

# **TOWN OF THROOP ZONING LAW**

## **ARTICLE 1 - GENERAL PROVISIONS**

### **Section 100 Short Title**

This Law shall be known and cited as the "Town of Throop Zoning Law".

### **Section 101 Purpose**

Such Law is made to promote the health, safety and general welfare of the community, and to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid concentration of population, to facilitate the adequate provision of transportation, water, sewage, schools, and parks. Another public requirement, under and pursuant to Article 16 of the Town Law of the State of New York, the size of buildings and other structures, the percentage of a lot that may be occupied, the side of the yards, the density of populations, and the use of building, structures and land for trade, industry, residence and other purposes are hereby restricted and regulated as hereinafter provided.

### **Section 102 Conflict with State Laws**

To the extent that any provisions of this local law are inconsistent with the Town Law or the State of New York, Chapter 62 of the consolidate laws, Article 16, Sections 261 through 268, 274-a through 281, the Town Board of the Town of Throop hereby declares its intent to supersede those sections of the Town Law, pursuant to its home rule powers under Municipal Home Rule Law, Article 2, Section 10, et., Seq. of the Consolidated Laws of the State of New York. Appendix 1, list in a table, the specific sections of this local law that is intended to supersede Town Law and the specific Town Law sections superseded in each case.

### **Section 103 Other Laws: Special Agreements**

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, comfort and general welfare. It is not intended by this Chapter to interfere with or abrogate or annul any easement, covenant, or other agreement between parties, provided however that when this chapter imposes a greater retraction on the use of structures or standards than are imposed or required by any other statute, law, ordinance, rule, regulation or by any easement,

covenant, or agreement, the provisions in the Chapter shall control. Where the requirement of another statute, law, ordinance, rule, or regulation, shall control the more restrictive shall govern.

## **ARTICLE 11 – DEFINITIONS**

### **Section 200 General**

- (a) Unless a contrary intention clearly appears, the following words and phrases shall have for the purpose of this law the meanings given in the following clauses.
- (b) For the purpose of this Law words and terms used herein shall be interpreted as follows:
  - (1) Words used in the present tense include the future.
  - (2) The singular includes the plural and vice versa.
  - (3) The word "person" includes a corporation, a partnership, a firm, any other legally recognized singular entity, as well as the individual.
  - (4) The word "lot" included the word "plot" or "parcel".
  - (5) The term "shall" is mandatory.
  - (6) The term "may" is permissive.
  - (7) The work "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, maintained, or designed to be occupied."
- (c) Any word or tem not defined herein shall carry its customary meaning.

### **Section 201 Accessory**

- (a) Accessory Building: A subordinate building located on the same lot as a principal building and clearly incidental and subordinate to the principal building. Any portion of a principal building devoted or intended to be devoted to an accessory use is not an accessory building.

(b) Accessory Use: A use located on the same lot with a principal use, and clearly incidental or subordinate to, and customary in connection with, the principal use.

### **Section 202 Adult Oriented Business**

Any use or substantial or significant part thereof in which is provided, in pursuance of a trade, calling business or occupation, goods, including books, magazines, pictures, slides, film, phonographic records, prerecorded magnetic tape and any other reading, viewing or listening matter, or services including activities, facilities, performances, exhibitions, viewings, and encounter, the principal feature or characteristics of which is the nudity or partial nudity of any person, or in respect of which the work "nude", "naked", "topless", "bottomless", "sexy" or any other word, picture, symbol or representation having the meaning or implication is used in any advertisement.

### **Section 203 Agriculture**

Any farm operation or related agricultural use consistent with New York State Department of Agriculture and Market rules and regulations including the raising of crops, produce, fruits, vegetables, farm animals and related products and structures incidental thereto.

### **Section 204 Alterations**

As applied to a building or structure, a change or rearrangement in the structural parts, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

### **Section 205 Area**

(a) Lot area: The total area contained within the property lines of an individual parcel of land, excluding any area within an existing street right-of-way.

(b) Building area: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of covered porches, terraces, and steps.

(c) Floor area: The sum of the areas of the several floors of a building, including areas used for human occupancy and basements, as measured from the exterior faces of

the walls. It does not include basements, unenclosed porches and attics not used for human occupancy.

### **Section 206 Basement**

A story partly underground, but having one half or more of its height (measured from floor to ceiling) above the average level of the adjoining ground. A basement shall be counted as a story for the purpose of height measurement or determining square footage.

### **Section 207 Bed and Breakfast**

Lodging facilities located in a private residence, having one to four guest rooms and serve breakfast to guest only.

### **Section 208 Building**

Building is a structure having a roof, which is used or intended to be used for the shelter or enclosure of persons, animals or property.

- (a) Accessory Building: A subordinate building located on the same lot as the principal building and clearly incidental and subordinate to the principal building. Any portion of a principal building devoted or intended to be devoted to an accessory use is not an accessory structure.
- (b) Principal Building: A building in which is conducted, or is intended to be conducted, the principal use of the lot on which it is located.

### **Section 208(a) Building Height**

A vertical distance measured from the mean elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck lines of the mansard roofs and to the mean height between eaves and the ridge for gable, hip and gambrel roofs.

### **Section 208(b) Building Coverage**

Building Coverage is the percentage of the plot or lot area that is covered by the building.

### **Section 209 Dwelling**

A building designed for use exclusively for one or more dwelling units

- (a) One Family Detached Dwelling: A building having only one dwelling unit from ground to roof, independent outside access, and open space on all sides.

(b) Two Family Dwelling: A building designed for or occupied exclusively by two families living independently of each other.

(c) Multiple Dwelling: A building used or designed as a residence for three or more families living independently of each other.

(d) Dwelling Unit: any room or group of rooms located within a residential building and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating by one family.

**Section 210 Farm Stand:**

A structure or vehicle whose principal use is the seasonal display and sale of agricultural and value added products.

(a) Agriculture Products: Any agricultural or aqua cultural product of the soil or water, including but not limited to fruits, vegetables, eggs, dairy products, grains and grain products, honey, nuts, preserves, maple sap products, apple cider and fruit juice.

**Section 211 Greenhouse:**

Greenhouse is a building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants.

**Section 212 Home Occupation:**

A home occupation is an activity that is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit. The home occupation must be clearly incidental and secondary to the use of the dwelling for residential purposes.

**Section 213 Junkyards:**

Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, secondhand motor vehicles, no longer intended or in condition for legal use on a public highway, are held, whether for the purpose of resale of used parts there from, for the purpose of reclaiming for use some or all of the material therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purpose: such term shall include any place of storage or deposit for any such purposes of used parts or waste material from motor vehicles which, taken together equal in bulk two or more such vehicles provided, however the tem junkyard shall not be construed to mean an establishment having facilities to process iron, steel or nonferrous scrap for sale for re-melting purposes.

- (a) Motor Vehicle: as defined in the New York State vehicle and traffic law.

### **Section 214 Lot**

A parcel of land, used or set aside, available for use as the site of one or more buildings and buildings accessory thereto or for any other purpose, in one ownership and not divided by a street, nor including any land within the right-of-way of a public or private street upon which said lot abuts, even if the ownership to such way is the owner of the lot. A lot for the purpose of this Law may or may not coincide with a lot of record.

- (a) Corner Lot: A parcel of land at the junction of and fronting on two or more interacting streets.
- (b) Through Lot: An interior lot having frontage on two parallel or approximately parallel streets.
- (c) Depth of Lot: The mean distance from the center line of the street of the lot to its opposite rear line measured in the general direction of the side lines of the lot.
- (d) Lot Width: The width of the lot between side lot lines at the front of the building line as prescribed by the front yard regulations.
- (e) Lot Lines: any boundary line of a lot.

### **Section 215 Mobile/Manufactured Home**

Mobile/Manufactured homes as used in this Law, is the (term mobile or manufactured home) as defined by the New York State Residential Code.

### **Section 216 Mobile or Manufactured Home Park**

A parcel of land under single ownership, which is offered to the public, whether or not for compensation, for the placement of two or more mobile or manufactured homes.

### **Section 217 Non-Conforming Lot or Structure, or Use**

- (a) Non-conforming Structure or Lot: A structure or lot that does not conform to a dimensional regulation prescribed by this Law for the district in which it is located or to regulation for signs, off street parking, off street loading or accessory building, but which structure or lot was in existence at the effective date of this Law and was Lawful at the time it was established.
- (b) Non-conforming use: A use of a building or lot that does not conform to a use regulation prescribed by this Law for the district in which it is located, but which was

in existence at the effective date of this Law and was lawful at the time it was established.

### **Section 218 Right-of-Way**

Land set aside for use as a street, alley or other means of travel.

### **Section 219 Sewer**

(a) Public sewer: A "public sewer" is any municipal or privately owned sewer system in which sewage is collected from buildings and piped to an approved sewage disposal plant or central septic tank disposal system. A public sewer may also be referred to; an "off-lot" or off-site" sewer.

(b) Private Sewer: An "on-lot" septic tank disposal system generally providing for disposal of effluent for a single building Lot as approved by the County Health Department.

### **Section 220 Shopping Center:**

A shopping center is comprised of a group or groups of integrated structures designed as an architectural unit within which retail trade and related service activities shall wholly be conducted in an enclosed building, planned developed owned and managed as a unit.

### **Section 221 Sign:**

Sign shall mean and include any permanent or temporary structure or part thereof, or any device attached painted or represented directly or indirectly on a structure or other outdoor surface that shall display or include any letter, word, insignia, flag or representation used as, or which is in nature of, an advertisement, announcement, visual communication, direction or is designed to attract the eye or bring the subject to the attention of the public.

(a) On-Premise Sign: A sign that directs attention to a person, business, profession, home occupation or activity conducted on the same lot. A for sale or for rent sign relating to the lot on which it is displayed shall be deemed and "on-premise" sign.

(b) Off-Premise Sign: A sign that directs attention to a person, business, profession, product, home occupation or activity not conducted on the same lot.

### **Section 222 Story:**

The portion of a building enclosed between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between any floor and the ceiling next above it.

**Section 223 Street:**

A public or private way used or intended to be used for passage or travel by vehicles.

**Section 224 Structure:**

A combination of materials assembled, constructed or erected at a fix location including a building, the use of which requires location on the ground or attachment to something having location on the ground.

**Section 225 Travel Trailer:**

A vehicle or portable structure built on a chassis and designed as a temporary dwelling for travel, recreation, vacation, and other shot term uses, and which may or may not have sanitary facilities.

**Section 226 Use:**

Any activity, occupation, business or operation carried on or intended to be carried on, in a building or other structure or on a tract of land.

(a) Use, Accessory: A use located on the same lot with a principle use, and clearly incidental or subordinate to, and customary in connection with the principle use.

(b) The main use on a lot.

**Section 227 Yard:**

A yard is an open space, unobstructed from the ground up, on the same lot with a structure, extending along a lot line or street and inward to the structure. The size of a required yard shall be measured as the shortest distance between the structure and a lot line or street line.

(a) Yard, Front: A yard between a structure and the edge of the street and extending the entire length of the street. In the case of a corner lot, the yards extending along all streets are front yards. In the case of a lot other than a corner lot that fronts on more than one street, the yards extending along all streets are front yards.

(b) Yard, Rear: A yard between a structure and a rear lot line and extending the entire length of the rear lot line.

(c) Yard, Side: A yard between a structure and a side lot line, extending from the front yard to the rear yard. In the case of a lot having no street frontage or a lot of odd shape, any yard that is not a front yard or a rear yard shall be considered a side yard.



## **ARTICLE III - ESTABLISHMENT OF DISTRICTS**

### **Section 300 Description of Districts**

For the purpose of promoting the public health, safety, morals and general welfare of the Town of Throop, The Town is hereby divided into the following types of zoning districts:

- (a) A Agricultural District
- (b) R Residential District
- (c) C Commercial District
- (d) I Industrial District
- (e) PDD Planned Development District.

### **Section 301 Zoning Map**

Said districts are bounded as shown on a map entitled "Zoning Map of the Town of Throop", adopted and certified by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is hereby made a part of this Law.

See Appendix #1 for Zoning Map.

See Appendix #2 for Description of Zones.

### **Section 302 Interpretation of District Boundaries**

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

- (a) Where district boundaries are indicated, as approximately flowing the center lines of streets or highways, street lines, or highway right-of-way lines, such as center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
- (b) Where district boundaries are so indicated, that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- (c) Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets, or the center lines or right-of-way lines of highways, such district boundaries shall be construed at being parallel thereto and at

such distance there from as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map.

## **ARTICLE IV – PLANNED DEVELOPMENT DISTRICT**

### **Section 400 Purpose**

In a Planned Development District (PDD) land and buildings may be used for any lawful purpose in any districts as authorized by the Town Board in specific instances. The purpose of the PDD is to provide the flexible land use and design regulations through the use of performance criteria and land impact considerations, so that developments incorporation individual building sites, common property, singular land use, and/or mixed land used may be planned and developed as a unit. Where deemed appropriate, the Town Board may consider a proposed planned development through an approval process requiring a zoning district change from the original district to PDD, in which the approval plat and a complete set of use and dimensional regulations become the basis for continuing land use controls.

### **Section 401 Objectives**

In order to carry out the purpose of this article, a PDD shall achieve at least the following objectives:

- (a) Work as a concentrated whole unit, being self-contained and un-conducive to expansion outside its boundaries at a future date, unless such expansion when added to the original PDD can act with it to create a larger self-contained unit.
- (b) Provide open space as an integral part of the plan
- (c) Provide convenient location of commercial and service areas.
- (d) Preserve trees, outstanding natural topography and geologic features and prevent soil erosion and ground and surface water pollution.
- (e) Make creative use of land and related physical development that allows an orderly transition of land from rural to more urban uses.
- (f) Make efficient use of land resulting in smaller networks of utilities and streets and thereby lowering costs for construction, maintenance and housing.
- (g) Provide a development pattern in harmony with the objectives of the Town's Comprehensive Plan and County's Land-Use Plans.

(h) Provide a more desirable environment for dwelling, working and/or recreation than would be possible through the strict application of the preset regulations in this Law.

## **Section 402 General Requirements**

(a) **Minimum Area:** Under normal circumstances, the minimum area requirement for a PDD shall be 10 acres of continuous land, un-separated by existing streets, highway or other properties. Minimum area requirements for industrial uses, mobile home parks, adult entertainment establishments, junkyards, shopping centers, senior living facilities and golf courses can be seen in Section 404. Where the applicant can demonstrate that the characteristics of his land holdings will meet the objectives of this article, projects with less acreage may be considered or as otherwise specified.

(b) **Ownership:** The tract of land for the project shall be owned or under lease option to purchase by the applicant who may be a single person, corporation, or a group of individuals or corporations. An application shall be filed by the owner or jointly by the owners of all property included in a project. In the case of multiple ownerships, the approved plan shall be binding on all owners.

(c) **Location:** The PDD shall be applicable to any area of the Town of Throop where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this article and the spirit of this Law. A proposed location for a PDD must have demonstrated compatibility with the surrounding land uses, neighborhood character, and traffic pattern, capacity and volume.

(d) **Permitted Uses:** The use of land and buildings in a PDD may be for any lawful purpose as authorized by the Town Board in accordance with the procedures of this article; the following general uses, or combinations thereof, may be considered.

**(1) Residential Uses:** Residences may be in a variety of types, in developing a balanced community, the use of a variety of housing types and densities shall be deemed most in keeping with the objectives of this article; the applicant shall demonstrate that he is reaching as broad an economic market as possible.

**(2) Commercial, Service & Other Non-residential Uses in Primarily Residential PDD:** These uses may be permitted (or required) where such uses are scaled primarily to serve the residents of the residential PDD. Consideration shall be given to the project, as it exists in its larger setting in determining the appropriateness of such uses. In no case shall more than twenty-five percent (25%) of the gross site area be permitted for commercial uses, services or non-residential uses, other than an open space, and non-profit recreation.

(3) **Commercial Uses:** If designed and organized toward the purpose and objectives of this article, a PDD with commercial uses as the major land use may be approved. All proposed shopping centers and golf courses in the Town shall be subject to approval through the PDD procedures. (See Section 404-b, c)

(4) **Industrial Uses:** If designed and organized toward the purposes and objectives of this article, a PDD with industrial uses as the major land use may be approved. All proposed industrial developments for the Town of Throop shall be subject to approval through the PDD procedures. Industrial uses shall not be permitted in combination with any residential uses.

(e) **Intensity of Land Use:** Relatively high land use intensity or dwelling unit density may be permitted if it is demonstrated that a good overall dwelling, working and/or recreation environment is thereby produced. In determining the suitability of land use intensity or dwelling unit density proposed for a PDD, each case shall be considered separately. Proposed land use intensity ratings and/or dwelling unit densities shall be completely documented by all facts, opinions and judgments used to justify the section of the intensity rate or unit density.

(f) **Common Property:** Common property in a PDD is a parcel or parcels of land together with the improvements thereon, the use and enjoyment of which is shared by the owners and occupants of the individual building sites. When common property exists (and such may be required), the ownership of such common property may be either public or private; when common property exists in private ownership, satisfactory arrangements shall be made for the improvement, operation and maintenance of such common property and facilities thereon, including but not limited to private streets, drives, services and parking areas, open space and recreation areas.

### **Section 403 Application Procedures for PDD Approval**

For full approval of a proposed PDD the applicant shall:

(a) Secure a zoning district change for his property from its present district to Planned Development District, which process shall be that of amending the Zoning Law and Map to include the proposed PDD plan and all the related specifications including the use and dimensional regulations specific thereto.

(b) After the zoning district change, it shall be required that the subdivision and platting of all lands in the proposed PDD be subject to Section 404 of this Law.

(c) Before construction and occupancy of building or land, the proper permit shall be secured by the applicant in accordance with this Law.

When any PDD is proposed, before any permit for erection of a permanent building in such PDD shall be granted, and before any subdivision plat or any part thereof may be filed in the Cayuga County Clerk's Office, the applicant or his authorized agent shall apply for and secure approval of such PDD in accordance with the follow specific procedures.

(a) **Pre-application Discussing Stage:** Prior to formal application the applicant may present the proposed PDD to the Town Planning Board in rough sketch and written descriptive form to get the initial opinions concerning the suitability of the concepts and general elements of the development, and to make sure the required procedures for the PDD application are fully understood by the applicant. In this stage it is advised that most of the items in Section 403-b be addressed at least in rough form by the applicant. Approval at this stage shall be considered binding.

(b) **Application for PDD Zoning:** A complete application for the establishment of a PDD Shall be made to the Town Board in plan (drawn to scale) and written report form. Prior to Town Board action, to insure that the proposed PDD is within the intent of the comprehensive planning activities of the Town, the Town Board shall immediately after receiving th3e complete application refer it for the purpose of review and recommendations, to the Town Planning Board which shall have thirty (30) days from its next regularly scheduled meeting within which to report. As deemed appropriate, either The Town Board or the Town Planning Board may submit the PDD application to the Cayuga County Planning Board for an informal review. As applicable in accordance with Sections 239-l and -m of Article 12-Bof the New York State General Municipal Law, to the Cayuga County Planning Board which shall have thirty (30) days or an agreed upon longer period from its next regularly scheduled meeting within which to submit its report. If either planning board does not report to the Town Board within the specified time period, their inaction shall be construed as them having no recommendations.

Acceptability of a PDD proposal shall be based upon the Town Board's judgment concerning the overall quality of the PDD proposal, and the extent of its impact upon the Town and its citizens, and their or other's properties. In order for the Town Board adequately to evao7atetye PDD proposal, the application (in its plan and written form) shall address the following areas, and the information shall be furnished therein in a reasonably complete manor.

(1) **Project Particulars:** Shall include the name and location of the project, name (s) and address (es) of the owner (s), a legal description of the property, and the names of owners of abutting properties.

(2) **Type of Development:** The type of development shall be fully described, including at least the following information.

(i) **Residential:** Total acreage of residential area and each residential portion of the development; total number of dwelling units and number in each residential portion; percentage and numbers of dwelling units by

type (single family, garden apartment, Town houses, etc.): dwelling unit density per gross site acreage; estimated population of the development and estimated number of school-age children.

(ii) **Commercial:** Total acreage of commercial area; gross leasable floor area in square feet, land use intensity rating; general description of commercial types and their general requirement for receiving and delivering goods.

(iii) **Industrial:** The total acreage of industrial area; land use intensity rating; types of industry and industrial process involved; source, type, general quantities and method of shipment for raw materials; general quantities and method of shipment for products; types of wastes and residuals.

(3) **Staging of Development:** Description on plan and in written report of the planned staging of the project (and such staging may be required.)

(4) **Natural Site:** A description of the natural site shall be included with at least the following information: soil characteristics and limitations; extent of and treatment intended for the site's vegetative cover (especially trees) topographical features (on topographic map); existing and proposed site drainage; foreseeable needs of the site for construction precautions; existing conditions of the projected effects upon the ground and surface waters of the site and community; possible air pollution hazards.

(5) **Site Planning and Design Consideration:** Descriptions and illustrations of the following: site ingress; and egress; parking; on-site pedestrian and vehicular circulation; general landscaping treatment; general location and arrangement of building and other structures; location of all facilities; and general visual description.

(6) **Transportation and Traffic:** Descriptions of at least the following; existing streets serving the area; the level of service provided by existing streets in terms of traffic count and street traffic capacities; expected modifications for existing street systems required by project; estimated daily automobile trips generated by the residential and other uses; availability of public transportation to site; design considerations for deterring on-site and area traffic congestion.

(7) **General Market Information:** Describe the need for the proposed Land uses in their proposed locations and their proposed quantities; and the intended market structures for the residential units (prices and rents, describe whether low-income, middle-income, luxury, etc.).

(8) **Projected Fiscal Impacts on Town:** Calculations of projected Town revenues and costs to be expected by the Town as a result of the proposed development.

(9) **Utilities and Related Services:** Describe the following and detail their intended locations on the plan (s); the method and projected quantities of waste water (sewage) from the development; demand and source of supply for water;; level of service needed and available for fire protection; demands for and availability of gas and electricity; projected quantities of and method of disposal for solid wastes.

(10) **General Effects of Development on Neighborhood and community Appearance and Land Use:** Description of effects on the appearance and relationship of project to predominant character and land use in area (compatibility).

(11) **Relationship of Proposed PDD to Official Town and County Development Policies:** Information on how the proposed PDD relates to local and area wide goals and policies as stated in plans and regulations.

(12) **Development, Operation and Maintenance of Open Space and Common Properties:** A general statement concerning the responsibility for these and proposed methods for their implementation.

(13) **Developer Competence:** Evidence in the applicant's behalf to demonstrate his competence to carry out plan and his awareness of the scope of the project, physical and financial.

(14) **Other:** Any other such information as the Town Board deems to be reasonably pertinent to the adequate consideration and evaluation of the proposed project.

(c) **Public Hearing:** Within forty-five (45) days after receiving a report from the Town Planning Board, the Town Board shall schedule and conduct a public hearing for the purpose of considering the change in zoning district to PDD for the applicants plan in accordance with the procedures required under Section 265 of the New York State Town Law.

(d) **Town Board Action:** Within forty-five (45) after a public hearing the Town Board shall render its decision on the PDD application. If the Town Board grants the PDD zoning, the Zoning Map shall be so noted, and the Law shall be amended so as to define the legal boundaries of the PDD, but such action shall effect only of granting permission for development of the specific proposed land uses in accordance with the use and dimensional specifications, plans and related materials filed with the Town Board and related to the specific PDD; such specifications, plans and related materials to include, if

deemed necessary by the Town Board to protect the public health, safety and welfare of the Town, any conditions and requirements for the applicant to meet. The approved plan and the related attachments shall be deemed an amendment to this Law and shall serve as continuing land use controls for the specific Planned Development District; the first such zoned PDD shall be designated "PDD-1", with subsequent unrelated Planned Development Districts to be numbered in continuing sequence.

(e) **Annual Review of PDD:** the Zoning Code Officer shall review the PDD annually in order to determine the amount and quality of the progress made by the developer toward fulfilling the specifications and plans and any attached conditions, and make a report to the Town Board. Based upon the progress made by the developer, the Town Board may reconsider the PDD and further amend the Law in relation to it, if progress is not to the satisfaction of the Town Board or not in keeping with the staging approved by the Town Board. If no progress is made on the site of the PDD within the first year after approval, the Town Board may seriously consider changing the zoning of the property to the original or other district. Little or no progress on the PDD site by the developer does not guarantee the Town Board will take action to change zoning, especially if the developer demonstrates to the satisfaction of the Town Board that he is acting in continuing good faith and, where applicable, the preliminary plat plans are in preparation.

#### **Section 404 Design Standards and Specific Requirements**

The following uses shall be permitted in the Town of Throop only in accordance with the procedures of this article; and in addition to the other provisions of this article, the following requirements shall apply to the specific planned developments.

(a) Manufactured or mobile Home Park is subject to the following provisions:

(1) All residential structures installed in manufactured or mobile home parks shall be constructed and installed in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code. The minimum area of any residential structure within a mobile home park, measured on the outside, shall be seven hundred and twenty (720) square feet.

(2) The minimum area of a manufactured or mobile home park shall be ten (10) acres.

(3) Each lot in a manufactured or mobile home park shall have a minimum area of six thousand (6,000) square feet, and minimum width of sixty (60) feet.

(4) A manufactured or mobile home park shall have buffer strips along the margins of the side and rear property lines; such buffer strips shall be at least six



(6) feet in thickness and consist of inter-locking trees and foliage acceptable to the Town Planning Board.

(5) A manufactured or mobile home park designed to accommodate twenty-five (25) or more residences shall provide at least one recreation area of at least eight percent (8%) of the gross site of the mobile home park.

(6) Manufactured or mobile home parks shall provide an area of common open space. An area of at least ten thousand (10,000) square feet of open space shall be required for a ten (10) acre manufactured or mobile home park. Open space area may be included as part of the recreation area and both shall be located centrally when possible and shall be free of traffic hazards.

(7) No residential structure or portion thereof shall be placed closer than thirty-five (35) feet to any other residential structure or portion thereof.

(8) A residential structure, park office, or any other structure shall not be located closer than fifty (50) feet from the street right-of-way or other property line.

(9) Storage space within a permanent, enclosed structure shall be provided in an amount equal to at least one hundred (100) square feet for each building lot in the manufactured or mobile home parks.

(10) Parking shall be provided in accordance with Article VII.

(11) Suitable landscaping, including at least lawns, plantings and trees shall be installed and maintained in a manufactured or mobile home park.

(12) Each mobile home park shall be provided with at least two (2) points of ingress/egress to the adjacent public street.

(13) Water supply, source and quality, and the treatment and disposal of sewage for a manufactured or mobile home park, shall comply with all the regulations of the Cayuga County Health Department and approval shall be secured from such health department before final Town Board approval shall be considered.

(14) An opaque enclosure must be provided for outside solid waste storage.

(15) No addition to a mobile home shall be constructed which would increase the living floor space of that mobile home; additions for the purposes of storage space, protection from sun and weather or other similar purpose, including but not limited to awnings, covered patios and carports, may be permitted only upon approval of the park operator and the Zoning Officer.

(b) Shopping Center is subject to the following provisions:

- (1) The minimum lot size for such use shall be ten (10) acres.
- (2) Off-street parking space shall be provided in accordance with Article VII.
- (3) A shopping center shall have its frontage on a state or county road, and ingress and egress for the site shall be designed so as not to constrict the flow of traffic on the public road.
- (4) Parking, loading, and service areas shall be located entirely within the confines of the lot, shall be physically separated from public streets by buffer strips against un-channeled motor vehicular ingress.
- (5) All access ways to a public street shall be located not less than one hundred and fifty (150) feet from the intersection of any street line.
- (6) Developer competence. Evidence, in the applicant's behalf, that demonstrates his competence to carrying out the plan and his awareness of the scope of the project, physical and financial.
- (7) All buildings shall be arranged in a group or in groups, and the distance at the closest point between any two (2) building or groups of attached buildings, shall be not less than fifteen (15) feet.
- (8) Along any adjoining lot line, a buffer strip shall be provided which shall not be less than twenty-five (25) feet in thickness and shall be planted with at least grass, shrubs and trees (to attain an average height of at least twelve (12) feet) along the entire length of the plot line to serve as a barrier to visibility, air-borne particles, glare and noise. Such screen planting shall be located within at least the exterior ten (ten) feet of the buffer strip.
- (9) All parking, loading, access and service areas shall be adequately illuminated at night. Such lighting, including sign lighting, shall be arranged so as to protect the highway and adjoining property from direct glare of hazardous interference of any kind.
- (10) All utility lines servicing a shopping center shall be placed underground.

(c) Golf course and/or country club are subject to the following provisions:

- (1) Minimum lot size shall be forty (40) acres.

(2) All buildings shall be not less than one hundred (100) feet from any lot line.

(3) Such use shall not be permitted in the Residential Districts (A, RR and R)

(d) Adult Oriented business, in order to prevent the negative secondary effects of adult entertainment establishments are subject to the following provisions:

(1) No adult-oriented business shall be permitted in a building any part of which is used for residential purposes, including no-conforming residential uses.

(2) No more than one adult oriented business shall be permitted in any building, or on any lot.

(3) No minor (under the age of 18) shall be permitted onto the premises of any adult oriented business.

(4) The exterior of the adult oriented business structure shall be consistent with the character of the surrounding structures and shall not detract from the appearance of the neighborhood. No building shall be painted in garish colors or other fashion as will effectuate the same purpose as a sign, without the Town Board approval.

(5) An adult oriented business shall not be operated on a lot whose property lines are within one thousand (1000) linear feet of any building used for: residential purposes, a group car facility, a child care center, a regular place of religious worship, a public or private school, a public or semi-public building, a medical center, a community center, or another adult oriented business.

(6) An adult oriented business shall not be operated with property lines within one thousand (1000) linear feet of the property line of any property used as a public park, recreational facility, health facility, or trail.

(7) All adult oriented business shall be conducted within enclosed buildings.

**(e) Junkyards are subject to the following provisions:**

(1) On a property not designated as a Junkyard, or outside the closure of the designated Junkyard, any accumulation of one cubic yard of junk, rubbish, or other non-green waste or discarded material shall be presumable to be in violation of this Law.

(2) Minimum lot size is twenty-five (25) acres. No junkyard shall be permitted with a thousand (1000) foot linear distance of ponds, watercourses, or wetlands.

(3) Before use, a new junkyard shall be completely surrounded with an eight (8) foot high fence, made of suitable fencing materials. The fence may not be made of vegetation or of any of the materials considered part of the junkyard and intended to be concealed behind the fence. Such fence shall be erected not nearer than fifty (50) feet from a public highway. The fence must be setback at least twenty-five (25) feet from the property line. All wreckage, parts, work or other activity involving the junkyard must take place within the closure.

(4) Requirement for operation or maintenance. No person shall operate, establish or maintain a junkyard until he has obtained a license to operate a junkyard business and has obtained a certificate of approval for the location of such junkyard.

(a) **Application for license and certificate of approval:** Application for the license and the certificate of approved location shall be made in writing to the Town Board and the application shall be accompanied by a certificate from the zoning board that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of such zoning law. The application shall contain a description of the land to be included within the junkyard.

(b) **Hearing:** A hearing on the application shall be held within four (4) weeks from the date of the receipt of the application by the Town Board. Notice of the hearing shall be given to the applicant by mail to the address given in the application and shall be published once in a newspaper having a circulation within the municipality not less than seven days before the date of the hearing.

(c) **License requirements:** at the hearing the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a license to operate, establish or maintain the junkyard. In considering such application, it shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the proposed junkyard, to any record of convictions for any type of larceny or receiving of stolen goods, and to any other matter within the purposes of this section.

(d) **Location requirements:** At the hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junkyard. The Board shall

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

(e) **Aesthetic considerations:** At the hearing regarding location of the junkyard, the Town Board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from any unfavorable effects of the proposed junkyard. In this connection the Town Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability or other suitable sites for the junkyard.

(f) **Grant or denial of application; appeal:** After hearing the Town Board shall, within two weeks, make a finding as to whether or not the application should be granted, giving notice of their findings to the applicant by mail to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following April first. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed thereafter upon payment of the annual license fee without hearing, provided all provisions of this chapter are complied with during the license period, the junkyard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The determination of the Town Board may be reviewed under article seventy-eight of the civil practice law and rules.

(5) **License fees:** The annual license fee shall be one hundred (100) dollars to be paid at the time the application is made and annually thereafter in the event of

renewal. In event the application is not granted, the fee shall be returned to the applicant>

(6) **Established junkyards:** For the purpose of this section the location of junkyards already established shall be considered approved by the governing board of the municipality where located and the owner deemed suitable for the issuance of a license. Within sixty (60) days from the passage of this section, however, the owner shall furnish the Town Board with information as to the location, which is required in an application, together with the license fee, and the Town Board shall issue the applicant a license valid until the next Aril first, at which time such owner may apply for renewal. The owner shall comply with all other provisions of this section including the fencing requirements.

(7) Notwithstanding any of the foregoing provisions of this section, no junkyard, hereafter established, shall be licensed to operate within five hundred (500) feet of a church, school, hospital, public building or place of public assembly.

(8) Violators of any of the portions of this section shall be guilty of an offense punishable by a fine of two hundred and fifty (250) dollars. Each week that such violation is carried on or continues shall constitute a separate violation.

**(f) Senior Housing is subject to the following provisions:**

(1) All residential structures shall be constructed and installed in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code. The minimum livable area per unit shall be seven hundred and fifty (750) square feet.

(2) The minimum area of the senior housing facility shall be ten (10) acres.

(3) A senior housing facility shall have buffer strips along the margins of the side and rear property lines; such buffer strips shall be at least six (6) feet in thickness and consist of inter-locking trees and foliage acceptable to the Town Planning Board.

(4) A senior housing facility designed to accommodate twenty-five (25) or more residential units shall provide at least one recreation area of at least eight percent (8%) of the gross site of the senior housing facility.

(5) A senior housing facility shall provide an area of common open space. An area of at least ten thousand (10,000) square feet of open space shall be required for a ten (10) acre senior housing facility. Open space area may be

included as part of the recreation area and both shall be located centrally when possible and shall be free of traffic hazards.

(6) No residential structure or portion thereof shall be placed closer than fifty (50) feet to any other residential structure or portion thereof.

(7) A residential structure, park office, or any other structure shall not be located closer than fifty (50) feet from the street right-of-way or other property lines.

(8) Storage space within a permanent, enclosed structure shall be provided in an amount equal to at least one hundred (100) square feet for each residential unit in the senior housing facility.

(9) Parking shall be provided in accordance with Article VII.

(10) Suitable landscaping, including at least lawns, plantings and trees shall be installed and maintained in a senior housing facility.

(11) Each senior housing facility shall be provided with at least two (2) points of ingress/egress to the adjacent public street.

(12) Water supply, source and quality, and the treatment and disposal of sewage for a senior housing facility, shall comply with all the regulations of the Cayuga County Health Department and approval shall be secured from such health department before final Town Board approval shall be considered.

(13) An opaque enclosure must be provided for outside solid waste storage.

## **ARTICLE V – USE REGULATIONS**

### **Section 500 Applicability of Regulations**

Except as provided by law or in this Law, in each district no building, structure or land shall be used or occupied except for the purpose permitted in Section 504 and for the zoning districts so indicated.

## **Section 501 Uses by Right, Special Permit, and Uses Not Permitted**

(a) A use listed in Section 504 is permitted by right in any district denoted by the letter “P”, subject to such requirements as may be specified in Section 504, and after a zoning permit has been issued in accordance with Article XI.

(b) A use listed in Section 504 may be permitted by Special Permit in any district denoted by the letter “SP” provided the Zoning Board of Appeals authorizes the issuance of a zoning permit by the zoning officer or code Enforcement Officer subject to the requirements of Sections 504 and 1106, and the other requirements of this Law.

(c) A use listed in Section 504 is not permitted in any district denoted by the letter “N”.

## **Section 502 Uses Are Subject to Other Regulations**

Uses permitted by right or by special permit shall be subject in addition to use regulations, to such regulations of yard, lot size, lot width, building area, provisions for off-street parking and loading, and to such other provisions as are specified in other Articles hereof.

## **Section 503 Prohibited Uses and Uses Subject to Planned Development District (PPD) Procedures and Requirements**

Any use not expressly stated as permitted in Section 504 are **prohibited** in the Town of Throop except as provided in Article IV Planned Development District. Industrial Uses, Manufactured or Mobile Home Parks, Golf Courses, Senior Housing and Shopping Centers are regulated under Article IV.

## **504 Tables of Use Regulations**

The following Table of Uses indicates the zone (s) where uses require a permit (P) or are not permitted (N). Requirements for evaluating Special Use Permit (SP) proposals shall be set forth in Section 1106.

@ indicates that special conditions apply. These are enumerated in Section 505.

- p = Designates a use permitted as of right.
- sc = Designates a use permitted as of right but subject to referenced section of zoning law.
- sp = Designates a use permitted only by special permit.
- n = Designates a prohibited use.

- 
- R = Residential District
  - A = Agricultural District
  - C = Commercial District



I = Industrial District  
PDD = Planned Development District

<b>Principal Use By Zoning Districts</b>	<b>A</b>	<b>R</b>	<b>C</b>	<b>I</b>	<b>PDD</b>
Accessory Structures & Buildings/Uses	sc	sc	sc	sc	sc
Agriculture/Farm Operations	p	n	n	n	n
Automobile and General Repairs/Sales	n	n	p	n	n
Bank and Financial Institutions	n	n	p	n	n
Bed & Breakfast -Boarding Houses	sc	sc	sc	n	n
Business and Professional Offices	sc	sc	p	sc	n
Car/Truck Wash	n	n	p	p	n
Cemeteries	sc	n	sc	n	n
Child Care Facilities Including Day Care/Nursery/Preschool	p	p	p	n	n
Clear Cutting Woodlands	p	n	p	n	n
Commercial Dog Kennel	sc	sc	p	n	n
Emergency Dwelling	sc	sc	sc	n	n
Farm Stands	sc	sc	sc	n	n
Farm Workers Dwellings	sc	n	n	n	n
Fences-Walls-Landscaping	p	p	p	p	p
Gas Stations/Convenience Stores	n	n	p	p	n
Greenhouse/Nursery (Commercial)	p	n	p	n	n
Health Care Institutions	n	n	p	n	n
Home Occupation I	sc	sc	p	p	n
Home Occupation II	sc	sc	p	p	n
Indoor Recreation Facility	n	n	sc	n	sc
Industry	n	n	n	p	n
Inns, Hotels, Motels	n	n	p	n	n
Junkyards Including Private and Commercial	n	n	n	sc	n
Keeping or raising of Livestock, small animals or poultry (Except household pets)	p	sc	n	n	n
Mining	n	n	n	n	n

<b>Principal use by Zoning District</b>	<b>A</b>	<b>R</b>	<b>C</b>	<b>I</b>	<b>PDD</b>
Mixed-use building combining permitted residential and commercial uses	n	n	p	p	n
Manufactured Home Park	n	n	n	n	p
Multi-family Dwelling	p	p	n	n	p
One-family Dwelling	p	p	n	n	p
Two Family Dwelling	p	p	n	n	p
Park, or recreation area, wherein the chief activity shall consist of outdoor recreation. Campgrounds/Golf courses etc.	n	n	p	n	p
Personal Service Establishments (Barber & Beauty Shops, Tanning Salons, tailor shops)	n	n	p	n	n
Places of Worship/ Religious Institutions	n	n	p	n	n
Professional Offices (Lawyers, Doctors, Counselors, Private Instructors, Massage Therapists, Photo Studios, etc.	n	n	p	p	n
Restaurants	n	n	p	p	n
Retail Shops	n	n	p	n	n
Signs	SC	SC	SC	SC	SC
Swimming Pools/Ponds	p	p	n	n	p
Storage Containers,	SC	SC	p	p	SC
Telecommunication Facilities (Cell Towers)	SC	n	n	n	n
Theaters - Indoor/Outdoor	n	n	p	n	n
Treatment/Storage/Disposal Waste	n	n	n	p	n
Undertaking & Funeral Parlors	n	n	p	n	n
Veterinary Services	SC	n	p	n	n
Wind Facilities	SC	SC	SC	SC	SC
Wood Burning Furnaces	SC	SC	SC	SC	n

### **Section 505 Special Conditions**

No zoning permit shall be issued by the Zoning Officer for any land use or activity listed in Schedule I as having special conditions applicable (SC) until the Zoning Officer is satisfied that

the applicable regulations set forth in this Article V Have been complied with or that a variance to such regulations has been duly granted.

The Zoning Officer shall issue a Zoning Permit for the following uses only when satisfied that applicable special conditions, as set forth in this Section 505, have been complied with, in addition to all other requirements of this Law.

### **Section 505.01 Accessory Structures**

#### Minimum Yard Regulations

1. Unattached Accessory Structures in Residential Districts. Accessory structures which are not attached to a principal structure may be erected in accordance with the following restrictions:
  - (a) No accessory structure is located closer than ten (10) feet to the side and rear lot lines.
  - (b) No accessory structure is located closer to the street than the street wall of the principal structure.
  - (c) No accessory structure is located closer to a principal structure than ten (10) feet.
  - (d) Height cannot exceed eighteen (18) feet to the peak.
  - (e) The total accessory structure must not exceed twelve hundred (1200) square feet of floor space
  - (f) No accessory structure in a residential zone shall be a building, structure, or other assemblage of materials designed for, or customarily used as a principal structure allowed under this Law, a vehicle, or a container primarily intended for commercial storage or transportation of goods, animals, or people.
2. Attached Accessory Structures in Residential Districts. When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this Ordinance applicable to the principal building and (a), (b), (d) and (e) above.
3. Accessory Structures in Other Districts. Accessory structures shall comply with front and side yard requirements for the principal structure to which they are accessory, and shall not be closer to any rear property line than ten (10) feet.

### **Section 505.02 Adult Oriented business**

In order to prevent the negative secondary effects of adult entertainment establishments are subject to the following provisions:

1. No adult-oriented business shall be permitted in a building any part of which is used for residential purposes, including non-conforming residential uses.

2. No more than one adult oriented business shall be permitted in any building or on any lot.
3. No minor (under the age of 18) shall be permitted onto the premises of any adult oriented business.
4. The exterior of the adult oriented business structure shall be consistent with the character of the surrounding structures and shall not detract from the appearance of the neighborhood. No building shall be painted in garish colors or other fashion as will effectuate the same purpose as a sign, without the Town Board approval.
5. An adult oriented business shall not be operated on a lot whose property lines are within one thousand (1000) linear feet of any building used for: residential purposes, a group care facility, a child care center, a regular place of religious worship, a public or private school, a public or semi-public building, a medical center, a community center, or another adult oriented business.
6. An adult oriented business shall not be operated with property lines within one thousand (1000) linear feet of the property line of any property used as a public park, recreation facility, health facility, or trail.
7. All adult oriented businesses shall be conducted within enclosed buildings.

#### **Section 505.03 Animals within the Residential Zone**

Animals within the Residential Zone cannot be housed within two hundred feet (200') of any property line. Animals must be either fenced in or tethered. Use will be limited to one (1) larger of five (5) small animals per each two (2) acres. Animals cannot graze within twenty-five feet (25') of the property line.

- a. Large animal: Over 150 lbs., e.g. horses, cows, etc.  
(Consider adult weight)
- b. Small animals: Under 150 Lbs., e.g. ducks, geese, chickens, etc. (Consider adult weight)

#### **Section 505.04 Automobile and General Repair and Sales Location:**

(a)**Location:** No station, or parts thereof, shall be located within two hundred (200) feet, measured along contiguous street frontages, of any place of residence or public assembly such as, but not limited to churches, schools, theaters, auditoriums, parks and playgrounds.

(b) **Size:** No more than two (2) service bays shall be permitted unless the following circumstances exist:

- (1) One (1) service bay and may be added for each thirty (30) feet of frontage additional to the minimum required herein, provided such additional frontage has a depth at least equal to that of the other portion of the lot.

(c) **Lot Coverage:** Lot coverage for such station shall not be more than 40% of the site.

(d) **Minimum Yard Requirements:**

- (1) All structures shall be setback from the street line a distance of not less than forty (40) feet.
- (2) No portable signs or other devices shall be located within the setback area required in the preceding paragraph (d)-1, except as otherwise provided in Article VII.
- (3) Side and rear yards of not less than two hundred (200) feet shall be provided along all other property lines. Such yards shall be provided with an opaque fence of not less than four (4) feet, nor more than six (6) feet in height placed along the property line, or provided with an all-year, solid, evergreen hedge of not less than four (4) feet in height planted along the property line and a ten (10) foot side landscaped strip adjacent to such residential area.

(e) **Open Area:**

- (1) All open area shall be landscaped, where required, or paved with an impervious, all-weather, dustless material, provided, however, all such paved areas shall be provided with a storm drainage system to conduct surface runoff into the nearest drainage system. A sand filter must be installed around the perimeter of the paved area. The sand should be replaced every six months or with the time frame specified by OSHA.
- (2) All landscaped areas shall be adequately protected by a raised curb of not more than six (6) inches in height, or a bumper guard of not more than eighteen (18) inches in height.
- (3) Curbs shall be provided along the edge of all areas accessible to motor vehicles to prevent the encroachment of vehicles or any portion thereof, upon adjacent property, or the street right-of-way.

(f) **Ingress and Egress:**

(g) **Lighting:**

- (1) All lighting shall be located such as to prevent the direct rays from shining upon adjacent properties.
- (2) All flickering, pulsating, or flashing lights and exposed neon lights are specifically prohibited.
- (3) No light, which may tend to confuse the motoring public, shall be permitted.

(h) **All automotive parts**, dismantled vehicles, and similar related articles shall be stored within a building.

## **Section 505.05 Bed and Breakfast**

A bed and breakfast facility shall be considered a home occupation and permitted only in compliance with the home occupation regulation of this Law.

#### **Section 505.06 Commercial Dog Kennel**

- (a) Minimum lot size shall be five (5) acres.
- (b) No wholly or partly non-residential structure housing dog kennel shall be closer than two hundred fifty (250) feet to any property line.

#### **Section 505.07 Emergency Dwellings**

In the event that the dwelling is rendered uninhabitable by fire, flood, or by a similar natural or manmade disaster, the Zoning Board of Appeals may authorize the placement of an emergency dwelling upon the lot where said damaged dwelling is located. An emergency dwelling shall be a safe and healthful dwelling unit that meets all applicable building, fire, health or other codes. The ZBA may waive such terms of this law so as to allow the placement and use of such as structure upon the same lot as the damaged dwelling, for occupancy during the period that the damaged dwelling is being repaired or replaced. Such emergency dwelling shall be removed with ten (10) days of the issuance of the Certificate of Occupancy for the repaired or replaced dwelling.

- (a) An emergency dwelling is permitted only to meet a documented emergency need.
- (b) The maximum length of time such an emergency dwelling may be on a lot is one (1) year. An extension of one (1) year making a total time period of two (2) years from the initial permit may be granted by the ZBA in cases of documented hardship. The hardship must result from circumstances beyond the control of the applicant that prevents the applicant from complying with the requirements of this Section. An extension may be granted only once.
- (c) An emergency dwelling must have running water and must be connected to a totally enclosed septic system, or public sewer.

#### **Section 505.08 Farm Stands**

A farm stand shall be permitted as a seasonal accessory use related to an agricultural activity occurring on either a farm or a non-farm parcel, subject to the following regulations:

- (a) The farm stand will be setback a minimum of twenty (20) feet from any street line.
- (b) A vehicle not exceeding six thousand (6,000) pounds net weight may be considered a permitted farm stand. However, a vehicle, or any part thereof, customarily known as a tractor/trailer or any containerized storage unit shall not be permitted.

- (c) **Non-Farm Parcels:** The total floor area of the stand shall not exceed one hundred fifty (150) square feet. The farm stand shall be solely for the seasonal display and sale of agricultural and value added products grown or produced on the premises.
- (d) **Farm Parcels:** The total floor area of the stand shall not exceed four hundred (400) square feet. Farms may seek relief from this requirement through an area variance. The applicant may demonstrate a need for an area variance for additional space based upon the needs of existing farm operations. The farm stand shall be solely for the seasonal display and sale of agricultural and value added products grown or from other farms. However, they may not resell any products previously bought at wholesale or retail establishments.

### **Section 505.09 Farm Worker Dwelling**

A farm worker dwelling – permitted Agricultural (A) Zones subject to the following conditions:

A dwelling that meets all the terms of this Law and other State, County, and local codes may be placed upon a working farm for the purpose of providing housing for persons working upon said farm provided that an area of land sufficiently large and so situated so that if broken off of the far, it would constitute a legal lot that is dedicated to the dwelling to be used by said farm worker. All normally required permits shall be obtained for the dwelling and, as part of the application; the land dedicated to it shall be illustrated.

### **Section 505.10 Fences**

No fence shall exceed six (6) feet in height in residential zones. No fence shall exceed eight (8) feet in commercial or industrial zones. Fences shall not impede or obstruct vision of traffic from driveway or roadways.

### **Section 505.11 Gas Station and Convenience Stores**

- (a) **Location:** No station, or parts thereof, shall be located within two hundred (200) feet, measured along contiguous street frontages, of any place of residence or public assembly such as, but not limited to churches, schools, theaters, auditoriums, parks and playgrounds.
- (b) **Size:** No more than four (4) gas pumps shall be permitted unless the following circumstances exist:
  - (1) One (1) pump island may be added for each thirty (30) feet of frontage additional to the minimum required herein, provided such additional frontage has a depth at least equal to that of the other portion of the lot.
- (c) **Lot Coverage:** Lot coverage for such station shall not be more than 40% of the site.

(d) **Minimum Yard Requirements:**

- (1) All structures, except for underground storage tanks, shall be setback from the street line a distance of not less than forty (40) feet.
- (2) No portable signs or other devices shall be located within the setback area required in the preceding paragraph (d)-1, except as otherwise provided in Article VIII.
- (3) Side and rear yards of not less than two hundred (200) feet shall be provided along all other property lines. Such yards shall be provided with an opaque fence of not less than four (4) feet, nor more than six (6) feet in height placed along the property lines, or provided with an all-year, solid, evergreen hedge of not less than four (4) feet in height planted along the property line and a ten (10) foot wide landscaped strip adjacent to such residential area.
- (4) Gasoline Pump Islands shall be located not less than twenty-five (25) feet from the street right-of-way lines and no less than thirty (30) feet from all other property lines.

(e) **Open Area**

- (1) All open areas shall be landscaped, where required, or paved with an impervious, all-weather, dustless material. All such paved areas shall be provided with a storm drainage system to conduct surface run-off into the nearest drainage system.
- (2) All landscaped areas shall be adequately protected by a raised curb of not more than six (6) inches in height, or a bumper guard of not more than eighteen (18) inches in height.
- (3) Curbs shall be provided along the edge of all areas accessible to motor vehicles to prevent the encroachment of vehicles or any portion thereof, upon adjacent property, or the street right-of-way.

(f) **Ingress and Egress**

Ingress and egress points shall be located a minimum of forty (40) feet from the intersection of right-of-way lines of any road.

(g) **Lighting**

- (1) All Lighting shall be located such as to prevent the direct rays from shining upon adjacent properties.
- (2) All flickering, pulsating, or flashing lights and exposed neon lights are specifically prohibited.
- (3) No light, which may tend to confuse the motoring public, shall be permitted.

(h) **All automotive parts** dismantled vehicles, and similar related articles shall be stored within a building.



- (i) **Additions of or improvement** to any existing gasoline service station may be permitted upon compliance with the procedures established for the location of new stations, provided such additions or improvements comply with the requirements of this Article.

### **Section 505.12 Private Gatherings and Assemblies**

- (a) Any private gathering or assembly numbering over 200 persons on a single property at any given time shall be required to obtain a permit from the Town Zoning Officer.
- (b) Applicants for a private gathering or assembly permit shall demonstrate that appropriate safety and sanitary facilities will be present and available during the entire course of the gathering, that all applicable health regulations will be complied with, and that vehicle entry, exit and parking will not unduly interfere with or cause a hazard to existing traffic patterns and emergency vehicle access.
- (c) "Private Gathering" and "Private Assembly" includes, but is not limited to, gatherings and assemblies of persons for recreational, amusement, and commercial purposes.

### **Section 505.13 Garage Sales**

- (a) "Garage sales" shall include sales of personal property and/or housewares, clothing, furnishings, and related miscellany occurring on private property.
- (b) Private properties within the Town shall be limited to a maximum of five (5) garage sales per property per year without a permit. No such garage sale shall last more than three (3) consecutive days.
- (c) Sales activities which exceed the above limits shall require special permit approval and shall demonstrate compliance with the regulations governing Business II Home occupation uses as set forth in Section 505.10(2).

### **Section 505.14 Greenhouses**

Personal greenhouses measuring no more than one hundred forty-four (144) square feet are permitted. Greenhouses larger than one hundred forty-four (144) square feet are governed by the following:

- (a) Said greenhouse shall be substantially in character with surrounding residences.
- (b) No principal or accessory structure, for commercial use only, shall be located closer than thirty (30) feet to any side or rear property line.
- (c) A buffer strip consisting of interlocking trees and foliage shall be provided on all side and rear property lines.

## **Section 505.15 Businesses I - Home Occupation**

A Business I Home occupation is a use which does not draw the public, and:

- (a) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit.
- (b) Is clearly incidental and secondary to the use of the dwelling for residential purposes.
- (c) Conforms to the following regulations:
  - i. The home occupation shall be carried on wholly indoors and within the principal building or within a building or other structure accessory thereto.
  - ii. There shall be no use of show windows or display or advertising visible outside the premises to attract customer or clients other than home occupation announcement signs as permitted.
  - iii. There shall be no exterior storage of materials.
  - iv. No external alterations, additions, or changes to the structure shall be permitted in order to accommodate or facilitate a home occupation.
  - v. No articles shall be sold or offered for sale except such as may be produced on the premises.
  - vi. No repetitive servicing by truck for supplies and materials shall be permitted.
  - vii. The home occupation shall be carried on only by members of the immediate family residing in the dwelling unit.
  - viii. The floor area devoted to a home occupation shall not be more than twenty-five (25) percent of the ground floor area of the principal residential structure or five hundred (500) square feet, whichever is less.
    - a. Among the uses that shall not be interpreted to be a Business I Home Occupation are uses which draw the public.
    - b. Certain service occupations may be permitted by special permit (Reference Section 503) provided all requirements of this section are met.

## **Section 505.16 Businesses II - Home Occupation**

A Business II Home Occupation is a use which draw the public, and:

- (a) Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit;
- (b) Is clearly incidental and secondary to the use of the dwelling for residential purposes.

- (c) Conforms to the following regulations:
  - i. The Business II Home Occupation shall be carried on wholly indoors and within the principal building or within a building or other structure accessory thereto.
  - ii. There shall be no use of show windows to attract customers or clients other than as permitted in subsection (f) below.
  - iii. There shall be no exterior storage of materials.
  - iv. No external alterations, additions, or changes shall be permitted in order to accommodate or facilitate a Business II Home Occupation.
  - v. No articles shall be sold or offered for sale except such as may be produced on the premises.
  - vi. No repetitive servicing by truck for supplies and materials shall be permitted.
  - vii. The home occupation shall be carried on only by members of the immediate family residing in the dwelling unit plus not more than one (1) additional employee.
  - viii. The floor area devoted to a home occupation shall not be more than twenty-five (25) percent of the ground floor area of the principal residential structure or five hundred (500) square feet, whichever is less.
  - ix. No more than two (2) clients shall be scheduled at any one (1) time.
- (d) No on-street parking is permitted. Off-street parking shall be provided for up to two clients pursuant to the requirements of this section are met.
- (e) Certain service occupations may be permitted by special permit (Reference Section 503) provided all requirements of this section are met.
- (f) The use shall be subject to the sign requirements of Article VII.

**Section 505.17 Inns, Hotels and Motels**

- (a) The minimum lot size shall be three (3) acres.
- (b) Shall have frontage on a state or county road.

**Section 505.18 Junkyards are subject to the follow provisions:**

- (1) On a property not designated as a Junkyard, or outside the closure of the designated Junkyard, any accumulation of one cubic yard of junk, rubbish or other non-green waste or discarded material shall be presumable to be in violation of the Law.
- (2) Minimum lot size is 25 acres. No junkyard shall be permitted within a thousand (1000) foot linear distance of ponds, watercourses or wetlands.
- (3) Before use, a new junkyard shall be completely surrounded with an eight (8) foot high fence, made of suitable fencing materials. The fence may not be made of

vegetation or of any of the material considered part of the junkyard and intended to be concealed behind the fence. Such fence shall be erected not nearer than fifty (50) feet from a public highway. The fence must be setback at least twenty-five (25) feet from the property line. All wreckage, parts, work or other activity involving the junkyard must take place within the closure.

### **Section 505.19 Mining Operations**

- (a) All application for mines and mining operations as defined below (excluding mining of consolidated material, which is prohibited in all zones) will comply with the standards set forth in Section 505.15 (Site Plan Review and Industrial Performance Standards) of the Town of Throop Zoning Law, and are subject to special permit review, except for those uses contained Section 505.17(b).
- (b) A special permit is not required for any mining operation which proposes to mine less than one thousand tons or seven hundred fifty cubic yards. Whichever is less, of mineral from the earth within twelve successive calendar months, and which does not require a mining permit from the New York State Department of Environmental Conservation.
- (c) DEFINITIONS. As used in this section of the Town of Throop Zoning Law the following terms shall have the respective meanings contained in the New York State Mined Land Reclamation Law: Mining, Mineral, Mine, Reclamation, Reclamation Plan.
- (d) In determining whether to grant or deny a special permit application for mining, the reviewing board shall consider all applicable special permit and Industrial Performance Standards criteria.
- (e) If a determination is made to grant a special permit subject to conditions, such conditions may include any and all conditions allowed under New York law, including but not limited to the following:
  - 1) Evidence must be submitted to the reviewing board's satisfaction that the site will not impose undue damage or excessive wear and tear upon roads and bridges controlled by the local government by virtue of the type and volume of traffic to be generated by the proposed operation. If such evidence is not submitted, the applicant shall procure in advance a bond to cover costs of road and bridge repair arising from such traffic. The amount of the bond shall be determined by the reviewing board, and shall be subject to annual review and adjustment at the reviewing board's sole discretion.
  - 2) Routing of mineral transport vehicles on roads controlled by the local government shall be determined by the reviewing board based upon evidence gathered by the board and submitted by the applicant and/or any

interest persons. Public health, safety and general welfare considerations shall principally govern the selection of appropriate routes.

- 3) The boundaries of any mining operation permitted herein shall be set back at least two hundred (200) feet from any property line, the boundary line of any street or public thoroughfare right-of-way, or any residence or other human-occupied structure.
  - 4) Mine access roads at all points, including but not limited to the main entrance and exits of the mine, shall be set back at least two hundred (200) feet from any existing residence or public building.
  - 5) A barrier consisting of: a) gates across all ingress and egress points; and b) ditching, berming or erection of other similar physical barriers to deter unauthorized vehicular access to the mine. All gates shall be closed and locked at all times except during working hours of such operations or when employees shall be within.
- (f) If the reviewing board finds that the above conditions either will not be imposed as written upon the applicant, or will not be sufficient to enable the proposed mining application to comply with applicable special permit and Industrial Performance Standards criteria, it shall deny the special permit.
- (g) Any area that has been used for mining in the Town of Throop, but has not sold its product commercially for one (1) year prior to the date of enactment of this Law as amended will be considered an inactive and unpermitted use, and will be required to apply for the right to operate under the terms of this Law.
- (h) Any mine operating legally in the Town on the date of enactment of this Law as amended will be allowed to continue its operation as a non-conforming use subject to the regulations for such uses found at Article IX of this Law.

#### **Section 505.20 Multiple Family Dwelling, Townhouse, Condominiums, Duplexes and Similar Units**

Multiple family dwellings, townhouses, condominiums, duplexes and similar units are permitted provided that the lot area per family is not less than the minimum lot area required

#### **Section 505.21 Signs**

##### Area of Sign

- (a) The area of sign shall be constructed to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including and supporting framework and bracing which are incidental to the display itself.

- (b) The area of a sign painted upon or applied to a building shall be considered to include all lettering, wording and accompanying designs or symbols together with any backing associated with the sign.
- (c) Where the sign consists of individual letters or symbols attached to or painted on a surface, building walls or window, the area shall be considered to be that of the smallest rectangle or other shape that encompasses all of the letters and symbols.
- (d) In computing square foot area of a double-face sign, each side shall be considered a separate sign.

### Permit Requirements for signs

All on-premises signs over ten (10) square feet in area and all off-premises signs, except official traffic signs and other official governmental signs, regardless of size shall require the issuance of a zoning permit before erection or replacement. All signs must comply with all of the regulations contained herein, irrespective of whether a permit is required.

### General Sign Regulations

The following requirements shall apply to all signs.

- (a) No sign shall have visible moving or moveable parts or flashing, animated or intermittent illumination.
- (b) No sign shall project more than twelve (12) inches out from the wall to which it is attached. Signs not exceeding two (2) square feet in area may be placed perpendicular to a building face if attached to and below a canopy projection from said building.
- (c) No sign shall be located within ten (10) feet of any side property line.
- (d) No sign shall be located within any street lines except official traffic signs and other official governmental signs.
- (e) Signs shall not project more than fifteen (15) feet in height. No sign shall be located on a roof or extended above the roof line.
- (f) All signs except temporary signs shall be constructed of durable material and kept in good condition and repair.
- (g) Nonconforming signs, once removed, shall be replaced only with conforming signs; however, nonconforming signs may be repainted or repaired provided such repair does not increase the dimensions of the sign.

### On-Premises Signs

- (a) Signs attached to a building and to be viewed from without, provided the total area of all such signs placed on any on building shall not exceed one (1) square foot in area for each one (1) lineal foot of front building wall.

- (b) One (1) free standing sign for each street frontage of a lot provided that the total area of such sign shall not exceed one (1) square foot for each lineal foot of lot frontage.
- (c) Two (2) special temporary promotional devices, signs or displays such as banners and pennants are permitted at one time, but they must be removed the day after the event.
- (d) Official traffic signs and other official federal, state, county or town government signs.
- (e) Signs displaying the name and address of the occupant of a dwelling, provided that the area of any such sign shall not exceed three (3) square feet per side and not more than one (1) such sign shall be erected for each dwelling unit, unless such property fronts on more than one street, in which case one (1) such sign may be erected on each street frontage.
- (f) Identification sign for housing development or apartment house provided that the area of any such sign shall not exceed twenty-five (25) square feet per side and not more than one (1) such sign shall be erected for any one (1) project, unless such project fronts on more than one (1) street, in which case one (1) sign may be erected on each street frontage.
- (g) Signs advertising the sale of farm products, nursery products or livestock produced or raised on the premises, provided that the area of any such sign shall not exceed ten (10) square feet per side and not more than two (2) such signs shall be placed on property held in single and separate ownership unless such property fronts on more than one street, in which case two (2) such signs may be erected on each street frontage.
- (h) Signs denoting membership in agricultural associations, cooperatives or indicating specialization in a particular breed of cattle, hogs etc., or in particular hybrids or strains of plants. Such signs may also include the name of the farm of the owner.
- (i) Bulletin or announcement board of schools, churches, hospitals, recreation areas and other principal uses and buildings other than dwellings, provided that the area of any such sign shall not exceed twenty-five (25) square feet per side and not more than one (1) such sign shall be placed on property held in single and separate ownership unless such property fronts on more than one (1) street, in which case one (1) such sign may be erected on each street frontage.
- (j) Identification signs for schools, churches, hospitals, recreation areas, and other principal uses and building other than dwellings provided that such sign is attached to part of the building structure to which it relates and further provided that not more than one (1) such sign shall be placed on property held in single and separate

- ownership unless such property fronts on more than one (1) street, in which case one (1) such sign may be erected on each street frontage.
- (k) Signs advertising the sale or rental of property, provided that the area of any such sign shall not exceed six (6) square feet per side and not more than one (1) such sign shall be placed on property held in single and separate ownership unless such property fronts on more than one street, in which case one (1) such sign may be erected on each street frontage. Such signs shall be removed immediately upon final settlement or renting a property.
  - (l) Temporary contractors, developers, architects or builders signs provided that the area of any such sign shall not exceed ten (10) square feet per side. Such signs shall be removed immediately upon completion of the work.
  - (m) Trespassing signs, signs indicating the private nature of a road, driveway, or premises, signs controlling fishing or hunting on the premises provided that the area of any such sign shall not exceed four (4) square feet per side
  - (n) Temporary signs announcing a campaign, drive or event of a civic, philanthropic, education or religious organization. Such signs shall not exceed ten (10) square feet per side in area and shall be removed within seven (7) days upon completion of the campaign, drive or event. If the sign is not removed within seven (7) days, the sign will be removed by the Town at the costs incurred will be paid by the owner of the sign.
  - (o) Memorial signs or tablets.

#### Off-Premises Signs

- (a) Off-premises signs, which are used for directing patrons, members or audience to service clubs, churches or other non-profit organizations, may be erected subject to the following requirements:
  - 1. A sign shall indicate only the name of the organization and the direction to the facility.
  - 2. Only one (1) such sign shall be erected prior to each intersection turning movement necessary to reach such facility.
  - 3. Signs shall not exceed four (4) square feet in area for each organization represented, except for cooperative displays by more than one (1) organization, in which case the maximum size shall be twenty-five (25) square feet.
- (b) Signs directing patrons, members or audience to temporary exhibits, shows or events are subject to the follow requirements:
  - 1. No such sign shall exceed ten (10) square feet in area



2. Signs shall be removed within two (2) weeks after the date of the exhibit, show or event.
  3. No permit shall be issued for the erection of such signs until a deposit shall be made with the Town Clerk in accordance with a fee schedule adopted by the Town Board to guarantee removal within the time prescribed. Failure to remove such signs within the time prescribed shall result in forfeiture of the deposit.
  4. No such sign shall be posted earlier than one month before the occurrence of the event to which it relates.
- (c) Official traffic signs and other official federal, state, county or town government signs.
- (d) Temporary signs announcing a campaign, drive or event of a civic, philanthropic, education or religious organization. Such signs shall not exceed ten (10) square feet per side in area and shall be removed within 7 days upon completion of the campaign, drive or event. If the sign is not removed within 7 days, the sign will be removed by the Town and the costs incurred will be paid by the owner of the sign.
1. No more than two (2) directional signs shall be erected in the Town for any one principal use.
  2. Signs shall not exceed fifteen (15) square feet in area.
  3. Signs shall be no closer than fifteen (15) feet to a side lot line and shall not be located with the street line.
  4. Signs shall not exceed ten (10) feet in height.

### **Section 505.22 Swimming Pools/Ponds**

Private Outdoor Swimming Pools (two (2) or more feet deep). A single private outdoor swimming pool per dwelling unit is permitted as an accessory use to a residential structure provided that such swimming pool is for the private use of the residents of the dwelling unit or for their guests and provided that the edge of the pool is not located closer than twenty (20) feet to any property line and does not occupy more than ten percent (10%) of the lot area and that a minimum four (4) foot high fence shall completely surround the area of the swimming pool, Decks to above ground pools must have retractable steps as defined by New York State Laws.

Ponds two (2) or more feet deep and in excess of one hundred (100) square feet shall require a zoning permit when located in any district. Subject to the following exception: ponds located in the Agricultural District and used exclusively for agricultural purposes (e.g. irrigation livestock watering source) shall not require a permit. If a permit is required, the pond must be located no less than fifty (50) feet from the property line and no less than one hundred twenty-five (125) feet from the edge of the road. The pond must not exceed twenty-five percent (25%) of the area of the property. The pond shall not affect natural water flow on the property.

## **Section 505.23 Storage Containers**

The definition of a Portable Storage Container is a portable, weather-resistant receptacle, designed and used for the storage or shipment of household goods, wares, building materials or merchandise. This term shall not include roll-off containers or storage containers having storage capacity of less than 150 cubic feet. (Example of a roll-off container: city yard waste and debris container or open/unclosed containers)

### **Container Requirements**

- No more than one (1) portable storage container having a storage capacity greater than 350 cubic feet shall be permitted on a zoning lot.
- Up to three (3) storage containers may be allowed on a zoning lot, provided that each individual container has a storage capacity of not greater than three hundred fifty (350) cubic feet.
- No container shall be located closer than fifteen (15) feet to any side or rear lot line or on any portion of a zoning lot, except behind the nearest portion of the principal building adjacent to a public street.
- On lots where there is no principal structure, the container shall comply with the front yard setback for that zoning district.
- No portable storage container shall have dimensions greater than twenty-four (24) feet in length and eight (8) feet in width or eight and one-half (8 1/2) feet in height.
- If site conditions prevent locating portable containers in conformity, containers may be placed in a driveway provided the two (2) parking spaces are unobstructed and the container is closer than ten (10) feet to the paved portion of any street.
- All portable storage containers shall be in a condition free from rust, peeling paint and other forms of deterioration.

### **Permit Requirements**

- Portable storage containers shall be allowed only upon issuance of a permit by the Zoning Officer, except when used in connection with an agricultural zoning district.
- Containers are allowed for a period not to exceed a six (6) month period.
- Permits shall be displayed on the outside of the container in plain view from the nearest street.
- Permits shall cost fifteen dollars (\$15.00) per zoning lot (regardless of the number of containers on the zoning lot).
- No permits will be required for containers located on a zoning lot less than seventy-two (72) hours.

## **Section 505.24 Telecommunication Facilities (Cell Towers)**

All telecommunications facility applications, whether for new or modified facilities, are subject to special permit review.

Each application for a proposed facility shall be accompanied by a State Environmental Quality Review (SEQR) and a long Environmental Assessment Form (EAF).

- (a) No application will be considered for either new facilities or modified facilities unless the telecommunication facility meets the following criteria:
  - (1) Is necessary to meet current or reasonable expected demands for services.
  - (2) Conforms to all federal and state laws and all applicable rules or regulations promulgated by the federal communications commission (the FCC), Federal Aviation Commission (the FAA), or any other federal agencies having jurisdiction.
  - (3) Is considered a public utility in the State of New York
  - (4) Is sited, designed and constructed in a manner that minimizes visual impact to the extent practical and adverse impacts upon migratory birds and other wildlife.
  - (5) Complies with all other requirement of this Law, unless expressly superseded her in.
  - (6) Is the most appropriated site among those available within the technically feasible area for the location of a telecommunication facility?
  - (7) When including the construction of a tower, such tower is designed to accommodate future shared use by at least two (2) other telecommunication service providers. Any subsequent locations of telecommunication equipment by the other service providers on specifically designated for shared use shall not require a new or modified special permit if there would be no increase in the height of the tower. However, any additional equipment will require a special permit review.
- (b) The shared use of existing telecommunications facilities or other structures shall be preferred to the constructions of new facilities. Any application, renewal or modification there of shall include proof that reasonable efforts have been made to co-locate within an existing structure. The application shall include an adequate inventory report specifying existing telecommunications facility sites. The inventory report shall contain and evaluation of opportunities or shared use as an alternative to the proposed location.

- (1) The applicant must demonstrate that the proposed telecommunications facility cannot be accommodated on existing telecommunications facility sites in the inventory due to one (1) or more of the following reasons:
  - i) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or their structure. Considering existing and reasonable anticipated future use for those facilities and structures.
  - ii) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented.
  - iii) Existing or approved telecommunications facilities or other structures do not have space and cannot be modified to provide space on which proposed equipment can be placed so it can function effectively and reasonable.
  - iv) Other technical reasons make it intractable to place the equipment proposed by the applicant on existing facilities and structures.
  - v) The owner of the existing telecommunications facility or other structure refused to allow such co-location

(c) Dimensional Standards:

- (1) A fall zone around any tower constructed as part of a telecommunications facility must have a radius at least equal to the height of the tower and any attached antennas. The entire fall zone may not include public roads and must be located on the property either owned or leased by the applicant or for which the application has obtained an easement, and may not, except as set forth below, contain any structure other than those associated with the telecommunications facility.
- (2) All telecommunications facilities shall comply with the setback, frontage, minimum lot size, requirements of Article VI. To the extent there is a conflict, the more restrictive provision will govern. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone.
- (3) The front, side, and rear yard requirements in which a telecommunications facility is erected shall apply not only to the tower, but also to all tower parts including guyed wires and anchors and to any accessory building.

(d) Lighting and Marking:

Towers shall not be artificially lighted and marked beyond the requirements of the FAA. An applicant may be permitted to add FAA-style light and marking, even if not required by FAA, if in the judgment of the Planning Board, such a requirement would be of direct benefit to public safety and would not unduly adversely affect residents of any surrounding property.

(e) Appearance and Buffering:

- (1) The use of any portion of a telecommunication facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons are prohibited.
- (2) The facility shall have the least practical visual effect on the environment as determined by the Planning Board. Any tower that is not subject to FAA marking as set forth above shall otherwise:
  - i) Have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board, or be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its designed function.
  - ii) Accessory structures shall maximize the use of buildings materials, colors, and textures designed to blend in with normal surroundings.
  - iii) Equipment or vehicles not used in direct support, renovations, additions or repair of any telecommunication facility shall not be stored or parked on the Facility site.
  - iv) Existing on-site vegetation shall be preserved to the maximum extent possible. Clear-cutting of all trees in a single continuous area exceeding ten thousand (10,000) feet shall be prohibited.
  - v) Screening: Deciduous or evergreen tree planting shall be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public or private property, including streets, at least one (1) row of native evergreen shrubs or trees forming a continuous hedge at least ten (10) feet in height at a time of planting to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include height of berm.

(f) Access and Parking:

- (1) Access ways shall make maximum use of existing public or private roads to the extent practical. New access ways constructed solely for Telecommunication Facilities must be at least twenty (20), but no more than sixty (60) feet wide, and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- (2) Parking areas shall be sufficient to accommodate the usual number of service vehicles expected on the premises at any one time. Space off of public highways shall be provided (not necessarily in parking areas) to accommodate the greatest number of service vehicles expected on the premises, at any one time.
- (3) Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out into a public thoroughfare.

(g) Security:

- (1) Towers, anchor points of guyed towers, and accessory structures shall be each surrounded by fencing at eight (8) feet in height, the top foot of which may, at the discretion of the Planning Board in the deference to the character of the neighborhood, be comprised of the three-strands of barbed wire to discourage unauthorized access to the site. The Planning Board may waive the requirement of fencing if, in its discretion, it determines that other forms of security are adequate, or that, by reason of location or occupancy, security will not be significantly compromised by the omission, or reduction in size, of the otherwise required fencing.
- (2) Motion-activated or staff-activated security fencing lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeters have been entered.
- (3) There shall be no permanent climbing pegs within fifteen (15) feet of the ground of any tower.
- (4) A locked gate at the junctions of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.
- (5) There shall be a security alarm system, which is linked to either a local caretaker, or a local police agency.

(h) Engineering and Maintenance:

- (1) All plans for Telecommunications Facilities must bear the seal of a professional engineer licensed to practice on the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
- (2) Every Facility shall be inspected at least every fifth (5<sup>th</sup>) year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the Planning Board and Building Code Enforcement Officer. Any unsafe condition revealed by such report shall be corrected with ten (10) days of notification of same to the record of the landowner on which the facility is constructed. The time period for correction may, on application of the land owner or the owner of the facility, be extended by the Zoning Board of Appeals if it is impractical to complete the correction within said ten (10) days and if there is no imminent danger to life, limb or other person's property. If the unsafe conditions is not corrected within the applicable time period, or if the required inspection is not provide to the Town the special approval for construction of the facility may, after a hearing by the Zoning Board of Appeals on at least ten (10) days prior notice to the landowner of record given by certified mail, return receipt request, or other equally effective manner of providing notice, be revoked by such Board. Revocation may occur only if the Board finds either that the required inspection has not been provided or that there is an unsafe condition that poses a risk to bodily injury or significant property damage. Upon such revocation, the facility shall be removed or dismantled to the point of removing all unsafe conditions.
- (3) A safety analysis by a qualified professional must accompany any special permit or special permit application, renewal thereof or modification, for the purpose of certifying that general public electromagnetic exposure does not exceed standards set by the FCC or any permit granted by the FCC.
- (4) The municipality, at the expense of the applicant, may employ its own consulting assistance to examine the application and related documentation and make recommendations as to whether the criteria for granting the special approval have been met, including whether the applicant's conclusions regarding need, co-location, safety analysis, visual analysis, and structural inspection, are valid and supported by generally accepted and reliable engineering and technical data and standards.

- (l) Removal:
- (1) At the time of submittal of the application for a special approval for a telecommunication facility, the applicant shall submit an agreement to remove, within ninety (90) days, all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower (s) dedicated solely for use within a telecommunications facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than six (6) consecutive months. Upon removal of sad facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed lands.
  - (2) At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the telecommunications facility and property restoration, with the municipality as the assignee, in an amount approved by the Planning Board, but not less than forty thousand dollars (\$40,000.00).
  - (3) At time of modification or removal of the special approval, the Planning Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the telecommunications facility and property restoration.

## **Section 505.25 Wind Energy Facilities**

### **I. Title**

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Throop, Auburn, New York.”

### **2. Purpose**

The Town Board of the Town of Throop adopts this Local Law to promote the effective and efficient use of the Town’s wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate the placement of such systems so that the public health safety, and welfare will not be jeopardized.

### **3. Authority**

The Town Board of the Town of Throop enacts this Local Law under the authority granted by



1. Article IX of the New York State Constitution 2 © (6) and (10).
2. New York Statute of Local Governments, 10 (1) and (7).
3. New York Municipal Home Rue Law, 10 (1) (i) and (ii) and 10 (1) (a) (6), (11), (12), and (14).
4. New York Town Law 130 (1) (Building Code, (3) (Electrical Code, (5) (Fire prevention), (7) (Use of streets and highways), (7-a) (Location of Driveways, (11) (Peace, good order and safety, (15) Promotion of public welfare), (15-a) Excavated lands, (16) Unsafe buildings), (10) (Trespass), and 25) Building lines).
5. New York Town Law 64 (17-a) (protection of aesthetic interest), (23) (General Powers).
6. The State Environmental Quality Review Act (SEQRA).

#### **4. Findings**

- A. The Town Board of the Town of Throop finds and declares that
  1. Wind energy is an abundant, renewable and non-polluting energy resource of the Town and its conversion to electricity may help reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
  2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generation stations to utilities or other users, or energy consumption at that location can be reduced.
  3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
  4. Wind Energy Facilities have the potential to cause significant aesthetic impacts if not properly sited, because of their large size, lighting, and shadow flicker effects.
  5. If not properly regulated, installation of Wind Energy Facilities have the potential to create drainage problems through erosion, lack of sediment control for facility, access road sites and harm farmlands through improper construction methods.
  6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
  7. If not properly sited, Wind Energy Facilities have the potential to adversely impact neighboring properties, including the property values of such properties.
  8. Wind Energy Facilities are potentially significant sources of noise, and if such facilities are unregulated or improperly sited, or if such impacts are inadequately mitigated, they can negatively impact adjoining properties.
  9. Without proper planning, construction of Wind Energy Facilities can create traffic problems and damage local roads.
  10. If improperly sited, Wind Energy Facilities can interfere with various types of communications.

#### **5. Review of Wind Energy Facilities**

A. The Town of Throop Planning Board is hereby authorized to review applications approve with conditions, or disapproval of applications for Wind Energy Facilities.

B. In the event financial offsets are offered, the Town Board of the Town of Throop shall act as the review board of said offsets.

## **6. Permits required; Transfer; Modifications**

A. No Wind Energy Facility shall be constructed, reconstructed, modified or operated in the Town of Throop except in compliance with this Local Law.

B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Throop except with a Wind Energy Facility Permit approved pursuant to this Local Law.

C. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Throop except pursuant to a Wind Energy Permit issued pursuant to this Local Law.

D. This Local Law shall apply to all areas of the Town of Throop.

E. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non-electrical WECS utilized solely for agricultural operations.

F. Transfer. No transfer of any Wind Energy Facility, Wind Energy Permit nor, can it be sold separately from the entity for which it is producing energy.

G. Replacement in kind or modification of a Wind Energy Facility, may occur when: (1) there will be no increase in total height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS. A building permit will be required.

## **7. Definitions**

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

**EAF** - Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

**RESIDENCE** – For purposes of this definition, suitable for habitation, shall mean that its primary purpose is for private-occupancy and it has both electrical service and a connection to an on-site or off-site potable water supply and wastewater treatment/disposal system on a full time basis. A residence may be part of a multi-dwelling or multipurpose building, but shall not

include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

**SEQRA** - THE New York State Environmental Quality Review Act, as codified in Article 8 of the New York State Environmental Conservation Law and its implementing regulations in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 617 et seq. (6 NYCRR 617).

**SITE** – A site is the parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties.

**ADJACENT PROPERTY** – Adjacent property is any property which has a Wind Energy Facility; or has entered into an agreement for said facility. A setback agreement shall not be considered off-site.

**SMALL WIND ENERGY CONVERSION SYSTEM (Small WECS)** – A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 50 KW and which is intended to primarily reduce consumption of utility power at that location.

**TOTAL HEIGHT** – The height of the tower and the furthest vertical extension of the WECS.

**WIND ENERGY CONVERSION SYSTEM (“WECS”)** a machine that converts the kinetic energy in the wind into a usable form (commonly known as a “wind turbine” or “windmill”).

**WIND ENERGY FACILITY** – Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**WIND FACILITY BUILDING ENERGY PERMIT** – A Wind Energy permit is a permit granted pursuant to this Local Law granting the holder the right to construct maintain and operate a Wind Energy Facility.

## **8. Applicability**

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified or constructed in the Town of Throop after the effective date of this Local Law, including any Wind Energy Facility, applied for but not yet approved prior to the date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, that:

1. Any such pre-existing Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Wind Energy Permit for said Wind Energy Facility was obtained.

## **9. Reserved for Future Use**

## **10. Applications**

Applications for Small WECS Wind Energy permits shall include:

A. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.

B. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

C. Address of the proposed tower location, including Tax Map section, blocks and lot number.

D. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.

E. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.

F. Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.

G. Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.

H. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

I. A description of the project, including the number and maximum rated capacity of the WECS.

J. A plot plan prepared by a licensed land surveyor, drawn in sufficient detail to clearly describe the following.

1. Property lines and physical dimensions of the Site;
2. Location, approximate dimensions and types of major existing structures and used on the Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed WECS site.
3. Location and elevation of the proposed WECS.
4. Location of all above and underground utility lines on the Site or within one radius of the Total Height of WECS, transformers, power lines, interconnection point with transmission lines, and other auxiliary facilities or structures.
5. Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
6. To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower located to:
  - a. (i) One and a halftimes the tower height. For any WECS sixty-five feet (65') or less in total height; two times the tower height for any WECS greater than sixty-five feet (65') but not greater than one hundred feet (100').
  - b. (ii) Five hundred foot perimeter
7. Location of the residential structure, both on the Site and off the Site, that is located within five hundred feet from the nearest individual Wind Energy Facility, as well as the specific distance from the nearest individual Wind Energy Facility to each residential structure.
8. All Proposed facilities, including access road, electrical lines, substations, storage or maintenance units, and fencing.

K. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors, one drawing may be submitted for each WECS of the same type and Total Height.

L. List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Site.

M. An application shall include at a minimum, the following information relating to the construction/installation of the wind energy conversion facility:

1. Dimensional representation of the various structural components of the tower construction, including the base and footing.
2. Design data indicating the basis of design, including manufacturer's dimensional drawings and installation and operation instructions.
3. Manufacturer's certification that the tower-design is sufficient to withstand wind-load requirements for structures as established by the New York State Uniform Fire Prevention and Building Code.
4. A construction schedule describing commencement and completion dates
5. A description of the routes to be used by construction and delivery vehicles.

N. Completed Part 1 of the Full EAF.

O. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

P. Procedures acceptable to the Town Planning Board for emergency shutdown of power generation units, created in consultation with the Throop Fire Department, shall be established and posted prominently and permanently on at least one location on the road frontage of each individual unit.

Q. The following information must be submitted by the applicant either with the application, or, in the event of a positive declaration under SEQRA, as part of any DEIS submitted by the applicant with respect to the application for a Wind Energy Facility;

1. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and/or commercial businesses and must describe measures that shall be taken to eliminate or mitigate the impacts of shadow flicker on such residences, including but not limited to operational measures to stop rotation at such times when modeling predicts that shadow flicker will impact neighboring residences.
2. Visual Impact: Applications shall include a visual impact study of the WECS as proposed, which should include, at a minimum, demonstrating any visual impacts from strategic vantage points, including visual impacts associated with the facility itself, as well as, any proposed above-ground collection or transmission components. Photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual

screening incorporated into the project that is intended to lessen the system's visual prominence

3. Fire Protection and Emergency Response: Applications shall include a fire protection and emergency response plan, created in consultation with the Fire department(s) having jurisdiction over the proposed Site. Procedures acceptable to the Town Planning Board for emergency shutdown of power generation units created in consultation with the Fire Department shall be established and posted prominently and permanently on the access of the individual unit.
4. Noise Assessment: Noise produced must not negatively impact the welfare of neighbors and limit their ability to peacefully and quietly enjoy their property. Maximum allowable level is 55 decibels at the property line. Describe measures, to be taken, to eliminate or mitigate unacceptable noise levels. This is in addition to any other noise limitations imposed by the Town of Throop. Manufacturers noise design and field testing data, both audible (dB-A) and low frequency (deep base vibration) must be included.
5. Avian Analysis: Applications shall include an Avian Analysis assessing the reasonable anticipated impacts of the WECS upon bird and bat species. The scope of such analysis should be developed in consultation with the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service, and must at a minimum consist of a literature survey for threatened and endangered species and provide relevant information on critical flyways, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to avoid or mitigate such impacts to the extent practicable. The applicant should also identify plans for post-construction monitoring or studies to assess actual operational impacts of the WECS upon birds and bats.
6. Property Values: Applications shall include a property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS sites. Such analysis should include actual data concerning the impacts of previously constructed facilities in the State of New York on property values. This analysis shall be presented to the Town Board for its consideration.
7. Electromagnetic Interference: Applications shall include an assessment of potential electromagnetic interference from the proposed facility with microwave, radio, television, person communication systems and other wireless communication.
8. Ice throw calculations: A report from a New York State Professional Engineer that calculates the maximum distance that ice from the turbine blades could be thrown (The basis of the calculation and all assumptions must be disclosed.)
9. Blade throw calculations: A report from a New York State Professional Engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
10. Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions)

11. FAA notifications: a copy of written notification to the Federal Aviation Administration.
12. Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.

R. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.

S. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

T. In addition to the materials required in accordance with this section, complete applications should include any additional study or assessment determined to be required by the lead agency during review of the project pursuant to SEQRA. No application shall be determined to be complete until the SEQRA review with respect to such application is concluded.

U. Applicants may request a pre-application meeting with the Town Planning Board by contacting the Town Clerk or with any consultant retained by the Town Planning Board for application review. The meeting with the Town Planning Board shall be conducted in accordance with the Open Meeting Law.

## **Small Wind Energy Conversion Systems**

### **11. Purpose and Intent**

The purpose of this Article is to provide standards for small wind energy conversion systems designed for home, farm, and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

### **12. Development Standards.**

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirement contained in this section, unless specifically waived by the Throop Planning Board.

A. All power Transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.



**B. Leave this blank**

C. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan. Exterior lighting on any structure associated with the system shall comply with existing Town Law.

D. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

E. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.

F. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems can be reasonably expected to produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

G. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.

H. The maximum Total Height of any WECS shall be one hundred feet.

I. In processing any application for a WECS or in reviewing such project under SEQRA, the Planning Board shall consider any applicable policy or guideline issued by the New York State DEC (i.e., visual impacts, noise impacts).

J. Turbine blades shall pass no closer than twenty (20) feet to the ground during operation of the facility.

K. Small Wind energy systems shall be used primarily to reduce the onsite consumption of electricity.

L. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11 of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

M. All on-site electrical wires associated with the system shall be installed underground except for "Tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

N. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system until the problem is resolved.

O. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system's generator housing in an unobtrusive manner.

P. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

1. Tower-climbing apparatus located no closer than 12 feet from the ground.
2. A locked, protective fence, of chain link or equivalent, at least six feet in height, with no spaces of more than four inches.

Q. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

R. To prevent harmful wind turbulence from existing structures, an engineering report shall be submitted to show that the height will not jeopardize the safety of the wind turbine structure.

S. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.

T. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

U. The Planning Board may require SEQR review.

V. Setback requirements. A small WECS, sixty-five feet (65') or less in height, shall not be located closer to a property line than one and one half times the total height of the facility; a WECS over sixty-five feet (65') but not greater than one hundred feet (100') shall not be located closer to a property line than two time the total height of the facility.

### **13. Required Safety Measurers**

A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

B. Appropriate warning signs shall be posted. At Least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. The Town Board may require additional signs based on safety needs.

C. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

### **14. Setback Easements**

A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver may be granted from such requirement by the Planning Board in the following circumstances:

1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) setbacks less than required; and

B. Waivers granted under this Section differ from waiver requests under Article V of this Local Law in that no Article V waiver is required if a waiver is given under this Section, and an Article V waiver must be sought rather than a waiver under this section if the adjoining property owner will not grant an easement pursuant to this Section.

C. A System shall be located on a single lot that allows the minimum set back requirement from the adjacent property Line or any structure

D. Only one small wind energy system tower per legal lot shall be allowed to provide energy to the home or farm on the same lot.

E. Tower heights may be allowed as follows:

1. One hundred feet (100') or less
2. Any WECS sixty-five feet (65') or less in total height shall have a minimum setback requirement of one and a half (1 ½) times the height of the WECS; any WECS greater

than sixty-five feet (65') but no greater than one hundred feet (100') shall have a minimum setback of two (2) times the height of the WECS.

3. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11 of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

F. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporated non-reflective surfaces to minimize any visual disruption.

H. Exterior lighting on any structure associated with the system shall comply with existing Federal, State and Local Law.

### **15. Application Review Process**

A. When a waiver of the requirements of this law is requested, the applicant should apply per Article V. Application should be submitted after receipt of the approved waiver decision. Include the decision with the application.

B. Six copies of the application shall be submitted to the Town Clerk or designee. Payment of all application fees shall be made at the time of application submission. If any waivers are requested, waiver application fees shall be paid at the time of the receipt of the application. In addition, the applicant shall provide the Planning Board, free of charge, with a reasonable number of additional copies necessary to coordinate review with involved agencies and interested parties, pursuant to SEQRA.

C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this article is included in the application, unless the Town Planning Board waives any application requirement, no application shall be considered complete and ready for final action until deemed complete and until either a negative declaration is issued under SEQRA, or, a Final Environmental Impact Statement and SEQRA Findings are issued by the lead agency.

D. If the Code Enforcement Officer/Zoning Officer deems the application incomplete, the Code Enforcement Officer/ Zoning Officer shall specify a list of missing information and forward it to the Planning Board. The Planning Board shall review and compile the additional information needed and return to applicant in a written statement listing the missing information. The applicant may then resubmit the application. No refund of application fees shall be made, but no additional fees shall be required.

E. The Planning Board shall hold at least one hearing on the application. Notice shall be provided by first class mail to property owners within 500 feet of the boundaries of the proposed WECS, and published in the Town's official recognized newspaper, no less than ten

nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Planning Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Hearing prepared by the Planning Board, and shall submit an affidavit of service. The assessment roll of the town shall be used to determine mailing addresses.

F. The hearing may be combined with any other hearing required, including public hearings held pursuant to SEQRA.

G. SEQRA review. Applications for WECS shall be deemed type 1 projects under SEQRA. The town of Throop Planning Board shall be responsible for the review of the proposed project under SEQRA, shall where appropriate, act as lead agency under SEQRA and shall coordinate its review with all other involved agencies having discretionary approval over any aspect of the proposed project in accordance with the requirements of SEQRA.

H. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town Planning Board shall issue a Statement of findings, which Statement may also serve as the Town's decision on the application.

## **16. Issuance of Wind Energy Permits**

A. Upon completion of the review process, the Town of Throop Planning Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.

B. If approved, the Planning Board will give notice to the Code Enforcement Officer/Zoning Officer that all conditions have been met to approve the application.

C. The decision of the Planning Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

D. If any approved Wind Energy Facility is not completed within six (6) months of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire.

## **17. Abatement**

A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that without any further action by the Planning Board, the applicant shall decommission and remove said system at its own expense. Removal of the system shall include at a minimum the removal of the entire above ground structure, including transmission equipment and fencing from the property. This provision shall not apply if the applicant demonstrates to the Planning Board that it has been making good faith efforts to restore the

WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven or inferred by reports to the Public Service Commission, NYSEERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board and Planning Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is function, which reports may be redacted as necessary to protect proprietary information.

### **18. Limitations on Approvals; Easement on Town Property**

1. Nothing in this Local Law shall be deemed to give any applicant their right to cut down surrounding trees and vegetation on any property, other than their own to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
2. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.
3. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conservation Systems
4. The Applicant is required to conform to all requirements of the Town of Throop local water revitalization plans.

### **19. Permit Revocation**

A. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Zoning Officer/Code Enforcement Officer. The applicant shall have 90 days after written notice considered by the issuer of the notice, to cure any deficiency. An extension of the 90 day period may be considered by the Town Zoning Board, but the total period may not exceed 180 days.

### **20. Abandonment of Use**

A. A WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner.

Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Code Enforcement Officer/Zoning Officer.

B. All WECS shall be maintained in good condition and in accordance with all requirements of this section.

## **21. Waivers**

A. The town Planning Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Planning Board, the grant of said waiver is in the best interests of the Town of Throop. The Planning Board may consider as reasonable factors in evaluating the request, which may include, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.

B. the Planning Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

C. The Town Planning Board has no authority to waive any provision dealing with fiscal responsibility or financial offsets that affect the budgetary responsibilities of the Town Board. Application of this type of waiver must be directed to the Town Board.

D. The applicant must pay any required fee.

## **22. Fees**

A. A non-refundable application fee shall be set by resolution of the Town Board from time to time.

B. Building Permits. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be determined by the Town Board for administrative costs, plus all charges to the Town of Throop to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for any inspection and/or certification procedure for these unique facilities. In such cases, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certification or conduct inspections as agreed by the parties.

C. Nothing in the Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on

the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

### **23. Tax Exemption**

The Town hereby reserves the right to opt out of the Tax Exemption provisions of Real Property Tax Law #487, pursuant to the authority granted by paragraph 8 of that law, or by any other provision of law.

### **24. Inspections**

A. The owner of each Wind Energy Facility shall submit a bi-annual inspection report to the Town Board or its designee on the structural and operational integrity of the facility. Such report shall be prepared by or under the direction of a qualified windmill inspector. If such report recommends that repairs or maintenance measures be undertaken, the owner shall provide with such report a written schedule for undertaking such repairs or maintenance.

B. Wind Energy Facilities shall not begin operating until all approvals required under this law are obtained and all required certifications are provided.

C. Following the issuance of any approval required under this local law, the Code Enforcement/Zoning Officer shall have the right to enter into the Site upon which a Wind Energy Facility has been placed, at reasonable times in order to inspect such facility and its compliance with this Local Law.

D. After undertaking such inspection, the Code Enforcement Officer/Zoning Officer shall provide notice of any non-compliance with the terms of this local Law or the conditions of approval of any permit issued hereunder, and shall provide the owner or applicant with a reasonable time frame to cure such violation, such timeframe to be determined based upon the seriousness of the violation, its impact upon public safety, and the impact of the violation upon residents of the Town.

### **25. Construction Related Damages**

The owner of every Wind Energy Facility constructed pursuant to this law shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the construction of such facility.

### **26. Enforcement: Penalties and remedies for violations.**

A. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the



terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of any offense and subject to a fine of not more than \$350.00 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350.00 for each violation and each week said violation continues shall be deemed a separate violation.

B. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town, can as necessary, institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

## **27. Certification.**

Prior to operation of any approved and constructed Wind Energy Conversion Facility, the applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

## **SECTION 2: Severability**

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

## **28. Effective Date**

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

## **Section 505.26 Outdoor Furnaces**

### **Section 1 Authority**

This local law is enacted under the authority granted pursuant to the General Municipal Law, Home Rule Law, and Town Law of the State of New York.

### **Section 2 Purpose**

The purpose of this local law is to regulate the placement and operation of outdoor furnaces within the Town of Throop. While outdoor furnaces/wood boilers are advertised as an economical alternative to conventional heating systems, the New York Attorney General's Office and the Department of Environmental Conservation found that outdoor furnaces, that are not located and operated properly, can deprive neighboring residents of enjoyment of their

property and/or normal use of their premises. This Chapter will impose reasonable limits and performance standards on these outdoor units so that such devices do not endanger the health, safety, comfort and general welfare of the residents and inhabitants of the Town of Throop.

### Section 3 Definitions

- A. **“Town”** shall mean the Town Board of the Town of Throop.
- B. **“Seasoned Firewood”** – Trunks and branches of trees that have been cut and dried for at least one year, but does not include leaves, needles, vines or brush smaller than 3 inches in diameter.
- C. **“Outdoor Furnace/Wood Boiler”** – Any equipment, device or apparatus, or any part thereof, which is installed, affixed or situated separate from an occupied residence or structure for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat and/or hot water for any space. Exempted from this definition are natural gas or propane swimming pool heaters, units specifically designed and manufactured for use of commercial fuels such as wood pellets and corn.
- D. **“Untreated Lumber”** – Dry wood which has been milled and dried but which has not been treated or combined or covered with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other related substance.
- E. **“Older Model Outdoor Furnace”** – Outdoor furnaces that produce emissions at the level defined by US EPA as Phase 1 or early levels. An outdoor furnace that produces emissions and was in operation before the effective date of this law at the level defined by US EPA as Phase 2 or later levels.
- F. **“Newer Model Outdoor Furnace”** – A "new" OWB is defined as commencing operation on or after the effective date of this law.
- G. **“Kit Built”** – Shall be defined as any furnace constructed or assembled on site.

### Section 4 Permit-Inspection Required

Following the enactment of this Chapter no person shall install and commence operation of an outdoor furnace/wood boiler within the Town of Throop without first having obtained a permit from the Zoning Officer/Code Enforcement Officer. Application for a permit shall be made to the Zoning Officer on forms provided and available at the municipal clerk’s office. Permit fees shall be established at the rate of \$25.00 per permit.

### Section 5 General Requirements Applicable to Older Model Outdoor Furnaces/Wood Boilers

- A. **Permitted Locations** – Older Model outdoor furnaces/wood boilers shall be permitted throughout the Town of Throop. All requirements included established by New York State for an outdoor furnace/wood boiler must be met.
- B. **Minimum Lot Setbacks** – The installed older model outdoor furnace/wood boiler must meet a minimum of **25** feet set back from the nearest side and back property line. Front yard placement is not permitted.
- C. **Permitted Fuel** – Only seasoned firewood and untreated lumber are permitted to be burned in any older model outdoor furnace/wood boiler. Burning of any and all other materials, including, without limitation, rubbish, garbage, paint, furniture, composite

shingles, construction debris, waste oil, products containing asphalt, treated, painted or stained wood, plywood, composite wood products, plastics, synthetic fabrics, foam, rubber including tires, newspaper, corrugated cardboard, coal office paper and container board in an outdoor furnace/wood boiler is strictly prohibited.

D. **Installation Instructions** – Installation of older model outdoor furnaces/wood boilers must meet all New York State and Regional Fire and Safety Codes. Installation must be in accordance to manufacturer’s instructions, except where this Chapter specifies a more restrictive requirement. All requirements included must be met.

E. **Spark Arrestors** – All older/newer model outdoor furnaces/wood boilers shall be equipped with properly functioning spark arrestors or be in conformity with specifications with regard to the release of sparks.

F. All older model outdoor furnace/wood boiler installed with a valid permit shall not be required to be modified as a result of any new construction or changes to the vicinity of the unit.

### **Section 6 General Requirements Applicable to Newer Model Outdoor Furnaces.**

A. **Permitted locations** - Newer model outdoor furnaces/wood boilers shall be permitted in any zoning district of the Town of Throop when installed after the date of this law.

B. **Minimum Lot Setbacks** - The installed unit must meet a minimum set back from the nearest side and back property line and front yard placement standards as stated in section 5 (B).

C. **Permitted Fuel** - Only seasoned firewood and untreated lumber are permitted to be burned in any newer model outdoor furnace/wood boiler. Burning of any and all other materials, including, without limitation, rubbish, garbage, paint, furniture, composite shingles, construction debris, waste oil, products containing asphalt, treated, painted or stained wood, plywood, composite wood products, plastics, synthetic fabrics, foam, rubber including tires, newspaper, corrugated cardboards, office paper and container board in an outdoor furnace/wood boiler is strictly prohibited.

D. **Installation Instructions** - Installation of newer model outdoor furnaces/wood boilers must meet all New York State and Regional Fire and Safety Codes. Installation must be in accordance to the manufacturer's instructions, except where this Chapter specifies a more restrictive requirement. The homeowner must maintain the furnace according to the manufacturer's specifications in all regards. Also the manufactures specifications must be attached to the permit.

E. Any newer model outdoor furnace/wood boiler installed with a valid permit shall not be required to be modified as a result of any new construction or changes to the vicinity of the unit.

F. Outdoor furnace/wood boiler must meet all current or future Federal, State county or local restrictions. Any part of this law that is more restrictive will take precedence.

### **Section 7 Existing Outdoor Furnaces/Wood Boilers**

Any outdoor furnace/wood boiler in existence prior to the enactment of this section shall be permitted to remain provided that the owner complies with Section 5 (C) and (E).

### **Section 8 Health, Safety and Welfare of the Community**

An outdoor furnace/wood boiler shall be removed at the owner's expense if determined that any of the following conditions occur:

- A. Emissions from the outdoor furnace/wood boiler contain pollutants, air contaminates or particulates, or exhibit opacity in excess of those levels permitted by Chapter 111 of the regulations of the New York State Department of Environmental Conservation (6NYCRR parts 200-317) for satisfactory combustion devices.
- B. The by-products of burning wood in the unit such as ash or wood remnants are being disposed of in a matter that is creating a nuisance, adversely impacting ground water supplies or wetland resources, and is not in compliance with all applicable laws.

### **Section 9 Entry on Premises**

Any resident who has secured a permit to install an outdoor furnace/wood boiler and/or has a unit in existence prior to the enactment of this section will also be required to allow the Code Enforcement Officer/Zoning Officer or any other person designated by the Town to enter upon any and all real property on which there is located an outdoor furnace/wood boiler, for the purpose of enforcing the provisions of this Chapter, for inspection, and/or in response to a complaint made regarding the outdoor furnace/wood boiler.

### **Section 10 Agriculture Exemption**

A permit shall be required in order that the installation meets at least the manufacturer's instructions.

### **Section 11 Coordination with Zoning**

An outdoor furnace/wood boiler is an appliance and shall comply with any provisions of the Zoning Law not in conflict with provisions of this Chapter. Should any zoning provision, applicable to an accessory use, conflict with any provisions of this chapter, the provisions of this chapter shall be applicable.

### **Section 12 Penalties for Violations**

Failure to comply with any of the provisions of this Chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not more than twenty-five dollars (\$25.00) for the first offense and shall be compounded daily until said violation is brought into compliance. Any subsequent offense shall be punishable of not more than twice that imposed by the court for the first offense. The owner (s) of the premises (recorded on tax maps) upon which prohibited acts/violations occur shall be jointly and severally liable. Any fine imposed shall constitute a lien upon the real property where the outdoor furnace/wood boiler is located until paid.

### **Section 13 Removal**

If the provisions of this Chapter require the removal of an outdoor furnace/wood boiler, and the unit is not removed within 60 days of the event that requires removal, the Code Enforcement Officer/Zoning Officer must take reasonable steps to effect the removal of the

identified unit. The costs incurred by the Town to effect said removal (including any attorney's fees and administrative costs incurred by the Town to effect the removal) shall be charged to the owner of the property so affected within 30 days from the date said costs are forwarded to the owner identified in the latest tax roll by registered mail to the address where tax bills are sent. If said expense is not paid within said thirty (30) days' time frame then said expense, including applicable penalties outlined for delinquent taxes shall be charged to the property so affected by, including such expenses in the next annual Town of Throop tax levy against the property. Any outdoor furnace/wood boiler that has been out of service for two (2) years will be inspected by the Code Enforcement Officer to ensure that the unit is operating properly.

## **ARTICLE VI – DISTRICT REGULATIONS**

### **Section 600 – Dimensional Requirements**

The regulations for each district pertaining to minimum lot size, minimum lot width, maximum building coverage, minimum front yard depth, minimum side yard with, minimum rear yard depth, and maximum height shall be as specified in this Section, subject to the further provisions of Article V and Article VI.

- (1) All structures shall meet the minimum standards set forth in Section 600, Schedule II (See end of section).
- (2) In addition to the standards enumerated in Schedule II, the following shall apply:
  - (a) Every dwelling unit hereafter placed or constructed in the Town of Throop shall have a minimum habitable floor area of 1200 sq. ft.
  - (b) The length of a dwelling unit shall not exceed 2.5 times the width of said unit.
  - (c) When a lot is adjacent to another upon which a structure already exists, the front setback requirement may be equal to that of the existing structure instead of that of the standard set forth in Schedule II. When structures exist on lots on each side of the lot under consideration, the front setback alternative may be the average setback of the two structures or the greater of the two.

### **Section 601 Exception for Prior Lots**

The provisions of Section 600 shall not prevent the construction of a single family dwelling, provided the yard requirements are observed, on any lot which was lawful when created and which prior to the effective date of this Law was in separate ownership duly recorded by plot or deed.

### **Section 602 Traffic Visibility across Corners (clear sight triangle)**

- (a) On any corner lot, no wall, fence, or other structure shall be erected or altered, or no hedge, tree, shrub, or other growth shall be maintained which may cause danger to traffic or a public street by obscuring the view. Visual obstructions shall be limited

to a height of not more than two (2) feet above street level within the triangular area bounded by the street lines and a straight line drawn between points on each such street line twenty-five (25) feet from the intersection of said street lines.

- (b) Where a private access way intersects a public street, visual obstructions shall be limited to a height of not more than two (2) feet above street level within the triangular area bounded by the street line, the edge of the private access way, and a straight line drawn between points on both the street line and the edge of the access way ten (10) feet from the intersection of said lines.

**Section 603 Building Height Regulations**

Maximum height regulation shall not apply to farm buildings, church spires, chimneys, or other structures built above the roof and not devoted to human occupancy.

**Section 604 Essential Services**

The erection, construction, alternation or maintenance by public utilities or town or other government agencies of underground or overhead gas, electrical, or water transmission or distribution systems, communication system, including poles, wires, mains, drains, sewers, pipes,, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories reasonably necessary for the furnishing of adequate service by such public utilities or town or other governmental agencies or for the public health or safety or general welfare, but no including buildings.

**Section 605 Front and Side Yards of Corner Lots**

On a corner lot the street side yard shall equal the required front yard for lots facing that street.

**Section 606 Minimum Habitable Floor Area**

Every dwelling unit shall have a minimum area of 1200 square feet. Such area shall not include area contained in cellars, attics or garages.

**SCHEDULE II: DIMENSIONAL REGULATIONS**

ZONE	MINIMUM AREA	WIDTH	DEPTH	SIDE YARD	SETBACKS	FRONT YARD	HEIGHT	
					Rear Yard		Feet	Stories
R	1 family=20,000	100	200	15	15	75	35	2

	2 family=30,000	150	200	20	20	75	35	2
	3 family=60,000	200	300	25	25	75	35	2
	4 family=60,000	200	300	25	25	75	35	2
A	1 family=40,000	200	200	30	30	75	35	2
	2 family=60,000	200	300	30	30	75	35	2
C	40,000	200	200	15	15	75	35	2
I	40,000	200	200	40	40	75	35	2

Notes:

- 1 Special conditions listed in Article V may modify certain lot requirements
- 2 County Health Department requirements of water and sewer systems may modify lot requirements to greater than the minimums listed above
- 3 R = residential, A = agricultural, C = commercial, I = industrial
- 4 Front setback is measured from center of road
- 5 No industrial structure, operation, or accessory activity shall occur or be located nearer than 20 feet of a residential property line. This 20 foot area shall serve as a buffer and be maintained in a manner set by the Town at the time of approval of the required site plan

**ARTICLE VII – OFF-STREET PARKING AND LOADING SPACES**

**Section 700 – Required Off-Street Parking and Loading Spaces**

- (a) Parking Space - The following off-street parking provisions shall constitute the minimum space required for the following buildings and uses hereafter erected, converted, or otherwise established in any district.

- (1) Single Family, detached dwelling on individual lot. Two (2) off-street parking spaces for each dwelling.
  - (2) Multiple Family Dwelling, Two (2) parking spaces for each dwelling unit.
  - (3) Church, Library, Fire Station, Theater and Auditorium, One (1) off-street parking space for every four (4) seats provided for patrons, customers, members or guests.
  - (4) Retail and Office Uses, one (1) off-street parking space for each one hundred and fifty (150) square feet of gross floor area.
  - (5) Home Occupation, two (2) off-street parking spaces in addition to the requirement for the dwelling.
  - (6) Drive-In-Roadside Sales and Garage Sales, a sufficient number of off-street parking spaces to accommodate the maximum number of stopping vehicles at any one time, but in no case fewer than five (5) such spaces.
- (b) Two (2) or more establishments may join in meeting the requirements of this Article provided that the total area for parking is the sum of the individual requirements.
  - (c) Required off-street parking spaces shall be provided on the same lot with the principal use served.
  - (d) Driveways and parking areas for non-residential uses except home occupations shall include, within the property lines, turning areas so constructed and surfaced that any vehicle entering or leaving the property is not required to back onto the street.

**Section 701 Loading and Unloading space**

Off street loading and unloading space, sufficient to accommodate the maximum demand generated by the use of the lot, shall be provided on any lot on which building for commercial or industrial use is hereafter erected or substantially altered. All off-street loading and unloading and unloading spaces shall have an all-weather surface to provide safe and convenient access and use during all seasons.

**Section 702 Design of Off-Street Parking and Loading Facilities**

- (a) All parking facilities provided under this Article shall be located off the public right-of-way and shall contain an area of at least two hundred (200) square feet per automobile parking space exclusive of access ways, aisles, and maneuvering space. Each space shall have an all-weather surface installed to town specifications.
- (b) All illumination on parking lots shall be shielded so as not to produce a strong dazzling light upon abutting properties.
- (c) Off-street parking facilities existing at the effective date of this Law shall not subsequently be reduced to an amount less than that required under Law for a similar new building or new use. Off-street parking facilities provided to comply with



the provisions of this Law shall not subsequently be reduced below the requirements of this Law.

## **ARTICLE IX - NONCONFORMITIES**

### **Section 900 Definitions**

- (a) Nonconforming structure of lot – A structure or lot that does not conform to a dimensional regulation prescribed by this Law for the district in which it is located or to regulations for signs, off-street parking, off-street loading, or accessory building, but which structure or lot was in existence at the effective date of this Law and was lawful at the time it was established.
- (b) Nonconforming Use – A use of a building or lot that does not conform to a use regulation prescribed by this Law for the district in which it is located, but which was in existence at the effective date of this Law and was lawful at the time it was established.

### **Section 901 - Continuation**

The lawful use of any structure or land existing at the effective time of this Law may be continued although such use does not conform to the provisions of this Law except as otherwise provided in Law.

### **Section 902 – Alteration or Extension**

- (a) A use of land or structure which does not conform to the regulation shall not be altered, reconstructed, extended, or enlarged, except in accordance with the following provisions:
  - (1) Such alteration or extension shall be permitted only upon the same lot as in existence at the date the use becomes nonconforming.
  - (2) Any increase in volume, area, or extent of the nonconforming use shall not exceed an aggregate of more than twenty-five (25 per cent during the life of the nonconformity.
  - (3) For the purposes of this section “Volume” does not mean volume of business but rather an increase of cubic volume within a structure.

### **Section 903 - Restoration**

A structure damaged by fire or other cause must be repaired or reconstructed in accordance with the following:

- (a) No structure damaged by fire or other causes to the extent of more than fifty (50) percent of its fair market value shall be repaired, reconstructed or used except in conformity with the regulations of this local law. Structures with damage to the extent of fifty (50) percent or less of the fair market value may be reconstructed, repaired or used for the same nonconforming use.
- (b) The reconstructed structure shall not exceed the height, area or volume of the damaged structure except as provided in Subdivision 2 of Section 902A.
- (c) The reconstructed structure shall also conform to the provisions of Section 600.
- (d) Reconstruction shall begin within six (6) months from the date of damage and shall be carried on without interruption. If reconstruction does not begin within six (6) months, the status of non-conforming use is discontinued. (Land or building) A permit shall be required for such construction in accordance with Section 1001 of this Law.
- (e) Over seventy-five) percent damage: The building shall be removed within six (6) months after damage occurred.

#### **Section 904 Abandonment**

Whenever a nonconforming use has been discontinued for a period of six (6) months and such use has been abandoned, such use shall not thereafter be reestablished and any future use shall be in conformity with the provision of this Law.

#### **Section 905 Changes**

Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use only under the following conditions:

- (a) Such change shall be permitted only by special permit.
- (b) The applicant shall show that the nonconforming use cannot reasonably be changed to a use permitted in the district where such nonconforming use is located.
- (c) The applicant shall show that the proposed change will be less objectionable in external effects than the existing nonconforming use with respect to:
  - (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic.
  - (2) Noise, smoke, dust, noxious matter, heat, glare, vibration
  - (3) Storage and waste disposal
  - (4) Appearance.

#### **Section 906 Displacement**

No nonconforming use shall be extended to displace a conforming use.

## **Section 907 District Changes**

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

## **ARTICLE X – ADMINISTRATION**

### **Section 1000 Zoning Officer/Code Enforcement Officer – Duties and Powers**

The provisions of this local law shall be administered and enforced by the Zoning Officer/Code enforcement Officer who shall be appointed by the Town board. It shall be the duty of the Zoning Officer/Code Enforcement officer and he shall have the power to:

- (a) Receive and examine all applications for Zoning Permits and to refer applications to the Planning Board for review and recommendation when required by Town Local Law and, when deemed advisable by the Zoning Officer/Code Enforcement Officer.
- (b) Issue Zoning Permits and certificates of occupancy only when there is compliance with the provisions of this local law and with other Town local laws, provided, however, the issuances of a zoning Permit shall not be deemed a waiver of the requirements of any Town Ordinance or local law.
- (c) Receive applications to the Zoning Board of Appeals or the Town Board where appropriate.
- (d) Following refusal of a permit, to receive applications for appeals from alleged error of the Zoning Officer/code enforcement Officer and variances and forward these application to the Zoning Board of Appeals for action thereon.
- (e) Conduct periodic inspections and surveys to determine the compliance or non-compliance with the terms of this local law.
- (f) Issue stop, cease, and desist orders, and order in writing, correction of all conditions found to be in violation of the provisions of this local law. Such written orders shall be served personally or by mail upon persons, firms or corporations deemed by the Zoning Officer to be violating the terms of this local law. It shall be unlawful for any person to violate such order lawfully issued by the Zoning officer, and any person violating any such order shall be subject to the penalty and enforcement provisions of this law.
- (g) Investigate all complaints and take immediate action as necessary to enforce the provisions of this law.
- (h) With the approval of the Town Board, or when directed by them, institute in the name of the Town any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; to retrain, correct, or abate such violation, so as to prevent the occupancy of, or use

of, any building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

- (i) Revoke by order, a Zoning Permit issued under a mistake of fact or contrary to the law or the provisions of this local law.
- (j) Maintain a map showing the current zoning classification of all lands in the Town.
- (k) Upon request of the Town Board, The Planning Board or the Zoning Board of Appeals, present to such bodies facts, records, or reports which they may request to assist them in making of decisions.

### **Section 1001 Zoning Permits**

- (a) No person, firm or corporation shall commence any excavation, grading, earth filling or earth removal or commence any erection, construction, enlargement, alteration, removal, improvement, demolition, conversion, or change in the nature of the use or occupancy of any building or structure, or cause the same to be done, without first obtaining a separate Zoning Permit from the Zoning Officer of the Town of Throop for each such lot, such building or structure, except that no Zoning Permit shall be required for the performance of ordinary repairs which are not structural in nature, and which are not intended to or do not provide for a new extended use of the building, structure or premises.
- (b) No permit shall be considered as complete or as permanently effective until the Zoning Officer has noted on the permit that the work or occupancy and use has been inspected and approved as being in conformity with the provisions of this local law.
- (c) Zoning Permits shall not be required for:
  - 1. General maintenance work;
  - 2. Clearing woodlands;
  - 3. Painting;
  - 4. Tilling the soil;
  - 5. Raising animals in the Agricultural Zone.

However, all such activities shall otherwise conform to the requirements of this local law.

- (d) Zoning Permits shall be issued with one (1) year life, provided, however, that if work is not commenced within ninety (90) days after issuance of the Zoning Permit, the permit shall automatically expire and a new permit shall be required before such work or change in use commences.

### **Section 1002 Certification of Occupancy**

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Town Building and Codes Enforcement Officer. Such certificate shall provide the date and results of an inspection performed on the completed subject building or use and state that the building or proposed use thereof complies with the provisions of this local law and all other local laws and ordinances of the Town.

### **Section 1003 Application Requirements for Zoning Permits**

- (a) All applications for Zoning Permits shall be made in writing by the owner of the property, or the owner's authorized agent, on a form supplies by the Town, and shall be filed with the Town Clerk. The Application shall:
1. Include a statement as to the existing and proposed use of the building or land.
  2. Include a site layout drawn to scale showing the location, dimensions, and height of proposed buildings, structures, or uses and any existing buildings in relation to the property and street lines.
  3. If said dwelling or alteration exceeds one thousand (1000) square feet the plans for such construction or alteration shall contain an architect's stamp and be subject to a posted fee approved by the Town Board.
  4. Include the number, location, and design of parking spaces and loading spaces, if applicable.
  5. Include the size, dimensions, location, and methods of illumination for signs, if applicable.
  6. Include any additional plans and information reasonably necessary for the Zoning Officer to ascertain whether the proposed use, change in use, erection, alteration, or addition complies with the provisions of this local law
  7. If the applicant is a corporation, include names and addresses of all corporate officers, together with a certification that the corporation is in good standing in New York State.
- (b) No permit for any new use or construction which will involve the on-site disposal of sewage or waste and no permit for a change in use or an alteration which will result in an increase volume of sewage or waste to be disposed of on-side shall be issued until a certificate of approval has been issued by the Cayuga County Department of Health.

### **Section 1004 Issuance of Zoning Permits**

Zoning Permits shall be granted or refused within fifteen (15) days after the written application has been filed with the Zoning Officer, except as provided for Special Permit applications. Upon completion of the activity authorized by any Zoning Permit, the holder of such permit shall notify the Zoning Officer of such completion

All applications with accompanying plans and documents shall become, and be preserved as, a public record, subject to the disposition of the Town Board.

A Zoning permit shall become effective when the Zoning Officer has filed written approval of the permit application in the office of the Town Clerk.

### **Section 1005 Fees**

The Applicant for a Zoning Permit shall at the time of making application, pay to the Town Clerk for the use of the Town, a fee in accordance with a fee schedule adopted by resolution of the Town Board upon the enactment of this local law or as such schedule may be amended by resolution of the Town Board.

### **Section 1006 Flood Control Review Procedures**

- (a) The Zoning Officer for the town of Throop when reviewing applications for Zoning Permits, including the plans and specification for the proposed construction, will review all building permit applications to determine if the proposed construction is consistent with Local Law of the Year 1987 and is consistent with the need to minimize flood damage.

### **Section 1007 Construction or improvement in Violation of this Local Law**

If the Zoning Officer finds any new construction or improvements located upon the premises to be in violation of this local law, he or she shall forthwith transmit notice of such violation to the applicant, together with a request that the Applicant comply with this local law.

### **Section 1008 Failure to Complete Construction**

Any structure for which a zoning permit or building permit has been issued which remains partially complete with no substantial progress over a six (6) month period, shall be considered a violation of this local law to be remedied pursuant to section 1007 above.

## **ARTICLE XI - ZONING BOARD OF APPEALS**

### **Section 1100 Establishment of the Zoning Board of Appeals**

In order that the, objectives of this local law may be more fully and equitably achieved, and a means for competent interpretation of this local law is provided, there is established a Zoning Board of Appeals for the Town of Throop.

### **Section 1101 Membership, Term of Office**

The Zoning Board of Appeals shall consist of five (5) MEMBERS APPOINTED BY THE Town Board for overlapping five (5) year terms.

### **Section 1102 Procedures, Meetings, Records and Decisions**

- (a) Procedures – The Town Board shall appoint a chairperson and the Zoning Board of Appeals shall appoint a secretary and shall prescribe rules in accordance with the Statutes of the State of New York and this local law for the conduct of its affairs.
- (b) Meetings – Meetings shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals shall specify in its rules of procedures.
- (c) Records and Decisions – Minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case considered, together with the votes of the members, and the final disposition of each case. Every decision of the Zoning Board of Appeals shall bear the signatures of a majority of the members of the Zoning Board of Appeals on the original thereof. All decisions of the Zoning Board of Appeals shall be permanently filed with the Official Town records. The Zoning Board of Appeals shall promptly notify the Town Board, Planning Board, and Zoning Officer of all decisions and resolutions.

### **Section 1103 Notice of Hearings**

Upon filing with the Zoning Board of Appeals of an application for a variance or appeal from alleged error of the Zoning Officer, the Zoning Board of Appeals shall fix a reasonable time and place for a public hearing.

### **Section 1104 Powers and Duties – Appeals from Alleged Error of the Zoning Officer**

To hear and decide appeals, where it is alleged there is an error in any order, requirement, decision or determination, including, any order requiring an alleged violator to stop, cease, and desist, made by the Zoning Officer in the enforcement of this local law.

### **Section 1105 Power and Duties - Variances**

- (a) To authorize, upon appeal, in specific cases, such variance from the terms of this local law as will not be contrary to public interest. Where owing to special conditions a literal enforcement of the provisions of this local law will result in unnecessary

hardship, and so that the spirit of this local law shall be observed and substantial justice done.

(b) The applicant shall have the burden of proof in establishing the right to a variance.

(c) In reaching its decisions the Zoning Board of Appeals shall be guided by the following standards:

1. Area Variance

**First**

The applicant must show that unless a variance is granted, he will suffer “a significant economic injury.”

The manner in which the economic injury arose is a factor which may be considered. (If the injury is self-imposed, the applicant is not automatically denied an area variance, but neither is the Board of Appeals prevented from issuing one.)

The applicant’s burden of proving significant economic injury is not met by a showing of what the property would be worth if a requested area variance was granted.

**Second**

If the applicant shows significant economic injury, as indicated above, the burden is on the municipality of going forward with proof that the zoning restriction involved is reasonably related to a legitimate exercise of the zoning power.

If the municipality cannot show this, the significant economic injury referred to above entitles the applicant to the area variance.

When the variance sought is slight, it will be more difficult for the municipality to meet this burden.

**Third**

If the municipality shows that the zoning restrictions involved are reasonable related to a legitimate exercise of the zoning powers, the applicant has the burden of showing that the particular restriction is not related to the public health, welfare and safety, and that the variance will not adversely affect the surrounding community.

Where the variance sought is great, it will be more difficult for the applicant to meet this burden.

**Fourth, and last**



If the applicant cannot show that the particular restriction isn't related to the public health, safety and general welfare (that is, where the board finds that it is), variance should be denied unless the applicant shows that the zoning restriction in question, as applied to his property, deprives him of all reasonable use of his property. If the applicant can show this, he should be granted the area variance.

2. Use Variance

Before the Board may exercise its discretion and grant a variance upon the ground of unnecessary hardship, the record must show that (1) the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone; (2) that the plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood which may reflect the unreasonableness of the zoning ordinance itself; and (3) that the use to be authorized by the variance will not alter the essential character of the locality. Only when an applicant for a variance can prove all three conditions and the variance does not violate the general purpose of the zoning ordinance, should a variance be granted.

There is one more important consideration that must be noted before leaving the discussion of use variances. That is the so-called rules of "self-created hardship". It is well settled that a use variance cannot be granted where the "unnecessary hardship," complained of has been created by the applicant, or where she/he now complains of.

3. The Board of Appeals, in the grant of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved 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.

### **Section 1106 Powers and Duties – Special Permits**

- (a) To hear and decide upon applications for Special Permits for any of the uses for which this local law requires the obtaining of a Special Permit from the Zoning Board of Appeals.
- (b) The general requirements and standards applicable to all Special Permits are as follows:
  - 1. No such Special Permit shall be granted by the Zoning Board of Appeals unless it finds that the use for which such Special Permit is sought will not in the circumstances of the particular case and under any conditions that the

Zoning board of Appeals considers necessary or desirable, be injurious to the neighborhood or otherwise detrimental to the public welfare.

2. Such conditions which the Zoning Board of Appeals may impose shall be written in full on the Special Permit and be entered in full in the minutes of the Zoning Board of Appeals.
3. The special uses for which a Special Permit is required and for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this local law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
4. No Special Permit shall be issued except upon finds of fact and conclusions of law having been made by the Zoning Board of Appeals in satisfaction of all following standards.
  - i. That the proposed use will not, in the circumstances of the particular case and under any conditions that the Zoning Board of Appeals considers to be necessary or desirable, be injurious to the neighborhood or otherwise detrimental to the public welfare.
  - ii. That the proposed site plan must include a current survey made by a licensed land surveyor. The site plan shall show the location of all building, parking areas, traffic access and circulation drives, open spaces and landscaping. (Failure to adhere to the site plan precisely as presented or as otherwise modified by order of the Zoning Board of Appeals will constitute a violation of the Zoning Law.)
  - iii. That there is no violation of the Zoning Law on the subject premises at the present time.
  - iv. That the:
    - (a) location and size of the proposed use
    - (b) dimensions of the proposed buildings
    - (c) nature and intensity of the operation involved
    - (d) size of the site in relation to the proposed use
    - (e) location of the site with respect to existing streets
    - (f) location of the site with respect to future streetsare in harmony with adjoining land uses and with the orderly development of the district.

- v. That the location, geometric characteristics, elevation, nature, height, architectural features, texture, color, lighting, design, and compatibility of:
  - (a) buildings
  - (b) walls
  - (c) fences
  - (d) driveways
  - (e) paintings, lawns, and trees
  - (f) parking areas
  - (g) lighting
  - (h) topographic features
  - (i) natural vegetationwill not discourage the appropriate development and use of the adjacent lands or buildings or impair the value thereof and are all in harmony with adjacent present uses and permitted uses.
  
- vi. That the operations in connection with such proposed use will not be more objectionable to nearby properties by reason of:
  - (a) Noise
  - (b) Fumes
  - (c) Vibration
  - (d) Flashing lightsthan would be the operations of any specifically permitted use in that zoning district.
  
- vii. The uses and site plans comply with applicable district regulations and other general and special controls contained in this local law
  
- viii. The proposed use or site plan will not have an adverse impact upon the character or integrity of any land use within the immediate vicinity having unique cultural, historical, geographical, architectural, or similar characteristics.
  
- ix. The proposed use or site plan shall be developed harmoniously within the visual and physical context of the immediate environment.
  
- x. The proposed use or site plan shall be developed in such a way as to ensure maximum amenities available to the site based upon the consideration of the functional requirements of the proposed uses.

- xi. The proposed use or activity would be developed in such a way as to not impede the development or redevelopment of land use within the general vicinity or adversely affect existing land use with close proximity to the subject site.
  
- xii. The proposed use is adequately served with water, sewer, and drain age facilities; that the addition of the proposed use will not create an unreasonable burden on public facilities.
  - Xiv. Traffic Controls.
    - (a) Traffic controls for vehicular and pedestrian movement are designed to protect the safety of the general public and the occupants, employees, attendants, and other persons for whose benefit the use is intended. In making this determination, the Zoning Board of Appeals shall review, but need not be limited to the following considerations:
      - (1) Location and adequacy of parking and loading facilities
      - (2) Pedestrian rights-of-way
      - (3) Traffic regulatory devices
      - (4) Location, number and design of points of ingress
      - (5) Accessibility of emergency vehicles with particular emphasis on proximity of structures, no parking or no loading zones, or areas and provision of turning and free movement
      - (6) Storage facilities for snow
      - (7) Age and mobility of all persons for whose benefit the use is intended
      - (8) Speed limits upon and general character of public highways in close proximity.
  
- xv. The proposed use will be provided with adequate supporting services, such as fire and police protection, public and private utilities, and all other supporting governmental services necessary and appropriate to the proposed use.

**Section 1107 Who May Appeal**

Appeals to the Zoning Board of Appeals may be taken by any person or Town Official aggrieved or affected by any provision of this local law or by any decision including any order to stop, cease, and desist issued by the Zoning Officers in enforcing the provision of this local law.

## **Section 1108 Rules and procedures for Filing Appeals and Applications**

### **(a) General rules and procedures for appeals and applications**

1. Any appeal shall be made by filing same with the Zoning Officer within thirty (30) days after the date of the Zoning Officer's adverse decision.
2. All appeals and applications made to the Zoning Board of Appeals shall be in writing on standard forms prescribed by the Zoning Board of Appeals
3. All appeals and applications shall refer to the specific provisions of this local law involved.
4. All appeals and applications shall set forth names and addresses of all adjoining owners, including those across public roads from the subject property.

### **(b) Appeals from alleged error**

Appeals from alleged error of the Zoning Officer shall specify the alleged error, the section or sections of this local law to which it pertains, and the interpretation thereof that is claimed.

### **(c) Variance Appeals**

Appeals for variance from the strict application of this local law shall include the Zoning Permit application denied by the Zoning Officer together with a statement with any supporting evidence regarding the requirement listed in Section 1105.

### **(d) Special Permit Applications**

Applications for Special Permits shall include a Zoning Permit application with all information required therein and a statement with any supporting evidence regarding the merits of the proposed use at the proposed location and how the proposal complies with the general and specific requirements of this local law.

## **Section 1109 Review by Planning Board on Application for Special Permits**

The Planning Board shall request an advisory opinion from the Zoning Officer on any application for a Special Permit. The Planning Board to submit a report of such advisory opinion prior to the date of the public hearing held by the Planning Board on an application.

- (a) Any person or persons, jointly or severally aggrieved by a decision of the Zoning Board of Appeals or any officer, department, Board, or Bureau of the Town of Throop may apply to the Supreme Court for a review by a proceeding under Article 78 of the civil practice law and rules. Such proceeding shall be instituted with thirty (30) days after the filing of a decision in the office of the Town Clerk. The Court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his finds of fact and conclusion of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The Court at the special term shall itself dispose of the causes on the merits, determining all questions which may be presented for determination.

- (b) Costs shall not be allowed against the Zoning Board of Appeals unless it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.
- (c) All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

### **Section 1110 Fees**

Appeals and applications before the Zoning Board of Appeals shall be accompanied by a payment to the Town of Throop in accordance with a fee Schedule adopted by resolution of the Town Board upon enactment of this local law, or as such schedule may be amended by resolution of the Town Board.

## **ARTICLE XII – AMENDMENTS, REMEDIES, PENALTIES, SEVERABILITY CLAUSE, REPEALER, AND EFFECTIVE DATE**

### Section 1200 Amendments

The Town Board May from time to time on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this local law after public notice and hearing.

Review by Planning Agencies: as an aid in analyzing the implications of proposed amendments and to coordinate the effect of such actions on intergovernmental concerns, the Town Board shall refer proposed amendments to the Town and County planning agencies as required by Section 230-l and 239-m of the General Municipal Law and by this local law.

Public Hearing and Notice: No proposed amendment shall become effective until after a public hearing thereon, at which the public shall have an opportunity to be heard. The Town Board shall set, by resolution at a duly called meeting, the time and place for a public hearing on proposed amendments, and shall cause public notice to be given as required by the laws of New York State and specified below. If a proposed amendment is initiated by petition, the petitioner shall be responsible for publication of notice and for notice to adjacent municipalities, if necessary.

- (a) Publication of Notice in Newspaper: Notice of the time and place of the public hearing shall be published at least ten (10) days in advance of such hearing in the official newspaper. This notice shall provide a summary of the proposed amendment in such reasonable detail as will give adequate notice of its contents, indicating the place or places where copies of the proposed amendment may be examined and the time and place of the hearing.
- (b) Notice to Adjacent Municipalities: Written notice of any proposed amendment affecting property lying within five (500) hundred feet of an adjacent town shall be served in person or by mail upon the Clerk of such municipality at least ten (10) days

prior to the date of public hearing. Representatives of neighboring municipalities receiving notification of a proposed amendment shall have the right to appear and be heard at the public hearing thereon, but shall not have the right to review by a court.

### **Section 1201 Enforcement and Remedies**

In case any building or structure is erected, constructed, reconstructed, altered, converted, or maintained, or any building, structure, or land is used in violation of this local law or of any other local law, ordinance, or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business, or use in or about such premises; and upon failure or refusal of the proper local officer, board, or body of the town to institute any such appropriate action or proceeding for a period of then (10) days after written request by a resident taxpayer of the town so the proceed, any three (3) taxpayers of the town residing in the district wherein such violating exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board, or body of the town is authorized to do.

### **Section 1202 Fines and Penalties**

(a) For any and every violation of the provisions of this local law:

The owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists, shall be punishable according to the provisions of this law.

A violation of this local law is an offense punishable by fine not exceeding five hundred dollars (\$500.00) or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense. Conviction of a second offense, committed within five (5) years of the first offense, is punishable by a fine not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed six (6) months, or both. Conviction of a third or subsequent offense committed within a period of five (5) years is punishable by a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5000.00), or imprisonment for a period not to exceed six (6) months, or both. Each day's continued violation shall constitute a separate additional violation.

In addition, any person who violates any provision of this local law or who shall omit, neglect, or refuse to do any act required thereby shall severally, for each and every such violation, forfeit and pay a civil penalty of not more than five hundred dollars (\$500.00). When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional penalty.

The imposition of penalties for any violation of this local law shall not excuse the violation nor permit it to continue. The application of the above penalties or prosecution for a violation of any provision of this local law shall not prevent the enforced removal of conditions prohibited thereby. The expenses of the Town in enforcing such removal, including legal fees, may be chargeable, in addition to the afore-stated criminal and civil penalties, to the offender, and may be recovered in a civil court of appropriate jurisdiction.

- (b) Whenever a violation of local law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Officer who shall properly record such complaint and immediately investigate and report thereon to the Town Board.

### **Section 1203 Severability**

It is hereby declared to be the legislative intent that:

- (a) Should the courts declare any provision of this local law to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this local law shall continue to be separately and fully effective.
- (b) Should the courts find the application of any provision or provisions of this local law to any lot, building or other structure, or tract of land, to be invalid or ineffective, in whole or in part, the effect of such decision shall be limited to the person, property, or situation immediately involved in the controversy, and the application of any such provision to other persons, property, or situations shall not be affective.

### **Section 1204 Costs for Review**

In connection with any application for a Special Permit, Site Plan approval, Zoning Amendment, or Variance, the reviewing board may require the applicant to pay in advance into an escrow fund established to cover the reasonable costs of reviewing such application. Such costs may include staff costs or consultant fees covering planning, engineering, environmental analysis, wetland delineation, legal review, and other technical services required for a proper and thorough professional review of the application. No. permit shall be issued until all costs have been paid. The Town shall account for the expenditure of all such funds and shall promptly refund any unexpended funds within twenty (20) days of final action by the reviewing board.



**Section 1205 Repealer**

(Reserved)

**Section 1206 Effective Date**

The effective date of this local law shall be immediate.

## **Boundary Description of Residential District**

Beginning at the southeastern most point of the Town, proceed westerly along the Town's southern boundary to a point three hundred feet (300') west of Division Street; thence proceed north and west, parallel along Division Street to a point three hundred feet (300') east of Beech Tree Road; thence proceed southerly along and parallel to Beech Tree Road to a point due east of Whitehead Lane; thence proceed due west to a point on the north side of Whitehead Lane, three hundred feet (300') west of Beech Tree Road; thence proceed northerly along and parallel to Beech Tree Road to a point three hundred feet (300') south of Division Street; thence proceed in a straight line east to Division Street; thence proceed to the southwest intersection of Division Street and Beech Tree Road; proceed westerly along the south side of Division Street for four hundred feet (400'); thence proceed southerly three hundred feet; thence proceed in a straight line, parallel to Division Street to a point directly opposite and southeast of the northeast intersection of McDonald Road and Turnpike Road; thence proceed north along the east side of McDonald Road for three hundred feet; thence proceed easterly and parallel to Turnpike Road to a point three hundred feet (300') west of Powers Road; thence proceed north along and parallel to Powers Road for a distance of one-half (1/2) mile; thence proceed northeasterly in a straight line to a point three hundred feet (300') east of Powers Road; thence proceed southerly and parallel to Powers Road to a point three hundred feet (300') north of Turnpike Road; thence proceed in a straight line to a point three hundred feet (300') west of Robinson Road; thence proceed northerly and parallel to Robinson Road and State Rt. 38 to a point on the Town's northern boundary, three hundred feet (300') west of State Rt. 38; thence proceed east to State Rt. 38 and south along it for one-half (1/2) mile; thence proceed northeast three hundred feet (300') east of State Rt. 38; thence proceed southerly and parallel to State Rt. 38 to a point west and directly opposite the intersection of Sine Road and Centerport Road; thence proceed in a straight line easterly to said intersection; thence southerly along the western edge of Centerport Road to its intersection with Reyer Road; thence proceed easterly along Reyer Road to a point three hundred feet (300) east of Centerport Road; thence proceed southerly and parallel to Centerport Road to a point three hundred feet (300') north of Turnpike Road; thence proceed easterly to North Brook; thence proceed southerly along North Brook to Turnpike Road; thence proceed along Turnpike Road easterly to the Town's eastern boundary; thence proceed southerly along said boundary to the point of beginning.

Within this area, the area described as the Turnpike Road/Rt. 38 commercial area elsewhere in this description is excluded.

### **Boundary Description of Agricultural District**

All lands within the Town of Throop, not included in the description of the Commercial Industrial, Residential or Planned Development Districts are considered to be in the Agricultural District.

### **Boundary Descriptions of Commercial and Industrial Districts**

#### Turnpike Road/Donovan Road area

Beginning at a point on Donovan Road one thousand two hundred sixty feet (1260') north of the northeast intersection of Donovan Road with Turnpike Road, proceed in a straight line one thousand feet (1000') east; thence in a straight line two thousand four hundred seventy feet (2470') South; thence west two thousand feet (2000') thence in a straight line north to a point one thousand one hundred sixty feet (1160') west of the southwest intersection of Canoga Road with Turnpike Road; thence in a straight line north to a point one thousand feet (1000') west of the beginning point; thence in a straight line east to the point of beginning.

Lands included in total or in part within this boundary are parcels: 107-00-01-04, 05, 12, 05.11 and 100.00-01-25111, 25.5 26, 28, 55, and 56 as shown on Cayuga County Tax Maps as of April 13 1989.

#### Turnpike Road/Rt.28 area

Beginning at a point at the northeast intersection of Turnpike Road and State Rt.38, proceed north along State Rt. 38 two hundred fifty feet (250'); thence in a straight line easterly two hundred seventy feet (270'); thence in a straight line southerly to the edge of Turnpike Road; thence in a straight line westerly two hundred forty-seven feet (247') to the point of beginning.

Included with this boundary is parcel 101.00-01-39.1 as shown on Cayuga County Tax Maps as of April 13, 1989.

#### North Division Street/Beech Tree Road area

Beginning at a point at the southwest intersection of Beech Tree Road and North Division Street proceed southerly along Beech Tree Road one thousand feet (1000'); thence proceed in a straight line northwesterly three hundred feet (300'); thence proceed southerly, parallel to Beech Tree Road three hundred fifty feet (350') to the boundary separating Cayuga County Tax Parcels 101.04-01-38 and 101.04-01-39; thence proceed northwesterly and southerly along said boundary to the southernmost boundary of parcel 101.04-01-39.1; thence proceed westerly and northerly along said boundary of parcel 101.04-01-39.1 to a point three hundred feet (300') south of North Division Street; thence proceed easterly and parallel to North Division Street to

a point one thousand one hundred forty-five feet (1145') from the point of beginning; thence proceed in a straight line northerly to the south side of North Division street; thence proceed along North Division Street easterly to the point of beginning.

Included within this boundary is part of parcel 101.00-01.39.1as shown on Cayuga County Tax Maps as of April 13, 1989.