

# TOWN of ELIZABETHTOWN LAND USE LOCAL LAW AND DEVELOPMENT REGULATIONS (LULLR)

## FOR THE HAMLET OF ELIZABETHTOWN, NY

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## **ARTICLE 1 INTRODUCTORY PROVISIONS**

### **1.01 SPECIFIC PURPOSES AND OBJECTIVES**

In addition to the general object and the purposes referred to in Section 1.01. This local law is adopted for the hamlet of Elizabethtown for the following related and more specific purposes:

1. To fulfill community desires for natural resource conservation and maintenance of the community's landscape.
2. To meet the community's goals to create a regulatory process that will retain the natural, economic, community character, and social assets of the hamlet area of Elizabethtown.
3. To create a regulatory process that is comprehensive and provides all the information necessary to make a sound decision within the framework of the law and consistent with the adopted Town of Elizabethtown Comprehensive Plan.
4. To utilize the data collected on the hamlet area of Elizabethtown's existing conditions and allow the Town to evaluate the capacity to accommodate additional growth in the hamlet area.
5. The Town seeks to maintain existing business owners and be attractive to new business.
6. The Town welcomes community development that is in keeping with the community character while also being contemporary and competitive with neighboring communities.
7. The Town seeks to foster a family-friendly community atmosphere.

Specifically, the purpose and objective of this Land Use Law shall be to promote the health, safety, and general welfare of the hamlet by channeling and directing growth, and by regulating and restricting the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yard, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, to the maximum extent permissible within the proper exercise of the police power as delegated by the Town Board and the Adirondack Park Agency Act.

It is the further purpose and objective of this Land Use Local Law to insure optimum overall conservation, protection, development, and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological, and natural resources of the Adirondack Park that are located within the hamlet area of Elizabethtown, and to satisfy the criteria for approval by the Adirondack Park Agency of the local land use program pursuant to Section 807(2) of the Adirondack Park Agency Act.

### **1.02 AUTHORITY and EFFECTIVE DATE**

The Town of Elizabethtown of the State of New York in the County of Essex, under authority of the Town Law Article 16 and the Municipal Home Rule Law Section 10(1) (d) (3) of the State of New York, hereby enacts and publishes the following hamlet of Elizabethtown Land Use Local Law and Development Regulations, but insofar as this Law is inconsistent with Provisions of Article 16 of the Town Law, such provisions of Article 16 of the Town Law are superseded. This law shall become effective upon filing with the New York State Department of State.

### **1.03 INTERPRETATION**

Where the conditions imposed by this Local Law are less restrictive than comparable conditions imposed by any other provisions of this Local Law or any other ordinance, resolution, law, or regulation of Article 27 of the Executive Law of the State of New York, the provisions that are more restrictive shall govern.

### **1.04 SEVERABILITY**

If any provision of the Local Law shall be invalid, such invalidity shall apply only to the article, section, subsection, or provisions judged to be invalid and the rest of this Local Law shall remain valid and effective.

### **1.05 Reserved**

### **1.06 APPLICABILITY**

1. This Land Use Local Law shall apply to all lands only within the zoning regulated areas of the Town of Elizabethtown located within the hamlet of Elizabethtown except for Article 9. Article 9 is applicable to all areas in the Town of Elizabethtown as shown on the adopted FIRM Floodplain Map. All private owned land in the zoning regulated area of Elizabethtown, regardless of the Adirondack Park Act Class A or Class B regional review requirements, shall be subject to this Land Use Local Law as set forth herewith.
2. No land use or development shall be undertaken or maintained except in conformity with all provisions contained in this Land Use Local Law relating to the Land Use District in which the land, water, site, structure, or use is located or is proposed to be located, and in conformity with the permit requirements of the Land Use Local Law, as applicable. Where this Land Use Local Law is more restrictive than covenants or agreements between parties or other rules or regulations or ordinances or the Adirondack Park Agency, the provisions of this Land Use Local Law shall control, provided that nothing in the Land Use Local Law shall impair or affect the validity of any covenants or agreements between parties.

### **1.07 CONFLICT OF INTEREST**

No member of the Planning Board or Zoning Board of Appeals shall participate in any decision of any such board in which he or she has a special pecuniary or other personal interest, whether arising out of ownership of real property, business, or family interest or otherwise.

### **1.08 ADIRONDACK PARK LAW PROVISIO**

The Land Use Local Law for the area of Elizabethtown regulated by zoning shall be guided by the Adirondack Park Act of the State of New York. Nothing in this Land Use Local Law shall be deemed to supersede, alter, or impair the jurisdiction of the Adirondack Park Agency, pursuant to the Adirondack Park Agency Act, to review and approve, approved subject to conditions, and disapprove those land uses and developments and subdivisions of land defined therein as Class A regional projects, or otherwise to

supersede, alter, or impair the statutory function, duties, and responsibilities of that Agency with regard to matters involving a municipality in which an Agency-approved local land use program has been validly adopted or enacted. Provided that the Adirondack Park Agency cannot, in the context of its Class A regional project review, override a more stringent local decision not to permit a given land use or development.

## **1.09 ZONING MAP**

The location and boundaries of the established zoning districts are shown on the map entitled 'Land Use Map. This map together with everything shown on it and all future amendments to it is hereby adopted and declared to be an appurtenant part of this Law. This land use map shall be filed with the Town Clerk of the Town of Elizabethtown and shall constitute the official "Land Use Map" for the hamlets' zoning regulated area.

The Adirondack Park land use and development map is hereby made a part of this Local Law for the zoning regulated area of Elizabethtown located in the hamlet of Elizabethtown. This map, designated as the official Adirondack Park Land Use and Development Map, amended from time to time pursuant to Subdivision Section 805 of the Adirondack Park Act, shall accompany this Land Use Local Law. The latest version of the Adirondack Park Map shall be on file with the Town Clerk, along with the Land Use Map for the zoning regulated area of Elizabethtown.

Amendments to the Local Land Use Map shall only be made upon approval of the Adirondack Park Agency and upon appropriate notification and hearings as provided for in in this local law and the State of New York Town Law.

## **1.10 INTERPRETATION OF LAND USE DISTRICT BOUNDARIES**

In making a determination where uncertainty exists as to boundaries of any land use districts shown on the land use map, the following rules shall apply:

1. Where district boundaries are indicated as approximately following the center of streets or highways, street lines, or highway right-of-way lines, such centerlines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
2. Where district boundaries are indicated that they are approximately parallel to centerlines or street lines of streets, the centerlines of right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the land use map.
3. Where district boundaries are indicated as approximately following a stream, lake, or other body of water, such stream, lake, or body of water shall be construed to be such district boundary.
4. Where district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries.

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5. Whenever any street, alley, or public way is vacated in the manner authorized by law, the district adjoining each side of such street, alley, or public way shall automatically be extended to the center of the former right-of-way and all of the area included in the vacated area shall henceforth be subject to all regulation of the extended district.
6. In the event that none of the above rules are applicable, or in the event that further clarification or definition is necessary or appropriate, the location of a district boundary shall be determined by the Zoning Board of Appeals.

### 1.11 LAND USE DISTRICTS

1. Establishment of Land Use Districts  
In order to fulfill the purpose of this Law. The Town of Elizabethtown establishes the following land use districts for the hamlet of Elizabethtown:
  - Hamlet Residential (HR)
  - Hamlet Service (HS)
  - Hamlet Protectorate (HP)
  - Floodway Special District (FS)
  - Mixed Use District (MU)

### 1.12 PUBLIC USES OF LAND

1. Public Uses Municipal  
The public municipal uses in the Land Use Local Law include the following uses and provision:
  - a) Services
  - b) Open Space and Parks
  - c) Scenic Protectorates
  - d) Land Protectorate

In carrying out the Land Use Local Law, the Town shall reserve land areas in its public domain to provide for the enjoyment of residents in the community. When lands are proposed for municipal public use, the standards set forth in his Land Use Local Law shall be complied with.

2. Public Uses, State  
The Land Use Map shows state designated and owned land uses. Land uses activities within these shall be in accordance with the Adirondack Use and Development Plan, and shall include use areas as follows:
  - a) Intensive Use Areas
  - b) Wild Forest Areas
  - c) Wilderness Areas

### 1.13 GENERAL USE REGULATIONS

1. All land uses listed as “permitted” in any given Land Use District shall be allowed without further Town of Elizabethtown Planning Board review. Other permits including but not limited to APA

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and local building permits may still be required. A use shall be permitted in a given Land Use District if it is listed in this Land Use Local Law and specifically under “Permitted Uses.”

2. Special Uses: A use listed as a “Special Use” in this Law may be permitted subject to Planning Board approval of a site plan and approval of a special use permit. The Planning Board may require specific conditions on the special permit use as are directly related to and incidental to the proposed special use permit and which may be necessary to assure continual conformance to all applicable standards and requirements.
3. Accessory Uses: When customarily adjunct to a primary use, shall be permitted. Such accessory use shall not increase any existing violations.
4. Prohibited Uses: Any use which is not specifically permitted after meeting any permit or special requirements under this Land Use Local Law shall be prohibited. All uses not included in the Use Schedule of Article 3 shall be considered prohibited.

## ARTICLE 2

### 2.01 CONSTRUCTION OF LANGUAGE

Except where specifically defined herein, all words used in this Local Law shall carry their customary meaning unless otherwise indicated. For the purposes of this Local Law, certain terms and works shall be interpreted or defined as follows:

1. The word person includes a firm, association, organization, partnership, trust company, or corporation, as well as an individual.
2. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
3. The word shall is always mandatory.
4. The word lot includes the word plot or parcel.
5. The word used or occupied as applies to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.
6. Wherever herein the term “Village” is used, it shall mean the geographic area comprising the former Village of Elizabethtown, also referred to as the hamlet of Elizabethtown. This is the area in which these regulations apply, as this is the zoned area.

### 2.02 DEFINITIONS

Accessory Structure means any structure or a portion of a main structure located on the same premises and incidental and subordinate to the main structure or principal use and that customarily accompanies or is associated with such main structure or principal use.

Accessory Uses When customarily adjunct to a primary use, shall be permitted. Such accessory use shall not increase any existing violations.



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Accessory Apartment - A second dwelling unit, either in, or added to, an existing single-family dwelling, or in a separate accessory structure such as barns and garages on the same lot as the existing single-family dwelling, for use as a complete, independent living facility with provisions in the accessory apartment for cooking, eating, sanitation, and sleeping. Such an apartment is a secondary and subordinate use to the principal dwelling. A mobile home or single-wide manufactured home shall not be considered as an accessory apartment.

Adirondack Park means lands lying within the area described in Subdivision One of Section 9-0101 of the Environmental Conservation Law of the State of New York, including any future amendments thereto.

Adirondack Park Agency (APA) is the Agency created by Section Eight Hundred-three of Article 27 of the Executive Law of the State of New York.

Adirondack Park Agency Act means Article 27 of the Executive Law of the State of New York, including any future amendments thereto.

Agriculture Use means any management of any land for agriculture, including raising of cows, horses, pigs, poultry, and other livestock, silviculture, and animal and poultry husbandry. This term also includes the sale of products grown or raised directly on such land, and including the construction, alteration, or maintenance of fences, agricultural roads, agricultural drainage systems, and farm ponds. The term shall not include the slaughtering of animals or poultry for commercial purposes except such as are grown or raised on the premises.

Alteration means any structural change, rearrangement, change of location, or addition to a building, other than repairs and modification in building equipment in the usual course of maintenance.

Apartment means one or more rooms with private bath and kitchen facilities constituting an independent, self-contained dwelling unit in a building. See also accessory apartment and multi-family dwellings.

Applicant means the person(s), corporation, agency, or other legal entity seeking site plan approval, special use or building permits; certificates of occupancy; variances; subdivision approval; or zoning amendment.

Auto Sales and Service means any building, premises, and land in which or upon which a business, service, or industry involving the sales, maintenance, servicing, repair, or painting of vehicles is conducted and rendered

Bed and Breakfast Inn means an owner-occupied dwelling unit within which are provided overnight accommodations for transient guests in a maximum of four guest rooms and which may include the serving of breakfast but no other meals to such guests.

Building means any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing, or enclosure of persons, animals or chattel. The term "building" shall include the term "structure" as well as receiving and transmitting commercial, radio, television, cellular and other utility communication towers, mobile homes, and modular homes.

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Building Area means the total of areas taken on a horizontal plane at the main finished grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces, and steps. All dimensions shall be measured between exterior faces of walls.

Building Height means the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and the average height between eaves and ridge for other types of roof.

Building Permit means written permission issued by the Building Inspector and/or Code Enforcement Officer for the construction, repair, alteration, or addition to a structure.

Class A Regional Project means a land use or development or subdivision of land that is classified and defined as such in Section 810 of the APA Act and set forth in Article 5, Section 5.04 and Article 8.

Class B Regional Project is a land use or development or subdivision of land that is classified and defined as such in Section 810 of the APA Act and set forth in Article 5, Section 5.04 and Article 8.

Cluster Development means a design technique or zoning strategy that involves grouping houses on smaller lots in one area of a development while preserving the remaining land on the site for recreation, common open space, or protection of environmentally sensitive areas.

Change of Use means the change of use or occupancy of land, or buildings, structures, or other improvements on land, from either residential, commercial or industrial to one of the other uses, or change in the nature, substance or intensity of the same use including, but not limited to, changes in use which require the issuance of a Certification of Occupancy pursuant to the New York State Building and Fire Code. Any use that substantially differs from the previous use of a building or land. Chapter 3 (Use and Occupancy Classification) of the Building Code of New York State shall be used to define uses that are not specifically defined in this local law. Change of occupancy or change of ownership shall not be construed as a change of use.

Commercial-Residential means a building or group of buildings, whether detached or in connected units, to be used or which are used, rented, or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

Complete Application means an application for development that includes all required documents and submittals pursuant to this law, and where a negative declaration has been made or a draft environmental impact statement has been accepted by the reviewing agency.

Comprehensive Plan means a study of existing conditions, their analysis, and implications of future development in the Town, including existing land use, natural resources, landscape quality and features, the population and economic base, transportation and highways, the community facilities and services, and the Adirondack Park Plan as it applies to the community. This comprehensive document in its parts and in its totality shall constitute a guideline and requisite for future changes and development in the Town.

Cultural Facility means an establishment that documents social, religious, intellectual and artistic structures and manifestations that characterize a society, and includes but is not limited to museums,

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art galleries, botanical and zoological gardens, and structures related to historic, educational or other artistic interests.

Day Care Facility means any program or facility licensed by the State of New York Office of Children and Family Services and which has a program caring for children of any age for more than three hours per day per child in which child day care is provided in a private residence for three to six children as per New York State Social Services Law § 390. See also Adult Day Care.

Dwelling Unit means a living space for one or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit.

Dwelling, Single-Unit means a building providing a living space for a single housekeeping unit. Mobile homes, single and double-wide manufactured homes shall be considered a different category of dwelling as per definitions below. Manufactured modular homes shall be considered a single-unit dwelling.

Dwelling, Two-Unit means a building providing two (2) dwelling units that are independent of each other and do not share common kitchen or bathroom facilities.

Dwelling, Multi-Unit means a building used and providing dwelling units or living spaces for three (3) or more living units living independently of one another, and including the conversion of an existing single dwelling unit converted for occupancy in separate living quarters of more than one family.

Easement means the right to use the land of another, obtained through the purchase or other acquisition of use rights from a landowner, for a special purpose consistent with the property's current use.

Environmental Assessment Form means a form used to determine whether a project will have significant environmental impacts. Depending on the site's environmental features and the project's magnitude, either a short or full SEQRA Environmental Assessment Form will be completed.

Farm Animal – any domesticated animal typically used in farms such as but not limited to hen chickens, pigs, cows, horses, sheep, goats, donkeys, and llamas. Cats, dogs, birds and other domesticated animals typically used as pets are not considered a farm animal.

Fence means an artificially constructed barrier of any material or combination of materials erected to enclose, screen or separate areas.

Flood Hazard Area means those areas subject to inundation and is further defined as those areas which would be subject to flooding by the 100-year flood or that flood which would have a one percent (1%) chance of occurring each year.

Flood proofing means any combination of structural and non-structural alterations, additions, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary structures, facilities, and contents of buildings.

Floodway means that portion of the flood hazard areas, to include the channel of the watercourse and adjacent land areas, required to carry and discharge the 100-year flood without increasing the flood

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elevations more than one foot. (Reference: Federal Emergency Management Agency Flood Map, Community-panel number 361388 0008)

Floodway Fringe means the remaining portion of the flood hazard areas excluding the floodway.

Food Processing, Aggregation and Food Hub means a facility designed to accept, process, and store locally or regionally produced food and to be the point from which those food items are distributed to other locations for retail or wholesale trade.

Forestry Use means any management, including logging of a forest, woodland, or plantation, and related research and educational activities or maintenance of wood roads, skid ways, landing, fences, and forest drainage systems.

Frontage means that part of a property bounded by either a public or private road, but not a driveway.

Garden Apartment means a two- or three-story multi-unit dwelling.

Gasoline Station means a building or land that is used for the sale of motor fuel and motor vehicle accessories, and which may include facilities for lubricating, washing, or servicing motor vehicles, but not including painting or major repairs.

Health Care Facility means a structure where health care is provided. Health facilities range from small clinics and doctor's offices to urgent care centers and hospitals.

Heavy Industrial Uses means any use or activity, which generates significant volumes of smoke, odors, noise, or polluting wastes and is not compatible with other uses in the Town of Ancram. Examples of "heavy industry" which are intended to be included in this definition are: chemical manufacturing; exploration for natural gas; extraction of natural gas; natural gas processing facilities (as defined elsewhere in this Law) and/or compressor stations; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; coal processing; and steel manufacturing. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to the activities identified in the examples.

Generic examples of uses not intended to be included in the definition of "heavy industry" are: milk processing plants; dairy farms; office and communications uses; garment factories; woodworking and cabinet shops; automobile repair shops; wineries and breweries; warehouses; equipment repair and maintenance facilities; parking lots and parking garages; light manufacturing or light industrial facilities (as defined elsewhere in this Law); agriculture; and surface gravel and sand mining. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

High Intensity Public Uses includes but is not limited to public works garages, fire stations, or other similar public uses that may generate heavy traffic, excessive noise, or other public disturbances at times.

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Home Occupation, Major means a business activity resulting in a product or service for financial gain, conducted wholly or partly within a dwelling unit or accessory structure as a non-residential use that is secondary and subordinate to the use of the dwelling for living purposes and which does not change the residential character of the dwelling unit or vicinity. The enterprise is conducted by an owner/operator who must reside on the premises and does not employ more than four persons, in addition to the owner/operator and any other family participants in the home occupation who reside on the premises. Exterior evidence of a major home occupation can include a sign, customers, and clients and other business associates entering the premises daily, parking of vehicles, delivery truck visits or other traffic beyond that expected of a typical residence.

Home Occupation, Minor means a business activity resulting in a product or service for financial gain, conducted wholly or partly within a dwelling unit or accessory structure as a non-residential use that is secondary and subordinate to the use of the dwelling for living purposes and which does not change the residential character of the dwelling unit or vicinity. The enterprise is conducted by an owner/operator who must reside on the premises and does not employ more than two persons, in addition to the owner/operator and any other family participants in the home occupation who reside on the premises. Exterior evidence of a minor home occupation is limited to a sign or lawn plaque. Few customers, and clients and other business associates enter the premises daily. The business does not store business products, equipment or vehicles outside. The enterprise normally produces only household quantities and types of waste and does not involve delivery truck visits or other traffic beyond that expected of a typical residence.

Hotel/Motel means commercial overnight sleeping accommodations, consisting of a building or group of buildings. Additional accessory services may be included such as restaurants, meeting rooms, entertainment and recreational facilities. Also, a building, or any part thereof, which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms.

Industrial Use means any manufacturing, production, or assembly of goods or material, including any on-site waste disposal areas directly associated with an industrial use. This term does not include mineral extractions, private and commercial sand and gravel extraction, sawmills, chipping mills, pallet mills, and similar wood-using facilities.

In Existence means (a) with respect to any land use or development that has been substantially commenced or completed, and (b) with respect to any subdivision or portion of a subdivision, that such subdivision or portion has been substantially commenced and that substantial expenditures have been made for structures or improvements directly related thereto.

Junk includes but is not limited to vehicles, tires, vehicle parts, equipment, paper, rags, metal, glass, building materials, household appliances, brush, wood, and lumber.

Junkyard means any area on a lot or parcel or part thereof, used for the storage, collection, processing, purchase, sale, or abandonment of wastepaper, rags, scrap metal, or other scrap or discarded goods, materials, machinery, or two or more unregistered, inoperable motor vehicles or other type of junk. It also includes a lot or parcel or part thereof where any scrap, waste, reclaimable material or debris, whether or not stored or used in conjunction with vehicle dismantling, processing, salvage, storage, bailing, disposal, or other use or disposition.

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Land Protectorate means those lots or parcels of land, or parts thereof that are included in the Hamlet Protectorate District.

Land Use Area means those areas delineated on the official Adirondack Park Land Use Plan and Development Map adopted under Article 27 of the Executive Law of the State of New York and designated thereon as "Hamlet" and delineated on the Adirondack Park Land Use Plan and Development Map, such areas also being coterminous with the boundaries of the former Village of Elizabethtown as they existed at the date of Village dissolution, December 31, 1980.

Land Use or Development means any construction or other activity that materially changes the use or appearance of land or a structure or the intensity of the use of land or structure. Land use and development shall not include any landscaping or grading which is not intended to be used in connection with another land use, or ordinary repairs or maintenance of interior alterations to existing structures or uses.

Land Use Plan means Article 1 and Article 3 of the Land Use Local Law and Development Regulations that divide the former village area of the town into land use districts, delineating areas of similar uses and requirements allowing certain permitted uses with no prerequisite review by the Planning Board and certain conditional uses requiring review by the Planning Board. The Land Use Plan shall serve as that part of the Local Law directing future change and growth in the community.

Light Industrial means a use in which a product is manufactured but the manufacturing process and facility have minimal impact on the property where the manufacturing takes place and almost none on adjacent properties, with qualities including:

1. No creation of noise, vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line;
2. No change to the character of the surrounding neighborhood;
3. Adequate screening of outside storage of goods, materials, or equipment;
4. Signs limited in size;
5. No chemical, metal, or hazardous waste, or potential contamination of surface or groundwater;
6. Adherence to all applicable commercial design and other standards cited in this local law.

Light industrial excludes higher intensity public uses including but not limited to public works garages, fire stations, or other similar public uses that may generate heavy traffic, excessive noise, or other public disturbances at times.

Lighting, down facing, fully shielded fixture means an outdoor light fixture that is designed to direct light down and not out to prevent glare or light pollution. Fully shielded luminaires emit no direct up-light, and limits the intensity of light in the region between 80° and 90°.

Lodging House is a facility in which rental-sleeping accommodations are provided and in which meals may be supplied as part of the fee. A dwelling, or part thereof, in which lodging is provided by the owner or operator to one or more boarders.

Lot is a parcel of land occupied or to be occupied by only one main building or uses customarily incidental to it. A lot shall be of sufficient size to meet minimum requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

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- a) A single lot of record
- b) A portion of a lot record
- c) A combination of complete lots of record, or complete lots of record and portions of record, or of portions of lots of record.
- d) A parcel of land described by metes and bounds.

Lot, corner means the lot at the intersection of two streets or a lot abutting a curved street where the tangents to the curve at the points of intersection of the side lot lines intersect at an angle less than 135 degrees.

Lot Coverage means the percentage of the parcel occupied by one or more buildings. Accessory buildings shall be considered when determining lot coverage.

Lot width means the distance measured along the boundary of a lot abutting on a street and/or water body. On a curve, because of the design of a street or turnaround, the width of the lot shall be measured at right angles to the street line, at the building line and meet the minimum requirements in Article 3 of this Local Law.

Manufactured Home, double-wide means a single-family dwelling unit, transportable in two sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is a minimum of 700 or more square feet, and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. A recreational vehicle is not included in this definition. Manufactured homes differ from modular or industrialized housing.

Manufactured Home, single-wide means a single-family dwelling unit, transportable in one section, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is 700 or more of square feet, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. A recreational vehicle is not included in this definition.

Manufactured Home Park means a residential use in which two or more manufactured homes (double-wide, single-wide, or mobile home) are located on a single property. It is a site containing spaces with required improvements and utilities that are leased for the long-term placement of manufactured homes and may include services and facilities for residents.

Manufactured Housing means factory-built, single-family structures that meet the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. Sec 5401), commonly known as the HUD code.

Mobile Home means a manufactured homes built prior to the adoption of the HUD Code.

Modular Home means a structure intended for residential use and manufactured off-site in accordance with the local or state code. Modular homes include those that are built in pieces or panels and then moved and constructed on-site.

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Noise, Nuisance means an undesired audible sound that interferes with the enjoyment and use of property. For purposes of this local law a decibel level exceeding 60 dB measured at the property boundary shall be a nuisance noise.

Non-conforming Structure means any structure which is in existence within a given land use district on the effective date of this Local Law, but which is not in conformance with the dimensional regulations for that land use district as listed in Article 3 of the Land Use Local Law and Regulations.

Non-conforming Use means any use which is in existence within a given land use district on the effective date of this Local Law but which is not an accessory, permitted, or conditional use for that land use district as listed in Article 6 of this Land Use Local Law, or a use for which a variance has been previously granted.

Non-Conforming Dimension or Bulk means that part of a building, other structure or tract of land which does not conform to one or more of the applicable dimensional regulations of this Local Law.

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

Open Space means land left in a natural state for conservation or for scenic purposes, devoted to the preservation of distinctive ecological, physical, visual, architectural, historic, geologic or botanic sites. It shall also mean land left in a natural state and that is devoted to active or passive recreation. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, used for playgrounds or manicured recreational lands such as ball fields, lawns, or occupied by any structure except agricultural buildings. Open space may be included as a portion of one or more large lots provided the lot(s) are greater than 5 acres in size, and are contiguous to form a larger un-fragmented open space area, or may be contained in a separate open space lot but shall not include private yards within 50 feet of a principal structure.

Parking Lot, Commercial means an off-street, ground-level open area that provides temporary parking for motor vehicles and that is associated with offices, stores, multi-family dwellings or other uses that require parking.

Parking Lot, Public means an area reserved for the parking of motor vehicles and operated as for a profit business.

Parking Space means off-street space used for the temporary location of a licensed motor vehicle; where this Local Law requires a "parking place," such shall be at least nine feet wide and twenty-two feet long, not including any access driveway.

Permitted Use means a permitted use as described by Article 3 of the Land Use Local Law and Regulations.



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Person means any individual, corporation, partnership, association, trustee, or other legal non-governmental entity.

Personal Service means establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel, including but not limited to laundry, cleaning, beauty shops, barbershops, funeral services, health clubs, domestic services, and shoe repair.

Planning Board means an appointed body whose principal duties include review and deciding about site plans, special use permits, subdivision applications, and reviewing and recommending about matters relevant to planning as authorized by the Town Board.

Planned Residential Development means an area of minimum contiguous size, as specified in this Local Law, to be planned and developed and operated or maintained as a single entity and containing one or more residential clusters; appropriate commercial, public, or quasi-public uses may be included if such uses are primarily for the benefit of residential development.

Plat, Final means a drawing prepared in a manner prescribed by local regulation, that shows a proposed subdivision, containing in such additional detail as shall be provided by local regulation all information required to be shown on a preliminary plat and the modifications, if any, required by the Planning Board at the time of approval of the preliminary plat if such preliminary plat has been so approved.

Plat, Preliminary means a drawing prepared in a manner prescribed by local regulation showing the layout of a proposed subdivision including, but not restricted to, road and lot layout and approximate dimensions, key plan, topography and drainage, all proposed facilities including preliminary plans and profiles, at suitable scale and in such detail as local regulation may require.

Principal Building or Structure means any of the following: single-unit dwelling, mobile home, tourist cabin, or similar structure for rent or hire, involving three hundred (300) or more square feet of floor space, each unit of a multiple-unit dwelling, a commercial or industrial use structure in excess of three hundred (300) square feet, and other structure which exceeds twelve hundred fifty (1,250) square feet. In addition, each motel unit, hotel unit, or similar tourist accommodation unit which is attached to a similar unit by a party wall, each accommodation unit of a tourist home or similar structure, and each tourist cabin or similar structure for rent or hire involving less than three hundred (300) square feet of floor space, will constitute one-tenth of a principal building. An accessory structure will not be considered a principal building. In addition, all agricultural use structures and single-unit dwellings or mobile homes occupied by a farmer of land in agricultural use, his employees engaged in such use, and members of their respective immediate families, will together constitute and count as a single principal dwelling.

Principal Use means the building where the main use of the lot is conducted.

Private Club House means a structure or location where access is restricted to members exclusively and do not permit usage of the club's amenities by non-members.

Private Sand, Gravel, or Topsoil Extraction means any extraction from the land of sand, gravel, or topsoil for the purpose of use, but not sale, by the owner of the land, or any extraction for the purpose of sale of less than fifty (50) cubic yards in any two-year period.

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Professional Service means an establishment that provides services to the public and that are required to be licensed or registered with the State. Professional services are delivered by an independent contractor (individual, entity, or firm) that offers its services to the public. Such services are paid on a fee basis for specialized services that are usually considered to be temporary or short-term in nature. Professional services include but are not limited to the following specific professions:

- Architecture
- Landscape architecture
- Land surveying
- Medicine or health care professional
- Optometry
- Professional engineering
- Real estate appraising
- Professional nursing
- Accounting (i.e., certified public accountant)
- Real estate agent
- Massage therapist

Prohibited Use means a use that is not permitted in a zoning district.

Public or semi-public building means any college, school, and municipal building, and library, place of worship, museum, research center, rehabilitation center, or similar building.

Public Utility means any public utility use, equipment, or structure that is not a use subject to the jurisdiction of the Public Service Commission pursuant to Article Seven or Article Eight of the Public Service Law. Such uses include any electric power cable which is one mile or more in length, any telephone distribution facility designed to service a new residential subdivision, any television, cable television, radio, telephone, or other communication transmission tower, any pipe or conduit or other appurtenance used for the transmission of gas, oil, or other fuel which is one mile or more in length, any electric substation, generating facility, or maintenance building and any water or sewage pipes or conduits.

Recreation, Indoor includes bowling alley, theater, table tennis and pool hall, skating rink, gymnasium, swimming pool, hobby workshop, and similar places of indoor commercial recreation.

Recreation, Private Outdoor includes yacht club, golf course, trap, skeet, and archery range, swimming pool, skating rink, riding stable, park, beach, tennis court, and skiing facility.

Recreation, Public outdoor includes publicly owned and operated playground, play field, park open space, swimming pool, and any other publicly owned recreation areas that are not operated for private profit.

Recreational Area, Non-Profit means a place designed and equipped for the conduct of sports and leisure time activities not for profit.

Restaurant means a permanent building used for the serving of meals where customers are seated principally at a table and are waited on when seated, where a full line of meals is offered, where the main proportions of the meals are not precooked or prepackaged in anticipation of customers, and,

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further, where, under proper authority, alcoholic beverages may be served from a service bar only and where the meal is not customarily or occasionally eaten in vehicles.

Restaurant, Drive-Through means a restaurant where patrons are not customarily served at tables or sit-down counters and where all or a portion of the food is prepared and wrapped, boxed, bagged or prepackaged, or is prepared in a manner in anticipation of customers, and where the customer places an order at a common counter or drive-in facility by waiting in line or by being served through a sequential numbering system and consumes the food either at tables provided in or adjacent to the building, in vehicles on site or elsewhere.

Retail Business means establishments engaged in the selling or rental of goods or merchandise (usually to the general public for personal use or household consumption or use, although, they may also serve businesses and institutional clients) and in rendering services incidental to the sale of such goods.

Screening means vegetation, fencing, or earthen materials used to block visibility toward and/or away from a site. Screening may also be used to lessen noise, lighting or visual impacts from a particular site or from adjacent land uses.

Senior Housing means multiple-family housing designed for older people or housing established and maintained in compliance with the Fair Housing Act, as amended, 42 U.S.C. § 3601 et seq., that is designed to meet the needs of persons 55 years of age or older and for which lease stipulations for age are established. A nursing care home is not senior housing.

SEQRA means review of an application according to the provisions of the State Environmental Quality Review Act, 6NYCRR, Part 617 (Statutory Authority: Environmental Conservation Law, Section 8-0113), which incorporates the consideration of environmental, social and economic factors into the planning, review and decision-making processes of state, county and local government agencies.

Services means a commercial establishment primarily engaged in providing assistance, rather than products, to individuals, business, industry, government, and other enterprises. Service related businesses include, but are not limited to: personal services (examples include beauty salons, massage, instruction, counseling, repair, funeral); business/contractual services (examples include janitorial services/property maintenance, excavation, plumbing/heating, consulting); and professional services (examples include physicians, engineers, legal, financial).

Setback means the distance in feet between the building or other use and any lot line or designated point.

Shoreline means that line at which land adjoins the waters of lakes, ponds, rivers, and streams within the Town at mean high water.

Shoreline building setback means the shortest distance, measured horizontally, between any point of a building and the shoreline of any lake or pond, and the shorelines of any river designated to be studied as a wild, scenic, or recreational river in accordance with the Environmental Conservation Law or any river or stream navigable by boat, including canoe.

Shoreline lot width means the distance, measured along the shoreline, between the boundary lines of a lot as they intersect the shoreline of any lake or pond and the shorelines of any river designated to be

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studied as a wild, scenic, or recreational river in accordance with the Environmental Conservation Law or any river or stream navigable by boat, including canoe.

Sign means any structure or part thereof, or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as, or which is in the nature of an announcement, direction or advertisement. A sign includes a bill board, neon tube, fluorescent tube, or other artificial light or string of lights, outlining or hung upon any part of a building or lot for the purposes mentioned above, but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious, or similar organization, campaign, drive, movement or event which is temporary in nature.

Site Plan means a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in this law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Site Plan Review is the process, pursuant to Section 5.10 of this law.

Sketch means conceptual maps, renderings, and supportive data describing the project proposed by the applicant for the initial review. May be used by the applicant as the basis for preparing the site plans for Planning Board review.

Solar Panel means any solar energy system or solar-thermal systems which serve the building or lot to which they are attached, and do not provide energy for any other buildings beyond the lot. A solar panel is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site and shall produce no more than ten kilowatts (kW) per hour of energy.

Solar Panel, Roof Mounted is a solar panel affixed to a building or other structure on a lot to provide electricity for such building or structure.

Solar Panel, Pole or Ground Mounted is a solar panel affixed to the ground, directly on via a pole or poles on a lot to provide electricity for use solely on that lot.

SPDES means a permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

Special Use means a land use which is deemed permissible within a given land use district or districts, but which may have the potential to exhibit characteristics or create impacts incompatible with the purposes of such district. The special use shall, therefore, be subject to approval by the Planning Board in accordance with conditions set forth for such use, as well as other applicable provisions of this law. A special use shall constitute any use in areas shown in Section 4.18 "Natural Resource Capacity Regulations," as an area designated as having severe limitations or any area classified as being a combination of any two (2) moderate limitations. A special use shall constitute any use in an area shown in the Section 4.18 "Natural Resource Capacity Regulations," as an area having one moderate limitation or "no limitations," that after filed investigation by the enforcing agent and an appropriate expert (Engineer for slopes and Soil Scientist for soils) indicate local conditions requiring special road services and conditions prior to the issuance of a permit.

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Stacking Lane means a separate lane that allows cars waiting to turn left, or cars waiting for a drive-through to be in their own lane so as not to prohibit the flow of vehicles in the parking lot.

Street means a right-of-way that provides a channel for vehicular circulation; is the principal means of vehicular access to abutting properties; and includes space for utilities, sidewalks, and drainage. Types of streets are as follows:

Collector – the principal traffic artery within residential and commercial areas with relatively high traffic volumes and conveys traffic from arterial streets to lower-order streets, it functions to promote the free flow of traffic.

Sub-Collector – A passage to access streets and conveys traffic to collectors. It provides frontage and access to residential lots but also carries some through traffic to access streets. It is generally a low-volume street.

Local Street – A passage that usually does not carry through traffic. Travel distances to sub-collector and collector streets are short, traffic speeds are low, lane capacity and design speed are not controlling design factors, and drivers and residents on these streets expect and accept both delays and the need to decrease speed. Cul-de-sac and dead-end streets are local streets.

Stormwater Pollution Prevention Plan (SWPPP) means a plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

Structure means any object constructed, installed, or placed on land to facilitate land use and development or subdivision land, such as buildings, sheds, single-unit dwelling units, mobile homes, signs, fences, and any fixtures, additions, and alterations.

Temporary Sign means a sign that advertises an event or activity for a limited amount of time and when the event or activity ceases, the sign is removed. Temporary signs shall not be allowed to be placed for more than 60 days.

Tourism and Eco-Tourism Business means a commercial establishment oriented to attracting, serving, and promoting tourism including, but not limited to bike and hike tours, guided tours, kayak and river-oriented activities, birding trips, etc.

Townhouses means single-unit dwellings attached so as to comprise a multi-unit structure. It is generally one of a series of attached one-family dwellings and where each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common walls.

Travel Trailer means any portable vehicle, including a tent camper, truck camper, or mobile home, which is designed to be transported on its own wheels, which is designed and intended to be used for temporary living quarters for travel, recreational, or vacation purposes, and which may or may not include one or all of the accommodations and facilities customarily included in a mobile home, provided that any travel trailer used for residential purposes for more than thirty (30) days consecutively or sixty (60) days aggregate in any one calendar year shall be considered a mobile home.

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Travel Trailer Camp means a parcel of land under single ownership that is designed and improved for use by two (2) or more travel trailers.

Use is employed in referring to the purpose for which any building, other structure or land may be arranged, designed, intended, maintained, or occupied; and any occupation, business activity, or operation conducted (or intended to be conducted) in a building or other structure or on land.

Variance, Area means relief from one or more of the dimensional requirements in a Land Use District as to certain minimum lot size, building setback, yard requirements, height of building, shoreline lot widths, etc., and is as defined in Article 7 of this Land Use Local Law and Regulations.

Variance, Use means the allowing of a use that is neither a permitted use nor a conditional use for the Land Use District in which the land is situated, and meets the requirements set forth in Article 7 of the Land Use Local Law and Regulations.

Yard means a space on a lot not occupied with a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the building and, thus, areas covered by a porch shall not be counted in measuring required yard.

Yard, Front means a yard between the front lot line and the front line of a building extended to the side lot lines of the lot. The depth shall be measured from the street line to the front line of the building.

Yard, Side means the yard between the principal building or accessory building and a side lot line and extending through from the front yard to the rear yard.

Yard, Rear means the yard between the rear lot line and the rear line of a building extended to the side lot lines of the lot. The depth of the rear yard shall be measured from the rear lot line to the rear line of the building.

Watershed management or flood control project means any dam, impoundment, dike, rip rap, or other structure or channelization or dredging activity designed to alter or regulate the natural flow or condition of rivers or streams or the natural level or condition of lakes or ponds.

Wetlands mean any land that is annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp, or marsh.

ZBA (Zoning Board of Appeals or Board of Appeals) means the board designated by the Town to consider requests for variances to and interpretations of this local Law.

## ARTICLE 3 DISTRICT REGULATIONS

In the following districts, the following regulations apply:

### 3.01 HAMLET RESIDENTIAL DISTRICT (HR)

This land use category contains existing residential areas that are outside of physical areas having severe natural resource constraints. Because of this category’s existing residential neighborhood character and the close physical proximity to existing commercial areas, retail business uses, except for single home occupations, are not appropriate.

Permitted Uses (Does Not Require Planning Board Approval)		Special Uses (Requires Site Plan Approval and a Special Use Permit)
1. Single-unit dwellings		1. Health care facilities as a major home occupation only
2. Two-unit dwellings		2. Non-profit recreational areas
3. Accessory structures		3. Churches
4. Minor Home Occupation		4. Public buildings*
5. Accessory Apartment		5. Multi-unit dwellings as per Section 4.02
6. Solar Energy Panels, roof mounted		6. Personal and professional services as a major home occupation only
7. Swimming Pool		7. Retail businesses as a major home occupation only
8. Travel Trailer per Section 4.04		8. Major Home Occupation
9. Manufactured Modular Home		9. Senior Housing as per Section 4.02
		10. Solar Panel Pole Mounted
		11. Farm Animal
Minimum Lot Area per unit in		Minimum Lot Width in Feet
Acres	square feet	
1/3 Acre	14,520	100'
Setback Requirements		
Front Yard	Side Yard, Each Side	Rear Yard
25 feet (Minimum) 35 feet (Maximum) <sup>1</sup>	25 feet	25 feet
Building Height: 35 feet		
Maximum Lot Coverage: 50%		

\* Excluding heavy uses such as, but not limited to, public works garages, fire stations, or other similar uses that generate heavy traffic, excessive noise, or other public disturbances.

<sup>1</sup> A maximum front yard setback is established to ensure that a build-to- line is created in the hamlet to maintain a consistent streetscape.

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Mobile home parks, single-wide and double-wide manufactured homes are not allowed in this hamlet district. See Section 4.03 for requirements for existing mobile homes, mobile home parks or other manufactured homes.

**3.02 HAMLET SERVICE DISTRICT (HS)**

The Hamlet Service District is a physical area now utilized for retail, personal and professional, and governmental services. Land designated as Hamlet Service within the zoning regulated area of Elizabethtown is on both sides of portions of New York State Routes 9 and 9N and both sides of Water Street. This District permits a variety of uses all promoting the community’s governmental and retail center and is intended to preserve the investment made in existing business centers while encouraging new businesses and their development in an orderly way. Residential uses are also allowed in this District accommodating those wishing to live in a high-density area.

<b>Permitted Uses (Requires Site Plan Approval)</b>	<b>Special Uses (Requires Site Plan Approval and a Special Use Permit)</b>
1. Offices, private or public	1. Hotels and motels
2. Retail businesses	2. Parking lots, commercial associated with any permitted or special uses in this District
3. Personal and professional services	3. Public utilities
4. Banks	4. Gasoline stations
5. Indoor and Outdoor Recreation	5. Nursing Care Home
6. Health care facilities	6. Auto sales and service
7. Accessory uses	7. Single- and Two-unit dwellings
8. Public buildings*	8. Private club house
9. Funeral homes	9. Day-care facilities
10. Churches	10. Light Industrial*
11. Museum	11. Manufactured modular home
12. Sign	12. Multi-unit dwelling or apartment with each unit requiring 10,000 square foot of lot size per unit. **
13. Restaurant	13. Multi-business Structure
14. Restaurant, Drive-through	14. Senior Housing
15. School	15. Cellular Tower
16. Solar Panels, roof mounted	16. Tourism and Eco-tourism business
17. Bed and Breakfast Inn	17. Food Processing, Aggregation and Food Hub
	18. Solar Panels, pole mounted

\* Light industrial excludes higher intensity public uses including but not limited to public works garages, fire stations, or other similar public uses that may generate heavy traffic, excessive noise, or other public disturbances at times.

Mobile home parks, single-wide and double-wide manufactured homes are not allowed in this hamlet district. See Section 4.03 for requirements for existing mobile homes, mobile home parks or other manufactured homes.



<b>Area</b>	<b>Width</b>	<b>Minimum Lot Area/Unit**</b>
10,000 sq. ft.	75 feet	10,000 sq. ft.
Maximum Lot Coverage <sup>2</sup> :	60%	
<b>Minimum Setback Requirements</b>		
<b>Front Yard</b>	<b>Side Yard, Each Side</b>	<b>Rear Yard</b>
15 feet (Minimum)		
45 feet (Maximum)	20 feet	50 feet
Building Height: 40 feet		
Building Footprint: 10,000 square foot maximum		

Transition yard requirements.

- 1) Where a residence district abuts a non-residence district there shall be provided in the nonresident district, for a distance of twenty-five (25) feet from the district boundary line, a front yard at least equal in depth to that required in the residence district.
- 2) Where the side or rear yard in a residence district abuts a side yard in a non-residence district, there shall be provided along such abutting line or lines a side or rear yard at least equal in depth to that required in the residence district. In no case, however, shall the abutting rear yard be less than twenty-five (25) feet.

### 3.03 HAMLET PROTECTORATE DISTRICT (HP)

This Land Use District is established based on natural resource limitations which make development in certain areas difficult. In the zoning regulated area of Elizabethtown, these natural obstacles include steep slopes, poor subsoil conditions such as shallow depth to bedrock and high water tables, and flood prone areas. In order to assure that these natural obstacles are overcome in any proposed development, a site plan review will be required prior to the issuance of any permits. In addition, a letter of non-jurisdiction will be required from the Adirondack Park Agency.

Special Uses (Ref: Article 5.11)

(Requires a Site Plan Approval and a Special Use Permit. If the lot is within a regulated floodplain, a floodplain permit may also be required.)

1. Single-unit dwellings
2. Two-unit dwellings
3. Accessory Structures
4. Solar Panel, Roof Mounted

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<sup>2</sup> A maximum front yard setback is established to ensure that a build-to- line is created in the hamlet to maintain a consistent streetscape.

Minimum Lot Area per unit in Acres and square feet		Minimum Lot Width in Feet
1 Acre	43,560 square feet	150 feet
<b>Minimum Setback Requirements</b>		
Front Yard	Side Yard	Rear Yard
25 feet Minimum 35 feet Maximum <sup>3</sup>	25 feet	50 feet
Maximum Building Height 35'		

Mobile home parks, single-wide and double-wide manufactured homes are not allowed in this hamlet district. See Section 4.03 for requirements for existing mobile homes, mobile home parks or other manufactured homes.

### 3.04 Mixed Use District (MU)

This district is established to improve the vitality and long-term sustainability of the town by increasing the opportunity for appropriate business expansion within the hamlet while maintaining the existing residential façade and building style wherever possible. The MU District:

- Honors the rural and residential character of the town.
- Provides a buffer (Mixed Use) between Hamlet Service and Hamlet Residential zones wherever practical.
- Minimizes the negative impacts to affected residents as much as possible.
- Creates opportunities for the expansion of greenspace and healthy activities (bike ways, running paths).
- Is consistent with the adopted Town of Elizabethtown Comprehensive Plan

Permitted Use* (Does Not Require Planning Board Approval)	Special Use** (Requires Site Plan Approval and a Special Use Permit)
1. All Permitted Uses in HR District	1. All Special Uses in HR District
2. Professional Offices (Non-medical) Attorney, Accountant, Surveyor, Realtor, Insurance Broker, Engineer, Counselor	2. Medical Professional Offices
3. Residential Rental	3. Small Restaurants (single location): Coffee, Ice Cream, Bakery, Diner
4. Small (single location) Retail Businesses: Gifts, Antiques,	4. Liquor Store
5. Bed and Breakfasts	5. Yoga/Fitness Studio

<sup>3</sup> A maximum front yard setback is established to ensure that a build-to- line is created in the hamlet to maintain a consistent streetscape.

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<b>Permitted Use* (Does Not Require Planning Board Approval)</b>	<b>Special Use** (Requires Site Plan Approval and a Special Use Permit)</b>
6. Personal Services	6.
7. Combinations of above	7. Gym
	8. Any Permitted Use that requires tear down of existing structure or new building construction

\* All Permitted Uses must use existing residential façade and adhere to parking, lighting, and noise requirements detailed in this local law.

\*\* May require specific limitations or requirements regarding Design Guidelines, hours of operation, down lighting, parking, noise and odor constraints, and vegetation as determined by the Planning Board.

Development Standards

1. All lot dimensional requirements of the HR district shall also be met in the MU District.
2. Any non-residential use that does not utilize an existing residential façade shall be required to obtain a Special Use Permit pursuant to Section 5.11. In the case where an existing residential façade cannot be used, the following design guidelines shall be met. The Planning Board may also require any additional commercial design standards pursuant to Section 4.13.
  - a. All rooflines shall be pitched to emulate the character of the surrounding neighborhood.
  - b. All setbacks must be set to match those in the surrounding neighborhood.
  - c. The Planning Board shall require lighting, noise and odors be controlled so as not to cause nuisance to adjacent uses.
  - d. The Planning Board may review hours of operation and may establish hours of operation in order to preserve the residential character of the district.
  - e. All setbacks and lot dimensions shall be met regardless of whether the use is a conversion or an expansion of an existing structure.
3. Noise generated from any non-residential uses in the MU District shall not exceed 10 decibels above the ambient noise levels as measured at property lot lines. The Planning Board may require evaluation of ambient noise levels as part of an application.
4. All parking shall be to the side or rear of the structure. All requirements of Section 4.11 shall also be met except there shall be a maximum of 10 off-street parking spaces for any non-residential use in the MU District.

## **ARTICLE 4 SUPPLEMENTAL REGULATIONS**

### **4.01 HOME OCCUPATIONS**

#### 1. General Standards for Minor and Major Home Occupations

- a) The home occupation shall be carried on by the family residing in the dwelling unit only. Only two employees not residing in the dwelling are permitted.
- b) No home-based business shall generate significantly greater traffic volumes or increased traffic hazards than would normally be expected in a residential district.
- c) The home-based business must be clearly incidental and subordinate to the residential use.
- d) The home-based business shall be allowed to be conducted within the dwelling unit or accessory structure.
- e) The residential character of the single-family dwelling or accessory building and the lot shall not be altered to accommodate a home-based business.
- f) The equipment used by the home-based business and the operation of the home-based business shall:
  - i. Not create any vibration, heat, glare, dust, odor, or smoke discernible at the property lines,
  - ii. Not generate noise exceeding 55 decibels at the property line from 8:00 A.M. to 6:00 P.M.,
  - iii. Not generate any noise discernible by the human ear at the property lines from 6:00 P.M. to 8:00 A.M.,
  - iv. Not create electrical, magnetic or other interference off the premises,
  - v. Not consume utility quantities that negatively impact the delivery of those utilities to surrounding properties, or
  - vi. Use or store hazardous materials in excess of the quantities permitted in a residential structure.
- g) No other business shall be permitted to share, let or sublet space for professional use.
- h) All lighting, noise, sign and parking requirements of this law shall be met.

#### 2. Major Home Occupations

- a) No more than twenty-five percent (25%) of the floor area of the dwelling unit or 1000 square feet of an accessory building may be used in connection with a major home occupation, whichever is lesser.

- b) All storage of equipment, materials, goods, or supplies shall also meet all requirements for such use pursuant to this Local Law. All exterior storage used in conjunction with a major home occupation must be screened from view or stored within structures and not visible from the public way or adjacent properties.
- c) Adequate parking shall be provided for all home occupants, employees and customers so as not to cause parking congestion or a visual disturbance to the character of the neighborhood.

#### **4.02 MULTI UNIT DWELLING**

- 1. Density. In districts where multi-unit dwellings are permitted, these dwellings shall be located only in lots which contain the minimum lot size for the districts. A minimum of 10,000 square feet of lot size is required per dwelling unit. The Planning Board may limit the total number of units allowed based on environmental limitations or potential impacts on surrounding neighborhoods.
- 2. Dwelling Type. In HR, MU, and HS districts, multi-unit dwellings shall only be permitted with Site Plan and Special Use Permit approvals as per this local law, and may be of a “town-house” design. In the HR and MU districts, multi-unit dwellings are permitted conditionally if they are created by subdividing (but not enlarging) pre-existing one-unit or two-unit structures to create additional units within the existing structure; otherwise multi-unit dwellings are only permitted in this district as part of a Cluster Development (See Section 4.16 for cluster procedures) and may be of a “town-house” or “garden apartment” design. In HR and MU use area, multi-unit dwellings may be of a “town-house” or “garden apartment” design and in HS, they may also be of a multi-story apartment design.
- 3. Design Standards for Multi-Unit Dwellings.
  - a) All structures containing multiple family units shall have a minimum roof pitch of 6 over 12.
  - b) All front yards attached to multiple family structures shall have a clearly defined front yard using landscaping, fencing, hedging, or brick or stone wall. Front yards of attached townhouses may be unified into one common yard treated as a single front yard for the entire building.
  - c) The maximum impervious surface area coverage, excluding paved areas for recreational facilities, such as a basketball or tennis court or a pool, shall be fifty percent (50%).
  - d) The Planning Board shall ensure that any proposed density will meet all New York State Board of Health requirements for waste water treatment systems and water supplies. When multiple structures are included within a multi-unit dwelling, there shall be no more than four dwelling units per individual structure.
  - e) Open space between buildings on the same lot shall be a minimum 30 feet
  - f) Parking shall be provided to the rear or side of the structure.

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- g) All front, side and rear yards shall be as required by Sections 3.01, 3.02, or 3.0. Parking spaces shall be required as per Section 4.11 of this Local Law.
- h) All multi-unit dwellings shall consist of structure having an architectural style that emulates single-family residences in building design, entrance, roof pitch, and door and window details.
- i) On-site pedestrian and vehicle circulation shall be designed to limit traffic hazards.
- j) Sidewalks shall be provided, as appropriate, to connect the residential units with parking areas, public streets, recreation areas, and other existing sidewalks, if present.
- K) Landscaping, lighting, and building elevation plans for each structure shall be submitted to the Planning Board for review. Landscaping and screening shall conform to the following minimum standards:
  - i. Use of existing vegetation to the greatest extent possible.
  - ii. Along road frontage, a ten (10) foot wide, landscaped buffer shall be provided and designed so as not to obstruct sight distance at road access points.
  - iii. All lighting shall be designed and arranged so as to prevent glare and reflection on adjacent properties using down-facing, fully shielded fixtures.
  - iv. The maximum height of pole-mounted lights should not exceed eighteen (18) feet.
  - v. The Planning Board may require that all utilities, exclusive of transformers, be placed underground at the time of initial construction. Required utilities may include water, sewer, storm drainage, telephone, TV cable, electricity, gas, and wiring for streetlights.
  - vi. Snow storage areas shall be indicated on the site plan and shall not interfere with required parking or traffic circulation.

### **4.03 Mobile Homes and Mobile Home Parks**

1. No mobile home shall be parked and occupied anywhere within the zoning regulated area for more than twenty-four hours, except upon a permit issued by the Zoning Enforcement Officer. Such permit shall be issued for a period not to exceed thirty (30) days, and shall not be renewed within the same calendar year.
2. As an exception to 4.03 (1) above, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants, during the construction of a house thereon, for a period not exceeding one hundred eighty (180) days. However, if material progress with house construction is not made within forty-five (45) days from the issuance of permit, or if construction work ceases for a consecutive period of forty-five (45) days from the issuance of

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permit, or if construction work ceases for a consecutive period of forty-five (45) days, such permit shall become void.

3. No new mobile home, single-wide manufactured home, or double-wide manufactured home shall be permitted in any zoning district except pursuant to Section 4.03 (1) or (2). Existing mobile, single-wide and double-wide homes already in place at the time of adoption of this local law shall be allowed to remain as a grandfathered, existing non-conforming use. However, replacement of such dwellings shall be consistent with the requirements of this Land Use Local Law.
4. No new mobile home park shall be permitted in any zoning. Existing mobile home parks in place at the time of adoption of this local law shall be allowed to remain as a grandfathered, existing non-conforming use. Single-wide and double-wide manufactured homes shall be permitted only within an existing mobile home park.

### **4.04 TRAVEL TRAILERS**

Travel trailers as defined in and regulated by Article 2, Section 2.02, are permitted and may be used to accommodate temporary living quarters for less than 30 consecutive days or 60 days aggregate.

### **4.05 SIGNS**

1. No signs or billboards shall be permitted in any Land Use District except as specifically permitted herein as follows and unless a permit has been approved by the Planning Board.
2. Purpose: The purpose of this section is to promote the public welfare and safety by regulating existing and proposed signs. It is intended hereby to reduce sign distractions and obstructions that may contribute to traffic accidents, to reduce hazards that may be caused by signs in disrepair or of faulty construction, and to curb deterioration of natural beauty, open space, and community character and the environment. It is intended that the display of signs will be appropriate to the land, building, or use to which they are appurtenant and be adequate, but not excessive, for the intended purpose of identification.
  - a) Signs in HR, MU, and HP Districts  
The following sign standards and signs are permitted when located on property of the principal use:
    - i. One home occupation or home business sign, not exceeding four (4) square feet.
    - ii. Temporary Real Estate signs, sale or rental signs not exceeding six (6) square feet.
    - iii. Signs identifying any non-residential building or use permitted in residential land use areas, not exceeding a total of four (4) square feet.
    - iv. Directional or information signs, not exceeding four (4) square feet.
    - v. Signs necessary for public safety or welfare shall not exceed four (4) square feet.
    - vi. A sign not exceeding two (2) square feet showing name and address of the occupant.
    - vii. No sign shall exceed six (6) feet in total height.
    - viii. No sign shall be closer than four (4) feet from nearest public sidewalk.
    - ix. No signs shall be closer than four (4) feet from the property line.

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- x. Only externally illuminated signs are allowed in these districts.
  - xi. No LED sign shall be allowed in the HR, MU, or HP districts.
  - xii. Temporary signs such as for garage sales, non-recurring events, fund drives, or events undertaken by a political, religious, charitable or educational organization may be placed for no more than 60 days (maximum 10 square feet per side).
- b) Signs in HS district. The following signs are permitted when located on the immediate lot on which the structure or use is situated in the HP district:
- i. All signs as permitted in residential area.
  - ii. One freestanding sign, and one building mounted sign are allowed per each permitted business use.
  - iii. The Planning Board may require that a freestanding sign be placed within a landscaped base. Suitable landscape planting shall be placed and maintained at the base of all freestanding signs. Such signs and adjacent grounds shall be kept neat, clean, inoffensive and in good repair.
  - iv. The face area of a freestanding sign shall not exceed 24 square feet. Freestanding signs shall be set back not less than five feet from the street right-of-way line, 15 feet from any adjacent commercial or industrial property and 25 feet from any adjacent residential property.
  - v. A principal building with more than one tenant is permitted a multi-business directory sign that is no larger than 24 square feet as the freestanding sign for the premises. Each individual business in the multi-business building will be allowed one sign to mark their individual entrance that is no larger than eight square feet.
  - vi. The top of ground mounted signs or freestanding signs shall not extend more than 8 feet above the ground level.
  - vii. A new business, or a business in a new location, awaiting installation of a permanent sign, may use a portable sign for a period of not more than 60 days or until installation of a permanent sign, whichever occurs first. Such portable sign must meet all the requirements of this Law.
  - viii. For building mounted signs, one sign shall be allowed with the total surface display area not exceeding one square foot per lineal foot of principal frontage of the lot, but not to exceed 40 sq. ft. in area.
  - ix. Illuminated Signs: Illumination of signs shall not be of intermittent or varying intensity or produce direct glare beyond the limit, of the side property line. Red, green, and amber lights of such shape and hue that may be confused with official traffic lights and signals shall be prohibited. All bare incandescent light sources and immediately adjacent reflecting surfaces shall be shielded from view. No revolving or neon signs shall be allowed. No illuminated sign shall be placed or directed to cause beams of light to be cast on any public highway, sidewalk, or adjacent premises or to cause glare or reflection that will be a traffic hazard or nuisance. The Planning Board may require an illuminated sign to be turned off at the close of business.
  - x. LED signs shall be allowed but shall not use flashing, letters with changing and moveable colors, or graphics.
- c) General provisions — The following provisions shall apply to all signs, regardless of their location with respect to any Land Use District.



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- i. No sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light or lights, including LED lighted signs. All luminous signs, indirectly illuminated signs, and lighting devices shall employ only lights emitting light of constant intensity, except in the case of digital street clocks and temperature indicators.
  - ii. No luminous sign, indirectly illuminated sign, or lighting device shall be placed or directed so as to cause glaring or non-diffuse beams of light to be cast upon any public street, highway, sidewalk, or adjacent premises, or otherwise to cause glare or reflection that may constitute a traffic hazard or nuisance.
  - iii. No sign shall be erected or maintained upon the roof of any building or structure.
  - iv. No licensed, operating motor vehicle, on which is placed or painted any sign, shall be parked or stationed in a manner primarily intended to display the sign. Non-operating vehicles that are used as a sign structure may be allowed subject to all requirements of this land use local law.
  - v. Permanent off-premise advertising shall not be permitted in any land use district. This prohibition shall not include temporary signs.
- d) **Non-Complying Signs:** Owners of any sign that is not in compliance with this section shall be notified by the Zoning Enforcement Officer that the sign is not in compliance with this land use local law. Such signs shall be considered a grandfathered, non-conforming sign but shall be allowed to remain in place. However, any replacement of a non-conforming sign shall be done with a sign that complies with all requirements of this section.
- e) **Abandoned or illegal signs:** In the event that a sign is (i) unlawfully erected after the effective date of this local law, or is maintained in violation of Section 4.05 hereof, then the Zoning Enforcement Officer shall mail to the owner of said sign, if known, at his last known mailing address and to the owner of the parcel of land upon which such sign is situated, at his last known mailing address, an order that the violation be cured within thirty (30) days after the date of the order. If after such date the violation is not cured, the Zoning Enforcement Officer may enter upon the land and remove and discard the sign, without liability to the Town or its agents.
- f) **Exempt Signs.** The following signs are exempt from the requirements of this Law regardless of the zoning district:
- i. Signs denoting the architect, engineer or contractor where construction or repair of a structure is in progress (maximum 6 square feet per side)
  - ii. Signs which mark property boundaries, trespassing signs, or warning of hazards (maximum 2 square feet per side)
  - iii. Signs giving the name of residents or a dwelling and its address (maximum 4 square feet per side)
  - iv. Temporary signs on one's property such as for garage sales, non-recurring events, fund drives, or for events undertaken by a political, religious, charitable or educational organization placed for no more than 60 days (maximum of 10 square feet per side)
  - v. A bulletin board or similar sign connected with a church, museum, library, school, and public structures, one per premise provided they are located on the premises
  - vi. Interior signs
  - vii. Flags and flags depicting the 'open' or 'closed' status of a business.

- viii. Memorial signs, historical markers or tablets, names of buildings, and dates of erection when cut into any necessary surface or when constructed of bronze, stainless steel, or similar material, not exceeding 6 sq. ft. in area per side.
- ix. Traffic or other municipal signs, legal notices, and such temporary, emergency, or non-advertising signs as may be authorized by the Town Board.

#### **4.06 JUNKYARDS**

1. Junkyards are not permitted in any district.

#### **4.07 ACCESSORY STRUCTURES**

1. All Unattached accessory structures not exceeding 100 square feet:  
Accessory structures that are not attached to a principal structure may be erected in accordance with the following requirements:
  - a) A permit is necessary for all accessory structures. There will not be a charge for structures under one hundred (100) square feet.
  - b) The number of accessory structures under one hundred (100) square feet shall be limited to two (2).
  - c) An accessory building shall not exceed twelve (12) feet in height and shall be located in the rear yard only.
  - d) No accessory structure shall be located within five (5) feet of side or rear lot lines.
  - e) Where a corner lot faces two principal streets, only one such street shall be considered the "principal street". For corner lots, the setback from all streets shall be the same for accessory buildings as for principal buildings. No obstruction to vision, other than an existing building, post, column, or tree, exceeding thirty (30) inches in height above the established grade of the street at the property line shall be erected or maintained on any lot within the triangle formed by the street lot lines of such lot and a line drawn between the points along such street lot lines thirty (30) feet distant from their points of intersection.
2. All attached accessory structures and unattached structures exceeding one hundred (100) square feet shall comply in all respects with the yard requirements of this chapter applicable to the principal building.
3. Accessory structures shall comply with front, side, and rear yard requirements for the principal structure to which they are accessory.

#### **4.08 FENCES**

1. Walls and fences to provide for security, privacy, or screening of a property shall be permitted anywhere on a lot, provided that the following conditions are met:

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- a) Corner clearance and street intersection. Any wall or fence constructed on a corner lot shall comply with the stated provisions.
  - b) Street frontage height requirement. Any wall or fence located in the required front yard or the required setback from a street right-of-way shall have a height of no more than four (4) feet.
  - c) Height in other yards. The maximum height of any wall or fence located in a rear or side yard may not exceed six (6) feet in any district without a special use permit.
2. Except living fences (such as cedar hedges), no fence shall exceed a height of 4 feet in the front yard or where corner sight distances are required for traffic safety. No fence shall exceed a height of 6 feet in the side or rear yard. A fence may be constructed of permanent material, such as wood, chain link, stone, rock, concrete block, masonry brick, brick, decorative wrought iron, or other materials that are similar in durability.

### **4.09 TEMPORARY USES AND STRUCTURES**

Temporary permits are required for non-conforming uses incidental to construction projects for a period not exceeding six (6) months. Such permits are conditional upon agreement by the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional period not exceeding six (6) months.

### **4.10 HEIGHT EXCEPTIONS**

District building height regulations shall not apply to barns, grain elevators, silos, flagpoles, radio or television antennae, transmission towers or cables, spires, or cupolas, chimneys, elevator or stair bulkheads, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures in their aggregate coverage occupy no more than 10% of the roof area of the building.

### **4.11 PARKING**

#### **1. OFF-STREET PARKING AND LOADING**

- a) Off-Street Automobile Parking Spaces: Since uses vary widely in their need for off-street parking, the parking requirements shall be based on the specific operational characteristics of the proposed use at the time of site plan and/or special use permitting by the Planning Board. The Planning Board, in its sole discretion, shall determine the parking requirements for any proposed use the following table as a guideline. When making that decision, the Planning Board shall consider that parking spaces should be sufficient to satisfy 85% of the anticipated peak demand or maximum capacity of an establishment. In most instances, requiring spaces beyond the 85% peak demand is likely to result in parking lots that are larger than necessary. One parking space shall equal 9 feet by 19 feet.

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	<u>Parking Use</u>	<u>Parking Space Required</u>
1.	Church, school, theater, or auditorium	1 space per 4 seats in principle assembly room.
2.	Eating and drinking establishments	1 space for every 4 seats (including bar stools).
3.	Health care facilities	1 space per 4 beds and 1 space for each employee based on the expected overall number of employee shifts.
4.	Home occupation	1 space per employee and 1 space per patron.
5.	Industrial	1 space for each 1.5 employees, based on the highest expected employees / shift.
6.	Multi-unit dwellings	1.5 spaces for each dwelling unit.
7.	Outdoor recreation	1 space for each 8 patrons.
8.	Private club / indoor recreation	1 space for each 4 patrons.
9.	Professional offices and business services	1 space for each 250 sq. ft. of gross floor area dedicated to such uses. Also 1 additional space per employee.
10.	Residential (single- and two-unit)	2 spaces for each dwelling unit.
11.	Retail business and personal service	1 space for each 250 sq. ft. of gross floor area dedicated to such uses. Also one additional parking space per employee.
12.	Other	Unless otherwise provided for, each primary building or structure shall be required to have a minimum of two off-street parking spaces for each 250 sq. ft. of floor space or fraction thereof.

- b) Loading – Paved service streets of not less than 20 feet in width, or in view thereof, adequate off-street loading space, suitably surfaced, shall be provided as follows:
- 1) Hotel, Health Service Facilities, Motels, Business, Service and Industries: One off-street loading space for every 10,000 sq. ft. of floor space.
  - 2) Wholesale, Warehouse, Freight, and trucking use: one off-street loading space for every 7,500 sq. ft. of floor area.
  - 3) Additional Parking and Loading Requirements
    - i. The Planning Board may require additional off-street parking and loading spaces if they find that minimum spaces are not adequate.
    - ii. With approval of the Planning Board, additional parking spaces may be provided by the applicant on other property provided that it is within 400’ of the principal building.

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- iii. Where a non-residential use or district abuts a residential district, the parking or loading space shall be no closer to the abutting property line than 15 feet and a buffer shall be suitable landscaped.
2. For uses not listed in 4.11, the Planning Board shall determine the parking requirements based on information provided by the applicant which shall consider type of use, number of employees, building size, hours of operation, and parking spaces required for visitors.
3. In the case of a combination of uses, the total requirements of off-street automobile parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.
4. Every space shall have direct and usable driveway access to a street or access way with minimum maneuver area between spaces as follows:
  - a) Parallel Curb Parking: Twelve-foot aisle width for one-directional flow and 24-foot aisle width for two-directional flow.
  - b) 30° Parking: 12-foot width for one-directional flow and 19-foot aisle width for two-directional flow.
  - c) 45° Parking: 12-foot aisle width for one-directional flow and 19-foot aisle width for two directional flow.
  - d) 60° Parking: 16-foot aisle width for one-directional flow and 20-foot aisle width for two-directional flow.
  - e) Perpendicular Parking: 24-foot aisle width for one-direction and two direction flow.
5. Location of Required Spaces: In the HR, MU, and HP districts, no parking area shall encroach on any required front yard. For non-residential uses In the HS district, parking lots shall be on the side or in the rear of the building. If front parking is the only feasible location for parking due to lot configuration, such parking shall be landscaped or screened, with a clear separation from parking lot, sidewalk, and street. Open parking areas may encroach on a required side or rear yard to within three feet of a property line. In the HS district all parking spaces shall be provided on the same lot. However, on-street parking spaces may contribute to the parking space count.
6. Set-aside for Future Parking in Phased Projects. For projects consisting of more than one phase the Planning Board may require that an applicant set aside additional land to meet potential future parking needs. Such land may remain in its natural state or be landscaped, but may not be used in a manner that would prevent it from being used for parking in the future.
7. Cross-Access and Shared Parking. In cases where two or more commercial developments are adjacent, the Planning Board may require cross-access easements between adjacent parking lots to provide for interconnected parking lots and to facilitate traffic and control access on the main road. Shared parking facilities are encouraged.

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8. Location of Loading Berths: All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Open off-street loading areas shall not encroach on any required front or side yard, access way or off-street parking area, except that in Business Districts off-street parking areas where they exist may be used for loading or unloading, provided that such spaces shall not be so used for more than three hours during the daily period that the establishment is open for business.
9. Construction of Parking Areas: The Planning Board may require use of pervious surfaces of parking lots to reduce stormwater runoff.
10. Lighting in parking lots. Parking areas to be used at night shall be lighted. Lighting shall be from fully shielded light fixtures and shall be placed in a manner so that light does not interfere with traffic by way of glare. All lights shall be shaded or so directed so as not to cause glare on adjoining residential properties and shall be so directed so as not to cause a traffic hazard due to glare or color. Light poles shall be no higher than 18 feet. Light fixtures that are not in compliance with these standards at the time of adoption of this land use local law shall be permitted to remain in place, but any replacement shall be of a conforming light pole and fixture.
11. Handicapped Parking. Adequate parking for handicapped persons shall be provided in accordance with applicable laws and designed in accordance with all State and Federal ADA regulations (ICC/ANSI A117.1).
12. Parking Lot Design.
  - a) No more than two curb cuts shall be created for access into a parking lot.
  - b) At least fifteen percent of the area of the lot usable for off-street parking shall be devoted to landscaping with lawn, trees, shrubs or other plant material. Landscaping shall be integrated into parking areas to visually break up large expanses of paving and to provide shade. Landscaping shall be placed at parking entryways, and at parking end islands, and shall help define vehicular access and pedestrian movement. One deciduous tree per six parking spaces is required. For parking lots greater than thirty cars, planting islands nine feet wide by 18 feet deep, constructed with sub-surface drainage and compaction resistant soil will be required to be placed in the interior of the parking area.
  - c) Curbing may be required to assure proper drainage, delineate the parking area and driveway access.
  - d) Stacking lanes may be required to avoid stacking of vehicles into the public right-of-way.
  - e) The Planning Board may also require bicycle parking spaces at the rate of one per 20 parking spaces.
  - f) Parking lots are encouraged to be designed with pervious pavement. Low impact stormwater methods such as bioswales and rain gardens shall be required to control runoff.

#### **4.12 STORMWATER**

1. Stormwater runoff rates after development shall not exceed the rates that existed prior to the site being developed. Existing natural areas that already provide storm water erosion control shall be protected to the maximum extent practical.
2. Erosion and stormwater control management practices shall be designed and constructed in accordance with the Stormwater Design Manual of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES), and with the requirements of the Environmental Protection Agency's Phase II National Pollutant Discharge Elimination System (NPDES) regulations and with the Green Infrastructure
3. All non-residential land disturbances of one (1) acre or larger and applicable residential developments that disturb over one acre of land shall conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities (GP-0-10-001), or as amended or revised.
4. The Planning Board may require the stormwater treatment to be designed through low-impact stormwater management practices. Bioretention (bioswales), dry wells, filter and buffer strips, grass swales, rain gardens, and infiltration trenches should be installed to infiltrate runoff from parking lots and other impervious surfaces to the maximum extent practical. Where vegetative solutions are not feasible, the Planning Board shall include porous surfaces to allow infiltration of stormwater to the maximum extent practical.

#### **4.13 COMMERCIAL DESIGN STANDARDS**

1. General. These standards are in addition to all requirements of the New York State Uniform Fire Prevention and Building Code. It is not the intent of this sub-section to discourage contemporary architectural expression but rather to preserve the integrity and authenticity of the hamlet of Elizabethtown and to ensure the compatibility of new structures within the existing district zoning. The standards established in this sub-section are for the purpose of promoting quality development that is attractive, convenient and compatible with surroundings. These standards are intended to be general in nature and not to restrict creativity, variety or innovation. During project development and review, attention should be given to the compatibility of adjoining developments when reviewing project proposals.
2. Applicability. These standards apply to all non-residential development required to have site plan or special use approval pursuant to Section 5.10.
3. Context and Compatibility. These standards and guidelines establish an expectation that new development enhances the community character of the Town and hamlet and that is consistent with the Town of Elizabethtown Comprehensive Plan. Context and compatibility with respected neighborhood buildings can be judged by the following major points of comparison:
  - a) Roof shapes, slopes and cornices are consistent with the prevalent types in the area.

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- b) Rhythm of building spacing along the street and overall scale are not interrupted.
  - c) Proportions for facades and window openings are in harmony with the traditional types within the district.
  - d) Materials, textures, and colors are similar, with natural and traditional building materials preferred.
  - e) Site details (porches, entrances, signs, landscaping, lighting, screened parking and mechanical systems) complement traditional examples in the area.
4. Building Placement.
- a) Buildings shall be designed so that entrance doors and windows, rather than blank walls, garages, side walls or storage areas, face the street. Blank walls for commercial applications are discouraged but may be allowed at the discretion of the Planning Board under certain circumstances such as when the structure is along an alley or when facing another blank wall.
  - b) The front façade of the building shall be parallel to the main street unless traditional orientation of buildings on that street differs for the majority of buildings.
5. Building Scale.
- a) The scale and mass of buildings shall be reviewed by the Planning Board during Site Plan Review and determined to be compatible with that of the district as viewed from the all exposed (public) vantage points.
  - b) In order to minimize the apparent scale of buildings greater than 40' in width, facades facing the main street should be broken by periodic setbacks, façade breaks, and rooflines should include offsets and changes in pitch. Other design features such as porches or cupolas, window bays, separate entrances and entry treatments, or the use of sections that may project or be recessed may also be used.
6. Building Façades
- a) Exterior materials of new construction shall be compatible with those traditionally used in the Hamlet and may include wood or wood-simulated (clapboard, board and batten or shingles, vinyl, red common brick, natural stone, and man-made or processed masonry materials if they simulate brick or stone and have the texture and architectural features sufficiently similar to that of the natural material to be compatible).
  - b) The front facade of the principal building on any lot shall face onto a public street.
  - c) A variety of architectural features and building materials is encouraged to give each building or group of buildings a distinct character.
  - d) New buildings should relate to the surrounding context to form a unified sense of landscape in each district. Repetition of design in multiple building projects should be avoided.



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- e) Formula-based architectural styles. All businesses, including commercial franchise or formula-based businesses shall meet all design standards of this Local Law. Formula-based architectural styles including, but not limited to those having uniform color schemes, facades, or signage used in all locations shall be allowed only if it is of a style consistent with the design standards of this sub-section. In order to protect the public health, safety and welfare of the Town, this provision is intended to preserve the Town's unique neighborhood and community character and to contribute to the establishment of a diverse economy and revitalized hamlet as established as critical goals in the Town of Elizabethtown Comprehensive Plan
7. Roof Types and Materials
- a) All roofs shall be pitched with a minimum pitch of 5" vertical rise for each 12" horizontal run and have a roof overhang of traditional proportions on all structures.
  - b) Peaked or slope roof dormers and cupolas are encouraged.
  - c) Roofing materials of slate, metal, asphalt or fiberglass shingles or cedar shakes or composites that have the same appearance as these materials are acceptable.
  - d) Porches, pent roofs, roof overhangs, hooded front doors or other similar architectural elements that define the front entrance to all residences are encouraged.
  - e) Multiple Buildings within a development shall have a variety of different roof overhang profiles, proportioned to replicate a traditional downtown street-front rhythm.
8. Windows
- a) The spacing, pattern and detailing of windows and window openings shall be reviewed by the Planning Board during Site Plan Review and determined to be compatible with adjacent buildings, including historic buildings, where possible.
  - b) The relationship of the width of windows to the height of windows in a building shall be visually compatible with adjacent buildings.
9. Accessory equipment. All roof-, wall- or ground-mounted mechanical equipment such as heating and air-conditioning units, exhaust fans, etc., shall be confined within the principal structure or within an area enclosed by a wall, screen, fence, berm or hedge of sufficient height and density to screen the equipment year round from view from adjacent streets, properties and parking lots. No equipment shall be located in front of a building, and the preferred location is to the rear of the building.

### **4.14 LANDSCAPING AND LIGHTING DESIGN IN THE MU and HS DISTRICT**

#### **Landscaping for all new non-residential uses.**

1. Landscape requirements of Section 4.14 Shall be required for all non-residential parking areas.

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2. Existing vegetation. Building placement and lot layout shall be designed to relate to and incorporate existing mature vegetation. Insofar as practical, existing trees and other desirable vegetation shall be conserved and integrated into the landscape design plan.
3. Landscape components. Primary landscape treatment shall consist of shrubs, ground cover and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Selected landscape plants should be native to the area to the extent practicable.
4. Screening. Open storage areas, exposed machinery, and areas used for storing and collecting rubbish shall be screened from roads and surrounding land uses. Suitable types of screening include wood fences and dense evergreen hedges of five feet or more in height. Where evergreen hedges are proposed, a temporary fence shall be built to provide screening until the evergreens are of sufficient height to screen the object alone.
5. Streetscape standards. Streets shall be designed to serve as a public space that encourages social interaction and that balances the needs of all users, including pedestrians, bicyclists, and motor vehicles.
6. Planting strips. Sidewalks shall be separated from street edges or curbs by a planting strip three to six feet wide and planted with grasses.
7. Shade trees shall be provided along each side of all streets, public or private, existing or proposed, but not including alleys, and at the expense of the owner. In locations where healthy and mature shade trees currently exist, these should be maintained and the requirements for new trees may be waived or modified. Shade trees shall be not be located in the planting strip between the street curb and the sidewalk but to the outside of the sidewalk away from the street where sidewalks are present. When the Planning Board allows for a new street with a sidewalk on only one side, the shade tree shall be planted at the same distance from the street edge or curb on both sides of the street. Shade trees shall have a minimum caliper of two inches measured at chest height at the time of planting and shall be spaced a maximum of 30 feet on center, with exact spacing to be evaluated on a site-specific basis.
8. Landscaped berms may be required by the Planning Board to screen non-residential uses from the street or adjacent structures. When required by the Planning Board, berms shall have a slope not greater than the slope created in 3 horizontal feet with a 1-foot vertical rise. The surface of the berm that is not planted with trees and shrubs shall be covered with grass, perennial ground cover, vines, and woody and herbaceous materials.

### **Lighting.**

1. No use shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located.
2. All light from exterior lighting, including security lighting, signs or other uses shall be directed away from adjoining streets and properties through the use of down facing and fully shielded light fixtures. Any site plan or special use permit plan provided to the Planning Board for a site plan or special use permit approval shall show the location, size, height, and design of all

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exterior lighting fixtures. The Planning Board may require a more detailed lighting plan on a grid to ensure that glare shall not trespass onto adjacent properties.

3. No direct glare shall be permitted and all lighting fixtures shall be fully shielded so that the angle of illumination is directed downwards rather than out with the exception of incandescent lamps equal to or less than 1650 watts, or glass filed tubes filled such as neon or argon.
4. Light source locations shall be chosen to minimize the hazards of glare. The ratio of spacing to mounting height shall not exceed a 4:1 ratio.
5. The maximum height of the luminaire shall not exceed 23 feet.
6. The installation of any mercury-vapor fixture or lamp for use as outdoor lighting is prohibited.
7. The Planning Board may require all exterior lights to be extinguished 30 minutes after the close of business, or after 11:00 PM unless the use is open 24 hours per day. Emergency lighting and pedestrian security lighting may be allowed to remain on after the close of business.
8. Light fixtures that are not in compliance with these standards at the time of adoption of this land use local law shall be permitted to remain in place, but any replacement shall be of a conforming light pole and fixture.

### **4.15 ENERGY EFFICIENT PRACTICES**

Energy efficient, Energy Star, and LEED energy standards are encouraged for all new building.

### **4.16 CLUSTER SUBDIVISION DESIGN**

1. The Planning Board may approve a cluster development for any subdivision proposed in the HR district. This procedure may be followed at the discretion of the Planning Board if its application would benefit the Town and hamlet.
2. All lot size, setback and other dimensions are to be set by the Planning Board at the time of application. A clustered development shall not result in an increase in the number of building lots which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of this Local Law. All design requirements of 4.16 to be met in exchange for lot size and dimension flexibility. The clustered subdivision can contain one or more of any housing type as allowed for in the HR district.
3. All procedures required for a subdivision in the hamlet of Elizabethtown shall also be followed for a clustered subdivision.
4. Standards for a Clustered Subdivision

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- a) The Planning Board may require that a minimum of 75% of the total dwelling units be situated on the property to conform to the traditional neighborhood design standards of this Appendix. The remaining dwelling units may be located strategically on the property to preserve open space.
- b) The subdivision shall adhere to the building design standards set forth below.
  - 1) Sidewalks and/or trails, and bicycle routes shall be incorporated to promote safe and efficient mobility, and create links between residences, mixed uses, and surrounding open spaces.
  - 2) Streetscape features and traffic calming measures shall be used to separate vehicular from pedestrian movement.
  - 3) Streets shall be interconnected in a grid or modified grid street pattern with block lengths from 200 to 400 feet.
  - 4) When any parking lot is required, shared parking lots within rear yards, and shared access to parking lots shall be incorporated.
  - 5) Commons, squares, and pocket parks shall be introduced as focal points in the neighborhood. One common “green” no less than 30,000 square feet shall be provided in a central location in the neighborhood and framed by new dwellings. Additional smaller greens serving clusters of dwellings shall be incorporated into the overall design of the neighborhood.
- c) Building orientation and façade.
  - 1) Blank walls. Buildings shall be designed so that entrance doors and windows, rather than blank walls, garages or storage areas, face the street.
  - 2) Front façade orientation. The front façade of the building shall be parallel to the street on which said building fronts.
- d) Building setback lines. Buildings shall define the streetscape through the use of setbacks along the build-to-line for each block. There shall be a uniform build-to line that shall establish the front yard setback for the lots on the block for new neighborhoods. The function of the build-to line is to form a distinct street edge and define the border between the public space of the street and the private space of the individual lot. The build-to line shall fall between the required minimum and maximum front yard as set forth for the HR and MU Districts.

A minimum of 80% of all buildings on the block shall conform to the build-to line with the remaining 20% allowed to vary by being set back farther but no greater than 75% of the distance from the right-of-way to the build-to-line. Buildings shall be allowed to come forward of the build-to line by no greater than 25% of the distance between the right-of-way and the build-to-line.

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- e) Streetscape.
  - 1) Plans shall incorporate a 4 to 6-foot-wide sidewalk separated from the street curb or edge by a 3 to 6-foot-wide planting strip. The proposed sidewalk shall transition to existing walkways where required. Shade trees shall be planted within the planting strip.
  - 2) Where sidewalks are not required, shade trees shall be located within the 10 feet of the front lot line. In developments where there are no existing trees, the Planning Board may require the developer to show trees at their planted size as well as normal rendering sizes to indicate the visual character of the development prior to maturation of trees.
  - 3) Where a new street has a sidewalk on only one side, the shade tree shall be planted at the same distance from the street edge or curb on both sides of the street.
- f) Stormwater design. Low impact stormwater management facilities will be incorporated into site and subdivision development wherever practicable. Low impact facilities include but are not limited to:
  - 1) Bioretention / Rain Garden
  - 2) Soil Amendments
  - 3) Grassed Swale
  - 4) Use of Rain Barrels
  - 5) Permeable Pavers
  - 6) Minimizing Imperviousness to Water
- g) Vehicular and Pedestrian Circulation
  - 1) All streets shall be provided with continuous sidewalks on one or both sides of the street. Sidewalks shall be four to five feet wide and constructed of concrete, masonry materials, or slate. Asphalt sidewalks are prohibited. Any new sidewalk shall be connected to existing sidewalks. Sidewalks shall comply with all applicable requirements of the American with Disabilities Act.
  - 2) Crosswalks shall be provided at all street intersections and shall be clearly marked with contrasting paving materials at the edges or with striping.
  - 3) The street system shall act as a functional and visual link between a subdivision and existing built and un-built areas in the hamlet. Motor vehicle circulation shall be designed to minimize conflicts with pedestrians.
  - 4) Traffic calming features such as curb extensions and bulb-outs, medians, narrow roads, surface textures, and modified intersections with narrowed intersection radii may be used to encourage slower traffic speeds.
  - 5) Bicycle circulation shall be accommodated on streets and/or on dedicated bicycle paths. Existing bicycle routes through a property shall be retained and enhanced. Facilities for bicycle travel may include off-street bicycle paths (generally shared with pedestrians and other nonmotorized users) and separate, striped, four-foot bicycle lanes on streets.

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Where feasible, bicycle routes through the subdivision shall be created. Facilities for bicycle travel may include off-street bicycle paths (shared with pedestrians and other non-motorized uses). Linkages to adjacent developments and neighborhoods with pedestrian and bicycle paths are required where feasible.

- 6) Any Town, County, or State plan for future bicycle pathways shall be considered during the design review process.
- h) Residential uses.
  - 1) Lot size diversity. A variety of lot sizes should be encouraged to eliminate the appearance of a standardized subdivision and to facilitate housing diversity and choice that meets the projected requirements of people with different housing needs.
  - 2) In major subdivisions, building mass, design, and floor plans shall be such to create visual differences between principal buildings, and new construction shall be consistent with the traditional character of Pine Plains. Monotony and similarity shall be minimized through use of changes in façade planes, use of porches, changes in location of entry way, varying the width of the unit, and varying roof orientation, roof styles, building orientation, and trim detailing. The Planning Board may require the submission of architectural renderings to ensure this objective is achieved.
  - 3) Duplex and multi-family structures shall be designed to look like a single family dwelling to the maximum extent possible.

### **4.17 UNREGISTERED MOTOR VEHICLES**

No person shall store or deposit, whether in connection with another business or not, two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose in any zoning district as per New York State General Municipal Law 136.

### **4.18 NATURAL RESOURCE CAPACITY REGULATIONS**

1. Purpose. It is hereby found and declared that improper utilization of land due to disruption and degradation of existing natural resource capacities constitutes a threat to the health, safety, and welfare of the inhabitants of the town and to the economic vitality of the community. The purpose of this following regulation is to protect the health, safety, and welfare of the inhabitants of the town, preventing impairment of existing natural resource capabilities.

This shall include the protection of persons, property, and natural resources.

2. Natural Resource Maps. The following maps are part of these Resource Protection Regulations and shall be utilized in reviewing project improvements. These maps are not included in the text

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of this Land Use Local Law and Regulations (LULLR), are referenced and shown within the Town of Elizabethtown Comprehensive Plan and are available from the Town Clerk.

- a) Soils Map
- b) Slopes Map
- c) Unique and Critical Areas Map
- d) Opportunities and Limitations Map
- e) Wetlands Map

3. Protection of Existing Natural Resource Capacities: To assure the protection of existing soil capacities, as well as the welfare of the community, during site improvement of property, road construction, foundation construction, and septic system installation, the following review procedure shall apply:

- a) When a project is, because of its magnitude, location, or type, a Class A Regional Project, all development categories related to the project shall be given a (3) rating.

<b>Natural Condition</b>	<b>Site Improvements</b>	<b>Road Construction</b>	<b>Foundation</b>	<b>Septic Systems</b>
Outwash	1	1	1	2
Alluvial	2	3	3	3
Shallow Till	3	3	3	3
Muck & Peat	3	3	3	3
0-3% Slopes	2	2	2	2
3-10% Slopes	1	1	1	1
10-15% Slopes	2	2	2	2
15-25% Slopes	2	3	3	3
Plus 25% Slopes	3	3	3	3
Wetlands	3	3	3	3
Flood Plains	2	3	3	3
“Critical Area” Wetlands	3	3	3	3

- b) The combination of a (2) rating for a development because of soil condition accompanied by a (2) or (3) rating for slope conditions, hydrologic conditions, critical conditions, and critical area status of unique natural conditions shall require a special use permit.

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- i. A (1) rating for a development shall indicate that there are no soil limitations that restrict the proposed project and a permit shall be issued.
- ii. A (2) rating for a development shall indicate that there are soil limitations that restrict the proposed project. The Town's Zoning Enforcement Officer shall be empowered to enforce the guidelines and standards for those soils and development procedures requiring special construction practices designed to overcome soil limitations and subject to these, may issue a permit.
- iii. A (3) rating for a development shall indicate that there are severe soil limitations that restrict the proposed project. The Planning Board is empowered to enforce the guidelines and standards for those soils and development procedures designed to overcome severe soil limitations. The Planning Board shall conduct a Special Project Review in such areas and shall approve or deny a special use permit on the basis of a proposed project's ability to overcome severe limitations according to the guidelines and standards hereby set forth.

### 4. Guidelines for Reviewing Project Improvements under Various Soil Conditions

- a) Outwash Soils: These soils present no problem for any development category. The Zoning Enforcement Officer shall ensure minimum standards, as defined in the New York State Public Health. These shall be met during construction and upon completion of a septic system or upon completion of any alteration to an existing septic system.
- b) Alluvial Soils
  - i) Site Improvements: Limitations to site improvements with an alluvial soil are associated with rivers and streams and the accompanying problems of erosion and vegetation loss. The following standards and guidelines shall apply:
    - a. Earth moving must not occur during the months of December 1 – April 30, because of the danger of flooding and the possibility of soil erosion. Earth grading must not increase the percentage of slope unless suitable soil stabilization is included, such as stone riprap embankments or steel reinforced levees.
    - b. Because of the risk of soil erosion, no removal of topsoil is permitted to alluvial soil areas unless replaced by a suitably stable material.
    - c. Excavation for foundation construction must be completed within 90 days from the project's initiation and must not be left incomplete during the months between December 1 and April 30.
    - d. Areas that have been graded must be vegetated upon completion of the project or within 90 days of its initiation, whichever shall come first. Vegetation may take the form of grasses or legumes or other appropriate vegetative ground cover. The applicant shall be held responsible for this successful adaptation of the vegetation.
    - e. For any and all vegetation removal, the Adirondack Park Agency shoreline restrictions for vegetation removal. Vegetation shall not be clear-cut from any alluvial soil area unless for the purposes of meadow, field, or pasture development.



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- f. The Planning Board shall solicit the opinion of a specialist, at the applicant's expense, before reaching a final decision.

ii) Foundation Construction: Foundations within alluvial soils are endangered by flooding and high water table conditions. Building: construction within these areas of alluvial soils shall, therefore, meet the provision of the floodway Special District as set forth in Article 9, Section 9.03 of this LULLR. In addition, foundation construction within alluvial soils outside of the Floodway Special District, and, therefore, capable of supporting foundation construction for dwelling units, shall be constructed to insure that cracking and seepage do not occur. Methods for preventing this may include, but are not limited to, the following procedures where appropriate:

- a. Removal of finer or more compactable soils and extensive backfilling with gravel or other pervious material at least two feet back from the foundation.
- b. Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors.
- c. Elimination of gravity flow drains.
- d. Construction to resist rupture or collapse caused by water pressure or floating debris.
- e. Elevation of structures to or above the necessary flood protection elevation.
- f. The Planning Board shall solicit the opinion of a specialist and/or private engineer at the builder's expense, before making a final decision on a permit for foundation construction.

iii) Road Construction: Roads through alluvial soil conditions must be capable of withstanding seasonally wet conditions, high water tables throughout the year, and intermittent flooding. Special Project Review or road construction includes private drives, subdivision streets, and public rights-of-way. Within alluvial soil areas, the road builder shall, in addition to meeting the minimum standards of road construction as set forth in 4.20 of this LULLR that the drive, street, or public right-of-way shall not cause environmental damage to adjacent land or adjacent river or stream water quality through alteration of the existing water table, subsoil, or vegetation conditions. The following standards shall therefore apply:

- b. Road construction of the drive, street, or right-of-way must insure the ability of the sub-base and base courses to withstand high water table and periodic flood conditions.
- c. A sub-base course of 4 to 8 inches of non-fibrous and pervious material shall be constructed to insure a stable base course while allowing for the free flow of ground adjacent vegetated areas.
- d. The Planning Board shall consult with a specialist at the landowner's expense, prior to reaching a final decision.

iv) Septic System: In areas having alluvial soil, septic systems can pollute ground water or adjacent surface water. Because of the ineffectiveness of septic systems constructed within alluvial soil areas, construction of septic systems and leach fields within the defined Floodway Special District shall not be permitted. In areas of alluvial soil outside this district, septic systems shall be constructed to insure their continued operation during periods of high water table and shall be constructed so as to prevent their contamination of ground water or adjacent surface water. The Planning Board, prior to a final decision on the

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granting of a special use permit for septic systems within alluvial soils, shall consult with a State Department of Health representative, as well as a private engineer at the landowner's request and expense.

### c) Shallow Till

- i) Site Improvements: In shallow till areas, soil is shallow to bedrock and easily eroded. Site improvements that will not cause soil erosion will be very difficult.

The Planning Board shall insure that:

- a. A maximum of 90 days for excavation duration.
  - b. Excavation areas are not exposed during the months from December 31 – March 31.
  - c. Methods to remove sediment from runoff water during the excavation period are effectively utilized.
  - d. Grading of land to as close to its former grade as possible and immediate reseeding is assured by the applicant.
  - e. A minimum of 4 inches of topsoil shall be provided to cover all finished slopes.
  - f. Embankments shall consist of solid and stable materials. These materials shall be placed in successive horizontal layers, each no more than 6 inches in depth. Each layer shall be thoroughly compacted before a new one is laid.
  - g. Vegetation shall not be clear-cut and removal of any timber for harvesting purposes shall retain at least one third of the timber so as to prevent soil erosion.
  - h. The Planning Board shall consult with a specialist, at the applicant's expense, prior to a final decision on a conditional permit request for site improvements.
- ii) Road Construction: Road construction standards for private drives and streets in shallow tills shall include:
- a. Road damage, mud slides, and ground water pollution shall be minimized by the retention of existing drainage-ways through and the installation of culverts at no less than 40 feet apart from the course of the road in 8-10 percent grade and 100 feet in grades 0-8 percent.
  - b. Topsoil shall be removed at least 24 inches in depth and replaced with a pervious gravel base course of at least 18 inches in thickness.
  - c. Construction of base courses within the shallow till areas shall, at their lowest point (18 inches from the final grade), be no less than two (2) feet from bedrock.
  - d. The Planning Board shall consult with a specialist, at the applicant's expense, prior to a final decision on a special use permit for road construction.
- iii) Foundation Construction: The principal problem of foundation construction in shallow till is soil erosion. Erosion of soil around the foundation can cause landslides, foundation movement and cracking, ground water pollution in lower elevations, and destruction of vegetation. Engineering methods must be utilized to insure that these four conditions

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do not occur as foundations are constructed. These methods can include by shall not be limited to:

- a. Stone, steel, or wood embankments to prevent landslides in slopes greater than 25 percent.
  - b. Improvements to existing drainage courses to insure even and dispersed water drainage from the site.
  - c. Grading of land below the construction site, creating intermittent drainage swales.
  - d. Permanent sediment basin construction and basin maintenance program.
  - e. The Planning Board shall, prior to a decision on a special use permit for foundation construction in shallow tills, consult a specialist in addition to a private engineer at the applicant's expense.
- iv) Septic Systems: It will be difficult for septic systems of any kind to operate effectively within shallow till areas. As well, pollution of ground water and adjacent streams can result in these areas because of the shallow depth.

### d) Muck and Peat Soil

- i) Site Improvements; Areas of muck and peat soil have a delicate biological balance. Changes to these areas shall not disrupt the balance.

In addition to fulfillment of guidelines in shallow till soil regulations (Section A.4 (3) (a) of this Appendix), site improvement shall not alter existing water quality, drainage patterns, or the water storage capacity of muck and peat soil. Vegetation removed during site improvements shall be replaced with similar vegetation types. The Planning Board shall consult a specialist at the request and expense of the applicant prior to a final decision on a special use permit.

- ii) Road Construction: The same guidelines as those listed for areas of alluvial soils in Section 4 (b) of this section shall apply.
- iii) Foundation Construction: The same guidelines as those listed in 4 (b) of this section for areas of alluvial soils shall apply.
- iv) Septic Systems: The same guidelines as those listed in Section 4 (b) of this section for areas of alluvial soils shall apply.

## 5. Slope Conditions

- a) 0-3 Percent Slopes

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- i) Site Improvements: This slope percentage represents areas that are nearly flat. Adequate drainage, therefore, should be an important consideration as sites of 0-3 percent are improved.
    - a. Improvements shall insure that sufficient drainage is maintained so as to prevent surface water collection. This may be accomplished by, but not only limited to, maintenance or regarding of topsoil to a 3 percent slope, or utilization of subsurface drainage tiles.
    - b. Where 0-3 percent slopes exist adjacent to water bodies and within flood plains, site improvements shall not alter the grade or elevation so as to alter the land area's seasonal or annual absorption of floodwaters.
    - c. Grading shall not disrupt the environment of existing vegetation by changing its water supply.
  - ii) Roads: Construction of roads through areas of 0-3 percent slope must insure adequate drainage of the road so as to prevent damage and/or standing water. To attain this, the following standards, in addition to those specified in this Appendix, apply to any road construction in 0-3 percent slope.
    - a. Side slopes on roadside drainage ditches shall descend one (1) foot vertically for at least each two (2) feet horizontally (one in two).
    - b. Surplus materials resulting from excavation of the roadbed shall be used to flatten slopes of embankments so that they ascend one (1) foot vertically for at least two (2) feet horizontally (two on one).
    - c. Side slopes in excavation rock shall ascent six (6) feet vertically for at least each one (1) foot horizontally (one on six).
  - iii) Foundations: Problems accompanying foundation construction within this classification include the chances of water collection along the foundation that can cause structural damage. Grading of the site shall therefore maintain a 3 percent minimal slope along all sides of the foundation and away from it a minimum of 25 feet.
  - iv) Septic Systems: Within area of 0-3 percent slope, septic system construction shall insure that a minimum 2 percent slope from the center of the leach field is maintained along the ground elevation to insure adequate surface drainage.
- b) 3-10 Percent Slope: No special problems, road construction, foundation construction, or septic system installation are associated with this slope category. Any surface drainage shall maintain finished grades of 3 percent.
  - c) 10-15 Percent Slopes: These slopes are generally suitable for development. Moderate limitations do exist in certain specific sites. The severity of a particular site shall be inspected. Roads shall not exceed 10 percent grades and leach fields shall not exceed 10 percent grades and leach fields shall not exceed minimum standards set forth in New York State Public Health Law.

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### d) 15-25 Percent Slope

- i) Site Improvements: Site improvements in this category can easily exacerbate existing erosion. The site development standards for shallow till soils as set forth in Section 4 (c) of this sub-section shall be applied to areas of 15-25 percent slope. In addition, vegetation shall not be clear-cut and removal of any timber for harvesting purposes shall retain at least one third of the timber stand and sufficient vegetation so as to prevent erosion.
  - ii) Road Construction: In addition to requirements set forth in these LULLR, guidelines and standards designated for shallow till areas as set forth in Section 4 (c) of this section shall apply within these areas as well as guidelines established for the 0-3 percent category, as set forth in this sub-section. Finally, drives, roads, streets, and public rights of way through slopes of 15-25 percent, unless covenanted for summer use only, shall not exceed 15 percent in slope over the course of 50 feet in length. Prior to a final decision on a special use permit for road construction, the Planning Board shall solicit the opinion of a specialist and/or a private engineer at the applicant's expense.
  - iii) Foundation Construction: Guidelines established for shallow till areas as set forth in Section 4 (c) of this sub-section shall apply. The Planning Board, prior to reaching a final decision on a special use permit for septic system construction, shall consult with a specialist and/or a private engineer at the applicant's expense.
- 5) Plus 25 Percent Slopes: Slopes of this type offer several constraints to all four categories of development. In addition, the risk of environmental degradation is very great. Guidelines and standards for each development category in 15-25 percent slope as set forth in this section shall apply. The Planning Board, prior to reaching a final decision on a special use permit for any development in land of this slope percentage, shall consult with the Soil Conservation Service and Adirondack Park Agency Project Review staff, in addition to a private engineer at the applicant's request and expense.

## 6. GUIDELINES AND REQUIREMENTS FOR THE PROTECTION OF WETLAND FLOOD AREAS

- a) Flood Plains: These areas are of a biologic importance while being hazardous for any development because of the danger of flood conditions. Guidelines and standards for each development category shall include those specified within the Floodway Special District Regulations and those for alluvial soil areas. The Planning Board, prior to reaching a final decision on any development request, shall consult with a public specialist, in addition to a private engineer, at the applicant's request and expense.
- b) Wet Lands: Guidelines and standards for site improvements, road construction, foundation construction, and septic systems in wetlands shall be the same as those for areas of Muck and Peat soil as set forth in Section A.4 (d) of this sub-section. These shall not supersede guidelines and standards for wetlands defined as critical areas. The Planning Board, prior to its reaching a final decision on a special use permit for development in wetlands, shall consult with a public specialist and Adirondack Park Agency representatives. As well, a private engineer may be consulted at the applicant's request and expense.

## 4.19 AESTHETIC SITE DEVELOPMENT CONSIDERATIONS

### 1. Scenic Quality Protection Regulations

The following regulations are adopted to protect defined areas of significant visual quality, to maintain a pleasing visual character along certain streets, and to insure that scenic quality considerations are applied to the site planning of development that, because of its type, size, or location, will have a significant impact upon the landscape of the hamlet of Elizabethtown.

### 2. Site Development Regulations

Site development shall be in keeping with the existing landscape assets of the site. Subdivision and Regional Class A project approval should be contingent upon a project's fulfillment of site development guidelines in scenic quality protection. These regulations include the following:

- a) Proposed access drive routes shall, wherever possible, respond to existing topographic conditions.
- b) Whenever possible, excavation, cuts and fills, and site grading shall be minimized by utilizing existing topographic features in the site plan.
- c) Areas of existing visual quality shall, whenever possible, be retained in their present scenic character.
- d) Important site features such as stone walls, rock outcroppings, and streams shall, whenever possible, be utilized as positive components in the development plan of the site in the Town.
- e) Building construction materials and site improvement shall be complementary with landscape plantings of a design and material appropriate to the indigenous character of the Town's landscape and its immediate neighborhood.
- f) Utility routes and access roads shall, whenever possible, be located along back lot lines.
- g) Temporary trash and waste containers, storage facilities for fuel, equipment and machinery, shall have on-site storage areas that will not be visible from public right-of-way.

## 4.20 ROADWAY STANDARDS

### 1. Street Layout Guidelines (For proposed subdivisions)

- a) Streets shall be suitable located and designed to accommodate the prospective traffic and to afford satisfactory access to firefighting, snow removal, and road maintenance equipment.
- b) Streets shall be arranged as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient and safe system.
- c) When a subdivision abuts or contains an existing or proposed arterial street, the Board may require marginal access streets, reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with rear service access, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- d) The arrangement, width and grade of all streets shall be considered in relation to existing and planned streets, topographic conditions, public convenience and safety, and in their

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- appropriate relation to proposed land uses. Minor streets shall be planned so their use by through traffic will be discouraged.
- e) Where a tract is subdivided into lots much larger than the minimum size required in the land use district in which a subdivision is located, the Planning Board may require that streets and lots be laid out to permit future subdivision.
  - f) Arrangement of streets shall provide for continuation of existing streets between adjacent properties.
  - g) Where a subdivision borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning Board may require a street approximately parallel to and on each side of such a right-of-way at a distance suitable for the appropriate use of intervening land.
  - h) If adjacent property is undeveloped and the street must be dead-end temporarily, right-of-way and improvements shall be extended to the property line. A temporary circular turn around shall be provided on all temporary dead-end streets, with the notation on the plot that land outside the street right-of-way shall revert to abutting lots whenever the street is continued.
  - i) Half streets and privately owned reserve strips preventing access to streets or adjacent property shall be prohibited.
  - j) A circular turn around shall be provided at the dead-end of a street.
  - k) Where the subdivision borders on an existing street and the Town Official Map indicates plans for realignment or widening of the street that would require reservation of some land of the subdivision, the Board shall require that such areas be shown and marked on the Final Plot "Reserved for Street Realignment (or Widening Purposes.)"

### 2. Street Design Standards

- a) Intersection of major streets by other streets shall be held to a minimum and shall be at least 500 feet apart, if possible. Cross street intersections shall be avoided, except at important traffic intersections. A distance of at least 250 feet shall be maintained between offset intersections. Within 100 feet of an intersection right-of-way, streets shall be approximately at right angles. Street jogs with centerline offsets of less than 125 feet shall be avoided.
- b) Grades of streets shall conform as closely as possible to original topography and shall be arranged so that building sites are at or above street grade. Steep grades and sharp curves shall be avoided. All changes in grade shall be connected by vertical curves of such length and radius as meet with the approval of the Town Engineer.
- c) Streets shall be graded and improved with pavements, curbs and gutters, sidewalks, storm drainage facilities, water mains, sewers, street lights and signs, street trees, and fire hydrants, except where waivers may be requested, and the Planning Board may waive, subject to appropriate conditions, such improvements as it considers may be omitted without jeopardy to the public health, safety and general welfare. Such grading and improvements shall be approved as to design and specifications by the Town Engineer.
  - i. Fire Hydrants: Installation of fire hydrants shall be in conformity with all requirements of standard thread and nut as specified by the New York State Fire Insurance Rating Organization and the Division of Fire Safety of the State of New York.

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- ii. Street Lighting Facilities: Lighting facilities shall be in conformance with the lighting system of the Town. Such lighting standards and fixtures shall be installed after approval by the appropriate power company.
- d) Curve Radii at Street Intersection: All street right-of-way lines at intersections shall be rounded by curves of at least 20 feet radius and curbs shall be adjusted accordingly.
- e) Steep Grades and Curves: Visibility at Intersections: A combination of steep grades and curves shall be avoided. In order to provide visibility for traffic safety, that portion of any corner lot (whether at an intersection entirely within the subdivision or of a new street with an existing street) shall be cleared of all growth (except isolated trees) and obstructions above the level three feet higher than the centerline of the street. If directed, ground shall be excavated to achieve visibility.
- f) Dead-end Streets (Cul-De-Sacs): Where dead-end streets are designed to be so permanent they should, in general, not exceed 900 feet in length, and shall terminate in a circular turnaround having a minimum right-of-way radius of 60 feet and pavement radius of 50 feet. At the end of temporary dead-end street, a temporary turnaround with pavement radius of 50 feet shall be provided, unless the Planning Board approves an alternate arrangement.
- g) Curve Radii: Street lines within a block, deflecting from each other at any one point by more than 10 degrees, shall be connected with a curve, the radius of which for the entire line of street shall not be less than 400 feet on major streets, 200 feet on collector streets, and 100 feet on minor streets.
- h) Sidewalk Construction Standards: Sidewalks shall be installed at the expense of the subdivider where the subdivision abuts or fronts onto a major street, and at such locations as the Board may deem necessary in accordance with the following:
  - i. Minimum width of sidewalks in a residential area shall be four feet, and in commercial or industrial areas five feet.
  - ii. Sidewalks shall be of concrete at least five inches thick, except through driveways and other areas subject to vehicular traffic where they shall be at least six inches thick, laid on a compacted bed of gravel at least six inches deep.
- i) Block-Planning and Design Standards:
  - i. The length width, and shape of blocks shall be determined with due regard to:
    - a. Provision of adequate building sites suitable to the special needs of the type of use contemplated.
    - b. Requirements as to lot sizes and dimensions.
    - c. Need for convenient access, circulation, control, and safety of street traffic.
    - d. Limitations and opportunities to topography.



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- ii. Irregular shaped blocks or oversized blocks indented by cul-de-sacs, parking courts, or loop streets and containing interior block parks or playgrounds will be acceptable when properly designed under provisions of Planned Residential Development.
- iii. Blocks lengths shall not exceed 1,200 feet, nor be less than 600 feet; blocks abutting major streets shall be not less than 1,000 feet and may exceed 1,200 feet.
- iv. Blocks over 800 feet in length may be required to have a 20-foot-wide crosswalk easement to facilitate pedestrian access.
- v. The minimum block width for two tiers of lots shall be 250 feet, or twice the minimum depth as specified in the Land Use Local Law.
- vi. Where double frontage lots are necessary, minimum block width shall be 200 feet.

j) Minimum Road Requirement Construction Standards:

- i. Street improvements shall be installed at the expense of the subdivider. The following specifications shall constitute the minimum standards for construction and improvement of streets. Other standards may be required if deemed necessary by the Planning Board to protect the public safety and welfare.

	<b>Collector</b>	<b>Sub-Collector</b>	<b>Local</b>
Maximum Right-of-Way Width	80'	66'	50'
Maximum Pavement Width	38'	34'	20'
Maximum Grade	6%	8%	10%
Minimum Grade	0.5%	0.5%	0.5%
Centerline Radius	250'	90'	90'
Corner Radius	25'	15'	15'
Block Length	NA	NA	700'
Trees Planted	Yes	Yes	Yes

k) Minimum Standards for Cul-de-Sacs and Dead End Streets. The Town of Elizabethtown finds that the use of cul-de-sacs and dead end streets in the hamlet is general not encouraged and is inconsistent with the desire for interconnected streets. All other street standards for local roads shall be met for cul-de-sac and dead end streets. Where the Planning Board does allow for such streets, the following additional standards shall be met:

- i) A cul-de-sac or dead end street shall terminate in circular rights of way having a minimum pavement width radius of 45 feet.
- ii) In no event shall the length of a cul-de-sac exceed 150'.
- iii) The Planning Board may require reserved land to allow for connection of a dead-end street if needed in the future.
- iv) At least 40% of the bulb of a cul-de-sac shall be landscaped.

## 4.21 OPEN SPACE AND RECREATION FACILITIES

### 1. Standards and Guidelines for Public Uses and Facilities

#### Scenic and Land Easements

In addition to the acquisition of land for ultimate public and semi-public uses, the Land Use Plan sets forth a recommended policy of dredge easements, visual easements, and easements of rights-of-way of such a community necessities as pedestrian ways and utility installations. The acquisition of easements shall be a prerequisite to subdivision approval as land development takes place in the Town. The Land Use Plan requires the establishment of a minimum of 25 feet for pedestrian ways, a 500-foot easement on identified drainage ways, and real easements as the Planning Board identifies critical and significant visual elements in the zoning regulated area of Elizabethtown.

### 2. Open Space and Outdoor Recreation Standards

- a) Tot Lots: A tot lot is designed to serve elementary and pre-school children. A tot lot should be one acre in size and incorporated in a larger park area. A tot lot may serve 300-700 children and have a service radius of one-quarter mile.
- b) Play Fields: May serve all ages. The minimum size for a play field complex is two acres and the facilities may include softball fields, basketball courts, tennis courts, ice-skating rinks, track and football fields. Depending on the size and variety of fields, a playing field complex can serve up to 5,000 people and should be within twenty minutes driving time.
- c) Parks: Are established to provide open space and passive recreation to all age groups. A park may include tot lots and playing fields or be used solely for passive recreation. It can be anywhere from one-half to seven acres in size, depending on its type. There should be 10 acres of parkland per 1,000 population and the parks should be within a one-half mile service radius.
- d) Trails and Bicycle Paths: Can serve all ages. The purpose of the trails and bicycle paths is to connect parks and play fields with residential areas or other parks. Developed trails may also be used to lead hikers through open spaces. The trails and bicycle paths may follow streams and waterways. An easement of 25 feet should be for this purpose.
- e) Water Recreation: Swimming, boating, and fishing are water oriented sports that attract participants of all ages. Full utilization of water assets would include outdoor swimming facilities, public boat landings, and fishing access areas within the hamlet of Elizabethtown.
- f) Open Space and Scenic Easements: The conservation of open space insures the protection of natural areas for the future and provides a balance between the natural and the man-made land use areas. Scenic easements along waterways can preserve the quality and the flow of water.

## 4.22 REGULATION OF FARM ANIMALS

In all districts, animals kept on residential properties shall be limited to the HR district as follows:

1. Keeping of domestic animals accessory to a residence in the HR district shall meet the following acreage requirements:

<b>Animal Type</b>	<b>Minimum Lot Size</b>	<b>Animal Type Maximum</b>
Horses and Mules	3 acres	1 per one acre to a maximum of 10
Cattle, Llamas & Deer	3 acres	1 per one acre to a maximum of 10
Fowl and Game Birds	1 acre	10 per one acre to a maximum of 25
Goats, Pigs, Sheep	1 acre	2 per one acre to a maximum of 10
Rabbits	1 acre	10 per one acre to a maximum of 25

- 2) Pens for such animals shall not exceed 10% of the lot area.
- 3) Buildings, pens, or other structures housing animals shall be located twenty (20) feet from any lot line and thirty-five (35) feet from any road or highway. No manure may be stored within fifty (50) feet of any property boundary line or one hundred (100) feet from any watercourse.
- 4) All buildings and structures used to store feed or other materials used for the domestic animal use shall be located a minimum of thirty-five (35) feet from all property lines. A minimum of one hundred (100) feet shall be provided between any area or structure used for the storage of animal wastes and wetlands, and waterways.
- 5) All domestic animals shall be fenced.
- 6) No animal shall have direct access to a jurisdictional wetland, impoundment, stream, spring or well on the lot.
- 7) Roosters shall not be allowed in any district within the hamlet of Elizabethtown.

## 4.23 SOLAR PANELS

1. Utility scale solar panels are prohibited in all zoning districts.
2. Solar Panel, Roof Mounted
  - a) No solar energy system shall be installed or operated in the Town except in compliance with this section.
  - b) The installation of a solar collector or panel is permitted as an accessory structure and shall meet all requirements of the district in which it is to be placed and of this sub-section 4.23, and shall require a building permit.
  - c) All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.

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- d) Height limits for solar collectors mounted on buildings shall be five feet above the level of the permitted building height.
- e) All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
- f) Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this article. However, all applicable building codes shall be met and necessary permits obtained. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered exempt or not.
- g) In order to ensure firefighter and other emergency responder safety, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and pathways to provide space on the roof for walking around all solar collectors and panels.

### 3. Solar Panel, Pole Mounted

- a) No solar energy system shall be installed or operated in the Town except in compliance with this section.
- b) The installation of a solar collector or panel on a pole or on the ground is permitted as an accessory structure and shall meet all requirements including but not limited to setbacks of the district in which it is placed and of this sub-section 4.23, and shall require a building permit.
- c) All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- d) Pole or ground mounted or freestanding solar collector height shall not exceed 20 feet when oriented at maximum tilt.
- e) Pole mounted or ground mounted solar collectors are permitted as accessory structures subject to the following additional conditions:
  - i. A lot must have a minimum size of 40,000 square feet in order for a pole mounted solar system to be permitted.
  - ii. Screening of the solar panel(s) shall be provided when practicable from adjoining lots through the use of architectural features, earth berms, landscaping, fencing, or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with normal operation of the solar collectors.

- iii The total surface areas of all pole or ground mounted solar collectors shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, not including patios and decks.

## **ARTICLE 5**

### **ADMINISTRATION AND ENFORCEMENT**

#### **5.01 PLANNING BOARD**

##### 1. Purpose.

The Planning Board shall have the following jurisdiction and authority:

It shall be the duty of the Planning Board to amend, extend, and add to the Land Use Local Law and Regulations for the physical development of the hamlet area in the Town of Elizabethtown. Upon the adoption of this Land Use Local Law and Regulations, no regulations, official map, or zoning, or other plan shall be enacted, established, or amended, and no plot, street, or way shall be approved until the Planning Board shall have reported its recommendations in regard thereto, and no public building, structure, except as authorized under the provisions of State Law, or roadway, street, way, park, or other public land shall be authorized, established, or modified in location or extent until the Planning Board shall have reported its recommendations to the Town Board in regard to the location and extent thereof. This report shall be made only after the Planning Board has made a careful investigation and is convinced that the plans or regulations proposed will fit in with the Land Use Local Law and Regulations adopted to guide the development of the zoning regulated portion of the town.

##### 2. Duties of the Planning Board:

- a) Coordinate the establishment of a town comprehensive plan.
- b) Responsibility to recommend to the Town Board a change or addition to the official map in regard to street layout, opening, or widening, district boundaries, etc.
- c) Review, approve, approve with modifications, or disapprove site plans prepared to specifications set forth in the ordinance or local law.
- d) Authority to grant special use permits as set forth in such zoning ordinance or local law.
- e) Subdivision review, approval of plats.

##### 2. Membership.

- a) Appointment and terms.

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- i) The Planning Board shall consist of five (5) members appointed by the Town Board. Members now holding office for terms that do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be five (5) years.
  - ii) The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members on the board. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board. Successor Board members shall be appointed for the term of five (5) years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board to fulfill the remaining unexpired term of that member.
  - iii) The Town Board shall appoint at least one (1) person as an Alternate Member of the Planning Board for a term of five (5) calendar years. All provisions of this Local Law relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards shall also apply to alternate members. The Chairperson of the Planning Board may designate the alternate member to substitute for a member who is unable to participate in deliberations and decisions of the Planning Board due to conflict of interest on an application or matter before the Board. When so designated: the alternate member shall possess all the powers and responsibilities of such member of the board; shall be allowed to participate in discussions of the proceedings; and shall be allowed to vote. Such designation of the Alternate Member shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made. At all other times, an Alternate Member may participate in discussions of the proceedings, but may not vote except due to the disqualification of a regular member and a designation of substitution by the Chairperson.
- b) Board composition. All members of the Planning Board shall be residents of the Town of Elizabethtown. No person who is a member of the Town Board shall be eligible for membership on the Planning Board.
  - c) Vacancies. When an alternate member has been appointed, the Town Board shall appoint such person to fill the unexpired term of a vacating member. When an alternate member moves to be a full member of the Planning Board, the Town Board shall appoint a new alternate to fill that open alternate position.
  - d) Mandatory training. All members and alternate members of the Planning Board shall comply with the requirements of New York State Town Law Section 271 that require all planning board members and alternate members to complete a minimum of four (4) hours of training each

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year. No Planning Board member shall be eligible for reappointment if they have not completed this training as required.

e) Removal.

- i) The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause. Any Planning Board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by this Local Law or other law established by the Town Board.

### **3. Chairperson and Vice Chairperson.**

The Town Board shall appoint one of the Planning Board members as Chairperson, to preside at all meetings and hearings and to fulfill the authorized duties of that office. In the absence of a chairperson appointed by the Town Board, the Planning Board may designate a member to serve as chairperson until such time as the Town Board permanently designates a chairperson.

All meetings of the Planning Board shall be held at the call of the chairperson and at such other times as such Board may determine. The chairperson, or acting chairperson, may administer oaths to applicants, witnesses, or others appearing before the Board and may compel the attendance of witnesses.

### **4. Public Record.**

The Town Clerk shall provide for keeping a file of all records of the Planning Board, and such records shall be public records open to inspection at reasonable times and upon reasonable notice, except for records exempted from disclosure under the New York State Public Officers Law (Freedom of Information Law) or documents which are protected by attorney-client privilege.

### **5. Voting procedures.**

- a) Quorum. No business shall be transacted by the Board without three (3) members of the Board being present.
- b) Voting. The concurring vote of at least three (3) members shall be necessary for any action by the Board, pursuant to New York State Town Law Section 271(16). Where an action is the subject of a referral to the Essex County Planning Board, and in the event that the Essex County Planning Board recommends disapproval of the application within the thirty (30) day time period allowed them, the Planning Board shall not act contrary to such recommendation except by a vote of a majority plus one (1) of all the members after the adoption of a resolution fully setting forth the reasons for such contrary action. Within thirty (30) days after taking final action on an application, the Planning Board shall file a report of the final action it has taken with the Essex County Planning Board.

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- c) Assistance to Planning Board. The Board shall have the authority to call upon any department, agency or employee of the town for such assistance as the Board deems necessary. All costs incurred by any department, agency or employee for providing assistance in a particular proceeding shall be borne by the applicant.

### **6. Decisions.**

- a) Decisions. Every decision of the Planning Board shall be by resolution and shall expressly set forth any limitations or conditions imposed or use authorized.
- b) Final decision. All deliberations and decisions of the Planning Board shall occur at a meeting open to the public and shall state any special circumstances or conditions. Decisions of the Board shall be final upon adoption of resolution of Planning Board by a majority of the members of the Planning Board and the filing of the resolution with the office of the Town Clerk.
- c) Notification of decision. Within five (5) business days following the final decision on any action before the Planning Board, a notice of such decision shall be mailed to the applicant and such decision shall be filed in the office of the Town Clerk.
- d) Failure to Act. All time periods prescribed for Planning Board action on a subdivision, special use permit, or site plan approval are specifically intended to provide the Planning Board and the public adequate time for review and to minimize delays in the processing of such applications. Such time periods may be extended only by mutual consent of the owner and the Planning Board. If the Planning Board fails to take action on a subdivision plat, special use permit, or site plan within the time prescribed after completion of all requirements under the state environmental quality review act, or within such extended period as may have been established by the mutual consent of the owner and the Planning Board, such application shall be deemed granted approval. The certificate of the Town Clerk as to the date of submission of the application and the date when such application is deemed complete for review and the failure of the Planning Board to take action within the prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval as required.

### **7. Conflicts.**

No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has an interest. Any conflict of interest prohibited by Article 18 of the New York State General Municipal Law shall disqualify a member.



## **8. Appeals.**

Any person or persons, jointly or severally aggrieved by any final decision of the Planning Board, may apply to the New York State Supreme Court for review by a proceeding under Article 78 of the New York Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of the decision of the Planning Board in the office of the Town Clerk.

## **5.02 APPOINTMENT OF ENFORCEMENT/ZONING ENFORCEMENT OFFICER**

The Zoning Enforcement Officer (ZEO) shall be appointed and may be removed by the Town Board. The Zoning Enforcement Officer shall have the power and duty to administer and enforce the provisions of this Local Law. An appeal regarding action taken by the Zoning Enforcement Officer in the Local Law may be made only to the Board of Appeals. The Zoning Enforcement Officer shall keep the planning board fully informed of all zoning actions on a minimum of a monthly basis and more frequent basis when required.

## **5.03 ADIRONDACK PARK LAW PROVISIO**

Nothing in this Land Use Local Law shall be deemed to supersede, alter, or impair the jurisdiction of the Adirondack Park Agency, pursuant to the Adirondack Park Agency Act, to review and approve, approved subject to conditions, and disapprove those land uses and developments and subdivisions of land defined therein as Class A regional projects, or otherwise to supersede, alter, or impair the statutory function, duties, and responsibilities of that Agency with regard to matters involving a municipality in which an Agency-approved local land use program has been validly adopted or enacted. Provided that the Adirondack Park Agency cannot, in the context of its Class A regional project review, override a more stringent local decision not to permit a given land use or development.

Class A regional projects include anything over 40' in height (except agricultural use structures, residential radio and TV antennas). The APA has no jurisdiction in the hamlet except an airport, tourist accommodations of 100+ units, mobile homes of 100+ or more, projects with 100 lots or more, and for watershed management flood control.

## **5.04 ENFORCEMENT DUTIES AND PROCEDURES**

1. The ZEO shall have the following powers and duties:
  - a) To receive and review for Local Law compliance and for clerical completeness all applications for a special use permit, site plan review and subdivision review pursuant to the provisions of this Local Law. If the Zoning Enforcement Officer determines that the application meets all requirements of the Local Law, the ZEO shall forward the application to the Planning Board for further review in accordance with the provisions of the Local Law. If the ZEO finds that the application does not comply in one or more respects with the provisions of the Local Law, the ZEO shall deny the application and notify the applicant that he/she may appeal the ZEO's determination to the Zoning Board of Appeals in accordance with the provisions of Article 7 of this Local Law.

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- b) Upon approval of any application by the Planning Board for a special use permit, site plan approval, or for any other change in use requiring the issuance of a building permit, the ZEO is authorized to issue a permit without additional application by the project sponsor. Such permit shall include all standards and conditions imposed by the Planning Board.
- c) To conduct inspections necessary to the investigation of complaints and all other inspections required or permitted under any provision of this Local Law. The filing of an application for any and all permits including regional projects approved under Article 8 of this Land Use Local Law and Regulations, an application for variance approval under Article 7 hereof, an application for site plan review and approval under Article 5, Section 5.10, or application for a land use and development permit under this article by an applicant shall be considered a granting of permission by said person to the Planning Board, the Zoning Board of Appeals, and the Zoning Enforcement Officer, and to such persons as they may designate, to conduct such tests and inspections of the site which are the subject of the application, as the body or officer having jurisdiction deems necessary and appropriate for the purposes of this Local Law.
- d) To issue stop work orders, notices of violations and compliance orders.
- e) To accept complaints of violations from citizens and public officials, to document and follow up on violations encountered during the course of inspections or through general observation in the community, to investigate potential violations, and where necessary in the discretion of the Town, to commence enforcement of the Local Law.
- f) To issue orders pursuant to this Local Law ("Violations").
- g) To maintain records.
- h) To collect fees set by the Town Board.
- i) To pursue administrative and civil enforcement actions and proceedings and/or criminal proceedings to enforce the provisions of this Local Law.
- j) To consult with the Town Attorney about pursuing such legal actions and proceedings as may be necessary to enforce the provisions of the Local Law.
- k) To exercise all other powers and fulfill all other duties conferred upon the Zoning Enforcement Officer by this Local Law.

### 2. Appointment and qualifications.

The Zoning Enforcement Officer shall be appointed by the Town Board. The Zoning Enforcement Officer shall possess background, skills, training and experience relating to the interpretation, application and enforcement of zoning laws and laws commensurate with the responsibilities of the position and shall, within the time period prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York and the Town shall require for Zoning Enforcement personnel. The Town Board may also appoint a Deputy Zoning Enforcement Officer who shall have the same duties and authority as those conferred

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upon the ZEO by the Town Board. Such Deputy shall also have the qualifications, training, and skills commensurate with the responsibilities of the Zoning Enforcement Officer position.

### 3. Authority to issue Stop Work Orders.

The Zoning Enforcement Officer is authorized to issue stop work orders pursuant to this Article for any work that is determined by the Zoning Enforcement Officer to be conducted in violation of the Local Law, including, but not limited to, work being conducted on land and/or work being conducted on a building or structure for which a special use permit or site plan approval is required but has not been obtained.

### 4. Content of Stop Work Order.

A stop work order shall:

- a) Be in writing;
- b) Be dated and signed by issuing Officer;
- c) State the reason or reasons for issuance; and
- d) If applicable, state the conditions that must be satisfied before work will be permitted to resume.

### 5. Service of stop work order.

The ZEO shall cause the stop work order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by registered or certified mail. The ZEO shall be permitted, but not required, to cause the stop work order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop work order, personally or by registered or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop work order.

### 6. Effect of stop work order.

When a stop work order is issued, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work that is the subject of the stop work order.

### 7. Complaints.

The ZEO shall review and investigate complaints that allege or assert the existence of conditions or activities that fail to comply with this Local Law. The process for responding to a complaint shall include any of the following steps the ZEO may deem to be appropriate:

- a) Performing an inspection of the property, conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- b) If a violation is found to exist, providing the owner of the affected property, and any other person who may be responsible for the violation, with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner authorized in Article IX, subsection (L) (Violations) of this Local Law;

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- c) If appropriate, issuing a stop work order and/or compliance order;
- d) If a violation that was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing the report with the complaint; and
- e) Notify the complainant about the outcome of any investigation initiated as a result of their complaint.

### 8. Recordkeeping

The ZEO shall keep permanent official records of all transactions and activities that he/she conducts and those conducted by members of his office, including records of:

- a) All applications received, reviewed and approved or denied;
- b) All plans, specifications and construction documents approved;
- c) All zoning permits, temporary certificates, stop work orders, operating permits, and certificates of use issued;
- d) All inspections and tests, including all third party inspections and tests, required and performed;
- e) All statements and reports issued and a master list of all reports to be received;
- f) All complaints received;
- g) All investigations conducted;
- h) All other features and activities specified in or contemplated by this Section of the Local Law; and
- i) All fees charged and collected.

All records shall be public records open for public inspection during normal business hours, except for records exempted from disclosure under the New York State Public Officers Law (Freedom of Information Law) or documents which are protected by attorney-client privilege. All records maintained by the ZEO shall be kept in an organized manner calculated to allow easy and efficient review by Town officials or the public. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation. The ZEO shall periodically check all reports and plans to ensure that appropriate action, if needed, is taken.

### 9. Program Review and Reporting.

The ZEO shall annually submit to the Town Board a written report and summary of all business

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conducted by the ZEO office and a report and summary of all appeals or litigation pending or concluded.

### **10. Violations.**

The ZEO is authorized to order in writing the remedying of any condition or activity found to exist in, on, or about any building, structure, property or premises in violation of this Local Law.

Upon finding that any violation exists, the officer shall issue a compliance order. The compliance order shall:

1. be in writing;
2. be dated, shall identify the ZEO, and be signed by the ZEO;
3. specify the condition or activity that violates this Local Law;
4. specify the provision or provisions of this Local Law that is/are violated by the specified condition or activity;
5. specify the period of time the ZEO believes is reasonably necessary for achieving compliance;
6. direct that compliance be achieved within the specified period of time; and
7. state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.

The ZEO shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by registered or certified mail. The Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof; to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by registered or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.

### **11. Appearance tickets.**

The ZEO is authorized to issue court appearance tickets for any violation of the Local Law.

### **12. Civil penalties.**

In addition to those penalties authorized by State law, any person who violates any provision of this Local Law shall be liable for a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted by the Town of Elizabethtown.

### **13. Criminal penalties and enforcement.**

Any violation of the Local Law is hereby declared to be an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense; upon conviction of a second offense, both of which were committed within a period of five (5) years, punishable by a fine not less than \$350, nor more than \$700, or imprisonment for a

period not to exceed six (6) months, or both; and upon conviction of a third or subsequent offense, all of which were committed within a period of five (5) years, punishable by a fine not less than \$700, nor more than \$1,000, or imprisonment for a period not to exceed six (6) months, or both. For the purpose of conferring jurisdiction upon the Courts and judicial officers generally, violations of the Local Law shall be deemed misdemeanors and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

**14. Injunctive relief.**

An action or proceeding may be instituted by the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Local Law. No court action or proceeding shall be commenced without the appropriate authorization from the Town Board. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of this Local Law, or any Stop Work Order, Compliance Order or other order obtained under this Local Law, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions.

**15. Remedies not exclusive.**

No remedy or penalty specified in this Article shall be the only remedy or penalty available to address any violation of this Article. Each remedy or penalty specified in this Article shall be in addition to, and not in substitution for the other remedies or penalties specified in any other applicable law of in Subdivision (2) of Section 381 of the New York State Executive Law ((Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation and Construction Code). Any remedy or penalty specified in this Article, including stop work orders, may be pursued at any time regardless of any other remedy or penalty specified in any other applicable law including those specified in Subdivision (2) of Section 381 of the New York State Executive Law.

Unless otherwise stated, all petitions, applications, and appeals provided for in this Local Law shall be made on forms available at the Town Offices. Completed forms shall be accompanied by whatever further information, plans, or specifications are required by the Zoning Enforcement Officer, to whom the plans are to be submitted and reviewed by, as specified in this Local Law.

**5.05 APPLICATION FEES**

Fees shall be paid upon the submission of petitions, applications, and appeals, provided for by the terms of this Local Law in such amount as shall be established by the Town Board. Said fee shall not be refundable.

**5.06 ISSUANCE OF LAND USE AND DEVELOPMENT PERMITS**

1. Land use and development permits shall be issued by the Zoning Enforcement Officer under the following conditions:

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- a) The new land use or development meets any applicable area, bulk, height, and yard requirements set forth in Article 3 for the district in which it is to locate unless an area variance has been granted pursuant to Article 7, Section 7.03 hereof or clustering has been approved pursuant to authority granted the Planning Board.
- b) The new land use or development complies with the Sanitary Codes.
- c) The new land use or development has received any required site plan review and approval pursuant to Article 5, Section 5.10 hereof and if such approval is subject to conditions to be met prior to the granting of a permit, that all such conditions have been met.
- d) The new land use is one of the following:
  - i. A permitted use which is not a Class A regional project;
  - ii. A conditional use for which conditional use approval has been obtained pursuant to the terms of Article 5, Section 5.11 hereof and if such approval was subject to conditions to be met prior to the granting of a permit, that all such conditions have been met;
  - iii. An accessory structure;
  - iv. A use not permitted under this Local Law which is not a Class A regional project for which a variance has been granted pursuant to Article 7, Section 7.03, and if said variance was approved subject to conditions which must be met prior to the granting of a permit, that such conditions have been met; and
  - v. A sign complying with the applicable provisions of Article 4, Section 4.05 of this Local Law.

### **5.07 FORM OF LAND USE AND DEVELOPMENT PERMITS**

Land use and development permits shall be issued on forms available at the Town Offices, and shall contain such requirements and conditions that are part of any approval or variance.

### **5.08 EXPIRATION OF LAND USE AND DEVELOPMENT PERMITS**

If a project for which a land use and development permit has been issued but has not acted upon within one year after the issuance of such permit, said permit shall expire, and the project may not be undertaken or continued, unless a new permit has been applied for and issued in the same manner, subject to all provisions governing the initial application for and issuance of a permit. This shall hold true for all projects except (for) those projects with provisions in the initial land use and development permit providing for a longer period of time, in which case the permit shall expire at the end of that longer period.

### **5.09 CERTIFICATE OF OCCUPANCY**

The building may not be occupied until a permit of occupancy has been issued. The Building Codes Enforcement Officer shall upon inspect issue such certificate of occupancy.

## 5.10 SITE PLAN REVIEW

### 1. General

- a. Authorization of Planning Board to Review Site Plans. The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove site plans for land uses within the land use districts as established in this Local Law.
- b. Application of Regulations: Any use indicated in Article 3 as one that requires either site plan approval or a special use permit issued by the Planning Board prior to issuance of a building permit shall follow all procedures and standards for Site Plan approval. The Planning Board, in reviewing Class A projects and exercising their duty to approve or disapprove, or approve with conditions, shall find that all requirements of Section 5.10 hereof have been met. The following land use activities are exempted from the requirements of this Section:
  1. In the HR, MU, and HS districts, construction of one or two family dwellings, ordinary accessory structures (except when added to existing commercial use on lot). Allowed uses in the HP district are not exempt from site plan review as per Section 3.03.
  2. Ordinary repair or maintenance of existing structures or uses.
  3. Agricultural structures as defined under the N.Y. State Building and Fire Code Regulations and agricultural land uses.
  4. Temporary roadside stands smaller than 100 square feet.
  5. Clearing or grading that disturbs less than 20,000 square feet
  6. Grading for landscaping occurring on slopes less than 15% and when the use does not require site plan review.
  5. Exterior or interior alterations or additions to an existing residential structure which do not substantially change its nature or use.
  6. Any change in use which does not require the issuance of a certificate of occupancy pursuant to the New York State Building and Fire Code.
- c. Uncertain Applicability: Any person uncertain of the applicability of this Law to a given land use shall apply in writing to the Planning Board for a written jurisdictional determination.
- d. Sketch Plan: A sketch plan conference shall be held between the Planning Board and applicant to review the basic site design concept and generally determine the information to be required on the site plan. At the sketch plan conference, the applicant should provide 5 copies of the information discussed below in addition to a statement or rough sketch describing what is proposed, along with any fee established pursuant to the Town of Elizabethtown Fee Schedule.

The intent of the sketch plan conference is to enable the applicant to inform the planning board of the proposal prior to the preparation of a detailed site plan; and for the planning board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. The Planning Board shall also review with the applicant submission requirements to determine what specific information is to be presented with the site plan application. Five



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copies of the following information shall be submitted to the Planning Board at least 10 days prior to the regularly scheduled Planning Board Meeting:

1. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions, existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard regulations;
2. An area map showing the land use district and parcel under consideration for site plan review.
3. A topographic or contour map of adequate scale and detail to show site topography. The Planning Board shall have the discretion to waive the provision of a topographical map in the event that the applicant shall show that the project will not impact the contour of the subject matter parcel(s) in any manner.
4. A general sketch map showing locations of natural features such as wetlands, streams, floodplains, or lakes.

e. Waiver of Site Plan Application Requirements

The Town Board further empowers the Planning Board to waive any application requirements below for the site plans submitted for approval, when reasonable. Any such waiver, which shall be subject to appropriate conditions as determined by the Planning Board, may be exercised in the event any such requirements are found not to be requisite in the interest of public health, safety or general welfare, or inappropriate to a particular site plan. In no case shall a waiver be more than a minimum easing of requirements and in no instance shall it result in any conflict with the adopted Town of Elizabethtown Comprehensive Plan and shall not nullify the intent and purposes of this site plan review section. Any request for a waiver of applicant requirements must be made in writing to the Planning Board, must demonstrate that compliance would cause undue hardship, and shall be determined at the time of the sketch plan.

f. Application for Site Plan Approval

After a sketch plan is reviewed with the Planning Board, an application for site plan approval shall be made in writing to the Planning Board and shall be accompanied by information drawn from the following checklist as determined necessary by the Planning Board at the sketch plan conference. All submitted maps shall be drawn at a scale of 50 foot to one inch or larger and designed by a licensed qualified professional. All costs for all reports, assessments, or plans required by the Planning Board shall be borne by the applicant.

1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
2. North arrow, scale and date.
3. Boundaries of the property.
4. Existing and proposed structures and improvements with all dimensions included and showing any required setbacks.
5. Existing watercourses and any associated floodplain and wetland areas.
6. Location, design and general construction materials of all existing or proposed site improvements, and a grading and drainage plan showing existing and proposed contours and including drains, culverts, catch basins, head walls, end walls, hydrants,

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- detention ponds, drainage swales, retaining walls and fences, rock outcrops, depth to bedrock, soil characteristics. The stormwater management and stormwater pollution prevention plans shall be prepared in compliance with the Stormwater Design Manual of the New York State Department of Environmental Conservation (SPDES), with the requirements of the Environmental Protection Agency's Phase II National Pollutant Discharge Elimination System (NPDES) regulations.
7. Location, proposed use, design type of construction, proposed use, exterior dimensions, and height of all buildings.
  8. Location, design and construction materials of all parking and truck loading areas showing access and egress.
  9. Location of any outdoor storage, and type and screening for all waste disposal containers, if any.
  10. Location of all present and proposed public and private roads and pedestrian access. The Planning Board may require a traffic study when the average daily traffic is proposed to increase by greater than 100 cars per day.
  11. Description of the method of sewage disposal and location, design and construction materials of such facilities.
  12. Description of the method of securing water and location, design and construction materials of such facilities.
  13. Location, design and construction materials of all energy distribution facilities, including electrical, gas, wind and solar energy.
  14. Location, size and design and construction materials of all proposed signs that require a permit.
  15. A general landscaping plan and planting schedule. The Planning Board may require additions to the landscape plan including, but not limited to requiring replacement of existing trees that are to be removed during construction, or replacement of vegetation that dies within 1 year after planting.
  16. Location and design of outdoor lighting facilities.
  17. Designation of the amount of building area proposed for retail sales or similar commercial activity.
  18. Part I of an Environmental Assessment Form pursuant to SEQRA.
  19. Any pertinent natural features that may affect the proposed use such as water courses, swamps, wetlands, wooded areas, areas subject to flooding, steep slopes (more than 20%), areas of rock outcrops, etc.
  20. The Planning Board may require a visual impact assessment. When a visual impact assessment is required, the following shall be prepared.
  21. Identification of, record of application for, and status of any state, federal, or county permits required for the projects execution.
  22. Location of fire and emergency access ways.
  23. Copy of any easement or deed restriction that is or may be placed on the property.
  24. The site plan application and associated maps shall include proposed phases of development. Site plan approval shall be based on the total planned project in order to facilitate the assessment of all potential development impacts. The Planning Board shall consider applications incomplete where there is reason to believe the application applies to only a segment of the total planned development. In such situations, the Planning Board shall return such application to the applicant together with a letter stating the basis for its determination.
  25. An estimated project construction schedule.

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26. Other elements integral to the proposed development as specified by the Planning Board.

g. Less Intensive Review.

The Planning Board may elect to conduct a less intensive review for minor types of projects. Minor projects are those that are a re-use of an existing building under 10,000 square feet and that create no new parking, curb cuts, lighting, or signage. The Planning Board must state in writing its grounds for electing to conduct less intensive review and file such statement along with the site plan application and supporting documents. A request for a less intensive review shall be explicitly requested by the applicant in writing, and expressly granted by the Planning Board. Requirements of this Law may not be waived except as properly voted by the Planning Board.

When a less intensive site plan review is to be conducted, the applicant shall submit the following:

1. Sketch of the parcel on a location map (e.g., tax map) showing boundaries and dimensions of the parcel of land involved and identifying contiguous properties and any known easements or rights-of-way and roadways.
2. The existing features of the site including land and water areas, water or sewer systems and the approximate location of all existing structures on or immediately adjacent to the site.
3. The proposed location and arrangement of buildings and uses on the site, including means of ingress and egress, parking and circulation of traffic.
4. The proposed location and arrangement of specific land uses proposed.
5. Sketch of any proposed building, structure or sign, including exterior dimensions and elevations of front, side and rear views, location of proposed buildings, structures or signs, including any anticipated changes in the existing topography and natural features of the parcel to accommodate the changes. Include the name and address of the applicant and any professional advisors. If the applicant is not the owner of the property, provide authorization of the owner.
6. Application form and fee (if required).

h. Planning Board Action Site Plan:

1. Acceptance of Site Plan Application. The Planning Board shall, within forty-five (45) days of a site plan application being filed, determine whether to accept the application as complete and begin the review process, or to reject the application as incomplete. Incomplete applications shall be returned to the applicant, without prejudice, with a letter stating the application deficiencies. No application shall be considered complete until a negative declaration under SEQRA Part 617 has been issued or until a draft Environmental Impact Statement has been accepted by the lead agency as satisfactory with respect to scope, content, and adequacy.
2. Public Hearing. The Planning Board shall conduct a public hearing on the site plan. Such hearing shall be held within sixty-two (62) days of the Planning Board's acceptance of the site plan application as complete and shall be advertised in the town's official newspaper at least five (5) days before the hearing. The Planning Board shall give the applicant at least ten (10) days' notice by mail of the Public Hearing. The applicant shall send notice of the Public

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Hearing to abutting property owners by certified mail, return receipt requested at least seven (7) days prior to the public hearing.

3. Decision. Within 62 days of the close of a public hearing on a site plan application, the Planning Board shall render a decision. The time period in which the Planning Board must render its decision can be extended by mutual consent of the applicant and the Planning Board. In its decision the Planning Board may approve, approve with modifications or disapprove the site plan. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by the Code Enforcement Officer.
  - a. Approval. Upon approval of the site plan, and payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall file it within five business days with a written statement of approval with the Town Clerk.
  - b. Disapproval. Upon disapproval of the site plan the decision of the Planning Board shall be filed within 5 business days with the Town Clerk and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the Planning Board's reasons for disapproval.

i. Extension of Time to Render Decision.

The time period in which the Planning Board must render its decision on the site plan may be extended by mutual consent of the applicant and the Planning Board. Failure of the Planning Board to act within the time period specified or agreed upon between the applicant and board, shall not constitute Planning Board approval of the site plan as submitted or last amended, and shall not be deemed automatic approval.

The site plan application and associated maps shall include all proposed phases of development. Site plan approval shall be based on the total planned project in order to facilitate the assessment of all potential development impacts. The Planning Board shall consider applications incomplete where there is reason to believe the application applies to only a segment of the total planned development. In such situations, the Planning Board shall return such application to the applicant together with a letter stating the basis for its determination.

j. Reservation of Park Land.

In accordance with the provisions of Section 274-a (6) of the Town Law, the Planning Board may require the site plan to contain a park or parks suitably located for playgrounds or other recreational purposes, or require the payment of a sum of money in lieu thereof.

k. Referral to Other Agencies and Boards

1. Coordinated Review. The Planning Board may refer the site plan for review and comment to local and county officials or their designated consultants, and to representatives of Federal, State and County agencies, including but not limited to the Soil Conservation Service, the New York State Department of Transportation, the State Department of Environmental Conservation, and the State or County Department of Health, whichever has jurisdiction.
2. Referrals. Prior to taking the final action on the site plan, and at least ten (10) days prior to the Public Hearing, the Planning Board shall refer the plan to the Essex County

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Planning Department for their review and approval pursuant to Section 239-m of the General Municipal Law. When a project occurs within the Lake Champlain Watershed, the Planning Board shall notify, or require the applicant to notify the Lake Champlain Watershed Committee prior making a decision. The Planning Board shall also consult with the Town Highway Superintendent and the emergency service agencies prior to final approval of a site plan to ensure proposed roads, curb cuts, access and provision of emergency services are adequate.

### I. SEQRA Compliance.

No application shall be approved without compliance with SEQRA (Article 8 of the Environmental Conservation Law, Section 8-0113, Part 617), including, where necessary, a lead agency determination, a negative or positive declaration, and submission of an acceptable draft environmental impact statement. No application for site plan review shall be considered complete for initiation of the site plan time frames until either a negative declaration has been issued or a draft environmental impact statement has been accepted. When scenic resources are of concern, the Planning Board shall require the use of the SEQR Visual EAF Addendum so that visual impacts can be evaluated during site plan review.

### m. Costs Associated with Review and Escrow.

The Planning Board reserves the right to hire professional consultants, at the applicants' expense, to review any information filed by the applicant including that filed under the SEQRA process. All costs related to the site inspection and review of a site plan, including any studies, reports, analysis, or other information that may be required by the Planning Board, shall be borne by the applicant. In addition to the application fees established by the Town Board, an escrow account, funded by the applicant, shall be established to cover all costs related to the review of a site plan. The applicant shall supply the Planning Board information as may be required to calculate the dollar amount required for the escrow account.

### n. Revocation of Site Plan Approval.

Any approval issued hereunder shall expire after one year from the date of such approval unless the applicant shall have commenced and substantially proceeded with construction of the project.

### o. Planning Board Review of Site Plan

The Planning Board's review shall include, as appropriate, but is not limited to the following:

1. Adequacy, arrangement, and grade of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls. All site plans proposing new driveways or roads shall be reviewed and approved prior to a final decision by the Planning Board and by the Town of Elizabethtown Highway Department.
2. Location of off-street parking and loading.
3. Location, arrangement, size, and general site compatibility of buildings, lighting, and signs.
4. Adequacy of stormwater and drainage facilities.
5. Adequacy of water supply and sewage disposal facilities.

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6. Adequacy, type, arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the reasonable retention of existing vegetation. To the extent practical, existing trees and other vegetation shall be conserved and integrated into the landscape plan.
7. Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
8. Adequacy of fire lanes and other emergency zones. If the Planning Board deems it necessary, it shall refer the application to the applicable emergency services providers for comment on the proposed access arrangements.
9. Adequacy of structures, roadways, and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
10. Compatibility with adjacent uses and compatibility with neighborhood character and the overall rural character of Elizabethtown.

p. Consultant Review.

The Planning Board may consult with the building inspector, fire commissioners, conservation council, highway superintendent, other local and county officials, and its designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Natural Resources Conservation Service, the State Department of Transportation, the State Department of Health, and the State Department of Environmental Conservation. The Planning Board may hire a consultant, if needed, to review plans with the approval of the Town Board and at the applicant's expense.

q. Integration of Procedures.

Whenever the particular circumstances of a proposed development require a Special Use Permit, the Planning Board shall integrate the procedural and submission requirements for such other compliance so that special use and site plan procedures run concurrently.

r. Expiration of Site Plan Approval.

Site plan approval shall automatically terminate one (1) year after the same is granted unless a building permit has been issued and there is physical evidence to demonstrate that the project is in progress. The applicant may request that the Planning Board grant an extension of time to complete such improvements, provided the applicant can show reasonable cause for inability to perform said improvements within the required time. The extension shall not exceed six (6) months, at the end of which time the town may use as much of the bond or certified check deposit to construct the improvements as necessary.

### **5.11 SPECIAL USE PERMIT AND REVIEW PROCEDURE**

1. Authorization to grant or deny special uses. The Town Board authorizes the Planning Board to grant or deny special uses in accordance with the requirements set forth in this section. No special use listed in this Law may be permitted, enlarged or altered unless approved by the Planning Board.
2. Applications for special use. Any application for a special use permit shall be made in writing. Eight copies of all application materials shall be delivered to the Planning Board at least ten (10) days prior to the date of their next regular meeting.

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- a. The application must include an Environmental Assessment Form (EAF) and all necessary documentation to comply with State Environmental Quality Review Act, Part 617 (SEQRA). No application shall be deemed complete until a Determination of No Significance has been made, or until a Draft Environmental Impact Statement has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.
  - b. Fees and Costs. Fees for the special use permit application shall be in accordance with any fees established by the Town of Elizabethtown. All application fees are in addition to any required escrow fees as may be established by the Town Board. The Planning Board may also incur other extraordinary expenses in order to properly review documents or conduct special studies in connection with the proposed application including but not limited to the reasonable costs incurred by the Planning Board for private consultation fees, fees for technical and engineering services, legal fees, or other expenses in connection with the review of a special use permit application. All reasonable fees shall be charged to the applicant.
3. Procedures
- a. Coordination with Site Plan. All uses subject to special use permit approval also requires site plan approval. The Planning Board shall review site plans and special use permit applications concurrently. All procedural and submission requirements shall be coordinated so as not to delay review and decision-making. In order to facilitate this coordination, any required information from Section 5.10 (Site Plan Review) shall accompany the special use permit application.
  - b. Area variance. Where a proposed special use permit contains one or more features which do not comply with the Land Use regulations, application may be made directly to the Zoning Board of Appeals for an area variance pursuant to Section 7, without the necessity of a decision or determination by the Zoning Enforcement Officer.
  - c. Use variance. All use variance applications to the Zoning Board of Appeals shall be made only after denial of a permit by the Zoning Enforcement Officer.
  - d. Public Hearing Required. Within sixty two (62) days of receipt of a complete application, the Planning Board shall hold a public hearing. Notice of the public hearing shall be published in the official newspaper at least five (5) days prior to the date set for public hearing.
  - e. Referral to Essex County Planning Department. Any application for a special use permit shall be referred to the Essex County Planning Department as required by Section 239-m of the General Municipal Law. The Essex County Planning Department shall have thirty (30) days to review the full statement of the proposed action. If the County Planning Department fails to report within 30 days, the Planning Board may take final action on the proposed action without such report. However, any County Planning Department report recommending modification or disapproval of a project and which is received after 30 days or such longer period as may have been agreed upon, but two or more days prior to final action by the Planning Board, the Planning Board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members.
  - f. SEQRA. The Planning Board shall comply with the provisions of the New York State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and

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its implementing regulations. An application shall not be deemed complete until a Negative Declaration has been adopted, or until a draft environmental impact statement has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.

- g. The Planning Board shall require proof that all permits required by other agencies have been applied-for prior to final approval. The Planning Board may approve a special use permit application contingent upon final approval of such application by other agencies. The Zoning Enforcement Officer shall ensure that all other agency approvals have been received and all conditions required by the Planning Board are met prior to issuing a permit. Such permit shall be approved prior to the Building Inspector issuing a building permit.
- h. Decisions
  1. Time of decision. The Planning Board shall decide upon the special use permit application within sixty two (62) days after the close of the public hearing, subject to compliance with the requirements of SEQRA and the General Municipal Law Sections 239-l and 239-m. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
  2. Type of Decision. In rendering its decision the Planning Board shall approve, disapprove or approve with modifications and conditions the special use permit application. In authorizing the issuance of a special use permit, the Planning Board has the authority to impose such reasonable conditions and restrictions as are directly related to, and incidental to, the proposed special use. Upon its granting of said special use permit, any such conditions must be met before issuance of permits by the Zoning Enforcement Officer.
  3. Filing. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days of the date such decision is rendered and a copy thereof shall be mailed to the applicant.
  4. A special use permit shall be deemed to authorize only the particular special use or uses permitted. Once a special use permit has been granted, it shall apply to the approved use on that parcel regardless of ownership.
- i. Lapses and Expiration. Special use permits will expire if the applicant fails to obtain a building permit or fails to comply with the conditions of the special use permit, unless other provisions are set forth by the Planning Board in connection with its approval, three years after approval. A special use permit will expire if the special use or uses shall cease for more than three years for any reason. If a use subject to an approved special use permit had been in continual operation, but has since lapsed in operation for more than three years between Planning Board approval and re-initiation of such use, the Planning Board shall require a review of such use prior to reinstatement to ensure that all original conditions of the special use permit are still valid. In either case, the Planning Board may, after review, reinstate, or reinstate with conditions such lapsed use.
- j. Renewal of Permit. The Planning Board, as a condition of approval, may require that special use permits be renewed periodically. When the Planning Board has established such a condition of approval, thirty (30) days prior to the expiration of a special use permit, the applicant shall apply to the Zoning Enforcement Officer for renewal of the special use permit. The Zoning



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Enforcement Officer shall inspect premises, verify that conditions of the permit have been met, and renew the permit for a time equal to the original special use permit. Where the Zoning Enforcement Officer determines that the applicant has not complied with the special use permit, permit renewal shall require Planning Board approval.

- k. Existing violation. No special use permit shall be issued for a property in violation of this Local Law unless the granting of a special use permit and Site Plan approval will result in the correction of the violation.
  - l. Deemed to be conforming. Any use for which a special use permit may be granted shall be deemed a conforming use in the district in which the use is located, provided that the special use permit shall affect only the lot, or portion thereof, which is the subject of the special use permit application.
  - m. Expansion of special use. The expansion of any special use shall require amendment and approval of the special use permit by the Planning Board in accordance with the procedures set forth in this Local Law. For purposes of this section, expansion shall be interpreted to mean an increase in the floor or lot area allocated to the special use, an increase in development coverage, increased hours of operation, or an increase in the intensity of the use, e.g., an increase in traffic or need for on-site parking.
4. Factors for consideration.
- a. In authorizing the issuance of a special use permit, the Planning Board shall take into consideration the public health, safety, and welfare of the community, the purposes of this Land Use Local Law, and the Town of Elizabethtown Comprehensive Plan, and shall prescribe appropriate conditions and safeguards to ensure the proposed use's scale and intensity are compatible with adjoining properties, and with the natural and built environment and character in the area and will accomplish the following objectives:
    - 1. Compatibility of the proposed use with adjoining properties and compatibility with the intent of the principles of the district and with the natural and built environment, and with the purposes set forth in this Law.
    - 2. Adequacy of parking for the proposed use, and its accessibility to fire, police and emergency vehicles.
    - 3. The proposed use shall protect natural environmental features, will not negatively impact traffic and will have no greater overall impact on the site and its surroundings than would full development of uses of the property permitted by right, considering environmental, social and economic impacts of traffic, noise, dust, odors, release of harmful substances, solid waste disposal, glare or any other nuisances.
    - 4. Consistency with the requirements for site plan approval.
    - 5. Vehicular traffic access and circulation, including intersections, road widths, drainage channelization structures and traffic controls shall be adequate to serve the special use and

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not negatively impact the overall traffic circulation system of the neighborhood and the Town.

6. Location, arrangement, size, nature, intensity of operations, and design of the special use, including all principal and accessory structures associated with that use, shall be compatible with the neighborhood in which it is located and with the rural and small town character of Elizabethtown and shall safeguard the values of surrounding properties from noise, glare, unsightliness, or other objectionable features.
  7. The special use shall not negatively impact historic or scenic features.
  8. The special use shall be in harmony with the orderly development of the district.
  9. Except for preexisting nonconforming lots of record, the use shall meet the prescribed area and bulk requirements for the district in which it is located.
  10. The level of municipal and other services required to support the proposed activity or use is, or will be, available to meet the needs of the proposed activity or use. This consideration shall include the suitability of water supply and sanitary sewage facilities to accommodate the intended use, and protection from pollution of surface water or groundwater.
  11. The Planning Board shall impose additional conditions and safeguards to the special permit use as are directly related to and incidental to the proposed special use permit and which may be necessary to assure continual conformance to all applicable standards and requirements, including reasonable assurance that these conditions and safeguards can be responsibly monitored and enforced. Restrictions and/or conditions may include those related to design of structures or operation of the use (including hours of operation) necessary either to ensure compatibility with the surrounding uses or to protect the resources of the Town.
5. Review by Courts. Any person aggrieved by a decision of the Planning Board in relation to special use approvals or denials may apply to the supreme court for review by a proceeding under Article 78 of the civil practice law and rules pursuant to 274-b of the New York State Town law. Such proceedings shall be instituted within 30 days after the filing of a decision by the Planning Board in the office of the Town Clerk.

### **5.12 PUBLIC HEARINGS**

1. Each notice of a hearing for special use projects, site plan approval, variances, or upon an appeal by the applicant to the Zoning Board of Appeals, shall be published once in the official newspaper of the Town at least five (5) days prior to the date of the hearing. In addition, at least ten (10) days prior to the date of the hearing, notices shall be mailed, by registered mail to all owners of the property within five hundred (500) feet of the exterior boundary of the property for which the application is made.
2. Any hearing may be recessed by the authorized Board in order to obtain additional information or to further serve notice upon property owners or to other persons who it may be decided would be

concerned parties. Upon recessing, the time and date when the hearing is to be resumed shall be announced. No further notice or publication is necessary.

## **ARTICLE 6 NON-CONFORMING USES**

The following provisions shall apply to any non-conforming structure or non-conforming use, existing on the effective date of this Local Law and any subsequent amendments<sup>19</sup>, which does not meet the requirements set forth in these regulations and to all structures and uses that in the future do not conform because of any subsequent amendment to these regulations.

### **6.01 PROVISIONS FOR NON-CONFORMING STRUCTURES AND USES**

1. Any non-conforming structure or land use, existing on the effective date of this Local Law, may continue indefinitely provided:
  - a) It is not moved, enlarged, altered, extended, reconstructed, or restored nor shall any external evidence of such use be increased by any means. This article shall not be construed to permit any unsafe use or structure, or to affect all proper procedure to regulate or prohibit the unsafe use of a structure.
  - b) It is not changed to another non-conforming use without approval by the Zoning Board of Appeals, and then only to a use which, in the opinion of the Planning Board, is of the same or of a more restricted nature.
  - c) It is not re-established after such use has been discontinued for a period of three years or has been changed to, or replaced by, a conforming use. Intent to resume a non-conforming use shall not confer the right to do so.
  - d) It is not restored for other than a conforming use after damage from any cause, unless the non-conforming use is reinstated within three years of such damage, if the restoration of the building is not completed within one year, the non-conforming use of such building shall be deemed to have been discontinued, unless such non-conforming use is carried on without interruption.

### **6.02 “SUBSTANTIAL CONSTRUCTION” PROVISION**

Nothing in this Local Law shall require any change in plans, construction, alteration, or designated use of a structure for which substantial construction work has lawfully commenced prior to the adoption of this Local Law. The Zoning Board of Appeals shall determine if aforementioned “substantial construction” has commenced if there is any question.

### **6.03 MAINTENANCE**

Nothing in this Law shall prevent the renovation, repair or maintenance of a nonconforming structure or lot made necessary by ordinary wear and tear. A building or structure of a non-conforming use may be repaired or restored to a safe condition.

## **6.04 EXISTING UNDERSIZED LOTS**

1. Any separately deeded lot in existence prior to the adoption date of this local law or of any subsequent amendment to the Law, and whose area and/or depth are less than the specified minimum density or lot requirements of this Local Law for the district, may be considered as complying with such minimum lot requirements, shall be allowed to have one principal structure, and no variance shall be required, provided that:
  - a. All applicable laws and regulations related to potable water and sewage disposal facilities as required by the Town of Elizabethtown, Essex County Department of Health, New York State Department of Health, and/or the New York State Department of Environmental Conservation are satisfied.
2. In any district where residences are permitted, such under-sized non-conforming lots may be used for not more than one single family dwelling.

## **ARTICLE 7 BOARD OF APPEALS AND VARIANCES**

### **7.01 Membership**

The Board shall consist of five (5) members appointed by the Town Board for staggered terms of five (5) calendar years.

1. All members and alternate members of the Board of Appeals shall be residents of the Town of Elizabethtown. No person who is a member of the Town Board shall be eligible for membership on the Board of Appeals.
2. The Town Board shall appoint at least two (2) people as Alternate Members of the Board of Appeals for a term of five calendar years. All provisions of this Land use Law relating to board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards shall also apply to alternate members. The Chairperson of the Board of Appeals may designate the alternate member to substitute for a member who is unable to participate in deliberations and decisions of the Board of Appeals due to conflict of interest on an application or matter before the Board. That designation of the Alternate Member shall be entered into the minutes of the initial Board of Appeals meeting at which the substitution is made. When so designated: the alternate member shall possess all the powers and responsibilities of such member of the board; shall be allowed to participate in discussions of the proceedings; and shall be allowed to vote. At all other times, an Alternate Member may participate in discussions of the proceedings, but may not vote except due to the disqualification of a regular member and a designation of substitution by the Chairperson.

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### 3. Terms of members now in office.

Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the Board.

### 4. Training and attendance requirements.

- a) Each member of the Board of Appeals and each Alternate Member shall complete, at a minimum, four (4) hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four (4) hours in any one (1) year may be carried over by the member into succeeding years in order to meet this requirement. Such training shall be approved by the Town Board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
- b) To be eligible for reappointment to the Board, a member or alternate member shall have completed the required training.
- c) No decision of the Board of Appeals shall be voided or declared invalid because of a failure to comply with this training requirement.

### 5. Vacancy in office.

If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint a new member for the unexpired term.

### 6. Removal of members.

The Town Board may remove, after public hearing, any member or alternate member of the Board of Appeals for cause. Cause for removal of a member or alternate member may include one or more of the following:

- a) Any undisclosed or unlawful conflict of interest.
- b) Failure to attend 33% of the meetings during the course of one calendar year.
- c) Failure to complete mandatory training requirements.

### 7. Chairperson.

The Town Board shall appoint one of the Board of Appeals members as chairperson to preside at all meetings and hearings and to fulfill the authorized duties of that office. The Chairperson shall annually appoint one of the Board of Appeals members as Vice Chairperson. In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson and shall have all the powers of the Chairperson. The Vice Chairperson shall have such other powers and duties as may be

provided by the rules of the Board. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the board may determine. The Chairperson, or in his or her absence, the Acting Chairperson, may administer oaths to applicants, witnesses, or others appearing before the board and may compel the attendance of witnesses.

8. Public Record.

- a). The Town Clerk shall provide for keeping a file of all records of the Board of Appeals, and those records shall be public records open to inspection at reasonable times and upon reasonable notice.

**7.02 BOARD OF APPEALS PROCEDURE.**

1. Meetings, minutes, records. Meetings of the Board of Appeals shall be open to the public except for records exempted from disclosure under the New York State Public Officers Law (Freedom of Information Law) or documents which are protected by attorney-client privilege. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the town clerk within five (5) business days and shall be a public record.
3. Assistance to Board of Appeals. The Board shall have the authority to call upon any department, agency or employee of the town (e.g. the Building Department or Conservation Advisory Council) for such assistance as the Board deems necessary. All costs incurred by any department, agency or employee for providing assistance in a particular proceeding may be borne by the applicant.
4. Hearing appeals. Unless otherwise provided in this Land use Law or other local law, generally the jurisdiction of the Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to Article 16 of New York State Town Law. For the purposes of this law, the administrative official charged with enforcement shall include the Zoning Enforcement Officer, the Building Inspector and/or the Code Enforcement Officer as applicable pursuant to the provisions of this law and those officers shall be referred to collectively as "Enforcement Officer". The Board of Appeals shall have the power, upon appeal from a decision or determination of the Enforcement Officer, to grant use and area variances. Where a proposed special use, site plan, or subdivision contains one or more features which do not comply with the land use regulations, application may be made to the Board of Appeals for an area variance without the necessity of a decision or determination by the Enforcement Officer.
5. Filing of administrative decision and time of appeal.

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- a) Each order, requirement, decision, interpretation or determination of the Enforcement Officer charged with the enforcement of this Town of Elizabethtown Land use Law shall be filed in the office of such Zoning Enforcement Officer, within five (5) business days from the day it is rendered, and shall be a public record.
  - b) All appeals must be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Enforcement Officer by filing with the Enforcement Officer and with the Board of Appeals a notice of appeal. The notice of appeal shall: specify the grounds for such appeal; the relief sought; identify specifically the section of the Land use Law or other code or law involved; describe precisely and in detail either the interpretation claimed or the variance or other relief that is sought and the grounds upon which it is claimed the relief should be granted. The notice of appeal shall be accompanied by a short or full Environmental Assessment Form as required by the State Environmental Quality Review Act (SEQRA), by an Agricultural Data Statement as required by NY AML 25-aa, and by other documents relevant to the appeal specified by the Board of Appeals. The appellant shall also be required to pay a filing fee at the time of the filing of the appeal in an amount to be established by the Town Board. The cost of sending notices relating to such appeal by certified mail, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon receiving a notice of appeal, the Enforcement Officer shall transmit to the Board of Appeals all papers constituting the record upon which the action appealed from was taken.
6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Enforcement Officer determines and certifies in writing to the Board of Appeals, after the notice of appeal shall have been filed with the Enforcement Officer, that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property. Should such a certification be made, the proceedings shall not be stayed other than by a restraining order granted by the Board of Appeals or by a court of record on application, on notice to the Enforcement Officer from whom the appeal is taken and on due cause shown.
7. Public Hearing. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it. The appellant and any other parties to the appeal shall be given written notice of the hearing date and of the fact that at such hearing he or she may appear in person or be represented by an attorney or other agent. Said notice shall be provided at least ten (10) days in advance of the hearing and shall be provided to the appellant by certified mail. The Board of Appeals shall additionally provide notice as follows:
- a) The Board of Appeals shall give public notice of such public hearing by publication in an official paper of general circulation in the town at least ten (10) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.
  - b) If a New York State Park shall be located within five hundred (500) feet of the property affected by the appeal, at least ten (10) calendar days prior to such public hearing, the

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- Board of Appeals shall send notices to the regional State Park Commission having jurisdiction over the State Park or Parkway.
- c) The Board of Appeals shall also give notice to the Essex County planning agency as required by Section 239-m of the New York State General Municipal Law. Such notice shall be in writing sent at least ten (10) calendar days prior to such public hearing.
  - d) If the land affected by the appeal lies within five hundred (500) feet of the boundary of any other municipality, the Clerk of the Board of Appeals shall also submit at least ten (10) calendar days prior to the public hearing to the municipal clerk of such other municipality or municipalities a copy of the notice of the substance of every appeal, together with a copy of the official notice of such public hearing.
  - e) In any application or appeal for a variance, the Clerk of the Board of Appeals shall provide written notice of the public hearing, along with the substance of the variance appeal or application, to: the owners of all property abutting, or directly opposite, that of the property affected by the appeal; and to all other owners of property within five hundred (500) feet of the property which is the subject of the appeal. Such notice shall be provided by certified mail at least ten (10) calendar days prior to the date of the hearing. Compliance with this notification procedure shall be certified to by the Clerk.
  - f) The names and addresses of surrounding property owners to be notified in accordance with the forgoing shall be taken from the last completed tax roll of the Town.
  - g) Provided that there has been substantial compliance with this provision, failure to give notice in exact conformance herewith shall not be deemed to invalidate an action taken by the Board of Appeals in either granting or denying a variance from a specific provision of this Local Law.
8. Referrals and Notice to Essex County Planning Board & Town of Elizabethtown Planning Board.
- a) At least thirty (30) days before such hearing, the Board of Appeals shall mail notice to the Essex County Planning Board as required by Section 239-m of the New York State General Municipal Law. The notice shall be accompanied by a full statement of the proposed action, as defined in subdivision one of Section 239-m of the General Municipal Law. No action shall be taken by the Board of Appeals until an advisory recommendation has been received from the County Planning and Development Department or thirty (30) calendar days have elapsed since the Planning and Development Department received such full statement. In the event that the Essex County Planning Board recommends disapproval of the requested variance or the attachments of conditions thereto within such time period or at a later date prior to final action by the Board of Appeals, the Board of Appeals shall not act contrary to such recommendation except by a vote of a majority plus one (1) of all the members after the adoption of a resolution fully setting forth the reasons for such contrary action. Within thirty (30) days after such final action, the Board of Appeals shall file a report of the final action it has taken with the Essex County Planning Board.
  - b) The Board of Appeals shall transmit to the Town of Elizabethtown Planning Board a copy of the appeal or application, and shall request that the Planning Board submit to the Board of



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- Appeals its advisory opinion on said appeal or application. The Planning Board shall submit a report of such advisory opinion prior to the date of the public hearing. The failure of the Planning Board to submit such report within thirty five (35) days from the date the Board of Appeals transmitted their request for an advisory opinion with a copy of the appeal or application to the Planning Board shall be interpreted as a favorable opinion for the appeal or application.
9. Compliance with state environmental quality review act. The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title Six, Part 617 of the New York Codes, Rules and Regulations.
  10. Time of decision. The Board of Appeals shall decide upon the appeal within sixty-two (62) days after the hearing is completed. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.
  11. Voting requirements.
    - a) Decision of the board. Every motion or resolution of a Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency the voting provisions of Section 239-m of the New York State General Municipal Law shall apply.
    - b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by this Law, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in this Law.
  12. Filing of decision and notice. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
  13. Rehearing. A motion for the Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the Board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

### **7.03 PERMITTED ACTION BY THE BOARD OF APPEALS.**

1. Orders, requirements, decisions, interpretations, determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision,

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interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Enforcement Officer charged with the enforcement of such ordinance or local law, and to that end, shall have all the powers of such Enforcement Officer from whose order, requirement, decision, interpretation or determination the appeal is taken.

### 2. Use variances.

- a) The Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances.
- b) No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable land use regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the land use regulations for the particular district where the property is located,
  - i. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - ii. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - iii. that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - iv. that the alleged hardship has not been self-created.
- c) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

### 3. Area variances.

- a) The Board of Appeals shall have the power, upon an appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances as defined herein. In addition, the Board of Appeals shall also have the power to grant area variances which are necessary in the course of site plan, special use permit and subdivision application for which application for such area variance may be made directly to the Board of Appeals without the necessity of a decision or determination of an administrative official charged with enforcement of the land use regulations as authorized by New York State Town Law Sections 274-a(3) [site plan], 274-b(3) [special use permits] and 277(6) [subdivisions].
- b) In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

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- i. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
    - ii. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
    - iii. whether the requested area variance is substantial;
    - iv. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
    - v. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
  - c) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
4. Imposition of conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Land use Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community

### 5. Relief from Decisions.

Any person or persons, jointly or severally aggrieved by any final decision of the Board of Appeals, may apply to the New York State Supreme Court for review by a proceeding under Article 78 of the New York Civil Practice Law and Rules. Such proceeding shall be governed by the specific provisions of CPLR Article 78 except that the action must be commenced as therein provided within thirty (30) days after the filing of the decision of the Board of Appeals in the office of the Town Clerk

### 6. Strict Construction.

All provisions of this Article pertaining to the Board of Appeals shall be strictly construed. The Board of Appeals shall act in strict conformity with all provisions of law and of this Article and in strict compliance with all limitations contained therein, provided however, that if the procedural requirements set forth in this Article have been substantially observed, no applicant or appellant shall be deemed deprived of the right of application or appeal.

### 7. Other Provisions of New York State Town Law Section 267-a.

All other provisions of New York State Town Law Section 267-a with regard to Board of Appeals procedure not set forth herein, are incorporated herein by reference and shall apply to the Board of Appeals.

## **ARTICLE 8 REGIONAL PROJECT REVIEW**

### **8.01 PURPOSE**

The purpose of this Article is to further the general purposes, policies, and objectives of this Land Use Local Law and Development Regulations and the Adirondack Park Agency Act by establishing requirements and administrative procedures for the review of Class A regional projects by the Adirondack Park Agency and the Planning Board.

### **8.02 APPLICABILITY OF THIS ARTICLE**

No person shall undertake a Class A regional project unless and until the Agency shall have reviewed and approved, or approved subject to conditions, such projects, and has issued an Agency permit with respect thereto pursuant to the terms of the Adirondack Park Agency Act and pertinent Agency rules and regulations and unless and until the Planning Board of the Town of Elizabethtown shall have reviewed and approved, or approved with conditions such a project and the Zoning Enforcement Officer has issued a permit with respect thereto pursuant to the terms of Article 5 and Article 7.

### **8.03 CRITERIA FOR REVIEW OF CLASS A REGIONAL PROJECTS BY THE ADIRONDACK PARK AGENCY**

1. The Adirondack Park Agency shall have jurisdiction to review and approve, approve subject to conditions, and disapprove all Class A regional projects proposed to be located within the territory of the Town area pursuant to and in accordance with Section 809(9) of the Adirondack Park Agency Act, the applicable Agency rules and regulations, and the criteria hereinafter set forth.
2. The Adirondack Park Agency shall not approve a Class A regional project unless it first determines, after consultation with the Planning Board and receipt of the advisory recommendations of the Planning Board relative to the project, that the project would comply with all provisions of this Land Use Local Law and Regulations, and of such other laws and regulations as shall be components of the hamlet Land Use Programs.
3. In making the determination required by Section 809(9) of the Adirondack Park Agency Act as to the impact of a proposed Class A regional project upon the resources of the Adirondack Park including the ability of all levels of government to provide supporting facilities and services made necessary by the project, the Agency shall consider those factors pertinent to the project contained in the development consideration and in doing so, shall make a net overall evaluation of the project in relation to the development objectives and guidelines set forth in this Local law.

### **8.04 PLANNING BOARD AUTHORITY REGARDING CLASS A REGIONAL PROJECTS**

1. The Planning Board is hereby designated and approved as the appropriate Town body to consult with the Adirondack Park Agency with regard to Agency review of Class A regional projects.

2. As soon as reasonably practical following receipt by the Planning Board from the Adirondack Park Agency of notice of application completion with regard to a Class A regional project, the Planning Board or one or more designees thereof shall consult with the Agency for the purpose of analyzing the project application and formulating advisory recommendations to whether the project meets all of the pertinent requirements and conditions of the Town Land Use Local Law and Regulations.

#### **8.05 DEVELOPMENT OBJECTIVES FOR USE IN REGIONAL PROJECT REVIEW**

The principal natural and public resource aspects of a project site to be considered in connection with the determination required by this Section and referred to in Section 8.03 hereof, together with representative means for avoiding undue adverse impact thereupon shall be in accordance with the Town's Land Use Local Law and Regulations. In addition, objectives and guidelines provided for in the Appendices of this Land Use Local Law and Regulations shall be utilized in determining the appropriateness and/or quality under the Adirondack Park Act.

## **ARTICLE 9 FLOODWAY REGULATIONS**

### **9.1 STATUTORY AUTHORIZATION AND PURPOSE**

#### **9.1.1 FINDINGS**

The Town Board of the Town of Elizabethtown finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the hamlet of Elizabethtown and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this local law is adopted.

#### **9.1.2 STATEMENT OF PURPOSE**

It is the purpose of this local law to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) control filling, grading, dredging and other development which may increase erosion or flood damages;
- (5) regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and;
- (6) qualify and maintain for participation in the National Flood Insurance Program.

#### **9.1.3 OBJECTIVES**

The objectives of this local law are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;

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- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- (6) to help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to provide that developers are notified that property is in an area of special flood hazard; and,
- (8) to ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

### 9.2 DEFINITIONS

Unless specifically defined below, words or phrases used in this local law shall be interpreted so as to give them the meaning they have in common usage and to give this local law its most reasonable application.

**"Appeal"** means a request for a review of the Local Administrator's interpretation of any provision of this Local Law or a request for a variance.

**"Area of shallow flooding"** means a designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**"Area of special flood hazard"** is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the base floodplain or 100-year floodplain. For purposes of this Local Law, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

**"Base flood"** means the flood having a one percent chance of being equaled or exceeded in any given year.

**"Basement"** means that portion of a building having its floor subgrade (below ground level) on all sides.

**"Building"** see "Structure"

**"Cellar"** has the same meaning as "Basement".

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**"Crawl Space"** means an enclosed area beneath the lowest elevated floor, eighteen inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

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

**"Elevated building"** means a non-basement building (i) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

**"Federal Emergency Management Agency"** means the Federal agency that administers the National Flood Insurance Program.

**"Flood"** or **"Flooding"** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters;
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

**"Flood Boundary and Floodway Map (FBFM)"** means an official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a Regulatory Floodway along water courses studied in detail in the Flood Insurance Study.

**"Flood Elevation Study"** means an examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.



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**"Flood Hazard Boundary Map (FHBM)"** means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

**"Flood Insurance Rate Map (FIRM)"** means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**"Flood Insurance Study"** see "flood elevation study".

**"Floodplain"** or **"Flood-prone area"** means any land area susceptible to being inundated by water from any source (see definition of "Flooding").

**"Floodproofing"** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**"Floodway"** - has the same meaning as "Regulatory Floodway".

**"Functionally dependent use"** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

**"Highest adjacent grade"** means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

**"Historic structure"** means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (i) by an approved state program as determined by the Secretary of the Interior or
  - (ii) directly by the Secretary of the Interior in states without approved programs.

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**"Local Administrator"** is the person appointed by the community to administer and implement this local law by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an engineering department.

**"Lowest floor"** means lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Local Law.

**"Manufactured home"** means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a "Recreational vehicle"

**"Manufactured home park or subdivision"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**"Mean sea level"** means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**"Mobile home"** - has the same meaning as "Manufactured home".

**"New construction"** means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

**"One-hundred-year flood"** or **"100-year flood"** has the same meaning as "Base Flood".

**"Principally above ground"** means that at least 51 percent of the actual cash value of the structure, excluding land value, is above ground.

**"Recreational vehicle"** means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**"Regulatory Floodway"** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in Section 9.4.4-2 of this Article.

**"Start of construction"** means the date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**"Structure"** means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**"Substantial damage"** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**"Substantial improvement"** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) any alteration of a "Historic structure", provided that the alteration will not preclude the structure's continued designation as a "Historic structure".

**"Variance"** means a grant of relief from the requirements of this local law which permits construction or use in a manner that would otherwise be prohibited by this local law.

**"Violation"** means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations.

## **9.3 GENERAL PROVISIONS**

### **9.3.1 LANDS TO WHICH THIS LOCAL LAW APPLIES**

This local law shall apply to all areas of special flood hazard as mapped on the Flood Insurance

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Rate Maps (FIRM) filed with and within the jurisdiction of the Town of Elizabethtown, Essex County.

### **9.3.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD**

The areas of special flood hazard for the Town of Elizabethtown, Community Number 361388, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

- (1) Flood Insurance Rate Map Panel Numbers:

361388IND), 3613880008B, 3613880009B, 3613880016B, 3613880018B

whose effective date is, January 20, 1993, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.

- (2) A scientific and engineering report entitled "Flood Insurance Study, Town of Elizabethtown, New York, Essex County" dated January 20, 1993.

The above documents are hereby adopted and declared to be a part of this Local Law. The Flood Insurance Study and/or maps are on file at the Town of Elizabethtown Town Clerk.

### **9.3.3 INTERPRETATION AND CONFLICT WITH OTHER LAWS**

This Local Law includes all revisions to the National Flood Insurance Program through October 27, 1997 and shall supersede all previous laws adopted for the purpose of flood damage prevention.

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

### **9.3.4 SEVERABILITY**

The invalidity of any section or provision of this local law shall not invalidate any other section or provision thereof.

### **9.3.5 PENALTIES FOR NON-COMPLIANCE**

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this local law and any other applicable regulations. Any infraction of the provisions of this local law by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this local law or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein

contained shall prevent the Town of Elizabethtown from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this local law for which the developer and/or owner has not applied for and received an approved variance under Section 9.7.0 will be declared non-compliant and notification sent to the Federal Emergency Management Agency.

### **9.3.6 WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this local law is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This local law does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This local law shall not create liability on the part of the Town of Elizabethtown, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this local law or any administrative decision lawfully made there under.

## **9.4 ADMINISTRATION**

### **9.4.1 DESIGNATION OF THE LOCAL ADMINISTRATOR**

The Code Enforcement Officer/Building Inspector is hereby appointed Local Administrator to administer and implement this local law by granting or denying floodplain development permits in accordance with its provisions.

### **9.4.2 THE FLOODPLAIN DEVELOPMENT PERMIT**

#### **9.4.2-1 PURPOSE**

A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in Section 1.09 and Article 9, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

#### **9.4.2-2 FEES**

All applications for a floodplain development permit shall be accompanied by an application fee as may be set by the Town Board. In addition, the applicant shall be responsible for reimbursing the Town of Elizabethtown for any additional costs necessary

for review, inspection and approval of this project. The Local Administrator may require a deposit of no more than \$500.00 to cover these additional costs.

#### **9.4.3 APPLICATION FOR A PERMIT**

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

- (1) The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- (2) The proposed elevation, in relation to mean sea level, to which any new or substantially improved non-residential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the Local Administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- (3) A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in Section 9.5.2-3, UTILITIES.
- (4) A certificate from a licensed professional engineer or architect that any non-residential floodproofed structure will meet the floodproofing criteria in Section 9.5.4, NON-RESIDENTIAL STRUCTURES.
- (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in Section 9.3.2, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
- (6) A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- (7) In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or 5 acres.

#### **9.4.4 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR**

Duties of the Local Administrator shall include, but not be limited to the following.

**9.4.4-1 PERMIT APPLICATION REVIEW**

The Local Administrator shall conduct the following permit application review before issuing a floodplain development permit:

- (1) Review all applications for completeness, particularly with the requirements of subsection 9.4.3, APPLICATION FOR A PERMIT, and for compliance with the provisions and standards of this law.
- (2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Section 9.5.0, CONSTRUCTION STANDARDS and, in particular, subsection 9.5.1-1 SUBDIVISION PROPOSALS.
- (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination.

If the proposed development may result in physical damage to any other property or fails to meet the requirements of Section 9.5.0, CONSTRUCTION STANDARDS, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and re-submit the application.

- (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by State or Federal law.

**9.4.4-2 USE OF OTHER FLOOD DATA**

- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to paragraph 4.3(7), as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this law.
- (2) When base flood elevation data are not available, the Local Administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this law.

**9.4.4-3 ALTERATION OF WATERCOURSES**

- (1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.
- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

**9.4.4-4 CONSTRUCTION STAGE**

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop work order for the project unless immediately corrected.

**9.4.4-5 INSPECTIONS**

The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

**9.4.4-6 STOP WORK ORDERS**

- (1) The Local Administrator shall issue, or cause to be issued, a stop work order for any floodplain development found ongoing without a development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 9.3.5 of this local law.
- (2) The Local Administrator shall issue, or cause to be issued, a stop work order for any floodplain development found non-compliant with the provisions of this law and/or the conditions of the development permit. Disregard of a stop work order shall subject the violator to the penalties described in Section 9.3.5 of this local law.



**9.4.4-7 CERTIFICATE OF COMPLIANCE**

- (1) In areas of special flood hazard, as determined by documents enumerated in Section 9.3.2, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Local Administrator stating that the building or land conforms to the requirements of this local law.
- (2) A certificate of compliance shall be issued by the Local Administrator upon satisfactory completion of all development in areas of special flood hazard.
- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Section 9.4.4-5, INSPECTIONS, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.

**9.4.4-8 INFORMATION TO BE RETAINED**

The Local Administrator shall retain and make available for inspection, copies of the following:

- (1) Floodplain development permits and certificates of compliance;
- (2) Certifications of as-built lowest floor elevations of structures, required pursuant to sub-sections 9.4.4-4(1) and 9.4.4-4(2), and whether or not the structures contain a basement;
- (3) Floodproofing certificates required pursuant to sub-section 9.4.4-4(1), and whether or not the structures contain a basement;
- (4) Variances issued pursuant to Section 9.6.0, VARIANCE PROCEDURES; and,
- (5) Notices required under sub-section 9.4.4-3, ALTERATION OF WATERCOURSES.

**9.5 CONSTRUCTION STANDARDS**

**9.5.1 GENERAL STANDARDS**

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 9.3.2.

### 9.5.1-1 SUBDIVISION PROPOSALS

The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):

- (1) Proposals shall be consistent with the need to minimize flood damage;
- (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and,
- (3) Adequate drainage shall be provided to reduce exposure to flood damage.

### 9.5.1-2 ENCROACHMENTS

- (1) Within Zones A1-A30 and AE, on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
  - (i) the applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location, or,
  - (ii) the Town of Elizabethtown agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Elizabethtown for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Elizabethtown for all costs related to the final map revision.
- (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in Section 9.3.2, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
  - (i) a technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,
  - (ii) the Town of Elizabethtown agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Elizabethtown for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Elizabethtown for all costs related to the final map revisions.

## 9.5.2 STANDARDS FOR ALL STRUCTURES

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in Section 9.3.2.

### 9.5.2-1 ANCHORING

New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

### 9.5.2-2 CONSTRUCTION MATERIALS AND METHODS

- (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
- (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
- (3) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
  - (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
  - (ii) the bottom of all such openings no higher than one foot above the lowest adjacent finished grade.

Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas sub-grade on all sides are considered basements and are not permitted.

### 9.5.2-3 UTILITIES

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall also be elevated or designed to prevent water from entering

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and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;

- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and,
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

### **9.5.3 RESIDENTIAL STRUCTURES**

#### **9.5.3-1 ELEVATION**

The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 9.5.1-1, SUBDIVISION PROPOSALS, and 5.1-2, ENCROACHMENTS, and Section 9.5.2, STANDARDS FOR ALL STRUCTURES.

- (1) Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- (2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- (3) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in Section 9.3.2 (at least two feet if no depth number is specified).
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.

### **9.5.4 NON-RESIDENTIAL STRUCTURES**

The following standards apply to new and substantially improved commercial, industrial and other non-residential structures located in areas of special flood hazard, in addition to the requirements in sub-sections 9.5.1-1, SUBDIVISION PROPOSALS, and 9.5.1-2, ENCROACHMENTS, and Section 9.5.2, STANDARDS FOR ALL STRUCTURES.

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- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any non-residential structure shall either:
  - (i) have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
  - (ii) be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (2) Within Zone AO, new construction and substantial improvements of non-residential structures shall:
  - (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
  - (ii) together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in sub-section 9.5.4(1) (ii)
- (3) If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Floodproofing Certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Section 9.5.4(1)(ii), including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.
- (4) Within Zones AH and AO, adequate drainage paths are required to guide flood waters around and away from proposed structures on slopes.
- (5) Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

### **9.5.5 MANUFACTURED HOMES AND RECREATIONAL VEHICLES**

The following standards in addition to the standards in Section 9.5.1, GENERAL STANDARDS, and Section 9.5.2, STANDARDS FOR ALL STRUCTURES apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
  - (i) be on site fewer than 180 consecutive days,

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- (ii) be fully licensed and ready for highway use, or
- (iii) meet the requirements for manufactured homes in paragraphs 5.5(2), (3) and (4).

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

- (2) A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (3) Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
- (4) Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in Section 9.3.2 (at least two feet if no depth number is specified).

## 9.6 VARIANCE PROCEDURE

### 9.6.1 APPEALS BOARD

- (1) The Board of Appeals as established by the Town of Elizabethtown shall hear and decide appeals and requests for variances from the requirements of this local law.
- (2) The Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this local law.
- (3) Those aggrieved by the decision of the Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- (4) In passing upon such applications, the Board of Appeals, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this local law and:
  - (i) the danger that materials may be swept onto other lands to the injury of others;
  - (ii) the danger to life and property due to flooding or erosion damage;
  - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

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- (iv) the importance of the services provided by the proposed facility to the community;
  - (v) the necessity to the facility of a waterfront location, where applicable;
  - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - (vii) the compatibility of the proposed use with existing and anticipated development;
  - (viii) the relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
  - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (x) the costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
  - (xi) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - (xii) the costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- (5) Upon consideration of the factors of Article 7 and the purposes of this Land Use Local Law, the Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this local law.
- (6) The Local Administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

### 9.6.2 CONDITIONS FOR VARIANCES

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xii) in Section 9.6 (4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the repair or rehabilitation of historic structures upon determination that:

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- (i) the proposed repair or rehabilitation will not preclude the structure's continued designation as a "Historic structure"; and
  - (ii) the variance is the minimum necessary to preserve the historic character and design of the structure.
- (3) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
  - (i) the criteria of subparagraphs 1, 4, 5, and 6 of this Section are met; and
  - (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- (4) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances shall only be issued upon receiving written justification of:
  - (i) a showing of good and sufficient cause;
  - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (7) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
  - (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions as required in Section 9.4.4-8 of Article 9 of this Local Law.



## **ARTICLE 10 AMENDMENT PROCEDURE**

The Town Board may from time to time on its own motive, on petition or on recommendation from the Planning Board, supplement or repeal the regulations and provisions of this Local Law by following the procedure of this statute:

### **10.01 REFERRALS**

Every such proposed amendment or change unless initiated by the Planning Board shall be referred to the Planning Board for review and report thereon before the required public hearing pursuant to Section 10.02. The Planning Board shall report its recommendations to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report.

Amendments that “relate” or “pertain” to the criteria set forth for initial approval of a local land use program set forth in Section 807 of the Adirondack Park Agency shall be subject to the approval of the Agency. The Town Clerk, therefore, when directed by the Town Board, shall submit a copy of a proposed amendment to the Adirondack Park Agency.

Where required by Section 239-m of the General Municipal Law, a copy of the amendment shall also be submitted to the Essex County Planning Agency for that required review.

### **10.02 HEARING AND DECISION ON PROPOSED AMENDMENTS**

A public hearing shall be required prior to adoption of any amendment to this local law. The procedure as to notice of public hearing, the public hearings on and enactment of a proposed amendment shall follow and be governed by Section 265 of the Town Law including all subsequent amendments thereto. Notice of the decision of the Town Board shall be sent to the Adirondack Park Agency after a decision has been made.

### **10.03 RECORD OF AMENDMENTS**

Every Amendment to the Zoning Law, including any map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board; a copy, summary or abstract of the amendment, exclusive of any map incorporated therein, shall be published once in the official newspaper of the Town; and a copy of such amendment together with a copy of any map incorporated therein, shall be posted on the Town’s official website and in the Office of the Town Clerk. Affidavits of the publication and posting thereof shall be filed with the Town Clerk.