. Collision shops.

E. Adult entertainment uses.

F. Fuel storage and supply operations.

G. Mining/excavating operations (see Chapter 93).

§ 229-102. Development and design provisions.

A. Minimum lot size: No lot shall contain less than 43,560 square feet.

B. Lot of record: No lot shall have less than 125 feet of public road frontage, nor be less than 200 feet in depth.

C. Lot width (minimum): 125 feet.

D. Lot depth (minimum): 200 feet.

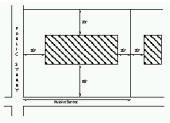
E. Front setback (minimum): 80 feet.

F. Side setback (minimum): 20 feet.

G. Rear setback (minimum): 25 feet.

H. Setback to adjoining residential zone (minimum): 100 feet.

I. Arcades, awnings and open porches shall be permitted to encroach a maximum of 12 feet into front setbacks and side setbacks. Where residential zones abut an industrial zone, the setbacks must be 100 feet minimum.



J. Accessory structures must meet all of the required front, side, and rear yard setbacks.

K. Corner lots must have at least 200 feet of public road frontage along both streets.

L. Building height:

(1) The vertical distance from the mean elevation of the finished grade relative to the frontage street to the ridgeline of the structure.

(a) All uses: maximum 45 feet.

(2) Exceptions: roof equipment not intended for human occupancy and which is necessary to the structure upon which it is placed.

(3) Transmission and receiving towers (total height from ground level to top of tower): intervening

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buildings are included in total tower height.

M. Building size. No principal building shall contain less than 2,000 square feet of ground floor area.

§ 229-103. Additional parking and loading requirements.

A. Off-street loading requirements shall be as follows:

(1) Less than 5,000 square feet: none.

(2) Five thousand to 20,000 square feet: one.

(3) Over 20,000 square feet: two plus one for each additional 30,000 square feet.

B. Parking may occur within the side or rear setbacks of the principal building. Parking within required setback areas must be a minimum of five feet from any property line. Adjacent parking lots and rear service lanes of lots shall have internal vehicular access. There shall be a minimum forty-five-foot greenbelt from any parking area to a residentially zoned property line.

§ 229-104. Architectural standards.

A. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building (see Subsection C, Materials, below). Approved metal paneling may not exceed 40% of any facade of a structure visible from a right-of-way.

B. All walls not visible from a public right-of-way may be constructed of cinder blocks or approved metal paneling but shall match the overall color scheme of the rest of the building.

C. Materials.

(1) Walls shall be clad in stone, brick, marble, approved metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling.

(2) Pitched roofs shall be clad in wood shingles, slate, sheet metal, corrugated metal, or asphalt shingles.

D. Configurations.

(1) Two wall materials may be combined horizontally on one facade. The heavier material must be below.

(2) Roof pitch may not vary within a development, except for architectural accents such as small cupolas or dormers.

E. Techniques. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

§ 229-105. Lot coverage.

All principal buildings and accessory structures located on an Industrial Business Park property may not exceed 75% of the gross area of the lot. Where a property owner has shared access and shared parking arrangements with adjoining property owners in perpetuity (for example, via a permanent easement recorded in the deed) the lot coverage requirements may be increased to 85% of the lot.

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ARTICLE XIII

OSD Open Space Design Development Overlay

[Amended 2-14-2007 by L.L. No. 1-2007; 7-9-2008 by L.L. No. 1-2008; 10-8-2014 by L.L. No. 5-2014]

§ 229-106. Purpose.

A. Open Space Design Development (OSDD) Overlay District or clustering shall be a subdivision plat or plats in which the applicable zoning law is modified to provide an alternative permitted method for the layout, configuration and design of lots; buildings and structures; roads; utility lines and other infrastructure; and parks and landscaping in order to preserve the natural and scenic qualities of open lands. Private roads to service clustered lots may be approved as a part of the final plat, and lots along such private roads may be platted as legal lots. Such private roads must provide adequate access to existing public roads. The Town Board may consider a reduction in minimum lot sizes down to and including lots to accommodate up to four units with zero-lot-line setbacks (four-unit structures).

B. Open space design development in the Town of Clarence shall require the final approval of the Town Board, upon the review and recommendations of the Planning Board, pursuant to the administration of Chapter 193, the Subdivision Regulations of the Town of Clarence. Open space design development shall not be considered for approval unless it is determined by the Town Board that it will achieve the intent of these regulations. The Town Board, at its discretion, may direct an applicant to pursue open space design development if, in the judgment of that Board and the Planning Board, its application would benefit the Town. For example, if a standard subdivision is proposed in an area containing important lands and/or resources (e.g., green space, woodlands, significant views, prime farmland, etc.), the Town may direct an applicant to pursue an open space design to preserve as much of these features as possible. The Town Board may also, upon its review, find a proposed open space design development not in accordance with the purposes or requirements of this article if the proposed development has no features worth preservation.

§ 229-107. Intent.

The purpose of these open space design development regulations is to enable and encourage flexibility of design and development of land in such a manner as to:

A. Preserve open space and natural features.

B. Protect important natural resources and sensitive lands.

C. Encourage a variety of lot sizes and housing types without increasing the overall density as permitted by the underlying zoning district.

D. Encourage residential development that is in harmony with the surrounding character and scenic quality of the Town.

E. Encourage creativity and adaptability in the layout of residential lots.

F. Reduce the public long-term costs associated with infrastructure maintenance.

§ 229-108. Regulations governing open space and/or incentive lot design development.

Open space and incentive lot design development may include single-family dwellings in accordance with the following regulations and standards. The area proposed for open space and incentive lot design

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development shall be in single ownership or under unified control throughout the review process, inclusive of the filing of the map cover in the Erie County Clerk's office.

A. Open space. Unless otherwise provided in this chapter, the following regulations shall apply to all open space design developments:

(1) Open space design development shall only be considered where public sewer districts have been established.

(2) Open space design development shall only apply to any major subdivision of not less than five acres in land area.

(3) Having achieved all goals identified in this chapter, the minimum lot size may be reduced to no less than 5,000 square feet for detached housing units and up to four-unit, one- or two-story attached housing units may be allowed, provided that any and all such area that is not designed to serve as residential areas, roads or other public purposes be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland or for recreational purposes of an active or passive nature.

(4) The required minimum habitable floor area may be reduced to 1,000 square feet for a one-story structure and 1,200 square feet for a two-story structure.

(5) The maximum height of buildings shall not exceed two stories or 35 feet for single-family units.

(6) The permitted number of dwelling units shall in no case exceed the number of units that could be permitted if the land were subdivided into lots conforming to the minimum lot size (see § 229-49) and density requirements of this chapter applicable to the district or districts in which the land is situated. An aerial photograph may be required to assist in the density determination. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:

(a) Lands utilized by public utilities or structures or recorded easements of rights-of-way shall be subtracted from the total gross area.

(b) Water bodies, marsh areas, wetlands, wetland buffers, woodlands, gorges, rock outcroppings, caverns, poorly drained, alluvial and unstable soils and floodplains shall be subtracted from the total gross area.

(c) Any other areas deemed unfavorable (unusable/unbuildable) by the Planning Board because of topographic, geologic or hydrological characteristics, slopes in excess of 15%, and lands deemed important to preserve and protect existing views and character shall be subtracted from the total gross area.

(d) For the purpose of providing land for public streets, after deductions have been made in accordance with Subsection A(6)(a), (b) and (c) above, 10% of the remaining area shall be subtracted from the total gross area. (Road frontage clusters will not require this subtraction.)

(e) The adjusted total gross area of the parcel, as determined in Subsection A(6)(a), (b), (c) and (d) above, shall then be used to compute the maximum number of dwelling units and/or building lots permitted.

(f) Fifteen percent of the adjusted total gross area shall be set aside or preserved and

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maintained as open space. The land subtracted out in calculations [Subsection A(6)(a), (b), (c) and (d)] cannot be included in the open space requirement.

(g) Overall, the minimum amount of open space preservation shall be no less than 50% of the gross acreage of the parcel or parcels to be developed.

(7) Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved.

(8) The recreation/open space fee required pursuant to the subdivision and fee laws of the Town of Clarence shall still be applicable. Open space, green space or recreation areas in the OSDD shall be privately owned. The Town Board may recommend the dedication of land to the Town of Clarence, in lieu of these fees, if the subdivision is located in an area where a proposed park, playground or other recreation or public site is desired by the Town.

(9) Final designs shall incorporate connectivity to surrounding areas and be developed with walkways, sidewalks and/or trails that provide access to public areas and the Town's recreational trail system. Such connectivity shall be developed as a part of the project. If circumstances dictate that connectivity be provided at a future time, final plats shall identify those areas for future connections to the trail system or other public lands.

(10) Easement; ownership; maintenance.

(a) A baseline study shall be prepared and approved as a part of development plan approval in order to develop a conservation easement on the common open space.

(b) At the time of the filing of the final plat for the subdivision, the common open space and recreation lands shall be transferred to a homeowners' association pursuant to a deed to be filed in the Erie County Clerk's office. The developer shall, at that time, create a homeowners' association that shall function pursuant to an agreement that shall contain the right for the homeowners' association and/or the Town of Clarence to enforce the use and maintenance of the common open space and recreation lands. The enforcement shall include, but not be limited to, the right to enjoin or otherwise enforce any encroachment by a private homeowner into the open space and recreation lands. The enforcement rights shall include the right to legal fees, costs and disbursements. A copy of the transfer documents and homeowners' association agreement shall be provided to the Town of Clarence Town Attorney's office for review and approval before filing same in the Erie County Clerk's office. Once filed, a stamp "filed" copy shall be provided to the Clarence Town Attorney's office.

(c) The maintenance of sidewalks, to include snow removal, shall be the responsibility of the homeowners' association or property owner that will be responsible for the continued ownership of any common land.

(11) Private roads shall be built to minimum standards approved by the Town Board and provided by the Town Engineering Department. Community parking areas may be required by the Town Board during subdivision review.

(12) The underlying zoning requirements for lot coverage and setback requirements for all lots in an OSDD shall be waived. Minimum setbacks from each residential structure shall be 20 feet.

(13) If not specifically addressed in this chapter, all other underlying zoning regulations shall apply.

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(14) The OSDD shall complement the character of surrounding homes and natural features.

(15) The OSDD shall minimize long-term costs associated with the maintenance of public streets and utilities.

B. Incentive design. Unless otherwise provided in this chapter, the following regulations shall apply to all incentive design developments:

(1) Incentive design development shall only be considered where public sewer districts have been established.

(2) Incentive design development shall only apply to any major subdivision of not less than five acres in land area.

(3) Having achieved all goals identified in this chapter, the minimum lot size may be reduced to no less than 5,000 square feet for detached housing units and up to four-unit, one- or two-story attached housing units may be allowed, provided that any and all such area that is not designed to serve as residential areas, roads or other public purposes be set aside and restricted on the subdivision plat for use by inhabitants as common open space, parkland or for recreational purposes of an active or passive nature.

(4) The required minimum habitable floor area may be reduced to 1,000 square feet for a one-story structure and 1,200 square feet for a two-story structure.

(5) The maximum height of buildings shall not exceed two stories or 35 feet for single-family units.

(6) The permitted number of dwelling units shall in no case exceed the number of units that could be permitted if the land were subdivided into lots conforming to the minimum incentive lot size (see § 229-49) and density requirements of this chapter applicable to the district or districts in which the land is situated. An aerial photograph may be utilized to protect the natural features of the land and be a delimiter in the density determination. However, prior to determining the number of dwelling units and/or building lots, the parcel to be developed shall be adjusted as follows:

(a) Lands utilized by public utilities or structures or recorded easements of rights-of-way shall be subtracted from the total gross area.

(b) Water bodies, marsh areas, wetlands, wetland buffers, woodlands, gorges, rock outcroppings, caverns, poorly drained, alluvial and unstable soils and floodplains shall be subtracted from the total gross area.

(c) Any other areas deemed unfavorable (unusable/unbuildable) by the Planning Board because of topographic, geologic or hydrological characteristics, slopes in excess of 15%, and lands deemed important to preserve and protect existing views and character shall be subtracted from the total gross area.

(d) For the purpose of providing land for public streets, after deductions have been made in accordance with Subsection B(6)(a), (b) and (c) above, 10% of the remaining area shall be subtracted from the total gross area. (Road frontage clusters will not require this subtraction.)

(e) The adjusted total gross area of the parcel, as determined in Subsection B(6)(a), (b), (c) and (d) above, shall then be used to compute the maximum number of dwelling units and/

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or building lots permitted.

(f) Fifteen percent of the adjusted total gross area shall be set aside or preserved and maintained as open space. The land subtracted out in calculations [Subsection B(6)(a), (b), (c) and (d)] cannot be included in the open space requirement.

(g) Overall, the minimum amount of open space preservation shall be no less than 25% of the gross acreage of the parcel or parcels to be developed.

(7) Natural features such as streams, rock outcrops, marshlands, trees and shrubs shall be preserved and incorporated into the landscaping of the development. In addition, open vistas visible from existing public roads shall be preserved.

(8) The recreation/open space fee required pursuant to the subdivision and fee laws of the Town of Clarence shall still be applicable. Open space, green space or recreation areas in the incentive design shall be privately owned. The Town Board may recommend the dedication of land to the Town of Clarence, in lieu of these fees, if the subdivision is located in an area where a proposed park, playground or other recreation or public site is desired by the Town.

(9) Final designs shall incorporate connectivity to surrounding areas and be developed with walkways, sidewalks and/or trails that provide access to public areas and the Town's pedestrian trail system. Such connectivity shall be developed as a part of the project. If circumstances dictate that connectivity be provided at a future time, final plats shall identify those areas for future connections to the trail system or other public lands.

(10) Common open space and recreation lands shall be deeded to a homeowners' association or individual that will be responsible for the continued ownership, use and maintenance of said lands. Such deeds shall be reviewed by the Town Attorney and approved by the Town Board.

(11) Private roads shall be built to minimum standards approved by the Town Board and provided by the Town Engineering Department. Community parking areas may be required by the Town Board during subdivision review.

(12) If not specifically addressed in this chapter, all other underlying zoning regulations shall apply.

(13) The OSDD shall encourage a variety of lot sizes and housing types to protect the long-term viability of the neighborhood.

C. After completing the density determination as herein described, for both an "open space" and "incentive design," the Planning Board will make a recommendation to the Town Board on either an open space or incentive design subdivision.

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ARTICLE XIIIA
LC Lifestyle Center District
[Added 1-17-2018 by L.L. No. 1-2018; amended 8-8-2018 by L.L. No. 4-2018]

§ 229-108.1. Description and purpose of LC District.

The Lifestyle Center District ("LC District") is established to permit and to promote upscale and community scale, open air streetscape/main street style mixed commercial/residential centers. The property zoned LC District is comprised of businesses serving the specialty and leisure time shopping needs of the community at large with integrated residential uses to promote a mixed use environment, public convenience and accessibility. In furtherance of this planning objective, mixed-use projects are permitted. Standards to ensure high quality shall be applied to allow flexibility while requiring integrated design within the overall site; limited access to public roadways, and integrated vehicular and pedestrian facilities within the site and adjacent properties. Development of property in the LC District is not intended to be accomplished in a fragmented, lot-by-lot manner or to consist of a single category or type of land use.

§ 229-108.2. Permitted uses.

Except as otherwise expressly provided within this chapter, land located in the LC District may be used only for a combination of the land uses listed below and subject to the standards for the permitted uses as set forth in this chapter.

A. Hospitality and food service establishments as follows:

(1) Hotels and motels.

(2) Restaurants without drive-in or drive-through service.

(3) Cafes, delicatessens, food catering establishments.

(4) Patio/outside dining facilities, outdoor gardens.

(5) Bars and similar alcohol-serving establishments.

B. Retail sales establishments as follows:

(1) General merchandise stores.

(2) Food and grocery stores, including specialty food stores, such as butcher shops and fish markets, fruit and vegetable markets, dairy products stores, candy, nut, and confectionery stores and retail bakeries.

(3) Stores selling apparel and personal accessories at retail.

(4) Furniture and home furnishings, and home and office supply stores selling items such as floor coverings, drapery and upholstery, household appliances, radios, televisions, and electronics, computers and software, videos and DVDs (except adult-oriented content), records, tapes and discs, musical instruments and office supplies at retail.

(5) Miscellaneous retail stores for items such as antiques, articles on consignment, sporting goods and bicycles, books (except adult book stores), stationery, jewelry, art, hobbies, crafts, toys, and games, cameras and photographic supplies, gifts, novelties, and souvenirs, luggage and leather goods, sewing, needlework, catalog and mail-order, liquor and tobacco products and

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accessories, pet supplies and accessories, and news dealers.

(6) Flower shops without green houses.

(7) Drug stores without drive-through service.

(8) Stores selling building materials such as paint, glass, wallpaper, plumbing and electrical fixtures and hardware, at retail excluding outdoor storage.

(9) E-retailer fulfillment centers to service project area.

C. Business services including:

(1) Advertising agencies, adjustment and collection services, credit reporting services, direct mail services, photocopying and duplicating services, commercial art and graphic design, secretarial and court reporting, building maintenance services, employment agencies, computer programming services, data processing, and messenger service stations.

(2) Miscellaneous repair services such as for radios, television, computers and similar electronics, household appliances and furniture, watches, clocks and jewelry as an accessory use to a principal retail use only.

(3) Technology facilities including accessory warehousing facilities utilized by the technology facility.

(4) Pet grooming and animal day-care facilities (excluding boarding kennels).

(5) Day-care facilities.

D. Personal services including:

(1) Beauty and barbers shops, travel agencies, fitness centers, tanning and manicure salons, tailor and dress making shops, shoe repair shops.

(2) Laundry/dry cleaning, pickup and dropoff only.

(3) Dance, art, music, and similar professional studios.

E. Office uses including:

(1) Banks and other financial institutions without drive-through service.

(2) Professional offices of doctors, dentists, optometrists, lawyers, accountants, realtors, architects, engineers, veterinarians, business or financial consultants or other professionals, and corporate, executive, administrative, or sales offices including incidental sales of medical or dental aids.

(3) Business offices for plumbers, heating, cooling contractors, electricians, decorators, and similar trades so long as the such uses do not involve the outdoor storage of commercial equipment and vehicles.

F. Motor vehicle uses:

(1) Automotive and other motor vehicle dealerships so long as display and inventory is limited to indoors only. Facilities for servicing motor vehicls shall be allowed as an accessory use to a dealership so long as all repairs, servicing, etc., is limited to indoors only. No outdoor storage of motor vehicles for sale or other purposes is permitted in the LC District.

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(2) Electric vehicle charging stations.

G. Religious uses:

(1) Churches and other places of religious assembly.

H. Community facilities:

(1) Medical uses.

(2) Colleges, universities, technical school, public and private schools.

(3) Libraries, museums, and art galleries.

(4) Administrative, public safety offices and public meeting rooms for Town, county, state, and federal government agencies.

(5) Wireless communications facilities, including antennas and towers, located on the principal structure and all associated transmitters, receivers, relays and equipment shelters, not exceeding 35% of the total height of the structure on which the wireless communications facilities are located.

(6) Indoor and outdoor recreational and athletic facilities.

(7) Adult and child day-care centers.

(8) Parks and public spaces, including water features.

(9) Transportation facilities such as trolleys, buses, bike share, etc., including autonomous versions.

(10) Entertainment venues.

(11) Community facilities, including but not limited to conference centers, gardens, theatres, cinemas and auditoriums.

I. Residential uses:

(1) Attached residential dwelling units, for sale or lease, including apartments, townhouses and live/work units.

(2) Attached housing units designated for seniors.

(3) Residential dwelling units located above first floor retail, office and other permitted categories of uses permitted within this § 229-108.2 of the Zoning Code.

(4) A home occupation, subject to the provisions of § 229-19 of the Zoning Code.

J. Parking facilities:

(1) Structured parking garages, architecturally compatible with principal structure(s).

K. Special events:

(1) Special events, including community gatherings and commercial event sales, are exempt from the review and approval process as set forth in § 229-108.11 subject to the following standards:

(a) Emergency access shall be maintained at all times, including designated fire lanes.

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(b) No unreasonable noise shall be allowed beyond that of the normal operations within the Lifestyle Center District.

(c) The location or venue of special events shall be accessible to Town of Clarence Departments and Town officials.

(d) No off-site parking shall be permitted. Appropriate parking arraignments for special events shall be provided. No parking shall be permitted in rights-of-way, access aisles, driveways or on greenspace.

(e) No unreasonable lighting beyond existing lighting consistent with the normal operations within the Lifestyle Center District.

(f) Tents, stages and other similar temporary items must be securely fastened to ensure safety.

(g) When estimated attendance is greater than 500 individuals, dedicated security shall be provided.

(h) All special events shall comply with any applicable requirements of the New York State Building Code and New York State Fire Code.

L. Other uses:

(1) Upon recommendation of the Office of Planning and Zoning, retail businesses or service establishments not listed above, that generally provide products or services and that are determined by a majority vote of the Planning Board to be: i) similar in character and operation to the permitted uses described above; and ii) complementary to permitted uses listed above; and iii) compatible with the intent and purposes of the LC District as set forth in § 229-108.2.

M. Uses expressly prohibited. The following categories of uses are expressly prohibited in the LC District:

(1) Warehouse type stores and retail buying clubs.

(2) Self-storage facilities.

(3) Automotive uses except as otherwise expressly permitted herein.

(4) Dog kennels.

(5) Manufactured homes.

(6) Detached residential units including but not limited to single-family homes on individual lots.

(7) Sexually oriented businesses.

§ 229-108.3. Site development standards.

Except as otherwise expressly provided in this chapter, projects in the LC District shall at a minimum comply with the standards provided in this section.

A. Mixed use requirements.

(1) The minimum required residential density shall be 20% of the floor area of the overall development on the land zoned LC District. The maximum allowed residential density shall be

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40% of the floor area of the overall development on the land zoned LC District. Residential density achieved through a mixed use format is encouraged as the preferred method of development for land zoned LC District. A mixed use format shall be defined as residential dwelling units located above first floor retail, office or commercial space. Residential units located in a mixed use format located above first floor retail, office or commercial space shall count towards the minimum residential percentage of requirement of 20% of the floor area of the overall development on the land zoned LC District. Residential units located in a mixed use format located above first floor retail, office or commercial space shall not count towards the maximum residential density percentage of 40% of the floor area of the overall development on the land zoned LC District. Projects within the LC District are not subject to the multiple-family development standards contained in § 229-126 of the Zoning Code.

B. Area and yard requirements, building and parking lot setbacks and greenbelts.

(1) In order to consider a LC District, a parcel or more than one contiguous parcel must contain at least 25 acres. This requirement may be reduced by the Town Board, if in its discretion it is determined that the LC District is appropriate for a parcel or more than one continuous parcel totaling less than 25 acres in accordance with the intent and standards of the LC District.

(2) Perimeter building setbacks for buildings. Building setbacks for commercial buildings placed along all existing perimeter public streets and/or adjoining residential districts shall be 80 feet as measured from the property line. Perimeter building setbacks for buildings adjacent to commercial zoning districts shall be 25 feet.

(3) Parking lot setbacks for commercial buildings. Parking lot setbacks for buildings placed along all existing perimeter streets shall have a minimum setback of 35 feet. The greenbelt/perimeter setback for parking lots located adjacent to off-site residential uses shall be a minimum of 45 feet. The required setback areas shall be utilized to create and maintain an aesthetically pleasing, safe and secure environment for visitors. The required setback areas may be utilized as sidewalks and recreational paths linking the various uses and shall otherwise be used to create and maintain an aesthetically pleasing, safe and secure environment for visitors and residents.

(4) Internal setbacks within designated commercial/mixed-use development areas. Within designated commercial/mixed-use development areas, internal zero lot line and internal zero setback layouts may be utilized. To that end, flexibility will be granted in establishing the setbacks from internal lot lines (when applicable) and the right-of-way lines for internal public and private roads serving the interior of the site.

(5) Yard, building, and area requirements for residential buildings. The lot area, lot width, building setback, and yard requirements applicable to residential buildings shall be proposed by the applicant and shall require the expressed approval of the Planning Board based on its application of site-planning criteria to achieve a proper integration of the uses and components. In establishing these standards, the criteria to be utilized by the Planning Board shall be as follows:

(a) Overall design of the project relative to its compatibility with nearby land uses.

(b) Number and type of dwelling units.

(c) Proximity to adjacent existing and future land uses.

(d) Preservation of existing vegetation or other natural features on a site.

(e) Topography of the site.

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(f) Adequate provision of emergency services, water, sanitary sewer, storm sewer improvements and all other necessary utilities.

(6) Permanent open space. A minimum greenspace requirement, including water features, lawns and landscaping, of 10% shall be met and a minimum of 10% of the project shall be accessible to the general public, as public open space.

C. Landscaping and open space.

(1) Strategically placed pedestrian plazas, squares, play areas and natural open space area as appropriate for both the village environment and the residential environment shall be provided. Such elements shall be designed to produce an aesthetically pleasing environment with sensitivity to vistas and the users. Pedestrian seating and other age-sensitive facilities and improvements shall be provided in appropriate quantities and locations.

(2) To the extent not referenced in the LC District code, landscaping shall be provided for greenbelts and parking lots as required by Chapter 131. Flexibility may be granted in the calculation of required parking landscape islands established under the parking area landscaping requirements of § 131-8C to allow for the aggregation of areas and their placement along internal streets when adjacent to parking areas. Landscaping shall be provided through a variety of noninvasive species featuring different sizes, types and spacing. Such landscaped spaces shall complement the character of the overall architectural style and theme of the site. Within the required open space, the applicant is encouraged to provide public landscape features, including but limited to water features, lawns and tree groves. Appropriate and sufficient landscaping shall be utilized to buffer adjacent sites and land uses at the time of planting. Consideration shall be given to the future growth and maintenance of such landscaping. Vehicular access points shall be supplemented with sufficient landscape features as to create the sense of a boulevard or parkway setting. Landscaping is encouraged to be utilized for the buffering of land uses on site.

D. Pedestrian and bicycle facilities. Full and safe pedestrian and bicycle access features shall be provided, and such improvements shall link all areas and uses within the overall development. This shall include appropriate connections to the existing and planned sidewalk and existing and planned recreational paths in the community and surrounding neighborhoods as well as sidewalk connections to all building entrances from public and private street system. Additionally, safe and secure pedestrian seating in appropriate quantities and locations shall be provided along sidewalks and recreational paths. Secure, marked, bicycle parking spaces shall be provided. Such facilities shall be designed and placed to be within walking distance of the buildings and building entrances they are intended to serve, be visible from major pedestrian corridors, and shall not cause obstruction of pedestrian or motor vehicle traffic.

E. Off-street parking requirements. There is not a minimum parking requirement for projects in the LC District. However, in connection with a project in the LC District, the applicant shall provide the appropriate number of parking spaces to satisfy the parking demand for the proposed project. The location of such parking shall be screened from view and integrated within the interior of the site to minimize visibility from public viewsheds. In order to demonstrate that an adequate number of parking spaces shall be provided, the applicant shall provide a parking plan based on such factors as land use and land use intensity, availability of public or alternative transportation, and shared parking arrangements.

F. Access and circulation. The appropriate control of traffic is an important consideration of development in the LC District. The following access and circulation standards shall apply:

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(1) A traffic impact study prepared by a licensed engineer shall be submitted as part of the environmental review of the overall project pursuant to the State Environmental Quality Review Act ("SEQRA") in connection with the review of the application. The traffic impact study shall provide data and recommendations for on-site and off-site traffic control improvements and measures, information on the amount of traffic generated by proposed uses, the impact of traffic on adjacent and nearby streets, and other relevant traffic information as required by the Planning Board and governmental agencies with jurisdiction over public roadways in the vicinity of the site.

(2) As a condition of approval of the application, the Planning Board shall find, based on the results of the traffic impact study and other relevant information regarding identified potential traffic impacts, that safe and efficient traffic flow will be maintained on adjacent, nearby and internal streets.

(3) Interior roadways and parking lots shall be designed so that traffic circulates in manner that creates minimum conflicts. Entrance points to parking areas shall be placed so as to avoid vehicles backing up onto adjacent roadways.

(4) When determined by the Planning Board to be suitable in order to ensure appropriate, safe and permanent vehicular access on the overall site and connections to public roadways, easements for internal private roadways and connections shall be required.

(5) Alternate transportation facilities are expressly encouraged.

§ 229-108.4. Unified development.

For the purpose of financing or varied ownership, parcels may be created within the LC District upon the granting of unified development approval by the Planning Board. A request for unified development approval shall be included with an application for conceptual master plan or an application for development plan. A request for unified development plan approval shall be reviewed by the Planning Board simultaneous with the conceptual master plan application or development plan application.

A. Building and parking, loading and stacking setbacks that otherwise apply to projects in the LC District shall not apply to the shared boundaries of parcels created upon receipt of unified development approval.

B. Reciprocal access easements to be recorded at the Erie County Clerk's office upon the approval of the content of such easements by the Town Attorney's office shall be required as a condition of granting unified development approval by the Planning Board. Reciprocal access easements shall expressly state that the access easements run with the land and that easements shall not be modified or rescinded unless approved by the Planning Board.

C. Reciprocal easements to be recorded at the Erie County Clerk's office upon the approval of the content of such easements by the Town Attorney's office for other common facilities located on more than one parcel such as parking spaces, stormwater management facilities, utility lines, etc., shall be required as a condition of unified development approval by the Planning Board. Reciprocal easements required pursuant to § 229-108.3 shall expressly state that the access easements run with the land and that easements shall not be modified or rescinded unless approved by the Planning Board.

§ 229-108.5. Building height, size, placement and appearance.

A. The minimum building setback from a public right-of-way or a parcel contiguous to property zoned

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LC District shall be equal to at least one foot for every foot of building height, as measured from finished grade to the peak height of the building.

B. Multistory buildings designed to accommodate a mixture of nonresidential uses on the first floor and residential units or office space on upper floors are permitted.

C. Buildings and structures shall have a coordinated, attractive, architectural theme. Anchor buildings and multitenant buildings shall be designed to avoid blank walls, unless they are designed for a specific purpose, such as an outdoor movie screen. All buildings shall include horizontal and vertical relief and quality architectural materials shall be utilized on all sides of buildings.

D. Buildings may feature green roof technologies, and as such, are encouraged. Where green roof technologies are utilized and accessible to residents or the public, consideration shall be given to safety features that meet all applicable Town, state and federal regulations.

E. Buildings shall be generally oriented toward the pedestrian access rather than the existing public roadways. Portions of buildings that directly face passing traffic and/or off-street parking areas shall be enhanced with attractive storefront entrances, screening, landscaping and a general presentation and character that is consistent with the village square, marketplace or main street character and design used throughout the remainder of the overall site.

F. Universal design shall be encouraged to accommodate individuals of all ages and abilities.

G. Refuse and loading areas shall be appropriately located and properly screened. The screening may be through internal loading areas, screening walls matching the building exterior in materials and design, fully opaque landscaping at time of planting, or appropriate combinations of the above. Gates and fencing may be used for security purposes, but not for screening, which is consistent with the village square, marketplace or main street character and design used throughout the remainder of the project, and shall be of aesthetic quality.

§ 229-108.6. Lighting.

All outdoor lighting fixtures including but not limited to pole-mounted or building-mounted lights shall be subject to the lighting standards contained in § 229-155D.

§ 229-108.7. Signs.

Unless otherwise specifically approved as part of an overall design scheme for signage at the time of development plan approval, signs shall comply with the sign regulations set forth in Chapter 181 of Town Code.

§ 229-108.8. Waivers.

A. The Planning Board shall have the authority and discretion to grant waivers of requirements as set forth in this Article XIIIA of the Town Zoning Code. The granting of waivers shall require a majority vote of the Planning Board based on its consideration of the following criteria:

(1) The hardship to the applicant that would result from compliance with the applicable standard from which the applicant is seeking a waiver.

(2) The Planning Board issuing a finding that the granting of the requested waiver will not conflict with the established planning objectives for property zoned LC.

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B. The granting a waiver by the Planning Board shall be on a case-by-case basis. The granting of a waiver by the Planning Board shall not establish a precedent for the granting of future waivers.

§ 229-108.9. Third-party consultants.

The Planning Board shall have the authority to recommend to the Town Board that one or more consultants be retained on behalf of the Town of Clarence to assist in the review of a proposed project located in the LC District. The categories of third-party consultants that the Town of Clarence may retain to provide assistance in connection with the review of a proposed project in the LC District shall include but not be limited to architectural, engineering (civil and/or traffic), legal and planning services. The cost of such third-party consulting services shall be reimbursed by the applicant to the Town of Clarence within 30 days of the Town receiving an invoice for third-party consulting services.

§ 229-108.10. Conflicts.

In the event of a conflict between the provisions contained in this article and other provisions contained in the Town of Clarence Code, the provisions and regulations contained in this article shall supersede such inconsistent provisions elsewhere in the Town of Clarence Code.

§ 229-108.11. Review process.

The review process for proposed projects in the LC District involves two distinct steps. The first step is titled Master Plan Review and the second step is Development Plan Review.

A. Preapplication meeting with Planning Department. Prior to submitting an application for conceptual master plan approval for a proposed project located in the LC District, the applicant shall be required to attend a preapplication meeting with the Planning Department. The purpose of the preapplication meeting shall be for the Planning Department to review a draft of the master plan and related project materials and provide input to the applicant for its consideration. During the preapplication meeting, there shall also be discussion of the scope of the traffic impact study to be included with the master plan application. The Planning Department shall determine whether to solicit input from governmental agencies with jurisdiction over public roadways in the vicinity of the site regarding the scope of the traffic impact study to be prepared and submitted in connection with the review of a conceptual master plan application.

B. Conceptual master plan application and review. The first formal step in the review process of a proposed project in the LC District is conceptual master plan review. An environmental review of the proposed project pursuant to the State Environmental Quality Review Act ("SEQRA") shall be conducted in connection with the conceptual master plan review process.

(1) Conceptual master plan application requirements. An application for conceptual master plan approval shall consist of the following:

(a) Completed request for action form;

(b) Proof of ownership or dated, signed and notarized authorization of property owner(s);

(c) Conceptual master plan showing the layout of the proposed project and illustrating the manner by which the applicant intends to comply with standards contained in this Article XIIIA of the Zoning Code;

(d) Conceptual sketches depicting architectural style and theme for the overall project;

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(e) An accurate and updated survey of the site showing the location and accurately referencing all recorded easements and rights-of-way;

(f) A completed Part 1 of full environmental assessment form;

(g) Traffic impact study;

(h) Parking plan;

(i) Conceptual landscape plan;

(j) Preliminary grading and drainage plan prepared by a licensed engineer; and

(k) Any other information and/or plans reasonably determined to be needed by the Planning Department to assist in the review of the conceptual master plan application.

(2) Review of conceptual master plan application by the Planning Department. The Planning Department shall hold an initial meeting for the purpose of reviewing the conceptual master plan application and providing input to the applicant. The Planning Board shall also initiate a coordinated environmental review of the proposed project pursuant to the State Environmental Quality Review Act ("SEQRA") during its initial review of the proposed project as long as the Planning Board has reasonably determined that the conceptual master plan application provides necessary information to enable the Planning Board and involved and interested agencies to identify and evaluate potential adverse environmental impacts.

(3) Determination pursuant to the State Environmental Quality Review Act ("SEQRA"). As early as practicable during its review of the conceptual master plan application, the Planning Board, so long as it has been designated as the lead agency pursuant to SEQRA, shall identify and evaluate potential adverse environmental impacts and issue a SEQRA determination. The Planning Board shall have the ability to consider input received from involved and interested agencies as well as Town departments and the public in connection its evaluation of identified potential adverse environmental impacts and issuance of a SEQRA determination. The Planning Board shall not be required to issue a SEQRA determination prior to holding a public hearing on the conceptual master plan application.

(4) Public hearing(s) to be held by the Planning Board. The Planning Board shall hold one or more public hearings in connection with its review of the conceptual master plan application.

(5) Criteria for approval of the conceptual master plan. In connection with its issuance of a decision on an application for conceptual master plan approval, the Planning Board shall have broad discretion. The Planning Board's decision on an application for conceptual master plan approval shall be based on the Planning Board's determination as to whether the conceptual master plan is consistent with the planning objectives and standards contained in this Article XIIIA of the Zoning Code.

(6) Conditions. The Planning Board shall have the right to impose reasonable conditions in connection with its approval of a conceptual master plan.

C. Development plan application and architectural approval. The second step in the formal review process of a proposed project in the LC District is development plan review. To the extent the development plan is not consistent with the approved conceptual master plan, the Planning Board shall have the discretion to simultaneously review any amendments to the conceptual master plan while reviewing the development plan application.

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(1) Development plan application requirements. An application for development plan approval shall consist of the following:

(a) Completed request for action form;

(b) Proof of ownership or dated, signed and notarized authorization of property owner(s);

(c) Accurate and updated survey of the site showing the location and accurately referencing all recorded easements and rights-of-way;

(d) Documentation addressing the master plan approval conditions imposed by the Planning Board;

(e) Fully engineered plans prepared and stamped by a licensed engineer [Note: A reference to any conditions imposed by the Planning Board in connection with its approval of a conceptual master plan shall be included on the fully engineered plans.];

(f) Architectural plans by licensed architect;

(g) Landscaping plan prepared by a licensed landscape architect;

(h) Photometric plan;

(i) Engineer's report prepared by a licensed engineer;

(j) Stormwater pollution prevention plan ("SWPPP") prepared a licensed engineer;

(k) Drafts of deed restrictions, easements, dedication documentation for review by the Town Attorney's Office and Planning Department; and

(l) Any other information and/or plans reasonably determined to be needed by the Planning Department to assist in the review of the development plan application.

(2) Public hearing(s) to be held by the Planning Board. The Planning Board shall hold one or more public hearings in connection with its review of the development plan application.

(3) Landscaping plan approval. Prior to the issuance of development plan approval, the submitted landscape plan shall be approved by the Town's Landscape Review Committee.

(4) Criteria for approval of the development plan. In connection with its issuance of a decision on an application for development plan approval, the Planning Board shall have broad discretion. The Planning Board's decision on an application for development plan approval shall be based on the Planning Board's determination as to whether the development plan is generally consistent with the approved conceptual master plan and also consistent with the planning objectives and standards contained in this Article XIIIA of the Zoning Code. The Planning Board shall also approve the architecture of buildings in connection with its issuance of a decision granting development plan approval.

(5) Conditions. The Planning Board shall have the right to impose reasonable conditions in connection with its approval of a development plan. The applicant shall be required to demonstrate compliance with conditions imposed by the Planning Board prior to being eligible to obtain a building permit for a project in the LC District.

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ARTICLE XIV
CHO Clarence Hollow Overlay District

§ 229-109. Purpose and intent.

In accordance with the recommendations and policies of the Town's Comprehensive Plan, the Clarence Hollow Overlay is intended to:

A. Preserve the character of the Clarence Hollow community as a hamlet-style area with mixed uses set in an historical context.

B. Encourage and enhance the principals of traditional neighborhood design, which call for a mixture of uses, improved walkability/connectivity, enhancement of neighborhood appeal, preservation of community character, etc.

C. Continue and complement the design elements associated with the streetscape design for Main Street.

D. Maintain and improve the traffic conditions and the walkability and pedestrian circulation of the area as development and redevelopment take place.

E. Ensure that new buildings or building modifications are harmonious with surrounding structures in their use, scale and design

F. Encourage the preservation of existing building and sites in a manner that maintains the historic and distinctive character of the hamlet.

G. Minimize the removal or disruption of historic, traditional or significant structures or architectural elements in the hamlet.

H. Allow for a mixture of uses that would allow many existing parcels of land and structures to be utilized without the need for a zoning variance.

§ 229-110. Boundary.

General boundary. In general, this overlay zone represents all that area situated between Winding Lane and Davison Road, including all properties that have frontage along Main Street.

§ 229-111. Permitted uses.

A. Permitted uses: The uses permitted in the Clarence Hollow Overlay shall be the same uses as permitted in the underlying zoning districts.

B. Accessory uses: The accessory uses permitted in the Clarence Hollow Overlay shall be the same accessory uses as permitted in the underlying zoning districts.

§ 229-112. Effect upon subdivision regulations.

A. The division of lands, regardless of the zoning classification, shall be subject to Chapter 193 of the Code of the Town of Clarence (Subdivision Law). The following special regulations/requirements shall apply to all subdivisions of lands within this overlay district:

(1) Central Business District area:

(a) In dividing parcels or combining parcels, the number of curb cuts (street access/driveways)

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to Main Street shall be minimized or reduced where practical. Shared driveways and cross access connections shall be encouraged.

§ 229-113. Site design requirements.

A. Architecture: A Community Character Protection Board shall be appointed by the Town Board to review all site plans submitted for approval within the Clarence Hollow Overlay Zone. Such Board shall be a recommending body to the Town Board/Planning Board and shall meet as required and requested by the Town Board. It is not the intent of these requirements to establish or match any particular architectural style or pattern. In general, the structures should have a hamlet-style appearance and scale and meet the following standards:

(1) Design elements should follow the Town's "Clarence Hollow Design Guidelines" (copies to be obtained from the Town).

(2) Stoops, open colonnades, open porches, balconies, and bay windows may encroach into the front yard setback.

(3) There shall be no building(s) that include internally illuminated signs. The color scheme of the signs should remain monotone or two-tone.

(4) Building design materials shall include stone, brick and natural appearing materials. In concert with the residential character of the surrounding area, the use of vinyl siding shall also be allowed.

(5) Blank concrete block walls or sheet metal at street level shall be avoided. Visually interesting activities at the sidewalk edge shall be maintained and/or established to engage pedestrian interest.

(6) Painting: The Town strongly encourages all structures in the TND Zoning District to use proper contrasts in paint schemes. Trim and foundations should be visually differentiated from the main body of the structure. Also, typically, only traditionally painted materials (such as wood) should be painted. No aluminum, vinyl, or similar hybrids shall be used in color schemes.

(7) All rooftop units (HVAC) shall be properly screened or located so as not to be visible from the street.

(8) If a project involves a property that has local historic significance, every effort should be made to preserve the character and integrity of the structure.

(9) Additions to any building shall respect the original character of the property.

B. Landscaping: All landscaping shall be designed in accordance with the Streetscape Plan for Main Street in the Clarence Hollow area. A copy of these design guidelines can be obtained through the Town. For all development projects requiring site plan approval in the Central Business District area, a site plan shall be submitted for review and approval by the Town Landscape Committee and the Clarence Hollow Community Character Protection Board. The following elements shall be included in the required landscape submittal:

(1) A site plan showing existing and proposed buildings, walks, driveways, off-street parking, freestanding walls, fences, landscaping and any other site amenities is required.

(a) Walks. Paved walkways from the existing public sidewalks in the Main Street right-of-

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way to the interior of the property are required. Materials may include concrete, brick, pre-cast concrete pavers or a combination of materials that are in keeping with the character of the surrounding architecture and streetscape. Asphalt walkways are not permitted.

(b) Driveways. All new driveways within the Main Street right-of-way shall be constructed of concrete, concrete pavers, brick pavers or a combination of materials in keeping with the character of the surrounding architecture and streetscape. Asphalt driveways will not be permitted within the right-of-way. A driveway (highway access) permit is required by the New York State Department of Transportation for any new driveway within the roadway right-of-way.

(c) Screening of off-street parking. All off-street parking areas shall be screened from the street. Screening should be a minimum of 42 inches in height, should be continuous and should conceal the parking area(s) from the street. Methods of screening many include stone walls, picket fences, evergreen or deciduous hedges, other suitable landscape materials or a combination of materials. All screening should be located inside the applicant's property boundary and should not encroach onto the public sidewalk. Screening should not limit a driver's visibility of the sidewalk or street when exiting any off-street parking lot. Where the driveway intersects the street right-of-way, there should be no fence, wall, hedge or other material higher than 42 inches above grade for a distance of at least 15 feet on either side of the driveway.

(d) Walls. Walls which are visible from the street may be constructed of stone, brick, stucco or a combination of masonry materials and should be in keeping with the character of the surrounding architecture. Concrete block and cast-in-place concrete walls are not permitted.

(e) Fences. Fences which are visible from the street may be constructed of wood (or a synthetic material simulating wood), ornamental iron or other material in keeping with the character of the surrounding architecture. Picket and ornamental iron are appropriate fence treatments within the district. No corrugated metal, corrugated fiberglass, woven wire, or barbed wire fences will be permitted adjacent to the street right-of-way. A woven wire fence may be allowed if it is screened from the street by the use of an evergreen hedge or other acceptable material.

C. Other design requirements.

(1) Signage. The Town of Clarence recognizes that signage is necessary within the Clarence Hollow area but, like other design elements, there is a responsibility to make sure that such signage respects the character of the historic Hollow. The Town strives to maintain signage requirements that compromise neither the design qualities of the Hollow nor the ability of individual businesses to be successful. All applications for new signs shall be referred to the Community Character Protection Board, as herein established, for review and comment prior to approval by the Town of Clarence Sign Review Board as established under Chapter 181 of the Code of the Town of Clarence.

(2) Other aesthetic requirements.

(a) All dumpsters and loading areas shall be screened from the road by landscaping, fencing or walls.

(b) Lighting shall adhere to the guidelines set forth in the Clarence Hollow Design Guidelines.

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(3) Parking.

(a) The body with final approval authority, either the Town Board or Planning Board, may reduce off-street parking requirements during the site plan review process to one parking space per 1,000 square feet of building space. **[Amended 12-1-2010 by L.L. No. 5-2010]**

(b) On-street parking may be counted as parking area for a business use if it is directly fronting the business property.

(c) Cross-access and shared parking agreements may be used to meet the minimum parking requirements for the proposed use.

§ 229-114. Underlying zoning district regulations.

Unless specifically addressed in this chapter, all other underlying zoning district regulations shall apply.

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ARTICLE XIVA
Adequate Educational Facilities Overlay District
[Added 6-27-2007 by L.L. No. 3-2007]

§ 229-114.1. Purpose, intent and findings.

In accordance with the recommendations and policies of the Town's master plan, the purpose and intent of the Adequate Educational Facilities Overlay are to:

A. Ensure that educational facilities needed to support new residential development do not fall permanently below the level of service guidelines established herein.

B. Ensure that the school district, through cooperation with the Town, as provided herein, maintains a realistic capital improvements program (CIP) to accommodate reasonable growth and development based on its ability to provide adequate educational facilities to new development.

C. Ensure that adequate educational facilities needed to support new development are available as new development occurs.

D. Establish uniform procedures for the review of AEF assessments subject to the standards and requirements of this article.

E. Encourage residential development in areas where educational facilities exist or are planned in the CIP of the school district.

F. Ensure that all applicable legal standards and criteria are incorporated in these procedures and requirements.

G. Ensure that development proposals will not adversely affect the public health, safety, and welfare of existing and future residents of the Town.

§ 229-114.2. Boundary.

The Adequate Educational Facilities Overlay District represents all that area situated within the Town of Clarence that also is within the boundaries of the Clarence Central School District, as shown on the Adequate Educational Facilities Overlay District Map, as adopted and on file with the Department of Community Development.

§ 229-114.3. Permitted uses.

A. Permitted uses. The uses permitted in the Adequate Educational Facilities Overlay District shall be the same uses as are permitted in the underlying zoning districts.

B. Accessory uses. The accessory uses permitted in the Adequate Educational Facilities Overlay District shall be the same accessory uses as are permitted in the underlying zoning districts.

§ 229-114.4. Affect upon subdivision regulations.

The division of lands, regardless of the zoning classification, shall be subject to Town Subdivision Law.[7] In addition, the regulations and requirements of this article shall apply to all divisions of land within this overlay district, as provided herein.

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7. Editor's Note: See Ch. 193, Subdivision of Land.

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§ 229-114.5. Underlying zoning district regulations.

Unless specifically addressed in this article, all other underlying zoning district regulations shall apply.

§ 229-114.6. Applicability.

A. Generally. Except as provided in Subsection B of this section, within the AEF Overlay District, a statement of available capacity, and/or an approved mitigation plan, which demonstrates available capacity, is required as a condition of final approval of any development proposal.

B. Exemptions. For a development proposal, or portion thereof, that consists of age-restricted or senior citizen housing, no AEF determination shall be required where the applicant demonstrates that all age-restricted or senior citizen housing units are subject to a recorded deed restriction prohibiting school-aged children from residing in the proposed dwelling units.

§ 229-114.7. Application and review procedure.

A. When required. Subject to applicable Zoning Law requirements, a complete AEF assessment must be submitted in conjunction with any development proposal application. No development proposal shall be referred by the Town to the Planning Board for review and comment unless an AEF determination has been made by the Director. No development plan shall receive final approval by the body with final approval authority, either the Town Board or Planning Board, unless a statement of available capacity has been issued. **[Amended 12-1-2010 by L.L. No. 5-2010]**

B. Requirements for AEF assessment.

(1) Presubmittal meeting required. Prior to submission of an AEF assessment, the applicant must meet with the Director to confirm the scope and applicability of this article, to identify potential Educational Facility deficiencies, and to ensure compliance the AEF assessment requirements. The Director may request the school district's representative to attend.

(2) General AEF assessment requirements. The AEF assessment shall include:

(a) Description of the development proposal, including the type and amount of each proposed land use, including number of proposed new residential units.

(b) A phasing schedule for any residential development of 25 or more new dwelling units.

(c) If applicable, a mitigation plan.

(d) Other information required by the Director or the school district to evaluate the AEF assessment and to make an AEF determination pursuant to this article.

(3) Completeness review. Within 15 days of receipt, the Director shall determine whether the AEF assessment is complete and complies with the submission requirements set forth in this section. If the AEF assessment is complete and the submission requirements have been met, the Director will undertake review of the AEF assessment as provided herein.

C. AEF determination by Director.

(1) Within 30 days of making a completeness determination, or of receiving a revised application or mitigation plan, after consultation with the school district, the Director will make an AEF determination, by issuing either a statement of available capacity or a statement of no available capacity, consistent with the requirements and methodology set forth below.

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(a) By school level. AEF determinations will be based on the capacity of the attendance zone for each school at each school level in which a development proposal is located.

(b) Capacity. AEF determinations will consider the capacity of existing educational facilities as well as those included in the CIP, which are anticipated to be constructed and available within two years of the Town's final approval of the development proposal, including any advanced facilities to be provided pursuant to a mitigation plan.

(c) Demand. AEF determinations will consider the demands on educational facilities created by existing development; developments that have an unexpired AEF allocation; approved, yet unbuilt, developments which will impact educational facilities; and other factors which will affect the capacity of educational facilities.

(d) AEF schedule. The Director will maintain a schedule setting forth the existing and projected capacity of the schools within the AEF Overlay District.

(e) Methodology. The Director will issue either a statement of available capacity or a statement of no available capacity, based on the following:

[1] If the Director determines that there is not available capacity at each school level for each school that will serve the development proposal, the Director will:

[a] Issue a statement of no available capacity;

[b] Identify the month and year in which the school district's CIP indicates that available capacity will exist;

[c] Identify what steps if any the applicant may take voluntarily to advance the provision of school facilities so as to qualify for a statement of available capacity by the district; and

[d] Identify any other factor or information the Director determines is relevant to the AEF determination and the Town's action on the development proposal.

[2] If there is available capacity at each school level for each school that will serve the development proposal, the Director will:

[a] Issue a statement of available capacity;

[b] Record an AEF allocation on the AEF schedule; and

[c] Identify any other factor or information the Director determines is relevant to the AEF determination and the Town's action on the development proposal.

(f) If, based on the methodology set forth above, the Director determines that available capacity exists for each elementary, middle, and high school Educational Facility that will serve the development proposal, or that a proffered mitigation plan will ensure available capacity, the Director will issue a statement of available capacity and will make an AEF allocation.

(g) If, based on the methodology set forth above, the Director determines that available capacity does not exist and no acceptable mitigation plan has been proffered which would ensure available capacity, the Director will issue a statement of no available capacity and no AEF allocation will be made.

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(2) Once the Director has made an AEF determination, the Director will transmit the AEF determination with the development proposal application to the Town Board for referral to the Planning Board, in accordance with Town Zoning and Subdivision Laws.

(3) If a statement of available capacity is based on an advanced facility, approval of the development proposal must be conditioned on the timely completion of the advanced facility and approval by the Town and the school district of a mitigation plan. **[Amended 12-1-2010 by L.L. No. 5-2010]**

D. Statement of no available capacity and mitigation plans.

(1) A statement of no available capacity by the Director will indicate the month and year in which the CIP of the school district indicates available capacity will exist, based on adopted level of service standards, projected enrollments, and other factors related to educational facilities capacity.

(2) Prior to or upon a statement of no available capacity, the applicant may:

(a) Submit a development proposal that has a reduced amount of development for which available capacity exists;

(b) Submit a phased development proposal, which must be approved by the Planning Board, and which includes the following:

[1] A proposed phasing schedule setting forth the amount, location, and timing of development associated with each proposed phase;

[2] A demonstration that available capacity will be available to serve each phase of development, as provided herein;

[3] Where advanced facilities are proposed, the location and timing of the proposed facilities; and

[4] Other relevant information as identified by the school district or the Director needed to demonstrate available capacity.

(c) Submit a mitigation plan, which will be approved only pursuant to a valid development agreement between the applicant, the Town, and the school district, which proposes the provision of advanced facilities. Mitigation plans must fund or result in the construction of educational facilities anticipated to be available within two years of the final approval of the Town of the development proposal and must include the following, as applicable: **[Amended 12-1-2010 by L.L. No. 5-2010]**

[1] If the applicant is constructing or dedicating educational facilities, an estimate of the incremental cost of providing the advanced facilities and a schedule for commencement and completion of the advanced facilities.

[2] If the applicant is providing advanced funding for planned educational facilities, the amount, nature, and timing of said funding.

[3] A proposed development agreement, between the applicant, the Town, and the school district, committing the applicant to the timely and adequate provision of advanced facilities as described in the approved mitigation plan.

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[4] Other provisions determined by the parties to be necessary to ensure timely available capacity.

E. Action by Planning Board and Town Board.

(1) The Director's AEF determination will be forwarded with the development proposal application to the Town Board for referral to the Planning Board for review and comment, as otherwise provided by Town law.

(2) Except as provided in Subsection F below, no development proposal will receive final approval by the Town unless a statement of available capacity has been issued by the Director, in accordance with the methodology set forth herein. **[Amended 12-1-2010 by L.L. No. 5-2010]**

F. Limitation on development deferrals.

(1) Except as provided in Subsection F(2), below, any deferral of development resulting from a statement of no available capacity shall expire in the month and year when available capacity is projected to exist, based on the CIP and adopted level of service standard.

(2) However, in no event shall a deferral of development, based on a statement of no available capacity, exceed two years from the date of issuance of a statement of no available capacity.

G. Duration and effect of a statement of available capacity.

(1) A statement of available capacity and an AEF allocation shall be deemed to indicate that:

(a) Available capacity exists at the time of the AEF determination; and

(b) Provided that an application for a development proposal is determined by the Director to be actively continuing through the development process, a statement of available capacity shall remain valid until expiration of the development proposal approval.

(2) A statement of available capacity of educational facilities shall not affect the need for the applicant to meet all other requirements set forth in the Zoning Law, Subdivision Law,[8] or any other Town law.

§ 229-114.8. Administrative relief. [Amended 12-1-2010 by L.L. No. 5-2010]

An applicant may appeal a final decision, made pursuant to the provisions of this article, by the Director, Planning Board, or Town Board, or may seek a variance from the provisions of this article, to the Zoning Board of Appeals, pursuant to § 229-163 of the Zoning Law and the Town Law of the State of New York, including instances where the strict application of the provisions of this article would result in an unlawful or unconstitutional prohibition on the use of an applicant's property.

8. **Editor's Note: See Ch. 193, Subdivision of Land.**

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ARTICLE XIVB
Clarence Center Overlay District
[Added 9-12-2012 by L.L. No. 3-2012]

§ 229-114.9. Purpose and intent.

In accordance with the recommendations and policies of the Town's comprehensive plan, the Clarence Center Overlay is intended to:

A. Preserve the character of the Clarence Center community as a hamlet-style area with mixed uses set in a historical context.

B. Encourage and enhance the principals of traditional neighborhood design, which call for a mixture of uses, improved walkability/connectivity, enhancement of neighborhood appeal, preservation of community character, etc.

C. Continue and complement the design elements associated with the streetscape design for the overlay district.

D. Maintain and improve the traffic conditions and the walkability and pedestrian circulation of the area as development and redevelopment take place.

E. Ensure that new buildings or building modifications are harmonious with surrounding structures in their use, scale and design.

F. Encourage the preservation of existing building and sites in a manner that maintains the historic and distinctive character of the hamlet.

G. Minimize the removal or destruction of historic, traditional or significant structures or architectural elements in the hamlet.

H. Allow for a mixture of uses that would allow many existing parcels of land and structures to be utilized without the need for a zoning variance.

§ 229-114.10. Boundaries.

General boundary. The boundaries of the Clarence Center Overlay are represented on the attached map and further called out in the Official Zoning Map as Clarence Center Overlay.

§ 229-114.11. Permitted and accessory uses.

A. Permitted uses. The uses permitted in the Clarence Center Overlay shall be the same uses as permitted in the underlying zoning districts.

B. Accessory uses. The accessory uses permitted in the Clarence Center Overlay shall be the same accessory uses as permitted in the underlying zoning district(s).

§ 229-114.12. Effect on subdivision regulations.

The division of lands, regardless of the zoning classification, shall be subject to Chapter 193 of the Code of the Town of Clarence (Subdivision Law). The following special regulations/requirements shall apply to all subdivisions of land within this overlay district:

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A. Central Business District area. In dividing parcels or combining parcels, the number of curb cuts (street access/driveways) to Clarence Center and Goodrich Roads and all secondary roads in the overlay district shall be minimized or reduced where practical. Shared driveways and cross access connections shall be encouraged.

B. Residential area: no purchasing of properties, tearing homes down and combining parcels to make larger homes and property.

§ 229-114.13. Site design requirements.

A. Architecture. A three- to five-member Community Character Protection Board shall be appointed by the Town Board to review all site plans submitted for approval within the Clarence Center Overlay Zone. Such Board shall be a recommending body to the Town Board/Planning Board and shall meet as required and requested by the Town Board. (It is not the intent of these requirements to establish or match any particular architectural style or pattern.) In general, the structures should have a hamlet-style appearance and scale and meet the following standards:

(1) Design elements should follow the Town's Clarence Center Design Guidelines (copies to be obtained from the Town).

(2) Stoops, open colonnades, open porches, balconies, and bay windows may encroach into the front yard setback.

(3) There shall be no building(s) that include internally illuminated signs. The color scheme of the signs should remain monotone or two-tone.

(4) Building design materials shall include stone, brick and natural-appearing materials. In concert with the residential character of the surrounding area, the use of vinyl siding shall also be allowed.

(5) Blank concrete block walls or sheet metal at street level shall be avoided. Visually interesting activities at the sidewalk edge shall be maintained and/or established to engage pedestrian interest.

(6) Painting. The Town strongly encourages all structures in the TND Zoning District to use proper contrasts in paint schemes. Trim and foundations should be visually differentiated from the main body of the structure. Also, typically, only traditionally painted materials (such as wood) should be painted. No aluminum, vinyl, or similar hybrids shall be used in color schemes. Property owners should consult the Clarence Center Design Guidelines and the standards set in that document.

(7) All rooftop units (HVAC) shall be properly screened or located so as not to be visible from the street.

(8) If a project involves a property that has local historic significance, every effort should be made to preserve the character and integrity of the structure, working with the property owner to utilize all historic preservation options, including pending laws.

(9) Additions to any building shall respect the original character of the property and surrounding property.

B. Landscaping. All landscaping shall be designed in accordance with the Streetscape Plan for Main Street in the Clarence Center area. A copy of these design guidelines can be obtained through the

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Town. For all development projects requiring site plan approval in the Central Business District area, a site plan shall be submitted for review and approval to the Town Landscape Committee and the Clarence Center Community Character Protection Board. The following elements shall be included in the required landscape submittal:

(1) A site plan showing existing and proposed buildings, walks, driveways, off-street parking, freestanding walls, fences, landscaping and any other site amenities is required.

(a) Walks. Paved walkways from the existing public sidewalks in the Goodrich and Clarence Center Road right-of-way (R.O.W.) to the interior of the property are required. Materials may include concrete, brick, pre-cast concrete pavers or a combination of materials that are in keeping with the character of the surrounding architecture and streetscape. Asphalt walkways are not permitted.

(b) Driveways. All new driveways within the Goodrich and Clarence Center Road R.O.W. shall be constructed of concrete, concrete pavers, brick pavers or a combination of materials in keeping with the character of the surrounding architecture and streetscape. Asphalt driveways will be permitted within the R.O.W. A driveway (highway access) permit is required by the New York State Department of Transportation for any new driveway within the roadway R.O.W.

(c) Screening of off-street parking. All off-street parking areas shall be screened from the street. Screening should be a minimum of 42 inches in height, should be continuous and should conceal the parking area(s) from the street. Methods of screening many include stonewalls, picket fences, evergreen or deciduous hedges, other suitable landscape materials or a combination of materials. All screening should be located inside the applicant's property boundary and should not encroach onto the public sidewalk. Screening should not limit a driver's visibility of the sidewalk or street when exiting any off-street parking lot. Where the driveway intersects the street right-of-way, there should be no fence, wall, hedge or other material higher than 42 inches above grade for a distance of at least 15 feet on either side of the driveway.

(d) Walls. Walls, which are visible from the street, may be constructed of stone, brick, stucco or a combination of masonry materials and should be in keeping with the character of the surrounding architecture. Concrete block and cast-in-place concrete walls are not permitted.

(e) Fences. Fences which are visible from the street may be constructed of wood (or a synthetic material simulating wood), ornamental iron or other material in keeping with the character of the surrounding architecture. Picket and ornamental iron are appropriate fence treatments within the district. No corrugated metal, corrugated fiberglass, woven wire, or barbed wire fences will be permitted adjacent to the street right-of-way. A woven wire fence may be allowed if it is screened from the street by the use of an evergreen hedge or other acceptable material.

C. Other design requirements.

(1) Signage. The Town of Clarence recognizes that signage is necessary within the Clarence Center area, but like other design elements, there is a responsibility to make sure that such signage respects the character of the historic Clarence Center. The Town strives to maintain signage requirements that compromise neither the design qualities of the Center nor the ability of individual businesses to be successful. All applications for new signs shall be referred to the

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Community Character Protection Board, as herein established, for review and comment prior to approval by the Town of Clarence Sign Review Board as established under Chapter 181 of the Code of the Town of Clarence.

(2) Other aesthetic requirements:

(a) All dumpsters and loading areas shall be screened from the road by landscaping, fencing, or walls.

(b) Lighting shall adhere to the guidelines set forth in the Clarence Center Design Guidelines.

(c) Benches, garbage cans, shelters and other small design features shall be compatible with Clarence Center Design Guidelines.

(3) Parking.

(a) The Town Board may reduce off-street parking requirements during the site plan review process to one parking space per 1,000 square feet of building space.

(b) On-street parking may be counted as parking area for a business use if it is directly fronting the business property.

(c) Cross-access and shared parking agreements may be used to meet the minimum parking requirements for the proposed use.

§ 229-114.14. Underlying zoning district regulations.

Unless specifically addressed in this chapter, all other underlying zoning district regulations shall apply.

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ARTICLE XV
Special Exception Use Permits

§ 229-115. Purpose. [Amended 2-14-2007 by L.L. No. 1-2007]

In order to ensure that the comfort, safety, welfare and property rights of the residents of the Town of Clarence are protected, the Town Board may authorize and direct the issuance of a special exception use permit for uses that require certain mitigating conditions specific to their design and/or operation. Such conditions ensure compatibility among building types so that different uses may be located in proximity to one another without adverse effects to neighboring residential uses and each other. This chapter specifies the minimum requirements which must be met by all the uses listed in the uses requiring a special exception use permit section for each zoning district in Article III, to be considered by the Town Board.

§ 229-116. Procedures. [Amended 2-14-2007 by L.L. No. 1-2007]

A. Applications to the Town Board for a permit authorizing a use indicated as a special exception use shall be made directly to the said Board on forms provided by the Planning and Zoning Department. The Town Board may refer the application to the Planning Board for review and comment. The Planning Board shall submit written comments to the Town Board on the proposal within 30 days of referral. The granting by the Town Board of a special exception use permit shall require the concurring votes of four members of the Board in favor of the applicant, after a public hearing advertised in accordance with Town procedures. Special exception use permits shall not be deemed to constitute a variance and shall not be conditioned upon an appeal from the denial of building permit or use permit by the Building Inspector. For just cause, including but not limited to negative impacts to the health, safety, welfare and property rights of the neighborhood for which the use is proposed, the Town Board has the authority to deny such special exception use permits. **[Amended 12-1-2010 by L.L. No. 5-2010]**

B. Each use may only be permitted in compliance with all conditions listed for the use in this chapter. The Town Board may, after public hearing, amend or add specific conditions to the recommendation from the Planning Board.

§ 229-117. Bed-and-breakfast inns.

A. Single-family homes used as bed-and-breakfast inns shall have a minimum heated floor area of 1,500 square feet.

B. Single-family homes used as bed-and-breakfast inns may not subdivide existing rooms into less than 200 square feet.

C. The bed-and-breakfast inn shall be owner-occupied.

D. All parking shall be to the rear of the home. Where on-street parking is permitted, the length of the street in front of the lot may be counted as parking. There shall be one parking space per room of lodging, plus two spaces for owner-occupant.

§ 229-118. Cemeteries.

A. Shall not include embalming or cremation facilities.

B. Walls between 1.5 feet and four feet are permitted.

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C. Fences between 2.5 feet and six feet are permitted.

D. Combination wall and fence is permitted. If exceeding four feet in height, the portion over four feet shall be a minimum of 50% opaque.

E. Setbacks from all street right-of-ways to a wall or grave shall be a minimum of 10 feet.

§ 229-119. Public recreational facilities.

A. All recreational facilities shall be treated as parks in design and landscaping. All structures associated with a recreational facility shall be located toward the perimeter of the lot.

B. Recreational facilities shall be encouraged to be built adjoining school campuses, greenbelts or parkways.

C. Parking shall be located behind structures or along the perimeter of the lot. There shall be 14 spaces per acre and/or one per 250 square feet of facility floor area.

§ 229-120. Drive-in theaters.

A. Minimum lot size: three acres.

§ 229-121. Rooming/boarding homes.

A. The rooming/boarding house shall be owner-occupied.

B. No more than one person or couple may inhabit a single room.

C. All parking shall be to the rear of the home. There shall be one space per room of lodging and two spaces for the owner-occupant.

§ 229-122. Churches/civic uses/community facilities/nursing homes.

A. Churches/civic uses shall be placed on a lot so as to front on the street and, where possible, terminate a vista.

B. Accessory structures shall be behind a line a minimum of 20 feet from the front facade of the principal structure and, if more than one, shall be arranged to create secondary gathering spaces within the lot.

C. Parking shall be located towards the interior of the lot. Parking may not occur within a front setback or corner side setback.

D. Front setbacks may be altered to preserve views or significant trees.

§ 229-123. Public safety stations.

A. All public safety buildings shall be similar in architectural design to adjoining residential structures.

B. Parking shall be to the rear of the lot.

C. Rear portions of lots shall be screened by a wall or fence with a minimum height of six feet.

§ 229-124. Drive-through facilities. [Amended 10-11-2017 by L.L. No. 7-2017]

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A. Drive-through windows and order boards shall be set back a minimum of 80 feet from any street or highway right-of-way line to allow adequate sight distance for exiting automobiles.

B. Drive-through lanes, windows and order boards shall not be located along the street frontage(s) of a building except where screened from view by landscaping and/or an architectural feature.

C. Vehicles must be stacked sufficiently for traffic flow and vehicular access. A minimum of eight vehicles per window shall be required.

D. Each vehicle stacking space in a drive-through lane shall be a minimum of 20 feet in length.

E. Vehicle stacking lanes shall not block or interfere with parking lot traffic or access to parking lot spaces, and shall function independent of parking lot isles.

§ 229-125. Car washes. [Amended 10-11-2017 by L.L. No. 7-2017]

A. Bay doors or vehicle entrances, exits and openings shall not front the street or any property used exclusively for residential purposes except where screened from view by landscaping and/or an architectural feature.

B. The design of all structures shall be architecturally compatible with neighboring structures, including, but not limited to, building materials and roof pitch, and consistent with architectural standards of the zoning district.

§ 229-126. Multiple-family developments. [Amended 6-27-2007 by L.L. No. 3-2007; 6-26-2013 by L.L. No. 2-2013; 7-8-2015 by L.L. No. 2-2015; 7-26-2017 by L.L. No. 5-2017]

Multiple-family developments will only be allowed in the Commercial, Restricted Business and Traditional Neighborhood Districts as described herein.

A. The purpose of a multiple-family development special exception use permit is to guide the future establishment of multiple-family developments within the Town of Clarence. Multiple-family developments shall not be considered an "as of right" use within any zoning classification.

B. The Town Board shall determine the Town-wide placement of such a multiple-family development based upon its design features, and its impacts upon the community character, infrastructure and fiscal sustainability of the Town.

C. The intent of this section is to provide design standards to ensure that multiple-family developments are properly integrated into the character of the Town of Clarence by providing for:

(1) Preservation of valuable commercial property within the Town for development of commercial uses.

(2) Preservation of open space.

(3) Harmony with the rural and suburban character and scenic qualities of the Town.

(4) Facilitation of interconnectivity within the multiple-family development between commercial and residential components.

(5) Facilitation of cross access between the development and surrounding properties.

(6) Facilitation of the adequate extensions of roads, walkways and utilities.

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D. Multiple-family developments in Commercial and Restricted Business Zones.

(1) In order to preserve the long-term viability of the Commercial and Restricted Business zoning classifications for commercial uses, provide a balance to residential growth in the community, and avoid the concentration of multiple-family developments in a particular area of the Town, the maximum number of multiple-family developments that can be approved on any shall be restricted as follows:

(a) Multiple-family developments will only be allowed on properties with sewer access as approved by the Town Board. The maximum density for multiple-family developments with sanitary sewer access shall be eight units per acre.

(b) Where feasible and appropriate, multiple-family developments may be considered on properties without sanitary sewer access. The maximum on-site waste treatment allowance determination shall be consistent with the approvals of regulatory agencies and the Town Engineer, including residential and projected commercial waste. The maximum number of residential units that can be developed on properties without sewer access in a multiple-family development shall be four units per acre with a maximum total number of 16 units.

(c) A minimum of 50% of the property shall be committed to commercial uses. On-site integration between residential and commercial components is required. The required commercial component shall be located in such a way as to front the public right-of-way.

(d) The density calculation and total number of residential units is only to be determined by the residential component of that portion of project site being utilized for the multiple-family development.

(e) Within the residential component, there shall be a maximum of four residential units per building. Upon recommendation of the Planning Board, the Town Board may consider exceptions to maximum residential units per building, as documented by the applicant for purposes relating to the physical or developmental health needs or government-recognized financial needs of the intended occupants.

(f) Buildings within a multiple-family development shall be limited to a maximum of two stories.

(g) Exclusively residential buildings within a multiple-family development shall have a sufficient setback from the fronting road to preserve the open character of the Town. The required front yard setback area shall be enhanced with landscaping to ensure a visual buffer. Where appropriate, exclusively residential buildings shall be located to the rear of the required commercial component or integrated through a mixed-use format.

(h) Scale and design must be compatible with community features and all other standards, as identified for Commercial or Restricted Business Districts in §§ 229-83 through 229-90.2 and §§ 229-75 through 229-82.2 of this chapter.

(i) All multiple-family developments shall have pedestrian connectivity integrating the site with its surrounding environment. Where appropriate, sidewalks or recreational trails shall be created, extended and connected to existing or planned off-site sidewalks or trails.

(2) Multiple-family developments will require 30% of the overall development to be preserved as permanent open space.

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(3) Part or all of the required commercial component can be preserved as open space for later commercial development. This open space reserved for commercial use is in addition to the 30% required for the overall development.

(4) Upon recommendation of the Planning Board, the Town Board will designate the area of the development that is to be reserved for commercial use as open space at the time of the approval of the special exception use permit.

(5) Mixed use design incentive.

(a) Within the minimum 50% of the development committed to commercial uses, mixed use designs may be allowed through an incentive density of up to four residential units per acre.

(b) Mixed use designs within the commercial component shall require a minimum of 75% of the first floor square footage to be dedicated to permitted commercial uses.

(c) For mixed use designs, there shall be no limit to the number of residential units per building in the commercial component.

(6) Transfer incentive.

(a) A transfer incentive of two additional residential units may be placed within the commercial component in a mixed use design for every one unit removed from the residential component.

(7) General design standards.

(a) All on-site roads and driveways shall be constructed to standards as approved by the Town Board. Curb cuts for proposed entrance and exit access roads and driveways shall not be closer than 100 feet to any existing road intersection.

(b) Each design or construction phase of any multiple-family development must meet the density requirements as herein established.

(c) Multiple-family developments that adjoin a road shall have significant screening running the length of the right-of-way, parallel to the road frontage.

(d) All multiple-family developments shall have an area, or areas, devoted to recreational use by the residents. Such recreational space shall have a total area equal to a minimum of 15% of the overall development. Part or all of such space shall be in the form of developed recreation areas to be usable for recreational purposes. The 15% recreational areas may be counted as a part of the 30% total open space requirement for such projects. The recreational area shall be maintained by the owner of the property.

(e) Buildings used in whole or part for single-family residential purposes, exclusive of accessory buildings, porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story detached building, nor less than 600 square feet of usable first floor living space if more than one story. No such building shall contain less than 600 square feet of usable living space for each one-bedroom family unit or apartment; 720 square feet of usable living space for each two-bedroom family unit or apartment; and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.

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(f) Any multiple-family development that includes five or more residential units which is situated, in whole or in part, within the Adequate Educational Facilities Overlay District, shall comply with the terms of Article XIVA of the Town Zoning Law.[9]

(8) Small-scale retail uses in the Restricted Business Zone exception.

(a) Under special circumstances, the Town Board, upon recommendation of the Planning Board, may allow small-scale retail uses within the Restricted Business Zone in conjunction with multiple-family developments in a mixed use design. These special circumstances would include:

[1] Each business should complement and service the residents of the development, and contribute to the character of the Restricted Business Zone.

[2] For mixed use design proposals that do not have predetermined small-scale retail tenants or defined uses at the time of submission, the overall area designated for small-scale retail will be considered for approval subject to future use permits as approved on a case-by-case basis by the Planning Board at the time when a tenant or defined use has been proposed.

(b) Furthermore, in an effort to maintain small-scale retail units that uphold the intent of the Restricted Business Zone (see § 229-75), additional retail restrictions would include but not be limited to:

[1] Limited vehicular traffic generation consistent with Restricted Business Zone.

[2] Architectural and design standards consistent with Restricted Business Zone.

[3] No automotive uses, including but not limited to sales, part sales, service, rental, collision, body repair, detailing and fueling.

[4] No drive-through facilities.

[5] No outside display.

(c) An applicant shall have the right to petition the Zoning Board of Appeals of the Town of Clarence in the event of a denial of the small-scale retail use permit by the Planning Board. The Zoning Board of Appeals of the Town of Clarence, after public notice and a hearing, may approve, deny, or vary/modify the application of this section in harmony with its general purpose and intent.

E. Multiple-family developments in Traditional Neighborhood District (TND).

(1) The maximum residential density of the multiple-family development shall be limited to eight units per acre.

(2) A minimum of 25% of the total floor space shall be committed to commercial uses.

(3) On-site integration and connectivity of uses is required.

(4) The required commercial component shall be located in such a way as to front the public right-of-way.

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9. Editor's Note: See §§ 229-114.1 through 229-114.8.

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(5) Scale and design standards shall be compatible with community features and all other standards, as identified within the TND Zoning District (§§ 229-57 through 229-68 of this chapter).

(6) General design standards.

(a) All on-site roads and driveways shall be constructed to standards as approved by the Town Board. Curb cuts for proposed entrance and exit access roads and driveways shall not be closer than 70 feet to any existing road intersection.

(b) Each design and construction phase of any multiple-family development must meet the density requirements as herein established.

(c) Multiple-family developments that adjoin a road shall have significant screening running the length of the right-of-way, parallel to the road frontage.

(d) All multiple-family developments shall have an area or areas devoted to recreational use by the residents.

Recreational uses shall be defined as pedestrian accommodations and improvements intended to beautify the property fronting the public right-of-way. Such features include, but are not limited to, benches, planters and bike racks.

(e) All multiple-family developments shall have pedestrian connectivity integrating the site with its surrounding environment. Where appropriate, sidewalk or recreational trail connections shall be created, extended and connected to existing or planned off-site sidewalks or trails.

(f) Buildings used in whole or part for single-family residential purposes, exclusive of accessory buildings, porches, entries, garages and terraces, shall contain no less than 900 square feet of usable living space if a one-story detached building, nor less than 600 square feet of usable first floor living space if more than one story. No such building shall contain less than 600 square feet of usable living space for each one-bedroom family unit or apartment; 720 square feet of usable living space for each two-bedroom family unit or apartment; and 1,000 square feet of usable living space for each three-bedroom family unit or apartment.

(g) Any multiple-family development that includes five or more residential units and which is situated, in whole or in part, within the Adequate Educational Facilities Overlay District, shall comply with the terms of Article XIVA of the Town Zoning Law.[10]

§ 229-127. Private schools.

A. School campuses shall have the principal structure face the fronting street, which should be located along the edge of a neighborhood.

B. Where practical, parking shall occur behind the fronting structure(s).

C. Schools shall be appropriately designed and scaled to serve as anchors for a community and should terminate a street or vista.

D. Large parking areas or setbacks shall not inhibit pedestrian connections to schools for surrounding

10. Editor's Note: See §§ 229-114.1 through 229-114.8.

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neighborhoods.

E. If school sites do not abut a greenbelt or parkway, ball fields and play areas shall be located near the interior portions of the property.

§ 229-128. Fuel service stations. [Amended 10-11-2017 by L.L. No. 7-2017]

A. The design of all structures, including fuel canopies, shall be architecturally compatible with neighboring structures, including, but not limited to, building materials and roof pitch, and consistent with architectural standards of the zoning district.

B. All fuel storage tanks and fuel pumps shall be located at least 20 feet from any lot line and fuel storage tanks shall be buried underground according to the building, fire prevention and other applicable laws, codes, rules and regulations.

C. Code of the Town of Clarence shall not supersede New York State Environmental Conservation Law regarding storage of hazardous materials.

§ 229-129. Restaurants, nightclubs and bars.

A. Live music or any outdoor noise shall not be audible off the premises at decibel levels louder than normal background noise for residential areas after 11:00 p.m.

B. Buildings shall conform to surrounding architecture.

§ 229-130. Traditional neighborhood uses in structures between 10,000 and 30,000 square feet.

A. Structures must be built in such a manner to be readily reused or adapted into other uses that are allowed within the district.

B. Properties must provide pedestrian connections to the neighborhood network of sidewalks and public or semipublic squares to encourage a more walkable community.

C. Building facades shall be articulated to create the impression that the building is more than one structure. This can be accomplished using different facade treatments and/or varying building height every 35 to 50 feet if the facade exceeds 80 feet in length.

D. Parking must be accommodated on site. Shared parking arrangements are encouraged.

E. All loading areas shall be to the rear of the structure. (Does not apply to multifamily developments)

F. For mixed-use structures between 10,000 and 30,000 square feet only, the first floor shall be used for nonresidential uses only.

§ 229-131. Restricted business uses in structures over 10,000 square feet or a cumulative total of 30,000 square feet on a property; any commercial uses exceeding 30,000 square feet.

A. The architectural style of buildings shall conform to the style that has been established in the immediate vicinity of the project site and as described in the adopted Comprehensive Plan.

B. Parking must be accommodated on site. Shared parking arrangements are encouraged.

C. All loading areas shall be to the rear of the structure. (Does not apply to multifamily developments)

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D. For mixed-use structures over 30,000 square feet only, the first floor shall be used for nonresidential uses only.

E. There shall be no more than one hotel/motel unit for each 2,500 square feet of site area.

F. The following accessory uses shall be permitted in a hotel/motel site:

(1) One restaurant/bar and/or coffee shop or cafeteria providing food and drink.

(2) Amusement and sports facilities for the exclusive use of hotel/motel guests, including swimming pool, children's playground, tennis or other game courts, game or recreation rooms.

(3) Office and lobby, provision of which shall be mandatory for each hotel/motel.

(4) Meeting and/or conference rooms.

§ 229-132. Major arterial uses exceeding 50,000 square feet in area.

A. Uses generating a significant amount of car trips a day, as determined by the Town of Clarence, shall be required to improve adjoining street or intersection infrastructure as determined by the Town Board, New York State Department of Transportation, and the Erie County Department of Public Works Division of Highways.

B. Uses requiring an excess of 20,000 gallons per day of water or sewer usage shall be required to improve infrastructure capacity as determined by the Town Board or the Erie County Health Department.

§ 229-133. Adult establishment (Industrial Business Park District).

A. Buildings and establishments operated as adult uses are determined to be detrimental and harmful to the health, morals and general welfare of a community. In order to promote the health, safety morals and general welfare of the residents of the Town of Clarence, this article is intended to restrict adult uses to nonresidential areas of the Town and otherwise regulate their operation. Moreover, in that the operational characteristics of adult uses increase the deleterious impact on a community when such uses are concentrated, this section is intended to promote the health, safety, morals and general welfare and good order of the residents of the Town of Clarence by regulating the concentration of such uses.

B. No such adult establishment shall be located less than 1,000 feet from a school, church, day-care center or lot in residential use.

C. In addition to the general requirements for obtaining a special exception use permit, the following shall be required:

(1) Architectural design of a proposed building or structure which includes adult uses shall include frosted windows and similar techniques, in addition to general features compatible to the surrounding character, to discourage such uses from being visible from the exterior of the proposed structure.

(2) The owner of a building or premises, his agent for the purposes of managing or controlling or collecting rents, or any other person managing or controlling a building or premises, any part of which contains an adult use, shall register the following information with the Town Clerk of the Town of Clarence prior to receiving a special exception use permit and then every year

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thereafter prior to January 15 of the year for which the operation is proposed for continuation:

(a) The address of the premises.

(b) The name and address of the owner of the premises and the names and addresses of the beneficial owners if the property is a land trust.

(c) The name of the business or the establishment subject to the provisions of this article.

(d) The name(s) and address(es) of the owner, beneficial owner or the major stockholder(s) of the business or the establishment subject to the provisions of this article.

(e) The date of the initiation of the adult use.

(f) The nature of the adult use.

(g) If the premises or building is leased, a copy of said lease.

D. It is a violation of this section for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult use without having properly registered said adult use with the Town Clerk.

E. The owner, manager or agent of a registered adult use shall display in a conspicuous place on the premises of the adult use a copy of the registration filed with the Town Clerk.

F. A fee as set by the Town Board shall be paid annually with the filing of the above-described registration.

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

§ 229-134. Indoor storage of industrial hazardous material. [Amended 10-11-2017 by L.L. No. 7-2017]

A. All indoor storage of industrial hazardous materials shall be in compliance with all applicable laws, codes, rules and regulations.

B. Such material shall be listed and made known with the Fire Department with jurisdiction.

C. Structures housing such materials shall be located at least 100 feet from any lot line and 200 feet from any residential lot line.

D. See Industrial Hazardous Waste Law (Chapter 123 of the Code of the Town of Clarence).

§ 229-135. Outdoor storage of industrial hazardous material. [Amended 10-11-2017 by L.L. No. 7-2017]

A. All outdoor storage of industrial hazardous materials shall be in compliance with all applicable laws, codes, rules and regulations.

B. Outdoor storage shall be screened from all public rights-of-way and can occur only in a rear yard. Screening shall comply with the Landscape Ordinance (Chapter 131 of the Code of the Town of

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Clarence).

C. All material shall be listed and made known with the Fire Department with jurisdiction.

D. All storage areas shall be located at least 200 feet from any adjoining lot line.

E. See Industrial Hazardous Waste Law (Chapter 123 of the Code of the Town of Clarence).

§ 229-136. Secondary living unit.

A. Units must be secondary to a principal dwelling unit and shall not be converted to a rental unit.

B. Applications for a building permit shall include additional information regarding the location, ingress, egress, parking, floor plan, utility schematics, construction contracts, and other information as necessary to determine that the nature of the addition will not alter the character of the principal structure as a single-family residence.

C. Any occupant of the living unit must be a family member, a paid employee or a temporary guest (such as an exchange student) of the principal homeowner. Any rental agreements or monetary exchanges for overnight stays shall constitute a separate principal living unit and be deemed a two-family structure for purposes of administering this chapter.

D. The unit shall never be rented as a separate living unit and proof of deed restrictions guaranteeing the single-family use of the property in perpetuity shall be required by the Building Department and shall be kept on file in that Department. **[Amended 2-14-2007 by L.L. No. 1-2007]**

§ 229-137. Expanded home occupations.

Home occupations that exceed the thresholds as identified within this chapter, especially as related to utilizing accessory buildings to house such operations, shall require a special exception use permit.

A. There shall be no outdoor storage of any product or materials

B. Accessory structures shall conform to the architectural standards of the principal use.

C. Under no circumstances shall a use that requires large-scale deliveries or trucks greater than three tons be allowed. No uses with deliveries of a greater frequency than five per day shall be allowed.

§ 229-138. Telecommunications towers.

All telecommunications towers that require a special exception use permit shall conform to all regulations as established in Chapter 173 (Satellite Antennas and Towers) of the Code of the Town of Clarence.

§ 229-139. Automotive, equipment, implement sales and services and commercial garages. [Amended 12-1-2010 by L.L. No. 5-2010; 10-11-2017 by L.L. No. 7-2017]

A. When bordering any property used for residential purposes, such operations shall be screened from the residential use by landscaping and/or an architectural feature in conformance with Chapter 131 of Code of the Town of Clarence (Landscape Law).

B. All parking areas and outdoor vehicle or equipment storage or display areas shall be paved.

C. No automotive related items shall be displayed for sale within the front yard setback, except when screened from view by landscaping or an architectural feature and buffered by a twenty-foot

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greenbelt.

D. All wastes and discarded parts resulting from servicing automotive vehicles and related equipment shall be stored, until properly disposed of, in an enclosed structure, so as not to be visible from the street or adjacent lots and with an impervious base foundation, so as to prevent ground contamination. None of these materials may be disposed of on the property. Furthermore, operations must be in conformance with Chapter 209 of the Code of the Town of Clarence (Vehicles, Abandoned).

E. Outdoor lighting shall be situated so as not to be directed at adjoining properties and shall conform to the requirements of Chapter 229 of Code of the Town of Clarence (Lighting Law).

F. Bay doors or automotive entrances, exits and openings shall not front the street. Bay doors or automotive entrances, exits and openings fronting any property used exclusively for a residential use are not permitted, except when screened from view by landscaping or an architectural feature.

G. Automotive hoists shall be located wholly within a structure.

H. All repair, service or maintenance activities are to wholly occur within a structure, except for refueling.

I. Outdoor storage shall only occur within the designated paved areas as determined at time of approval, and shall not occur within the front yard setback.

J. Outdoor display for sale shall only occur within the designated paved and striped surface as determined at time of approval.

K. The design of all structures shall be architecturally compatible with neighboring structures, including, but not limited to, building materials and roof pitch and consistent with architectural standards of the zone.

L. Code of the Town of Clarence shall not supersede New York State Environmental Conservation Law regarding storage of hazardous materials.

§ 229-140. Building supply sales and storage yards.

A. All buildings, structures, materials storage areas shall be located at least 50 feet from all lot and street lines.

B. When located within 200 feet of a residential structure such operations shall be screened from the adjacent residential lot by a fence, hedge or other landscaping in conformance with Chapter 131 of the Code of the Town of Clarence (Landscape Law). **[Amended 12-1-2010 by L.L. No. 5-2010]**

C. Any outdoor lighting shall be situated so as not to be directed at adjoining uses.

§ 229-141. Parking facilities.

All parking facilities that act as a principal use in a commercial zone must have a valid landscape plan approved by the Town's Landscape Committee under Chapter 131 of the Code of the Town of Clarence.

§ 229-142. Light manufacturing and assembly operations.

Any light manufacturing operation such as the manufacture or fabrication of handicraft products, scientific instruments, power tools, computer equipment, electronics, furniture, wearing apparel and other products

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made primarily from fabrics may be allowed, provided that such uses shall not give rise to smoke, noise, dust or fire nuisance or hazard greater in character than the uses specifically permitted in the zoning district.

§ 229-143. Warehousing and distribution facilities.

Any warehousing and distribution facility must be located in an area readily accessible to major roadways to minimize the impacts of heavy vehicle traffic on residential areas.

§ 229-144. Fuel storage and supply operations.

All fuel storage and supply operations shall have a setback of 100 feet from any aboveground storage tank to any residential structure or residential zoning line.

§ 229-145. Excavations.

All excavations must conform to the Excavation Law (Chapter 93 of the Code of the Town of Clarence).

§ 229-146. Manufactured home parks.

Any manufactured home park must meet the provisions set forth in the Manufactured Housing Parks Law (Chapter 135 of the Code of the Town of Clarence).

§ 229-147. Beauty salons.

A. Beauty salons or parlors shall be an accessory use to the principal use of the residential or agricultural property.

B. The operation shall be conducted only by a resident or residents of the premises and no outside help shall be employed.

C. There shall be no outside display or advertising, except a sign as permitted through the Sign Law (Chapter 181 of the Code of the Town of Clarence).

D. The operation shall not utilize more than 25% of the living space of the dwelling, and the usable living space remaining for dwelling purposes exclusive of the beauty salon shall meet the minimum requirements of the zoning district.

E. The application for a beauty salon or parlor shall include a site plan showing the location of all facilities, ingress and egress, parking areas, and any other information required by the Town. The site plan must receive a recommendation from the Planning Board and be reviewed by the Town Board for its approval or disapproval.

§ 229-148. Shopping plazas.

A. There shall only be one freestanding tenant directory sign per plaza in accordance with the Sign Law (Chapter 181 of the Code of the Town of Clarence).

B. The plaza owner must submit a unified sign plan for all of the tenant spaces to the Sign Review Board for approval.

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ARTICLE XVI
Administration

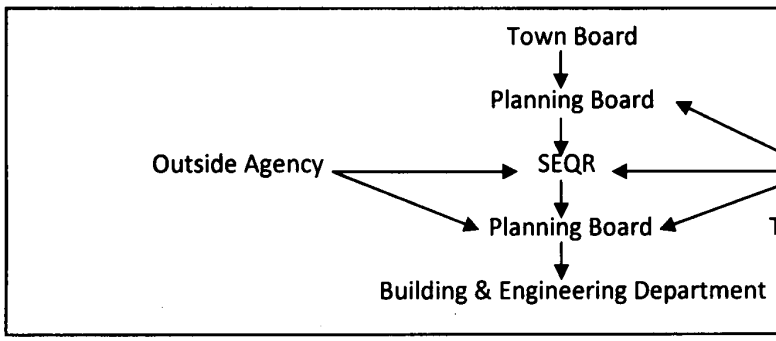
§ 229-149. Purpose.

This administration section explains the process for reviewing, enforcing and amending the provisions and requirements of this chapter. Procedural responsibility for these actions shall reside with the Planning and Zoning Department and the Building Department.

§ 229-150. Zoning permit process.

A. The review process associated with the issuance of permits under the Zoning Law will take two different tracks. The first process involves uses that are permitted as of right in a zoning classification and would not require a formalized review process. Applicants for such permits may proceed directly to the Town of Clarence Building Department and apply for a zoning/building permit for such uses. In similar fashion, interior remodeling within a previously approved commercial/industrial use that does not involve a change in use may proceed to apply for a zoning/building permit through the Building Department.

B. All other uses will require approval of the Town Board and/or Planning Board. Depending upon the complexity of the application, the Town Board approval process will vary. Generally, all proposed uses of previously unimproved property shall be initially reviewed by the Town Board, acting as gatekeeper, to determine the type of review required (e.g., site plan, special exception use permit, temporary conditional permit, etc.), compatibility with the adopted Master Plan and to identify any areas of concern before being forwarded for detailed review and approval by the Planning Board. The Town Board shall have final approval authority for special exception use permits, temporary conditional permits, and open space design and incentive lot subdivisions and may refer such matters to the Planning Board before taking a final action. The following flow chart identifies the typical review process for applications forwarded by the Town Board for further detailed review. **[Amended 12-1-2010 by L.L. No. 5-2010]**



§ 229-151. Site plan review requirements.

A. Statement of intent. The purpose of these requirements is to promote orderly development in the Town of Clarence and to ensure that uses are developed in a manner harmonious with surrounding properties. To achieve these ends and to assure compliance with all applicable requirements of this chapter, all applications for permits shall be submitted on forms as required and available in the

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Planning and Zoning Department and the Building and Engineering Department that shall include a site plan of the property to be developed and a boundary survey stamped by a New York State licensed land surveyor.

B. Development and uses requiring a site plan. Site plans drawn to scale shall be required for all uses and shall be included in all applications for a permit. Site plans may not be required for the following uses, as determined by the Director of Community Development, Building Inspector or designee:

(1) Accessory structures (other than for single- or two-family dwelling units).

(2) Any enlargement of a principal building by less than 10% of its existing size, provided such enlargement would not result in a requirement for additional parking or encroachment in a setback area.

(3) A change in principal use where such change would not result in a change in lot coverage, off-street parking, access or other external site characteristics.

C. Procedure for preparation:

(1) Site plans or any portion thereof shall be prepared by an engineer, architect, landscape architect or land surveyor who is authorized by the State of New York to practice as such.

(2) Site plans shall be prepared to a scale as deemed appropriate by the Town department with jurisdiction.

(3) A site plan may be prepared in one or more sheets to show clearly the information required by this section and to facilitate the review and approval of the site plan.

(4) All horizontal dimensions shown on the site plan shall be in feet and decimal fractions of a foot to the closest 0.00 foot, and all bearings shall be in degrees, minutes and seconds.

(5) Every site plan shall show the name and address of the owner or developer, the North arrow, the date, the scale of the drawing, and the number of sheets. An application form requesting an action from the Town shall be made available to any applicant and completed with the submission of a site plan for review. All applicable review fees (Chapter 99 of the Code of the Town of Clarence) must be paid along with the application.

(6) Seven copies of the site plan shall be submitted to the Planning and Zoning Office for review for projects requiring Planning Board review. The Director of Community Development or his designee may request additional copies for outside agency review during the state environmental quality review process.

D. Required information on site plans for concept plan review.

(1) Location of the tract on an insert map at a scale of not less than one inch equal to 2,000 feet, indicating the scale, the North point, and such information as the names and numbers of adjoining roads, streams, subdivisions or other landmarks sufficient to clearly identify the location of the property.

(2) A boundary survey of the tract by bearings and distances certified by a licensed land surveyor or engineer. The owner of the property must give written authorization for the project, if different from the applicant, to the Planning and Zoning Department. Include land title, deed description, and any real estate contracts involving any lands to be included in the project scope, including any deed restrictions.

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(3) The proposed location, general use, number of floors, height and floor area for each building and, where applicable, the number, size and type of dwelling units. Indicate the present use of all adjoining properties, including building footprints within 500 feet of the project site.

(4) All existing property lines; existing streets and easements, their names, numbers and widths; the location and size of existing sanitary and storm sewers, gas lines, water mains, culverts, and other utilities and their easements; existing buildings; existing watercourses; and any other prominent physical features on or adjoining the tract.

(5) Show the current zoning classification and zoning district boundaries on adjoining properties. Note any proposed changes in zoning.

(6) A topographical survey that shows floodplains, wetlands, soils, existing streams and ditches with base flood elevations, existing elevations and proposed elevations clearly illustrated. Contour lines should be no greater than one-foot intervals.

(7) All off-street loading spaces, parking and walkways. indicating the type of surfacing, size, angle of stalls, width of aisles, and a specific schedule showing the number of parking spaces provided. Also show any areas that may be used for future parking expansion, if needed.

(8) The location of wooded areas on the property and the location of trees and wooded areas that will be retained. Spotted tree surveys shall be required for any tree over six inches in diameter as measured at diameter breast height (DBH). Trees shall be identified by species type. **[Amended 2-14-2007 by L.L. No. 1-2007]**

E. Required information on site plans for development plan review:

(1) The location, character, size, height and orientation of proposed signs and outdoor lighting systems.

(2) A detailed landscape plan that identifies all plant species by number and type that includes both preconstruction and postconstruction vegetation.

(3) Design plans are to be submitted in an organized plan set with a title sheet to include project name, project location map, engineering/architectural firm name, engineering/architectural firm contact information, submittal date, list of drawings and owner/developer contact information. All drawing sheets to have original stamps and signatures.

(4) Legal boundary survey stamped and signed by a New York State licensed land surveyor showing entire development parcel and adjacent properties within 200 feet, including reputed owner information for all immediately adjacent properties.

(5) Site layout plan and detail sheets to include, but not be limited to, proposed building location(s) with dimensions to property lines, all setbacks, paved areas, parking layout, sidewalk locations, berms, exterior lighting and all associated site details. The following information must be provided on the site plan for Building Department review: landscaping (see Town of Clarence Landscape Law[11] zoning, occupancy classification, construction type, building height, building area, proposed fire protection systems, frontage/area modification(s) (see Chapter 5 of Building Code[12]), finished floor elevation(s) and a basic floor plan including fire walls, fire barriers, fire partitions, stairways and exits. **[Amended 12-1-2010 by L.L. No. 5-2010]**

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11. Editor's Note: See Ch. 131, Landscape and Tree Conservation.

12. Editor's Note: See Ch. 67, Building Code Administration.

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(6) Storm drainage and grading plans, profiles and detail sheets to include, but not be limited to, location of existing and proposed drainage structures (all structures to be numbered); length, size, slope, and material of proposed storm sewer piping; pipe inverts at all structures and end sections; high water elevation within storm water retention/detention basins; perimeter yard drainage with inlets at all property line intersections; storm drainage easements; proposed spot elevations; proposed elevation contours at one foot intervals; detention/retention basin cross sections; proposed perimeter swales with swale center line elevations; and all associated storm drainage and grading construction details.

(7) Utility plans, profiles and detail sheets to include, but not be limited to, location of all existing and proposed utilities and their respective size and material (water mains and services, sanitary sewers, storm sewers, gas mains, cable, telephone, electricity lines); proposed backflow prevention device; proposed utility poles and all associated construction details.

(8) Erosion and sedimentation control plans and detail sheets to include, but not be limited to, location of silt fencing; location of straw sediment traps; stabilized construction entrance; topsoil stockpile areas; limits of stripping; limits of grading; maintenance schedule and all associated construction details.

(9) Engineer's report explaining the project in detail, including but not limited to existing site drainage condition hydrographs; proposed site drainage conditions hydrographs; stormwater detention requirement calculations; detention basin design criteria, including controlled-discharge calculations and storm drainage pipe-sizing calculations including perimeter yard drainage. The engineer's report must have the original stamp and signature of a professional engineer licensed in the State of New York.

(10) A traffic control plan must be submitted that shows the location of all access drives within 1,000 feet of the proposed site. All proposed traffic control devices shall be shown on a site layout plan that includes safe pedestrian corridors throughout the site.

F. Compliance with other requirements and agencies. All features and elements of the site plan shall in all respects conform to all applicable provisions and standards of the general statutes of the State of New York; the laws of the Town of Clarence and Erie County; and the standards and requirements of the New York State Department of Transportation and the New York State Department of Health. Proof of all appropriate permits for utilities and other improvements must be submitted to the Town before development plan approval may be granted.

§ 229-152. Procedure for processing permits.

A. Applications for single- and two-family home building permits shall be submitted to the Building Inspector for review and issuance of a permit if it is determined that a project does not require additional review or is ministerial in nature. If the Building Inspector determines that the project will require discretionary approval of the Town Board, the application will be forwarded to the Planning and Zoning Office to further the review process.

B. The Director of Community Development, or his/her designee, shall review all site plans and boundary surveys submitted to the Planning and Zoning Office. The Director of Community Development, or his designee, shall verify the completeness and compliance of such plans and may circulate the plans to the relevant regional and Town agencies and officials for comments as to the proposed development's conformance to all applicable standards and requirements and whether approval of the site plan is recommended. The reviewing agencies and officials may include, but need

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not be limited to:

(1) District Fire Chief via Fire Advisory Committee.

(2) Town Engineer.

(3) Erie County Water Authority.

(4) Traffic Safety Committee.

(5) Erie County Health Department.

(6) Erie County Department of Environment and Planning.

(7) Erie County Highway Department.

(8) New York State Department of Transportation.

(9) New York State Department of Environmental Conservation.

(10) U.S. Soil Conservation Services, District Office.

(11) Municipal Review Committee.

C. Once the Director of Community Development or his/her designee deems the plans to be complete in information provided and in compliance with all identified provisions, the item will be placed on the next agenda of the Town Board for review and consideration. At the Town Board's discretion, the plan may be referred to the Planning Board for review. The initial review by the Town Board shall identify if the proposal is consistent with the adopted Master Plan and the design is generally acceptable. The Town Board shall identify any specific concerns related to architectural style, landscape buffering and general use prior to forwarding the application for further review.

D. The Planning and Zoning Office must receive the complete plan with checklist at least 10 days prior to the Planning Board's next meeting date to place it on their agenda.

§ 229-153. Concept plan review and recommendation. [Amended 12-1-2010 by L.L. No. 5-2010]

If a proposed action is forwarded by the Town Board, the Planning Board shall review the application and make a recommendation and/or a final determination, if the final determination is to be made by the Planning Board in accordance with § 229-150. The Planning Board shall have up to 45 days from its first meeting date to make such recommendation and/or determination. Alternatively, the Planning Board could request additional information of the applicant in order to aid it in its review of the application.

§ 229-154. Town Board review and consideration. [Amended 2-14-2007 by L.L. No. 1-2007]

Concept plan approval will require Town Board approval only if rezoning of land is required as a part of the application or if major changes as identified by the Planning Board are incorporated into the concept recommendation by the Planning Board. A concept plan approval issued by the Planning Board or Town Board shall become null and void after two years if no action to further the review process has occurred.

§ 229-155. General site plan performance criteria.

All development proposals referred to the Planning Board for site plan review shall be assessed against the following criteria.

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A. Site design. When reviewing a site plan, the structure(s) and the landscape should be viewed as a whole. All elements of the site plan shall be designed to function as a system which enhances the aesthetic quality of the site as well as uses on neighboring sites. A well functioning site is one where the processes taking place on site occur without damage or inconvenience to property or persons both on and off site.

B. Vehicular and pedestrian traffic.

(1) There shall be adequate arrangement of safe vehicular traffic access and circulation

(2) Pedestrian and automobile conflicts shall be minimized as much as practical.

(3) All roads and sidewalks shall be constructed to the standards adopted by the Town Board.

C. Parking.

(1) The parking requirements as described in Article II of this chapter shall be adhered to.

(2) Design requirements:

(a) Parking areas of all developments shall be designed so that sanitation, emergency and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous movements.

(b) Every parking area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation or obstruction.

(c) Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

(d) Parking areas shall be graded and surfaced with material that will provide adequate protection against potholes, erosion and dust and in a manner that will not conflict with the proposed means of snow storage and/or removal.

(e) The parking area shall be adequately defined for the proposed use by landscaping, curbing or similar devices. Parking space lines, signs and other traffic control devices shall be provided to meet the intentions of this chapter.

(f) Parking areas shall be properly maintained in all respects.

(3) Parking areas from adjoining properties may be designed for common access, joint use and maintenance, if there is written agreement between the property owners and the Planning Board determines that it would be beneficial to both uses and that there would be no deleterious effect on the overall traffic circulation patterns.

D. Lighting.

(1) Adequate lighting shall be provided on a site to ensure safe movement of persons and vehicles and for security purposes. A detailed lighting plan showing proposed locations of all light standards and the specifications of the light intensity shall be noted on the plans. Lighting standards shall be of a type approved by the Planning Board and Town Board. All lighting shall be designed and arranged so as to minimize glare and reflection on adjacent properties. No

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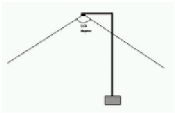
lighting fixtures in excess of 100 watts shall be installed without specific approval of the Town Board. **[Amended 2-14-2007 by L.L. No. 1-2007]**

(2) The following design standards shall be followed on all site development plans:

(a) The style of the light and light standard should be consistent with the architectural style of the principal building.

(b) The maximum height of freestanding lights shall not exceed the height of the principal building or 20 feet, whichever is greater.

(c) All lights should be shielded to restrict the maximum apex angle of the cone of illumination to 150°.



(d) Where lights along the property line will be visible to adjacent residents, the lights should be appropriately shielded.

(e) Spotlight-type fixtures attached to buildings shall be avoided.

(f) Freestanding lights should be located and protected to avoid being easily damaged by vehicles.

(g) Lighting shall be located along street, parking areas, at intersections and where various types of circulation systems merge, intersect or split.

(h) Pathways, stairways, sloping or rising paths, buildings entrances and exits should be illuminated.

(i) Lighting should be provided where buildings are set back or offset.

(j) The following intensity in footcandles shall be used to guide final design:

[1] Parking lots: an average of one footcandle.

[2] Intersections: a maximum of two footcandles.

[3] Maximum at property lines: 0.5 footcandles.

[4] Residential areas: average of 0.5 footcandles.

§ 229-156. Development plan review and recommendation.

A. Upon receiving concept plan approval, an applicant may proceed to the development plan approval stage. For consideration of development plan approval, an applicant must submit required documentation to the Planning and Zoning Department.

B. The Planning and Zoning Department shall distribute the submitted application for review and comment to all involved Town departments and regulatory agencies. Upon receipt of all required information, as determined by the Planning Board, an application may be placed on the next available

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agenda of the Planning Board.

C. The Planning Board shall act on the development plans as submitted. **[Amended 12-1-2010 by L.L. No. 5-2010]**

D. The body with final approval authority, either the Town Board or Planning Board, shall determine whether or not to approve the application as to architectural style and functional plan. In approving an application, said body may attach fair and reasonable conditions, which protect the public health and safety of the community and ensure compatibility to the existing character of the neighborhood. The applicant/petitioner shall be given reasonable opportunity to consider and respond to any additional requirements prior to approval, modification, or denial. **[Amended 12-1-2010 by L.L. No. 5-2010]**

E. The body with final approval authority, either the Town Board or Planning Board, may approve the plan if it has evaluated an application and determined that: **[Amended 12-1-2010 by L.L. No. 5-2010]**

(1) The use meets all required specifications of the Zoning Law, and

(2) The use will not materially endanger the public health or safety and will not substantially injure the value of adjoining property if located where proposed. Conditions, if any, placed on the plan by the Town Board shall be adequate to meet this requirement.

(3) The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the plan would be contrary to one or more of these findings) shall rest entirely with the landowner.

(4) If the use or development for which the plan is submitted is a conditional use, the Town Board may approve the plan with the approval of the conditional use permit. In no case, however, may a plan be approved for a use or development which requires the issuance of a conditional use permit without the conditional use permit having first been issued.

(5) A project approval shall be null and void, if, after two years from receiving development plan approval, action to commence construction has not occurred.

(6) A building permit issued by the Town of Clarence Building Inspector shall expire one year after the date of issuance.

(7) The establishment of a vested right on a piece of property for a plan shall not preclude the Town from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this chapter.

§ 229-157. Zoning permit.

No building, sign or other structure (except as otherwise provided for in this chapter) shall be erected, moved, extended or enlarged or structurally altered (exemption: internal alterations and renovations which do not alter the footprint or height of a structure), nor shall the use conducted within the building change, nor shall any excavation or filling of any lot for the construction of any building be commenced until the Director of Community Development, Building Inspector or designee has issued a zoning permit for such work in accordance with a fee schedule established by the Town Board.

A. Expiration of zoning permit. Any zoning permit issued in accordance with this chapter will lapse and

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become invalid after 12 months of the date of issue or if the work authorized by it is suspended or abandoned for a period of at least one year.

B. Records.

(1) The Planning and Zoning Office shall maintain a record of all zoning permits authorized by the Town Board and/or Planning Board on file at the Planning and Zoning Office, and copies shall be made available on request to interested parties. **[Amended 12-1-2010 by L.L. No. 5-2010]**

(2) The Building Department shall maintain a record of all building permits issued by the Building Department, and copies shall be made available on request to interested parties.

C. Conditions for approval. Zoning permits issued on the basis of dimensional plans approved by the Building Inspector, or designee, authorize only the use, arrangement and construction set forth in such approved plans and applications. Use, arrangement or construction which differs from that authorized shall be deemed a violation of this chapter and shall be punishable as indicated in this chapter.

D. Zoning permit not required. Notwithstanding any other provisions of this chapter, no zoning permit is necessary for the following uses:

(1) Silos, corn cribs and other similar agriculture accessory uses (exclusive of barns).

(2) Electric power, telephone, cable television, gas, water and sewer lines, wires or pipes, together with supporting poles or structures, located within a public easement for utilities.

(3) Interior alterations of less than $10,000 in value that do not affect the integrity of the structure.

(4) Routine maintenance and improvements, including roofing, window replacement, siding replacement, etc., that does not expand the exterior dimensions of a structure.

(5) Mailboxes, newspaper boxes, birdhouses, flagpoles, pump covers and doghouses.

(6) Uncovered decks on residential properties.

E. Establishing setbacks. When establishing measurements to meet the required front yards and structure setbacks, the measurement shall be taken from the property line to the building foundation line. In the case of a corner lot, both yards shall be considered front yards and shall meet the appropriate setback.

F. Attached garage provisions. A private garage or other accessory structure that is connected to a dwelling or structure becomes a part of the principal building rather than an accessory building and shall be included when determining required setbacks from adjacent lot and street lines. For zoning purposes, a garage shall not be required to have a setback distance from the principal building. A garage may not be erected in a required front yard.

G. Additional setback provisions. In determining the yard requirements of a lot, decks, porches, carports, chimneys or other similar attached structures are considered a part of the principal building. Setbacks are determined from the foundation, exclusive of overhangs.

H. Height exceptions. Maximum height requirements as set forth in specific zoning districts do not apply to silos, other such agricultural uses, flagpoles and church steeples.

I. Fees. A fee, as determined by the Town Board, shall be paid for each zoning permit issued. Costs of hearings, notices, postings, etc. shall be added to this fee.

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§ 229-158. Certificate of occupancy.

A. No land shall be occupied or used and no building or structure shall be occupied or used, sewage system used, or changes made in the use, until a certificate of occupancy shall have been issued by the Building Inspector stating that the buildings or proposed use thereof complies with the provisions of this chapter. The Code Enforcement Officer shall refer all requests for all changes in use, as herein described, to the Town Board for approval prior to issuing a permit. A change in use shall include any change from nonresidential to residential use; any change which increases the number of dwelling units in a building or structure; any changes from agriculture or residential use to a business use; any change from a business, commercial or industrial use to a different business, commercial or industrial use; or the reuse or reopening of any building or premises after the same has been closed for one year or more. **[Amended 12-1-2010 by L.L. No. 5-2010]**

B. A record of all certificates of occupancy shall be kept on file in the office of the Town of Clarence Building Department and copies shall be furnished, on request, to all interested parties. If a certificate of occupancy is denied, the reason for such denial shall be specified in writing and provided to the applicant.

§ 229-159. Complaints regarding violations.

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis thereof shall be filed with the Planning and Zoning Office or the Building and Engineering Office. Authorized representatives, so appointed by the Town Board, shall properly record such complaint, immediately investigate, and take action as provided by this chapter.

§ 229-160. Enforcement.

A. If the Director of Community Development, Building Inspector or the Zoning Code Enforcement Officer finds that any of the provisions of the chapter are being violated, he/she or his/her designee shall follow the procedures set forth in the Town of Clarence Prosecution Manual. Such provisions call for a notification, in writing, to the owner of the property upon which such violation is located, indicating the nature of the violation and order that necessary actions be taken to correct the deficiency. He/she shall order discontinuance of illegal uses of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations or structural changes; and discontinuance of any illegal work being done. The Director of Community Development, Building Inspector or designee shall take any other action authorized by this chapter to ensure its compliance.

B. Additional written notices of violation may be sent by the Director of Community Development, Building Inspector, or designee at his/her discretion. The final written notice (such final notice may be the initial written notice) shall state the action which the Director of Community Development, Building Inspector or designee intends to take if the violation is not corrected. Upon failure of the property owner to correct any violation of this chapter, the enforcement officer will cause to be issued an appearance ticket for local justice court action.

§ 229-161. Penalties.

A. Any person, firm or corporation convicted of violating the provisions of this chapter shall, upon conviction, be guilty of a violation and shall be fined an amount not to exceed $250 and/or imprisoned for a period not to exceed 30 days. Each day of violation shall be considered a separate offense, provided that the violation of this chapter is not corrected within 30 days after notice of said violation

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is given.

B. The Town shall have the authority to seek civil penalties or small claims actions under Article 18 of the Uniform Justice Act, Town Law §§ 135(1), and 268.

C. Any taxpayer of the Town of Clarence may seek citizen enforcement remedy under § 268(2) of the Town Law for unlawful construction or use of any building, structure or land, or any illegal subdivision.

D. Any property owner in violation of this chapter or other local laws regarding land use, including but not limited to Chapters 8, 67, 69, 75, 79, 87, 93, 101, 107, 121, 123, 131, 135, 147, 173, 177, 181, 185, 187, 189, 193, 196, 209, and 217 of the Code of the Town of Clarence shall not be able to obtain a zoning permit under this chapter until the outstanding violation is corrected, unless the permit sought is to correct said violation.

E. In addition to the other remedies cited in this chapter for the enforcement of its provisions, and pursuant to New York state law, the regulations and standards in this chapter may be enforced via prosecution standards as adopted by the Town of Clarence.

§ 229-162. Nonconforming uses.

The purpose of this section is to regulate and limit the continued existence of uses and structures established prior to the effective date of this chapter (or any amendment subsequent thereto) that do not conform to this chapter. Any nonconformity created by a change in the classification of property or the text of these regulations shall be regulated by the provisions of this section. Many nonconformities may continue, but the provisions of this section are designed to curtail substantial investment in nonconformities and to bring about eventual elimination and/or lessen their impact upon surrounding conforming uses in order to preserve the integrity of the area in which they are located and the intent of this chapter.

A. Every structure or use not conforming to the regulations of the district in which it is located at the time of adoption of this chapter shall be a nonconforming use.

B. A nonconforming structure or use may not be altered, rebuilt or resumed except in conformity with the regulations for the district in which it is located.

C. A nonconforming use of a structure or land that has ceased for a consecutive period of 12 consecutive months may not be altered, rebuilt or resumed unless in conformity with this chapter.

D. A nonconforming use may be continued subsequent to adoption of this chapter but the structure shall not be enlarged in a fashion that increases its nonconformity.

E. A nonconforming use may be extended throughout any part(s) of a building manifestly arranged or designed for such use at the time of adoption of this chapter.

F. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming structure declared unsafe by a duly designated official.

G. Nothing in this chapter shall be deemed to prevent, with proper permit, the reconstruction of a nonconforming structure to its original configuration when destroyed by fire or act of God and with review and approval by the Zoning Board of Appeals.

H. Whenever an area is transferred from a district of one classification to a district of a different classification, or amendments are adopted which change permitted uses or other regulatory measures

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governing such, the above regulations shall apply to nonconforming uses created by such transfer.

I. The Planned Unit Residential District (PURD) zoning classification shall be identified as a preexisting zoning classification. PURD projects have been previously approved as to design and land use by the Clarence Town Board. Amendments to these preexisting districts may be made by the Town Board in accordance with procedures as outlined in § 229-165 of this chapter, Zoning Code/ Map amendments. Any amendments to a preexisting PURD district must be consistent with the adopted Master Plan and residential design requirements in the Town of Clarence Subdivision Law.[13]

§ 229-163. Zoning Board of Appeals.

The Zoning Board of Appeals (ZBA) shall have the authority to hear and decide appeals from any order, decision, determination or interpretation made pursuant to or regarding these regulations. The Zoning Board of Appeals shall have the authority to hear and decide applications for variances from the requirements of these regulations.

A. Membership in ZBA.

(1) The Zoning Board of Appeals shall consist of five members and one alternate member, appointed by the Town Board. The alternate member, while attending any meeting of the Board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member. Members shall be compensated at a rate as determined by the Town Board.

(2) The terms of office of the members of the Zoning Board of Appeals shall be for overlapping terms of five years.

(3) Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the Town Board, and such appointment shall only be for the period of the unexpired term. Members may be removed for cause by the Town Board and upon written charges and after public hearing.

(4) The Town Board shall appoint a Chairperson and Vice Chairperson of the Zoning Board of Appeals from the membership of the same Board.

B. Meetings, hearings and procedures of the ZBA:

(1) All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedures set forth in these regulations and by New York State Town Law and rules of procedure adopted by the Zoning Board of Appeals. Such rules of procedures may be amended by the Zoning Board of Appeals membership.

(2) Any rules of procedure adopted by the Zoning Board of Appeals shall be kept on file at the Planning and Zoning Office and shall be made available to the public upon request.

(3) Permanent records shall be kept on file for all proceedings of the Zoning Board of Appeals at the Planning and Zoning Office and shall be made available to the public upon request.

C. Staff. The Director of Community Development or his/her designee shall serve as staff to the Zoning Board of Appeals and shall provide technical assistance to the Zoning Board of Appeals as requested.

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13. Editor's Note: See Ch. 193, Subdivision of Land.

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D. Initiation of appeals and variances.

(1) An appeal may be initiated by any aggrieved party or by any officer, department or board of the Town of Clarence.

(2) An application for a variance may be initiated only by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having a written contractual interest in the affected property.

E. Administrative review, appeals and interpretation. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or citation made by the Director of Community Development or designee, Building Inspector or designee, or Town Board regarding any portion of this chapter and apply such interpretation to particular fact situations. In addition, the Director of Community Development or designee, Building Inspector or designee or Town Board may ask the Zoning Board of Appeals to interpret any portion of the Zoning Law.

(1) The Zoning Board of Appeals may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed or make an interpretation of the Zoning Law.

(2) The Zoning Board of Appeals shall have all the powers of the Director of Community Development, Building Inspector or designee, or Town Board in making any order, requirement, decision, interpretation or determination with reference to an appeal or petition.

(3) An appeal may be made by any person who has received a ruling from the Director of Community Development or designee, Building Inspector or designee. An appeal to the Zoning Board of Appeals shall be made within 45 days of the decision, order, determination or interpretation made by the Zoning Enforcement Officer. The Zoning Enforcement Officer may make an appeal to the Zoning Board of Appeals at any time.

F. Variances. When practical difficulties, special conditions, or unnecessary hardships would result from carrying out the strict letter of this chapter, the Zoning Board of Appeals shall have the power to vary or modify any of the regulations or provisions of this chapter relating to the construction or alteration of buildings or structures or the use of land.

(1) A "use variance" shall mean the authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(a) No such use variance shall be granted 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, for each and every permitted use under the zoning regulations for the particular district where the property is located:

[1] That the applicant cannot earn a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

[2] That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;

[3] That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

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[4] That the alleged hardship has not been self-created.

(b) 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.

(2) An "area variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

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

[1] 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;

[2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

[3] Whether the requested area variance is substantial;

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

[5] 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 Zoning Board of Appeals, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this chapter and shall be punishable as prescribed in this chapter.

(4) Unless otherwise authorized by the Board of Appeals and included in its decision to grant a variance, any order of the Board of Appeals in granting a variance shall expire, if a building permit or certificate of occupancy (for a use for which a building permit is not required) has not been obtained within one year from the date of its decision.

§ 229-164. Planning Board. [Amended 12-1-2010 by L.L. No. 5-2010]

A Planning Board is established to review projects and make final approvals on site plan reviews and changes in use; and make recommendations to the Town Board on matters referred by the Town Board, including but not limited to temporary conditional permits, special exception use permits, open space design and incentive lot subdivisions, and long-range planning and land use issues.

A. Membership. The Planning Board shall consist of seven full members and one alternate member. The Town Board shall appoint the members of the Planning Board on a staggered-term basis in conformance with Town Law. The Planning Board alternate shall be appointed on an annual basis. The alternate member, while attending any meeting of the Board and serving in the absence of any

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regular member, shall have and may exercise all of the powers and duties of a regular member. Members shall be compensated at a rate as determined by the Town Board.

B. Vacancies. Vacancies occurring for any reason other than expiration of term shall be filled by appointment of the Town Board and shall be for the period of the unexpired term.

C. Executive Committee. The Town Board shall appoint a Chairperson, Vice Chairperson and Second Vice Chairperson from the membership of the Planning Board. Collectively, such members shall constitute the Planning Board Executive Committee.

D. Meetings, hearings and procedures of the Planning Board. All meetings and hearings of the Planning Board and the Planning Board Executive Committee shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and by New York State Town Law and rules and procedures established by the Planning Board. Such rules and procedures may be amended by the Planning Board membership.

(1) Any rules of procedure adopted by the Planning Board shall be kept on file at the Planning and Zoning Office and shall be made available to the public upon request.

(2) Permanent records shall be kept on file in the Planning and Zoning Office for all proceedings of the Town Planning Board and shall be made available to the public upon request.

E. The Planning Board, for matters associated with the Zoning Local Law, shall have final authority on site plan review including concept plans, development plans and changes in use and be a recommending body to the Town Board on other referred matters. In addition to concept and development plan reviews, the Planning Board shall make recommendations on special exception use permit applications and temporary conditional permit applications when directed by the Town Board. The Planning Board shall attach reasonable safeguards and conditions to uses, which might otherwise produce deleterious effects on the environment, neighborhood character, and/or the Town resident’s health, safety and welfare.

F. Staff. The Director of Community Development and Assistant Director of Community Development shall serve as staff to the Planning Board and shall provide technical assistance to the Planning Board, as requested.

§ 229-165. Zoning Code/Map amendments.

The purpose of this section is to set forth procedures for amending the text of these regulations and the zoning classification of land as shown on the Zoning Map. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments necessary in light of changed conditions or changes in public policy. This Zoning chapter shall act as an implementing tool for the Town's adopted Comprehensive Plan and all regulations and amendments must be in conformance with the adopted plan.

A. Authority. Upon compliance with the provisions of this section, the Town Board shall have the authority to amend or repeal the text of these regulations and the classification of any parcel of land, as indicated on the Zoning Map.

B. Initiation. Any amendment may be initiated by:

(1) The Town Board or Planning Board on its own resolution;

(2) A local government agency of the Town of Clarence; or

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(3) By any other person legally or equitably owning property within the zoning jurisdiction of the Town of Clarence, in accordance with the procedures set forth herein.

C. Filing of petitions; determination of completeness. For a reclassification of property proposed by any person or entity other than the Planning Board or Town Board or for petition to change the text of this chapter, such petition shall be on an application form prescribed by the Town Board and accompanied by the fee established by the Town Board. Said application form and fee shall be filed with the Planning and Zoning Office.

D. Content of application.

(1) Each noncontiguous parcel of land for which rezoning is requested shall be deemed as a separate application, and said application fee shall accompany each application. For the purpose of this paragraph, land located and adjacent on either side to the rear and all property directly across any street or public right-of-way from the subject property shall be deemed to be contiguous.

(2) Each application for a rezoning of land shall be accompanied by two copies of a map, drawn to scale, with the following information either shown on the map or accompanying it:

(a) The subject property plus such additional property as to show the location of the subject property with reference to the nearest street intersection, stream or other feature easily identifiable on the ground. In addition, all property lines which abut the property and property owners' names and addresses of all contiguous properties shall be furnished.

(b) If the property is in a subdivision of record, a map of such portion of the subdivision that would relate the subject property to the closest street intersection, and in addition, the name of the subdivision and the plat addition, the names and addresses of all adjoining property owners (as indicated on the most up-to-date tax listings) shall be furnished.

(c) A survey of the property(ies) proposed for rezoning shall accompany the map.

(d) The present and proposed zoning classification of the lot(s) in question.

(e) The property identification number(s) of the lot(s) in question

(3) An application for a change in the text of the chapter shall be made in duplicate, on an application form provided by the Town Board. The application shall contain a reference to the specific section, subsection, paragraph or item proposed to be changed, as well as the wording of the proposed change, and the reasons therefor.

E. Planning Board review and recommendations. Once a petition for rezoning is complete, the Director of Community Development shall refer the petition to the Town Board. The Town Board, prior to taking any action, shall refer the petition to the Planning Board for review and recommendation to the Town Board. The Planning Board shall have a maximum of 45 days from the date it first meets to make such recommendation unless an agreement between the applicant and the Planning Board stipulates additional time for review. If a recommendation is not made during said time period, the application shall be forwarded to the Town Board without a recommendation from the Planning Board.

(1) If a recommendation is made to the Town Board by the Planning Board concerning a petition for rezoning, said recommendation shall be as follows:

(a) Grant the rezoning as requested, or

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(b) Grant the rezoning with a reduction of the area requested, or

(c) Grant the rezoning to a more restrictive general zoning district or districts, or

(d) Grant the rezoning in conjunction with a change in the text of this chapter, or

(e) Recommend that the application be denied.

(2) If a recommendation is made to the Town Board by the Planning Board concerning a petition to amend the text of this chapter, it shall be as follows:

(a) Adoption of the amendment as written, or

(b) Adoption of the amendment as revised by the Planning Board, or

(c) Rejection of the amendment.

F. Submittal and review periods. In order for an amendment to the Zoning chapter text or Map to be made in accordance with this section, a public hearing must first be held by the Town Board. Notification of the public hearing shall be as follows:

(1) A notice shall be published in a newspaper having general circulation in the Town, to be published not less than 10 days nor more than 25 days prior to the date established for the hearing.

(2) A notice of a proposed Zoning Map change shall be sent by first class mail by the Planning and Zoning Office to the affected property and to all contiguous property owners and other owners within 500 feet of the property proposed for amendment.

G. Town Board review and consideration.

(1) In case of protest against an amendment, duly signed by the owners of 20% or more either of the area of the lots included in such proposed change or of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending 100 feet therefrom or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such amendment shall not become effective except by favorable vote of 4/5 of the Town Board.

(2) Once the public hearing has been conducted, the Town Board shall render a decision on the petition. The decision of the Town Board shall be in the form of any of the various options listed in this section. Alternatively, the Town Board may send the application back to the Planning Board for further study and consideration. The petitioner shall have the right to withdraw his petition at any time prior to the final decision being rendered by the Town Board. The Town Board shall have the authority to call for additional public hearings on any amended petition brought before it. The forty-five-day Planning Board review period shall be in effect after the close of the first and any subsequent public hearings called for by the Town Board on a particular amendment.

H. Notification of decision. Once a public hearing has been held and closed and a final determination made by the Town Board, said decision shall be sent by first class mail by the Director of Community Development to the applicant and any persons at or before the public hearing who have indicated in writing to the Director of Community Development that they would like the decision mailed to them within five working days following the date of said decision. Similarly, notice shall be sent to the applicant in the same manner if the Town Board makes a decision to resubmit the petition to the Planning Board for further review.

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I. Resubmission of petition.

(1) The Town Board shall not review any applications for the same changes affecting the same property or any portion thereof until the expiration of one year from the date of such previous denial.

(2) The Town Board may allow resubmission of such petition within said one-year period if it determines that, since the date of action on the prior petition:

(a) There has been a significant change in the zoning district classification of an adjacent piece of property;

(b) The Town Board has adopted a plan that changes public policy regarding how the property affected by the amendment should be developed;

(c) Construction or expansion of a road, waterline, sewer line or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification; or

(d) There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one-year restriction on a new petition; this, however, shall not include a change in the ownership of the subject property.

§ 229-165.1. Annual adequate public facility review procedures. [Added 6-27-2007 by L.L. No. 3-2007]

A. Fire and EMS level of service. On an annual basis, beginning one year after the effective date of this section, the Director shall submit to the Town Board a report regarding the capacity of the volunteer fire districts to address existing and projected demands from new residential and nonresidential development within the Town. The report shall:

(1) Reflect coordination and input from the each of the volunteer fire districts;

(2) Identify whether existing and planned fire protection and emergency medical service (EMS) facilities are or are anticipated to be adequate to serve the needs of existing and projected residents and employees in the Town; and

(3) Be based on the level of service standards recognized by the Town for fire and EMS services.

B. Schools level of service. On an annual basis, beginning one year after the effective date of this section, the Director shall submit to the Town Board a report regarding the capacity of the school districts that serve residents of Clarence to address existing and projected demands from new residential development within the Town. The report shall:

(1) Reflect coordination and input from the Clarence Central, Williamsville, and Akron School Districts, as appropriate;

(2) Reflect the input of the Town on the CIP of the school districts, including those providing educational facilities capacity within the AEF Overlay District;

(3) Identify whether existing and planned educational facilities are or are anticipated to be adequate to serve the needs of existing and projected residential developments in the Town; and

(4) Be based on the level of service standards recognized by the Town and school districts.

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ARTICLE XVII
Definitions

§ 229-166. Intent.

For the purpose of interpreting this chapter, certain words, concepts, and ideas are defined herein and appear within the text of the chapter. Except as defined herein, all other words used in this chapter shall have their everyday dictionary definition.

§ 229-167. Interpretation.

A. Words used in the present tense include the future tense.

B. Words used in the singular number include the plural, and words used in the plural number include the singular.

C. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.

D. The word "lot" includes the word "plot" or "parcel" or "tract."

E. The word "shall" is always mandatory and not merely discretionary.

F. The word "structure" shall include the word "building."

G. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."

H. The word "Zoning Map" or "Clarence Zoning Map" shall mean the Official Zoning Map of Clarence, New York.

I. Any word denoting gender includes the female and the male.

J. The term "Town Board" shall mean the "Town Board of Clarence, New York."

K. The term "Planning Board" shall mean the Planning Board of Clarence, New York.

L. The term "Board of Appeals" shall mean the Zoning Board of Appeals (ZBA) of the Town of Clarence, New York.

M. The term "Zoning Enforcement Officer" shall mean any code enforcement officer as appointed by the Clarence Town Board.

N. The term "Planning Department" shall mean the Planning and Zoning Department of the Town of Clarence, New York.

§ 229-168. Definitions. [Amended 2-14-2007 by L.L. No. 1-2007; 6-27-2007 by L.L. No. 3-2007; 10-8-2014 by L.L. No. 5-2014; 7-8-2015 by L.L. No. 2-2015; 3-11-2020 by L.L. No. 1-2020; 8-14-2024 by L.L. No. 1-2024]

As used in this chapter, the following words shall have the meanings indicated:

ACCESSORY BUILDING — A subordinate structure to the principal building or use on a lot that may include, but not be limited to, private garages, greenhouses, storage buildings and the like.

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ADEQUATE EDUCATIONAL FACILITIES (AEF) ALLOCATION — A reservation of capacity made by the Town upon issuing a statement of available capacity.

ADEQUATE EDUCATIONAL FACILITIES (AEF) ASSESSMENT — An application for an AEF determination of educational facilities as required by and described in this chapter.

ADEQUATE EDUCATIONAL FACILITIES (AEF) DETERMINATION — The Town's determination of whether an educational facility impacted by a development proposal has available capacity, based on adopted level of service standards, which determination may be based on an approved mitigation plan.

ADEQUATE EDUCATIONAL FACILITIES (AEF) OVERLAY DISTRICT — The area within which the adequacy of educational facilities capacity will be determined pursuant to the terms of this chapter. The AEF Overlay District is as shown on the Adequate Educational Facilities Overlay District Map, as adopted and on file with the Department of Community Development, which is hereby adopted and incorporated by this reference.

ADEQUATE EDUCATIONAL FACILITIES (AEF) SCHEDULE — A schedule developed and maintained by the Town, in coordination with the school district, which tracks the capacity of educational facilities for each school within the AEF Overlay District.

ADOPTED LEVEL OF SERVICE STANDARD — One-hundred-ten-percent of the maximum capacity of a school.

ADULT ESTABLISHMENT — Any establishment which sells, rents, leases, displays, distributes, purchases or trades in materials distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. This definition shall not include materials related to the medical profession. This definition shall include an adult bookstore, adult entertainment cabaret, adult mini-motion-picture theater, and adult motion-picture theater. Adult Establishments are expressly permitted (including by special use exception permit) in certain zoning districts. Unless expressly permitted, adult establishments are prohibited.

ADULT USES — See "adult establishment."

ADVANCED FACILITY — An educational facility proposed to be constructed, dedicated, or funded by an applicant, pursuant to an approved mitigation plan, which offsets the proportionate impacts of a development proposal.

AGRICULTURE OPERATION (CUSTOMARY) — The raising or production for compensation, of crops, livestock, poultry, dairy products, fish or other wildlife, trees and other similar pursuits. Tree growing and harvesting, animal husbandry, horticulture operations, forestry operations and the sale, at wholesale or retail, of farm products upon the premises where the same are grown or produced shall be considered agriculture operations.

AGRICULTURAL SUPPORT STRUCTURES — Includes, but shall not be limited to, barns, silos, sheds, coops, shops, commodity buildings, machine or equipment storage buildings, greenhouses, stables, riding rings or arenas, exercise tracks, runs, dry lots, stalls, paddocks, pens, corrals or fences, windmills, water supply ponds, farm stands, manure storage facilities, wineries or vineyards, maple sugaring facilities or other storage buildings, outbuildings or enclosures.

ALTERATIONS — To change or rearrange any exterior structural part of the existing facilities of a building or structure by enlarging the building or structure, whether by extending any side or increasing the height thereof, or to move the same from one location or position to another. It shall not be considered an alteration if there is no expansion of exterior dimensions. For instance, replacement of windows, doors, siding, roofing, etc., as well as interior alterations shall not be considered an alteration for the purposes of this chapter.

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ANATOMICAL AREA(S) — Anatomical areas shall include:

A. Less than completely and opaquely covered genitals, pubic regions or female breast below a point immediately above the top of the areola.

B. Human male genitals in a discernibly turgid state even if completely covered.

APARTMENT BUILDING — A building arranged, intended or designed to be occupied by three or more families independently of each other. Includes multiple-family dwelling(s).

AREA, FLOOR — The total floor area less permanent concourses, stair halls, lobbies, elevator shafts, areas permanently devoted to warehousing, and rooms housing equipment servicing the entire building.

AREA, LIVING — Usable living space, exclusive of porches, entries, garages and terraces, determined by the sum of the gross horizontal areas of the floors of a building measured from the exterior faces of the exterior walls.

ASSISTED LIVING FACILITY — See "nursing home."

AUTOMOTIVE SALES — Any building, premises or land in or upon which the occupant offers motor vehicles for sale or lease, including recreational vehicles, motor homes, farm and construction vehicles, or any part thereof.

AUTOMOTIVE SERVICE STATIONS — Any building, premises and land, or portion thereof, used or occupied for the sale or supply of gasoline or motor vehicle fuels, oils or lubricants or for the polishing, greasing, washing and routine servicing and maintaining of motor vehicles

AVAILABLE CAPACITY — The circumstance where an educational facility has sufficient capacity to accommodate the demand created by a development proposal, or each phase of a development proposal, based on adopted level-of-service standards.

BASELINE STUDY — An analysis and inventory document of existing environmental features to be preserved, including, but not limited to: wetlands, vistas, berms, knolls, streams, rock outcrops, marshlands, woodlands, escarpments, mature trees and shrubs.

BASEMENT — A story partly below grade but having at least 1/2 of its height (measured from floor to ceiling) below the average adjoining grade.

BASEMENT, WALK-OUT — A story partly below grade but having at least 1/2 of its height (measured from floor to ceiling) above the average adjoining grade with full door access to the exterior of the home.

BED-AND-BREAKFAST INN — A use that takes place within a building that consists of renting one or more dwelling rooms on a daily basis to tourists, vacationers and business people, where provision of meals is limited to the breakfast meal, available only to guests. The homeowner shall reside on site, and employment shall not exceed two full-time employees, not including the owner(s).

BOARDER — A person unrelated to the owner of the premises that may rent living space in an existing living unit but not create an additional living unit.

BOARDINGHOUSE — An owner-occupied living unit that rents living area of the unit to a boarder.

BUILDING — Any structure having a roof supported by columns or by walls which is used or occupied for the shelter of enclosure of animals, persons or property. Unless specified, the term includes both principal and accessory buildings.

BUILDOUT — The completed construction of all phases of a development as allowed by all local laws and regulations. The scale of buildout can be from a single lot to the entire Town.

BUILD-TO LINE — The line along the front of a property where construction shall begin. A build-to line

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runs parallel to the front property line and is established to create an even building facade line on a street.

BUILDING AREA — The total area, taken on a horizontal plane at grade level, occupied or to be occupied by the principal building and all necessary buildings, excluding chimneys, uncovered porches, patios, terraces, steps and open areas.

BUILDING DEPARTMENT — The arm of local government responsible for the enforcement of the New York State Fire Prevention and Building Code as well as all of the Town's local land use laws regarding building and construction of all principal and accessory structures.

BUILDING HEIGHT — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest average point of the roof.

BUILDING LINE — The line formed by the facades of buildings, which creates a frame defining the public realm. Respecting building lines means to place walls or landscaping in such a manner as to continue the frame where there is an absence of buildings.

BUILDING INSPECTOR — The person appointed by the Town Board to enforce the regulations in the New York State Fire Prevention and Building Code as well as all the Town's local land use laws regarding building and construction of all principal and accessory structures.

BUILDING PERMIT — A permit obtained from the Town of Clarence Building Department which sets the inspection schedule and construction techniques for a project.

CALIPER — The measurement of the size in inches of a tree's trunk diameter usually taken between one foot and 4.5 feet above the ground elevation; one-foot measurement to be used for new trees to be planted and 4.5 feet to be used for existing trees on a site or trees to be removed.

CAPACITY — The demand that can be accommodated by an educational facility without exceeding the adopted level-of-service standard.

CAPITAL IMPROVEMENTS PROGRAM or CIP — A capital planning and funding document of the school district, also known as a "long-range facilities plan."

CARRYING CAPACITY — The amount of traffic which can be accommodated on a street without reducing the service level of the street as defined by the New York State Department of Transportation or street design standards of the Town of Clarence Subdivision Law.[14] Carrying capacity is determined by the amount of traffic per lane per hour.

CEMETERY — Land used or intended to be used for the burial or entombment of human remains. This definition does not include funeral homes, crematoriums, or embalming facilities.

CERTIFICATE OF OCCUPANCY (CO) — A certificate allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with this Zoning Chapter and all other applicable regulations.

CHILD-CARE CENTERS — A place where daytime care is provided to six or more children and not the legal wards or foster children of the attendant adult within an occupied residence. "Day-care facility" and "nursery school" shall be included in this definition.

COMMERCIAL USE — All retail sales establishments, office uses (medical, financial), service industry uses (restaurants, hotels/motels/inns), wholesale businesses, and general businesses (automotive repair).

COMMUNITY FACILITY — A building or parcel of land used specifically for a governmental purpose or nonprofit institution, including unincorporated community groups. Facilities may include churches, parks,

14. **Editor's Note: See Ch. 193, Subdivision of Land.**

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governmental offices, golf courses, nature preserves, public or private schools, recreational trails, and cemeteries.

CONCEPT PLAN — A preliminary sketch plan of a plot of land intended to obtain a permit according to this Zoning chapter. A concept plan may include drainage, setbacks, what utilities are available to the site, the proposed building construction type, and show existing buildings and drives within 500 feet of the site.

CORNER LOT — Any lot at an intersection of two separate public or private road rights-of-way. Such lots shall be considered to have two front yards from those public or private road rights-of-way to the closest point of the principal building.

CREMATORIUM — A facility in which the remains of deceased human beings are processed by cremation. Crematoriums are prohibited in all zoning districts.

CREMATORY — See "crematorium."

CUSTOMARY HOME OCCUPATION — Any use conducted for gain entirely within the dwelling and carried on by the occupants thereof, which use is clearly incidental and subordinate to the residential use and which does not change the character thereof and in connection with which there is no display. When observed from beyond the lot on which it is located, the home occupation does not give visual, audible, sensory, or physical evidence that the property is used for any nonresidential purpose.

DETACHED AND ATTACHED SINGLE-FAMILY HOME — Attached housing does not provide for an open yard on all sides of the home (perimeter yard). Any group of attached housing containing more than two dwelling units on a single lot is multifamily. Attached housing with each house on its own deeded lot (zero lot line) is not multifamily. Detached housing must have a perimeter yard and be located on a single deeded lot (exception: see "Temporary conditional permits" of the General Provisions[15]). A "modular home" is included in this definition but "manufactured housing" is not.

DEVELOPMENT PLAN — A set of detailed plans used in the construction of a project that has been derived from an applicant's approved concept plan. Information may include all of the items needed by all review agencies in order to issue permits under this chapter for such development.

DEVELOPMENT PROPOSAL — Either of the following:

A. A development plan for a residential subdivision that includes five or more proposed lots; or

B. A multifamily development that includes five or more units.

DIAMETER BREAST HEIGHT (DBH) — The diameter of a tree species at approximately four feet above ground level.

DIRECTOR — The Town's Director of Community Development.

DIRECTOR OF COMMUNITY DEVELOPMENT — The person appointed by the Town Board to administer this Official Zoning Law as well as make recommendations on local land use policy. This position is the department head for the Planning and Zoning Office.

DOG KENNEL — A structure used for the harboring of dogs for compensation.

DRIP LINE — An imaginary vertical line extending from the outermost portion of the tree canopy to the ground.

DRIVE-IN FACILITY — A commercial establishment designed to permit customers to remain in their automobiles while being accommodated.

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15. Editor's Note: See § 229-13 of Art. II.

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DRIVEWAY — A private roadway utilized for providing access from a public road to a permitted use.

DUPLEX — A structure containing two dwelling units located on a single lot.

DWELLING UNIT or LIVING UNIT — A building designed or used exclusively as the living facilities for one family.

EDUCATIONAL FACILITIES — Permanent school buildings or land provided by the school district which provide additional capacity to accommodate the demand for schools generated by new development.

ENCROACHMENT — The overlap of a structure into a dedicated setback area. Areas may include dedicated yard areas, an easement or a highway right-of-way.

ENTERTAINMENT USE — Any establishment which provides active recreational opportunities such as miniature golf, batting cages, carnival games, waterslides, or passive recreation such as movie theaters.

ERECT — To construct, build, reconstruct, rebuild, or excavate for a building or structure.

EXPANDED HOME OCCUPATION — A customary home occupation that meets all requirements except as to utilizing an accessory structure on the premises for business purposes.

FACADES — The vertical surface of a building which is set along a frontage line. The elevation of a facade is the vertical surface area. Facades are subject to visual definition by building height and setback lines.

FAMILY — One or more genetically or lawfully related persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group of unrelated persons occupying a boardinghouse, lodging house, club, fraternity or hotel.

FARM — Any parcel of land containing at least five acres which is used for economic gain in the raising of agriculture products, livestock, poultry, dairy products, and tree farms, including related accessory structures.

FLAT ROOF — Refers to the silhouette formed by a roofline. Flat rooflines infer a roof with no pitch. The actual roof structure is required to have a slope for drainage purposes. This is separate from the roofline, which can be stepped; flat in appearance through architectural elements such as cornices, mansards and parapets; or pitched as with residential homes.

FRONTAGE — The distance between lot lines along a public or private highway right-of-way.

FUNERAL HOME — A facility used or held out as being used to care for and prepare for burial of the body of a deceased human being or maintained as the office from which business is transacted by a funeral director or undertaker. This definition does not include crematoriums.

GARAGE — An accessory structure that is primarily used to store automobiles and personal belongings.

GRADE — Grade shall mean the elevation of the land or land level at a specific point.

GRADING AREA — The grading area includes any area of land around a newly constructed building that affects surface water patterns. This area will be determined on a permit-by-permit basis through the Building and Engineering Department at site plan review.

GREENBELT — A greenbelt is a buffer area between new construction and other properties consisting of various forms of vegetation. This area is mainly used for aesthetic mitigation for existing or future adjoining uses.

GROUP HOME — Group residence for those requiring full-time assisted living as well as supervision.

HAZARDOUS WASTE — Any substance meeting the definition of that term under § 27-1101 of the New York State Environmental Conservation Law or any regulations promulgated thereunder.

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HOUSING TYPES — The style of living unit, that may include multistory, single-story, attached, detached, owner-occupied or rented, located on a private yard or common land of various sizes.

HOTEL — A principal building containing a group of living units designed to be used or which are used or rented for sleeping purposes by guests and where only a common kitchen and dining area is provided by the property managers.

IMPERVIOUS COVER — All areas covered by buildings, pavement (not including ungrouted pavers for sidewalks), gravel, rooftops of stored merchandise (i.e., cars and manufactured housing displays, even if located on grass surfaces), and any material that prevents water from infiltrating the surface layer of the soil. Wooden slatted decks and pool surfaces are exempt for the purposes of lot coverage calculations.

INFILL DEVELOPMENT — New development within an existing sewer district on vacant or idle land or within a vacant building.

INTERCONNECTED — Refers to streets which provide through access to other streets. "Interconnected" means the existence of a grid or grid pattern that may include curvilinear street layouts.

IRREGULARLY SHAPED LOTS — Lots which are located on corners or at intersections which create lots with three sides or lots with more than four sides, with corner angles greater or less than 90°. The front yard of such lots shall be determined with respect to adjacent homes and the maintenance of street vistas.

JUNKYARD — Any lot, land or structure, or part thereof, used primarily for the collection, storage and sale of wastepaper, rags, scrap metal or other discarded material; for the collection, dismantling, storage of machinery or inoperative and/or unregistered motor vehicles; or for the sale of parts thereof.

LANDSCAPED AREA — The area of a lot that does not have buildings, structures or impervious surfaces covering the surface of land.

LARGE, MEDIUM AND SMALL MATURING TREES — Tree height categories. "Large maturing" trees grow to a minimum height of 40 feet. "Medium maturing" trees grow to a minimum of 20 feet. "Small maturing" trees grow to a minimum of 10 feet.

LEVEL OF SERVICE or "LOS" — An indicator of the extent or degree of service provided by an Educational Facility, based upon, and related to the operational characteristics of the facility, in comparison with the capacity of the Educational Facility.

LIGHT ASSEMBLY, INDUSTRIAL — Light assembly includes all operations involving the creation of whole products from parts and all industrial processes of less intensity than such operations. No light assembly industrial use shall emit noise or odor which alters or impacts adjacent property or discharge gas or liquid waste into the environment which impacts adjacent property. Light assembly uses shall be conducted indoors and any accompanying storage shall be indoors or screened from all abutting property lines and nonindustrial uses.

LIVING UNIT — See "dwelling unit."

LOADING SPACE, OFF-STREET — An area of land off the public right-of-way where it is appropriate for unloading and/or loading goods for an approved use.

LOT — A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title.

LOT COVERAGE — The area of an existing lot that is utilized or covered with buildings and structures.

LOT OF RECORD — Any vacant lot which individually or as a part of a subdivision has been recorded in the County Clerk's Office and for which proof can be given that the lot was intended for development prior

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to adoption of this chapter.

MACHINE SHOP — A workshop that is mechanized to size and assemble pieces of machinery.

MAINTAINED EASEMENT — A recorded right-of-way made of crushed gravel, pavement, or graded and cleared of brush, so as to permit access by all vehicles.

MANUFACTURED HOUSING — A residential dwelling unit that is constructed in accordance with the standards set forth in the New York State Fire Prevention and Building Code and is composed of one or more components, each of which was assembled in a manufacturing plant and designed to be transported to the home site on its own chassis. The unit is also situated on land that is leased by a licensed manufactured home park owner.

MANUFACTURING OPERATION — Any facility that assembles, fabricates, processes or packages products, from raw materials or component parts, for sale and distribution to wholesale and retail establishments or other industries. Does not include operations involving hazardous materials.

MAXIMUM CAPACITY — The capacity of a school, based on a twenty-two-student-per-classroom standard, the number of permanent classrooms in a facility, and normal classroom operations. Maximum capacity does not include temporary or portable classrooms.

MECHANICAL EQUIPMENT — All HVAC (heating, ventilation, and air conditioning), pool filters and other outdoor plumbing equipment located on the roof of a building or outside a home or building.

MEDICAL OFFICE — Offices used for medical treatments or the practice of medicine.

MITIGATION PLAN — A voluntary plan proposed by an applicant in order to offset a development proposal's proportionate impacts on educational facilities, through the provision of advanced facilities. A mitigation plan may be proffered either in conjunction with an AEF assessment or to address an AEF determination.

MIXED USE — The presence of residential and nonresidential uses within the same complex or same building. "Mixed use" can also refer to different categories of nonresidential uses such as institutional, retail, and office within the same complex of building. The advantage of mixed uses is the promotion of architectural compatibility and pedestrian-scaled environments.

MOBILE HOME — A transportable single-family dwelling which may be towed on its own running gear and which is affixed to real estate, used for nontransient residential purposes and which is recognized and approved as a mobile home by the New York State Fire Prevention and Building Code.

MODULAR HOME — A dwelling unit which is constructed in compliance with the New York State Fire Prevention and Building Code and composed of components substantially assembled in an off-site manufacturing plant and transported to the building site for final assembly on a permanent foundation.

MORTUARY — See "funeral home."

MOTEL — A hotel designed to accommodate motorists.

MULTIPLE-FAMILY DWELLING UNIT — Three or more attached single-family dwelling units located on a lot of record.

NONCONFORMING USES — Any use lawfully being made of any land, building or structure which on the effective date of these regulations or on the effective date of any amendment thereto rendering such use illegal within a district does not comply with all the regulations of this chapter or any amendments thereto.

NURSING HOME, RETIREMENT — A licensed facility that provides support services to three or more elderly or disabled adults who need assistance in meeting their daily basic needs.

OFF-STREET PARKING — Parking which occurs on a lot and not on a street or other public right-of-

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way.

OPEN SPACE or OPEN AREA — Any space or area characterized by natural scenic beauty or whose existing openness, natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding lands or would maintain or enhance the conservation of natural resources.

PARCEL — Any subdivision of land within the Town of Clarence.

PARKS — An area of land devoted to active or passive recreational pursuits.

PARKING FACILITIES — Any grounds or structures used primarily for the storage of automobiles.

PATIO HOMES — A detached single-family home that is single story, measuring under 2,400 square feet in area, that has two bedrooms or less and is located on a lot that is either commonly owned or measures less than what is required in the Residential Single-Family Zoning District.

PERMITTED USES — Any use of land or buildings that is allowed as a vested right in a zoning district without any additional review or approvals by the Town Board.

PLANNED UNIT RESIDENTIAL DISTRICT (PURD) — A preexisting zoning classification allowing flexible land use and design regulations as approved by the Clarence Town Board. This zoning classification was originally created by the Town Board on July 10, 1974. This district has been repealed by the adoption of this chapter.

PLANNING AND ZONING DEPARTMENT — The office of local government that is charged with developing the long range goals of the community, recommending proper land use policy, and administering all local land use regulations.

PLANNING BOARD — The Planning Board of the Town of Clarence.

PLAYGROUND — An area of land devoted to active recreational pursuits that may contain articles of play equipment.

PRINCIPAL BUILDING — A building where the main or principal use of the lot is conducted.

PRIVATE DRIVE — A privately owned road right-of-way that may limit access to the owner(s).

PROFESSIONAL OFFICES — Offices which offer professional or consulting services, such as legal, engineering, architectural, accounting or other similar services, but not including medical.

PUBLIC HEARING — A meeting advertised in the local printed media concerning items, including but limited to adopted laws, ordinances or special and temporary permits, which require public input.

PUBLIC SAFETY STATION — Police stations, fire halls and emergency vehicle stations, including any substations of such organizations.

PUBLIC SERVICE FACILITY — See "community facility."

PUBLIC STREET — Any right-of-way used for vehicular and pedestrian traffic that is permanently maintained by the Town, county or state and is open to all traffic.

PUBLIC UTILITY FACILITY — Any structure needed by a public utility for the maintenance and facilitation of that public utility. Facilities may include, but not be limited to, the following: any substation, power pole and utility box. This definition does not include telecommunications towers and satellite antennas, which are regulated under a separate law (see Chapter 173 of the Code of the Town of Clarence).

QUADRANGLES — A rectangular area, such as a courtyard, enclosed by buildings.

QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING — A lot or land or part thereof used for

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the purpose of extracting stone, sand, gravel, or topsoil for sale as an industrial operation, and exclusive of the process of grading a lot in preparation for the construction of a building for which application for a building permit has been made.

RECREATIONAL FACILITY (PUBLIC AND PRIVATE) — A publicly or privately owned and operated facility involved with recreational activities, for municipal, commercial or accessory residential purposes, including but not limited to swimming pools, tennis courts, basketball courts, athletic fields, playgrounds, half-pikes, golf courses or other similar facility or use. Swimming pools require separate permits issued by the Building and Engineering Department to follow New York state regulations.

RECREATIONAL VEHICLE — Shall include motor homes, truck campers, utility and landscape trailers, boats, watercraft, snowmobiles, snow machines, any trailer capable of transporting these vehicles, and camping trailers less than 48 feet in length and/or having less than 720 square feet of interior floor area.

RESEARCH AND DEVELOPMENT OPERATIONS — Any principal use that involves scientific research of product development in any field except those that involve hazardous substances, which are handled under Chapter 123 of the Code of the Town of Clarence.

RESTAURANT/BAR — A commercial establishment that prepares and serves food and/or alcoholic beverages to the public.

RETENTION AND DETENTION PONDS — Engineered facilities for delaying or storing stormwater runoff from a site. Retention delays the flow off a site to prevent flooding. Detention stores water on a site to allow time for pollutants to precipitate out of the runoff. This cleans the water before it is allowed to flow to nearby drinking sources.

RIDING ACADEMY — Any establishment where horses are kept for riding, driving or stabling for compensation or incidental to the operation of any club, association, ranch or similar establishment.

RIGHT-OF-WAY (R-O-W) — An area of land dedicated to infrastructure, including but not limited to streets, sewer lines, waterlines, electric lines and gas lines.

ROOMING HOUSE — See "boardinghouse."

SCHOOL DISTRICT — The school district that serves students within the AEF Overlay District, or the school district's designated representative.

SECONDARY LIVING UNIT — An additional living unit added to a single-family home that is for a family member of the owner-occupant.

SETBACKS — The mandatory distance between a frontage line and a facade or a lot line and a building wall.

SHOP FRONT — A business or retail use. The facade of a shopfront is aligned directly on the frontage line with the entrance at grade. This is typical for sidewalk retail. Shopfronts often have awnings or a colonnade. A transition line should separate the signage from the facade below.

SIGNIFICANT IMPACT — Any impact that would deteriorate the public health, safety and general welfare of the community. General welfare may include community character and other quality of life issues that are deemed important to that community, including but not limited to, all those issues reviewed under New York State's Environmental Quality Review Act (SEQRA).

SITE PLAN — A diagram drawn to scale showing the development plans for a lot.

SITE SURVEY — A map developed by a land surveyor licensed in the State of New York accurately depicting the distances and measurements of all existing and proposed structures on a lot, including all legal boundary lines with distances and bearings.

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SMALL-SCALE RETAIL — Neighborhood scale businesses that maintain a reduced amount of square footage and produce a minimal amount of vehicular traffic. These are often clustered with similar small-scale retail establishments in association with mixed use developments and typically do not exceed 2,500 square feet and do not require more than 15 parking spaces.

SPECIAL EXCEPTION USE PERMIT — An authorization of a particular land use that is permitted in a specific zoning district subject to the requirements imposed by this chapter to assure that the proposed use is in harmony with this chapter and will not adversely affect a neighborhood if such requirements are met.

STABLE — A building or part of a building used to house horses or cattle.

STATEMENT OF AVAILABLE CAPACITY — An AEF determination that educational facilities impacted by a development proposal have available capacity, based on adopted level of service standards, which determination may be based on an approved mitigation plan.

STATEMENT OF NO AVAILABLE CAPACITY — An AEF determination that educational facilities impacted by a development proposal do not have available capacity to serve a development proposal, based on adopted level of service standards.

STORY — The portion of a building included between the surface of any floor and the ceiling above it.

STORMWATER RUNOFF — Rain that falls onto impervious surfaces and is not absorbed into the ground immediately. Stormwater runoff carries pollutants off of paved surfaces into streams and rivers and causes flooding by speeding up the rate of water flow into streams and rivers.

STREET ORIENTATION — The direction of the architectural front facade of a building in relation to the street.

STREET VISTA — A view framed by buildings at the termination of the axis of a thoroughfare.

STREET YARD — The area of land along the front property line parallel to a right-of-way reserved for tree planting and landscaping.

SUBDIVISION — The division of any parcel into two or more parcels.

SUSTAINABLE — Having the ability to accommodate and maintain population growth and economic expansion through intelligent design.

TEMPORARY STRUCTURES — Buildings placed on a lot for a specific purpose, which are to be removed within a specified time period. Examples of temporary structures are monitoring stations, mobile classroom or office space, construction trailers and guard houses, manufactured housing placed on a lot for temporary housing while principal home renovations are done, and produce stands. This chapter establishes the duration permitted for a temporary structure.

TEMPORARY CONDITIONAL USE PERMIT — A permit issued by the Town Board allowing a use which is not permitted within a zoning district to continue as long as certain criteria are being met by the applicant.

THEATER — A building or part thereof devoted to showing movies or theatrical productions on a paid admission basis.

TOURIST HOME — See "bed-and-breakfast inn."

TOWNHOUSE, ATTACHED — A dwelling unit that is owner-occupied and shares a common wall with at least one other owner-occupied unit in a multiple-family structure. The unit is situated on land that is commonly owned and maintained by a homeowners' association.

TRAILS — Recreational paths for walking, jogging or bicycling within parkways or greenbelts. Trails are informal in design and may run through natural settings.

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TRANSITIONAL YARD — The area of a property running along the side or rear yard of a nonresidential lot when it abuts a residential lot used as a buffer. Transitional yards are planted with trees and landscaping to reduce noise and other impacts on less intense property uses.

TREE AND ROOT PROTECTION AREA — An area of land designated by a local official or board that insures the protection of existing mature trees during site construction. Such areas may be enclosed by temporary fencing for delineation purposes and must include all driplines.

USABLE LAND — Land that is not protected by state or federal environmental law, not covered with water, or subject to flooding. Also, land not encumbered by any utility, conservation or access easement, including public and private highway rights-of-way.

VARIANCE, AREA — A modification of the dimensional requirements of a lot involving a permitted use in the district in which it is located.

VARIANCE, USE — An exception granted to utilize land for a use not permitted in the district in which it is located.

VESTED RIGHT — The right to undertake and complete a development and use the property under the terms and conditions of an approved site survey plan.

VOCATIONAL CENTER — A teaching or learning business where classes are held, which may be affiliated with a university or college.

WATERSHED — An area of land that drains into a stream or river used for drinking water. The watershed delineates the boundaries of the watershed district, which sets development standards for impervious surface areas and water quality.

WETLANDS — All lands and submerged lands, commonly called "marshes," "swamps," "sloughs," "bogs," and "flats," which support aquatic vegetation. These areas are transitional zones that occur between terrestrial upland systems and deepwater aquatic systems, and are part of a continuous gradient between both. Wetlands provides flood control, surface and groundwater protection, wildlife habitat, open space, and water resources. Regulated wetlands are identified by the United States Army Corps of Engineers or the New York State Department of Environmental Conservation.

WETLAND BUFFER — Abutting areas that surround and protect a wetlands from adverse impacts to its function and values.

WOODLANDS — Land that is covered with woody vegetation.

YARD — An area of land immediately adjacent to a building. Yards are broken into front, rear and side. Front yards extend from the architectural front of a building to the fronting street or right-of-way. Side yards extend from the sides of a building to a street right-of-way or property line. Rear yards extend from the back of a building to a property line or right-of-way.

ZERO LOT LINE — No distance from a structure to a property line creating no yard area.

ZONING BOARD OF APPEALS (ZBA) — The Zoning Board of Appeals of the Town of Clarence. As defined by Town Law § 267, the jurisdiction of the Board shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by the administrative official(s) charged with the enforcement of this chapter.

ZONING ENFORCEMENT OFFICER — For purposes of this chapter, the Zoning Enforcement Officer may be the Director of Community Development, Assistant Director of Community Development, Zoning Code Enforcement Officer or any Building Inspector.

ZONING MAP OF THE TOWN OF CLARENCE — The Official Map that illustrates the zoning district

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boundaries described in this chapter. The Official Map shall be maintained current by the Town's Planning and Zoning Department and remain derived from the adopted Comprehensive Plan of the Town.

ZONING PERMIT — Written permission issued by the Town of Clarence for the use of property, construction, or enlargement of a structure or the grading or excavation of a site in preparation of construction or for the installation of underground utilities.

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