

Article 3 - Permit Reviews & Processes

Part 1: Purpose

This article describes the procedures for reviewing applications for land use and development activities in the Town of Clarence. This article is intended to ensure consistency and efficiency in the administration of this Code and builds off of the authority and duties of the various Boards and bodies noted in [Article 2](#).

Part 2: Development Review Summary

Section 2.1 Summary Table

The table below provides a summation of the major review procedures and approval of applications for land use and development activities in the Town of Clarence. This table indicates which applications require pre-application conferences and/or public hearings and indicates the role of the Town review and decision-making authorities.

Other approvals may be needed as part of the land development process depending on the proposed use/project, including, but not limited to:

- A. Certificate of Appropriateness – Historic Preservation Commission ([Article XX, Part XX](#))
- B. Floodplain Development Permit – Town Engineer ([Article XX, Part XX](#))
- C. Fill Permit
- D. Temporary Permit

Table 3.2.1: Summary of Development Review & Related Permits

"X"= Review and Decision | "R" = Referrals (as needed)

Procedures	Section	Review and Decision-Making Bodies					Public Hearing
		Planning & Zoning Dept.	Code Enforcement Officer	Zoning Board of Appeals	Planning Board	Town Board	
General							
Variances (Use/ Area)				X			Y
Rezone/Amendments					R	X	Y
Change-In-Use		X			R	R	
Special Use Permits		R			R	X	Y
Zoning Permit		X			R		
Building Permit			X				
Fill Permit			X				
Temporary Permit		X	R			R	
Floodplain Development Permit			X		R		
Site Plan Review							
Pre-Development/ Sketch Plan					Opt.	X*	
Preliminary					X	R	
Final					X		Opt.
Subdivision							
Pre-Development/ Sketch Plan					Opt.	X*	
Minor					X	R	
Major - Preliminary				R	X		Y
Major - Final				R	X		Y
Lot Line Adjustment		X			R		
Public Improvement Permit					X	X	
*Pre-Development Plan may be required by Town Board in certain instances							

EDITORS NOTE (WORKING DRAFT): The table above will be adjusted as the process continues on to better reflect the permits within the Town.

Section 2.2 Referrals to Internal Entities

To ensure coordinated review of development applications and compliance with local requirements, certain applications shall be referred to other boards and agencies as provided herein (list not exhaustive).

- E. Town Engineer – Applications involving grading, drainage, stormwater management, or utility infrastructure shall be referred to the Town Engineer for technical review and compliance with engineering standards.
- F. Town Attorney - Applications involving legal agreements, easements, dedications, or complex compliance issues shall be referred to the Town Attorney for legal review and advice.
- G. District Fire Chief - Applications involving SEQRA, large-scale development, or changes in access shall be referred to for emergency response considerations.
- H. Highway Superintendent - Applications involving new or modified access to public roads, trails, sidewalks, infrastructure improvements and other such traffic elements shall be referred to for technical review. Any proposal impacting Town Roads.
- I. Landscape Review Committee - Applications proposing significant landscaping plans, buffer areas, or visual screening shall be referred for compliance with design standards and aesthetic objectives. This shall also include fences, walls, and berms.
- J. Municipal and Farmland Protection Committee - Applications located within or adjacent to agricultural districts or involving conversion of farmland shall be referred to comment on consistency with farmland protection policies.
- K. Historic Preservation Commission – Applications involving properties within a designated historic district or affecting historically designated structures shall be referred for review under local historic preservation guidelines.
- L. Fire Inspector

Part 3: Common Development Review Procedures

Section 3.1 Organization of Common Procedures

- A. This section describes the procedures and rules applicable to all land use and development applications unless otherwise stated in this Code; application-specific procedures are identified in subsequent sections.
- B. Authority to Submit. Unless expressly stated otherwise in this Code, a permit/development application shall be submitted by:
 - (1) The owner, contract purchaser, or any other person having a recognized property interest in the land on which development is proposed; or

- (2) A person authorized to submit the application on behalf of the owner, contract purchaser, or other person having a recognized property interest in the land, as evidenced by a letter or document signed by the owner, contract purchaser, or another person.
- (3) If there are multiple owners, contract purchasers, or other persons authorized to submit the application, all such persons shall sign the application or a letter or document consenting to the application.

Section 3.2 Application Submission and Administrative Review

(229-152)(229-150)

- A. All applications for permits shall be made with the Building Department when a building permit is required, including, but not limited to, single-family and two-family home building permits. They shall be submitted to the Code Enforcement Officer for review and issuance of a permit if it is determined that a project does not require additional review or is ministerial in nature. In addition, interior remodeling within a previously approved commercial/industrial use that does not involve a change in use may proceed to apply for a building permit through the Building Department. Notably, all applications' initial point of submission is to the Planning and Zoning Department for review before referring applications to the appropriate review body therefore the Planning and Zoning Department may refer applications to the Building Department.
- B. Applications for single- and two-family home building permits shall be submitted to the Code Enforcement Officer for review and issuance of a permit if it is determined that a project does not require additional review or is ministerial in nature. In addition, 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. For all other uses, the Planning and Zoning Department will coordinate the review process.
- C. The Director of Community Development, or their designee, shall review all applications submitted to the Planning and Zoning Department for completeness. If the submission is complete, it will be directed to the appropriate board for review, determinations, and hearings as determined necessary based on type of application. If incomplete, the applicant must return with sufficient documentation to provide a completed application. **The application will not be considered until deemed complete with all required information.**
- D. The Planning and Zoning Department must receive a complete application package (with checklist) at least 10 days prior to the next meeting date of the authority Board to place it on their agenda.

Section 3.3 Pre-Development Review

The pre-application conference is intended to provide an opportunity for an informal evaluation of an applicant's proposal and discuss the following:

- (1) To review Town policies concerning development
- (2) Understand application and submittal requirements, including development standards and approval criteria
- (3) To discuss preliminary design of the project
- (4) To identify any potential area(s) of environmental concern
- (5) Discussion of potential impacts of the proposed project
- (6) Establish points of contact between the Town and the applicant throughout the development review process
- (7) To set a possible timetable for review

3.3.1 Applicability

- A. REQUIRED Pre-Development Review. As noted in [Article 2, Part 2.2](#), development applications that exhibit greater complexity or are substantial in nature are subject to initial discussion and review with the Town Board prior to formal application to the Planning and Zoning Department. These include any of the following:
 - (1) Previously unimproved property
 - (2) Significant diversion or inconsistency with the Comprehensive Plan, other community planning documents, or the outlined purpose/intent of the zoning district the property is located in
 - (3) Anticipated or desired rezonings
 - (4) Development that includes financial aspects as noted herein subject to Town Board review
 - (5) Projects determined to be SEQRA Type 1 actions
 - (6) A change of use that would result in significant increase in traffic; under NYSDEC analyses, a significant increase in traffic is defined as a development project generating more than 100 peak-hour vehicle trips per day.
- B. OPTIONAL Pre-Development Review. For all other developments not subject to subsection A above, prior to formally applying, it is *recommended* to schedule a conference with the Planning & Zoning Department.

3.3.2 Procedure

- A. The applicant shall contact the Planning and Zoning Department to request a Pre-Development Review.
- B. The applicant shall provide the information determined necessary by the Planning and Zoning Department in order to provide the reviewing body with the means to offer a substantive, informal evaluation of the applicant's proposal and relevant recommendations. The applicant shall review the following materials with the Planning and Zoning Department before being scheduled for a pre-application conference.
 - (1) The proposed project location;
 - (2) A written description of the proposed project;
 - (3) Conceptual drawings showing the location, layout, primary elements, elevations and renderings of the proposed project;
 - (4) Specific uses, location of uses, and densities of proposed project; and
 - (5) Proposed construction phasing (if applicable).
- C. Upon written request for a Pre-Development Review, the Planning & Zoning Department shall schedule the conference with the Town Board during a work session.
- D. The Town Board, in coordination with the Planning & Zoning Department shall review the project against the following criteria:
 - (1) Identification of concerns or factors the applicant should consider related to the scope, features, and potential impacts of the proposed project as they relate to this Code
 - (2) Potential environmental impacts that will need to be considered
 - (3) General compatibility with the Town's ~~Master Plan~~ Comprehensive Plan or any other community-developed planning documents
 - (4) To the extent possible, the applicable approval procedures for the proposed project, such as subdivision, site plan review, special use permit, area or use variance, or administrative adjustment will also be indicated
- E. Any information or discussions held in accordance with this section shall not be binding on the Town or the applicant. Discussions of potential conditions to mitigate impacts do not reflect actions by the decision-making body unless and until a decision-making body takes formal action to attach such condition to a development approval.

Section 3.4 Public Hearings and Notices

3.4.1 Applicability

The following actions are subject to public hearings in accordance with New York State Town Law:

- A. Rezoning and Code Amendments
- B. Subdivisions, including cluster/conservation subdivisions
- C. Any demolition of structures or landscapes older than 50 years, or those structures/landscapes deemed historically significant on a local, state or federal level
- D. Variances or code interpretations by the Zoning Board of Appeals
- E. Special Use Permits

3.4.2 Public Notice

Notice of public hearings shall be done in accordance with **Chapter 32 (Meetings)**. Generally, notice is required in no less than 72 hours prior to hearing and include time, place, and reason for meeting. Mailed notices shall be provided to the applicant and property owners within 500 feet.

Part 4: Site Plan Review

Section 4.1 Purpose

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 ensure compliance with all applicable requirements of this chapter, all applications for permits shall be submitted on forms as required and available at the Town 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.

Section 4.2 Site Plan Review Required

- A. Site plans drawn to scale shall be required for the following land use activities prior to the issuance of building or other permits or the commencement of any land development activity, including clearing and grading.
 - (1) Construction of new buildings or structures.
 - (2) Development, expansion, or modification of parking areas.
 - (3) Activities that would result in the modification of an approved site plan.
 - (4) Other site modifications deemed by the Planning & Zoning Department to warrant site plan review.
- B. Exceptions Site plan review is not required for:

- (1) Accessory structures to single-family or two-family homes.
- (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 a change would not result in a change in lot coverage, off- street parking, access or other external site characteristics.

Section 4.3 General Requirements

- A. 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.
- B. Site plans shall be prepared to a scale as deemed appropriate by the Town department with jurisdiction.
- C. 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.
- D. 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.
- E. 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 as noted in the fee schedule as approved by the Town Board must be paid along with the application.
- F. Five (5) copies of the site plan shall be submitted to the Planning and Zoning Department for review and with one (1) digital copy. The Director of Community Development or their designee may request additional copies at their discretion or as required.

Section 4.4 General Procedures

The review and approval of site plans is a two-step process consisting of concept plan for review and recommendation followed by formal plan development and approval. Should a pre-development review by the Town Board be triggered in accordance with [Article 2 \(2.2G\)](#), this would occur prior. The steps are as follows:

- A. Concept plan. A thoroughly developed plan, along with any other supporting information and/or reports, that outlines the proposed project to ensure that the Town has an opportunity to identify and address any potential impacts of new development prior to further review. In the case of a proposed development which

is phased over a number of years, the applicant shall submit an overall plan for the total development of the project, and a phasing plan for each phase of the development. Internal and external referrals of the concept plan will occur during this phase.

- B. Development Plan. Following the review of the concept plan and receiving comments from any internal and external entities, a refined plan will be provided to the Town to review. Should other actions be required from other Boards, such as but not limited to, variances, rezonings, waivers, or incentives, these shall occur prior to the Planning Board taking any further action on the development plan.
- C. Any resubmission of a previously approved preliminary site plan shall be required to go through the same procedures as the original preliminary site plan application.

Section 4.5 Concept Plan Stage

4.5.1 Required Information

The following are required on site plans for concept plan review:

- A. 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.
- B. A boundary survey of the tract by bearings and distances certified by a licensed land surveyor or engineer. The owner of the property, if different from the applicant, must give written authorization for the project 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.
- C. 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.
- D. 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 easements; existing buildings; existing watercourses; and any other prominent physical features on or adjoining the tract.
- E. Show the current zoning classification and zoning district boundaries on adjoining properties. Note any proposed changes in zoning.
- F. 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.

- G. 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.
- H. 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 measured at diameter breast height (DBH). Trees shall be identified by species type.
- I. Location and plan for any outdoor signs
- J. Any proposed screening and other landscaping, including types and locations of proposed street trees, and open space
- K. Any contemplated public improvements on or adjoining the property
- L. Proposed new grades showing how such grades will meet existing grades of adjacent properties on the street
- M. Setbacks and other dimensional requirements
- N. Any other information deemed by the Planning Board to be necessary to determine conformity of the site plan with the spirit and intent of this chapter

4.5.2 Concept Plan Review

Factors for consideration during preliminary site plan review. The Planning Board review of a site plan shall include but is not limited to the following considerations:

- A. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
- B. Adequacy and arrangement of pedestrian traffic access and circulation, including separation of pedestrians from vehicular traffic, sidewalks, linkages, control of intersections with vehicular traffic and pedestrian convenience.
- C. Location, arrangement, appearance and sufficiency of off-street parking and loading areas.
- D. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
- E. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise-deterring buffer between the proposed use and adjoining uses or properties.
- F. In the case of an apartment complex or multiple dwellings, the adequacy of usable on-site recreational and pedestrian facilities.
- G. Adequacy of stormwater management and sanitary waste disposal facilities.

- H. Protection of adjacent properties from noise, glare, unsightliness or other objectionable features.
- I. Adequacy of water supply facilities.
- J. Overall impact on the neighborhood, including compatibility of design, compatibility of the first-floor elevation of proposed buildings, and the effect of the project on the environment and preservation of natural features such as trees.
- K. Conformance with the Town Comprehensive Plan and other plans which the Town uses as a guide for appropriate development.

4.5.3 Request for Waiver

In the event that there is a request for waiver of any specific item within this Chapter, the applicant shall provide a written request that shall be submitted by the applicant detailing the reason why a waiver is requested. Such request shall be forwarded to the Town Board by the Planning Board for further review and consideration.

4.5.4 Planning Board Action

- A. Upon review of the above criteria, the Planning Board shall provide comments to the applicant and determine if the plan is ready to proceed to the development plan approval stage.
- B. 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.
- C. Once the concept plan has addressed any comments from the Planning Board and it is determined to proceed to the development plan stage, the Planning and Zoning Department shall distribute the plan and any documentation for review and comment to all involved Town departments and regulatory agencies. Upon receipt of all referrals, as determined by the Planning Board, an application must be submitted with any other required documentation to the Planning and Zoning Department and may be placed on the next available agenda of the Planning Board.
- D. A concept plan approval issued by the Planning Board may be renewed only if it remains consistent with the Comprehensive Plan and zoning code, and SEQRA approval remains valid and applicable after two years if no action to further the review process has occurred.

4.5.5 Plan Circulation/Referrals

Based on Planning Board action and comments in the concept plan stage, the Planning and Zoning Department shall coordinate the circulation of such plans to the relevant regional and Town entities for comments as to the proposed project's conformance to all applicable standards and requirements. Town entities shall have the opportunity to have up to 30 days to review and provide comments to the Planning Board for consideration as

part of the Plan Development stage. Where approvals are required from other Boards prior to site plan approval, the Planning Board shall not take action until other actions are completed and relayed to the Planning Board.

A. Internal referrals may consist of the following based on authority (see Article 2):

- (1) Town Board
- (2) Zoning Board of Appeals
- (3) Town Engineer
- (4) Town Attorney
- (5) District Fire Chief
- (6) Traffic Safety Advisory Board
- (7) Conservation Advisory Council Committee
- (8) Landscape Review Committee
- (9) Municipal and Farmland Protection Committee
- (10) Historic Preservation Commission

B. External referrals and officials may include, but not limited to:

- (1) Erie County Water Authority
- (2) Erie County Health Department
- (3) Erie County Department of Environment and Planning
- (4) Erie County Highway Department
- (5) New York State Department of Transportation
- (6) New York State Department of Environmental Conservation

Section 4.6 Development Plan Stage

4.6.1 Required Information

The following is required on site plans for final plan review:

- A. The conceptual location, character, size, height and orientation of outdoor lighting systems
- B. The conceptual location, character, size, height and orientation of proposed signage.
- C. A detailed landscape plan that identifies all plant species by number and type that includes both preconstruction and postconstruction vegetation.
- D. 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 have original stamps and signatures.

- E. Legal boundary survey stamped and signed by a New York State licensed land surveyor showing entire development lot and adjacent properties within 200 feet, including reputed owner information for all immediately adjacent properties.
- F. Site layout plan and detail sheets to include, but not be limited to:
 - (1) Proposed building location(s) with dimensions to property lines
 - (2) All setbacks, paved areas, parking layout, sidewalk locations, berms, exterior lighting and all associated site details
 - (3) Landscaping
 - (4) Finished floor elevation(s) and a basic floor plan including fire walls, fire barriers, fire partitions, stairways and exits
- G. 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.
- H. 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.
- I. 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.
- J. 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.

- K. A traffic control plan must be submitted that shows the location of all access drives within 500 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.

4.6.2 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.

4.6.3 Approval

The Planning Board shall determine whether or not to approve the application as to architectural style and functional plan. In approving an application, the Board 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 Planning Board, in coordination with any other required procedures by other Boards, shall evaluate an application and determine that:

- A. The use meets all required specifications of the Zoning Law
- B. The use will not materially endanger 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.
- C. 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.
- D. A project approval may be considered for renewal only if it remains consistent with the Comprehensive Plan and zoning code, and SEQRA approval remains valid and applicable.
- E. A building permit issued by the Town of Clarence Code Enforcement Officer shall expire one year after the date of issuance.

Part 5: Special Use Permits

Section 5.1 Purpose

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 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. Special use permits shall not be deemed to constitute a variance and shall not be conditioned upon an appeal from the denial of the building permit or use permit by the Code Enforcement Officer. This Part 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 5](#), to be considered by the Town Board.

Section 5.2 Procedures

5.2.1 Application

Applications to the Town Board for a special use permit shall be made on forms provided by the Planning and Zoning Department and shall include the following:

- A. A legal description of the property.
- B. A proposed current site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives, parking areas and all streets within 200 feet of the lot, as well as showing the property and all properties within a radius of 500 feet of the exterior boundaries thereof.
- C. Plans and elevations necessary to show the proposed development.
- D. Other drawings or information necessary to obtain an understanding of the proposed use and its relationship to surrounding properties.
- E. A filing fee.

5.2.2 Referral

- A. Planning Board. The Town Board may refer to the Planning Board for review and comment where no site plan approval is required. The Planning Board shall submit written recommendation to the Town Board on the proposal, upon receipt of all necessary information, within 30 days of referral. Where a site plan approval is required, the Town Board shall not take action on the Special Use Permit until the Planning Board has approved the site plan.
- B. Other referrals, including County Planning Board or other agencies, shall occur concurrently.

5.2.3 Public Hearing

Within 62 days of receipt of a complete special use permit application, including any referrals and upon receipt of comments, the Town Board shall hold a public hearing with public notice provided at least five (5) days prior to such hearing.

5.2.4 Decision

Within 62 days of closure of the public hearing, the Town Board shall comply with the provisions of the state environmental quality review act (SEQRA) and render a decision on the special use permit. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant. 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 use permits.

5.2.5 Standards

A special use shall comply with the standards of the district in which it is located and meet the following:

- A. In order to grant any special use, the Town Board shall find that the request is in harmony with the general purpose and intent of this chapter, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with the use and the size of the site with respect to streets giving access thereto.
- B. In order to grant any conditional use, the Town Board shall find that the establishment, maintenance or operation of the use applied for, under the circumstances of the particular case, will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- C. The proposal will not result in the destruction, loss or damage of any natural, scenic or significant historical resource.
- D. The proposal will not create excessive additional requirements of public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- E. The proposal will be served adequately by essential public facilities, such as highways, streets, police and fire protection, stormwater drainage, water and sewer and schools, or that the applicant for the proposed conditional use shall otherwise ensure that these services be adequately obtained.
- F. The proposal will not result in unmitigated destruction or loss of, or unmitigated damage to trees.
- G. The proposal essentially conforms to the Town Comprehensive Plan.

5.2.5 Conditions

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

5.2.6 Revocation, Expiration, & Renewal

- A. A special use permit shall become void one (1) year after approval unless, by conditions of the use permit, greater or lesser time is specified as a condition of approval or unless, prior to expiration of one (1) year, the use is established as approved. The special use permit shall be void if the use shall cease for more than one (1) year for any reason. The Town Board may extend the permit subject to the requirements of this article.
- B. The Town Board, on its own motion, may revoke any special use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing. The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable for any person to violate any condition imposed by a special use permit. In such cases a period of 60 days shall be granted the applicant for full compliance prior to revocation of the said permit. In cases where there is imminent danger to public health, safety or welfare, the revocation of the conditional use permit shall be immediate.
- C. The Town Board may require that special use permits be periodically renewed after notice and a public hearing to determine if the original conditions have been complied with or whether conditions have changed since the original special use permit was granted.

Part 6: Subdivisions

Section 6.1 Purpose

These regulations are adopted for the following purposes:

- A. To protect and provide for the public health, safety and general welfare of the people of the Town of Clarence and Western New York.
- B. To guide the future growth and development in accordance with sound planning principles.
- C. To secure safety from fire, flood and other danger and to prevent overcrowding of the land and undue congestion of population.
- D. To protect a variety of neighborhoods, including the Town's hamlets, rural areas, and industrial and commercial areas.

- E. To encourage orderly and beneficial development for the economic stability of the community.
- F. To protect and conserve the value of land, buildings and improvements and to minimize conflicts among the uses of land and buildings.
- G. To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation and other public services and facilities.
- H. To provide the most beneficial relationship between land and buildings that allows proper access and circulation of traffic.
- I. To allow for the safe movement of vehicles and pedestrians in streets, highways and pedestrian facilities.
- J. To establish design standards and procedures for subdivisions and re-subdivisions and to ensure proper legal descriptions, identification and monumentation of subdivided land.
- K. To ensure that public facilities are available and will have sufficient capacity to serve the proposed subdivision.
- L. To preserve the natural beauty and topography of the Town of Clarence and to ensure appropriate development with regard especially to environmentally sensitive areas.
- M. To provide for the preservation of open spaces by means of design layout of the land, including open space design to provide width and area of lots, while preserving living unit density as established in this Chapter.
- N. To carry out the objectives cited in the Town's adopted Comprehensive Plan.

Section 6.2 General Provisions

- A. Design and review policy. The policy of the Town is to consider land subdivision and development as part of a plan for the orderly, efficient and economical development of the Town and in a manner that is reasonable and in the best interests of the community. The Planning Board will be guided in its consideration of an application for the subdivision and development of land by the following general requirements:
 - (1) Land must be buildable and free of hazards. The physical characteristics of the land to be subdivided shall be such that it can be used for building purposes without danger to health and safety or peril from fire, flood, erosion or other menace. Proper provision shall be made for stormwater drainage, water supply, sewage disposal and transportation systems and other needed improvements.

- (2) Natural and historic features should be preserved. Insofar as possible, all existing features of the landscape such as large trees, unusual glacial formations, steep slopes, water- and floodcourses, historic sites, wetlands and other such irreplaceable and environmentally sensitive areas and assets shall be preserved.
 - (3) Subdivisions and developments shall be in conformance with all other local legislation, except as provided for elsewhere by Town law or this chapter and shall be properly related to the Comprehensive Plan, as it is being used for guidance by the Planning Board, either with or without formal adoption. Streets shall be of such width, grade and location as to accommodate the prospective traffic, to afford adequate light and air and to facilitate fire protection. Open areas of suitable location, size and character for playground or other recreational or open space purposes shall be shown on the plans in proper cases and when required by the Planning Board.
- B. Subdivisions. Subdivisions proposed for the Town of Clarence shall be considered as major, minor, re-subdivisions, or lot line adjustments. The appropriate track for review and action will be determined by the Planning and Zoning Department in conjunction with the Planning Board Executive Committee.
- C. Resubdivisions. Resubdivision involves the revision of all or part of an existing filed plat including consolidation of lots or alteration of approved lot boundaries. If the proposed resubdivision consists solely of the simple alteration of lot lines, lot line adjustments apply (Section 6.4). Resubdivisions within existing major subdivisions, including master planned communities, are allowed at the discretion of the Planning and Zoning Office and when the subdivision is still under the control of the developer. Such resubdivisions shall be determined to be a minor or major subdivision upon which those regulations and procedures shall apply.
- D. Surety. The Town Board may require that appropriate surety be posted to assure that the project is constructed as designed or to ensure that conditions of approval are met.
- E. Clustering. The Open Space Design Development (OSDD) Overlay District Zoning, which includes open space design development and incentive lot design developments, may be considered or required by the Town for any proposal. The Town Board shall have final authority to allow clustering to protect environmentally sensitive areas or preserve open space. The Planning Board may recommend that clustering be employed and shall refer the application back to the Town Board for consideration of clustering. OSDD standards as defined and detailed in this Chapter, must be met in approving such applications.
- F. SEQRA. All proposals require appropriate environmental reviews in accordance with the State Environmental Quality Review Act (SEQRA). For all subdivisions

involving clustering, the Town Board will act as lead agency for SEQRA. For all other subdivisions, the Planning Board will act as lead agency under SEQRA. SEQRA approvals for all subdivisions will be determined by the body of the first approval.

- G. Once a subdivision has been proposed, and reviewed and approved by the Town, no lot within that proposed subdivision shall be transferred or sold before the subdivision plat has been duly filed in the office of the Erie County Clerk.
- H. The subdivision of any lot or any lot of land by the use of a metes and bounds description for the purpose of sale, transfer or lease with the intent of evading these regulations shall not be permitted.
- I. Fees. All applications for subdivision approval shall be accompanied by a fee to be established by resolution of the Town Board. This fee shall be used to cover part of the cost of the subdivision review process, including such administrative costs as public hearing notices, inspections, and communications.
- J. Date of receipt. Timetables for decisions shall commence on the date of the first meeting of the body with final approval authority, either the Town Board or Planning Board, subsequent to the filing of a completed application

Section 6.3 Other Governmental Review

- A. Review by other governmental agencies. All major subdivisions shall be referred to all affected local, state and federal agencies. Every subdivision plat must undergo review by the Town Engineer, who will ascertain that civil engineering standards are met. All comments received from reviewing agencies shall become a part of the permanent public record of the project.
 - (1) County Planning Department review. The Town shall, where required by §239-n of the General Municipal Law, submit the plan to the Erie County Department of Environment and Planning for review and recommendation. No final decision will be rendered prior to the receipt of such recommendation when the plan is referred pursuant to §239-n.
 - (2) County Health Department approvals. The Town shall not approve any building permits for a subdivision that requires a permit for a septic field and that permit has not been issued by the Erie County Health Department because of New York Realty Subdivision Law requirements (Article 11, Title II, Public Health Law, and Article 17, Title 15, of the Environmental Conservation Law).

Section 6.4 Lot Line Adjustments

- A. Submission. Any applicant wishing to make a lot line adjustment must submit sufficient information to the Planning and Zoning Department to allow review for compliance with this Chapter. This shall include five (5) copies of a survey map

sealed by a New York State licensed surveyor reflecting both existing and proposed lot boundaries, wells for potable water, and septic system locations, if any.

- B. Referrals. All lot line adjustment applications submitted to the Planning and Zoning Department are reviewed and approved internally by the Department and consultation with the Town Engineer. However, if necessary, the Highway Department and Town Attorney are referred to. The application shall be reviewed for compliance with all applicable zoning requirements; the applicant/owner is responsible for ensuring all other State and County standards are met, including, but not limited to, well and septic system distances from lot boundaries, utility easements, proximity to existing drainage facilities, and other engineering and legal considerations.
- C. Nonconformities. Lot line adjustments shall in no way create nonconforming lots. Any Lot line adjustment that creates or intensifies a nonconformity shall be denied; existing nonconforming lots can only be adjusted if conformance with the current code is increased or by maintaining current nonconformities. The applicant may appeal a decision on lot line adjustments to the Zoning Board of Appeals following the procedures set forth herein.
- D. After review by the Planning and Zoning Department, the Director of Community Development or their Designee may approve the lot line adjustment, or may refer it to the Town Engineer, Town Attorney, Town Assessor and Planning Board Chairman before approvals are made.
- E. The approved lot line adjustment must be filed with the Erie County Clerk's Office within 180 days of the date of approval. If the approved lot line adjustment and respective deeds are not filed within 180 days, the approval may be considered for renewal only if it remains consistent with the Comprehensive Plan and zoning code, and SEQRA approval remains valid and applicable [Section 6.5](#) Minor Subdivisions.

Section 6.5 Minor Subdivisions

A survey for a minor subdivision shall be prepared and submitted to the Planning and Zoning Department for all proposed minor subdivisions. This is a two-step process that involves Town departmental review and Planning Board review and approval.

6.5.1 Requirements

- A. Five (5) physical copies plus one digital copy of the survey for the minor subdivision, a completed application, and fee as noted in the fee schedule as approved by the Town Board shall be submitted to the Planning and Zoning Office for necessary review coordination.
- B. Additional copies may be required to be submitted to the Planning and Zoning Department if it is determined that other officials, agencies or consultants need to be informed about the project.

6.5.2 Procedures

- A. Completed application. As outlined in **Article 3, Part 3: Common Development Review Procedures**, the Planning and Zoning Department shall review the application submitted to determine whether it is complete in accordance with the standards of this chapter. If no pre-development review is required or done, the matter shall be placed on the agenda of the next available Planning Board meeting.
- B. Referrals. The plan shall be distributed to agencies/entities having authority, in coordination with the Planning Board Executive Committee, including but not limited to the Town Engineer, the Building Department, the Highway Superintendent, the Fire Inspector, the Town Assessor, and the Town Attorney.
- C. Action on minor subdivision plan.
 - (1) Prior to taking final action on the submitted application for a minor subdivision, comments from all involved agencies and departments shall be forwarded to the Planning Board through the Planning and Zoning Office.
 - (2) The Planning Board, as the assumed Lead Agency, shall comply with SEQRA and issue a determination.
 - (3) The Planning Board shall, by resolution, within 62 days of receipt of complete application, approve conditionally, approve with or without modification or disapprove such application. In the case of disapproval of a proposed minor subdivision application, the Planning Board shall identify reasons for disapproval in its minutes. The time in which the Planning Board must take action may be extended by mutual consent between the developer and the Planning Board.
 - (4) Expiration of approval. An approved minor subdivision plan shall be filed in the Erie County Clerk's office within 62 days from the date of the signature of the Planning Board Chairperson. Failure to file the plat within this period shall constitute expiration of approval.
- D. Issuance of permits restricted. All site developments or construction within minor subdivisions must occur on legal lots and be approved by the Planning Board followed by filing at the Erie County Clerk's office by the applicant.

Section 6.6 Major Subdivisions

6.6.1 General procedures

Major subdivisions are a three-step process consisting of concept plan approval, development plan approval and final plat approval. Should a pre-development review by the Town Board be triggered in accordance with **Article 2 (2.2G)**, this would occur prior.

- A. Concept plan. A concept plan is a subdivision map/plan that has preliminary information about the proposed subdivision and is used for discussion purposes

and to determine compatibility with existing and proposed land use regulations, including the adopted Comprehensive Plan, and generally describes the proposed layout of the subdivision. The purpose of the concept plan review is to provide the subdivider with an opportunity to consult with the Town in order to save time and money to come to an understanding as to the most desirable design given the site constraints and the development requirements of the Town. This plan may also be known as the sketch plan.

- B. Development plan. A development plan is a subdivision map containing more detailed refinement of the development and construction improvements of the subdivision as well as the official subdivision plat(s) and is considered the major design portion of the project. Development plan approval allows an applicant to proceed with obtaining permits to commence construction on required infrastructure to support the project. This plan may also be known as preliminary plat.
- C. Final plat. A final plat is a refinement of the project into its final acceptable form for utilization as a permanent record on the project that is filed with the County Clerk and includes easements, dedications, etc. as well as noting any phasing.

6.6.2 *Concept Plan*

A. Requirements

- (1) Five (5) physical copies plus one digital copy of a proposed concept plan and a completed application, including completion of a concept plan checklist and a fee, as noted in the fee schedule as approved by the Town Board, shall be submitted to the Planning and Zoning Department two weeks prior to a Town Board meeting. The copies shall be utilized for departmental reviews and files and for referrals to regional regulatory agencies.
- (2) Additional copies may be required at the request of the Planning Board. Digital files will also be required for public presentation purposes.
- (3) The concept plan shall comply with the **Manual of Standards for Land Development** as developed by the Town Engineering and Highway Departments and as adopted by the Town Board.
- (4) The concept plan shall meet all of the requirements in the concept plan review checklist made available in the Planning and Zoning Department.
- (5) Public improvements and/or lands that are proposed to be dedicated to the Town shall be identified and preliminarily discussed with the Town Board. The applicant shall refer to appropriate design standards, permitting, and fees/securities associated with such along and factor these into plan development.
- (6) Grading and drainage plan

(7) SEQRA

B. Procedures

- (1) Completed application. Upon the receipt of an application for a concept plan review, the Director of Community Development or their designee shall review the application submitted to determine whether it is complete in accordance with the standards of this Chapter. Completed applications must be submitted at least 10 business days prior to the next scheduled meeting. The Director of Community Development or their designee shall concur with the Planning Board before placing the matter on the agenda of the next available Planning Board meeting for discussion purposes. When the application submitted is received by the Director of Community Development or their designee, its completion is ensured, followed by the distribution of any necessary items to internal departments. After, it is placed on the Planning Board's agenda awaiting SEQRA initiation so that a coordinated review of the concept plan can begin with inside and outside agencies and departments. This is the stage that marks the beginning of a more formal review of the concept plan. The next course of action is not until feedback is received from all the participating agencies and departments.
- (2) Notification. The Director of Community Development or their designee will notify adjacent property owners in accordance with the Town's adopted notification policy that the property is currently under concept plan review. The date and time of a Planning Board meeting to introduce the concept will be identified to welcome adjoining property owners to comment on the proposal. The Planning Board will hold a SEQRA coordinated review of the prospective plans and alternative development scenarios to achieve the best overall concept.
- (3) Planning Board action on the concept. The Planning Board shall thereafter convey a written report or provide minutes of Planning Board meetings relative to the concept plan, with comments, to the subdivider. The report or minutes shall contain the Planning Board's comments concerning the design of the proposed subdivision, as well as any suggestions as to coordinate with the design of the adjacent subdivisions or compliance with the requirements of other affected public agencies. Copies of the minutes of the relevant meetings shall be considered a sufficient written report. The Planning Board makes conditioned approvals of concept plans based on conditions determined by the engineers.

6.6.3 *Development Plan*

A. Requirements

- (1) Five (5) physical copies and one digital copy of the development plan and construction detail of the proposed improvements, a complete development plan checklist, an application, and fee, shall be submitted to the Planning and Zoning Department two weeks prior to a Planning Board meeting. This must occur within two years of the date of the resolution approving the concept plan. The Planning Board, in consultation with the Town Board, may, by resolution, authorize an extension beyond the two-year limit.
- (2) Additional copies may be required to be submitted to the Planning Board, which may determine that other officials, agencies or consultants need to be informed about the project.
- (3) The development plans shall comply with the **Manual of Standards for Land Development** of the Town of Clarence and any protective covenants or deed restrictions.
- (4) The development plan shall comply with the approved concept plan and any conditions.
- (5) The development plan shall also include a clearly marked "preliminary plat" as part of the package and shall satisfy the requirements for such plats as described in the **Manual of Standards for Land Development** of the Town of Clarence.
- (6) The development plan shall comply with the development plan review checklist made available in the Planning and Zoning Department.

B. Procedures

- (1) Completed application. Upon receipt of an application for a development plan review, the Planning Department shall review the application submitted to determine whether it is complete in accordance with the standards of this chapter. The Director of Community Development or their designee also may distribute the preliminary plat to the affected agencies, including but not limited to the Town Assessor, the Town Engineer, the Highway Superintendent and the Building Department, for comment. Accompanying the preliminary plat shall be all documents showing construction details of proposed improvements, any supporting materials or engineering reports, and a completed environmental review form.
- (2) Referrals. The Planning Board will review the development plan and the comments from the agencies to which the plat was referred. The Planning Board then may refer the subdivider to appropriate officials or agencies to resolve any issues of design or legal requirements of the respective agencies.

- (3) Action on development plan. The Planning Board shall, within 45 days after the receipt of a completed development plan application, including all required departmental and regulatory agency approvals, recommend approval conditionally, approval with or without modification or disapproval of such development plan.
- (4) Notification. Notification of action shall be mailed to the subdivider and filed in the Town Clerk's office within seven working days of the date of final approval. Failure of said body to act within the required time period shall constitute approval. Notwithstanding these provisions, the time in which the Board must take action may be extended by mutual consent of the applicant and said body.
- (5) Permitting. Approval of development plans shall allow the applicant to proceed to pursue the necessary permits to proceed with construction, including, but not limited to public improvement permits or building permits. No construction activity shall commence without first obtaining development plan approval from the Planning Board and the appropriate regulatory agency and departmental permits.

6.6.4 *Final Plats*

- A. Purpose. This step provides for the final refinement and documentation of information submitted in the Development Plan review procedure, finalizing information about site design and improvements. This information permits the Town Board, the Planning Board and Planning and Zoning Department, the Building Department, and the Town Engineer and the Town Attorney to make decisions concerning the final dedication and acceptance of the proposed subdivision. Some important considerations include but are not limited to:
 - (1) Conditions of the concept and development plan approvals.
 - (2) Mitigating measures resulting from environmental review.
 - (3) Offers of dedication.
 - (4) Requirements of outside agencies.
 - (5) The final plat shall be clearly marked "final subdivision plat" and shall satisfy the requirement for such plat as described in the design and construction standards for land development of the Town of Clarence.
 - (6) If the subdivider wishes to develop the subdivision in phases, a subdivision plat covering a portion of the area encompassed by the preliminary plat must be submitted, provided that the proposed development phases were generally indicated on the preliminary plat approved by the body with final approval authority, either the Town Board or Planning Board.
- B. Procedures.

- (1) Completed application. Upon receipt of an application for a final plat review, the Director of Community Development or their designee shall review the application submitted to determine whether it is complete in accordance with the standards of this chapter. The Director of Community Development or their designee also will distribute the final plat to the affected agencies, including the Town Engineer, Town Attorney, Town Assessor, Highway Superintendent and the Building Department for review and comment.
- (2) The Town Board at this time shall process any requests for dedication of public improvements, formation or extension of special districts, and any other public or financial benefits.
- (3) Action on final subdivision plat. The Town Board, in consultation with the Planning Board as needed, shall, by resolution within 62 days after the date of the completed submittal, approve, conditionally approve or disapprove such a plat. Notwithstanding these provisions, the time in which said body must take action may be extended by mutual consent of the applicant and said body.
- (4) Notification of action shall be mailed to the subdivider and filed in the Town Clerk's office within seven working days of the date of Town Board action. In the case of disapproval of a proposed plat, the Board shall state its reasons for denial in its minutes. A letter stating the reasons for denial shall be sent to the applicant. The certificate of the Town Clerk as to the date of submission and/or hearing and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written approval.
- (5) Conditional approval. Upon resolution by the Town Board, in consultation with the Planning Board as needed, of a conditional final plat approval, the Town Clerk shall sign the plat, subject to completion of such requirements as may be stated in the said body's resolution. Conditional approval shall expire within 180 days after the date of the resolution granting conditional approval unless all such requirements are completed. This period may be extended by the said body for up to two ninety-day periods beyond the initial period of 180 days. Within five days of the resolution of conditional approval, the plat shall be certified by the Town Clerk as conditionally approved. A sufficient number of copies shall then be filed in the Planning and Zoning office and the Erie County Clerk's office.
- (6) Issuance of building permits restricted. No building permits shall be issued within the proposed subdivision until the final plat has been signed by the Planning Board Chairperson or another authorized officer of the Planning Board and filed with the County Clerk. Notification of such filing must be

received by the Planning Board and the Building Department prior to the issuance of permits. When a certificate of occupancy is requested for a new building in a subdivision prior to the completion of all improvements shown on the approved subdivision plat, the utilities and streets serving the building shall be completed to a degree satisfactory to the Town Engineer. The decision of the Engineer shall be based upon the following considerations:

- a. Adequate vehicular access for the prospective occupant and emergency vehicles, including permanent road signage as approved by the Highway Superintendent.
- b. Services adequate or completed, including water systems and an approved means to dispose of sanitary wastes.
- c. Structure completed to the satisfaction of the Code Enforcement Officer, who shall utilize standards set forth in the New York State Fire Prevention and Building Code.
- d. Where such certificate of occupancy has been issued, the streets and utilities proposed for dedication shall be maintained in a suitable condition by the subdivider at his expense and liability until such time as it is accepted by the Town Board.

EDITORS NOTE (WORKING DRAFT): Town Engineer to review above and comment

- (7) Expiration of the final plat. The owner shall file an approved final plat with the Erie County Clerk's Office within 62 days of Town Board approval or such approval shall expire in accordance with Town Law §276.

Section 6.7 Special Districts

6.7.1 Purpose

The purpose shall be to provide certain utilities and services, on an equitable basis, and also to assure a means of ongoing maintenance of those utilities and services; the Town of Clarence will create or extend special districts. These districts shall be formed in conformance to the provisions of New York State Town Law and as also set forth in these regulations. The formation of these special districts is accomplished to assure that only those who benefit from the installation of those utilities and services are responsible for paying for their installation and maintenance. Special districts must be in place prior to approval of any subdivision that will utilize such facilities.

6.7.2 Requirements

- A. Requirements to create or extend districts are set forth in Article 12 of New York State Town Law.

- B. Applications to create or extend a district must be accompanied by the required fee, as noted in the fee schedule as approved by the Town Board, and meets and bounds description of the district and a description of any easements or other information required to form the type of district requested. One copy of any application and accompanying materials to be presented to a state agency whenever necessary is required as part of the process of obtaining final plat approval.

6.7.3 *Procedures*

Application for the formation of a district is processed as follows:

- A. Applications for state approval are submitted to the Town Board through the Planning and Zoning Department.
- B. The Director of Community Development or their designee refers to the Town application and accompanying documents for processing.
- C. The Town Board must ensure that the following procedural steps are completed:
 - (1) The documents are forwarded to the Town Engineer, who prepares the maps and plats for the creation or extension of the district.
 - (2) The Town Attorney or designee receives and reviews all documents to assure that all provisions of Article 12 of the New York State Town Law and all other legal requirements are met. If all matters are in compliance, the Town Attorney's office or its designee shall prepare:
 - a. The petition for creation of the district.
 - b. The notice for public hearing.
 - c. The resolution creating or extending the district.
 - (3) All proposed districts are in compliance with the Town's adopted Comprehensive Plan.
- D. Public hearing. Upon receipt of a completed application for the district and recommendation of the Town Attorney, the Town Board shall schedule and hold a public hearing on the proposed district or extension of a district. The purpose of the public hearing is to permit free and open discussion of the proposed district. Notice of the public hearing shall be published in accordance with the provisions of New York State law. If the Town Board determines the proposal meets all state and local requirements, the district shall be created or extended by resolution of the Town Board.
- E. Notification. Notification of the decision shall be the responsibility of the Town Clerk and shall be performed in accordance with all provisions of state law. Final documentation concerning the creation or extension of the district shall become a

part of the permanent public record of the subdivision and distributed by the Town Clerk accordingly.

Part 7: Permits & Certificates

Section 7.1 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 or their designee and/or the Code Enforcement Officer or their designee has issued a zoning permit for such work in accordance with a fee schedule established by the Town Board.

7.1.1 *Expiration of zoning permit*

Any zoning permit issued in accordance with this chapter may be considered for renewal only if it remains consistent with the Comprehensive Plan and zoning code, and SEQRA approval remains valid and applicable. Renewal shall be required 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.

7.1.2 *Records*

- A. 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.
- B. 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.

7.1.3 *Conditions for Approval*

Zoning permits shall be issued based on compliance with this chapter, in conjunction with any special use permit, site plan approval, or any such other authorizations required to ensure compliance. Where a building permit is required in accordance with the New York State Uniform Code, such application may be submitted at the same time as the zoning permit application. No building permit shall be issued unless a zoning permit is issued. 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.

- C. 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.
- D. 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.
- E. 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 the required front yard.
- F. 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.
- G. 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.
- H. 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.

Section 7.2 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 Code Enforcement Officer stating that the buildings or proposed use thereof comply with the provisions of this chapter. The

Code Enforcement Officer shall refer all requests for all changes in use, as herein described, to the Planning 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.

- 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.

Section 7.3 Public Improvement Permit

- (1) Public improvement permits. A permit, as monitored by the Town Engineer pursuant to Chapter 121 of the Code of the Town of Clarence, Public and Private Improvements, must be obtained for all public improvements proposed for dedication to the Town or other public entity.
- (2) Completion of improvements. The developer shall complete all improvements in accordance with the approved development plans. The quality of the improvements must be in accordance with final development plans. Their quality also must be acceptable to the Town Engineer, the Highway Superintendent, the Planning and Zoning Department, or any other agency having jurisdiction.
- (3) Performance bond. Prior to the issuance of the permit, the applicant shall post with the Town Board a certified check, bond or other surety as deemed acceptable by the Town, in an amount determined by the Town Board to be sufficient to cover the cost of installing the required improvement(s). Any such bond shall be issued by a surety satisfactory to the Town Board, and, if required by the Town Board, shall specify thereon, or by reference, the improvement or installation covered, as well as the completion deadline for such work, and any other conditions deemed necessary or appropriate by the Town Board.
- (4) Maintenance bond. Applicant shall furnish a maintenance bond in accordance with Chapter 121.
- (5) Expiration. Approval shall expire two years after the date of the resolution granting approval, unless major construction has commenced. Major construction consists of infrastructure such as roads, water and sewer line extensions or other such similar improvements. Upon mutual consent of the developer and the body with final approval authority, either the Town Board

or Planning Board, the approval period may be extended up to an additional two years.

- (6) Certificates of subdivision completion. Upon completion of improvements in accordance with the approved development plans, an inspection shall be made of the project by municipal officials who have jurisdiction over various improvements installed. Upon satisfactory review, a certificate of subdivision completion shall be issued by the Town Engineer. Acceptance of offers of dedication and release of the final performance bond shall be prerequisites to the issuance of the certificate. Following the issuance of this certificate, the final plat may be signed by the Planning Board and filed with the County Clerk.

Part 8: Code and Plan Amendments

Section 8.1 Purpose

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 hardships, nor to confer special privileges or rights on any person, but only to make necessary adjustments 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 lot 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
 - (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 Department.
- D. Content of application.

- (1) Each noncontiguous lot of land for which rezoning is requested shall be deemed as a separate application and said application fee shall accompany each application. For 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 five (5) physical copies and one (1) digital cop 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 or on Erie County GIS) 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)/SBL(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 therefore.
- E. Town Board review and determination. Once a petition for rezoning is complete, the Director of Community Development or their designee 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 recommendations unless an agreement between the applicant and the Planning Board stipulates additional time for review. If a recommendation is not made during said 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
 - 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. As required by the Town of Clarence's public hearing notification policy:
- (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 or their designee to the applicant and any persons at or before the public hearing who have indicated in writing to the Director of Community Development or their designee 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.
- 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.