

3/20/24

LOCAL LAW INTRO. 2 of 2024

**A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF TONAWANDA**, (as recodified by Local Law 3-83) **BY DELETING AND REPEALING CHAPTER 215 THREOF, ZONING, AND REPLACING IT WITH A NEW CHAPTER 215 TO BE ENTITLED “ZONING”**, which Chapter provides a comprehensive Town-wide zoning update.

Be it Enacted by the Town Board of the Town of Tonawanda as Follows:

**Section 1.** The Code of the Town of Tonawanda is hereby amended by deleting and repealing Chapter 215, Zoning.

**Section 2.** The Code of the Town of Tonawanda is hereby amended by adding thereto a new Chapter, to replace Chapter 215 hereinabove repealed, to be Chapter 215, Zoning, to read as follows:



# CHAPTER 215. ZONING CODE

## Part 1. Introductory Provisions

**DRAFT**

**FEBRUARY 1, 2024**

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# Article 10. Establishment & Applicability

## §215-10.1

### ENACTING & SUPERSEDING CLAUSE

The Town Board of the Town of Tonawanda, County of Erie, State of New York, hereby enacts and publishes the following Chapter establishing zoning district, use, and development regulations for the Town and providing for the enactment, administration, and amendment thereof pursuant to the provisions of NYS Town Law, Article 16.

## §215-10.2

### TITLE

This Chapter shall be known as the "Zoning Local Law of the Town of Tonawanda, County of Erie, State of New York." For convenience, it is also referred to throughout this Chapter as the "zoning law" or "zoning code."

## §215-10.3

### PURPOSE & INTENT

- A. **Purpose.** The purpose of this zoning law, set forth in the text, tables, illustrations, and map that constitute this Chapter, is to promote and protect the public health, safety and general welfare.
- B. **Intent.** The regulations of this Chapter are also intended to serve as a tool for implementing the vision and goals of the Town of Tonawanda Comprehensive Plan, Local Waterfront Revitalization Program, and other adopted plans and studies, which aim to:
  1. Shape and improve the quality of the built environment by managing growth so as to provide for the needs of the community while maintaining and improving the overall character;
  2. Promote a stable and diverse local economy;
  3. Beautify and enhance the assets of the Niagara River waterfront, increase public access, and protect overall water quality;
  4. Promote the availability of diverse, high-quality, affordable, and attractive places for people to live;
  5. Provide a multi-modal transportation system that is safe, efficient, convenient, and environmentally responsible;
  6. Facilitate the adequate provision of public utilities and services, such as water, sewer, broadband, schools, and parks;
  7. Promote the protection of people and their property, including safety from fire, panic, and other dangers; and
  8. Provide for adequate light and air, preserve solar access, and maintain a healthy environment for future generations.

**§215-10.4****APPLICABILITY**

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This zoning law affects every structure and use within the corporate limits of the Town of Tonawanda. Except as hereinafter provided, no building, structure or premises shall be used or occupied, and no building or structure shall be erected, moved, reconstructed, extended, enlarged, altered, or demolished except in conformity with the regulations herein.

**§215-10.5****EFFECTIVE DATE**

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The effective date of this zoning law shall be the date of filing with the Secretary of State.

**§215-10.6****TRANSITIONAL PROVISIONS**

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**A. Applications Prior to Effective Date.**

1. Development applications submitted and processed before the effective date of this Chapter (Section 215-10.5) may be reviewed wholly under the terms of the zoning law in effect immediately before this Chapter, or they may be reviewed wholly under the terms of this zoning law.
2. Whether such review takes place under the provisions of the previous zoning law or under this zoning law is at the applicant's option. The applicant's decision about which law applies, once submitted, may not be changed.
3. All development applications submitted on or after the effective date of this Chapter will be reviewed wholly under the terms of this zoning law.

**B. Permits Granted Prior to Effective Date.**

1. Any building, development or structure for which a building permit was issued before the effective date of this Chapter may be completed in conformance with the issued building permit and other applicable permits and conditions.
2. If construction has not commenced by the effective date of this Chapter, then the building, development or structure must be constructed, completed and occupied only in strict compliance with the standards of this zoning law.

**C. Continuance of Violations.**

1. Any violation of the previous zoning law will continue to be a violation under this zoning law and be subject to penalties and enforcement as provided by this Chapter and the Municipal Code of the Town of Tonawanda.
2. If the use, development, construction, or other activity that was a violation under the previous law complies with the express terms of this zoning law, enforcement action will cease, except to the extent of collecting penalties for violations that occurred before the effective date of this Chapter.
3. The adoption of this zoning law does not affect nor prevent any pending or future prosecution of, or action to abate violations of the previous law that occurred before the effective date of this Chapter.

- D. **Continuing Nonconformities.** Any nonconformity under the previous zoning law will also be nonconformity under this zoning law, as long as the situation that resulted in the nonconforming status under the previous regulation continues to exist. If, however, a nonconforming situation under previous zoning regulations becomes conforming because of the adoption of this zoning law, or any subsequent amendment to it, then the situation will no longer be considered a nonconformity.

## §215-10.7

### COMPLIANCE WITH OTHER APPLICABLE REGULATIONS

- A. The provisions of this zoning law are the minimum requirements deemed necessary to carry out the zoning law's stated purpose and intent.
- B. In addition to the requirements of the zoning law, all uses and development must comply with all other applicable town, county, state, and federal laws and regulations.
- C. All references in the zoning law to other town, county, state, and federal laws and regulations are for informational purposes only and do not constitute a complete list of such regulations. These references do not imply any responsibility for the Town to enforce county, state, or federal laws and regulations.

## §215-10.8

### CONFLICT WITH OTHER REGULATIONS

- A. **Conflict with County, State, or Federal Laws and Regulations.** If the provisions of this zoning law are inconsistent with those of the county, state, or federal government, the more restrictive provision will control, to the extent permitted by law. The more restrictive provision is the one that imposes greater restrictions or more stringent controls.
- B. **Conflict with other Town Regulations.** If the provisions of this zoning law are inconsistent with one another, or if they conflict with provisions found in other adopted laws, ordinances, or regulations of the Town of Tonawanda, the more restrictive provision will control. The more restrictive provision is the one that imposes greater restrictions or more stringent controls.
- C. **Conflict with Private Agreements and Covenants.** This zoning law is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this zoning law impose a greater restriction than imposed by a private agreement, the provisions of this zoning law will control. If the provisions of a valid, enforceable private agreement impose a greater restriction than this zoning law, the provisions of the private agreement will control. The Town does not enforce or maintain a record of private agreements.

## §215-10.9

### SEVERABILITY

If any portion of this zoning law is held to be invalid or unconstitutional by a court of competent jurisdiction, that portion is to be deemed severed from the zoning law, and in no way affects the validity of the remainder of the zoning law.

# Article 11. Zoning Map

## §215-11.1

### OFFICIAL ZONING MAP

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- A. The location and boundaries of the zoning districts established by this Chapter are shown on the map designated "Official Zoning Map of the Town of Tonawanda," bearing the date of adoption of this Chapter and as revised from time to time. For convenience the Official Zoning Map of the Town may also be referred to as the "zoning map."
- B. The zoning map is hereby established, adopted, and attached to this Chapter and shall be as much a part hereof as if fully set forth and described herein.

## §215-11.2

### KEEPING OF THE MAP

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- A. The zoning map shall be duly certified in the manner prescribed by the State of New York relating to Town zoning and shall be maintained by the Clerk of the Town of Tonawanda.
- B. When duly certified, including any amendments thereto, the zoning map shall be filed with the Town Clerk and with the Town of Tonawanda Code Enforcement Officer, Planning Board, Zoning Board of Appeals, and Planning and Development Department.
- C. The Town Clerk shall also file the zoning map, and any amendments thereto, with Erie County and the Secretary of State as required by NYS Law.
- D. A copy of the zoning map indicating the latest amendments shall be kept in the offices of the Town Clerk for the use and benefit of the public.

## §215-11.3

### DISTRICT BOUNDARIES

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- A. Where district boundaries are indicated as approximately following the center lines of streets, highways, waterways or railroad rights-of-way, or such lines extended, such center lines shall be construed to be such boundaries.
- B. Where such boundaries are indicated as approximately following the property lines of parks or other publicly owned lands, such lines shall be construed to be such boundaries.
- C. In all cases where a district boundary line is located not farther than 10 feet away from a lot line of record, such boundary line shall be construed to coincide with such lot line.
- D. In all other cases where dimensions are not shown on the map, the location of boundaries shown on the map shall be determined by the Director of Planning and Development through the application of a graphic scale or other such instrument of measurement.



# Article 12. Enforcement & Penalties

## §215-12.1

### ADMINISTRATION & ENFORCEMENT AUTHORITY

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- A. Director of Planning and Development.** The authority to administer the provisions of this zoning law shall be performed by the Director of Planning and Development. The powers and duties of the Director of Planning and Development shall include:
1. Receiving and processing development applications as provided by this Chapter;
  2. Attending review body meetings, as necessary and appropriate;
  3. Providing guidance on the applicability of regulations and procedures of this zoning law to the Code Enforcement Officer, review bodies, and applicants;
  4. Ensuring consistency of development applications with the visions and goals of the Town Comprehensive Plan and other relevant adopted plans and studies;
  5. Serving as the Chair of the Town Staff Plan Review Committee; and
  6. Coordinating and communicating with all Town departments and officials as necessary for the proper review of development applications.
- B. Code Enforcement Officer.** The regulations of this zoning law shall be enforced by the Town Code Enforcement Officer and Inspectors designated in Chapter 54 (Building Code Administration and Enforcement) of the Town of Tonawanda Code. In addition to the authority provided by Chapter 54, Code Enforcement personnel powers and duties specific to this zoning law shall include:
1. Receiving and processing development applications as provided by this Chapter;
  2. Attending review body meetings, as necessary and appropriate;
  3. Securing or causing to be secured all information necessary for the proper consideration of any question relating to building and zoning applications;
  4. Inspecting every building or structure to certify compliance with the requirements of this zoning law;
  5. Issuing all appropriate written notices or orders to remove illegal or unauthorized construction or to cease and desist any illegal or unauthorized uses;
  6. Ordering in writing the remedying of any conditions found in violation of the regulations herein; and
  7. Maintaining permanent official records of all transactions and activities concerning the enforcement of this Chapter, including all applications received, permits or certificates issued, fees charged and collected, inspection reports and notices and orders issued.

**§215-12.2****PENALTIES FOR OFFENSES**

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- A. Any violation by a person, firm, or corporation of any provision of this chapter shall be deemed a violation punishable by a fine not to exceed \$250 or by imprisonment for a period not to exceed 15 days, or both.
- B. Any person who takes part in or assists in any violation of this chapter shall also be subject to the penalties provided herein.
- C. Each day that a violation of this chapter is committed or permitted to exist shall constitute a separate offense.

**§215-12.3****ADDITIONAL REMEDIES**

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In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used or any land is divided into lots, blocks or sites in violation of this chapter, the Code Enforcement Officer, in addition to any other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

**§215-12.4****PROHIBITED DEVELOPMENT ACTIONS**

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To ensure the orderly use of lands in accordance with this zoning law, the following development actions shall be prohibited:

- A. No portion of a lot may be subdivided or disposed of in any manner whatsoever which would create a violation of the restrictions of the district(s) in which the lot exists.
- B. No portion of a lot may be subdivided or disposed of in any manner whatsoever which would leave a remaining portion without ingress or egress from a paper street, an improved or unimproved street or highway or any easement approved by the Town Board of the Town of Tonawanda.

# Article 13. Nonconformities

## §215-13.1

### CONTINUATION OF NONCONFORMING BUILDING OR USE

- A. Any lawful building, structure or use of premises existing at the time of enactment of this Chapter, or any subsequent amendment thereof applying to such building, structure, or use of premises, may be continued although such building, structure or use of premises does not conform to the provisions thereof.
- B. Any undeveloped lot in a subdivision which was not properly approved by the Planning Board and/or not filed in the office of the County Clerk and whose area and/or depth is less than the specified minimum lot requirements and average density requirements of this Chapter shall be considered a violation of this Chapter.

## §215-13.2

### CHANGES FROM NONCONFORMING TO CONFORMING USE

A nonconforming use if changed to or replaced by a conforming use shall not thereafter be changed back to any nonconforming use.

## §215-13.3

### DISCONTINUANCE OF NONCONFORMING USE

Whenever a nonconforming use of any premises or a building has been discontinued for a period of one year, such nonconforming use shall not be reestablished, and all future use shall be in conformity with the provisions of this chapter.

## §215-13.4

### EXPANSION, ALTERATION, OR RECONSTRUCTION

- A. **Expansion.** A nonconforming use of a building, structure or land or any portion thereof shall not be extended or expanded in any manner that further increases its level of nonconformity.
- B. **Alteration.** Any alteration to a nonconforming use or structure shall bring such use or structure into compliance with the provisions of this zoning law to the greatest extent practicable.
- C. **Reconstruction.** A nonconforming use or structure shall not be reconstructed except in compliance with the provisions of this chapter.

## §215-13.5

### NECESSARY MAINTENANCE & REPAIRS

A building or structure of nonconforming use may be repaired or restored to a safe condition. Any such repair or restoration shall be subject to the following provisions:

- A. Such repair or restoration shall be permitted only upon the same lot as was in existence on the date the use became nonconforming.
- B. Any increase in the volume, area or extent of the nonconforming use shall not be permitted.

- C. If a structure has been damaged or destroyed to the extent of more than 75% of its assessed value, repair or reconstruction of the structure shall be prohibited except in compliance with all currently effective zoning regulations, as well as the provisions of the New York State Uniform Fire Prevention and Building Code.
- D. Under no circumstances shall "repaired or restored" be construed to include the total demolition and rebuilding of a structure. In such an instance, the provisions of Subsection C above shall apply.

# Article 14. Review Bodies

## §215-14.1

### TOWN BOARD

- A. Authorization.** For the purpose of promoting the health, safety, morals, or the general welfare of the community, the Town Board of the Town of Tonawanda is hereby empowered by NYS Town Law to regulate and administer the provisions of this Zoning Law as provided herein.
- B. Staff Appointments and Confirmations.** A clerk, or other Town employee appointed by the Supervisor, will serve at the pleasure of the reviewing body (e.g. Planning Board or Zoning Board of Appeals). Such appointed persons shall also be confirmed by the Town Board.
- C. Final Decision Authority.** Pursuant to this Zoning Law and NYS Town Law, the Town Board is hereby authorized and empowered with final decision authority for the following:
  1. Special Use Permits;
  2. Amendments to the text and/or map of this Chapter (re-zonings); and
  3. Planned Unit Development (PUD) Districts.
- D. Additional Powers.** The Town Board shall hold all additional powers and duties provided by the laws, rules, and regulations of New York State and the rules, regulations, and local laws of the Town of Tonawanda.

## §215-14.2

### PLANNING BOARD

**NOTE:** This Section would replace the existing Town Code Chapter 27 (Planning Board).

- A. Establishment.**
  1. As provided by NYS Town Law §271, the Town of Tonawanda Planning Board previously established under local law and still in existence at the time of this Chapter's enactment shall hereby be continued.
  2. The Planning Board shall be governed by the provisions of all applicable state statutes, local laws, ordinances, including NYS Town Law, and these rules.
- B. Membership and Terms.**
  1. The Planning Board shall consist of seven members appointed by the Supervisor and approved by the Town Board.
  2. The terms of the members of the Planning Board shall be seven years.
- C. Advisory Authority.** Pursuant to this Article and NYS Town Law, the Planning Board is hereby authorized and empowered with review and advisory authority for the following actions:
  1. Special Use Permits;
  2. Amendments to the text and/or map of this Chapter (re-zonings); and
  3. Planned Unit Development (PUD) Districts.

- D. Final Decision Authority.** Pursuant to this Article and NYS Town Law, the Planning Board is hereby authorized and empowered with final decision authority to approve, approve with modifications or conditions, or deny applications for the following:
1. Site plan review
- E. Additional Powers and Duties.** The Planning Board may exercise additional powers and duties as directed by the Town Board, as may be described elsewhere in this Chapter, and as permitted by NYS Town Law.

### §215-14.3

### ZONING BOARD OF APPEALS

- A. Establishment.**
1. Per NYS Town Law §267, the Zoning Board of Appeals (ZBA) previously established under local law and still in existence at the time of this Chapter's enactment shall hereby be continued.
  2. The ZBA shall be governed by the provisions of all applicable state statutes, local laws, ordinances, including NYS Town Law, and these rules.
- B. Membership and Terms.**
1. The ZBA shall consist of five members appointed by the Supervisor and approved by the Town Board.
  2. The terms of the members of the ZBA shall be four years.
- C. Final Decision Authority.** Pursuant to this Article and NYS Town Law, the ZBA is hereby authorized and empowered with final decision authority to approve, approve with modifications or conditions, or deny applications for the following:
1. Variances;
  2. Appeals; and
  3. Zoning Code Interpretations.
- D. Additional Powers.** The ZBA may exercise additional powers as may be described elsewhere in this Chapter and as permitted by NYS Town Law.

### §215-14.4

### REVIEW BOARD REQUIREMENTS & PROCEDURES

- A. Applicability.** The following membership and procedural requirements shall apply to the Town Planning Board and Zoning Board of Appeals.
- B. Membership Requirements.**
1. Every member of the board, at the time of their appointment and throughout their term of office, shall be a resident of the Town and the record owner of real property in the Town.
  2. No board member shall hold any other public office in the Town or be members of the Town Board.
  3. The Town Board shall appoint one member of the board as Chairperson.
  4. Efforts will be made to ensure that review board members represent a variety of ethnic, professional, and civic groups in the Town and are appropriately qualified to execute the powers and duties herein.

5. Removal of members, alternates, and vacancies on each board shall be addressed as provided for in NYS Town Law.
  6. Board members shall be compensated as the Town Board determines by resolution.
- C. Officers.** The officers of each board shall consist of a Chairperson, Acting Chairperson, and Recording Secretary.
1. Chairperson.
    - a. The Chairperson shall perform all the duties required by law, ordinance, and these rules. The Chairperson shall preside at all meetings and shall decide on all points of order and procedure, subject to these rules.
    - b. The Chairperson shall appoint any committees found necessary to carry out the business of the board and may administer oaths and compel the attendance of witnesses as necessary to carry out board business.
    - c. The Chairperson's signature shall be the official signature of the board and shall appear on all decisions as directed by the board.
  2. Acting Chairperson. An Acting Chairperson shall be designated by the board members to serve in the absence of the Chairperson and shall have all the powers of the Chairperson during their absence.
  3. Recording Secretary.
    - a. A Recording Secretary shall be designated by the board.
    - b. The Recording Secretary shall keep minutes of all proceedings and shall also keep records of all votes and official actions. The Recording Secretary shall file a copy of the minutes with the Planning and Development Department.
    - c. The Recording Secretary shall be responsible for calling special meetings of the board upon receiving a request as provided by this section.
- D. Responsibilities.**
1. Members of the board shall adhere to the training and attendance requirements of §271-7-a and §262-7-a of NYS Town Law, Town Board resolution requirements, or requirements of the State of New York.
  2. The board members shall become familiar with all the duly enacted ordinances and laws of the Town under which it may be expected to act, as well as all applicable state statutes.
  3. The board members shall become familiar with the community goals, desires and policies as expressed in the Town's Comprehensive Plan and other applicable adopted plans and studies, and in rendering approvals, recommendations, and reports, shall be guided by such plans.
- E. Meetings.**
1. Regular Meetings. The regular meetings of each board shall be held in accordance with the meeting schedule and location set by Town Board

resolution, or at such other date, time, and location as may be determined by the Chairperson of the board.

2. Annual Meeting. The annual organizational meeting of each board shall be the first regular meeting of the year.
  3. Special Meetings.
    - a. Special meetings of each board may be called by the Chairperson. At least 72 hours' written notice of the time, place and business of the meeting shall be given each member of the board and duly public noticed.
    - b. The Chairperson shall call a special meeting within 10 days of receipt of a request from any four members of the Planning Board or three members of the ZBA, which request shall specify the matters to be considered at such special meeting.
  4. Cancellation of Meetings.
    - a. Whenever there is no business to be conducted at a regular meeting, the Chairperson may dispense with such meeting by electronic notice to all members not less than 48 hours prior to the time set for such meeting.
    - b. Notice of such cancellation shall also be provided to the public via posted notice at the meeting location and on the Town's website.
- F. Proceedings and Rules of Order.** The order of business at regular meetings shall be as follows:
1. Roll call;
  2. Approval of minutes of preceding meeting;
  3. Action items;
  4. Old business;
  5. New business;
  6. Adjournment.
- G. New Business.** No new matter will be considered unless the completed appropriate application for said matter is received in accordance with Article 40 of this Chapter. The Chairperson, for good cause shown, may waive this requirement.
- H. Quorum.**
1. A quorum shall consist of a majority of the members of the board.
  2. No meeting of the board shall be held, nor any action taken, in the absence of a quorum.
- I. Voting.**
1. Any member of the board shall be allowed to cast an "Aye" or "Nay" vote.
  2. All matters shall be decided by roll call vote. Decisions on any matter before the board shall require an affirmative majority vote unless otherwise specified by this Chapter or NYS Law.



3. Any member of the board who believes they have a conflict of interest on any matter on the agenda shall voluntarily recuse themselves from discussion and voting on the matter.
4. No member of the board shall vote on any matter in which he is personally or financially interested. Said member shall not be counted in establishing the quorum for such matter.

## §215-14.5

### TOWN STAFF PLAN REVIEW COMMITTEE

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#### A. Purpose and Intent.

1. The purpose of this Committee is to provide for coordinated inter-departmental development review, bringing together highly experienced and qualified staff from all Town departments involved in project review.
2. This coordinated review is intended to:
  - a. Better facilitate the processing and review of applications.
  - b. Ensure consistency and compliance with all applicable local, state, and federal plans, codes, and standards.
  - c. Avoid costly delays in the approval process by providing feedback from multiple departments early in the review process.
  - d. Streamline the review of smaller, low-impact development proposals by providing for administrative review.

**B. Membership.** The Staff Plan Review Committee shall consist of all Town department directors, or their designee(s), with an interest or stated role in the review of development applications. This may include, but is not limited to Building, Planning, and Engineering staff.

#### C. Meetings.

1. Meetings of the Committee may be held on an as needed basis, when called by the Director of Planning and Development.
2. Said meetings may be open to the public at the discretion of the Director of Planning and Development. Where the Committee is conducting administrative plan review, the public shall be permitted to attend.

#### D. Powers and Duties.

1. The Committee is authorized to act as an advisory authority to applicants and review boards, where requested or required by this Chapter.
2. In its advisory role the Committee may provide written comments and recommendations on applications or impose certain conditions where deemed necessary to safeguard the quality of the community's built and natural environments and protect the public health, safety, and welfare.
3. The Committee may review and decide upon administrative development plans or refer such applications for site plan review by the Planning Board in accordance with Article 42 of this Chapter.
4. All feedback shall be provided in a timely and efficient manner.
5. The Committee may exercise additional powers as may be described elsewhere in this Chapter and as permitted by other applicable NYS laws, rules, and regulations.

# Article 15. Terminology

## §215-15.1

### MEANING & INTENT

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The language of the Zoning Law must be read literally. Regulations are no more or less strict than stated. Words defined in this Article shall have the specific meaning assigned, unless the context expressly indicates another meaning. Words that are not defined in this Zoning Law shall have the relevant meaning given in the latest edition of Merriam-Webster's Unabridged Dictionary.

## §215-15.2

### WORD USAGE

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For the purposes of this Zoning Law, certain terms and tenses used herein shall be interpreted or defined as follows:

- A. Plurality.** Words in the plural number include the singular number and all words in the singular number include the plural number, except as to the number of permitted structures, unless the natural construction of the wording indicates otherwise.
- B. Tense.** Words used in the present tense include the future tense. The reverse is also true.
- C. Nouns.**
  - 1. "Person" includes an association, firm, partnership, entity, or corporation or the plural of those words.
  - 2. "He" also includes the word "she."
  - 3. "Lot" shall include the word "plot," "parcel," "tract", or "site."
  - 4. "Building" includes the word "structure."
  - 5. "Premises" includes a lot and all buildings or structures thereon.
- D. Modal Verbs.**
  - 1. "Shall," "must," "will," and "may not" are mandatory or required.
  - 2. "May" is permissive and "should" is advisory or recommended, not mandatory or required.
- E. Conjunctions.** Unless the context otherwise clearly indicates, conjunctions have the following meanings:
  - 1. "And" indicates that all connected items or provisions apply.
  - 2. "Or" indicates that the connected items or provisions may apply singularly or in combination.
- F. Activity.**
  - 1. "Occupied" shall include "designed, arranged, or intended to be occupied."
  - 2. "Used" shall be deemed also to include "designated, intended, or so arranged to be used or occupied."

3. "To erect," "to construct" and "to build" a building or structure each have the same meaning and include "to excavate" for a building and "to relocate" a building by moving it from one location to another.

**G. Measurement.**

1. When used with numbers, "up to X," "not more than X," and "a minimum or maximum of X" all include X.
2. Unless otherwise specified, all distances shall be measured horizontally along the ground from nearest edge to nearest edge.

### §215-15.3

#### LISTS & EXAMPLES

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Unless otherwise expressly indicated, lists of items or examples that use "including," "such as," or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities.

### §215-15.4

#### FRACTIONS

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The following rules apply to fractional number unless otherwise expressly stated.

- A. Minimum Requirements.** When a regulation is expressed in terms of a minimum requirement, any fractional result of 0.5 or more must be rounded up to the next consecutive whole number. For example, if a minimum requirement calling for one tree to be provided for every 30 linear feet of frontage is applied to a 50-foot dimension, the resulting fraction of 1.67 is rounded up to two required trees.
- B. Maximum Limits.** When a regulation is expressed in terms of maximum limits, any fractional result will be rounded down to the next lower whole number. For example, if a maximum limit of one dwelling unit for every 5,000 square feet is applied to a 12,500 square foot lot, the resulting fraction of 2.5 is rounded down to 2 (allowed dwelling units).

### §215-15.5

#### CURRENT VERSIONS & CITATIONS

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All references to other town, county, state, or federal regulations in the zoning law refer to the most current version and citation for those regulations, unless expressly indicated otherwise. When the referenced regulations have been repealed and not replaced by other regulations, zoning law requirements for compliance are no longer in effect.

### §215-15.6

#### ADMINISTRATIVE AGENCIES DEFINED

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**CODE ENFORCEMENT OFFICER** — The official designated by the Town Board of the Town of Tonawanda to enforce the provisions of this Zoning Law and the New York State Uniform Fire Prevention and Building Code in the Town of Tonawanda.

**COUNTY PLANNING BOARD** — The Planning Board of Erie County.

**DEPARTMENT OF HEALTH** — The New York State Department of Health and any other health board or department established pursuant to the laws of the State of New York and having authority for the regulation of matters pertaining to the public health within the Town of Tonawanda.

**DEVELOPMENT SERVICES STAFF** — Includes personnel from the Building Department, Planning and Development Department, and/or the Technical Support Department.

**DIRECTOR OF PLANNING AND DEVELOPMENT** — The official designated by the Town Board of the Town of Tonawanda to administer the provisions of this Zoning Law.

**PLANNING BOARD** — The Planning Board of the Town of Tonawanda, New York.

**STAFF PLAN REVIEW COMMITTEE** — The Town of Tonawanda department directors, or their designee(s), with an interest or stated role in the review of development applications as provided by this Chapter or confirmed by the Director of Planning and Development. This may include, but is not limited to Building, Planning, and Engineering staff.

**TOWN BOARD** — The Town Board of the Town of Tonawanda, New York.

**ZONING BOARD OF APPEALS** — The Zoning Board of Appeals of the Town of Tonawanda, New York.

## §215-15.7

## DEFINITIONS

The following definitions shall be used in interpreting this Zoning Law.

### Aa

**ABANDONMENT** — To cease or discontinue a use or activity without intent to resume it.

**ACCESSORY USE or STRUCTURE** — A building, structure, or use (except for accessory dwelling unit) that meets the following conditions. A list of residential and nonresidential accessory uses or structures is provided in §215-24.4.

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

**ACCESSORY DWELLING UNIT (ADU)** — An additional, subordinate dwelling unit that may have been added to or created within a single-family dwelling. The ADU shall be on the same parcel as the primary dwelling. An ADU is differentiated from an in-law suite in that it serves as a complete independent living space with full kitchen and bathroom facilities and may have a separate entrance from that of the primary structure.

**ADULT USE** — Any type of business or combination of businesses where specified anatomical areas are displayed or specified sexual activities are encountered in accordance with the following. These definitions shall not include any bona fide medical or health service office or establishment in which clients or customers may be required to display any specified anatomical area for the purpose of diagnosis or treatment.

1. **ADULT BOOKSTORE and/or ADULT VIDEO STORE** — An establishment in which a substantial or significant portion of its stock-in-trade consists of books, magazines, films, videocassettes, digital video discs or similar media for sale or viewing on the premises by use of motion-picture devices or any other coin-operated means, and other materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or an establishment with a segment or section devoted to the sale or display of such material.
2. **ADULT ENTERTAINMENT CABARET** — A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dancers, strippers, male or female impersonators or similar entertainers.
3. **ADULT MASSAGE PARLOR** — A public or private establishment which is used for the provision of the service of stroking, kneading, tapping or vibrating the human body with the hands or other devices, with or without the aid of oils or other lubricants, except by those licensed to perform said activity under Education Law § 7802.
4. **ADULT MINI-MOTION-PICTURE THEATER** — An enclosed building with a capacity of less than 50 persons which is used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
5. **ADULT MOTION-PICTURE THEATER** — An enclosed building with a capacity of 50 or more persons which is used regularly and routinely for presenting material having as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
6. **SPECIFIED ANATOMICAL AREAS** —
  - a. Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
  - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
7. **SPECIFIED SEXUAL ACTIVITIES** —
  - a. Human genitals in a state of sexual stimulation or arousal.
  - b. Acts of human masturbation, sexual intercourse or sodomy.
  - c. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

**ALLEY** — A public or private narrow passageway designed for the special accommodation of the property it reaches or abuts, to be used mainly for the convenience of said abutting property owners and those dealing with them, which passageway is not dedicated to the public use or established for that purpose by the Town or its officials.

**ALTERATION** — As applied to a building or structure, a change or rearrangement in the structural parts or in exit facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

**ALTERNATIVE TOWER STRUCTURE** — Any man-made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

**ANTENNA** — Any device or exterior apparatus mounted on a tower, building, utility pole, light pole or other structure designed for telephonic, radio, data, Internet or television communications to transmit or receive communication signals or electromagnetic waves for the purpose of providing cellular services, telecommunications services, personal communications services, personal wireless services, wireless cable, commercial paging, data, or wireless services, and its attendant base station, utilizing microcells or frequencies authorized by the Federal Communications Commission.

**ANIMAL GROOMING SHOP** — A commercial operation that provides grooming services for domesticated animals and pets that customarily reside and are cared for within a residential dwelling.

**ANIMAL HOSPITAL or VETERINARY CLINIC** — A building for the treatment of animal illness including facilities for boarding animals receiving treatment.

**ANTENNA SUPPORT STRUCTURE** — Any structure, mast, pole, tripod, or tower utilized for the purpose of supporting an antenna or antennas for the purpose of transmission or reception of electromagnetic waves.

**APPLICANT** — A property owner or agent of a property owner who has filed an application for a land development activity as provided herein.

**APPROPRIATE** — Consistent, compatible with, or fitting, to the context of the site and desired future development condition of the neighborhood.

**APPROVAL** — A favorable decision to an application by the authorized review body that indicates acceptance and the terms of the application, as written or modified, are satisfactory. Includes both approval and approval with conditions.

**ARCHITECTURAL FEATURE** — A prominent or significant part or element of a building, structure, or site.

**ART, DANCE, MUSIC, or PHOTO STUDIO** — Establishments or work space dedicated to artists, artisans, musicians, dancers, or other individuals practicing or teaching one of the fine or performing arts or skilled in an applied art or craft. Incidental retail sales of work produced on the premises or related to the studio may be included in the business's permitted function. This definition excludes all adult oriented uses.

**ATTIC** — That space of building which is between the top of the uppermost floor construction immediately below and wholly or partly within the roof framing and that is not finished as habitable or occupied space (See also "story, half.")

**AUTOCLAVE** — An apparatus for sterilization using steam under high pressure.

**AWNING** — A roof-like protective cover of canvas or other flexible material over a door, entrance, window, or outdoor service area that projects from the facade of a building.

## Bb

**BACKHAUL NETWORK** — The lines that connect a provider's towers/ cell sites to one or more cellular telephone switching offices and/or long distance providers or the public switched telephone network.

**BAR** — A business establishment licensed by the State of New York to serve alcoholic beverages and which establishment is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

**BASEMENT** — Any space of a building which is partly below finished grade but having more than 1/2 of its height measured from floor to ceiling above average finished grade. (See also "cellar.")

**BATTERY ENERGY STORAGE** — The following definitions shall apply as related to the provisions of Article 28.

1. **ANSI:** American National Standards Institute
2. **BATTERY(IES):** A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.
3. **BATTERY ENERGY STORAGE MANAGEMENT SYSTEM:** An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.
4. **BATTERY ENERGY STORAGE SYSTEM:** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2 (Tier 2A and 2B) or Tier 3 Battery Energy Storage System as follows:
  - a. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. These are accessory uses to a principal use and are intended for energy use

by the principal use and do not exceed storage of 110% of two-days' of energy for the user (as determined by the Town Building Department).

- b. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area (a Tier 2A system) or in an outdoor area (a Tier 2B system). These are accessory uses to a principal use and are intended for energy use by the principle use and do not exceed storage of 110% of two-days' of energy for the user (as determined by the Town Building Department).
- c. Tier 3 Battery Energy Storage Systems (Utility Grade system) are systems that are designed independent of a User, with a purpose to store energy and then put that energy back into the power grid. They can be an accessory or primary use on a site. They also include any system not meeting the definition/requirements of a Tier 1 or Tier 2 system.
5. **CELL:** The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.
6. **COMMISSIONING:** A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.
7. **DEDICATED-USE BUILDING:** A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:
  - a. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
  - b. No other occupancy types are permitted in the building.
  - c. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
  - d. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
    - The areas do not occupy more than 10 percent of the building area of the story in which they are located.
    - A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.
8. **NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the



requirements of both the construction and general industry OSHA electrical standards.

9. **NON-DEDICATED-USE BUILDING:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.
10. **NON-PARTICIPATING PROPERTY:** Any property that is not a participating property.
11. **NON-PARTICIPATING RESIDENCE:** Any residence located on Non-participating Property.
12. **OCCUPIED COMMUNITY BUILDING:** Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.
13. **OPERATING PERMIT:** As defined in Chapter 54, Article V of the Tonawanda Town Code.
14. **PARTICIPATING PROPERTY:** A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.
15. **UL:** Underwriters Laboratory, an accredited standards developer in the US.

**BED-AND-BREAKFAST** — An owner-occupied single-family dwelling having at least one but not more than five sleeping rooms and facilities for serving food and drink prepared within the building to preregistered transient guests for overnight accommodation.

**BLOCK** — The length of a street between two intersections or between an intersection and its termination.

**BOATYARD** — A facility for servicing all types of recreational watercraft, as well as providing supplies, storage and fueling facilities, and with facilities for the retail sale, rental or charter of boats, motors and marine equipment.

**BREWERY** — An enclosed building for the manufacture, processing, bottling, and packaging of malt liquors, such as beer, ale, or ciders, but not to include distilled liquors, and duly licensed by the NYS Liquor Authority. For the purposes of this Chapter, this shall include operations which include tasting rooms.

**BREWERY, MICRO** — A brewery operation manufacturing and selling up to 75,000 gallons of beer annually. This shall not preclude licensed brewers from manufacturing and selling beer in excess of 75,000 gallons annually off-site. Such brewery may hold any valid brewer(s) license provided for by NYS Alcoholic Beverage Control Law; however, such operation shall be limited to the production scale provided herein.

**BUFFER** — An area of land forming a visual and/or physical separation or barrier between two uses. In the case of a visual barrier, the land shall be covered with

natural plantings or man-made material to provide a continuous physical screen preventing visual access and reducing noise. Also referred to as "screening."

**BUILDING** — A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof and which is permanently affixed to the land. The term "building" shall be construed as if followed by the phrase "or part thereof," unless otherwise indicated by the text, and shall include any structure other than a fence, sidewalk, or driveway.

**BUILDING, DETACHED** — A building surrounded by open space on the same lot.

**BUILDING, SEMIDETACHED** — A building attached by a party wall to another building normally of the same type on another lot but having one side yard.

**BUILDING FOOTPRINT** — The total of areas taken on a horizontal plane at the main grade level of a structure. All dimensions shall be measured between the exterior faces of walls. Also referred to as "building area."

**BUILDING FRONTAGE** — The linear footage of a building facing the front yard as defined in this chapter of the Code of the Town of Tonawanda, New York.

**BUILDING GROUP** — A group of two or more principal buildings and any buildings accessory thereto occupying a lot in one ownership and having any yard in common.

**BUILDING HEIGHT** — The vertical distance measured from the average elevation of the proposed or existing finished grade to the highest point of the roof for flat or shed roofs to the deck of mansard roofs, and to the highest point of the ridge for pitched, gable, hip and gambrel roofs.

**BUILDING LINE** — A line, generally parallel to the lot line, drawn through that point or projection of a building face which is closest to the lot line. The building face shall include any portion of the building or structure, enclosed or unenclosed, except uncovered steps or architectural feature projections, such as awnings and cornices.

**BULK** — A term to describe the size, volume, area and shape of buildings and structures, and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures or other walls of the same building; and all open spaces required in connection with a building, other structure or tract of land.

Cc

**CALIPER** — The measurement of the size in inches of the diameter of small trees (under six inches), usually measured at six inches above grade. Trees greater than six inches in diameter are measured 12 inches above the ground. This measurement is generally used for tree-planting measurement applications.

**CAR WASH** — A building, premises or portions thereof where automobiles and other vehicles are washed either by the patron or others either by hand or using machinery and mechanical devices specifically designed for this purpose.

**CELLAR** — Any space in a building the structural ceiling level of which is less than four feet above average finished grade where such grade meets the exterior walls of the building. (See also "basement.")

**CELL SITE** — A tract or parcel of land that contains the personal wireless service facilities, including any antenna, support structure, accessory buildings and parking and may include other uses associated with and ancillary to personal wireless services.

**CEMETERY** — Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums and mausoleums within the boundaries of such cemetery.

**CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLIANCE-** A certificate issued pursuant to § 54-9 of the Code of the Town of Tonawanda.

**CHARACTER** — The atmosphere or physical environment that is created by the combination of land use and buildings within an area. "Character" is established and influenced by land use types and intensity, traffic generation and also by the location, size and design of structures as well as the interrelationship of all these features.

**CHARGING STATION** — A site with electrical ports, outlets, or electric vehicle supply equipment (EVSE) that supplies electrical power for charging one or more plug-in hybrid or electric vehicles. A charging station may be provided in an approved parking area.

**COMMERCIAL VEHICLE** — Any vehicle exceeding a gross vehicle weight of 6,000 pounds when empty or 20 feet in length. This shall include pick-up trucks, vans, box-trucks, or other vehicles used for business or commercial purposes that may not exceed the above length or weight limits.

**COMMUNITY CENTER** — Any building, room, or facility designed or utilized primarily for indoor recreational, educational and civic pursuits and purposes by nearby residents and operated by the Town or a non-profit agency, but not including any retail, service, or other commercial activities.

**CONTIGUOUS PARCEL** — A tract of land under the control of the applicant or its agent that is not divided by any natural or man-made barriers such as existing streets and highways or public rights-of-way identified on the Official Map and is not bisected by water bodies.

**CONTRACTOR'S YARD** — Any space, whether inside or outside a building, used for the storage or keeping of construction equipment, machinery or vehicles or parts thereof which are in active use by a construction contractor.

**CORNER LOT** — A lot at the junction of and abutting two or more intersecting streets.

**CORNICE** — A horizontal decorative molding that crowns a building, such as the top edge of a façade or over an external door or window.

**CREMATORIUM OR CREMATORY** — A facility which includes a furnace for the cremation of the dead, whether located in and associated with a freestanding building, a cemetery, or a funeral home.

## Dd

**DAY-CARE CENTER, CHILD or ADULT** — Any licensed facility providing daytime care for two or more adults or children on a regular schedule, except in-home daycare.

**DEVELOPED LAND AREA** — Land which is occupied by either structures, parking lots, outdoor storage areas or recreation areas, and any combination thereof.

**DEVELOPMENT ACTIVITY** — Any construction or other activity which changes the use or appearance of land or a structure or the intensity of use of land or a structure. Land use activity shall explicitly include but not be limited to the following: new structures, expansions to existing structures, new uses, changes in or expansions of existing uses, roads, driveways and excavations for the purpose of extracting soil or mineral deposits.

**DISTILLERY** — An enclosed building for the manufacture, processing, bottling, and packaging of distilled liquors, such as vodka, gin, whiskey, or tequila, duly licensed by the NYS Liquor Authority. For the purposes of this Chapter, that shall include operations that may include tasting rooms.

**DISTILLERY, MICRO** — A distillery manufacturing and selling no more than 75,000 gallons of spirits annually. Such distillery may hold multiple licenses as provided for by the NYS Alcoholic Beverage Control Law; however, such operation shall be limited to the production scale provided herein.

**DRIVE-THROUGH FACILITY** — A service window, booth, or other like arrangement on the exterior of the building or structure wherein the sale of goods or delivery of services is provided directly to patrons while seated in motor vehicles located on the premises.

**DRIVEWAY** — That portion of a paved surface on a premises used or set aside for the use of motor vehicles.

**DRY CLEANER** — A facility that provides drop-off and pickup of garments and other textile items for on- or off-site specialty cleaning services.

**DUMP** — A lot or land used primarily for the disposal by abandonment, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste materials of any kind.

**DWELLING** — A building designed or used principally as the living quarters for one or more families.

**DWELLING, ATTACHED** — A single- or two-family dwelling attached by a common party wall.

**DWELLING, SINGLE-FAMILY** — A building containing one dwelling unit and designed or used exclusively for occupancy by one family.

**DWELLING, TWO-FAMILY** — A building containing two dwelling units and designed or used exclusively for occupancy for two families living independently of each other; or two single-family dwellings having a party wall in common.

**DWELLING, MULTI-FAMILY** — A building or portion thereof containing three or more dwelling units and designed or used for occupancy by three or more families living independently of each other.

**DWELLING UNIT** — One room or rooms connected together, consisting of a separate, independent housekeeping establishment with living, sleeping, cooking and sanitary facilities for use by one family.

**DWELLING UNIT, UPPER FLOOR** — A dwelling unit located within a mixed-use or multi-story building on any floor other than the ground floor.

## Ee

**ENERGY CODE** — The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

**ENERGY STORAGE AND DISTRIBUTION** – Any facility or business operation designed to store energy products for wholesale distribution as a principal use of a property.

## Ff

**FAA** — The Federal Aviation Administration.

**FAÇADE** — The face of a building.

**FAÇADE, PRIMARY or FRONT** — The principal face of a building that looks onto a street, right-of-way, or open space. Buildings on corner lots shall be considered to have two primary or front facades.

**FAMILY** — One or more persons related by blood, marriage, civil union, or adoption; or a group of persons who need not be so related and who are living together in a dwelling unit and maintaining a common household.

**FCC** — The Federal Communications Commission.

**FENCE** — A barrier, enclosure, wall or boundary separation made of posts, boards, wood, wire, metal, masonry, natural stone, shrubs, bush vegetation or other such material for either decorative or security purposes.

1. **LOT-LINE FENCE** — A fence located on or within three feet of a lot line.
2. **SNOW FENCE** — A product commonly made of parallel wood slats alternately held by continuous parallel lines of wire or reinforced plastic.

**FINAL PLANNED UNIT DEVELOPMENT PLAN** — An approved preliminary planned unit development plan prepared at such additional detail and showing information as is required by Article IXI, and the modification, if any, required by the Town Board at the time of approval of the preliminary planned unit development plan, if such preliminary plan has been so approved.

**FINAL PLANNED UNIT DEVELOPMENT APPROVAL** — The signing of a final plan by a duly authorized officer of the Town pursuant to a resolution granting final approval of the plan or after conditions, if any, specified in said resolution granting conditional approval of the plan are completed. Such final approval qualifies the plan for filing in the office of the Town Clerk and as provided herein and in the office of the county clerk as necessary.

**FINISHED GRADE** — The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade used in computing the height of buildings and other structures or for other purposes shall be the average elevation of all finished grade elevations around the periphery of the building.

**FIRE CODE** — The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**FLOODPLAIN** — The low lands adjoining the channel of a river, stream or watercourse, lake or other body of standing water which have been or may be inundated by floodwater. The channel of a stream or watercourse is a part of the floodplain in accordance with the National Flood Insurance Program (NFIP) as administered by the Federal Emergency Management Agency (FEMA).

**FLOODWAY** — 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, in accordance with the National Flood Insurance Program (NFIP) as administered by the Federal Emergency Management Agency (FEMA). Also referred to as a "regulatory floodway."

**FLOOR AREA** — The sum of the gross areas of all floors of a building as measured from the exterior faces of exterior walls. Floor area shall not include attic or basement space.

**FUELING STATION** — An area of land, including structures thereon, or any building or part thereof that is used primarily for dispensing gasoline, hydrogen, or other fuels intended to be used in motor vehicles. Such use may include an ancillary retail shop, but may not include facilities for lubricating, washing (which does not require mechanical equipment), servicing, or repairing motor vehicles.

**FUNERAL HOME** — A building or part thereof used for human funeral services, including chapels, embalming, autopsies, storage of caskets, funeral urns and other related funeral supplies, and the storage of funeral vehicles. This shall not include crematories.

**Gg**

**GARAGE** — Covered parking enclosed on at least three sides and provided with doors and located as an accessory structure or incorporated into principal structures.

**GREEN LOADING ZONE** — Curb space or an area in an approved parking lot designated for the sole use of “green” delivery vehicles, which could include electric, alternative fuel vehicles, or other zero-emission delivery modes like electric-assist cargo bikes.

**GYM, FITNESS, or HEALTH CLUB** — An establishment providing indoor recreation or instruction to patrons for health, exercise, or educational purposes.

**Hh**

**HEIGHT** — When referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad and any antenna.

**HOME OCCUPATION** — An accessory use which is clearly incidental to or secondary to the principal residential use of a dwelling unit and does not change the character thereof, and is carried on wholly within the enclosed walls of a dwelling unit or accessory building by the resident of such dwelling unit.

**HOSPITAL** — An institution for the care and treatment of the sick and injured, equipped with technical facilities and medical, nursing, and other professional and technical personnel necessary for diagnosis and treatment of persons suffering from sickness or injury which require inpatient care, outpatient care, and/or emergency room care.

**HOTEL or INN** — A building, or any part thereof, which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances. A hotel or inn may also include incidental uses such as conference rooms or banquet rooms. Additional commercial services proposed as part of a hotel, such as restaurants, taverns, or spas, shall be considered separate uses for the purposes of this Chapter and shall be permitted in accordance with district regulations.

**li**

**IMPERVIOUS SURFACE** — A surface composed of any material that impedes or prevents natural infiltration of water into the soil. Impervious surfaces shall include but are not limited to roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel surfaces.

**IMPERVIOUS SURFACE, GROSS** — The total area of all buildings, structures, and surfaces of impermeable pavement or other such material that impedes or prevents natural infiltration of water into the soil underneath.

**IN-LAW SUITE** — A division of a primary residence added to or created within a single-family dwelling providing separate living, sleeping, eating, and sanitary facilities, but not including a full kitchen. In-law suites shall be located on the same lot as the primary residence and have a shared entrance.

**INCINERATOR** — A type of furnace designed for burning waste and/or hazardous materials in a combustion chamber.

**INDUSTRIAL / BUSINESS PARK** — A planned, coordinated development of a tract of land with two or more separate parcels or lots for industrial, business or mixed industrial/business development. Such development is planned, designed, constructed and managed on an integrated and coordinated basis with special attention given to site planning and layout, attractive appearance, entrance signage, general landscaping, vehicular circulation, service and delivery, parking, utility needs, building design and orientation, equipment storage, refuse disposal and open space. Typically, an industrial/business park is developed or controlled by one proprietary interest and has an enforceable master plan and/or covenants, conditions and restrictions.

**INDUSTRIAL USE** — Any activity conducted in connection with the manufacture, assembly, disassembly, fabrication, resource recovery, storage or processing of materials or products all or any part of which are marketed off the premises or marketed to other than the ultimate consumer.

**ITEM REPAIR or SERVICE SHOP** — A commercial operation providing services for the cleaning and repair of personal items or effects, such as shoes, clothing, jewelry, household appliances, or electronics, except for the repair or service of vehicles. Ancillary retail sales may be permitted as part of an item repair or service shop.

## Jj

**JUNKYARD** — An area of land with or without buildings used for or occupied by the storage, keeping, abandonment or the salvage of junk material, including processing such as sorting, baling, packing, disassembly, exchange and/or purchase and sale of materials, and including scrap metals or other scrap, used or salvaged building materials, or the dismantling, demolition or abandonment of automobiles or other vehicles, machinery or parts thereof. A lot on which any motor vehicle that is not licensed and/or is incapable of meeting minimum NYS motor vehicle inspection standards is stored for a period of thirty days or more shall be considered to meet this definition.

## Kk



**KENNEL** — Any place at which four or more domesticated animals are housed, groomed, bred, boarded, trained, or sold in exchange for a fee. This definition shall include temporary housing of such animals for periods over four hours but shall not include private residences where the occupant owns the animals.

## LI

**LANDSCAPED AREA** — Paths, patios, walkways and existing natural treed areas that consist of, at least, lawn and/or ornamental shrubs, which shall be maintained in a healthy growing condition, neat and orderly in appearance, but shall not include driveways, ramps, lanes or parking areas.

**LANDSCAPING** — The use of natural plant materials including, but not limited to, ground covers, shrubs, and trees. Landscaping also involves the placement, preservation and maintenance of said plant materials in conjunction with associated improvements such as fences, walls, lighting, earth mounding, and structures (principal or accessory).

**LANDFILL** — A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which, waste may remain after closure.

**LAUNDROMAT** — A business premises equipped with individual clothes-washing machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house or an apartment hotel.

**LOADING SPACE** — An area, exclusive of driveways, passageways, maneuvering aisles or other maneuvering space, for the loading and/or unloading of one motor vehicle used for the transport of goods.

**LOT** — A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use or ownership, and the customary accessories and open spaces belonging to the same and which abuts and is accessible from a private or public street.

**LOT, CORNER** — A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135°.

**LOT, THROUGH** — A lot which faces on two streets at opposite ends of the lot, and which is not a corner lot.

**LOT AREA or SIZE** — The total area within the lot boundary lines excluding any area included in a public street right-of-way.

**LOT COVERAGE** — The percentage of the area of the lot covered by impervious surface. This definition includes all buildings and structures as well as impermeable surfaces such as driveways, swimming pools, decks, parking areas and parking lots, excluding patios, terraces and pedestrian walkways.

**LOT DEPTH** — The mean distance from the front lot line to the rear lot line.

**LOT FRONTAGE** — A lot line which is coincident with the right-of-way line of a public road, or which is measured 20 feet from the center line of a private road.

**LOT LINE** — The property line bounding the lot. Where any property line parallels a street and is not coincident with the street line, the street line shall be construed as the property line for the purpose of complying with the area and setback regulations of this Chapter.

**LOT LINE, FRONT** — The lot line fronting the street. On a corner lot there shall be two front lot lines.

**LOT LINE, REAR** — The lot line opposite to the front lot line.

**LOT LINE, SIDE** — Any lot line not a rear lot line nor a front lot line shall be deemed a side lot line.

**LOT WIDTH** — The width of a lot measured between the side lot lines along the rear line of the required front yard.

## Mm

**MARINA** — A facility for the berthing and fueling of all types of recreational watercraft.

**MARIJUANA and CANNABIS USE** — For the purposes of this Chapter, the definitions provided by the NYS Office of Cannabis Management shall apply. This includes but is not limited to the following. Where this Zoning Law conflicts with NYS Law, the NYS provided definitions shall take precedence.

- 1. CONSUMPTION SITE** — A building, structure, or lot licensed by the Cannabis Control Board for on-site consumption of cannabis product. An on-site consumption license authorizes the acquisition, possession, and sale of cannabis from the licensed premises of the on-site consumption licensee to cannabis consumers for use at the on-site consumption location.
- 2. CULTIVATION** — Growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis plants for sale to certain other categories of cannabis license- and permit-holders. A cultivator's license authorizes the acquisition, possession, distribution, cultivation and sale of cannabis from the licensed premises of the adult-use cultivator to a licensed processor.
- 3. DELIVERY** — The direct delivery of cannabis products by a retail licensee, microbusiness licensee, or delivery licensee to a cannabis consumer. Delivery licenses may not have a total of more than twenty-five individuals, or the equivalent thereof, providing fulltime paid delivery services to cannabis consumers per week under one license
- 4. DISTRIBUTION** — Any operation that sells at wholesale any cannabis product, except medical cannabis, for the sale of which a license is required under the provisions of NYS Law. A distributor's license authorizes the acquisition, possession, distribution and sale of cannabis from the licensed premises of a licensed adult-use processor, adult-use

cooperative, microbusiness, or registered organization authorized to sell adult use cannabis, to duly licensed retail dispensaries, on-site consumption sites and adult-use delivery licensees.

5. **MICROBUSINESS** — A duly licensed operation authorized for the limited cultivation, processing, distribution, delivery, and sale of their own adult-use cannabis and cannabis products.
6. **PROCESSING** — Extracting concentrated cannabis and/or compounds, blending, extracting, infusing, or otherwise manufacturing concentrated cannabis or cannabis products. A processor's license authorizes the acquisition, possession, processing, and sale of cannabis from the licensed premises of adult-use cultivators to licensed distributors.
7. **RETAIL DISPENSARY** — Any establishment that sells at retail any cannabis product, to cannabis consumers. A retail dispensary license authorizes the acquisition, possession, sale and delivery of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

**MECHANICAL EQUIPMENT** — Equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

**MIXED USE BUILDING or STRUCTURE** — A building or structure occupied by two or more uses of varying land use classifications, such as residential and commercial, generally a mixed use structure is a multi-story building providing commercial uses on the first floor and residential and/or office uses on the upper floors.

**MUNICIPAL STRUCTURE or USE** — A building, structure, lot, or other property occupied by a municipal authority, such as a local governmental agency.

## Nn

**NEC** — National Electric Code.

**NFPA** — National Fire Protection Association.

**NONCONFORMING STRUCTURE** — That part of a building, other structure, or tract of land which does not conform to one or more of the applicable bulk regulations of this chapter, either following its effective date or as a result of subsequent amendment thereto.

**NONCONFORMING USE** — Any use of a building, other structure, or tract of land which does not conform to the use regulations for the district in which such use is located, either at the effective date of this chapter or as a result of subsequent amendment thereto.

## Oo

**OFF-STREET PARKING** — A parking facility established with an approved surface off of the public right-of-way and meeting all other restrictions of this chapter.

**OFFICE, ADMINISTRATIVE or PROFESSIONAL** — The use of a building or structure for the operation of a professional service and/or the day-to-day activities that are related to record keeping, billing, personnel, and logistics, within a business or organization. This shall not include facilities with licensed professionals providing medical treatment to patients.

**OFFICE or CLINIC, MEDICAL** — A facility for the diagnosis and/or treatment of outpatients by licensed medical professionals. This may include a group practice in which several physicians or medical professionals work cooperatively. Medical professionals include, but are not limited to, dermatologists, doctors, dentists, physical therapists, or psychiatrists.

**OWNER** — A person, persons or others who hold title to real property as is determined by the current assessment roll for the Town of Tonawanda, New York.

**OPEN SPACE** — Any area or area(s) that are undeveloped or restricted from development, provide access to light, air, and/or water, and hold some environmental, aesthetic, economic, and/or recreational value. This may include, but is not limited to, privately or publicly owned parkland and recreational facilities, farmland, woodlots, wetlands, lakes, ponds, local habitats, environmentally sensitive areas, and otherwise undeveloped lands. Open space shall not be deemed to include driveways, roadways or parking areas.

**OUTDOOR ASSEMBLY or SEATING AREA** — The use of an adjacent, outside area by a commercial establishment, such as a restaurant or tavern, in which the same activities which occur within the establishment may be enjoyed by patrons.

**OUTDOOR SALES AND DISPLAY** — The placement of goods in an area outside the principal structure for advertising, display, or sale purposes as an ancillary and temporary use to a permanent commercial use located inside an adjacent building.

**OUTDOOR STORAGE** — The placement of goods in an area outside the principal structure for storage purposes as an ancillary and temporary use to a permanent nonresidential use located inside an adjacent building.

## Pp

**PARKING AREA or LOT** — An off-street area containing one or more parking spaces, with passageways and driveways appurtenant thereto, as required by this Chapter.

**PARKING SPACE** — An off-street space available for the parking of one motor vehicle exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

**PEDESTRIAN-ORIENTED** — Refers to a pedestrian-friendly design policy providing clear, comfortable pedestrian access to residential and nonresidential areas as well

as providing for the construction of buildings, sites, and amenities to be human-scaled, purposefully engaging and accommodating pedestrians.

**PERFORMANCE STANDARDS** — Standards which are adopted as part of this chapter or are involved in the electrical or plumbing code of the Town of Tonawanda or the New York State Uniform Fire Prevention and Building Code or County of Erie or New York State laws or regulations.

**PERSONAL SERVICE ESTABLISHMENT** — A commercial operation providing services to an individual which are related to the care and appearance of the body, such as barbershops, salons, and spas. Ancillary retail sales shall be allowed in personal service establishments.

**PLACE OF WORSHIP** — A building or premises used for regular public worship by members or representatives of a religious sect or organization as defined by state statute.

**PORCH** — Includes any porch, veranda, gallery, terrace, piazza, portico or similar common projection from the main wall of a building, if covered by a roof or if enclosed, with sidewalls or walls other than the main building walls.

**PREEXISTING TOWERS AND PREEXISTING ANTENNAS** — Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of Article 29 of this chapter, including permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

**PRELIMINARY PLANNED UNIT DEVELOPMENT PLAN** — A proposal for a planned unit development prepared in a manner prescribed by Article IXI showing the layout of the proposed project, including, but not limited to, maps, plans, or drawings relating to proposed land uses, approximate location and dimensions of buildings, all proposed facilities, including preliminary plans and profiles, at suitable scale and in such detail as is required by local regulation; architectural features, lot sizes, setbacks, height limits, buffers, screening, open space areas, lighting, signage, landscaping, parking and loading, traffic circulation, protection of natural resources, public or private amenities, adjacent land uses and physical features, and such other elements as are required by Article IXI.

**PRELIMINARY PLANNED UNIT DEVELOPMENT PLAN APPROVAL** — The approval with conditions, if any, of the layout of a proposed planned unit development as set forth in a preliminary plan and the simultaneous proposed amendments of the zoning law on the recommendation of the Planning Board to create and map a planned unit development district encompassing the preliminary planned unit development plan, subject to the approval of the final planned unit development plan pursuant to the provisions of Article IXI.

**PREMISES** — A lot together with all the buildings and uses thereon.

**PRINCIPAL BUILDING or STRUCTURE** — A building or structure in which is conducted the main or principal use of the lot on which said building is situated.

**Rr**

**RECREATION or ENTERTAINMENT FACILITY, INDOOR** — Establishments providing amusement, entertainment, or recreational services occurring within a fully enclosed structure for a fee or admission charge, such as: arcades containing coin-operated amusements and/or electronic games; bowling alleys; movie theaters; laser tag businesses; indoor play center (rock climbing or inflatable party place); indoor sports fields, courts, or arenas; swimming pools; and other indoor activities determined to be substantially similar to the above. Accessory uses may be permitted to include the preparation and serving of food and/or the sale of equipment related to the primary use.

**RECREATION or ENTERTAINMENT FACILITY, OUTDOOR** — Establishments providing amusement, entertainment, or recreational services occurring within in an open area or partially enclosed structure for a fee or admission charge, such as: outdoor pools, sports fields or courts, concert venues, amusement parks or rides, golf courses (including miniature), or other outdoor activities determined to be substantially similar to the above. Accessory uses may be permitted to include the preparation and serving of food and/or the sale of equipment related to the primary use.

**RECREATIONAL VEHICLE** — A registered self-propelled vehicle which is used or designed to be used for seasonal and/or temporary living or sleeping purposes, and which is customarily standing on wheels or rigid supports.

**RECYCLABLE** — A component of waste which exhibits the potential to be recycled.

**RECYCLABLES HANDLING AND RECOVERY FACILITY** — A facility that processes source-separated non-putrescible recyclables. This shall not include any use that generates more than 15% non-recyclable material based on their intake for a full year of operation.

**RESTAURANT** — Any establishment whose principal business is the retail sale of foods, which includes all edible and drinkable substances, in a ready-to-consume state for consumption on the premises or for delivery or carry-out.

**RETAIL STORE** — A business or commercial use or activity involving primarily the sale of merchandise or stock-in-trade to the public.

**RIGHT-OF-WAY** — The property under public ownership or easement normally used for the movement of vehicles and/or persons, including but not restricted to any pavement area.

**Ss**

**SATELLITE TELEVISION ANTENNA** — An antenna the purpose of which is to receive television and/or radio signals from orbiting satellites and which is located external to or attached to the exterior of any structure.

**SENIOR HOUSING** — A building or group of buildings where occupancy is restricted to persons 55 years or older. In the case of double occupancy of a unit, only one resident is required to be at least 55 years of age.

**SERVICE CLUB** — The premises and buildings used by a local, international, national or state organization or by a bona fide local civic association catering exclusively to members and their guests primarily for a patriotic, fraternal, benevolent, social, educational, religious or political purpose. The club shall not be used in whole or in part for the conduct of any business or enterprise for profit, but this shall not be construed as preventing the utilization of a club for benefits or performances for a recognized charity, nor for the meeting of other organizations or for educational and cultural purposes.

**SETBACK** — The distance (measured in feet) a building, structure, or parking area must be from the front, side, and rear lot lines.

**SHORELINE** — The point of convergence between the Niagara River during the nonflood conditions and the land mass within the Town of Tonawanda corporate limits.

**SHORT-TERM RENTAL** — A dwelling unit that is rented, in whole or part, by the owner or occupant of the dwelling to any person or entity for a period of less than 30 consecutive nights.

**SIDEWALK** — That portion of a paved surface, consisting of concrete, blacktop or paving brick, on a premises used or set aside for the use of pedestrians.

**SIGN** — Any object, device, display or structure, or part thereof, situated outdoors that is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including but not limited to words, letters, figures, designs, symbols, fixtures, colors, illumination or project images. "Signs" shall also include all sign structures. A sign for the purposes of this Chapter does not include the following:

1. A flag or emblem of any nation, organization of nations, state or city, or any fraternal, religious or civic organization;
2. Merchandise, pictures or models of products or services incorporated in a window display;
3. Official notices issued by any court or public office or officer in the performance of a public or official duty;
4. Traffic control signs as defined in the NYS Vehicle and Traffic Law; and
5. Works of art, including murals, that do not contain any commercial message, logo, graphic, or trademark.

**SIGN TYPE** — The design and/or structure of a sign, including freestanding signs, wall signs, projecting signs, suspended signs, awning signs, and window signs.

**SIGN, A-FRAME** — A freestanding sign that is comprised of two sign faces diverging at an angle of no more than 45 degrees from their adjoining edge.

**SIGN, AWNING or CANOPY** — A sign that is part of or attached to a roof-like protective cover of canvas or other flexible material over a door, entrance, window or outdoor service area that projects from the façade of a structure.

**SIGN, BILLBOARD** — Any sign that attracts attention to an object, product, service, place, activity, institution, organization, or business not available or not located on the premises where the sign is located.

**SIGN, DIGITAL** — A sign that utilizes computer-generated messages or some other electronic means of message display. These signs may include displays using incandescent lamps, LEDs, LCDs or a flipper matrix.

**SIGN, DIRECTIONAL** — A sign commonly associated with and limited to information and directions necessary and convenient for persons coming on the property, including signs marking entrances, parking areas, one-way driveways, rest rooms, pickup and delivery areas, or drive-throughs. Such sign shall not carry a commercial message.

**SIGN, FREESTANDING** — A sign not attached to any building or structure.

**SIGN, GOVERNMENTAL** — A sign erected and maintained pursuant to and in discharge of any governmental function or required by any general law, local law or governmental regulation.

**SIGN, GROUND** — A sign not attached to any building or structure, which may be flush with the ground or supported by two columns or posts provided the distance between the ground and bottommost edge of the sign is no greater than three feet.

**SIGN, INCIDENTAL** — A sign containing no commercial message and typically erected to identify addresses, entrances, exits, restrooms, hours and days of operation, public utility locations, emergency addresses and telephone numbers, etc. These examples are not given by way of limitation.

**SIGN, INTERNAL** — A sign within a building not legible from the public right-of-way or adjacent lots, or any sign within an enclosed outdoor space, such as an athletic field, where such sign is intended only to be seen from within the enclosed space and is so oriented.

**SIGN, ILLUMINATED** — A sign that is lighted by one or more of the following artificial light sources:

1. External. A separate light source from the sign face or cabinet directed so as to shine on the sign face or exposed lights, LEDs, or neon tubes on the sign face.
2. Internal. A light source concealed within the sign structure.

**SIGN, LAWN** — A sign constructed of materials not intended for permanent installation that are attached to a single or multiple posts for support and stuck into the ground. The height of a lawn sign shall include any posts or supports.



**SIGN, NEON** — A sign that incorporates illumination using neon gas tubing.

**SIGN, POLE** — A sign not attached to any building or structure and is supported by one or two columns or posts with a distance exceeding three feet between the ground and the bottommost edge of the sign.

**SIGN, PORTABLE** — Any temporary freestanding sign which can be disassembled and moved by one person, or one which is on wheels and can be trailered or towed from one location to another.

**SIGN, PROJECTING** — A sign which is wholly dependent upon a building for support and which projects more than 12 inches from such building.

**SIGN, ROOF** — A sign that is supported on the top of a building or structure and constructed of a noncombustible material.

**SIGN, SUSPENDED** — A sign attached to and supported by the underside of a horizontal plane.

**SIGN, TEMPORARY** — A sign which is not intended to be used for a period exceeding 60 days and is not attached to a building, structure, or ground in a permanent manner.

**SIGN, WALL** — A sign fastened to the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project outward more than 12 inches from such building or structure.

**SIGN, WINDOW** — A sign visible from a sidewalk, street, or other public place, painted or affixed on glass or other window material, or located inside within three feet of the window, but shall not include graphics in connection with customary display of products.

**SINGLE OWNERSHIP** — Possession of land under single or unified control, whether by sole, joint, common, or other ownership or by a lease having a term of not less than 10 years, regardless of any division of such land into parcels for the purpose of financing.

**SITE PLAN** — Maps and supporting information required under Article 42 of this chapter. Also referred to as "Development Plan."

**SOLAR ENERGY SYSTEMS** — The following definitions shall apply as related to the provisions of Article 26.

- 1. BUILDING-INTEGRATED SOLAR/PHOTOVOLTAIC (BIPV) SYSTEM** — A solar energy system incorporated into and becoming part of the overall architecture and design of a building or structure in a manner that the solar energy system is a permanent and integral part of the building envelope or structure.
- 2. BUILDING-MOUNTED SOLAR ENERGY SYSTEM** — A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Solar energy systems constructed over a parking lot are considered building-mounted solar energy systems.

3. **GROUND-MOUNTED SOLAR ENERGY SYSTEM** — A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices.
4. **LARGE-SCALE SOLAR ENERGY SYSTEM** — Any solar energy system that cumulatively on a lot meets all of the following criteria:
  - Is an accessory or principal use or structure, designed and intended to generate energy primarily for use on site, potentially by multiple tenants, through a distribution system or electrical grid that is not available to the general public. If excess energy is produced, it can be sold to a utility under a net metering agreement.
  - Consists of an overall footprint of not less than 20,000 and not exceeding 100,000 square feet. Overall footprint shall be determined by the outline created on the ground, building/ structure surface, or combination thereof, excluding all rooftop- mounted solar energy systems that meet the requirements of a small-scale or large-scale solar energy system, by wholly enclosing all components/structures of a solar energy system on a lot.
5. **NEW YORK STATE UNIFIED SOLAR PERMIT APPLICATION** — A statewide permit application for the installation of small-scale solar facilities.
6. **REFLECTOR, SOLAR** — A device for which the sole purpose is to increase the solar radiation received by a solar collector.
7. **ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM** — Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface.
8. **SMALL-SCALE SOLAR ENERGY SYSTEM** — Any solar energy system that cumulatively on a lot meets all of the following provisions:
  - Is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site. If excess energy is produced, it can be sold to a utility under a net metering agreement.
  - Consists of an overall footprint of less than 20,000 square feet. Overall footprint shall be determined by the outline created on the ground, building/structure surface, or combination thereof, excluding all rooftop-mounted solar energy systems that meet the requirements of a small-scale or large-scale solar energy system, by wholly enclosing all components/structures of a solar energy system on a lot.
9. **SOLAR COLLECTOR** — A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.
10. **SOLAR ENERGY SYSTEM** — A complete system intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/ turbines, water and energy storage and distribution systems, storage, maintenance and/or other

accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical, electrical, and plumbing components.

11. **SOLAR SKYSPACE** — The space between a solar collector and the sun through which solar radiation passes.
12. **SOLAR SKYSPACE EASEMENT** — A right, expressed as an easement, covenant, condition, or other property interest in any deed or other instrument executed by or on behalf of any property owner that protects the solar skyspace of any solar energy facility at a designated location for designated time periods by forbidding or limiting activities, land uses, development, and/or vegetation that would interfere with or obstruct the solar skyspace, thus reducing the feasibility of operating the solar energy system.
13. **UTILITY-SCALE SOLAR ENERGY SYSTEM** — Any solar energy system that cumulatively on a lot meets at least one of the following:
  - Is a principal use or structure, designed and intended to supply energy solely into a utility grid for sale to the general public; or
  - Consists of an overall footprint of greater than 100,000 square feet. Overall footprint shall be determined by the outline created on the ground, building/structure surface, or combination thereof, excluding all rooftop-mounted solar energy systems that meet the requirements of small-scale or large-scale solar energy systems, by wholly enclosing all components/structures of a solar energy system on a lot.

**SOLID WASTE or WASTE** — Discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, municipal, commercial, institutional, mining, or agricultural operations or from residential activities including materials that are recycled or that may have value. This shall not include those exemptions as provided by the solid waste management facilities general requirements definitions section of NYS Law (Title 6 CRR-NY 360.2; or as amended).

**SOLID WASTE DISPOSAL FACILITY** — A facility where waste is intentionally placed and where the waste is intended to remain.

**SOLID WASTE TRANSFER STATION** — A facility that receives solid waste for the purpose of subsequent transfer to another facility for further processing, treatment, transfer, or disposal. The storage of solid waste shall not exceed a period of 12 months.

**STORY** — The part of a building comprised between a floor and the floor or roof next above it. A basement or cellar shall not be considered a story.

**STORY, HALF** — That portion of a building situated above a full story and having at least two opposite exterior walls meeting a sloping roof at a level not higher above the floor than a distance equal to 1/2 the floor- to-ceiling height of the story below. An attic with a finished floor shall be considered a half story. Half stories have structural headroom of less than seven feet six inches and shall not be included within the definition of floor area for the purposes of this chapter. (See "floor area.")

**STREET** — An existing public or private way which affords principal means of access to abutting properties and is suitably improved; or a proposed way shown on the Official Map and recorded in the office of the County Clerk.

**STREET GRADE** — The elevations of a street as established by the Town. Where no such grade has been established, the elevation of the traveled street shall be considered the street grade for the purpose of measurement.

**STREET LINE** — The line which is the joint boundary line between a lot and street or highway right-of-way, and is not to be confused with the curbline of the street.

**STREETScape** — The scene as may be observed along a public street or way composed of natural and man-made components, including buildings, paving, planting, street hardware, and miscellaneous structures.

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

**SUBDIVISION** — A parcel of land which has been divided into several lots, all of which front onto one or more streets, the layout of which has been approved by the Town Board.

**SWIMMING POOL** — Any enclosure, excavation or receptacle for water having a depth at any point greater than two feet designed, used or intended to be used for swimming or bathing, including all appurtenant equipment.

**SWIMMING POOL, PRIVATE** — A swimming pool operated as an accessory use to a residential dwelling unit or units and located on an individual residential lot or site.

**SWIMMING POOL, PUBLIC** — A publicly or privately owned pool open to the general public or to individuals on a membership basis and having appropriate dressing room facilities and recreation and off- street parking area.

Tt

**TELECOMMUNICATIONS FACILITIES** — The following definitions shall apply as related to the provisions of Article 29. Duplicate definitions that are found in other sections of the chapter do not apply to Article 29.

1. **ACCESSORY STRUCTURE OR FACILITY** — An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to generators or other emergency power supply equipment, utility or transmission equipment storage sheds or cabinets, or fencing.
2. **ANTENNA or ANTENNAS** — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to, radio, television, cellular, paging, personal telecommunication services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building, and permitting authority.
3. **COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE** — The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably

anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a particular return or investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or terms of an agreement "commercially impracticable."

4. **HEIGHT** — The distance measured from the preexisting grade level to the highest point on the tower or structure, including any antenna or lightning protection device.
5. **LATTICE TOWER/TRUSS TOWER** — A freestanding framework tower with three to four sides, sometimes called a "self-supporting tower (SST)."
6. **MODIFICATION or MODIFY** — The addition, removal, or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade, or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is technically equivalent to the component being replaced for any matters that involve the normal repair and maintenance of a wireless facility.
7. **PERSONAL WIRELESS FACILITY** — See definition for "wireless telecommunications facilities."
8. **PETITIONER** — Any wireless service provider or agent submitting an application for a special use permit for wireless telecommunications facilities.
9. **RADIO ARRAY** — A directional antenna or system of antennas for radio transmission or reception.
10. **TEMPORARY** — Temporary in relation to all aspects and components of Article 29, something intended to, or that does, exist for fewer than 90 days.
11. **WIRELESS TELECOMMUNICATIONS FACILITY** — Any exterior facility, including an antenna, antenna array or other communications equipment, excluding a satellite dish antenna or small cell telecommunications facility, established for the purpose of providing wireless voice, data, and image transmission within a designated service area and which includes equipment consisting of personal wireless services, as defined in federal law, including by Federal Communications Commission orders or regulations. A telecommunications facility must not be staffed. A telecommunications facility consists of one or more antennas attached to a support structure and related equipment. Equipment may be located within a building or an exterior equipment cabinet.
12. **WIRELESS TELECOMMUNICATIONS FACILITY, CO-LOCATION** — Siting additional telecommunications facilities on an existing structure or pole using the same base or support structure, without the need to construct a new base structure. Co-location may include siting multiple facilities from the same provider or from more than one provider in the same location.

13. **WIRELESS TELECOMMUNICATIONS FACILITY, NEW** — The establishment of a telecommunications facility on a base structure where no such facility presently exists.
14. **WIRELESS TELECOMMUNICATIONS FACILITY, SMALL-CELL OR MICRO-CELL** — An exterior facility, excluding a satellite dish antenna, established for the purpose of providing wireless voice, data and/or image transmission within a designated service area. A small-cell telecommunications facility must not be staffed, and consists of one or more antennas attached to a support structure or building. Antennas may not be larger than a maximum height of four feet and a maximum width of two feet, six inches. These type units which fall under the Federal Telecommunications Act will be processed in accordance with this article.
15. **WIRELESS TELECOMMUNICATIONS FACILITY, STEALTH** — Any telecommunications facility that is integrated into an architectural feature of a structure or the surrounding landscape so that the facility and its purpose to provide wireless services is not visually apparent or prominent.
16. **WIRELESS TELECOMMUNICATIONS FACILITY, SUPPORT STRUCTURE** — A monopole, tower, utility pole, existing light pole, building or any other freestanding self-supporting structure or replacement of equivalent dimensions which can safely support the installation of a telecommunications facility.

**TOPSOIL** — A surface layer of the soil containing more or less organic matter to a depth usually plowed in cultivation. The A-horizon of the soil solum.

**TOWER** — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like. The term includes the structure and any support thereto.

**TOWNHOUSE** — A building consisting of three or more attached single-family dwelling units each having separate entrances and common vertical party walls. See also "building, semidetached."

**TOWN LAND** — Real estate located in the Town of Tonawanda which is owned, leased or otherwise controlled by the Town of Tonawanda.

**TRAILER** — A nonmotorized wheeled vehicle designed to be transportable when towed by a motorized vehicle and which has been designed for human occupancy as a dwelling unit.

**TRAILER, UTILITY** — A nonmotorized wheeled vehicle designed to be transportable when towed by a motorized vehicle and which has been designed for the storage of tools and/or equipment.

**TRANSITIONAL HOUSING** — A building or buildings configured as temporary housing that:

1. Is owned, operated, or managed by a qualified nonprofit organization or governmental entity in accordance with state and federal program requirements; and

2. Provides supportive services to stabilize persons experiencing homelessness and move them to permanent housing. Such housing may also be configured for specialized needs groups such as people with substance abuse problems, mental illness, domestic violence victims, or veterans.

**TRAVEL TRAILER** — A registered vehicle which is used or designed to be used for seasonal and/or temporary living or sleeping purposes, and which is customarily standing on wheels or rigid supports and is towed by another vehicle.

**TRUCK/RAIL TERMINAL or STORAGE FACILITY** — A building or part of a building or premises for the storage and/or transfer of goods, wares and merchandise for the owner or others by truck or rail transport.

## Uu

**UNIFORM CODE** — the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**USE** — The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

**USE, PRINCIPAL** — The main or primary purpose for which a building, other structure and/or lot is designed, arranged, or intended or for which it may be used, occupied or maintained under this chapter.

**USE, PERMITTED** — Any use of a building, structure, lot or part thereof which this Chapter provides for in a particular district as a matter of right.

**USE, PROHIBITED** — A use of a building, structure, lot or part thereof which is not listed as a permitted, specially permitted, or accessory use.

**USE, SPECIALLY PERMITTED** — A particular land use which may be allowable, but because of its unique characteristics requires individual consideration in each case and may be subject to additional conditions imposed to assure that the proposed use is in harmony with the requirements of this Chapter and will not adversely affect the neighborhood or vicinity if such conditions are met. Also referred to as a "specially permitted use."

**USE, NONRESIDENTIAL** — A building, lot, structure, or structure(s) containing no dwelling units and designated or intended for commercial, public, institutional, or other such use. The inclusion of dwelling units in a mixed use building or structure shall be considered a nonresidential use for the purposes of this Chapter.

**USE, RESIDENTIAL** — A building, lot, structure, or structure(s) containing a dwelling unit or grouping of dwelling units designated or intended for the housing of individuals and families, not including any commercial, public, or institutional use. The inclusion of dwelling units in a mixed use building or structure shall be considered a nonresidential use for the purposes of this Chapter.

## Vv

**VEHICLE SALES** — A commercial establishment offering new or used vehicles for sale, rental, or lease, including personal vehicles, commercial vehicles, or other registered automobiles.

**VEHICLE SERVICE or REPAIR SHOP** — A building or premises used for the repair of motor vehicles, including painting and the sale of related parts and accessories. This shall not include a junkyard or auto salvage yard.

**VERTICAL FARMING** - The practice of growing crops in vertically stacked layers. It often incorporates controlled-environment agriculture, which aims to optimize plant growth, and soilless farming techniques such as hydroponics, aquaponics, and aeroponics.

**VISION CLEARANCES, UNOBSTRUCTED** — Lines of sight or clear view within the first 15 feet of depth of private properties, in order that persons moving across property or right-of-way lines from public streets and ways to private properties may have unobstructed views of approaching vehicles, as defined by §215-25.1 of this chapter.

## Ww

**WAREHOUSE** — A building or premises for the storing of goods, wares and merchandise, whether for the owner or for others, whether publicly or privately owned or used. Warehouse uses may include a wholesale operation.

**WATER-ORIENTED USE** — A use or activity that is water-dependent or provides water-related or water-enjoyment services to the general public and derives economic benefit from direct access to the waterfront along which it is proposed. Water-oriented uses may include recreational, cultural, retail, or entertainment uses, such as a boatyard, marina, or dock.

**WATER-ENHANCED USE** — A use or activity which does not require a location adjacent to the waterfront, but whose proximity to the waterfront adds to the public use and enjoyment of the waterbody. Water-enhanced uses may include recreational, cultural, retail, or entertainment uses.

**WATERFRONT** – Land along the edge of the Niagara River or Ellicott Creek. Also referred to as “riverfront.”

**WAY** — A thoroughfare, street, alley, way, or right-of-way, however designated, permanently established for passage of persons or vehicles.

**WHOLESALE** — A business establishment engaged in selling to retailers or jobbers rather than directly to consumers.



**WIND ENERGY CONVERSION** — The following definitions shall apply as related to the provisions of Article 27. Duplicate definitions that are found in other sections of the chapter do not apply to Article 27.

1. **BUILDING-MOUNTED WIND ENERGY CONVERSION SYSTEM** — A WECS attached to an existing building or structure, with no new tower component.
2. **COMMERCIAL WIND ENERGY CONVERSION SYSTEM** — A WECS consisting of a wind turbine, tower, and associated control or conversion electronics, with a total height of more than 165 feet, but less than 300 feet.
3. **EMERGENCY INGRESS AND EGRESS PLAN** — Plan illustrating how emergency service personnel should respond to emergencies in and around the WECS. Plan should illustrate: ingress and egress routes for emergency service personnel, evacuation routes for WECS staff, and minimum safe distance to establish an evacuation perimeter.
4. **EVACUATION PERIMETER** — Minimum safe distance specified by the WECS manufacturer that people should be removed from the radius of the WECS in the event of an emergency.
5. **FIRE SAFETY PLAN** — Plan illustrating how the manufacturer's WECS is designed to respond in the event of a fire. Plan also includes the manufacturer's recommendations for emergency service personnel response in the event of a fire. The Fire Safety Plan shall be approved by the Town Building Department.
6. **INDUSTRIAL GRADE WIND ENERGY CONVERSION SYSTEM** — A WECS of either greater than 300 feet in height or a system that it is intended to solely supply electrical power into a power grid for sale.
7. **MAXIMUM OVERALL HEIGHT** — See "total height."
8. **NONCOMMERCIAL WIND ENERGY CONVERSION SYSTEM** — A WECS consisting of a wind turbine, tower, and associated control or conversion electronics, with a total height less than 165 feet.
9. **TOTAL HEIGHT** — The height of the WECS measured from the ground elevation to the top of the tip of the blade in the vertical position.
10. **TOWER** — The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.
11. **TOWER HEIGHT**— The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.
12. **WIND ENERGY CONVERSION SYSTEM (WECS)** — One or more mechanical devices such as wind chargers, windmills or wind, turbines which are designed and used to convert wind energy into a form of useful energy for use on site to reduce power costs for sale or redistribution to others. WECS include both commercial and noncommercial systems.
13. **WIND ENERGY FACILITY** — Any WECS or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.
14. **WIND ENERGY SYSTEM** — The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.

**15. WIND MEASUREMENT TOWER (MET)** — A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

**WINERY** — An enclosed building for the manufacture, processing, bottling, and packaging of wine as defined by and duly licensed by the NYS Liquor Authority. For the purposes of this Chapter, this shall include operations which include tasting rooms.

**WINERY, MICRO** — A winery operation manufacturing and selling up to 1,500 gallons of wine and/or cider annually. Such winery may hold multiple licenses as provided for by the NYS Alcoholic Beverage Control Law; however, such operation shall be limited to the production scale provided herein.

**Xx**

**Yy**

**YARD** — That portion of a lot extending open and unobstructed from the ground upward along a lot line for a setback depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

**YARD, FRONT** — An open area extending the full width of the lot situated between the front lot line and front building line.

**YARD, REAR** — An open area extending the full width of the lot situated between the rear lot line and rear building line.

**YARD, SIDE** — An open area between the side lot line and side building line extending from the front building line to the rear building line.

**Zz**

**ZONING PERMIT** — A certificate issued by the Director of Planning and Development in accordance with Article 41 of this Zoning Law. Said certificate shall acknowledge compliance with all the requirements of this chapter and such adjustments thereto granted by the Zoning Board of Appeals.



# CHAPTER 215. ZONING CODE

## Part 2. District & Use Regulations

REVISED  
FEBRUARY 1, 2024

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# Article 20. Residential Districts

## §215-20.1

### DISTRICTS ESTABLISHED

The residential districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to residential or "R" zoning districts it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Single-Family Residential</i>	<b>R-1</b>
<i>Two-Family Residential</i>	<b>R-2</b>
<i>Mixed Residential</i>	<b>MR</b>

## §215-20.2

### PURPOSE STATEMENTS

- A. Single-Family Residential (R-1).** The purpose of the R-1 District is to support the neighborhood vision and goals of the Town's Comprehensive Plan through the preservation and enhancement of existing single-family neighborhoods. Since the settlement of the Town, these neighborhoods have provided affordable, multi-generational housing options arranged in a manner that fosters a sense of community connection. The intent of the R-1 District regulations is to permit the construction and/or reconstruction of homes in a manner that does not compromise this traditional character and community setting, consisting of owner-occupied, single-family detached homes on varied lot sizes, with unobstructed front yards, and pedestrian-scaled streetscapes with sidewalks, street trees, and other amenities.
- B. Two-Family Residential (R-2).** The R-2 District is intended to reflect and preserve the Town's traditional neighborhoods established with a mix of single- and two-family homes, increasing housing choice and continuing to foster a sense of community. The purpose of the R-2 District regulations is to protect and enhance these moderate density neighborhoods in accordance with the vision and housing goals of the Town's Comprehensive Plan. Like the R-1 District, these neighborhoods are generally defined by detached homes on varied lot sizes, with sidewalks, street lighting, street trees, and garages located to the rear of the property. These neighborhood design elements create visually interesting, connected, and walkable environments for residents. Future investment should reflect the existing settlement pattern and neighborhood design.
- C. Mixed Residential (MR).** The purpose of the MR District is to provide for quality, affordable, and diversified housing options within the Town in accordance with the vision and goals of the Town Comprehensive Plan. MR District identifies both existing and potential mixed density neighborhood areas. Residential uses permitted in this District include single-, two-, and multi-family dwellings arranged in a manner that provides for an inclusive and connected community. The design and location of housing stock should be scaled according to the existing neighborhood context, where applicable. To ensure the future design, layout, and character of the MR District is cohesive and

consistent with the vision of the Town of Tonawanda, all development and/or redevelopment proposals should seek to achieve the following:

1. Establish neighborhoods with a variety of housing types in a unique, attractive environment that is oriented toward connecting residents and fostering pedestrian activity.
2. Locate residential types and densities in a manner that provides a natural transition from single- and two-family neighborhoods to higher density developments, community resources, and commercial centers.
3. Expand housing options for residents of all ages, incomes, and life stages in a connected, community-centered environment.
4. Foster the compatibility of residences and other improvements through their arrangement, bulk, form, character, and landscaping.
5. Develop on- and off-site connections to nearby amenities, roadways, sidewalks, parks, and trails.
6. Design well-configured greens, landscaped streets, greenbelts, and parks that are woven into the pattern of the neighborhood and dedicated to the social interaction, recreation, and visual enjoyment of the residents.
7. Preserve and integrate existing natural features and undisturbed areas into the open space and design of the neighborhood.
8. Create a cohesive and interconnected traditional neighborhood development pattern throughout the entirety of the District, regardless of the sequence of proposals or project phasing.

### §215-20.3

#### REVIEWS REQUIRED

- A. **Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. **Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

### §215-20.4

#### USE LISTS

Uses are allowed in residential districts in accordance with Table 20-a.

- A. Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
- B. Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.



C. Uses not listed and those identified with a “-“ are expressly prohibited.

TABLE 20-a	R-1	R-2	MR	Additional Regulations
<b>RESIDENTIAL USES</b>				
Single-Family Dwelling	P	P	P	
Two-Family Dwelling	-	P	P	
Multi-Family Dwelling, up to 4 units	-	-	P <sup>1</sup>	§24.15
Multi-Family Dwelling, over 4 units	-	-	SP <sup>2</sup>	§24.15
Mobile Home Park	-	-	SP	
Bed and Breakfast or Short-Term Rental	-	SP	SP	§24.7
Senior Housing	-	-	P	
<b>OTHER USES</b>				
Community Center	-	-	P	
Day Care Center, Child or Adult	-	-	SP	§24.10
Municipal Structure or Use	P	P	P	
Place of Worship	SP	P	P	
Park or Playground	P	P	P	
Telecommunications Facility	-	-	-	Article 29
<b>ACCESSORY USES</b>				
Accessory Use or Structure	P	P	P	§24.4
Accessory Dwelling Unit or In-Law Suite	SP	SP	SP	§24.3
Home Occupation	P	P	P	§24.13
Keeping of Animals <sup>3</sup>	-	-	-	
Small-Scale Solar, Rooftop-Mounted	P	P	P	Article 26
Tier 1 Battery Energy Storage System	P	P	P	Article 28
Tier 2A Battery Energy Storage System	P	P	P	Article 28

- NOTES:** (1) Multi-family dwellings up to four units may be permitted by conversion or new construction.  
 (2) Conversion of a single- or two-family dwelling to more than four units is prohibited.  
 (3) This shall include the breeding, raising, or keeping of bees, fowl, farm animals, exotic animals, pigeons, reptiles, or more than three dogs on any property.

## §215-20.5

## DIMENSIONAL &amp; BULK REQUIREMENTS

Table 20-b indicates the dimensional and bulk requirements for residential districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

<b>TABLE 20-b</b>	<b>R-1</b>	<b>R-2</b>	<b>MR</b>
<b>MIN LOT AREA <sup>1</sup></b>			
Single- or Two-Family Dwelling	4,500 sf	4,500 sf	4,500 sf
Multi-Family Dwelling, per unit	-	-	2,000 sf
Other Use	10,000 sf	10,000 sf	10,000 sf
<b>MIN LOT WIDTH <sup>1</sup></b>			
Residential Use	45 ft	45 ft	45 ft
Other Use	55 ft	60 ft	60 ft
<b>MIN FRONT SETBACK <sup>2</sup></b>			
Primary Use	25 ft	25 ft	20 ft
<b>MIN SIDE SETBACK <sup>3</sup></b>			
Primary Use	2 / 6 ft	2 / 6 ft	2 / 6 ft
Nonresidential Use, adjacent to residential	8 ft	8 ft	8 ft
Accessory Use	2 ft	2 ft	2 ft
<b>MIN REAR SETBACK</b>			
Primary Use	25 ft	25 ft	25 ft
Accessory Use	2 ft	2 ft	2 ft
<b>MAX LOT COVERAGE</b>			
Structures & Impervious Surfaces	60%	60%	50%
<b>MIN OPEN SPACE</b>			
Grass, Landscaped, or Natural Areas	40%	40%	50%
<b>MAX BUILDING HEIGHT</b>			
Primary Structure	35 ft	35 ft	45 ft
Accessory Structure	12 ft	12 ft	12 ft
Private Garage	16 ft	16 ft	16 ft
<b>MIN BUILDING FOOTPRINT</b>			
One-Story Dwelling	800 sf	-	-
Two or More Story Dwelling	520 sf	-	-
<b>MAX BUILDING FOOTPRINT</b>			
Primary Structure	-	-	-
Private Garage, Attached or Detached	900 sf	900 sf	900 sf
Other Accessory Structure <sup>4</sup>	180 sf	180 sf	180 sf

- NOTES:**
- (1) Or the average lot area/width on the block.
  - (2) Where 20% of the lots in a single block are improved with buildings on a uniform line or on various building lines, the average setback shall be the established building line for that block.
  - (3) At least one side yard shall meet the larger requirement. The larger width of side yards on any street in any block shall be on the same side of the building.
  - (4) This provision shall apply to enclosed accessory buildings only. For maximum number of permitted accessory structures, see §215-24.4.

# LOT & BUILDING REQUIREMENT VISUALIZATIONS

FIGURE 1. Dimensional Standards by Parcel Configuration

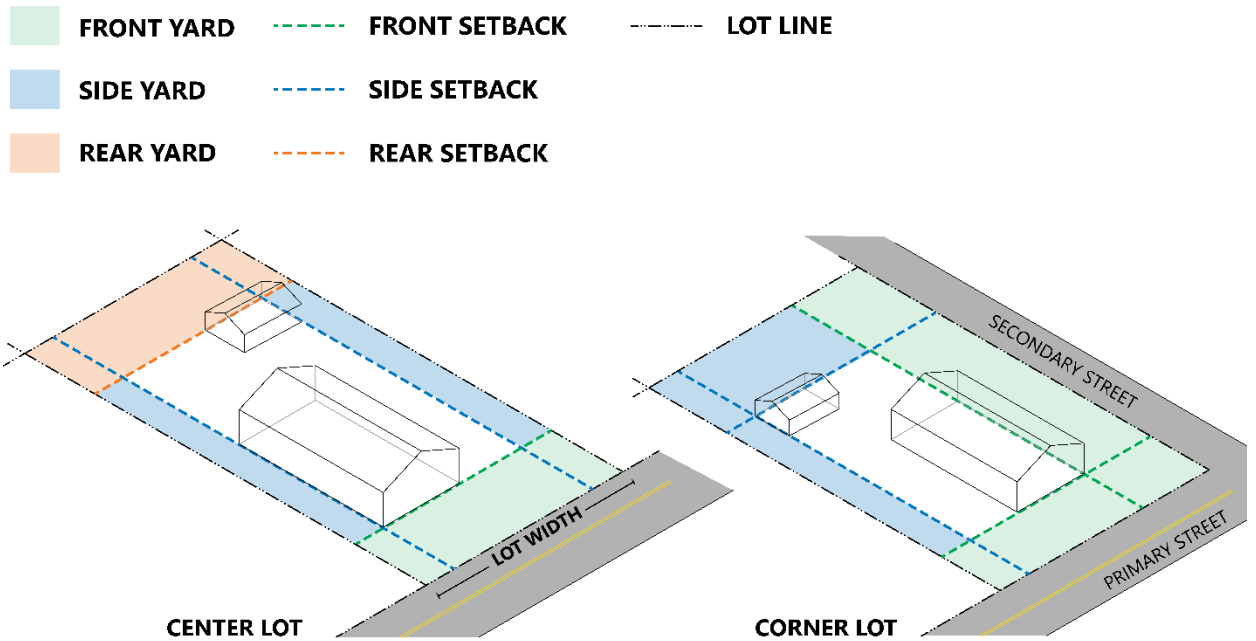
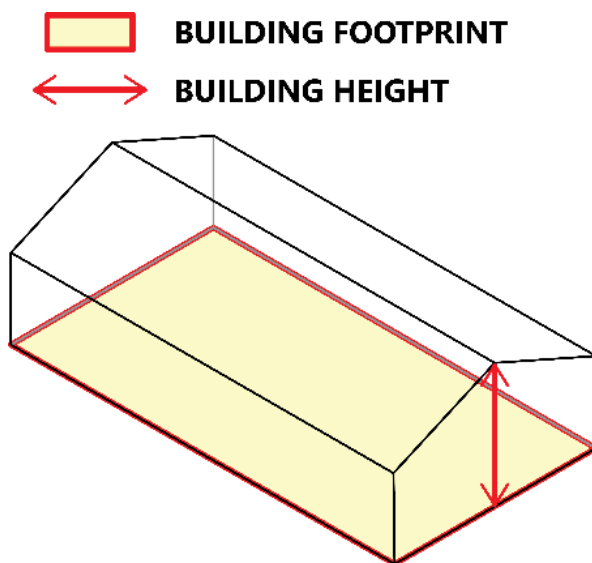


FIGURE 2. Building Height & Building Footprint



# Article 21. Mixed Use Districts

## §215-21.1

### DISTRICTS ESTABLISHED

The mixed-use districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to mixed-use or "MU" zoning districts it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Mixed Use Neighborhood</i>	<b>MU-N</b>
<i>Mixed Use General Commercial</i>	<b>MU-GC</b>
<i>Mixed Use Waterfront</i>	<b>MU-W</b>

## §215-21.2

### PURPOSE STATEMENTS

- A. Mixed Use Neighborhood (MU-N).** The purpose of the MU-N District is to facilitate investment in properties along established secondary commercial corridors, such as Delaware and Englewood Avenue, in accordance with the Town's Comprehensive Plan. The regulations of this District serve to protect the character of existing neighborhoods abutting such corridors, where the accommodation of large-scale, high-intensity commercial uses would be disruptive. Future investment within this District should:
1. Fit the context of existing neighborhoods in terms of scale, architectural style, intensity of use, and size of lots and structures.
  2. Accommodate a mix of uses which are designed to serve the residents of the neighborhoods and surrounding community.
  3. Be of an appropriate scale and design to complement the existing character of neighborhoods where they are located and be sensitive to the context of existing surroundings.
  4. Reduce the presence of generic, auto-oriented suburban development, and encourage the transformation of buildings and sites in a manner that improves the aesthetics of the corridor and enhances the character and walkability of the streetscape.
  5. Provide for safe, convenient pedestrian connectivity and access on- and off-site and reduce potential conflicts between motor vehicles and pedestrians.
  6. Ensure the design of the site balances adequate landscaping, buffering, and green space with parking, circulation, and access needs, particularly where abutting residential properties.
  7. Promote optimal utilization of properties fronting commercial collector streets and provide future opportunities for economic development by enhancing the viability of low impact commercial corridors and activity centers.

- B. Mixed Use General Commercial (MU-GC).** The purpose of the MU-GC District is to support the vision and goals of the Town's Comprehensive Plan to support investment in and redevelopment of Tonawanda's major commercial corridors and activity centers, such as Sheridan Drive and Niagara Falls Boulevard. The regulations of this District are intended to permit a wide variety and mix of uses that serve the needs of local residents and the traveling public. In order to accomplish this, the MU-GC District regulates the location, design, and use of structures and land to redefine the public and private realms in a manner that promotes attractive, multi-modal streetscapes. Although higher intensity commercial uses may be permitted in the MU-GC District, proper landscaping, screening, and site design elements will be required to mitigate any potential negative impacts to the desired character of the streetscape and quality of life for adjacent neighborhoods. Special attention should be given to the design of sites and structures at major intersections and gateways to the Town to define Town character and create a sense of place.
- C. Mixed Use Waterfront (MU-W).** In accordance with the Town of Tonawanda Waterfront Land Use Plan, Local Waterfront Revitalization Program (LWRP), and Comprehensive Plan, the MU-W District provides for the redevelopment of the Niagara River shoreline, while balancing the need to protect the unique environmental features and aesthetic qualities of the waterfront. The regulations of this District are intended to achieve the following objectives:
1. Encourage a mix of residential, limited commercial, tourism, and recreational uses, including public and private water-dependent and water-oriented uses.
  2. Support the redevelopment of the waterfront into a vibrant, attractive destination for residents and visitors alike.
  3. Ensure development is sensitive to the physical and environmental limitations of the lands within this district, working with the landscape to preserve natural features and optimize green space.
  4. Promote public access to and use of waterfront areas, including along the shoreline, through the extension and enhancement of public parks and trails.
  5. Protect unique vistas and viewsheds to and from the shoreline.
  6. Provide a buffer between the waterfront and the industrial areas of the Town on the inland side of River Road.
  7. Utilize building and site design practices that address both the River Road streetscape and Niagara shoreline, enhancing the overall character and aesthetic of the waterfront.
  8. Remediate brownfields and other contaminated lands to restore environmental quality, reclaim developable space, and provide opportunities for more desirable land uses.
  9. Reduce the presence of industrial uses through increased landscaping and screening, and redirect such uses to the appropriately designated industrial areas of the Town.

### §215-21.3

### REVIEWS REQUIRED

- A. Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.

- B. Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

**§215-21.4**

**USE LISTS**

Uses are allowed in mixed use districts in accordance with Table 21-a.

- A.** Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
- B.** Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.
- C.** Uses not listed and those identified with a "-" are expressly prohibited.

<b>TABLE 21-a</b>	<b>MU-N</b>	<b>MU- GC</b>	<b>MU-W</b>	<b>Additional Regulations</b>
<b>RESIDENTIAL USES</b>				
<i>Single-Family Dwelling</i>	P	P	-	
<i>Two-Family Dwelling</i>	P	P	-	
<i>Multi-Family Dwelling, up to 4 units</i>	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	<b>§24.15</b>
<i>Multi-Family Dwelling, over 4 units</i>	SP <sup>2</sup>	SP <sup>2</sup>	SP <sup>2</sup>	<b>§24.15</b>
<i>Upper Floor Dwelling Units or Lofts</i>	P	P	P	
<i>Transitional Housing</i>	SP	SP	-	
<i>Bed and Breakfast or Short-Term Rental</i>	P	P	P	<b>§24.7</b>
<i>Senior Housing</i>	SP	P	P	

- Table continued on next page -

TABLE 21-a	MU-N	MU-GC	MU-W	Additional Regulations
<b>COMMERCIAL USES</b>				
Animal Grooming Shop	P <sup>3</sup>	P	-	§24.6
Animal Hospital or Veterinary Clinic	-	P <sup>4</sup>	-	§24.6
Art, Dance, Music, or Photo Studio	P	P	P	
Car Wash	-	SP	-	§24.8
Day Care Center, Child or Adult	P <sup>3</sup>	P	P	§24.10
Financial Institution	P <sup>3</sup>	P	-	
Funeral Home or Parlor	P <sup>3</sup>	P	-	
Gym, Fitness, or Health Club	P <sup>3</sup>	P	P	
Hotel or Inn	-	P	P	
Laundromat or Dry Cleaner	P <sup>3</sup>	P	-	
Personal Service Establishment	P <sup>3</sup>	P	P	
Item Repair or Service Shop	P <sup>3</sup>	P	-	
Construction, Landscape, or Other Property Service Operation	-	SP <sup>5</sup>	-	
Office, Administrative or Professional	P	P	P	
Office or Clinic, Medical	P <sup>3</sup>	P	P	
Restaurant or Bar	P <sup>3</sup>	P	P	§24.18
Retail Store	P <sup>3</sup>	P	P	
Self-Storage	SP	SP	-	
Retail Dispensary, Marijuana/Cannabis	P <sup>3</sup>	P	-	§24.14
Consumption Site, Marijuana/Cannabis	-	-	-	
Microbusiness, Marijuana/Cannabis	-	SP	P	§24.14
Micro-Winery, Brewery, or Distillery	-	SP	P	§24.20
Winery, Brewery, or Distillery	-	-	P	§24.20
Recreation or Entertainment Facility, Indoor	P <sup>3</sup>	SP	P	
Recreation or Entertainment Facility, Outdoor	-	-	SP	§24.17
Water-Oriented or Enhanced Use (Marina, Dock, etc.)	N/A	N/A	P	
Fueling or Charging Station	-	SP	-	§24.12
Vehicle Sales, Service, or Repair Shop	-	SP	-	§24.19

- Table continued on next page -

TABLE 21-a	MU-N	MU-GC	MU-W	Additional Regulations
<b>OTHER USES</b>				
Community Center	P <sup>3</sup>	P	P	
Library, Museum, or Cultural Facility	SP	P	P	
Municipal Structure or Use	P	P	P	
Park or Playground	P	P	P	
Parking Lot, as primary use	-	SP	SP	
School, Public or Private	SP	P	-	
Service Club or Organization	P <sup>3</sup>	P	-	
Large- or Utility-Scale Solar, Rooftop-Mounted	-	P	P	Article 26
Large-Scale Solar, Building or Ground-Mounted	-	-	-	Article 26
Wind Energy Conversion System, Building-Mounted	-	-	P	Article 27
Wind Energy Conversion System, Noncommercial	-	-	SP	Article 27
Wind Measurement Tower	-	-	SP	Article 27
Telecommunications Facility	-	SP	-	Article 29
Use of Incinerators or Autoclaves	-	-	-	
Waste Transfer Station or Disposal	-	-	-	
Mix of Uses in Single Structure or Lot	Refer to Each Use			
Permitted Use over 5,000 sf in Floor Area	SP	N/A	N/A	
<b>ACCESSORY USES</b>				
Accessory Use or Structure	P	P	P	§24.4
Accessory Dwelling Unit or In-Law Suite	P	P	P	§24.3
Drive-Through Facility	-	SP	-	§24.11
Home Occupation	P	P	P	§24.13
Small-Scale Solar	P	P	P	Article 26
Tier 1 or Tier 2A Battery Energy Storage System	P	P	P	Article 28
Tier 2B Battery Energy Storage System	-	P	P	Article 28
Outdoor Assembly or Seating Area <sup>6</sup>	SP	P	P	§24.16
Outdoor Sales or Display	-	SP	SP	§24.16
Outdoor Storage	-	-	-	§24.16

- NOTES:**
- (1) Multi-family dwellings up to four units may be permitted by conversion or new construction.
  - (2) Conversion of a single- or two-family dwelling to more than four units is prohibited
  - (3) Provided such use occupies no more than 5,000 square feet of floor area.
  - (4) Where such use includes the overnight accommodation of animals or outdoor facilities for animals a special use permit shall be required.
  - (5) Outdoor sales, display, and/or storage areas, including storage of vehicles, shall be in accordance with §215-24.16.
  - (6) Outdoor dining areas must obtain an outdoor dining permit per §215-24.16.



## §215-21.5

## DIMENSIONAL &amp; BULK REQUIREMENTS

Table 21-b indicates the dimensional and bulk requirements for mixed use districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 21-b	MU-N	MU-GC	MU-W
<b>MIN LOT AREA</b>			
Single- or Two-Family Dwelling	4,500 sf	6,500 sf	-
Multi-Family Dwelling, per unit	2,000 sf	2,000 sf	SPR <sup>1</sup>
Other Use	10,000 sf	15,000 sf	SPR <sup>1</sup>
<b>MIN LOT WIDTH</b>			
Residential Use	50 ft	50 ft	60 ft
Other Use	70 ft	70 ft	70 ft
<b>MIN FRONT SETBACK</b>			
Primary Use <sup>2</sup>	0 / 20 ft	30 / 50 ft	20 / 50 ft
Primary Use, at shoreline	-	-	SPR <sup>1</sup>
<b>MIN SIDE SETBACK</b>			
Primary Use <sup>3</sup>	5 / 10 ft	5 / 15 ft	SPR <sup>1</sup>
Accessory Use <sup>3</sup>	3 / 5 ft	3 / 5 ft	SPR <sup>1</sup>
<b>MIN REAR SETBACK</b>			
Primary Use	25 ft	25 ft	SPR <sup>1</sup>
Accessory Use	5 ft	5 ft	SPR <sup>1</sup>
<b>MAX LOT COVERAGE</b>			
Structures & Impervious Surfaces	85%	85%	SPR <sup>1</sup>
<b>MIN OPEN SPACE</b>			
Grass, Landscaped, or Natural Areas	15%	15%	35%
<b>MAX BUILDING HEIGHT</b>			
Primary Structure	35 ft	45 ft (3 stories)	SPR <sup>1</sup>
Accessory Structure, residential	16 ft	16 ft	SPR <sup>1</sup>
Accessory Structure, nonresidential	15 ft	15 ft	SPR <sup>1</sup>
<b>MAX BUILDING FOOTPRINT</b>			
Primary Structure, nonresidential	5,000 sf	-	-
Private Garage	900 sf	-	-
Other Accessory Structure <sup>4</sup>	180 sf	-	-

- NOTES:**
- (1) SPR indicates requirement to be determined through site plan review.
  - (2) The larger shall be the maximum front setback requirement.
  - (3) The larger is the requirement where adjacent to a residential use or district.
  - (4) This provision shall apply to enclosed accessory buildings only. Accessory structures such as pools, patios, and playgrounds are exempt. For maximum number of permitted accessory structures, see §215-24.4.

# Article 22. Industrial Districts

## §215-22.1

### DISTRICTS ESTABLISHED

The industrial districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to industrial or "I" zoning districts it is referring to one of the following:

District Name	Abbreviation & Map Symbol
Mixed Use Industrial	MU-I
General Industrial	GI

## §215-22.2

### PURPOSE STATEMENTS

**A. Mixed Use Industrial (MU-I).** The purpose of the MU-I District is to foster the transformation of industrial areas into vibrant, stable economic centers. While the presence of industrial operations continues to serve as an important facet of Tonawanda's economy, the viability of large-scale industrial operations may be affected by current market shifts and advances in technology. This District is intended to support the vision and recommendations of the Town's Comprehensive Plan by allowing for creative redevelopment and investment efforts that cultivate increased employment opportunities. Future development in the MU-I District should seek to achieve the following objectives:

1. Contribute to the local economy by increasing the tax base and local job opportunities, as well as providing for the production and availability of goods, services, and utilities to the region.
2. Capitalize on opportunities to rehabilitate vacant or underutilized buildings and sites within the District.
3. Foster an innovative, viable center for industry within the Town in a campus style environment, allowing for supportive commercial uses that serve office and industrial operations.
4. Continue to support large-scale industry and commerce provided that such uses operate in a manner that protects and maintains the health, safety, welfare, and quality of life of adjacent neighborhoods.

**B. General Industrial (GI).** The purpose of the GI District is to accommodate industrial activity, which may be more intensive than light industrial operations, in a manner that supports the goals and objectives contained in the Town's Comprehensive Plan. The GI District provides opportunities for a wide range of manufacturing activities, which have a greater potential for negative impacts on surrounding properties. Uses permitted in the GI District shall be in areas where public utilities and adequate transportation facilities (rail, tractor trailer, etc.) are available or can be made available. Developments in this District shall employ techniques to minimize negative impacts (including traffic, parking, glare, noise, odor, soil contamination, etc.) on site and where adjacent to non-industrial uses, especially established residential districts and environmentally sensitive areas.

**§215-22.3****REVIEWS REQUIRED**

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- A. Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.
- B. Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

**§215-22.4****USE LISTS**

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Uses are allowed in industrial districts in accordance with Table 22-a.

- A.** Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
- B.** Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.
- C.** Uses not listed and those identified with a "-" are expressly prohibited.

TABLE 22-a	MU-I	GI	Additional Regulations
<b>COMMERCIAL USES</b>			
Adult Use	SP	SP	§24.5
Animal Hospital, Veterinary Clinic, or Kennel	SP	-	§24.6
Office, Administrative or Professional	P	P	
Office or Clinic, Medical	P	P	
Hospital	P	-	
Item Repair or Service Shop	P	P	
Construction, Landscape, or Other Property Service Operation	SP	P	
Consumption Site, Marijuana/Cannabis	-	-	
Microbusiness, Marijuana/Cannabis	P	P	§24.14
Micro-Winery, Brewery, or Distillery	P	P	§24.20
Winery, Brewery, or Distillery, including Micro	P	P	§24.20
Recreation or Entertainment Facility, Outdoor	SP	-	§24.17
Self-Storage Facility	P	P	
Vehicle Sales, Service, or Repair Shop	P	P	§24.19
<b>INDUSTRIAL USES</b>			
Manufacturing, Processing, or Fabrication of Food items	SP	P	
Manufacturing, Processing, or Fabrication of Other Goods	P	P	
Distribution, Delivery, or Processing of Marijuana/Cannabis	SP	P	§24.14
Cultivation of Marijuana/Cannabis	SP	P	§24.14
Research and Development Facility or Laboratory	P	P	
Packaging or Assembly of Products	P	P	
Printing or Publishing Operation	P	P	
Industrial Equipment Sales, Service, or Repair	-	P	
Junkyard or Stockyard	-	-	
Land Mining	-	-	
Laundry or Dry-Cleaning Plant	-	P	
Lumber or Storage Yard	-	P	
Truck or Rail Terminal or Storage Facility	SP	P	
Warehouse, Storage Facility	P	P	

- Table continued on next page -

TABLE 22-a	MU-I	GI	Additional Regulations
<b>OTHER USES</b>			
Crematorium	-	SP	§24.9
Municipal Structure or Use	P	P	
Park or Playground	P	-	
Parking Lot, as primary use	P	P	Article 30
Recycling Center	SP	SP	
Large- or Utility-Scale Solar, Rooftop-Mounted	P	P	Article 26
Large-Scale Solar, Building or Ground-Mounted	P	P	Article 26
Utility-Scale Solar, Building or Ground-Mounted	SP	SP	Article 26
Wind Energy Conversion System, Building-Mounted	P	P	Article 27
Wind Energy Conversion System, Commercial	-	SP	Article 27
Wind Energy Conversion System, Noncommercial	SP	SP	Article 27
Wind Measurement Tower	SP	SP	Article 27
Tier 3 Battery Energy Storage System	SP	SP	Article 28
Telecommunications Facility	SP	SP	Article 29
Use of Incinerators or Autoclaves	-	-	
Vertical Farming	SP	SP	
Waste Transfer Station or Disposal	-	-	
Mix of Uses in Single Structure or Lot	P	P	
Energy Storage and Distribution	P	P	
<b>ACCESSORY USES</b>			
Accessory Use or Structure	P	P	§24.4
Ancillary Retail Sales or Restaurant	SP	SP	
Drive-Through Facility	P	P	§24.11
Small-Scale Solar	P	P	Article 26
Tier 1 or Tier 2 Battery Energy Storage System	P	P	Article 28
Outdoor Assembly, Seating, Sales, Display, or Storage Area	P	P	§24.16

§215-22.5

**DIMENSIONAL & BULK REQUIREMENTS**

Table 22-b indicates the dimensional and bulk requirements for industrial districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 22-b	MU-I	GI
<b>MIN LOT AREA</b>		
	30,000 sf	40,000 sf
<b>MIN LOT WIDTH</b>		
	80 ft	100 ft
<b>FRONT SETBACK</b>		
Primary Use	40 ft	40 ft
<b>MIN SIDE SETBACK <sup>1</sup></b>		
Primary Use	10 / 25 ft	25 / 50 ft
Accessory Use	5 / 15 ft	5 / 25 ft
<b>MIN REAR SETBACK <sup>1</sup></b>		
Primary Use	25 ft	25 / 50 ft
Accessory Use	5 / 15 ft	5 / 25 ft
<b>MAX LOT COVERAGE</b>		
Structures & Impervious Surfaces	65%	75%
<b>MIN OPEN SPACE</b>		
Grass, Landscaped, or Natural Areas	35%	25%
<b>MAX BUILDING HEIGHT</b>		
Primary Structure	80 ft	80 ft
Accessory Structure	25 ft	25 ft

**NOTE:** (1) The larger is the requirement where adjacent to a residential use or district.

§215-22.6

**MU-I DISTRICT PERFORMANCE STANDARDS**

- A. Uses are not permitted which exceed New York State regulations or any of the following standards measured at the individual property line:
  1. Emission of noise in excess of 65 decibels.
  2. Emission of any odor which endangers the health, comfort, safety or welfare of any person or which has a tendency to cause injury or damage to property, business or vegetation.
  3. Emission of dust or dirt which endangers the health, comfort, safety or welfare of any person or which has a tendency to cause injury or damage to property, business or vegetation.
  4. Emission of any smoke in excess of Ringelmann Chart No. 2.
  5. Emission of any noxious gases which endanger the health, comfort, safety or welfare of any person or which have a tendency to cause injury or damage to property, business or vegetation.
  6. Causing, as a result of normal operations, a vibration which creates displacement of 0.003 of one inch.

7. Certain lighting or signs which create glare which could impair the vision of a driver of any motor vehicle.
- B.** No use shall be permitted if the operation of such use on the premises would:
1. Cause a fire, explosion or safety hazard.
  2. Cause, as the result of its operation, an adverse environmental impact or a hazard to the safety, health or well-being of any person.
  3. Cause, as the result of its operation, the violation of the New York State Fire Prevention Code, adopted by the Town of Tonawanda, New York.
  4. Cause, as the result of its operation, the violation of Local Law No. 1-73, as amended, regulating the use of public and private sewers and drains in the Town of Tonawanda, New York.
  5. Cause anything to be done which would create a violation of any law, ordinance, rule or regulation of the Town of Tonawanda, Erie County, or State of New York.
- C.** Tank storage of flammable liquids shall be limited to 48,000 gallons total and shall be constructed, protected, located and maintained in accordance with the latest rules, regulations and specifications of the National Fire Protection Association (NFPA).

# Article 23. Special Purpose Districts

## §215-23.1

### DISTRICTS ESTABLISHED

The special purpose districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to a special purpose district it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Community Facility</i>	<b>CF</b>
<i>Open Space</i>	<b>OS</b>
<i>Local Waterfront Overlay</i>	<b>LWO</b>
<i>Flood Hazard Overlay</i>	<b>FHO</b>
<i>Transit-Oriented Development</i>	<b>TOD</b>
<i>Planned Unit Development</i>	<b>PUD</b>

## §215-23.2

### REVIEWS REQUIRED

- A. Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.
- B. Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

## §215-23.3

### COMMUNITY FACILITY (CF) & OPEN SPACE (OS) DISTRICTS

- A. Community Facility (CF).** The purpose of the CF District is to identify, protect, and enhance the availability of community services and resources throughout Tonawanda in accordance with the Town's Comprehensive Plan. Uses permitted within the CF District include those providing social, cultural, educational, recreational, municipal, and public safety services. The intent of this District is to provide for the continuation of these services, support community institutions and organizations, and increase access to services that better the physical and mental health, safety, and wellbeing of Tonawanda residents. Development within the CF District should be context sensitive and utilize appropriate building and site design practices to ensure connectivity to



and compatibility with adjacent activity centers, commercial corridors, and neighborhoods.

- B. Open Space (OS).** The purpose of the OS District is to implement the vision and goals of the Town’s Comprehensive Plan to preserve and enhance Tonawanda’s open spaces, parks, trails, and environmentally sensitive areas by protecting these natural amenities from development pressures. The OS District applies to private and publicly owned or accessible parks, squares, recreational fields, natural wildlife areas, creeks or streams, and cemeteries. The intent of this District is to ensure ample passive and active recreational opportunities for residents and visitors and to identify areas of valued green space throughout the Town.
- C. Use Lists.** Uses are allowed in accordance with Table 23-a.
  1. Uses identified with a “P” are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
  2. Uses identified with a “SP” may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.
  3. Uses not listed and those identified with a “-” are expressly prohibited.

TABLE 23-a	CF	OS	Additional Regulations
<b>PRIMARY USES</b>			
Cemetery	-	P	
Community Center	P	SP	
Day Care Center, Child or Adult	P	-	§24.10
Golf Course	-	P	
Library, Museum, or Cultural Facility	P	-	
Municipal Structure or Use	P	P	
Park or Playground	P	P	
Parking Lot, as Primary Use	SP	SP	Article 30
Place of Worship	P	-	
Public Safety or Service Facility	P	-	
Public Utility Infrastructure	P	SP	
Recreation or Entertainment Facility, Indoor	P	-	
Recreation or Entertainment Facility, Outdoor	P	P	§24.17
Rehabilitation or Social Support Services	SP	-	
School, public or private	P	-	
Senior Housing	SP	-	
Telecommunications Facilities	SP	SP	Article 29
<b>ACCESSORY USES</b>			
Accessory Use or Structure	P	P	§24.4
Ancillary Retail Sales, Services, or Concessions	SP	SP	
Small-Scale Solar	P	P	Article 26
Outdoor Assembly or Seating Area	P	P	§24.16
Outdoor Sales, Display, or Storage Area	SP	SP	§24.16

- D. **Dimensional and Bulk Requirements.** Table 23-b indicates the dimensional and bulk requirements for the CF and OS Districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 23-b	CF	OS
<b>MIN LOT AREA</b>	20,000 sf	-
<b>MIN LOT WIDTH</b>	80 ft	-
<b>FRONT SETBACK</b>		
<i>Primary Use</i>	20 ft	20 ft
<b>MIN SIDE SETBACK <sup>1</sup></b>		
<i>Primary Use</i>	10 / 25 ft	25 ft
<i>Accessory Use</i>	5 / 10 ft	5 / 10 ft
<b>MIN REAR SETBACK <sup>1</sup></b>		
<i>Primary Use</i>	25 ft	25 ft
<i>Accessory Use</i>	5 / 10 ft	5 / 10 ft
<b>MAX LOT COVERAGE</b>		
<i>Structures &amp; Impervious Surfaces</i>	65%	15%
<b>MIN OPEN SPACE</b>		
<i>Grass, Landscaped, or Natural Areas</i>	35%	85%
<b>MAX BUILDING HEIGHT</b>		
<i>Primary Structure</i>	45 ft (3 stories)	35 ft (2.5 stories)
<i>Accessory Structure</i>	15 ft	12 ft

**NOTE:** (1) The larger is the requirement where adjacent to a residential use or district.

§215-23.4

**LOCAL WATERFRONT OVERLAY (LWO) DISTRICT**

The purpose of the LWO District is to align the Town's zoning code and map with the Town of Tonawanda Local Waterfront Revitalization Program (LWRP), implementing special controls to guide land use and development within the waterfront areas. The extent of the LWO District boundary shall follow that of the Town's LWRP boundary. The overlay district is to be superimposed on the underlying zoning district provisions, applying the additional regulations of Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.

§215-23.5

**FLOOD HAZARD OVERLAY (FHO) DISTRICT**

The Town of Tonawanda has determined and found that the potential and/or actual damages from flooding and erosion may cause physical, financial, and environmental harm to property owners. Such damage may include, but is not limited to, destruction or loss of private and public housing, damage to public facilities, and injury to or loss of human life. The application of this overlay district is intended to minimize the threat of such damage and align this Zoning Law with the land use provisions set forth in Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code. The FHO District boundary shall include all property within the

Town's Special Flood Hazard Areas, floodways, and floodplains as outlined in Chapter 92.

## §215-23.6

### TRANSIT-ORIENTED DEVELOPMENT (TOD) DISTRICT

It is the intent of the TOD District to encourage walkable, mixed-use development along corridors served by public transit. Further, it is the specific intent of the TOD District to:

- A. Encourage an intensity of development and complementary mix of land uses near transit stops that are compatible with and supportive of increased ridership and fosters the creation of a livable community with opportunities to live, work, and play within walking distance of convenient transit facilities.
- B. Encourage land uses and site design practices that promote the use of alternative modes of transportation, such as bus, bicycling, and walking, thereby reducing traffic congestion from individual automobile use.
- C. Promote economic revitalization of transit corridors by encouraging innovative, transit-oriented infill development and redevelopment of underutilized land near transit stops.
- D. Encourage shared parking between compatible uses on the same or on adjacent lots, wherever feasible, to minimize the number of curb cuts that interrupt the pedestrian network and to provide for more efficient utilization and distribution of parking within the TOD District.
- E. Foster well-designed vibrant public and private gathering spaces that create a sense of place and encourage social interaction.
- F. Encourage the provision of additional amenities that benefit the public health, safety, and welfare, such as moderate-income housing, efficient roadways, safe bicycle and pedestrian connections, stormwater management, and green building practices.

## §215-23.7

### PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

**A. Purpose.** The Town Board hereby finds that when coordinated with the comprehensive plan, planned unit development zoning is an effective tool for guiding development in ways that support the community's goals and priorities. Planned unit development, among other things, provides a means by which different land uses within an area covered by a single development plan may be combined to achieve compatibility among such uses. Unattainable with traditional municipal zoning techniques, planned unit development provides flexibility in the regulation of land use development in order to:

- 1. Encourage innovation in land use variety and design, in the layout and type of new structures and in their integration with existing structures;
- 2. Enhance efficiency in the use of land, natural resources, energy, community services, and utilities;
- 3. Encourage open space preservation and protection of natural resources, historic sites, and structures;
- 4. Facilitate the provision of housing and improved residential environments;
- 5. Encourage economic development with new businesses, support existing business, and create employment opportunities; and

6. Encourage public access to the Town's waterfront area and encourage the implementation of facilities and uses both private and public that promote that access.
- B. Eligibility.** Unless waived by the Town Board, a planned unit development district shall be comprised of at least 20 acres of land. Subsequent subdivision of the property will not affect the zoning provisions.
  - C. Use of Land.** In planned unit development districts, land and buildings may be used for any lawful purposes, as determined by the Town Board upon recommendation by the Planning Board in the course of its review of the applicable preliminary and final planned unit development plans, and subject to the limitations and procedures of this article. No building or structure shall be erected, nor shall any land, building, or structure be used in any planned unit development district until approval of a final planned unit development plan is issued by the Town Board. No uses, buildings, or structures which deviate from the approved final planned unit development plan or are inconsistent with the comprehensive plan or the community character shall be allowed. The approval of a final planned unit development plan establishes the zoning regulations for the subject property, and building permits shall not be issued unless in conformity with the final planned unit development plan.
  - D. Permissible and Prohibited Uses.** Planned unit developments may include a mix of uses including commercial, residential, light industrial, and public uses of a variety and type such that may be deemed appropriate by the Town Board. Such approved uses shall be stated in the authorizing resolution of the PUD. The following uses shall be prohibited in any PUD:
    1. Heavy industrial uses.
    2. Adult uses.
    3. Crematoriums.
    4. Waste transfer stations.
    5. Junkyards.
    6. Organic recycling operations.
    7. Agricultural uses.
  - E. Preservation of Open Space.** One of the Town's primary goals in authorizing planned unit development is the preservation of open space. For any PUD zoning district, 20% of the site shall be usable open space. The preservation of open space is an important goal, with the particular requirements determined in the evaluation of the preliminary planned unit development plan. Open space may include walkways, plazas, landscaped areas, and recreation areas. Parking areas and vehicle access facilities shall not be considered in calculating open space.
  - F. Public Benefits.** Applicants shall provide for one or more the following public benefits towards justification of the proposed project and shall offset any identified adverse impact(s).
    1. Acquisition and/or construction of a new Town park or recreational facility.
    2. Improvements or rehabilitations to existing Town parks or recreational facilities.

3. Creation of active and passive recreation to include greenways, sidewalks, and other pedestrian/bicycle circulation networks that serve to connect significant areas and various land uses.
  4. Utility extensions that provide additional service connection opportunities to other potential users to a degree that the Town Board deems acceptable.
- G. Common Property.** The applicant shall provide for and establish a perpetual organization for the ownership and maintenance of any common property in the planned unit development district. Such organization, which shall be established prior to any permits being issued, shall not dispose of any common property by sale or otherwise except to dedicate such property to the Town for public use, but nothing in this code shall require such dedication nor require the Town to accept any dedication of land.
- H. Ownership and Management.** The tract of land or combination of lands under application for consideration for a planned unit development may be owned, leased, or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by the owners or their agent(s) of all property included in the project. In the case of multiple ownership, the approved plan shall be binding upon all property owners, and such owners shall provide written certification of such binding agreements. All land included for the purpose of development within a PUD shall be owned by or be under the complete control of the applicant for such PUD, whether the applicant be an individual, partnership, corporation, or other entity, and shall be planned and developed as a whole in a single development operation or a definitely programmed series of development operations or phases. The applicant shall provide to the Office of Planning and Development all of the necessary documents and information that may be required by the Town Attorney to assure that the development project may be lawfully completed according to the plans sought to be approved and shall be binding upon all property owners, with written certification of such binding agreement(s).
- I. Phasing.** At the time of application, preliminary planned unit development plan approval, and final planned unit development plan approval, through the completion of construction of all improvements, ownership and/or control of the development shall be in the hands of one entity, except that for each phase, if a project is done in phases, properties may be sold for completed phases, provided single control shall be maintained over each phase until the final planned unit development plan is approved and construction completed.

# Article 24. Additional Use Regulations

## §215-24.1

### PURPOSE & INTENT

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- A. Purpose.** This Article provides additional regulations for uses that are generally considered to have a higher potential for incompatibility with residential or low impact commercial uses without proper mitigation measures. The purpose of the regulations contained herein is to promote the health, safety, and general welfare of the public, while also protecting property values and the character of the immediate neighborhood and greater Tonawanda community.
- B. Intent.** These regulations are intended to mitigate the potentially undesirable impacts of certain uses, which by reason of nature or manner of operation, are or may become hazardous, obnoxious, or offensive owing to excessive and undue increases in the production and presence of odors, dust, smoke, fumes, noise, vibrations, refuse matter, vehicular traffic, or human activity.

## §215-24.2

### APPLICABILITY

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- A.** The following requirements are applicable to all uses, permitted (P) and specially permitted (SP), as noted in the use tables of Articles 20, 21, 22, and 23 of this Chapter.
- B.** Specially permitted uses must obtain a special use permit and site plan review in accordance with Articles 43 and 42.
- C.** Permitted uses do not require a special use permit. However, uses permitted as-of-right must obtain site plan review approval in accordance with Article 42 and conform to the additional use requirements of this Article, where applicable.
- D.** Should the additional use regulations of this Article conflict with other requirements of this Chapter, the regulations contained herein shall take precedence.

## §215-24.3

### ACCESSORY DWELLING UNITS & IN-LAW SUITES

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- A. Purpose.** The purpose of regulating accessory dwelling units and in-law suites is to:
  - 1.** Create new housing units while respecting the design and scale of low density residential neighborhoods;
  - 2.** Increase the housing stock of existing neighborhoods in a manner that is less intense than multi-family dwelling alternatives;
  - 3.** Provide a broader range of affordable housing options that respond to changing family and household needs; and
  - 4.** Offer a means for residents to remain in their homes and neighborhoods while also obtaining extra income, security, companionship, and/or services.
- B. General Requirements.** Accessory dwelling units and in-law suites shall conform to the following.

1. Such use may only operate as an accessory use to a single-family dwelling. There shall be no more than one such use per property.
2. No such use shall be permitted on a nonconforming lot or within a nonconforming structure.
3. The total floor area shall not exceed 30% of the total habitable floor area of the single-family dwelling and shall not include more than two (2) bedrooms.
4. All exterior entrances shall be located on the side or rear façade of the primary structure or in the rear yard of the principal residence.
5. No such use shall be permitted if an existing approved driveway cannot accommodate at least one off-street parking space in addition to the parking spaces required for the single-family dwelling.
6. The construction, modification, addition, or demolition of such use shall not discernably alter the single-family residential character of the lot or structure located thereon.
7. Such use may be subject to an annual inspection by the Code Enforcement Officer to ensure compliance with the requirements of this Chapter and all other local, regional, or state laws, rules, and regulations.

**C. Owner-Occupancy Requirements.**

1. At least one of the dwellings (primary, accessory, or in-law suite) shall be occupied by the property owner and maintained as their primary residence.
2. The property owner shall sign an affidavit before a notary public affirming that the property is their primary residence. Such affidavit shall be submitted to the Code Enforcement Officer. Upon sale of the property, a new owner shall be required to sign and submit a new affidavit within 30 days of the close of sale.
3. The individual sale of an accessory dwelling unit or in-law suite apart from the single-family dwelling is strictly prohibited.

## §215-24.4

### ACCESSORY USES & STRUCTURES

Accessory uses and structures are allowed in any zoning district in connection with any principal use lawfully existing within such district as noted in Articles 20, 21, 22, and 23 of this Chapter. All accessory uses and structures shall conform to the following requirements.

**A. General Requirements.** Accessory uses and structures shall:

1. Be clearly incidental and subordinate to the primary structure or use by height, area, extent, and purpose.
2. Not be located in any required front yard area, unless otherwise permitted in this Chapter.
3. Be in conformance with the dimensional and bulk requirements of the zoning district in which they are located. No accessory use or structure shall cause the rate of lot coverage to exceed the maximum rate permitted.
4. Be limited to one attached garage and/or detached garage and up to two additional sheds or otherwise fully enclosed accessory structures.

Where both an attached and detached garage are located on a single lot, the combined maximum floor area shall not exceed 900 square feet.

5. Be finished with materials and/or siding that is consistent and compatible with the existing character of the primary structure and surrounding neighborhood.
  6. Not obstruct, block, or force the enclosure of any structural opening (windows, doors, etc.), open porch, deck, or terrace, or required vehicular or pedestrian accessway.
  7. Overhead electric circuits to garages or accessory structures shall not be permitted. All electric circuits and feeders must be installed underground.
  8. No standby generator, air conditioner condenser or similar type units shall be located in any front yard. All standby generators shall be screened from adjacent properties by fencing or vegetation.
- B. Residential Accessory Uses and Structures.** The following shall be considered permissible residential accessory uses or structures for the purposes of this Chapter.
1. Decks, patios, terraces, seating areas, or gazebos.
  2. Residential garages, carports, off-street parking areas, and driveways, including personal charging stations and EVSE, provided all applicable residential parking and driveway requirements of this Chapter are met.
    - a. Private garage overhead doors shall be restricted to 9 feet or less in height.
    - b. The maximum perimeter dimension shall be 40 feet for any private garage.
  3. Enclosed storage structures, such as sheds.
  4. Fences and walls in accordance with §215-25.6.
  5. Playgrounds or playhouses and private swimming pools in accordance with §215-25.7.
  6. Noncommercial nurseries, gardens, or greenhouses.
  7. Fire escapes or other such structures intended to maintain the health, safety, and welfare of residents within the dwelling and the general public.
  8. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
  9. Dish or radio antennae no more than one meter in diameter and intended for noncommercial use. Such antennae shall not extend more than 30 inches above the roofline or exceed the maximum building height of the district, whichever is less.
  10. Personal generators, air conditioning units, and other small-scale mechanical equipment for noncommercial use, provided such equipment is located in the rear yard.
  11. Green infrastructure installations, such as rain barrels, rain gardens, or bioswales.
  12. Other uses and structures which the Code Enforcement Officer deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.



- C. Nonresidential Accessory Uses and Structures.** The following shall be considered permissible nonresidential accessory uses or structures for the purposes of this Chapter.
1. Decks, patios, terraces, or seating areas otherwise not programmed for public use as part of the primary operation. Outdoor seating and assembly areas shall be in conformance with §215-24.16.
  2. Garages or carports and off-street parking and loading areas, including charging stations and EVSE, provided all requirements of Article 30 and §215-24.12 are met.
  3. Enclosed storage structures, such as sheds.
  4. Fences and walls in accordance with §215-25.6.
  5. Playgrounds or playhouses.
  6. Nurseries, gardens, or greenhouses.
  7. Fire escapes or other such structures intended to maintain the health, safety, and welfare of employees, patrons, and the general public.
  8. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
  9. Dish or radio antennae no more than two meters in diameter when screened from public view and adjacent residential property. Such antennae shall not extend more than five feet above the roofline or exceed the maximum building height of the district, whichever is less.
  10. Generators, HVAC systems, and other mechanical equipment, provided such equipment is located, screened, and operated in accordance with the requirements of this Chapter.
  11. Green infrastructure installations, such as rain barrels, rain gardens, or bioswales.
  12. Pump houses, water towers and storage tanks.
  13. Walkup service windows with site plan review approval.
  14. Clinics, cafeterias, and recreational facilities for the exclusive use of employees of the principal use.
  15. Other uses and structures which the Code Enforcement Officer deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

## §215-24.5

### ADULT USES

#### A. Purpose and Intent.

1. The regulation of adult use establishments, as hereinafter defined, is found to be necessary in light of the operational characteristics of such uses which, without the enactment and enforcement of appropriate regulations, would have documented adverse, detrimental and harmful impacts and effects within the Town of Tonawanda, and particularly on residential neighborhoods and community business areas. Such impacts and effects include but are not limited to decreased property values; creation of traffic and/or parking problems due to the attraction of transients; potential increases in criminal activities; loss of business by non-

adult-use commercial establishments in the vicinity, and deterioration within residential neighborhoods.

2. It is the purpose and intent of this section to establish appropriate and reasonable regulations and restrictions regarding the location and operation of adult use establishments, as hereinafter defined, so as to promote the health, safety, and general welfare of the residents of the Town of Tonawanda, and to establish reasonable and uniform regulations to prevent the deleterious impacts and effects identified above which may result from the location and operation of such establishments.
3. It is neither the purpose nor intent of this section to impose a limitation or restriction on the content of any communicative materials, including sexually explicit or sexually oriented materials, nor is it the purpose or intent of this section to restrict or deny access by adults to sexually explicit or sexually oriented materials, activities, performances or depictions protected by the First Amendment to the United States Constitution, or to deny access by distributors and/or exhibitors of sexually explicit or sexually oriented materials or entertainment to their intended market. However, it is also not the purpose or intent of this section to condone or legitimize the display or distribution of obscene materials.

**B. General Requirements.** All adult uses shall:

1. Be conducted in an enclosed building.
2. Be conducted in such a manner that, regardless of location or distance, no one who is passing by or who is at any point outside of the enclosed building occupied by such a use shall be able to observe or perceive any performance, conduct, image, printed matter, visual representation, instrument, device or paraphernalia displaying, depicting or otherwise presenting any specified anatomical area or specified sexual activity regulated hereunder, including but not limited to any sign or advertisement or any window or other opening permitting the view of the interior of the premises from the exterior of the premises.
3. Not employ loudspeakers or sound equipment as part of the adult use establishment in such a way as may be audible to or discerned by the public from public or semipublic areas.
4. Be permitted only on lots of two acres or more.
5. Not be established or maintained within 500 feet of:
  - a) A church, synagogue or regular place of worship.
  - b) A public or private elementary or secondary school.
  - c) Any child-care institution or day-care center, as defined herein and in the Education Law.
  - d) A residence, or the boundary of any residential zoning district.
  - e) A public park, playground, playing field, governmental office or facility or other similar area where large numbers of persons may travel or congregate.
  - f) River Road or coastal area as defined by the Town's Local Waterfront Revitalization Program.
  - g) A municipal boundary.
6. Not be established or maintained within 1,000 feet of another adult use.

- C. Distance Measurement.** For the purposes of this section, measurement of the distances specified above shall be made in a straight line, without regard to intervening structures or objects, from building to building. The distance between any two adult use establishments shall be measured from the nearest property boundary line of the property upon which the adult use is proposed to be located to the nearest point of the parcel containing the use from which the adult use is to be separated.
- D. Registration Required.** The owner of a building or premises, his agent for the purpose of managing, controlling or collecting rents or any other person managing or controlling a building or premises, any part of which contains an adult use, shall register with the Town Clerk the following information. Registration under the provisions of this section shall not be transferable.
1. The address of the premises.
  2. The name and address of the owner of the premises and the names and addresses of the beneficial owners if the property is in a land trust.
  3. The name of the business or the establishment subject to the provisions of this article.
  4. The name(s) and address(es) of the owner, beneficial owner or the major stockholder(s) of the business or the establishment subject to the provisions of this article.
  5. The date of initiation of the adult use.
  6. The nature of the adult use.
  7. If the premises or building is leased, a copy of said lease.
- E. Display of Registration.** The owner, manager or agent of a registered adult use shall display in a conspicuous place on the premises of the adult use a copy of the registration filed with the Town Clerk.
- F. Inspection Requirements.** Prior to the commencement of any adult use establishment business, or upon any transfer of ownership or control of such a business, the premises on which such establishment is located must be inspected and found to be in compliance with all laws, rules and regulations of or enforced by the New York State Health Department, Fire Department, Code Enforcement Office, Fire Marshal, and other code enforcement officials of the Town and county.

## §215-24.6

### ANIMAL GROOMING SHOPS, ANIMAL HOSPITALS, VETERINARY CLINICS, & KENNELS

- A. General Requirements.** The following requirements shall apply to all animal groom shop, animal hospital, veterinary clinic, and kennel uses.
1. Adjacent properties shall be adequately protected from noise, odors, and unsightly appearances as determined appropriate by the reviewing board in site plan review. Such protections may include, but are not limited to landscaped buffers, berming, and fencing.
  2. A waste management plan shall be required to ensure proper upkeep of the site and disposal of animal excrement and waste.
  3. All operations must apply for and secure proper licensing and registration as required by state and local law.
- B. Animal Grooming Shops.**

1. All services shall be provided within a completely enclosed building.
2. The boarding of animals shall be prohibited.
3. All buildings, structures, and accessory use areas, except off-street parking areas, shall be located at least 50 feet from any property line abutting a residential district.

**C. Animal Hospitals, Veterinary Clinics and Kennels.**

1. All services shall be provided within a completely enclosed building, with the exception of outdoor animal exercise, play, or containment areas subject to site plan review approval.
2. All buildings, structures, accessory use areas, and outdoor animal exercise, play, or containment areas, except off-street parking areas, shall be located at least 50 feet from any property line abutting a residential use or district.
3. Screening for outdoor animal exercise, play, or containment areas may be required along lot lines bordering residential uses or districts at the reviewing board's discretion.
4. All animals will be confined to the property and housed in an enclosed structure in humane conditions (i.e. protected from weather, clean, sanitary, adequate space, non-porous surfaces, well-ventilated, etc.) All animals shall be kept within a totally enclosed building between 10:00 PM and 6:00 AM.

## §215-24.7

### BED & BREAKFASTS & SHORT-TERM RENTALS

All bed and breakfast and short-term rental uses shall be in conformance with the following requirements.

- A. Such uses shall be duly licensed, registered as a business and shall be subject to the Hotel Occupancy Tax of Erie County, New York.
- B. Such uses may be permitted in an owner-occupied single-family dwelling or detached accessory structure located on the same lot as the dwelling.
- C. No such use shall be permitted on a nonconforming lot or within a nonconforming structure.
- D. Sales of merchandise shall be incidental to the use.
- E. The residential character of the lot and structures located thereon shall be preserved. Structural alterations or additions of a nonresidential nature shall be prohibited.
- F. There shall be no more than two nonresidential employees (not living on the property) reporting for work.
- G. Such uses must be able to accommodate the minimum off-street parking requirements on-site. Where on-site parking is impracticable, the reviewing board may provide relief from this provision in whole or in part through site plan review, if deemed appropriate.
- H. Off-street parking shall not be permitted in the front yard, except for within an approved driveway area. All parking areas shall be screened from adjacent properties and the public right-of-way in a manner approved through site plan review.

- I. All outdoor lighting proposed for the operation shall be appropriately shielded so as not to adversely impact neighboring properties.

## §215-24.8

### CAR WASHES

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- A. All washing facilities shall be completely within an enclosed building.
- B. Washing facilities shall not be located within 200 feet of any residential district or use.
- C. Vacuuming facilities may be outside of the building but shall not interfere with the free flow of traffic on or off the site.
- D. Where fueling and charging stations are either a principal use with or an accessory use to the car wash, the requirements of the fueling and/or charging station (§215-24.12) shall also be adhered to.
- E. All areas for the travel or storage of motor vehicles shall be paved, suitably graded and drained, and maintained in a neat and orderly manner.
- F. Any such use shall be buffered from adjacent uses by no less than 10 feet. The buffer area shall minimally consist either of fencing, evergreen shrubbery, coniferous trees, or any combination thereof that prevents the unwanted transmission of headlight glare across the property line.
- G. Sufficient screening shall be provided along all lot lines abutting or adjacent to residentially zoned or developed property to block any view of operations from all points on such residential property when viewed from ground level.
- H. Perimeter landscaping shall be a minimum of 10 feet in width along the street frontage(s).
- I. In the event a car wash is abandoned the owner shall immediately remove any outdoor vacuums, and all signs. The owner shall also provide adequate protection against unlawful entry into the building and onto the property and shall close all vehicular entrances to the property. A car wash shall be considered abandoned if it is inactive for a period of 12 consecutive months.

## §215-24.9

### CREMATORIUMS

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- A. Crematoriums shall be a minimum of 300 feet from any residential, school, day care, and public or semi-public use. The distance shall be measured from the nearest portion of the crematorium building to the nearest property line of the use from which the crematorium shall be separated.
- B. All activity relating to the dead shall be handled discreetly and be screened from public view to the maximum extent possible, including delivery and storage of the remains.
- C. Crematoriums shall not be used for the disposal of any waste materials.
- D. Crematoriums shall not emit any visible air emissions nor generate odors which are discernable beyond their lot lines.
- E. Special use permit application materials for a crematorium shall also include:
  - 1. Proposed cremation equipment including emission control devices.
  - 2. Chimney stack height.
  - 3. Plans for ongoing emission monitoring and performance testing.

- 4. Documentation that all emissions fall within accepted industry practices and meet all applicable state or federal air quality standards.
- F. Crematoriums shall be constructed, installed, operated and maintained in accordance with all manufacturers' specifications and all applicable federal, state and local permits, as amended.
- G. A crematorium may be allowable by special use permit as part of a cemetery provided it complies with all requirements of this section.

## §215-24.10

### DAY CARE CENTERS, CHILD & ADULT

- A. No day care shall be permitted without obtaining the proper license and registration, as required by NYS and Erie County Law.
- B. All buildings, structures, and areas of organized activity dedicated to the primary day care use shall maintain a setback of at least 10 feet from all property lines.
- C. A landscaped buffer or fence of at least five feet in height shall be provided at all side and rear property lines abutting a residential use or district.
- D. Outdoor speakers and public-address or stereo systems are prohibited in residential districts.
- E. Day care centers may be conducted as a home occupation, provided such use is in also in conformance with §215-24.13.

## §215-24.11

### DRIVE-THROUGH FACILITIES

- A. **Purpose.** Products of the automobile age, drive-through facilities have become a common amenity for a specific range of uses, including banks, freestanding drug stores, and fast-food restaurants. A well-designed drive-through on a parcel with adequate area can be convenient for motorists and have minimal impact upon the streetscape and pedestrians. Conversely, a poorly designed drive-through on a parcel of inadequate size can cause problems with traffic circulation and create areas that are hostile to the pedestrian. Moreover, drive-throughs have the potential to generate undesirable impacts for adjacent properties such as odors from vehicle exhaust and noise from engines, car stereos, and menu board speakers. The purpose and intent of this section is to establish appropriate standards which allow for the typical range of activities while ensuring public safety and mitigating the associated impacts.
- B. **Access Drives and Vehicular Lanes.**
  - 1. Only one access drive, or two one-way access drives, shall be permitted per street frontage.
  - 2. Vehicular stacking/exit lanes, service areas, or windows shall not be located in the front yard.
  - 3. All stacking/exit lanes shall be designed so that they do not interfere with off-street parking areas or vehicular and pedestrian circulation on the site. Such lanes shall be designed to reduce the impacts of traffic congestion on adjacent property and public streets.
  - 4. All stacking/exit lanes and pedestrian walkways shall be delineated with landscaping, curbing, raised or decorative pavement, and/or signage that is identifiable during all seasons.

**C. Speakers and Menu Boards.**

1. Speakers and any other such devices used for audio amplification shall be located a minimum of 30 feet from any adjacent residential property line and shall not be audible beyond the property line.
2. Menu boards may be internally or externally illuminated in accordance with Article 34 (Signage). Menu boards utilizing digital sign technology shall comply with all applicable requirements of §215-34.18 (Digital Signs).
3. Menu boards shall not be illuminated outside of business hours.
4. To the greatest extent practicable, all speakers and menu boards shall face away from adjacent residential use(s) and public rights-of-way.

**D. Buffering and Landscaping.** All impervious surfaces, including curbing, shall maintain a setback of at least 10 feet from any abutting residential property line. Such setback areas shall be landscaped to the satisfaction of the reviewing board in site plan review.

**E. Traffic Capacity Limitations.** No drive-through shall be permitted that is anticipated to be a significant detriment to the community or to the local road network. The applicant must demonstrate that the proposed use will not alter levels of service or utilize available traffic capacity to such an extent that it cannot be adequately mitigated or otherwise create unsafe on-site or off-site traffic conditions.

**§215-24.12****FUELING & CHARGING STATIONS**

**A. General Requirements.** All fueling and charging stations shall be in conformance with the following.

1. A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments shall be determined through site plan review.
2. No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theater, church, or other public gathering place, park, playground or fire station unless a street 50 feet or more wide lies between such service station and such building or use.
3. The storage and/or display of vehicles for sale or for rent shall be prohibited.

**B. Fueling Stations.**

1. No part of any filling pump, lift, or other service appliance shall be erected within 100 linear feet of a property line of any residential district or use.
2. No fuel pump shall be located closer than 20 feet to any side lot line nor closer than 35 feet to any street line, measured from the outside edge of the fuel island.
3. Minor vehicle repair or service may be permitted provided all activities are conducted within a completely enclosed building.

**C. Charging Stations.** The following requirements shall apply to charging stations and electric vehicle supply equipment (EVSE) established as a primary use or part of an approved accessory off-street parking area. Private charging stations and EVSE installed as an accessory use to single- or two-family dwellings are exempt.

1. Charging stations and EVSE shall also comply with the requirements of Article 30 (Circulation, Access, and Parking), where applicable.
2. Permitted EVSE shall include Level 1, 2, and 3 charging stations.
3. Battery charging station outlets and connector devices shall be mounted to comply with local and state building and energy codes and must comply with all relevant Americans with Disabilities Act (ADA) requirements.
4. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designed and located as to not impede pedestrian travel or create trip hazards on sidewalks.
5. Cords shall be retractable or have a place to hang the connector and cord at least three (3) feet off the ground. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
6. EVSE pedestals shall be designed to minimize potential damage by accidents, vandalism and to be safe for use in inclement weather.
7. EVSE shall not encroach into the required dimensions of a parking space (length, width, and height clearances).
8. EVSE shall be maintained in all respects, including the functioning of the equipment. A phone number or other contact information shall be provided on the equipment for reporting problems with the equipment or access to it.
9. All charging stations shall provide EVSE in at least one (1) accessible parking space or 25% of the minimum number of accessible parking spaces required by the ADA, whichever is greater.

## §215-24.13

### HOME OCCUPATIONS

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- A. **Purpose.** The purpose of regulating home occupations is to provide residents with the opportunity to conduct professional office or administrative uses within their home, while still preserving the value and character of the neighborhood.
- B. **Permitted Occupations.** Permitted home occupations include lawyers, accountants, authors, engineers, architects, consultants, realtors, insurance agents/brokers, artists, photographers, tailors, repairpersons, beauticians, barbers, counselors, teachers, tutors, music or art instructors, seeing no more than one client in-person at a time, or other such vocations which the Zoning Board of Appeals deems appropriate by virtue of similarity in nature, activity, and/or extent.
- C. **Prohibited Occupations.** Prohibited home occupations include those that would generate adverse impacts to or are incompatible with the existing character of a residential neighborhood. These uses include, but are not limited to, retail stores, medical or emergency services, animal care services, and vehicle sales, service, or repair, dancing instruction, instrument instruction in groups, tearooms, convalescent homes, or mortuary establishments.
- D. **General Regulations.**
  1. The home occupation must be clearly incidental and secondary to the use of the residential dwelling and shall conform to all requirements of the NYS Uniform Building and Fire Prevention Code.



2. The residential character of the lot and structures located thereon shall be preserved. Structural alterations or additions of a nonresidential nature shall be prohibited.
3. The home occupation shall be owned and operated by a full-time resident of the dwelling.
4. All home occupation related activities shall occur wholly within an enclosed structure.
5. No more than one employee shall be permitted that is a nonresident of the dwelling.
6. No more than one patron shall be served by the home occupation at one time, except for home day care centers as permitted by §215-24.10.
7. Hours of operation shall be limited to those between 8:00 AM and 9:00 PM
8. There shall be no exterior display or storage of materials, good, supplies, or equipment related to the home occupation.
9. No home occupation shall produce odors, noises, dust, vibrations, glare, or any other nuisance not typically found in a residential neighborhood.
10. On-site retail sales are prohibited, except for the sale of items that are clearly incidental to a permitted home occupation.
11. Deliveries to home occupations shall be permitted by two-axle vehicles only.
12. No home occupation shall be permitted that generates more than the average volume of waste of the residential use of the dwelling in which it is located.

## §215-24.14

### MARIJUANA & CANNABIS USES

- A. **Retail Dispensaries and Microbusinesses.** All retail marijuana and cannabis uses, where permitted by this Chapter, shall require the review and approval of a site plan by the Planning Board. The purpose of this is to prepare and provide for the high level of demand and traffic typically experienced by such use, while also giving the Town and applicant an opportunity to adapt to any changes in the intensity of use during the first year of operation.
  1. Site Plan Review Required. Prior to establishing and operating such a use, approval of a site plan shall be required. Such plan shall address the potential issues resulting from high volumes of pedestrian and vehicular traffic and activity. This may include, but is not limited to, identification of a queuing plan for pedestrians and vehicles and temporary or overflow parking provisions.
  2. A copy of the approved state license from the Office of Cannabis Management shall be provided to the Town along with the application materials regarding safety and security on the site.
- B. **Distribution, Delivery, Processing, Cultivation.**
  1. Production and supplying uses for marijuana and cannabis shall submit an energy use plan as part of special use permit and site plan review. The energy use plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand. The plan shall also indicate how the operation

will implement best practices for energy consumption to reduce demand on public infrastructure.

2. Additional review criteria to be considered as part of special use permit and site plan review include air quality impacts, wastewater management, solid waste disposal, odors, and buffering from residential districts and uses.

## §215-24.15

### MULTI-FAMILY DWELLINGS

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- A. **By Conversion.** The conversion of an existing single- or two-family dwelling to three or more units, where permitted by this Chapter, shall be required to comply with the following:
  1. No dwelling unit conversion shall be permitted in a structure with less than 1,000 square feet of gross floor area. No dwelling unit conversion shall cause the use to exceed the maximum density requirements of the district in which it is located.
  2. All dwelling units and structures resulting from conversion shall comply with the standards set forth in the NYS Uniform Code. Said standards shall take precedence to this Chapter should there be a conflict.
  3. Any alterations made to the exterior of the building due to the unit conversion shall be completed in such a way to preserve the single- or two-family residential character.
  4. No dwelling unit conversion shall be permitted unless the dwelling, following such conversion, can comply with all off-street parking requirements of this Chapter. Landscaping and screening of off-street parking areas shall be provided as determined necessary in site plan review.
  5. Conversions of dwellings that decrease the number of units or combine units shall be required to ensure the discontinued dwelling unit is permanently and fully integrated into a legal dwelling unit with unimpeded access throughout the legal unit.
- B. **New Construction.** Newly constructed multi-family dwellings shall be in conformance with the following regulations and design standards:
  1. When adjacent to an existing residential neighborhood building designs are required to take the form of single- or two-family dwellings in a manner that is visually compatible with the architectural detailing of the Town's traditional residential character.
  2. Buildings shall not have uninterrupted or undefined continuous wall or roof planes in excess of 50 feet. Varied roof heights, projecting bays, gables, recesses, and porches shall be used to visually divide larger building facades to produce a scale that is compatible with and complimentary to adjacent residential development.
  3. Buildings shall maintain a distance of at least 20 feet from other structures on the lot.
  4. Detached garages shall be located in the side or rear yard only.
  5. Where garages are erected to serve multi-family dwellings, all of the exterior walls thereof shall be constructed of or faced with materials similar to those used in the facing of the main building.

6. Buildings shall be laid out so that the primary entrances face the street. Each entrance shall be connected by sidewalk to the Town's public sidewalk system, where applicable.
7. Developments of 10 or more units shall provide recreational open space at a standard of 250 square feet per dwelling unit. Each recreation area shall be developed with both passive and active recreation facilities, including the installation of appropriate playground or leisure equipment. Where compliance with the minimum open space area is infeasible due to lot size or other physical restriction, the reviewing board may waive or modify this requirement.

**§215-24.16****OUTDOOR ASSEMBLY, SEATING, SALES, DISPLAY, & STORAGE AREAS**

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These standards shall not apply to outdoor residential accessory uses.

**A. General Requirements.**

1. No area shall block windows, entrances, exits, pedestrian or vehicular access, sidewalks, fire lanes, or other travel lanes.
2. No area shall exceed 30% of the gross floor area of the primary use.
3. All areas shall remain clean and free of trash or debris at all times.
4. The use of such areas shall be clearly ancillary to the primary use. Businesses and operators not directly associated with the primary use of the property are not permitted to occupy such space.
5. No outside music or speakers shall be permitted.
6. Noise levels shall not exceed those outlined in Chapter 133 of the Code of the Town of Tonawanda.

**B. Assembly, Seating, Sales, and Display Areas.**

1. Such areas may be allowable in the public right-of-way with the issuance of a license by the Town Board and site plan approval in accordance with this Chapter.
2. All areas shall be located adjacent to the wall of the primary structure and shall not extend more than 20 feet from said wall or beyond any public right-of-way or property line, unless otherwise approved through site plan review.
3. No outdoor assembly, seating, sales, or display area shall be used for storage purposes.
4. Seating and all items for sales or display shall be removed, enclosed, screened, and/or otherwise secured during non-business hours.

**C. Storage Areas.**

1. No area shall be permitted in any front yard or within any public right-of-way.
2. All areas shall be fully screened from public view and from adjacent residential uses or districts.

3. Outside storage areas shall not exceed 12 feet in height, unless within the MU-I or GI District, and located at least 150 feet from the public right-of-way.
4. The storage of materials shall be limited to those necessary for and specific to the operation of the use, such as items for sale at a retail store or building materials for a construction company.
5. Where more than five commercial vehicles are to be parked overnight or otherwise stored on-site, the parking area for such vehicles shall be in the rear yard and screened from the view of adjacent property and rights-of-way. The nature and extent of such screening shall be approved as part of site plan review.
6. Acceptable pavement surfaces include asphalt, concrete, or other such paving systems designed to carry anticipated vehicle and material weights.
7. Unacceptable paving surfaces include millings, loose stone, degraded concrete or asphalt, and any surface that will generate dust.
8. Exceptions may be made to the paving requirements by the Planning Board as part of site plan review.

**D. Outdoor Dining Permit.**

1. Any person, firm, partnership, corporation or any other entity in the food service or related industry desiring to provide patrons with outdoor facilities for dining or similar activity shall annually make application for an outdoor dining permit to the Code Enforcement Officer.
2. Prior to issuance of a permit, the applicant shall obtain site plan approval.
3. Permit Expiration.
  - a) All outdoor dining permits expire on the 31st day of December of each year.
  - b) Each outdoor dining permit shall be posted in a conspicuous location on the premises.
  - c) Any outdoor dining permit which has not been suspended or revoked may, upon filing of an application for renewal and payment of a fee prescribed by this section, be renewed for an additional period of one year from its expiration.
  - d) No outdoor dining permit shall be assignable or transferable.
4. Bar and/or restaurant facilities licensed by the New York State Liquor Authority (NYSLA) to sell alcohol on the premises shall provide written approval from the NYSLA to establish such outdoor dining prior to permit issuance.

**E. Temporary Use Permit.** The use of outdoor areas associated with a commercial use or business for a special event or other temporary purpose may be allowed with the issuance of a temporary use permit by the Director of Planning and Development, in accordance with this following.

1. Application Requirements. An application for a temporary use permit may be submitted by the property owner(s) to the Planning and Development Department on the provided form(s). The applicant shall attach materials addressing the following, as applicable:
  - a) A description of the temporary event or use, including dates/times.

- b) The number of employees at maximum shift.
  - c) The maximum seat capacity and/or anticipated number of people expected to attend over the course of the event.
  - d) A recycling and waste management plan.
  - e) The nature and type of all mechanical equipment provided and/or required.
  - f) Any desired or necessary temporary signage.
  - g) A description of any music or noise that may be generated by the proposed activity.
  - h) Anticipated parking demand and location and amount of parking to be provided.
  - i) A site plan, survey or aerial image denoting the location of the subject property and all structures thereon, including appropriate markings to show the location of all proposed activities.
  - j) Copies of any other required local, county, or state permits such as Erie County Health Department permits or fire inspection certificates.
2. Review Criteria. The Director of Planning and Development shall consider the following when reviewing an application for temporary use. The Director may consult with any other Town department or review board as deemed necessary for an adequate and informed review.
- a) Be in harmony with the general purpose and intent of this chapter, taking into account the location and size of the use, the nature and intensity of the operations involved or conducted in connection with it and the size of the site with respect to the streets giving access thereto.
  - b) Not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures.
  - c) Not create a hazard to health, safety or general welfare.
  - d) Not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
  - e) Not introduce substantial adverse impacts on the surrounding neighborhood.
  - f) Not be detrimental to the flow of traffic, taking into account the duration and times of the activity.
  - g) Not adversely impact pedestrian safety.
  - h) Not create a hazard to health, safety or general welfare.
  - i) Not be a nuisance or create offensive odors or noise.
3. Issuance of Permit.
- a) The Director of Planning and Development may grant, grant with conditions, or deny the application.
  - b) The permit shall be valid for the dates/times approved as part of review. No permit may be granted for a period exceeding 30 days.
  - c) No more than four permits may be granted to any one applicant, property, or use in a 12-month period.

**§215-24.17****RECREATION & ENTERTAINMENT FACILITIES, OUTDOOR**

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- A. Permanent, enclosed bathroom facilities for the public shall be provided on site.
- B. No outdoor recreation or entertainment facilities shall be located closer than 200 feet to the property line of any adjacent residential use or district unless proper landscaping and screening is provided as approved in site plan review.
- C. Hours of operation shall be posted on-site. All outdoor facilities shall be secured and closed to the public outside of operating hours.
- D. A waste management plan shall be required to ensure proper upkeep of the site and disposal of trash, litter, animal waste, and other refuse.

**§215-24.18****RESTAURANTS & BARS**

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- A. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance with the regulations therein.
- B. Uses where the sale of food is the primary source of revenue shall be considered restaurants. Restaurants must have a full kitchen and menu as required by the NYS Liquor Authority when the sale of beer, wine, and/or liquor is provided.
- C. Bars shall include a minimum food preparation area and menu that satisfies the NYS Liquor Authority's minimum food requirement.
- D. A waste management plan shall be required to provide for proper upkeep of the site and disposal of refuse. All refuse containers shall be located in the rear yard and maintain a setback of at least five feet from all property lines.
- E. Where the provision of on-site refuse containers is infeasible, a shared waste management agreement may be established between adjacent uses. Under no circumstance shall any shared refuse container be located outside of a 200-foot radius of a single use.

**§215-24.19****VEHICLE SALES, SERVICE, & REPAIR SHOPS**

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- A. A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments shall be determined through site plan review.
- B. No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theater, church, or other public gathering place, park, playground or fire station unless a street 50 feet or more wide lies between such service station and such building or use.
- C. All automobile parts and dismantled vehicles are to be stored within a building, and no repair work or automobile maintenance is to be performed outside a building.
- D. No vehicle sales, service, or repair operation shall be used for auto wrecking.
- E. No more than five wrecked, partially dismantled, junked, or unlicensed vehicles shall be stored on site unless located within an enclosed structure. Such vehicles may be stored outdoor on the premises for no more than two weeks.

**§215-24.20****WINERIES, BREWERIES, & DISTILLERIES (INCLUDING MICROS)**

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- A. When adjacent to residential uses or districts, such uses shall be buffered to minimize visual and auditory impacts in a method approved during site plan review. Such buffering may include but is not limited to landscaping, screening, and fencing.
- B. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance with the regulations therein.
- C. Bars and tasting rooms shall include a minimum food preparation area and menu that satisfies the NYS Liquor Authority's minimum food requirement.
- D. A waste management plan shall be required to provide for proper upkeep of the site and disposal of refuse. All refuse containers shall be located in the rear yard and maintain a setback of at least five feet from all property lines.
- E. Where the provision of on-site refuse containers is infeasible, a shared waste management agreement may be established between adjacent uses. Under no circumstance shall any shared refuse container be located outside of a 200-foot radius of a single use.

# Article 25. Supplemental Regulations

## §215-25.1

### SIGHT OBSTRUCTIONS

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It is the intent that a person requiring ingress or egress from a private driveway, alley or intersections of public rights-of-way shall have a clear view of the street and sidewalk in all directions and that persons using the street or sidewalk will have a clear unobstructed view of vehicles approaching the street from private driveways, alleys or another street and that the view shall not be obstructed by parked vehicles, fences, hedges, shrubbery, trees or any structure greater than three feet in height above the ground elevation of said driveway at the street line. This unobstructed vision clearance shall apply to the area bounded by the first 15 feet from the point of intersection of the boundary lines of public or private rights-of-way in both directions and a line connecting the same. This unobstructed vision clearance shall also apply where lot lines intersect street lines and when the edge of a driveway for either of the adjoining lots is within 15 feet of the lot line. Trees with branches no lower than 12 feet above the street grade within these areas of vision clearance shall not be deemed obstructions. Persons responsible for violations of these vision clearance requirements shall be served written notice by the Code Enforcement Officer ordering correction.

## §215-25.2

### ANTENNA RESTRICTIONS

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In all zoning districts, no antenna or antenna support structure of any type shall be located in the front yard of any premises, except that a single-wire antenna utilized by a person who holds a valid amateur radio operator's license issued by the Federal Communications Commission shall be permitted to project into the front yard of a premises and the required antenna support system may be situate thereon.

## §215-25.3

### EXCAVATION, REMOVAL, & STORAGE OF MATERIALS

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Standards for the excavation, removal and storage of materials are contained in Chapter 179 of the Code of the Town of Tonawanda, New York.

## §215-25.4

### HOME VEHICLE & APPLIANCE REPAIR

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The repairing, rebuilding, servicing, maintenance, painting or repainting of motor vehicles, motorcycles, boats, trailers, furniture or other appliances owned by the resident of the property upon which such activity is to be conducted is permitted, provided the activity is controlled to avoid unreasonable interference with the use of any adjoining or neighboring premises.

## §215-25.5

### OVERHEAD ELECTRIC CIRCUITS

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Overhead electric circuits to garages or accessory structures shall not be permitted. All electric circuits and feeders must be installed underground.



## §215-25.6

## FENCES

**A. General Requirements.**

1. It shall be the responsibility of the property owner to ensure all fencing is located upon their own property and not on adjoining property.
2. Fences shall be oriented so that the side with posts or other structural supports faces the interior of the lot on which it is located, unless such posts or supports are an integral part of the decorative design of the fence.
3. No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.
4. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e. grass, weeds) around a fence is regularly mowed.
5. A fence, wall or other similar structure shutting out, unduly or unnecessarily, light or air or which may cause a nuisance or a fire hazard shall not be permitted.

**B. Residential Districts and Uses.**

1. Fencing located within the front yard shall not exceed three (3) feet in height. For the purposes of this Section the term "open fencing" shall refer to fencing which is no more than 50% opaque.
2. Fencing located within any side yard shall not exceed four (4) feet in height.
3. Fencing in a rear yard shall not exceed six (6) feet in height.

**C. Nonresidential Districts and Uses.**

1. Fencing located within the front yard shall not exceed three (3) feet in height for closed fencing or four (4) feet in height for open fencing.
2. Fencing located within any side or rear yard shall not exceed eight (8) feet in height.
3. In industrial districts, fences in the side or rear yard shall not exceed 10 feet in height.

**D. Non-Lot Line Fences.** Fences other than lot-line fences may be erected if approved by the Code Enforcement Officer. Any person intending to erect such a fence shall first make application to the Code Enforcement Officer. Such application shall specify the reasons and need for such a fence. The Code Enforcement Officer may then determine whether or not to approve such application and, if approved, may specify such additional conditions which, in his sole discretion, he may deem necessary.

**E. Height Exceptions.**

1. Where a residential use abuts a nonresidential use or district, the maximum fence height requirement for the nonresidential use shall apply to both properties.
2. In nonresidential districts, fences utilized for the purposes of screening dumpsters, outdoor storage areas, telecommunications facilities, energy facilities, or other potentially unsightly uses or structures, where the

maximum height would be insufficient to properly screen such use, may exceed said maximum height with site plan review approval.

3. The maximum building height restriction in any district shall not apply to the antenna or antenna support structure utilized by any person who holds a valid amateur radio operator's license issued by the Federal Communications Commission.

**F. Materials.**

1. No fence shall be comprised of unfinished metal, concrete block, plastic, fiberglass, or plywood.
2. Decorative concrete fences are permitted in nonresidential districts.

- G. Snow Fences.** Snow fences may be erected and maintained without a permit only in locations appropriate for the control of snow between the dates of November 1 and April 1. All other uses, with the exception of temporary protection at emergency and/or construction sites, are strictly prohibited.

## §215-25.7

### SWIMMING POOLS (PRIVATE)

- A. Applicability.** This section shall apply to any swimming pool operated as an accessory use to a residential dwelling unit or units and located on an individual residential lot or site.

1. An in-ground swimming pool is one so constructed that the majority of the pool depth is located below grade, requiring significant excavation of land and often providing for at-grade access.
2. An aboveground swimming pool is one so constructed that the majority of the pool depth is located above grade, raising the level of access above grade and often requiring the use of a ladder or other structure to gain entry.

**B. General Requirements.**

1. All swimming pools, hot tubs, and spas shall be in conformance with the Residential Code of New York State.

**C. Location.**

1. A swimming pool as an accessory structure to a residential use may be installed and used in a rear or side yard of a lot in a residential district, provided that the rear and side setback requirements are met.
2. A swimming pool hereafter constructed on the rear of a corner lot and adjacent to the side line of an interior lot shall be located not less than six feet from the above-mentioned side line and not less than two feet or more than three feet from the side line of the lot opposite the side street line.

## §215-25.8

### PROJECTION INTO YARDS

Only the following shall be permitted to project into a minimum yard setback:

- A.** Awnings, canopies, single-story porches, and deck stairs may project a maximum of nine feet.

- B. Cornices, eaves, passive solar devices, other such architectural features, and roof-mounted antennas may project a maximum of two feet.
- C. Exterior uncovered and unenclosed handicap access facilities may project up to the lot line if required to meet the access requirements of the Americans with Disabilities Act (ADA).

**§215-25.9**

**EXCEPTIONS TO REAR & SIDE YARD REQUIREMENTS**

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The space required in a side or rear yard shall be open and unobstructed except for the ordinary projections of window sills and belt courses not to exceed four inches; projections of cornices, eaves or ornamental features not to exceed 18 inches; projections of fireplaces, chimneys or flues not to exceed 12 inches; or an open porch, patio or veranda projecting a maximum of nine feet from the main body of the rear of the dwelling.

# Article 26. Solar Energy Systems

## §215-26.1

### SMALL-SCALE SOLAR ENERGY SYSTEMS

- A. Interpretation.** The provisions of this chapter shall be interpreted as providing minimum requirements for small-scale solar energy systems adopted for the purpose of promoting the health, safety, and general welfare of this community.
- B. Intent; Greater Restrictions to Prevail.** It is not intended by this chapter to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this chapter imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.
- C. Building Permit Required.**
1. Installation of solar energy systems and equipment is encouraged on all preexisting structures; however, access to sunlight which is necessary therefor cannot be obtained through the provisions of this chapter. The installation of a solar collector, whether attached to the main structure or as a detached accessory structure, shall require a building permit and a New York State Unified Solar Permit as stated in §54-5F(8).
  2. Other alternative natural energy conservation devices shall be considered structures and shall require a building permit. All permit applications for such devices will be reviewed and considered as they meet §215-10.3 of this chapter.
- D. General Requirements.**
1. Solar collectors are subject to the minimum setbacks, offsets and lot area coverage for whatever use district in which they are proposed to be installed.
  2. Height limitations for solar collectors in all residential districts and the MU-N District shall be five feet above the level of the permitted building height. Height limitations in all other districts shall be in accordance with the regulations therein.
  3. All solar collectors and their associated support elements shall 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.
  4. All solar energy systems located in residential districts are only permitted to contain solar collectors located on the rooftops of principal or accessory buildings. The solar collectors must be completely contained within the limits of the building roof. All other equipment and components of the

solar energy system shall be located within the rear yard only and are subject to setbacks for accessory structures.

## §215-26.2

### LARGE-SCALE & UTILITY-SCALE SOLAR ENERGY SYSTEMS

#### A. Purpose.

1. The Town of Tonawanda recognizes that solar energy is a clean, readily available, and renewable energy source. Development of solar energy systems provides an excellent opportunity for the reuse of brownfields and landfills throughout the Town and offers an energy resource that can act to attract and promote green business development.
2. The Town of Tonawanda has determined that comprehensive regulations regarding the development of solar energy systems is necessary to protect the interests of the Town, its residents, and its businesses. This article is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the aesthetic qualities and character of the Town.

#### B. Applicability.

1. Any large-scale or utility-scale solar energy system erected, constructed, modified, or operated in the Town of Tonawanda after the effective date of this article shall be in compliance with this section.
2. In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this article. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.

#### C. Permits and Approvals Required.

1. A building permit shall be required for installation of all large-scale and utility-scale solar energy systems.
2. A special use permit shall be required in accordance with the district use tables of this Chapter.
3. Building- or ground-mounted large-scale and utility-scale solar energy systems shall be subject to site plan review.
4. Large-scale solar energy systems shall not be permitted as a principal use on a lot in the MU-GC District.

#### D. Applications for Solar Energy Systems. All applications for large-scale or utility-scale solar energy systems shall include the following:

1. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading

activities are subject to review and approval by the Planning Board and shall not commence until the issuance of site plan approval.

2. Certification from a professional engineer or architect registered in New York State indicating that the building or structure to which the solar energy system is to be affixed is capable of handling the loading requirements of the solar energy system and various components.
3. One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
4. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
5. Plan for clearing and/or grading of the site. If necessary, a plan for stormwater management and erosion control of the site.
6. Documentation of utility notification, including an electric service order number.
7. Decommissioning plan and description of financial surety that satisfies the requirements of Subsection L for utility-scale only.
8. Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specs and photos of the proposed solar energy system, solar collectors, and all other components.
9. Sunchart. Where an applicant for a solar energy system requests that the setback for solar collectors from the south property line be less than that identified in Subsection I, the Planning Board may require that the applicant submit a sunchart for the proposed site indicating the sun angle for the southern boundary of the site for a minimum four-hour continuous period during the time of the highest sun angle on December 21, along with the potential for existing buildings, structures, and/or vegetation on the site or on adjacent sites to obstruct the solar skyspace of the proposed solar energy system. The sunchart shall also indicate the potential for obstructions to the solar skyspace of the proposed solar energy system under a scenario where an adjacent site is developed according to Chapter 215, Zoning, with a building/structure built to maximum bulk and height at the minimum setback. Where no standards for height and/or setback are established, this scenario shall assume a minimum fifty-foot building height developed with a maximum setback of five feet from the property line. The sunchart shall be kept on file at the Town Building Department and determine the minimum setback required for any solar collectors from the south property line as well as the solar skyspace that should be considered when development of neighboring properties occurs. This article in no way places responsibility on the Town for ensuring or enforcing solar skyspace easements, nor places responsibility for guaranteeing the solar skyspace of a solar energy system in the event setbacks are waived at the applicant's request.
10. A property owner who has installed or intends to install a solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with the Town Code. In the event that solar easements are negotiated by an applicant

or property owner, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at a minimum, include:

- d) The restrictions placed upon buildings, structures, vegetation, and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system.
  - e) A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions.
  - f) The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day.
  - g) Provisions for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses.
  - h) Provisions for compensation of the owner/operator benefiting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement.
  - i) The terms or conditions, if any, under which the easement may be revised or terminated.
11. Where the owner of the property is different than the site host of a solar energy system, the owner of the property shall provide an affidavit or evidence of agreement between the property owner and the solar energy system's owner/operator verifying that the system owner/operator has the permission of the property owner to install and operate the solar energy system.
- E. Fees.** All fees shall be approved by the Town Board by resolution. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required under SEQRA if an EIS is required.
- F. General Provisions.** All applications for large-scale or utility-scale solar energy systems shall be in accordance with the following:
- 1. All solar energy systems shall adhere to all applicable Town of Tonawanda building, plumbing, electrical, and fire codes.
  - 2. Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Tonawanda or other federal or state regulatory agencies.
  - 3. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.

4. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.
  5. All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
  6. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
  7. Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
  8. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- G. Lot Requirements.** The overall footprint for any large-scale or utility-scale ground-mounted solar energy system shall be permitted to occupy up to 100% of the overall buildable area of the site, and shall not be counted towards the site's maximum lot coverage. Overall footprint shall be determined by the outline created on the ground by wholly enclosing all components/ structures of a solar energy system on a lot.
- H. Bulk and Siting Requirements.**
1. Large-scale or utility-scale solar energy systems located in an industrial district.
    - a) Rooftop-mounted solar energy systems.
      - (i) The maximum height of any rooftop-mounted solar energy system shall be 15 feet, as measured from the finished surface of the roof to which the system is affixed.
      - (ii) Where rooftop-mounted solar energy systems are affixed to a pitched or peaked roof, the solar energy system should generally follow the slope of the roof.
      - (iii) A rooftop-mounted solar energy system shall not extend horizontally beyond the plane of the roof surface.
    - b) Building-mounted solar energy systems.
      - (i) The maximum height of a building-mounted solar energy system shall be 15 feet as measured from the lowest point where the system is affixed to the vertical side of a building.
      - (ii) A building-mounted solar energy system shall not extend horizontally more than eight feet from the vertical surface of a building.
      - (iii) Building-mounted solar energy systems should be integrated into the design of the building and shall not obstruct any window, door, or other architectural feature of the building.



- c) Ground-mounted solar energy systems. The maximum height of a ground-mounted solar energy system shall be 30 feet as measured from the finished grade.
- 2. Large-scale or utility-scale solar energy systems located in a mixed-use district:
  - a) Rooftop-mounted solar energy systems.
    - (i) The maximum height of any rooftop-mounted solar energy system shall be eight feet, as measured from the finished surface of the roof to which the system is affixed.
    - (ii) Where rooftop-mounted solar energy systems are affixed to a pitched or peaked roof, the solar energy system should generally follow the slope of the roof.
    - (iii) A rooftop-mounted solar energy system shall not extend horizontally beyond the plane of the roof surface.
    - (iv) Where practical and when obstruction of solar skyspace can be avoided, a rooftop-mounted solar energy system shall be screened from view from the public right-of-way by use of a building parapet or other measure.
  - b) Building-mounted solar energy systems.
    - (i) The maximum height of a building-mounted solar energy system shall be 15 feet as measured from the lowest point where the system is affixed to the vertical side of a building.
    - (ii) A building-mounted solar energy system shall not extend horizontally more than eight feet from the vertical surface of a building.
    - (iii) Building-mounted solar energy systems should be integrated into the design of the building and shall not obstruct any window, door, or other architectural feature of the building.
    - (iv) Building-mounted solar energy systems shall not be located on the side of a building that faces a public right-of-way.
  - c) Ground-mounted solar energy systems.
    - (i) The maximum height of a ground-mounted solar energy system shall be 15 feet as measured from the finished grade.
    - (ii) Ground-mounted solar energy systems shall not be located within the front yard.

**I. Setbacks.**

- 1. Large-scale or utility-scale ground-mounted solar energy systems.
  - a) Where an applicant fails to provide proof that a solar skyspace easement has been negotiated with adjacent property owners, or fails to provide the Town with a sunchart or other written evidence justifying a reduced setback, the default setback from the south property line for all solar collectors constructed as part of a large-scale or utility-scale ground-mounted solar energy system shall be 135 feet.

- b) In no case shall the setback from the south property line be less than that determined by the setback for accessory structures identified for the zoning district in which the system is located.
2. Utility-scale ground-mounted solar energy systems.
    - a) All solar energy equipment and components/structures developed as part of a utility-scale ground-mounted solar energy system shall be set back from any property zoned residential or mixed use, a public road, or any public park a minimum of 50 feet.
    - b) All other setbacks for all solar energy equipment and components/structures developed as part of a utility-scale ground-mounted solar energy system, whether developed as a principal use or accessory use, shall be as determined by the setback for principal structures identified for the zoning district in which the system is located.
  3. All other setbacks for all solar energy system equipment and components/structures developed as part of a large-scale or utility-scale rooftop-mounted, building-mounted and/or ground-mounted solar energy system not identified above shall be as determined by the setback for accessory structures identified for the zoning district in which the system is located.

**J. Landscaping and Screening.**

1. Due to the need to keep the solar skyspace for solar energy systems free from obstructions, the Planning Board may recommend modifying the landscaping requirements within Chapter 215, Zoning, for any site proposed to contain solar collectors and shall ensure that any landscaping proposed is low-growth vegetation that will not obstruct the solar skyspace at mature height.
2. Following construction of a large-scale or utility-scale ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
3. Applications for utility-scale solar energy systems shall meet the following additional criteria:
  - a) Any site containing a utility-scale solar energy system shall contain fencing or other enclosure acceptable to the Town enclosing all solar energy system components that present safety hazards.
  - b) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, shall be provided along any property line that abuts an existing residence or any property zoned residential or mixed use.

- K. Certification.** After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.

**L. Abandonment or Decommissioning.**

1. Unsafe, inoperable, and/or abandoned solar energy systems and solar energy systems for which a special use permit has expired shall be removed by the owner. A solar energy system shall be deemed

abandoned when it fails to produce energy for at least one year. All safety hazards created by the installation and operation of the solar energy system shall be eliminated and the site restored to its preexisting condition within six months of the removal of the solar energy system.

2. For all utility-scale solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value.
3. The applicant for a utility-scale solar energy system where the system is the principal use on a lot shall, as a condition of the special use permit and upon each renewal, provide and maintain a form of financial surety. Such financial surety shall be provided either through a security deposit, escrow account, bond, or in a manner otherwise acceptable to the Town. The amount shall be based upon the estimated decommissioning costs and shall not exceed \$50,000 per application. It is intended to cover, in whole or in part, the cost of decommissioning in the event the Town must remove any utility-scale solar energy systems and associated structures/components, as well as restore the site subsequent to such removal in accordance with the approved decommissioning plan. Upon successful completion of all decommissioning activities, any remaining portion of the posted financial surety shall be returned to the applicant. Such financial surety shall not be required for municipally or state-operated solar energy systems or for utility-scale solar energy systems that meet all of the following criteria:
  - a) The solar energy system is constructed as part of an approved industrial or business park; and
  - b) The approved industrial or business park consists of a solar energy system or systems located on land that is leased with ownership retained by the owner of the industrial or business park; and
  - c) The solar energy system supplies energy to tenants of the industrial or business park and not solely into the grid.

**M. Transfer of Special Use Permit.**

1. Special use permits granted for utility-scale solar energy systems and performance standards use permits issued for large-scale or utility-scale solar energy systems shall be assignable or transferable so long as they are in full compliance with this article and all conditions, and the Building Department is notified of the transfer at least 15 days prior thereto.
2. Any post-construction changes or alterations to the solar energy system shall be done by amendment to the special use permit only and subject to the requirements of this article.

# Article 27. Wind Energy Conversion Systems (WECS)

## §215-27.1

### PURPOSE & APPLICABILITY

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- A. Purpose.** The Town of Tonawanda has determined that a comprehensive local law regulating the development of WECS is necessary to protect the interests of the Town and its residents. The Town adopts this law to promote the effective and efficient use of the Town's wind energy resource through WECS, and to regulate the placement of such systems so that the public health, safety and welfare will not be jeopardized, and that the WECS will not have a significant adverse impact on the aesthetic qualities of the Town.
- B. Applicability.** The requirements of this section shall apply to all WECS proposed, operated, modified, or constructed after the effective date of this article.

## §215-27.2

### PERMITTING

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- A.** No WECS shall be constructed, reconstructed, modified, or operated in the Town of Tonawanda except in compliance with this article.
- B.** A building permit shall be required for installation of all WECS.
- C.** A special use permit shall be required in accordance with the district use tables of this Chapter. The special use permit shall not be assignable or transferable.
- D.** All WECS or MET shall be subject to site plan review.
- E.** Permits approved shall be renewed annually. The permit holder shall make renewal application to the Code Enforcement Officer 60 days prior to expiration to allow for inspection and full compliance with all applicable laws and regulations. The renewal application will include a fee as set by the Town Board.
- F.** Any changes or alterations postconstruction to the WECS shall be done only by amendment to the special use permit and subject to all requirements of this article.
- G.** Industrial grade WECS are not allowed in the Town of Tonawanda.

## §215-27.3

### APPLICATION PROCEDURE

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- A.** Applications for a building-mounted WECS shall be made through the Town Building Department on a specially designated building permit application.
- B.** Applications for a special use permit for noncommercial WECS will follow the general process for the issuance of a special use permit as described in Article 43 of this Chapter and this article.
- C.** Applications for site plan approval for noncommercial WECS shall be made in accordance with Article 42 of this chapter.

- D. The applicant shall agree to indemnify and save the Town, its Town Board, officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents and/or employees arising from the construction, operation or maintenance of the WECS.

## §215-27.4

### APPLICATION REQUIREMENTS

Applicants for a special use permit for WECS within the Town of Tonawanda shall submit the following information to the Town for its referral to a professional engineer or consultant and the Planning Board of the Town for review and recommendation to the Town Board:

- A. Name and address of the applicant.
- B. Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
- C. Visual environmental assessment form (visual EAF), including appropriate models to scale elevations, renderings and photography assessing the WECS from key viewpoints identified in the visual EAF (or by the Town of Tonawanda). The visual EAF shall include a detailed photographic simulation showing the site fully developed with all proposed WECS and accessory structures. Each photo must be labeled with line of sight, elevation and with date taken imprinted on the photograph.
- D. Landscaping plan indicating the proposed placement of the facility on the site, location of existing structures, and any other significant environmental features. Shall include the type and location of plants proposed to screen the WECS at ground level; method fencing prohibiting unauthorized entry, and any ground level lighting.
- E. A narrative describing the distance of the proposed WECS, and the extent to which it would be visible, from any local, county, state, or national scenic, historic, or environmental resources located within its viewshed, including any proposed mitigation measures.
- F. SEQR full environmental assessment form (EAF).
- G. A site plan drawn in sufficient detail to show the following:
  1. Location of the WECS on the site and the tower height, including blades, rotor diameter and ground clearance.
  2. Utility lines, both above and below ground, within a radius equal to the proposed tower height, including the blades.
  3. Property lot lines and the location and dimensions of all existing structures and uses on site within 1,000 feet of the WECS.
  4. Surrounding land use and all structures within 1,500 feet of the WECS.
  5. Dimensional representation of the various structural components of the tower construction including the base and footing.
  6. Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code:
  7. Existing topography.
  8. Proposed plan for grading and removal of natural vegetation.

9. Proposed plan for restoration after construction according to Town of Tonawanda and New York State Department of Environmental Conservation guidelines.
10. Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
11. Plan for ingress and egress to the proposed project site including:
  - a) Road surface material stating the type and amount of surface cover.
  - b) Width and length of access route.
  - c) Dust control procedures.
  - d) Road maintenance schedule or program.
  - e) Review railroad accessibility for deliveries.
12. Detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material, equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in the field with name and phone number.
13. Tree delineation. All groves of trees shall be located on the site plan at time of application. No tree of three inches DBH or greater shall be removed without approval of the Planning Board.
14. Turbine information. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
15. Turbine drawings. Photographs or detailed drawings of each wind turbine model including the tower and foundation.
16. Noise report. [See §215-27.6(H) for requirements.] A noise report shall be furnished which shall include the following (the noise report requirement may be waived by the Town for noncommercial WECS):
  - a) A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
  - b) A description and map of the noise-sensitive environment, including any noise-sensitive receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two miles of the proposed wind energy facility.
  - c) A survey and report prepared by a qualified engineer that analyzes the preexisting ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction, and analyses at affected sensitive receptors located within two miles of the proposed project site.
  - d) A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and

operation workers, and estimates of expected noise levels at sensitive receptor locations.

- e) A description and map of the cumulative noise impacts.
  - f) A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with levels in this article.
  - g) Identification of any problem areas.
  - h) Manufacturers noise design and field testing data, both audible (dBA) and low frequency (deep bass vibration), for all proposed structures.
  - i) A report that outlines issues and considerations for individuals that use hearing aids.
17. A geotechnical report shall be furnished which shall at a minimum include the following:
- a) Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - b) Foundation design criteria for all proposed structures.
  - c) Slope stability analysis.
  - d) Grading criteria for ground preparation, cuts and fills, and soil compaction.
18. Ice throw calculations (for commercial WECS): a report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
19. Blade throw calculations (for commercial WECS): a report from a New York State professional engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
20. Catastrophic tower failure. A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).
21. Emergency ingress and egress plan. Plan illustrating how emergency service personnel should respond to emergencies in and around the WECS Plan should illustrate: ingress and egress routes for emergency service personnel, evacuation routes for WECS staff, and minimum safe distance to establish an evacuation perimeter.
22. Evacuation perimeter: minimum safe distance specified by the WECS manufacturer that people should be removed from the radius of the WECS in the event of an emergency or catastrophic tower failure.
23. Plan illustrating how the manufacturer's WECS is designed to cease operations in the event of a fire. Plan also includes the manufacturer's recommendations for emergency service personnel response in the event of a fire. The Fire Safety Plan shall be approved by the Town of Tonawanda Fire Chief or appropriate Building Department designee.
24. FAA notification. A copy of written notification to the Federal Aviation Administration.

- 25. Utility notification. Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- 26. Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- 27. Floodplain. An application that includes any wind turbine which is located within a one-hundred-year floodplain area shall submit the appropriate floodplain study to the Town and any additional information as requested by the Town.
- 28. Other information. Such additional information as may be reasonably requested by the Development Services Staff, Planning Board or Town Board.

## §215-27.5

### PERMIT FINDINGS

Findings necessary to grant a WECS facility permit. In order to grant a WECS facility permit, the Town of Tonawanda shall review the application, all filings by any other party, and conduct a public hearing. A commercial wind energy facility permit shall not be granted unless the Town of Tonawanda makes the following findings based on substantial evidence:

- A. Consistent with the Comprehensive Plan. The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the Town of Tonawanda.
- B. Will not unreasonably interfere with the orderly land use and site plans. The proposed WECS facility will not unreasonably interfere with the orderly land use and development plans of the Town of Tonawanda.
- C. Benefits to the applicant and public will exceed any burdens. The benefits of the proposed WECS facility project to the applicant and the public will exceed any burdens.
- D. Not detrimental to the public health, safety and general welfare of the community. The proposed WECS facility will not be detrimental to the public health, safety or general welfare of the community.
- E. Complies with all required provisions of the Zoning Ordinance. The proposed WECS facility shall comply with all required provisions of the Zoning Ordinance, unless variances have been properly applied for and granted pursuant to this Chapter.

## §215-27.6

### WECS CONDITIONS

WECS shall be subject to the following conditions.

- A. **Setbacks.** The applicant shall adhere to the following setbacks.
  - 1. From property boundary lines:
    - a) One thousand feet from any residential district or MU-N District boundary line.
    - a) A minimum 1.5 times the total WECS height from any nonresidential property line excluding adjoining lot lines of project participants.



- b) One thousand feet from any other municipal boundary lines.
  - 2. From structures:
    - a) A minimum 1.5 times the total WECS height from any building located outside the applicant's property line.
    - c) A minimum of 1,500 feet from any dwelling (located off of the site).
  - 3. From public road and highways.
    - a) A minimum 1.5 times the total WECS height from any public road and highway.
    - d) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the center line of such right-of-way.
  - 4. From aboveground transmission lines greater than 12 kilovolts: A minimum 1.5 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD zones.
- B. Maximum Overall Height.**
- 1. Building-mounted WECS must meet the height requirements of the district in which they are located and are restricted to a maximum of 15 feet above the roofline.
  - 2. The maximum overall height of any noncommercial WECS shall be 165 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
- C. Signage.** No advertising sign or logo shall be placed or painted on any commercial wind energy facility.
- D. Color and Finish.**
- 1. Color and finish: Wind turbines shall be painted a nonobtrusive natural (such as white, gray, or beige) color that is nonreflective.
  - 2. Camouflage facilities: The design of WECS buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.
- E. Lighting.** Lighting plan required: The applicant shall submit a noncommercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
- F. Compliance with Regulatory Agencies.** The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the wind energy conversion system.
- G. Safety and Security Requirements.** The applicant shall adhere to the following safety and security requirements:
- 1. Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed-shutdown-disconnect switches shall be provided and clearly labeled on

the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.

2. Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
  3. Wiring. All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.
  4. All transmission lines from WECS to on-site substations shall be underground. The Town Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Town Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
  5. Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
  6. Climability. Wind turbine towers shall not be climbable (exterior) up to 15 feet above ground level.
  7. Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
  8. Self-supporting structures. All structures shall be of monopole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.
  9. Signage. Appropriate warning signage shall be placed on WECS and all WECS appurtenances (towers, electrical equipment, and wind energy facility entrances, etc.). Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state, and federal codes.
- H. Noise Requirements.** The applicant shall adhere to the following noise requirements:
1. Compliance with noise regulations required. A WECS permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
  2. Noise study required. The applicant shall submit a noise study based on the requirements set out in §215-27.4. The Planning Board and Technical Support Department shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
    - a) Low frequency noise.
    - b) Infrasound noise.
    - c) Pure tone.
    - d) Repetitive/impulsive sound.
  3. Noise setbacks. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such

greater setbacks are necessary to protect the public health, safety and welfare of the community.

4. Audible noise standard. The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dBA for more than five minutes out of any one-hour time period or to exceed 50 dBA for any time period.
  5. Operations, low frequency noise. A WECS facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
  6. Noise complaint and investigation process required. The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.
- I. **Fire Hazard Protection.** The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility as determined by the Town of Tonawanda Building Department or its designee. The proposed program may include, but is not limited to, the following:
1. Fireproof or fire-resistant building materials.
  2. Buffers or fire-retardant landscaping.
  3. Availability of water.
  4. An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment — without regular human occupancy.
  5. Provision of training and fire-fighting equipment for local fire protection personnel.
- J. **Impact on Wildlife Species and Habitat.** The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
1. Endangered or threatened species. Development and operation of a WECS facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Tonawanda Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria established by the federal or state regulatory agencies.
  2. Migratory birds. Development and operation of a commercial WECS shall be evaluated based on SEQRA findings.
- K. **Unsafe and Inoperable Wind Energy Facilities; Site Reclamation.** The applicant shall adhere to the following:
1. Removal and site restoration. Unsafe WECS facilities, inoperable WECS facilities, and WECS facilities for which the permit has expired shall be removed by the owner at their expense. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible as per Subsection 2 of this section. A bond or other appropriate form of security shall be required to cover the cost of the

removal and site restoration at the time of building permit application. The bond shall be payable to the Town of Tonawanda for the removal of nonfunctional WECS and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. Any fund established may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant.

2. Removal and site restoration plan required. The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Code Enforcement Officer and Technical Support Department for review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finished grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
  3. Public nuisance. Every unsafe WECS facility and every inoperable WECS facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable WECS facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.
  4. Inoperable, defined. A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- L. Interference with Residential Television, Microwave and Radio Reception.** The applicant must submit proof that the proposed construction of the WECS will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- M. Interference with Aviation Navigational Systems.** The applicant shall adhere to the following:
1. No interference with aviation facilities. No commercial wind energy facility shall be installed or operated in a manner that causes interference with the operation of any aviation facility.
  2. Compliance with FAA regulations. All wind energy siting shall comply with Federal Aviation Administration (FAA) regulations.
  3. Locking mechanisms to limit radar interference required. All WECS facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or clutter. This provision does not apply while the WECS is "free-wheeling" during startup and shutdown. The Town Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or clutter will be caused by the WECS facility.

- N. Erosion Control.** The applicant shall adhere to the following:
1. Before the Town of Tonawanda shall issue a grading or building permit for the WECS facility, the applicant shall submit a stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 73, Stormwater Management, of the Code of the Town of Tonawanda, if applicable. The SWPPP shall meet the performance and design criteria and standards in §73-9 of the Town Code or most recent standard.
  2. If the proposed project disturbs over one acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the notice of intent (N.O.I.) and stormwater pollution prevention plan (SWPPP) as required by the General Permit must be filed with the Town of Tonawanda prior to construction. Per Permit No. GP-02-01, construction cannot begin until the required time period for NYSDEC review has passed.

## §215-27.7

### CERTIFICATIONS

The applicant shall provide the following certifications:

- A. Certification of Structural Components.** The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer licensed and registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Building and Construction Code that have been adopted in New York State.
- B. Certification of Postconstruction.** After completion of the WECS, the applicant shall provide a postconstruction certification from a licensed professional engineer licensed and registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans.
- C. Certification of Electrical System.** The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
- D. Certification of Rotor Overspeed Control.** The rotor overspeed control system shall be certified in writing by a mechanical engineer licensed and registered in New York State. The engineer shall certify compliance with good engineering practices.
- E. Certification of Project.** Certificate of completion must be supplied by the applicant and approved by the Town of Tonawanda Code Enforcement Officer.
- F. Certification of Security.** The applicant shall certify to the Town that appropriate security will be in place to restrict access to the WECS and facilities following completion of construction.

## §215-27.8

### MONITORING REQUIREMENTS FOR WECS

- A. Right to Enter Premises for Monitoring.** Upon reasonable notice, Town of Tonawanda officials or their designated representatives may enter a lot on which a WECS facility permit has been granted for the purpose of monitoring

compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.

- B. Avian/Bat Impact Study Plan.** The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.
- C. Periodic Reporting Required.** The applicant shall agree to submit periodic monitoring reports to the Town. The report shall contain data on the operations and environmental impacts and shall be in the form prescribed by the Code Enforcement Officer.
- D. Power Production Report Required.** The applicant shall agree to submit a quarterly power production report to the Town. The power production report shall cover the preceding calendar quarter and shall be in the form prescribed by the Technical Support Department and shall include actual power production in kilowatt hours for each WECS facility.
- E. Inspections.** Unless waived by the Town Board, all commercial WECS shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Officer that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- F. General Complaint Process.**
  - 1. During construction, the Town of Tonawanda Code Enforcement Officer can issue a stop-work order at any time for any violations of the permit.
  - 2. Postconstruction. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Tonawanda Code Enforcement Officer, the permit holder/ contact person shall have seven working days to reply to the Town in writing.

## §215-27.9

### APPLICATION & DEVELOPMENT FEES & COSTS

- A. Application Fee.** The applicant shall pay all costs associated with the Town of Tonawanda's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Tonawanda may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- B. Development Fees to Be Paid.** A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a commercial WECS permit. Such fees must be related to the public need created by the wind energy development. The purposes for which the permit fee may be used include, but are not limited to, providing roads required by

the wind energy development, providing fire protection services, and establishing and operating a monitoring system.

- C. Proof of Insurance.** Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.

## §215-27.10

### WIND MEASUREMENT TOWERS

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- A.** The Town Board acknowledges that, prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer ("Met") towers, shall be permitted under the laws as a temporary special use (for up to two years) in the same zoning districts as the WECS.
- B.** An application for a wind measurement tower shall include:
1. Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  2. Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
  3. Address of each proposed tower site, including Tax Map section, block and lot number.
  4. Site plan.
  5. Decommissioning plan, including a security bond or cash for removal.

## §215-27.11

### PERMIT REVOCATION

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- A. Testing Fund.** A special use permit shall contain a requirement that the application fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by residents. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this article and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation.** A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate permit conditions, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.

- C. Notwithstanding any other abatement provision under this article, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: 1) order either remedial action within a particular time frame, or 2) order revocation of the wind energy permit or the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

## §215-27.12

### FEES & COSTS

All fees shall be approved by the Town Board by resolution. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

## §215-27.13

### ENFORCEMENT, PENALTIES & REMEDIES FOR VIOLATIONS

- A. Any person owning, controlling or managing any building, structure or land who shall undertake a WECS or wind measurement tower in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order of the Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense and subjected to a fine of not more than
- B. \$250 or to imprisonment for a period of not more than six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250 for each violation, and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this article, including the terms and conditions imposed by any permit issued pursuant to this article, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation to prevent the illegal act.



# Article 28. Battery Energy Storage Systems

## §215-28.1

### AUTHORITY & PURPOSE

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- A. Authority.** This article is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, §10(1) and (7); §261-263 of the Town Law and §10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.
- B. Statement of Purpose.** This article is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Tonawanda by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
1. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems.
  2. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.
  3. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.
  4. To protect the public health and safety of the residents of the Town of Tonawanda.
  5. To regulate the development of battery energy storage systems in accordance with the Town's Comprehensive Plan.

## §215-28.2

### APPLICABILITY

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- A.** The requirements of this article shall apply to all battery energy storage systems permitted, installed, or modified in Town of Tonawanda after the effective date of this article, excluding general maintenance and repair.
- B.** Battery energy storage systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C.** Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this article.

## §215-28.3

### GENERAL REQUIREMENTS

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- A. Permit Required.** A building permit, an electrical permit, special use permit, and potentially an operating permit shall be required for installation of all battery energy storage systems as provided by this chapter.
- B. SEQR Compliance.** Issuance of permits and approvals by the Tonawanda Town Board or Planning Board shall include review pursuant to the State

Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

- C. Additional Code Requirements.** All battery energy storage systems, all dedicated use buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.
- D. Fees.** Fees as set by the Town Board periodically by resolution must be paid at the time of submission of an application for site plan approval, special use permit, a building permit, for an amended building permit, or for renewal of a building permit. The applicant, for Tier 2 or 3 projects, may also be required to pay the costs of the Town's engineers and attorneys or outside professional consultants for time spent reviewing and analyzing the application.

## §215-28.4

### PERMITTING REQUIREMENTS FOR TIER 1

Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code, all other applicable Codes and the battery energy storage system permit, and are exempt from site plan review.

## §215-28.5

### PERMITTING REQUIREMENTS FOR TIER 2 (2A & 2B)

- A. Tier 2A Permits.** Tier 2A battery energy storage systems are located within a structure shall be permitted in all zoning districts, subject to the Uniform Code, all other applicable Codes, the battery energy storage system permit, and an operating permit, and are exempt from site plan review.
- B. Tier 2B Permits.** Tier 2B battery energy storage system is located exterior of the primary building on site and shall be permitted through the issuance of site plan approval and an operating permit within all zoning districts except any residential zoning districts or the MU-N District and shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2B battery energy storage systems associated with a solar or wind energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the zoning districts that allow a solar and/or wind project).
- C. Review Procedures.** Applications for the installation of a Tier 2B battery energy storage system have the following requirements:
  1. They shall be reviewed by the Code Enforcement Officer and the Town Planning Department for completeness. An application shall be complete when it addresses all matters listed in this article including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and floodplain, utility lines and electrical circuitry, signage, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment. Any deficiencies in the application must be addressed prior to substantive review.

2. They shall be referred to the County Planning Board pursuant to General Municipal Law §239-m, if required.
  3. The Planning Board shall take action on the application after the SEQR process is completed, which can include approval, approval with conditions, or denial.
- D. Utility lines and Electrical Circuitry.** All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- E. Signage.**
1. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including reach-back phone number.
  2. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- F. Lighting.** Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties. In accordance with Town law, there shall be no light spillage onto adjoining properties.
- G. Vegetation and Tree-cutting.** Areas within 10 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth in accordance with all applicable codes. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
- H. Noise.** The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 45 dBA as measured at the outside wall of any nonparticipating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.
- I. Decommissioning.** The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan may be required to include the following (Planning Board or Town Board to determine the extent of this plan depending on size and location of the installation):
1. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components,

structures, equipment, ancillary equipment and below ground infrastructure, security barriers, and transmission lines from the site.

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  3. The anticipated life of the battery energy storage system.
  4. The estimated decommissioning costs and how said estimate was determined.
  5. The method of ensuring that funds will be available for decommissioning and restoration.
  6. The method by which the decommissioning cost will be kept current.
  7. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  8. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- J. Site Plan Application.** For a Tier 2B battery energy storage system the site plan application shall include the following information:
1. Property lines and physical features, including roads, for the project site.
  2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
  3. A one- or three-line (as determined by the Town) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
  4. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
  5. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
  6. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
  7. Zoning district designation for the parcel(s) of land comprising the project site.
  8. Commissioning plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where

commissioning is required by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.

9. Fire safety compliance plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
10. Operation and maintenance manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
11. Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established in the Town of Tonawanda and by the Town Board through the approval process.
12. Prior to the issuance of the building permit, but not required as part of the application engineering documents must be signed and sealed by a NYS licensed professional engineer.
13. Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
  - a) Procedures for safe shutdown, deenergizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
  - b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
  - c) Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
  - d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, deenergizing equipment, and controlling and extinguishing the fire.

- e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- f) Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
- g) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
- h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

**K. Additional Standards (Tier 2B Projects).**

1. Setbacks. Tier 2B battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures, or as prescribed in the following paragraphs, whichever is greater.
  - a) Shall not be placed in the front yard.
  - b) Shall be set back a minimum of 20 feet from any side yard or rear yard if abutting a nonresidential district.
  - c) Shall be set back a minimum of 50 feet from a side yard or rear yard abutting any residential district or a residential use.
2. Height. Tier 2B battery energy storage systems shall comply with the building height limitations for accessory structures of the underlying zoning district, or as required by the Fire Code.
3. Fencing requirements. Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports, or as otherwise required by any federal, state or local laws or codes.
4. Screening and visibility. Tier 2 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

## §215-28.6

### PERMITTING REQUIREMENTS FOR TIER 3

- A. Tier 3 Permits.** Tier 3 battery energy storage systems are permitted only in industrial districts, as restricted below, through the issuance of a special use permit, site plan approval, and an operating permit and shall be subject to the Uniform Code and the site plan application requirements set forth in the Tier 2B section with the below additional requirements, and other applicable sections of these regulations and the Town Code. Tier 3 battery energy storage systems are also restricted from (not allowed) the lands located on the "river side" of River Road, no matter what the zoning is of the site.

**B. Special Use Permit Standards (Tier 3 Projects).**

1. Setbacks. Tier 3 battery energy storage systems (as measured from the fence line) shall be setback a minimum of 20 feet from any property line, or as prescribed in the following paragraphs, whichever is greater.
  - a) Shall not be placed in the front yard (for a property having a principal use). For a property not having a principal use or the BESS is the principal use, the front yard setback shall be at least 200 feet.
  - b) Shall be set back a minimum of 100 feet from any side yard or rear yard if abutting a property in a residential district or a property with a residential use.
  - c) Shall be set back a minimum of 20 feet from a side yard or rear yard abutting any property in a commercial district.
  - d) Shall be set back a minimum of 20 feet from a side yard or rear yard abutting any nonparticipating property in an Industrial district, and 20 feet for a participating property in an Industrial district.
  - e) Shall be set back a minimum of 100 feet from a side yard or rear yard abutting any nonparticipating property containing a petroleum storage tank and at least 200 feet from the tank itself. If a participating property, the setback from the tank shall be a minimum of 200 feet or as prescribed by any other law or requirement, whichever is greater.
  - f) Shall be set back a minimum of 20 feet from a side yard or rear yard abutting any nonparticipating property containing electrical infrastructure (substation, electrical towers, etc.).
  - g) Shall not be located within 200 feet any public park or recreation facility.
2. Height. Tier 3 battery energy storage systems shall have building/structure height limitation of 20 feet.
3. Fencing requirements. Tier 3 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access, or as otherwise required in federal, state, local laws and codes including national codes and standards, and/or professional consensus standards.
4. Screening and visibility. Tier 3 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports. The Planning Board shall provide the direction on the location and type of screening based on a visual analysis/study to be submitted by the applicant.
5. Safety standards. Tier 3 battery energy storage systems shall meet all required New York State and federal safety standards including, but not limited to requirements for spill containment, personal protection (eye-wash stations, safety showers, etc.) and fire suppression. After completion of a Tier 3 system but prior to beginning operation, the fire department and applicable emergency service providers will be provided a training and education day with the owner and equipment manufacturers on the system (at the cost of the owner/applicant).

6. A road use agreement with the Town may be required if utilizing Town roads for construction access.

**C. Additional Site Plan and Other Requirements for Tier 3 Systems.**

1. Access design. Due to the nature of these large facilities, it will be a requirement to have a primary and secondary means of access from the public right-of-way (ROW) to the site. The ROW used for access shall not be a dead-end road. Access shall be provided through roadways/driveways designed to Town standards with input from emergency service providers. Primary and secondary access may be created through a public improvement permit.
2. Any infrastructure to be placed to service the site (water, sewer, etc.) must meet Town and other applicable standards. Public water and sewer extensions may be provided through a public improvement permit.
3. A noise study will be required addressing noises and tonal issues.

- D. Decommissioning Fund.** The owner and/or operator of any Tier 3 battery energy storage system shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney for the removal of the battery energy storage system (in accordance with the approved decommissioning plan), in an amount to be determined by the Town (based on 125% of the estimated value for decommissioning), for the period of the life of the facility. This estimate will be updated on a prescribed basis and account for inflation, and the fund or bond will reflect these revised estimates. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant. The applicant shall also provide a notarized acknowledgement that if the costs for removal of battery facility exceed the bond for decommissioning, the battery developer/owner are fully fiscally responsible.

## §215-28.7

### SAFETY

- A. System Certification.** Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 (Standard for Battery Energy Storage Systems and Equipment) with subcomponents meeting each of the following standards as applicable:
1. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
  2. UL 1642 (Standard for Lithium Batteries),
  3. Other standards for other battery types,
  4. UL 1741 or UL 62109 (Inverters and Power Converters),
  5. Certified under the applicable electrical, building, and fire prevention codes as required.
  6. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- B. Site Access Maintenance.** Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and emergency service providers.



- C. **Clearances and Enclosures.** Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

## §215-28.8

### PERMIT TIME FRAME & ABANDONMENT

- A. The special use permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2B or Tier 3 battery energy storage system and restoration of the site in accordance with the decommissioning plan. The Town retains the sole right to make the determination site decommission completion (whether by the site owner or by the Town through the security). Any costs borne by the Town to make the determination that the site is decommissioned fully may be passed on to the developer/site owner.

## §215-28.9

### CONSTRUCTION INSPECTIONS (TIER 3 PROJECTS)

- A. **Work to Remain Accessible and Exposed.** Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.
- B. **Elements of Work to be Inspected.** The following elements of the construction process shall be inspected, where applicable:
  1. Work site prior to the issuance of a building permit.
  2. Footing and foundation.
  3. Preparation for concrete slab.
  4. Framing.
  5. Building systems, including underground and rough-in.
  6. Fire-resistant construction.
  7. Fire-resistant penetrations.
  8. Solid-fuel-burning heating appliances, chimneys, flues or gas vents.
  9. Energy Code compliance.
  10. Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and Town Engineer.

11. A final inspection by the fire inspector must be completed prior to activation.
- C. **Inspection Results.** After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
  - D. **Fee.** A fee will be set by the Town Board for construction inspections and that fee must be paid prior to or at the time of each inspection performed pursuant to this section.
  - E. **Inspection and Certification.** At the completion of construction, the applicant shall have an engineer inspect and certify (PE stamped) that the project has been constructed in accordance with all required standards and in accordance with Town approvals.

## §215-28.10

### OWNERSHIP CHANGES (TIER 2 & 3)

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- A. If the owner (or lessee) of the battery energy storage system changes or the owner of the property changes, the special use permit and/or operating permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of any special use permit, operating permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of Tonawanda of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing.
- B. The successor owner or operator shall assume in writing all of the obligations within the decommission plan. Proof of acknowledgement of the decommission plan and proof of bond may be requested by the Town at time of ownership change. The new owner should sign the acknowledgement regarding the costs exceeding the bond. The special use permit and/or operating permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required time frame. Reinstatement of a void special use permit and/or operating permit will be subject to the same review and approval processes for new applications under this article.

## §215-28.11

### ENFORCEMENT, PENALTIES & REMEDIES FOR VIOLATIONS

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- A. This section shall be enforced by the Town Code Enforcement Officer.
  1. Any person owning, controlling, or managing any building, structure or land who shall undertake a battery energy storage system in violation of this section, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.

2. The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator to remedy the violation with specifications to be taken and an agreed schedule.
  3. Special proceeding. In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a battery energy storage system, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.
- B. BESSs requiring an operating permit, shall be required to submit a certified report by the owner and be inspected annually, and shown to be in accordance with the operating permit and any other approvals.

## §215-28.12

### STOP-WORK ORDERS

- A. **Authority to Issue.** The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
1. Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work;
  2. Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
  3. Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. **Content of Stop-work Orders. Stop-work orders shall:**
1. Be in writing;
  2. Be dated and signed by the Code Enforcement Officer;
  3. State the reason or reasons for issuance; and
  4. If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. **Service of Stop-work Orders.** The Code Enforcement Officer 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 mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, 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 mail 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.

- D. Effect of Stop-work Order.** Upon the issuance of a stop-work order, 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 which is the subject of the stop-work order.
- E. Remedy Not Exclusive.** The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under §215-28.11 of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

# Article 29. Telecommunications Facilities

## §215-29.1

### PURPOSE

The purpose of this article is to establish general guidelines for the siting of telecommunications facilities including communications towers and antennas which are regulated in accordance with the Telecommunications Act of 1996 and other applicable federal laws. The intent of this article is to regulate the location of telecommunication facilities, in accordance with the Town's Master Plan and Zoning Map and giving full consideration to existing land uses and environmentally sensitive areas, while conforming to the Telecommunications Act of 1996 and other applicable federal laws. The goals of this article are to:

- A. Protect residential areas and land uses from potential adverse impacts of towers and antennas;
- B. Encourage the location of towers in nonresidential areas, away from significant natural resources and without adverse impact to designated and eligible for designation historic resources;
- C. Minimize the total number of towers throughout the community;
- D. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- E. Encourage users of towers and antennas to locate them, to the greatest extent possible, in areas where the adverse impact on the size and scale of the community's built environment, the natural environment, and designated or eligible for designation historic resources is minimal;
- F. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques (stealth technology);
- G. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
- H. Ensure that these facilities are limited to those for which the petitioner has demonstrated a need for service. No towers shall be built purely "on speculation" for future users; and
- I. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

## §215-29.2

### APPLICABILITY

- A. **New wireless telecommunications facilities.** All new wireless telecommunications facilities, or relocated, rebuilt, modified or extended towers or antennas in the Town of Tonawanda shall be subject to these regulations, including the general requirements contained in §215-29.4 of this article.
- B. **Amateur radio station operators/receive-only antennas.** This article shall not govern any tower or the installation of any antenna that is under 70 feet in

height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

- C. Preexisting wireless towers or antennas.** Preexisting towers and preexisting antennas shall not be subject to the requirements of this article, other than the requirements of §215-29.4 (H) and (I). Modification of a preexisting wireless telecommunication facility shall be subject to the requirements of this article.
- D. Radio array.** For purposes of implementing this article, a radio array shall not be considered as a telecommunications facility.

## §215-29.3

### APPROVALS & BULK REQUIREMENTS

Applications for telecommunications facilities shall propose, locate, site and erect these facilities with priority being given to co-located/existing structure sites first, and consideration given to industrial, commercial and business sites, with residential locations being the least preferred. A petitioner for a non-co-located antenna or new structure may not bypass sites of higher priority by stating that the site proposed is the only site leased or selected. All applications shall address co-location as an option. The petitioner shall submit a written report demonstrating the petitioner's review of the higher priority locations and demonstrating by technical reasons why a higher priority site was not chosen.

- A. Co-located/existing structures.** An antenna that is to be attached to an existing wireless telecommunications facility, or any building or structure is permitted in all zoning districts and will be reviewed administratively (which may include a courtesy review by the Planning Board, as determined by the Building Department). If the proposal is to locate the antenna on or within a public right-of-way, the project will require approval from the Tonawanda Town Board (see §215-29.6). All co-located small cell facilities installed in the public right-of-way will also meet the requirements of 1 (d) below.
  - 1. Building permit required.
    - a)** The antenna is permitted upon issuance of a building permit. The building permit application will include a structural analysis/report verifying the ability of the structure to handle the antenna. Antennas on structures, buildings, etc., shall be located in such a manner to reduce their visual appearance, utilizing stealth technology to the fullest extent possible. In areas of high visibility, accessory equipment structures may need to be screened, camouflaged or placed below ground in a vault.
    - b)** Co-located antennas may be placed on existing utility or telephone poles: height of new antenna shall not extend above the height of the existing structure by more than four feet (note the requirement for placing new antennas on or within Town-owned property);
    - c)** Also, if the new antenna is being placed on a structure within a higher governmental-owned lands (like a road right-of-way), but is to be located on a structure (like a utility pole) that is not owned by that higher government, then the project will require Planning Board review and approval prior to the issuance of a building permit;
    - d)** All small cell facilities that are located in the public right-of-way are subject to the Town's aesthetic design standards and issuance of a license agreement by the Town Board.

2. Industrial buildings: height of new antenna shall not extend above the height of the existing building by more than 12 feet;
  3. Multifamily residential buildings: height of new antenna shall not extend above the height of the existing building by more than 12 feet;
  4. Commercial buildings: height of new antenna shall not extend above the height of the existing building by more than 12 feet;
  5. Water tower: height of new antenna shall not extend above the height of the water tower by more than 12 feet; or
  6. Existing standalone, wireless telecommunication facility: height of new antenna shall not extend above the height of the existing facility by more than 12 feet.
- B. Non-co-located/new structure antennas.** An antenna that will not be mounted on an existing structure, as defined above, or is more than the allowed height above that structure on which it is mounted, is permitted in accordance with the following (all new towers shall not be lattice towers):
1. Site plan review and special use permit required.
  2. Municipal- or government-owned property:
    - a) If located on municipally (Town of Tonawanda) owned property, a Town lease or license agreement must be obtained and the Town must refer the proposal to the Planning Board for its input. The tower must be set back the height of the tower from any residentially zoned property and be in accordance with §215-29.6.
    - b) If proposed in the Town road right-of-way, the Town will require a lease or license agreement but also require the project to receive a tower special use permit (including Planning Board and Highway Department referral and recommendation).
    - c) If located on county, state, or federal property, the tower shall be administratively reviewed by the Town and the Planning Board shall conduct a courtesy review and the tower must be set back the height of the tower from any property line.
    - d) If located on a public school property, the project will be reviewed and approved by the Town Planning Board.
  3. Industrial Districts:
    - a) Setback a minimum of 100 feet from any property line.
  4. Mixed Use Districts:
    - a) The tower must be set back a minimum of the height of the tower from any residentially zoned property or any front yard line.
    - b) Towers exceeding 195 feet in height in mixed use districts shall be treated as Type 1 actions under the State Environmental Quality Review Act (SEQRA).
    - c) Height restriction of 195 feet and setback of 100 feet from any property line.
  5. Residential Districts:
    - a) The tower must be set back a minimum of the height of the tower from all property lines and any existing building not located on the site, but not less than 100 feet.

- b) The maximum height of a tower in these zoning districts is 90 feet. An area variance for height will be required from the Zoning Board of Appeals to exceed this height, following initial review by the Planning Board.
- c) All applications for telecommunications facilities in these zoning districts shall be treated as Type 1 action under the State Environmental Quality Review Act (SEQRA).

## §215-29.4

### GENERAL REQUIREMENTS

The following requirements apply to all applicants for non-co-located/new structure antennas (except municipal property structures):

#### A. Application Requirements.

1. All applicants under this article must obtain a building permit from the Code Enforcement Officer. The Code Enforcement Officer is hereby authorized to issue building permits under this article if it is determined that an applicant has met the requirements established in this article.
2. All applications are subject to site plan review by the Town of Tonawanda Planning Board. The intent of site plan review is to evaluate site plans and require changes consistent with minimizing conflicts which may result between the site layout and design of proposed uses and natural site conditions and features and/or existing or planned adjacent uses. Site plan review is also responsible for ensuring that development comply with clearly calculated planning goals and policies as are provided in the Town of Tonawanda's Comprehensive Plan and other area-specific planning documents.
3. Further, the applicant must demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the cell site's function within the grid system.
4. The Town of Tonawanda may deny the application to construct a new tower if the applicant has not proven to the Town that it cannot mount the antenna on an existing structure and/or public property.
5. Applications for necessary permits will only be processed when the applicant demonstrates that it is either an FCG-licensed telecommunications provider or has in place agreements with an FCC-licensed telecommunications provider for use or lease of the support structure or tower (no tower may be built "on-spec").

**B. Principal or accessory use.** Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

**C. Lot size.** For purpose of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

**D. Inventory of existing sites.** Each applicant shall provide to the Town an inventory of its existing towers, antennas or sites approved for towers or antennas that are either within the jurisdiction of the Town of Tonawanda or within one mile of the



border thereof, including specific information about the location, height, and design of each tower. The Director of Planning and Development or the Code Enforcement Officer may share such information with other applicants applying for administrative approvals or special use permits under this article or other organizations seeking to locate antennas within the jurisdiction of the Town of Tonawanda; provided, however, that the Town official is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- E. Aesthetics.** Applications shall meet the following requirements:
1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
  2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.
  3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible (stealth or camouflaging technology should be considered).
- F. Fencing.** A well-constructed masonry or stone wall or privacy fence, not less than eight feet for residential districts or 10 feet for nonresidential districts in height from finished grade shall be provided around each antenna and/or tower and shall also be equipped with an antilimbing device. Access to the tower shall be through a locked gate. No barbed wire shall be used.
- G. Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- H. State or federal requirements.** All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- I. Building codes safety standards.** To ensure the structural integrity of towers and antennas, the owner of a tower or antenna shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Tonawanda concludes that a tower or antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower or antenna, the owner shall have 30 days to bring such tower or antenna into compliance with such standards. Failure to bring such tower or antenna into

compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- J. Measurement.** For purposes of measurement, tower setbacks shall be calculated and applied to facilities located in the Town of Tonawanda irrespective of municipal and county jurisdictional boundaries.
- K. Not essential services.** Towers and antennas shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as essential services, public utilities or private utilities.
- L. Franchises.** Owners and/or operators of towers or antennas shall certify that all franchises and licenses required by law by any governmental entity, including the Town of Tonawanda, now or in the future for the construction and/or operation of a wireless communication system in the Town of Tonawanda have been obtained and shall file a copy of all required franchises and licenses with the Planning and Development Department or the Code Enforcement Officer.
- M. Signs.** No signs or advertising material of any nature shall be allowed on an antenna or tower.
- N. Buildings and support equipment.** Buildings and support equipment associated with antennas or towers shall comply with the requirements of §215-29.10.
- O. Multiple antenna/tower plan.** The Town of Tonawanda encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.
- P.** The owner of any tower or antenna shall provide the Town Clerk with a demolition bond equal to twice the cost of removal of the tower or antenna.
- Q.** The owner of any tower or antenna shall identify the entities providing the backhaul network for the antenna or tower described in the application and other cell sites owned or operated by the applicant in the Town of Tonawanda, as well as any information detailing the purpose for the proposed antenna or tower.
- R.** All applicants under this article must comply with the State Environmental Quality Review Act.
- S.** Unless otherwise provided, towers and antennae and their related structures shall comply with all existing setbacks within any zoning districts. Additional setbacks may be required by this article, the Code Enforcement Officer, Planning Board, or the Town Board, as applicable, to contain on site substantially all ice-fall or debris from tower failure and/or to comply with the purpose of this article. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities.
- T.** An applicant may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the preapplication meeting.
- U.** The applicant shall furnish a visual impact assessment, which shall include:
  - 1.** Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
  - 2.** A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site

features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

3. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or its designee, during the preapplication conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
4. A narrative discussing:
  - a) The extent to which the proposed facility would be visible from, but not limited to, state highways, major roads, state and local parks, public lands, historic districts, preserves, historic sites, archaeological sites, environmental conservation areas, any other location where the site is visible to visitors, travelers, employees, or residents; and
  - b) The tree line elevation of vegetation within 100 feet of the facility;
- V. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require the disclosure of confidential business information.
- W. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
  1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements;
  2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements;
  3. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
    - a) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
    - b) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
    - c) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
  4. For facilities existing prior to the effective date of this article, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this article;

5. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access.
- X. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology; engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. §470w(5); 36 CFR 60 and 36 CFR 800).
- Y. The applicant shall examine the feasibility of designing a proposed tower to accommodate future demand for a minimum of five additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate a minimum of five additional antenna arrays equal to those of the petitioner, and located as close to the petitioner's antenna as possible without causing interference. This requirement may be waived, provided that the petitioner, in writing, demonstrates that the provision of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
  1. The foreseeable number of FCC licenses available for the area;
  2. The kind of wireless telecommunication facility site and structure proposed;
  3. The number of existing and potential licenses without wireless telecommunication facilities' spaces/sites; and
  4. Available space on existing and approved towers.
- Z. Applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Planning Board and Town Board why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for a claim of commercial impracticability or hardship.
- AA. Notwithstanding the above, the Planning Board may approve any site located within an area in the above list of priorities, provided that the Planning Board finds that the proposed site is in the best interest of the health, safety, and welfare of the Town and will further the policies and goals set forth in the Town's laws and Comprehensive Plan.
- BB. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

## §215-29.5

### RETENTION OF EXPERT ASSISTANCE & REIMBURSEMENT BY APPLICANT

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the

construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Town shall precede the preapplication meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.

- C. The total amount of the funds needed as set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

## §215-29.6

### USE OF PREMISES OWNED OR CONTROLLED BY TOWN

- A. **General.** All applicants who wish to locate a tower or antenna on Town land must submit to the Planning and Development Department or Code Enforcement Officer a completed application and detailed plan that complies with the requirements of this article and the Code of the Town of Tonawanda and must furnish any other pertinent information as may be requested by the Town. In addition, such applicant shall submit along with the application's nonrefundable fee as shall be established by resolution of the Town Board. Any such application is subject to the site plan review requirements of Article 42 of this chapter. Upon receipt of any such complete application, within a reasonable time, the Code Enforcement Officer shall issue a building permit if he is satisfied that the applicant is in compliance with the requirements contained herein or deny such application.
  - 1. Towers on Town land. Towers or antennas may be located on Town land, provided that a license or lease authorizing such antenna or tower has been approved by the Town of Tonawanda and further provided that the applicant complies with the provisions of this section.
  - 2. Priority of users. Priority for the use of Town land for antennas and towers will be given to the following entities in descending order:
    - a) The Town of Tonawanda;
    - b) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the Town of Tonawanda and private entities with a public safety agreement with the Town of Tonawanda;
    - c) Other governmental agencies, for uses which are not related to public safety; and
    - d) Entities providing licensed commercial wireless telecommunication services, including cellular, personal communication services (PSC), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging and similar services that are marketed to the general public.

3. Placement. The placement of antennas or towers on Town land must comply with the following requirements:
  - a) The antennas or tower will not interfere with the purpose for which the Town land is intended.
  - b) The antennas or tower will have no adverse impact on surrounding private property.
  - c) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of Town land and other necessary provisions and safeguards.
  - d) The applicant will submit a letter of credit, performance bond or other security acceptable to the Town of Tonawanda to cover the costs of the antenna or tower's removal.
  - e) The antennas or tower will not interfere with other users of Town land.
  - f) Upon reasonable notice, the Town of Tonawanda may require the antenna or tower to be removed at the applicant's expense.
  - g) The owner of the tower or antenna must reimburse the Town of Tonawanda for any costs which the Town incurs because of the presence of the antenna or tower.
  - h) The applicant must obtain all necessary land use approvals.
  - i) The applicant will cooperate with the Town of Tonawanda's objective to promote co-locations and thus limit the number of separate antenna sites requested.
  - j) The applicant's continued compliance with the requirements of this article.
4. Special requirements. The use of certain Town land, such as water tower sites, parks and Town road rights-of-way, for antennas or towers brings with it special concerns due to the unique nature of these sites. The placement of antennas or towers on these special Town lands will be allowed only when the following additional requirements are met:
  - a) Water tower or reservoir sites. The Town of Tonawanda's water towers and reservoirs represent a large public investment in water pressure stabilization and peak capacity reserves. Protection of the quality of the Town's water supply is of prime importance to the Town. The placement of antennas or towers on water tower or reservoir sites will be allowed only when the Town is fully satisfied that the following requirements are met:
    - (i) The applicant's access to the facility will not increase the risks of contamination to the Town's water supply;
    - (ii) There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility;
    - (iii) The presence of the facility will not increase the water tower or reservoir maintenance cost to the Town; and
    - (iv) The presence of the facility will not be harmful to the health of workers maintaining the water tower or reservoir.
  - b) Parks. The presence of certain antennas or towers represents a potential conflict with the purpose of some parks owned by the Town

of Tonawanda. In no case shall towers be allowed in designated conservation areas unless they are to be installed in areas which currently contain tower facilities. Antennas or towers will be considered only in the following parks after the recommendation of the Parks and Recreation Committee and approval by the Town Board.

- (i) Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use;
  - (ii) Commercial recreation areas and major play fields; and
  - (iii) Park maintenance facilities.
- c) Town road right-of-way. The Town of Tonawanda Town Board may allow antennas to be placed on existing structures within the Town road right-of-way. New structures within the Town road right-of-way will only be allowed under extenuating circumstances and would need to follow the full requirements of this article. Antennas to be placed on existing structures will also require input from the Highway Department, the Engineering Department, the Town Attorney and the Planning Board. They will utilize stealth technology and equipment will either be screened or placed underground. Small cell sites shall be designed in accordance with the Town's aesthetic design standards. The Town will consider all financial impacts of the project and the possibility of yearly fees for use of these lands through a license agreement.
5. Termination.
- a) The Town Board may terminate any lease if it determines that any one of the following conditions exist:
    - (i) A potential user with a higher priority as described in §215-29.6 A(2) cannot find another adequate location and the potential use would be incompatible with the existing use;
    - (ii) A user's frequency broadcast unreasonably interferes with other uses of higher priority as described in §215-29.6 A(2), regardless of whether or not this interference was adequately predicted in the technical analysis; or
    - (iii) A user violates any of the standards in this article or the conditions attached to the Town of Tonawanda's lease or other authorization.
  - b) Before taking action, the Town of Tonawanda will provide notice to the user of the intended termination and the reasons for it and provide an opportunity for the user to address the Town Board regarding the proposed action. This procedure need not be followed in emergency situations.
6. Reservation of right. Notwithstanding the above, the Town Board reserves the right to deny, for any reason, the use of any or all Town land by any one or all applicants.

## §215-29.7

## ADMINISTRATIVELY APPROVED USES

---

- A. General.** The following provisions shall govern the issuance of administrative approvals for towers and antennas.
1. Applicants for administratively approved uses must comply with the site plan submittal requirements of Article 42 of this chapter.
  2. The Code Enforcement Officer may administratively approve the uses listed in this section.
  3. Each applicant for administrative approval shall apply to the Code Enforcement Officer by providing the information set forth in §§215-29.4 and 215-29.8 of this article, and submitting a nonrefundable fee as established by resolution of the Town Board.
  4. The Code Enforcement Officer shall respond to each such complete application within 60 days after receiving it by either approving or denying the application.
  5. If an administrative approval is denied, the applicant may file an application for a special use permit pursuant to §215-29.8 in order to proceed.
- B. List of administratively approved uses.**
1. An antenna attached to an existing wireless telecommunication facility, building, water tower, or other such structure as described in this chapter.
  2. Installing a small-cell network (in full compliance with the Telecommunications Act of 1996 and this article) through the use of multiple low-powered transmitters/receivers attached to existing wireline system poles, such as conventional cable or telephone wire poles or similar technology that does not require the use of standalone or co-located telecommunication towers and/or antennas.

## §215-29.8

### SPECIAL USE PERMITS

- A. General.** The following provisions shall govern the issuance of special use permits for the construction of new towers or antennas or modification of existing towers:
1. Applicants for a special use permit under this section are subject to the site plan review requirements of Article 42 of this Chapter.
  2. Applications for special use permits under this section shall be subject to the procedures and requirements of Article 43 of this Chapter.
  3. In granting a special use permit, the Town Board may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower and antenna on adjoining properties.
  4. An applicant for a special use permit shall submit the information described in this section and a nonrefundable fee as established by resolution of the Town Board.
  5. Compliance with the requirements of this article shall be required.
- B. Towers.**
1. Information required. In addition to any information required for applications for special use permits pursuant to Article 43 of this Chapter, applicants for a special use permit for a tower shall submit the following information:



- a) A scaled site plan clearly indicating the location, type and height of the proposed tower or height increase, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access setbacks from property lines, elevation drawings of the proposed tower or increased height and any other structures, topography, parking and other information deemed by the Development Services Staff to be necessary to assess compliance with this article.
  - b) Legal description of the parent tract and leased parcel.
  - c) The setback distance between the proposed tower or existing tower proposed to be increased in height and the nearest residentially zoned properties.
  - d) A landscape plan showing specific landscape materials.
  - e) Method of fencing and finished color and, if applicable, the method of camouflage and illumination.
  - f) A description of compliance with requirements of §§215-29.4 and 215-29.8 B(4) and all applicable federal, state or local laws.
  - g) A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.
  - h) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Town of Tonawanda.
  - i) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
  - j) A description of the feasible locations of future towers or antennas within the Town of Tonawanda based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
2. Factors considered in granting special use permits for towers. In addition to any standards for consideration of special use permit applications pursuant to Article 43, the following additional factors shall be considered in determining whether to issue a special use permit:
- a) Height of the proposed tower or the increase in height proposed to any existing tower;
  - b) Proximity of the proposed or existing tower to residential structures and residential zoning district boundaries;
  - c) Nature of uses on adjacent and nearby properties;
  - d) Surrounding topography;
  - e) Surrounding tree coverage and foliage;
  - f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - g) Proposed ingress and egress; and



**§215-29.9****EXTENT & PARAMETERS OF SPECIAL USE PERMIT**

---

- A. Such special use permit shall be nonexclusive.
- B. Such special use permit shall not be assigned, transferred, or conveyed without the express prior written notification to the Town within 30 days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior notice to the petitioner, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this article after prior written notice to the holder of the special use permit.

**§215-29.10****BUILDINGS OR OTHER EQUIPMENT STORAGE**

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- A. **Antennas mounted on structures or rooftops.** The equipment cabinet or structure used in association with antennas shall comply with the following:
  - 1. The cabinet or structure shall not contain more than 300 square feet of gross floor area or be more than 12 feet in height. In addition, for buildings and structures which are less than 65 feet in height, the related unmanned equipment structure, if over 300 feet square feet of gross floor area or 12 feet in height pursuant to an area variance granted by the Zoning Board of Appeals, shall be located on the ground and shall not be located on the roof of the structure.
  - 2. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 25% of the roof area.
  - 3. Equipment storage buildings or cabinets shall comply with all applicable building codes.
  - 4. There shall be only two generators allowed per tower site. These generators must service any future antennas and related equipment placed on the tower.
- B. **Antennas mounted on utility poles or light poles.** The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
  - 1. In residential districts the equipment cabinet or structure shall be sited using stealth technology to the fullest extent practicable and may be located underground or as follows:
    - a) In a front or side yard, provided that the cabinet or structure is no greater than three feet in height or 16 square feet of gross floor area and the cabinet/structure is located a minimum of two feet from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 42 inches to 48 inches and a planted height of at least 36 inches.
    - b) In a rear yard, provided the cabinet or structure is no greater than 12 feet in height or 140 square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of six feet and a planted height of at least 36 inches.
  - 2. In all other zoning districts, the equipment cabinet or structure shall be no greater than six feet in height or 300 square feet in gross floor area. The structure or cabinet shall be screened by an evergreen hedge with an

ultimate height of eight feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence eight feet in height or an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches.

- C. Antennas located on towers.** The related unmanned equipment structure shall not contain more than 300 square feet of gross floor area or be more than 12 feet in height and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

## §215-29.11

### REMOVAL OF ABANDONED ANTENNAS & TOWERS

Any antenna or tower that is not operated for a period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the Town of Tonawanda notifying the owner of such abandonment.

## §215-29.12

### NONCONFORMING USES

- A. Non-expansion of nonconforming use.** Towers that are constructed and antennas that are installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. Preexisting towers.** Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this article.
- C. Rebuilding damaged or destroyed nonconforming towers or antennas.** Notwithstanding §215-29.11, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the setback requirements specified in §215-29.8 B(4). The type, height and location of the tower on-site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in §215-29.11, hereof.



# CHAPTER 215. ZONING CODE

## Part 3. Development Standards

REVISED

FEBRUARY 1, 2024

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# Article 30. Circulation, Access, & Parking

## §215-30.1

### PURPOSE & INTENT

---

- A. Purpose.** The purpose of this Article and intent of its regulations is to achieve the following objectives:
1. Ensure there are adequate amounts of off-street parking and loading facilities to serve the use(s) and users of the property;
  2. Protect the users of adjacent properties from nuisances caused by the noise, fumes, and glare of headlights which may result from the operation of vehicles;
  3. Reduce congestion on the primary street networks of the Town;
  4. Encourage alternative parking designs and modes of transportation to reduce the share of auto-dominated sites within the Town and dependence on single-occupancy vehicular trips;
  5. Minimize further expansion of impervious surfaces within the Town and reduce loss of green space;
  6. Provide safe traveling conditions and off-street accommodations for motorists, pedestrians, and bicyclists; and
  7. Ensure safe, well-planned multi-modal access is provided to all properties while minimizing potential vehicular, pedestrian, and bicyclist conflicts.
- B. Redevelopment.** These regulations are further intended to guide redevelopment of existing properties and new facilities in a manner compatible with the future development vision of the Town of Tonawanda. As redevelopment and investment takes place, emphasis should be placed on improving the aesthetics of the site and surrounding area, especially as it relates to commercial corridors and views along the waterfront.

## §215-30.2

### APPLICABILITY

---

- A. Uses Subject to Regulation.** All nonresidential, mixed-use, and multi-family development shall meet the requirements of this Article. No building or zoning permit shall be issued for any use that does not conform to the requirements herein.
- B. Residential Uses.** Single-, two-, and multi-family properties up to four units shall be exempt from the requirements of this Article, except for §215-30.3.
- C. Owners Responsibility.** The provision and maintenance of off-street parking and loading areas is a continuing obligation of the property owner.
- D. New Construction.** New construction and infill development shall be in conformance with all requirements of this Article, unless otherwise provided herein.
- E. Existing Sites.**



1. If an existing building, use, or occupancy is altered so that there is an increase in the minimum required off-street parking and loading spaces, the number of such spaces shall be provided at least equal to the number required for the increased area of the building or use in accordance with all provisions of this Article.
  2. Improvements to already developed sites shall follow the regulations of this Article to the greatest extent practicable. In the case of nonconformities, Subsection G shall apply.
- F. Substantial Improvements.** Where the total cost of proposed improvements to an existing site are 75% or more of the property's assessed value, all improvements shall be in full compliance with this Article.
- G. Nonconformity.** A building or site not in conformance with this Article may not be required to bring the entirety of such structure into conformance, if, in the opinion of the reviewing body, the proposed improvements to the property do not increase the level of nonconformity and are otherwise consistent with the intent of this Article.
- H. Property Owner Assistance.** Owners of existing sites are strongly encouraged to consult with Town Staff and/or all applicable review bodies for assistance in following these design guidelines prior to making exterior repairs, renovations, restorations, and alterations to their buildings.

### §215-30.3

### RESIDENTIAL PARKING REQUIREMENTS

- A. Regulations for Residential Uses.** The requirements of this section shall apply to all single-, two-, and multi-family uses and lots up to four units.
1. The minimum number of parking spaces shall be provided in accordance with §215-30.4 B.
  2. Parking may be permitted in the front yard area, provided all vehicles are located on an approved driveway. The driveway width shall be limited to the minimum and maximum width requirements of §215-30.10 E.
  3. Only one curbcut shall be allowed per residential lot and shall conform to the requirements of Chapter 183 (Streets and Sidewalks) of the Town of Tonawanda Code.
  4. Parking is prohibited on grass areas and yard space that is not hard-surfaced and properly designated for such use.
- B. Parking of Recreational Vehicles.** Parking of personal seasonal vehicles, boats, trailers, or recreational vehicles is permitted, provided such vehicles:
1. Are registered and licensed;
  2. Are not used for living purposes;
  3. Are not parked within the front yard area;
  4. Are parked on an approved surface; and
  5. Do not obstruct vehicular, pedestrian, or bicyclist vision and access.
- C. Maximum Vehicle Weight.** No portion of a residential property located in a residential district shall be occupied at any time by any vehicle having a

maximum gross load weight in excess of five tons unless said vehicle is stored and kept entirely within an enclosed structure when on the premises.

## §215-30.4

### OFF-STREET PARKING SPACE REQUIREMENTS

#### A. Number of Parking Spaces.

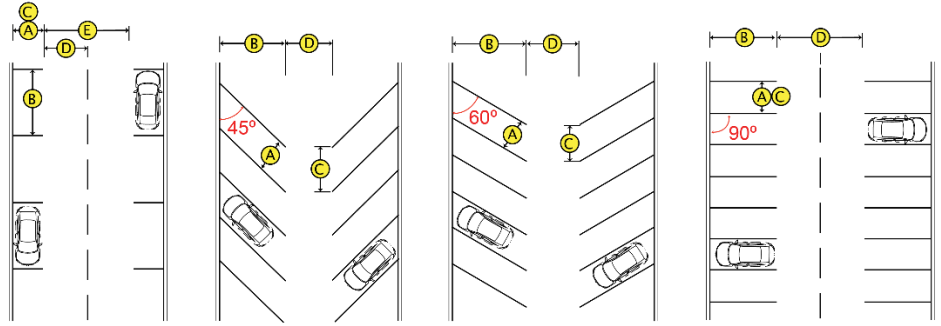
1. The requirement for a single use (e.g. a retail store) shall be determined directly from this section, unless otherwise noted within this Chapter.
2. The requirements for a combination of uses (e.g. a retail store with an office building) shall be determined by establishing the requirement for each single use and adding them together, unless otherwise noted herein.
3. For uses not specifically listed, the requirement shall be the same as for the most similar listed use as determined by the Code Enforcement Officer.

#### B. Parking Minimums. The minimum number of off-street parking spaces per use shall be in conformance with the following:

LAND USE	MINIMUM SPACES
<b>Residential</b>	
<i>Single-Family Dwelling</i>	2 per unit
<i>Multi-Family Dwelling</i>	1.5 per unit
<b>Commercial / Industrial</b>	
<i>Retail Shop</i>	3 per 1,000 sf of gross floor area
<i>Service Shop</i>	2 per 1,000 sf of gross floor area
<i>Office or Clinic</i>	1 per employee <sup>1</sup>
<i>Restaurant or Bar</i>	4 per 1,000 sf of gross floor area
<i>Recreation or Entertainment Facility</i>	0.25 per maximum occupancy
<i>Industrial Operation</i>	1 per employee <sup>1</sup>
<b>Other</b>	
<i>Hospital</i>	1 per bed + 1 per employee <sup>1</sup>
<i>Place of Worship or Public Assembly</i>	0.25 per maximum occupancy
<i>Marina</i>	1 per boat slip
<i>School</i>	1 per classroom + 1 per employee <sup>1</sup>

**NOTE:** (1) Per employee at maximum shift.

- C. **Parking Maximums.** The maximum number of parking spaces allowable for any use shall not exceed 120% of the minimum requirement, except through the submission of a parking demand analysis in accordance with §215-30.8(E) and development plan approval.
- D. **Size of Parking Spaces.** The size of off-street parking spaces and aisles shall conform to the following dimensional standards:



STALL ANGLE	STALL WIDTH (A)	STALL LENGTH (B)	SKEW WIDTH (C)	DRIVE AISLE WIDTH (D)		
	MIN	MIN	MIN	ONE-WAY MIN	TWO-WAY MIN	MAX
0°	8 ft	18 ft	8 ft	11 ft	22 ft	24 ft
45°	9 ft	17 ft	11 ft	12 ft	22 ft	24 ft
60°	9 ft	20 ft	9 ft	14 ft	22 ft	28 ft
90°	9 ft	18 ft	9 ft	11 ft	22 ft	24 ft

§215-30.5

LOADING SPACE REQUIREMENTS

- A. **Applicability.** Whenever the normal operation of any use requires that goods, merchandise, or equipment be routinely delivered to or shipped from that use, off-street loading areas must be provided in accordance with this section.
- B. **Minimum Spaces Required.** Loading spaces shall be provided for uses in accordance with the table below.

GROSS FLOOR AREA (SF)	MINIMUM SPACES	MINIMUM SIZE
<i>Less than 5,000</i>	0	-
<i>5,000 to 10,000</i>	1	12 by 25 ft
<i>10,000 to 30,000</i>	1	14 by 50 ft
<i>Each additional 15,000</i>	+1	14 by 50 ft

- C. **Deliveries.** Where loading spaces are located within 100 feet of a residential use or district there shall be no deliveries between the hours of 10:00PM and 7:00AM EST.
- D. **Green Loading Zones.** The provision of green loading zones is highly encouraged. Where such zones may be reasonably accommodated on-street, the number of spaces provided may count towards the off-street loading space requirements of this section.

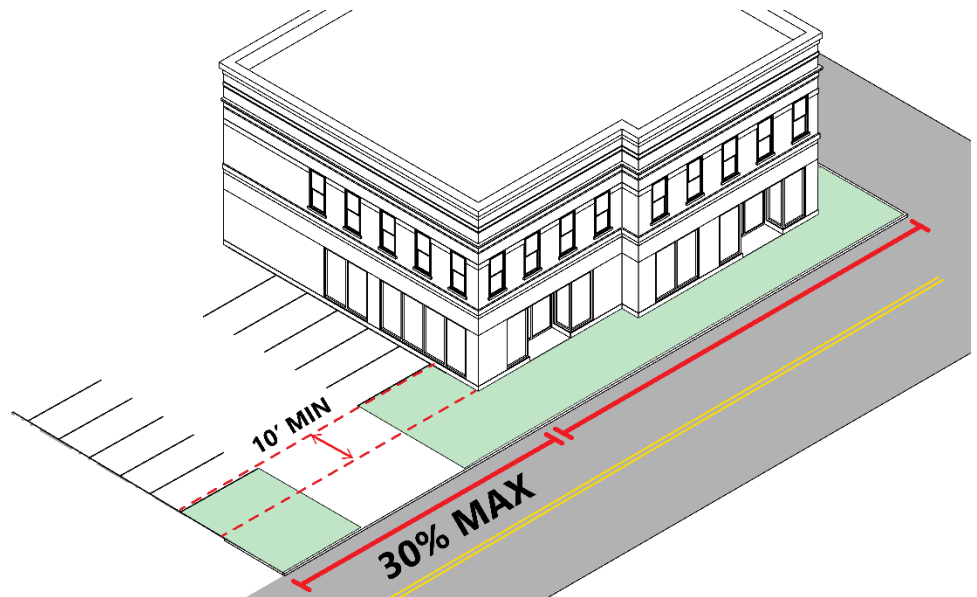
§215-30.6

LOCATION OF SPACES

- A. **Front Yard.**

1. No off-street parking spaces shall be located in the front yard area, with the exception of a single row of parking spaces and the necessary access road to said spaces.
  2. At least 50% of the convenience parking area frontage shall be screened from the public right-of-way in accordance with §215-31.9 B.
  3. No off-street loading spaces shall be permitted in the front yard area or fronting a primary street.
- B. Side Yard.** Off-street parking areas may be permitted in the side yard when in compliance with the following standards:
1. The overall width of the parking area frontage does not exceed 30% of the lot width. **See Figure 30.1.**
  2. The paved parking area is at least 10 feet behind the front building line. Where no primary structure is provided on a lot, the parking area shall meet the minimum setback requirements or be located at least 10 feet behind the front building line of an adjacent property, whichever is greater. **See Figure 30.1.**

**FIGURE 30.1 Side Yard Parking**



- C. Same Lot Requirement.** All off-street parking and loading spaces shall be on the same lot as the use they are intended to serve, unless otherwise allowable with an alternative parking arrangement.
- D. Distance from Residential Property.**
1. Parking areas shall maintain a setback of at least 10 feet from abutting residential use or district property lines, unless otherwise approved as part of development plan review.
  2. Loading spaces and delivery areas shall maintain a setback of at least 30 feet from abutting residential use or district property lines.

All off-street parking and loading areas, including their vehicular access drives and pedestrian, and bicyclist connections, shall conform to the requirements of the Town of Tonawanda Design and Construction Standards and the following:

**A. Paving Materials.**

1. Acceptable surfacing materials shall be those capable of being kept in a smooth, well-graded condition, free of snow and debris. This includes concrete, asphalt, blacktop, brick, or other such properly engineered paving material with approval by the reviewing body. The use of pervious paving material is highly encouraged.
2. Prohibited surfacing treatments include dirt, gravel, pavement millings, or loose stone unless otherwise provided for by Subsection 4, the use of these materials may be permitted in the GI or MU-I districts as part of site plan review.
3. All areas shall be constructed to withstand the loads to be imposed by the vehicles for which the parking or loading area is intended.
4. To prevent the unnecessary paving of lands, emergency fire lanes or other areas and access drives not intended for daily use may be left unpaved and maintained as stone with review board approval. Such areas and drives shall remain unobstructed and in navigable condition to ensure vehicular accessibility at all times.

**B. Markings.**

1. Parking and loading spaces shall be properly marked with clear and permanent painted strips of at least four inches in width.
2. Areas designated for pedestrian and/or bicyclist access and use shall also be clearly delineated in this manner, unless otherwise separated by curbing or some other physical barrier.

**C. Landscaping and Screening.** All off-street parking and loading areas shall be landscaped and screened in accordance with Article 31.

**D. Lighting.** The exterior lighting of parking and loading areas shall be in conformance with the provisions of Article 33.

**E. Snow Storage.** All parking and loading areas must include a dedicated area for the placement and storage of snow.

**F. Stormwater Management.** All parking and loading areas shall conform to the stormwater management regulations of §215-32.11.

**G. Electric Vehicle Charging Stations.** Off-street parking and loading spaces may include charging stations for use by electric vehicles in accordance with §215-24.12.

## §215-30.8

### ALTERNATIVE PARKING ARRANGEMENTS

**A. On-Street and Municipal-Owned Parking.** On-street and municipally owned parking spaces may be used to satisfy the minimum off-street parking

requirement, in whole or in part, at the discretion of the reviewing body. Such spaces must be located within 1,000 feet of the use.

- B. Public Transit Access.** A public transit stop or station may be used to satisfy up to 15% of the minimum off-street parking requirement, provided the transit stop or station is located within 1,000 feet of the use.
- C. Compact Parking.**
1. Compact parking may comprise up to 30% of the required spaces.
  2. Compact spaces must be clearly designated on the site.
  3. Compact spaces must have dimensions of no less than seven feet in width and 14 feet in length.
- D. Stacked or Valet Parking.**
1. Stacked or valet parking is allowed if an attendant is present to move vehicles.
  2. If stacked parking is proposed to be used for all or a portion of required parking spaces, a written guarantee must be filed with the Town ensuring that an attendant will be present when the lot is in operation.
  3. The requirements for minimum or maximum spaces and other applicable parking area development standards continue to apply for stacked parking.
- E. Parking Demand Analysis.**
1. The number of parking spaces required for any use may be adjusted with the completion of a parking demand analysis by the applicant and approval by the reviewing body.
  2. A parking demand analysis may be required where shared parking is proposed to determine the sharing factor.
  3. Such analysis shall include, at a minimum:
    - a. The names and addresses of the owner(s) and tenant(s) that will be using the parking;
    - b. An estimate of the number of spaces needed to accommodate the proposed use(s);
    - c. A summary and map of the proposed location and configuration of spaces (on-site, public lots, on-street, joint, shared, etc.);
    - d. A market study and/or other supporting information and rationale behind the requested number of parking spaces; and
    - e. An analysis of existing parking conditions in the surrounding area, to include a radius of at least 1,000 feet.
  4. The reviewing body may waive a parking demand analysis and the requirements thereof in whole or in part in accordance with §215-40.4 G.
- F. Joint or Shared Parking and Loading Spaces.**
1. Where two or more uses are located on the same lot or located on separate lots, an applicant may propose the use of joint or shared parking and/or loading spaces.

2. Such arrangements may be authorized by the reviewing body as part of development plan review, provided the following conditions are met:
  - a. The parking area is located within 1,000 feet of the building(s) or use(s) it is intended to serve.
  - b. The loading area is within 100 feet of the building(s) or use(s) it is intended to serve.
  - c. The minimum number of spaces provided is at least that of the use with the greatest requirement or otherwise compliant with an approved parking demand analysis.
  - d. It is proven that the uses have different peak hour demands, or the total demand at peak times is adequately served by the total number of spaces proposed.
  - e. A Joint or Shared Access Agreement is executed documenting all uses and property owners. Such agreement shall be reflected in a deed, lease, contract, easement or other appropriate legal document.
  - f. A Maintenance Agreement is executed documenting the responsibility of each user and/or property owner in the maintenance and upkeep of such parking and/or loading areas.
3. Applicants seeking authorization of such arrangement shall submit written documentation justifying their requests, including:
  - a. The names and addresses of the owner(s) and tenant(s) that will be using the parking and/or loading spaces.
  - b. A description of the uses involved, including their minimum individual parking and/or loading requirements determined by this Article.
  - c. The location, design, and number of parking and/or loading spaces that are proposed, including the number to be shared and/or reserved for a certain use, where applicable.
  - d. A parking demand analysis in accordance with Subsection E above to determine the appropriate sharing factor. To be approved, this analysis must show that the uses have differing peak parking or loading times or that users overlap in visiting more than one use during peak times and that the proposed spaces will be adequate for the anticipated demands of each use.
  - e. The required access and maintenance agreements as outlined Subsection F (2).
4. Joint or shared parking and loading areas shall provide for cross access with clearly delineated vehicular drive aisles. Separation of joint or shared parking areas by a wall, guard rail, or other structure preventing vehicular access shall be prohibited, unless otherwise approved by the reviewing body.

## §215-30.9

## BICYCLE & PEDESTRIAN ACCOMMODATIONS

### A. Bicycle Parking.

1. Bicycle parking may be required of all nonresidential development at a rate of at least 10% of vehicle parking requirements at the discretion of the reviewing body.
2. This requirement shall not apply to properties within zoning districts where there are publicly provided or shared bicycle parking facilities within 1,000 feet of the use.

**B. Pedestrian Connectivity.**

1. Off-street parking areas of five or more spaces shall include a clearly identified pedestrian pathway from the parking spaces to building entrances and uses on site.
2. Pedestrian connections to the public sidewalk shall also be required, where applicable. **See Figure 30.2.**

**FIGURE 30.2 Pedestrian Sidewalk Network**



3. Pedestrian paths shall be a minimum of six feet wide. Pedestrian paths shall be distinguished from the parking area by grading or other protective device.
4. Pedestrian paths shall be located so the pedestrian has a short and efficient walking route.
5. Abutting land uses and buildings on a site shall be connected by a pedestrian path.



6. Pedestrian paths connecting off-street parking spaces to a building or use entrance shall be provided at a ratio of one pedestrian path for every four parking rows or 140 feet of parking lot width, whichever is greater.

## §215-30.10

### ACCESS MANAGEMENT

- A. **Access Required.** All off-street parking and loading spaces shall have direct access to a public street or alley.
- B. **Joint or Shared Access.**
  1. To promote more efficient traffic flow and traffic safety and minimize the number of curbcuts, every effort shall be made to provide shared means of ingress and egress to developed and developing properties.
  2. Where deemed necessary and appropriate, the reviewing body may require the provision of shared access drives and/or cross-easement agreements for rear access lanes to adjacent properties which minimize curbcuts along the primary roadway (see Figure 30.3).

**FIGURE 30.3** Vehicular Cross Access



- C. **Delineation.** Access from streets to parking and loading areas shall be clearly defined. All curbcuts shall be delineated with raised curbing.
- D. **Driveway Separation.** No access driveway shall be located closer than 50 feet to the intersection of public streets or another driveway. This minimum

separation may be increased or decreased with review body approval or where otherwise required by the Erie County or New York State Departments of Transportation.

- E. **Driveway Dimensions.** The size and dimension of driveways shall conform to the standards indicated in the following table.

LAND USE	REQUIRED WIDTH (FT)	
	MIN	MAX
<i>Single-, Two-, or Multi-Family, up to 4 Units</i>	10 ft	1/3 of Lot Frontage OR 20 ft <sup>1</sup>
<i>Multi-Family, over 4 Units</i>	12 ft	20 ft
<i>Nonresidential, One-Way Access</i>	10 ft	16 ft
<i>Nonresidential, Two-Way Access</i>	18 ft	24 ft

NOTE: (1) Whichever is less.

- F. **Conformance with Local and State Regulations.**

1. All curbcuts and street openings shall conform to the requirements of Chapter 183 (Streets and Sidewalks) of the Town of Tonawanda Code and the Town's Design and Construction Standards.
2. All exit or entrance drives connecting a parking and loading spaces to the street shall be approved by the Town of Tonawanda Engineer, Highway Superintendent, and Director of Planning and Development, as well as the Erie County and New York State Departments of Transportation, where involved.
3. Reference should be made to the New York State Department of Transportation Access Management Guidelines and regulations to determine the most appropriate access management strategy, including shared access and spacing of curbcuts.

# Article 31. Landscaping, Screening & Open Space

## §215-31.1

### PURPOSE & INTENT

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- A. Purpose.** The Town of Tonawanda recognizes the value of trees and landscaping and that the preservation and enhancement of these resources is necessary to protect the health, safety and welfare of Town residents. Landscaping is considered an integral part of site design, offering shade and habitat, impeding soil erosion, providing water absorption and retention to inhibit excess runoff and flooding, enhancing air quality, offering a natural barrier to noise and enhancing property values and providing scenic beauty. Landscaping emphasis shall be placed on providing features that enhance the overall aesthetics of development and the character of the Town of Tonawanda.
- B. Intent.** The standards located within this Article are intended to:
1. Establish minimum standards and criteria for landscaping for multi-family and nonresidential development in the Town, including parking areas.
  2. Dissuade the unnecessary clearing and disturbing of land to preserve the natural and existing growth of flora.
  3. Ensure the replacement of removed flora, or to establish new flora, that is indigenous to the Western New York region.
  4. Reduce the effects of wind and air turbulence, noise and the glare of automobile lights.
  5. Provide unpaved areas for the absorption of stormwater runoff and prevent soil erosion and avoid the blighted appearance of parking areas.
  6. Conserve and stabilize property values, preserve a healthful environment, and facilitate the creation of a convenient, attractive, and harmonious community environment.
- C. Redevelopment.** These regulations are further intended to guide redevelopment of existing properties and new facilities in a manner compatible with the future development vision of the Town of Tonawanda. As redevelopment and investment takes place, emphasis should be placed on improving the aesthetics of the site and surrounding area, especially as it relates to commercial corridors and views along the waterfront.

## §215-31.2

### APPLICABILITY

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- A. Uses Subject to Regulation.** All nonresidential, mixed-use, and multi-family developments shall meet the requirements of this Article. Single-, two-, and multi-family properties up to four units shall be exempt from these provisions.

- B. Development Plan Review.** The requirements of this Article shall be applied and approved through development plan review as provided for by Article 42.
- C. Review Body(s).** The terms "review body" or "reviewing body" shall mean the board, committee, commission, or other agent with development plan review authority as duly designated by Article 42.
- D. New Construction.** New construction and infill development shall be in conformance with all requirements of this Article, unless otherwise provided herein.
- E. Existing Sites.** Improvements to existing developed sites shall follow the regulations of this Article to the greatest extent practicable. In the case of nonconformities, Subsection G shall apply.
- F. Substantial Improvements.** Where the total cost of proposed improvements to an existing site are 75% or more of the property's assessed value, all improvements shall be in full compliance with this Article.
- G. Nonconformity.** A building or site not in conformance with this Article may not be required to bring the entirety of such structure into conformance, if, in the opinion of the reviewing body, the proposed improvements to the property do not increase the level of nonconformity and are otherwise consistent with the intent of this Article.
- H. Property Owner Assistance.** Owners of existing sites are strongly encouraged to consult with Town Staff and/or all applicable review bodies for assistance in following these design guidelines prior to making exterior repairs, renovations, restorations, and alterations to their buildings.

### §215-31.3

### LANDSCAPE PLAN REQUIREMENTS

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- A. Landscape Plan.** A landscape plan shall be required as part of the development plan review process, where applicable. Where determined to be necessary by the reviewing body, the landscape plan may be required to be prepared, signed and stamped by a professional, NYS licensed, or registered landscape architect, certified nurseryman, landscape designer, civil engineer, or architect.
- B. Plan Specifications.** The landscape plan shall be drawn to scale, and include the locations and dimensions of the following, as applicable:
  - 1. Existing and proposed structures and uses;
  - 2. All parking and loading areas;
  - 3. All vehicular, pedestrian, and bicyclist connections;
  - 4. Refuse disposal areas and dumpsters;
  - 5. Outdoor assembly, seating, and storage areas;
  - 6. Existing and proposed trees, shrubs, and plantings, including those that are to be removed;
  - 7. Drainage patterns and stormwater management facilities; and
  - 8. Provisions for visual and noise screening.

- C. Proposed Planting Summary.** Landscape materials to be used on the site shall be identified in a planting schedule or species list to be included on the landscape plan with the following information:
1. Type, common, and botanical names;
  2. Size and quantity; and
  3. Pit or bed treatment.

## §215-31.4

### PLANT MATERIAL REQUIREMENTS

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- A. Mixing of Species.** Landscape plans should include a variety of trees, shrubs, and ornamental planting (annuals and perennials) as part of the site design. The mixing of trees and shrubs helps to avoid a uniform, unnatural appearance, and to protect against extreme loss due to disease or infestation.
- B. Appropriateness of Species.**
1. All plant material, including grasses, shall be compatible with soil conditions on-site and the regional climate and in accordance with those appropriate for the Town of Tonawanda's Plant Hardiness Zone (Zone 6a) as defined by the United States Department of Agriculture, including any amendments thereto.
  2. Native species shall be utilized to the greatest extent possible.
  3. Plastic or other artificial plantings or vegetation are not permitted.
  4. Under no circumstance shall any site include plant material that is considered by the NYS Department of Environmental Conservation to be a prohibited and regulated invasive species per NYS Law 6 CRR-NY V C 575, including any amendments thereto.
- C. Suggested Species.** The Town shall maintain a list of suggested tree species by plant type. However, this shall not preclude the use of other appropriate plant material in accordance with Subsection B above.

**D. Minimum Tree Specifications.** All trees shall be species having:

1. A minimum caliper of three inches measured two feet above ground level at the time of planting,
2. An average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere.
3. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same to create the equivalent of a 15-foot crown.

**E. Minimum Shrub and Hedge Specifications.**

1. Shrubs shall be a minimum of two feet in height when measured immediately after planting.
2. Hedges shall be planted and maintained to form a continuous visual screen within two years after time of planting.

**§215-31.5****GENERAL STANDARDS & CRITERIA****A. Minimum Areas of Open Space and Landscaping.** The provision of open space and landscaped areas shall conform to the following:

1. Areas of open space shall be provided at the rate required by the district in which the lot is located (see Part 2, District and Use Regulations).
2. Landscaping shall be provided at a rate of at least 5% on the owned site and 10% on the total property.
3. Areas of open space in the right-of-way may count toward the provision of landscaping and open space on the property to the extent permitted by the reviewing body.

**B. Existing Vegetation.** Existing vegetation and trees (of all sizes and stages of maturity) shall be maintained, wherever possible.**C. Landscape Design.**

1. Appropriate shrub and tree plant materials shall be arranged in rows or clusters, and designed as buffers, screens or hedges in a manner that:
  - a. Gives attractive definition to the street edges or other areas of a lot.
  - b. Screens a lot along its lot lines with adjacent properties.
  - c. Screens utility buildings, refuse collection areas, storage areas, cooling systems or other similar structures, and other similar installations and features.
  - d. Provides landscaped islands or planted sub-areas which punctuate otherwise developed internal portions of a site, in conjunction with appropriate combinations of decorative fences, walls and berms.
2. The arrangement and spatial location of landscaped areas shall be designed as an integral part of the site development and disbursed throughout the site, and not just located around the perimeter.

3. Plantings should be designed to stage blooms and have color throughout the growing season.
  4. Effective use of earth berms and existing topography is also encouraged as a component of the landscaping plan.
  5. Ornamental lighting and street furnishings may be incorporated within landscaped areas with development plan review approval.
- D. Snow Removal and Storage.** Provisions for snow removal and snow storage must not adversely impact landscaped areas. Any area damaged as the result of snow removal or storage activities must be fully restored in accordance with the approved landscaping plan within the next planting season.

### §215-31.6

#### LAWN AREA

- A. Grass areas may be sodded, plugged, sprigged, hydro-mulched, or seeded except that solid sod shall be used in swales or other areas subject to erosion.
- B. In areas where other than solid sod or grass seed is used, over-seeding shall be sown for immediate effect and protection until coverage is otherwise achieved.
- C. Replacement or over-seeding mixes shall match or compliment the original installation.
- D. Grass areas shall also provide continuous, uniform, and consistent coverage.

### §215-31.7

#### BUILDING FOUNDATION LANDSCAPING

- A. A mix of landscape plantings shall be installed around all building foundations to the satisfaction of the reviewing body.
- B. Plant material should be placed intermittently against long expanses of buildings walls, fences, and other barriers to soften the effect and to help break-up walls with little to no architectural detail.
- C. Ornamental plant material, such as flowering trees and shrubs, perennials, and ground covers are encouraged.
- D. Plantings should decrease in size and increase in detail, color, and variety near entryways into buildings.

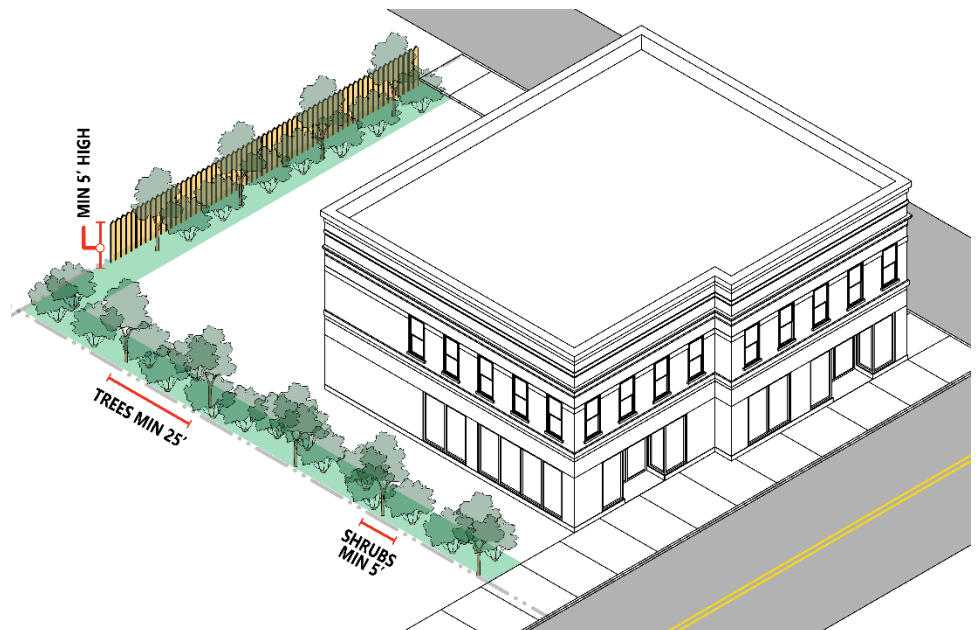
### §215-31.8

#### PERIMETER LANDSCAPING & TREES

- A. **Right-of-Way Areas.** Areas between street curbing or the edge of rights-of-way and sidewalks on Town-owned streets shall be landscaped. Town, Erie County and New York State rights-of-way may be improved under the following conditions:
  1. Where the existing space between the curblines and sidewalk is less than three feet, that area may be improved with stamped colored concrete, brick pavers, or other approved material.
  2. Where the existing space between the curblines and sidewalk is greater than three feet, that area shall be improved with landscaping in the form of street trees or grass or other appropriate approved natural materials.

3. Where plans for improvements to the public space include adding or replacing sidewalk, the area between curb and sidewalk shall be landscaped to provide a minimum five-foot snow storage area.
  4. Improvements to the public space shall be approved by the right-of-way owner prior to the Town completing site plan review.
- B. Tree Spacing.** Trees shall be planted at a spacing pattern of at least one tree every 30 linear feet along site edges adjoining principal streets. This requirement may be modified to allow for grouping where deemed appropriate by the reviewing body.
- C. Sight Obstructions.**
1. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-25.1 (Sight Obstructions).
  2. Shrubs and similar materials shall generally not be higher than three feet above the adjacent street grade and street trees shall have branches generally no lower than 12 feet above the adjacent street grade.
- D. Screening from Residential.**
1. Where any nonresidential or mixed-use property immediately abuts a residential property or use shall install a combination of the following for the purposes of buffering and screening (**see Figure 31.1**).
    - a. Decorative, opaque fencing, hedges, or other live vegetative barrier at least five feet in height.
    - b. Tree plantings spaced a minimum of 25 feet center-to-center or shrub plantings located a minimum of five feet center-to-center.
  2. Parking and loading areas shall be screened from residential in accordance with §215-31.9 A.

**FIGURE 31.1 Screening from Residential**





- E. Screening Along Street Frontage.** In the MU-I and GI Districts, nonresidential uses shall provide a landscaped buffer of at least 20 feet in width along all street frontages.

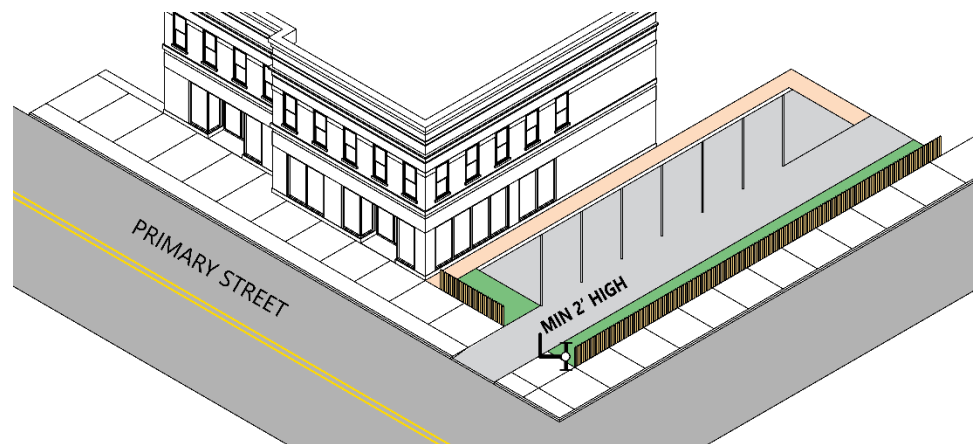
## §215-31.9

### OFF-STREET PARKING & LOADING AREAS

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- A. Screening from Residential.** Off-street parking and loading areas abutting a residential district or property line shall conform to the following:
1. Where the minimum setback requirements are met, the perimeter shall be landscaped with ground cover, low shrubs or flowering plants, and shade trees planted at intervals of not more than 25 feet.
  2. Where the minimum setback requirements are unable to be met due to the physical constraints of the site, a solid wall or fence at least five feet in height shall be required in addition to the above.
  3. The reviewing body may waive or modify these requirements as deemed necessary during development plan review.
- B. Screening at Street Frontage.** Off-street parking areas located along a primary street frontage shall be screened with a minimum two-foot decorative knee-wall. The location of such wall shall be subject to reviewing body approval.

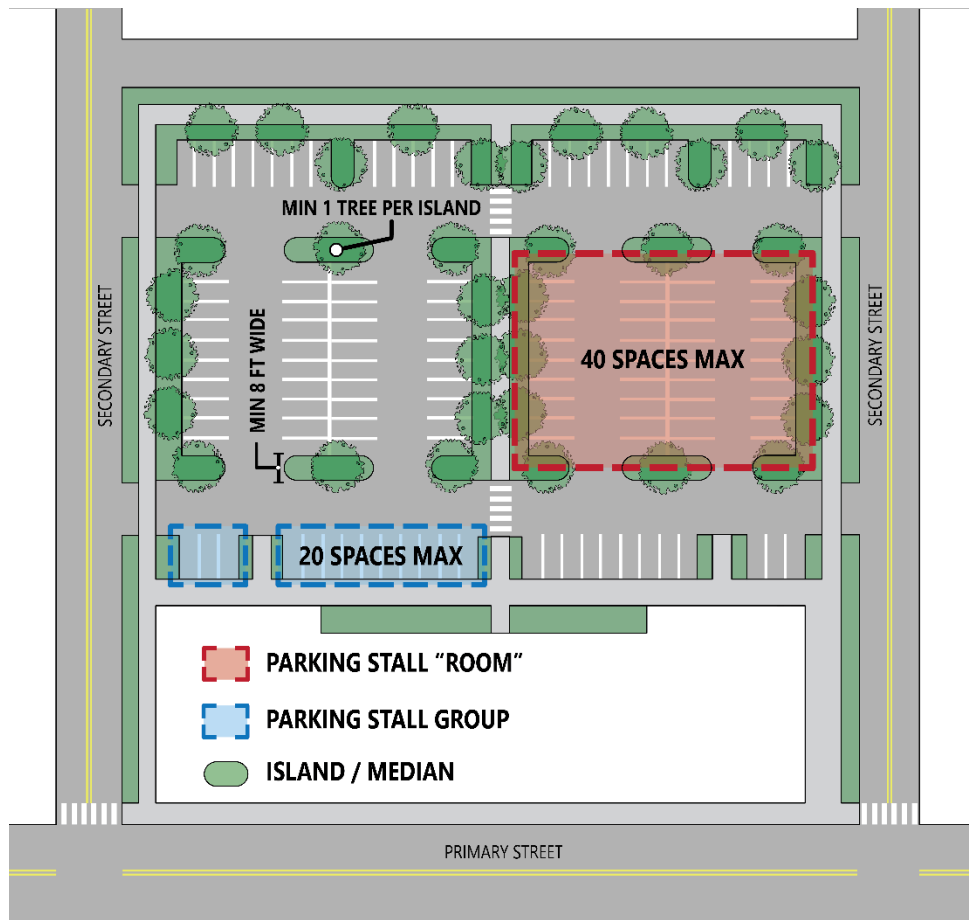
FIGURE 31.2 Parking Lot Knee Wall



**C. Landscaped Islands and Medians.** Parking areas containing 10 or more spaces shall include landscaped islands and/or medians in accordance with the following:

1. Landscaped islands should be utilized in parking areas to separate parking stalls into groupings of not more than 20 spaces between islands (**see Figure 31.3**).
2. Parking areas should be broken up into “rooms” of no more than 40 spaces, separated by landscaped medians or pedestrian accessways (**see Figure 31.3**).
3. The dimensions of all islands and medians should be a minimum of eight feet wide at the shortest side to protect plant materials and ensure proper growth (**see Figure 31.3**).
4. Each island and median shall include at least one tree. Low shrubs and ground covers will be required in the remainder of the area (**see Figure 31.3**).
5. Trees shall be provided at a rate of one shade tree per eight spaces. Large and medium shade trees (no less than eight feet in height at maturity) are recommended. Due to heat and drought stress and vision clearances, ornamental and evergreen trees are not recommended in parking areas.
6. Islands and medians shall be protected with concrete curbing.

FIGURE 31.3 Parking Area Design & Landscaping



D. **Existing Vegetation Credit.** The above-mentioned standards may be amended as part of development plan review to allow credit for existing, retained plant material if such an adjustment is in keeping with the intent of these standards.

§215-31.10

DUMPSTER SCREENING

- A. **Location.** No dumpster shall be located near or adjacent to a primary roadway or otherwise visible from the road.
- B. **Screening.** Dumpsters shall be screened from public view in accordance with the following:
  1. Screening shall include a combination of landscaping and decorative opaque fencing or similar enclosures.
  2. Enclosures must be equal to or taller than the dumpster being screened.
- C. **Use.** Dumpsters shall be secured and kept closed when not in use.
- D. **Exceptions.** Where conformance with the above may be infeasible due to site constraints, the requirements may be waived or modified by the reviewing body. In such cases, the waiver or modification of requirements should still ensure the greatest level of compliance with the spirit and intent of this section.

**§215-31.11****MECHANICAL EQUIPMENT SCREENING**

---

- A. Ground Level Equipment.** Mechanical equipment located at ground level must be effectively screened with vegetation, low berms, fencing, or others measures that are equal to or taller than the equipment being screened.
- B. Rooftop Mounted Equipment.**
  - 1. Rooftop equipment should be so grouped and located to minimize visibility from the ground to the greatest extent practicable.
  - 2. Where visible from the public right-of-way or abutting residential uses, architectural screening in the form of a parapet wall or other design feature shall be utilized.
  - 3. Equipment placed on the building roof may be permitted above the maximum height specified, provided that such mechanical equipment is set back a minimum of 15 feet from any exterior walls and does not exceed 10 feet in height above the finished roof line of the building upon which it is installed.

**§215-31.12****LANDSCAPING & TREE MAINTENANCE**

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- A.** All landscaping and screening shall be maintained according to the provisions of this Article and approved landscape plan, or as amended by an approved development plan revision.
- B.** The property owner, or his designated agent, shall be responsible for the proper care and maintenance and replacement, if necessary, of all landscape materials in a healthy and growing condition.
- C.** Maintenance shall include, but not be limited to; watering, weeding, mowing (including trimming at the base of fencing), fertilizing, mulching, proper pruning, and removal and replacement of dead or diseased trees and shrubs on a regular basis.
- D.** All landscaping and plant material that is missing, dead, decaying, or injured as of September 30th shall be replaced by June 30th of the following year at the property owner's expense. The replacement shall be of the same species and size unless otherwise approved as part of development plan review.
- E.** Irrigation systems shall be designed to minimize spray on buildings, neighboring properties, roads or sidewalks; maintained in proper operating condition and conserve water to the greatest extent feasible.
- F.** Improper maintenance shall be determined through periodic inspection by the Code Enforcement Officer. The Code Enforcement Officer may require a review and status report of plantings by a professional landscaper, arborist, or engineer. All reasonable costs for review and determination shall be at the property owner's expense.

**§215-31.13****OPEN SPACE & GREEN SPACE**

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- A. Preservation of Existing.** Open spaces, green spaces, public preserves, parklands, vegetative buffers, and other such natural areas shall be retained and established as required by this Chapter.
- B. Minimum Open Space Areas.** Minimum areas of open space and greenspace, including any landscaped areas, shall be provided at the rate required by the

district in which the property is located (see Part 2, District and Use Regulations). Open space and green space areas need not be contiguous but shall be of a useable size and area deemed appropriate by the reviewing body.

- C. Stormwater Facilities as Open Space.** Stormwater management facilities and green infrastructure, such as detention ponds or bioswales, shall not be considered open space for the purposes of this Chapter unless they are designed to be a multi-functional, productive, working landscape that serves local environmental, aesthetic, and/or recreational benefits.
- D. Passive Recreation Space.**
1. Open space and greenspace areas may be used for passive recreation activities, such as walking trails, picnic areas, gardens, preserves, or similar uses, provided the lands are preserved in their natural state to the greatest extent practicable.
  2. Buffer areas may be used for passive recreation activities and may contain bicycle or pedestrian pathways, provided such activities do not compromise the primary buffering function of such areas.
- E. Additional Designation of Open Space.** The reviewing body, as part of development plan review, may require the reservation or creation of open space more than the minimum requirements herein, provided such designation is determined to be:
1. Consistent with the Town's adopted plans and studies with respect to environmental conservation and improving public use of and access to green spaces, recreational areas, trails, and the waterfront;
  2. Necessary for the protection and preservation of natural resources, local habitats, wildlife, and native species, woodlots, and/or wetlands; and
  3. A significant benefit to the health, safety, and general welfare of the public, relative to the burden placed upon the property owner and/or developer in preserving, maintaining, and/or programming such areas.
- F. Two Mile Creek and Rattlesnake Creek Buffers.**
1. A minimum of 50 feet on either side of Rattlesnake Creek, Two Mile Creek, or their tributaries shall be maintained in its natural state or as landscaped open space.
  2. The setback distance shall be measured from the average adjacent high-water line of the water body.
  3. The protection of natural drainage elements within the project area is encouraged.
  4. Developments are encouraged to provide public access along any drainage element or within the fifty-foot buffer area where it is appropriate or desired to integrate the preservation of the drainage features into the open space element of the project design and accommodate trails.

# Article 32. Building & Site Design Standards

## §215-32.1

### PURPOSE & INTENT

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- A. Purpose.** The purpose of this Article is to improve the overall character and image of the Town of Tonawanda through the application of building and site design standards to future development and investment. These regulations are further intended to guide redevelopment of existing properties and new facilities in a manner compatible with the future development vision of the Town of Tonawanda. As development takes place, emphasis should be placed on improving the aesthetics of the site and surrounding area, fostering high-quality investment, and promoting the Town as an attractive place for people to live, work, shop, and socialize.
- B. Objectives.** All nonresidential, mixed-use, and multi-family buildings and structures within in the Town shall be designed to achieve the following objectives:
1. Improve the ambiance and visual quality of the Town's commercial, industrial, waterfront, and mixed-use areas;
  2. Promote diversity in architectural design, variations in building footprints, and visually interesting façades, while also creating a cohesive aesthetic between buildings on the same site and/or streetscape;
  3. Reflect the appropriate and desired building scale and character of the surrounding neighborhood, activity center, and/or corridor;
  4. Utilize elements, details, styles and architectural features for buildings, sites, and public spaces that enhance the visual appeal of the surrounding area and foster a sense of place;
  5. Utilize high-quality building materials and avoid prototypical corporate or franchise style architecture to ensure longevity in the life and use of buildings and structures; and
  6. Encourage the development of buildings consistent with the goals of the Leadership in Energy and Environmental Design (LEED) program.

## §215-32.2

### APPLICABILITY

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- A. Uses Subject to Regulation.** These design standards shall apply to all existing, altered, or newly constructed buildings, sites, and structures of the following uses and developments:
1. Nonresidential uses, including industrial uses;
  2. Mixed-uses, whether located on the same site or within the same structure; and
  3. Multi-family dwellings over four units.
- B. Development Plan Review.** The requirements of this Article shall be applied and approved through development plan review as provided for by Article 42.

- C. Review Body(s).** The terms “review body” or “reviewing body” shall mean the board, committee, commission, or other agent with development plan review authority as duly designated by Article 42.
- D. New Construction.** New construction and infill development shall be in conformance with all requirements of this Article, unless otherwise provided herein.
- E. Existing Buildings and Sites.** Improvements to existing buildings and sites shall follow the regulations of this Article to the greatest extent practicable. In the case of nonconformities, Subsection G shall apply.
- F. Substantial Improvements.** Where the total cost of proposed improvements to an existing building and/or site are 75% or more of the property's assessed value, all improvements shall be in full compliance with this Article.
- G. Nonconformity.** A building or site not in conformance with this Article may not be required to bring the entirety of such structure into conformance, if, in the opinion of the reviewing body, the proposed improvements to the property do not increase the level of nonconformity and are otherwise consistent with the intent of this Article.
- H. Property Owner Assistance.** Owners of existing buildings are strongly encouraged to consult with Town Staff and/or all applicable review bodies for assistance in following these design guidelines prior to making exterior repairs, renovations, restorations, and alterations to their buildings.

### §215-32.3

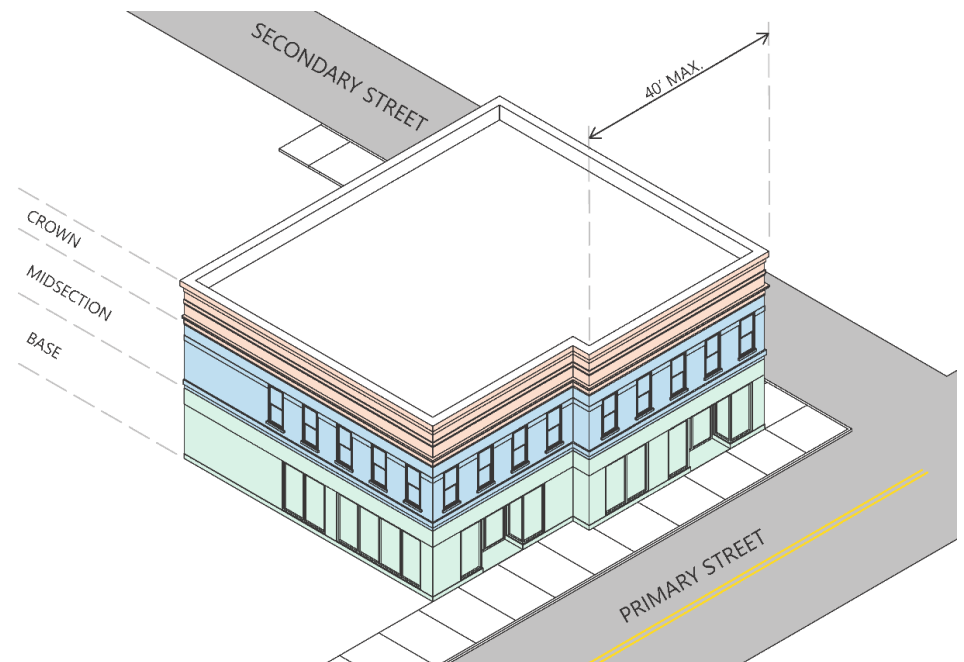
### BUILDING PLACEMENT & ORIENTATION

- A. Context.** Placement refers to how a building is situated on the lot. Orientation refers to the location of a building's main axis, or primary façade. Building placement and orientation is a crucial part of the interface of private building façades with public thoroughfares, which shape a compact, walkable public realm.
- B. Building Placement.** The placement of buildings shall follow the minimum and maximum front setback requirements of this Chapter. Relief from this provision may be provided for appropriate architectural elements and pedestrian amenities, such as recessed entries or chamfered corners, as deemed appropriate by the reviewing body.
- C. Building Orientation.**
  1. The primary façade(s) shall be oriented to the street and waterfront, where applicable.
  2. Where multiple buildings are located on the same lot, the primary façades shall be oriented to foster a campus style environment as deemed appropriate by the reviewing body.
- D. Accessibility.** All buildings shall be accessible to emergency vehicles.
- E. Integration and Arrangement.**
  1. All buildings in the plan shall be integrated with each other and with adjacent buildings and shall have convenient access to and from adjacent uses.
  2. All buildings shall be arranged to avoid undue exposure to concentrated loading or parking facilities, wherever possible, and shall be oriented to preserve visual and auditory privacy between adjacent buildings.

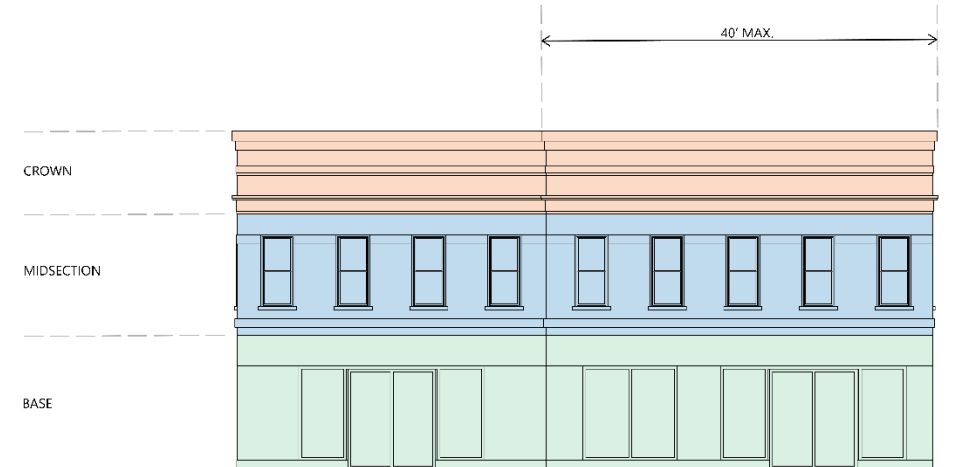
## §215-32.4

## BUILDING MASSING &amp; FORM

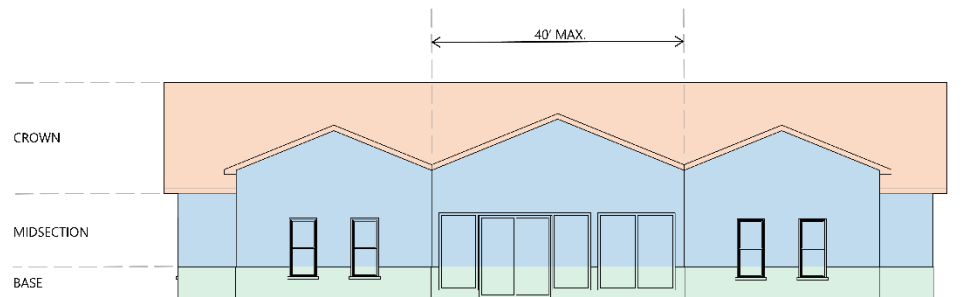
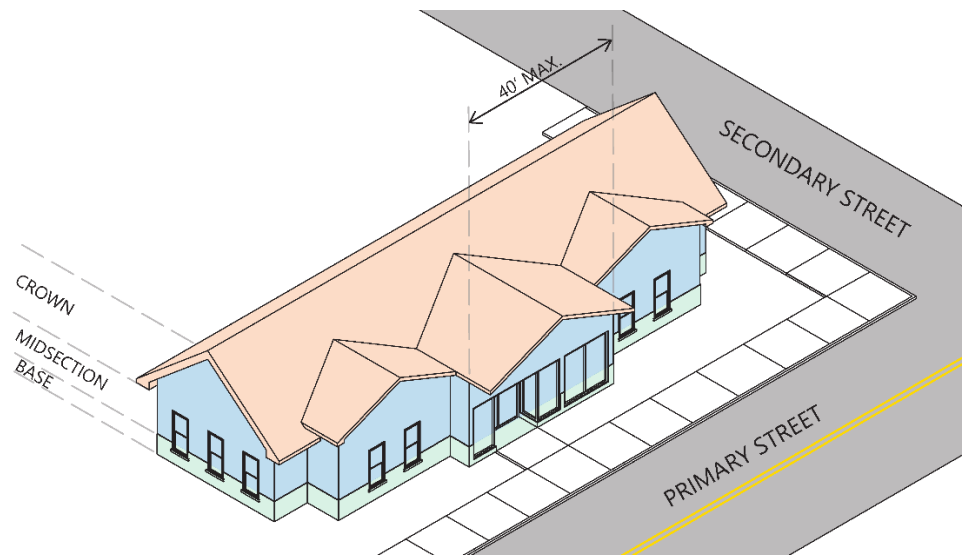
- A. Context.** Massing and form refer to the volume and shape of a building. Buildings should provide visual interest that engages pedestrians and others to promote activity and business vitality.
- B. Building Massing.**
1. Buildings should be taller than they are wide. Buildings which are "squat" in proportion, or which have very strong horizontal elements that dominate the façade, are discouraged.
  2. Primary buildings in the mixed-use districts (MU-N, MU-GC, MU-W, and MU-I) shall appear to be a minimum of 1 and ½ stories in height.
  3. All buildings shall exhibit a clearly defined base, mid-section, and crown. This can be accomplished using a combination of architectural details, materials, textures, and colors (see Figures 32.1 and 32.2).

**FIGURE 32.1 Façade Articulation (MU-GC, MU-W, MU-I)**





**FIGURE 32.2 Façade Articulation (MU-N)**



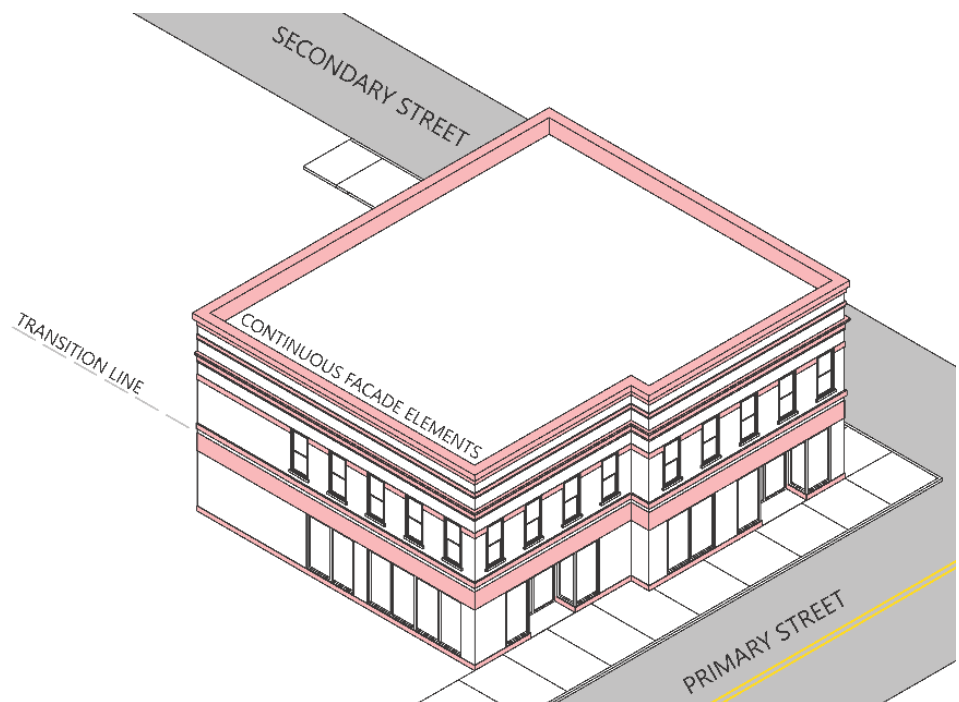
4. A single, large, dominant building mass shall be avoided. No façade shall have a blank, uninterrupted length exceeding 40 feet without including architectural features such as columns, pilasters, piers, or changes in plane, in texture or masonry pattern, storefronts and entry treatments, or

equivalent design element that subdivides the wall into pedestrian-scaled proportions (see Figures 32.1 and 32.2).

### C. Building Form.

1. Buildings designed to advertise or promote a uniform corporate image in a manner that may render the building undesirable or unable to reasonably accommodate future uses shall be prohibited.
2. Buildings situated at street corners shall "wrap" the corner by continuing certain façade elements (such as the cornice, roofline treatments, or horizontal accent bands) on all street elevations (see Figure 32.3).
3. Buildings of two or more stories shall have a transition line. A transition line is a horizontal architectural element, such as a cornice, balcony or change in material, which spans the full width of the façade, and creates a distinction between the first and second stories. Transition lines shall be designed in proportion to the overall height and width of the building (see Figure 32.3).

**FIGURE 32.3** Continuous Façade Elements



## §215-32.5

### BUILDING FAÇADES & FENESTRATION

#### A. Context.

1. A building façade serves as the interface between the public realm and the interior space of the building and should be compatible with the character and context of the surrounding area. Proper façade composition creates visual interest and adds character to a façade, providing visibility into the building interior, particularly for retail uses,

contributing to the pedestrian, bicyclist, and motorist experience throughout the Town.

2. Fenestration refers to the area of the façade or building exterior covered with openings, in particular windows and doors, how transparent the enclosing glass in the openings is, and how the openings are arranged and/or relate to each other with respect to size, depth, location, etc.

**B. General Façade Design.**

1. Buildings should employ four-sided architecture design practices, extending and relating architectural detailing and design elements across all façades.
2. The same exterior treatment provided to the primary façade shall also be provided to any side and rear wall facing a public right-of-way or residential use.
3. For the purposes of this Article, buildings that are located on a street corner are considered to have two primary façades.
4. Façade elements such as windows and bays shall be of a consistent proportion to each other.
5. The use of depth is encouraged to highlight façade openings such as windows to create a three-dimensional relief which produces shadows.

**C. First Floor.** Includes the area of façade below the roofline for single-story structures, or the transition line for two or more story structures.

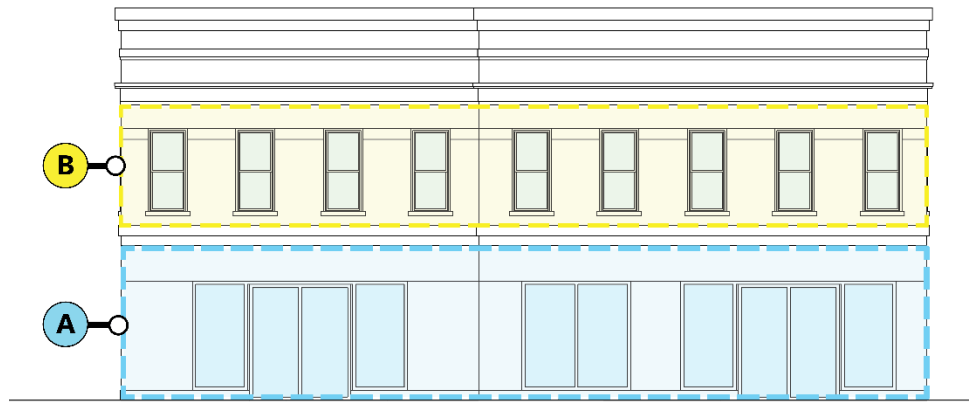
1. The first floor of any building should be between 12 and 15 feet in height.
2. The first floor of a structure shall include vertical elements dividing the building into "bays." Each bay should contain a window or entrance door.
3. The first-floor levels of a façade shall provide the highest amount of façade openings, articulation, and transparency.

**D. Upper Floors.** Includes all façade area above the transition line.

1. The spacing and rhythm of upper-floor openings shall match that of the major entrance and design elements on the first floor.
2. Upper-floor openings shall be residential in size, proportion, and character.

**E. Windows and Doors.**

1. All primary façades shall observe the transparency requirements by use and zoning district in the following table.



BUILDING / USE	R-1, R-2, MR	MU-N	MU-GC, MU-W	MU-I, GI
<b>MIN Transparency – First Floor (A)</b>				
<i>Commercial/Mixed Use</i>	25%	35%	50%	35%
<i>Other</i>	25%	25%	35%	35%
<b>MIN Transparency – Upper Floors (B)</b>				
<i>All Buildings/Uses</i>	20%	20%	35%	-
<b>MAX Transparency – Total Façade Area (A+B)</b>				
<i>All Buildings/Uses</i>	65%	75%	85%	75%

**NOTE:** Transparency shall be measured as the percentage of the primary wall area per floor.

2. Doors that are comprised of an area of at least 30% transparent glass shall be used for building entrances on the primary façade. Opaque doors may be used for doorways providing access to upper floors.
3. The use of opaque, mirrored, or tinted glass with less than 50% light transmittance is prohibited. If screening is necessary, interior blinds or curtains are encouraged.

**F. Storefronts and Entrances.**

1. Primary entrances shall face the street and be so located to afford direct access from the sidewalk, where applicable.
2. Where parking areas are located behind the building, secondary entrances should be provided at the rear or side of the building to offer direct access.
3. Upper floor entrances shall be distinguished from entrances for first floor uses.
4. Corner buildings may have two separate entry points or a single-entry point at the corner.
5. Storefront construction should be recessed enough at the point of entry to allow the door to swing out without obstructing the sidewalk, where applicable.

6. The sill of storefront windows should be no higher than three feet above grade.

**G. Awnings and Canopies.**

1. Awnings or canopies may be permitted over entrances, storefronts, large first-floor windows, and upper-floor windows.
2. Awnings and canopies shall be designed to fit the window, door, or storefront openings that they are intended to cover. Placement should not conceal architectural features.
3. The use of reflective, neon, translucent, wood, metal, plastic, fiberglass, aluminum, or stock metal materials is prohibited.
4. Awnings and canopies shall be capable of withstanding both high winds and winter snow loads.
5. Street-level awnings and canopies shall be mounted so that the bottommost edge is no less than seven feet above grade.
6. Awnings and canopies shall not project more than seven feet from the building façade.

## §215-32.6

### ROOF STYLES & TREATMENTS

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- A. Context.** A roofline is an architectural element, such as a cornice, parapet, or change in material, plane, or design, which creates a distinction between the top of the building and the lower floors.
- B. Roof Design.**
1. All structures shall have a distinct, visible roofline.
  2. Building rooflines should be varied to highlight entrances and bays and otherwise contribute to the visual interest of the building.
  3. Rooflines shall be designed in proportion to the overall height and width of the building.
  4. Flat roofs shall slope to the back of the building to provide proper drainage and shall include a cornice element.
  5. Peaked or gable roofs shall be consistent with the placement, size, and patterns of nearby or adjacent structures, where applicable.
  6. Mechanical equipment that is located on the rooftop shall be effectively screened with parapet walls, decorative fencing and/or gables to eliminate views from the ground level.
- C. Sustainable Roof Treatments.**
1. Roofing materials that reflect sunlight (e.g. lighter colors) or incorporate vegetated roofing are encouraged. Lighter colors decrease heating and cooling needs, while green roofs reduce stormwater run-off.
  2. Where green roofs are proposed, the reviewing body may deduct a portion of the green roof building from the lot coverage calculations up to 75% of the green roof footprint.

3. The use of alternative energy materials and systems, such as solar panels or shingles, is encouraged. Their installation shall be incorporated into the design of the building so as not to detract from the architectural style and detailing.
4. Where feasible, roof-mounted alternative energy equipment shall be located so as not to be visible from the public right-of-way.

## §215-32.7

### MATERIALS & COLOR

---

#### A. Allowable Materials.

1. Building façades shall be constructed of durable materials such as brick, stone, finish masonry, or fiber cement (panels, siding, and trim boards) or finished wood, or their equivalent or better. The most stringent quality standards will be applied to buildings in locations most visible to people in public spaces.
2. In proposing other exterior building materials, the applicant must show that the material is appropriate to the use proposed and will not significantly impact the overall visual quality of the environment.
3. The use of modern materials or design may be permitted at the discretion of the reviewing body. This may include, but is not limited to, the use of metal for decorative features.

#### B. Variety of Colors and Materials.

1. No less than two and no more than three building materials or colors (excluding trim) shall be used on any one façade of a building.
2. A single material or color should be used as the dominant theme in the façade, with secondary materials and colors used to highlight and accent the design.
3. Changes in materials shall occur at inside corners. Material changes at the outside corners or in a plane shall be prohibited, unless otherwise approved by the reviewing body.

#### C. Metal Buildings.

1. No building or structure may be constructed 100% of metal materials, except for accessory structures which may be of pole barn style construction.
2. The finishing of pole barn style accessory structures shall reflect the character and design of the primary structure on the same lot.

#### D. Prohibited Materials.

1. The use of stucco, vinyl, fiberglass, plastic panels, sheet metal, clear-coated or corrugated aluminum, iron, stainless steel, mirrored glass, concrete block, or smooth concrete is prohibited.
2. Finishes that are intended or designed to reflect light and glare are not permitted in any district.
3. Exterior Insulation and Finish System (EIFS) material may be permitted with review body approval.

- E. **Color.** Florescent, neon, day-glow, primary, pastel, or metallic colors are prohibited.

## §215-32.8

### DESIGN TRANSITIONS BETWEEN NONRESIDENTIAL & RESIDENTIAL USES

- A. **Applicability.** All nonresidential, mixed, and multi-family use structures shall employ similar building and site design standards to ensure compatibility with adjacent residential development. These requirements shall be applied in addition to the design standards and guidelines of this Article and requirements set forth by this Chapter for landscaping, screening, and buffering of uses.
- B. **Requirements.** To the maximum extent practicable, nonresidential, mixed-use, and multi-family developments shall use all the following techniques when adjacent to a residential use.
  - 1. Similar building setback;
  - 2. Similar building height;
  - 3. Similar roof form; and
  - 4. Similar exterior materials.

## §215-32.9

### GENERAL SITE DESIGN STANDARDS

- A. **Natural Topography and Grading.**
  - 1. The design of buildings and the parking facilities shall take advantage of the natural topography of the project site where appropriate.
  - 2. Contour grading, where both the horizontal and vertical slopes are varied to reflect naturally occurring landforms, is preferred.
  - 3. Grading shall be minimized to the extent possible, and all finished grades shall blend with existing off-site grades.
  - 4. Berming as a grading or visual buffer solution shall be avoided along the riverfront to preserve the existing level or gently rolling topography.
- B. **Open Space.**
  - 1. Areas of open space shall be designed as integral parts of the overall site and shall be properly related to existing and proposed buildings, multi-modal connections, and the waterfront, where applicable.
  - 2. All open space areas shall meet the minimum requirements of §215-31.13
- C. **Pedestrian and Bicyclist Accommodations.**
  - 1. Pedestrian connections shall be designed as integral parts of an overall site design and be properly related to existing and proposed buildings. Separated circulation should be provided to the extent practicable.
  - 2. Buildings and vehicular circulation areas shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.
  - 3. Bicycle and walking paths should be parallel to major roadways or driveways and shall form an interconnected network of path facilities within a property or group of properties.

4. Wherever practicable, every effort should be made to interconnect on-site pathways to adjacent parks and trails, including the larger regional network of paths.
- D. ADA Conformance.** All new or reconstructed off-street parking areas must conform to Americans with Disabilities Act standards.

## §215-32.10

### WATERFRONT VIEWSHED PROTECTION

- A. Applicability.** All sites within the Mixed-Use Waterfront (MU-W), Mixed-Use Industrial (MU-I), and General Industrial (GI) Districts shall be developed in such a way as to maximize view opportunities at the river's edge and view corridors throughout the development.
- B. General Requirements.**
1. Site layout and design shall consider view corridors from the Riverwalk and any adjacent public open space.
  2. Important views should be protected and enhanced to the maximum extent practicable.
  3. To ensure visual access to the water, at least 30% of the shoreline shall be contained within view corridors.
  4. The minimum width of a view corridor shall be 25 feet. Satisfaction of this requirement shall be measured by dividing the number of linear feet of river view preserved in a view corridor by the total river view in a single ownership.
  5. No buildings, walls, or other opaque structures shall be permitted within view corridors. Nonopaque structural elements such as gazebos, pergolas, bandshells or open market or festival stalls are permitted within view corridors.
- C. Development Plan Review Materials.** The reviewing body may require the applicant to provide information which will allow an adequate review of the potential impact of the development on the scenic resources of the area.
1. Information that may be requested may include:
    - a. Photographs of all existing scenic vistas at the site.
    - b. Schematic plans and sections clearly showing the impact that development will have on the scenic vistas.
    - c. Elevations or perspective sketches showing the proposed development and its impact on views to the river from surrounding public open space and/or public rights-of-way.
  2. Based on the findings of the visual assessment, the reviewing body may limit the height or length of any proposed structure and may recommend changes in the arrangements of buildings if in its determination the proposed limitations or changes will protect or enhance the visual character.

## §215-32.11

### STORMWATER MANAGEMENT & GREEN INFRASTRUCTURE

- A. Guiding Documents and Regulations.** The below documents serve as the official guides and specifications for stormwater management.



1. New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation).
2. New York State Standards and Specifications for Erosion and Sediment Control (New York State Department of Environmental Conservation).
3. Town of Tonawanda Design and Construction Standards.
4. Chapter 73 (Stormwater Management) of the Town of Tonawanda Code.

**B. Discharge Preferences.**

1. Where technically feasible, stormwater discharges must be directed to sewers according to the following hierarchy of preference:
  - a. Green infrastructure system in accordance with Subsection C.
  - b. Storm sewer and/or storm overflow sewer.
2. Where the stormwater will be released to a storm sewer or storm overflow sewer, the project must meet both the sizing criteria and water quality standards contained in the New York State Stormwater Management Design Manual.

**C. Green Infrastructure.**

1. Where practicable, stormwater management facilities should utilize Green Infrastructure Best Management Practices (BMPs) according to the following hierarchy of preference:
  - a. Conservation of natural areas.
  - b. On-site infiltration practices including, but not limited to, bioretention cells/rain gardens, vegetated swales, filter strips, constructed wetlands and porous pavement.
  - c. Capture and reuse of runoff through low- impact practices including, but not limited to, green roofs, blue roofs, and rain barrels or cisterns.
2. Where on-site green infrastructure BMPs are not feasible for all or a portion of stormwater runoff volume due to factors including, but not limited to, contamination, high groundwater table, shallow bedrock, or poor infiltration rates, or where it can be proven that such practices would cause property or environmental damage, the remaining portion may be treated by another stormwater management practice acceptable to the reviewing body.
3. In cases where on-site BMPs have been determined not to be feasible, the reviewing body may consider the following alternative stormwater management practices to meet water quantity standards, in order of preference:
  - a. Off-site green infrastructure BMPs within the same sub-sewershed;
  - b. Retention through subsurface infiltration or underground storage vaults;
  - c. Detention through underground storage vaults.
4. Where stormwater management performance standards cannot be met due to unique site constraints or any other conditions beyond the control of the applicant, the reviewing body may provide an exemption to the standards of this section.

# Article 33. Exterior Lighting

## §215-33.1

### PURPOSE & INTENT

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The purpose of this Article is to provide regulations for exterior lighting to achieve the following objectives:

- A. Allow for the provision of exterior lighting as needed for visibility, security and as an accent to architectural and/or landscape features.
- B. Permit the use of exterior lighting that does not exceed the minimum levels specified in the International Dark Sky Association and the Illuminating Engineering Society of North America recommended practices for night-time safety, utility, security, productivity, enjoyment, and commerce.
- C. Minimize adverse offsite impacts of lighting such as light trespass, and obtrusive light.
- D. Curtail light pollution, reduce skyglow and improve the nighttime environment.
- E. Help protect the natural environment from the adverse effects of night lighting from gas or electric sources.
- F. Conserve energy and resources to the greatest extent possible.

## §215-33.2

### APPLICABILITY

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- A. **Uses Subject to Regulation.** These regulations shall apply to all exterior lighting on any property utilized for the following purposes:
  - 1. Nonresidential uses, including industrial uses;
  - 2. Mixed-uses, whether located on the same site or within the same structure; and
  - 3. Multi-family dwellings over four units.
- B. **Development Plan Review.** No exterior lighting regulated under this Chapter shall be erected without first receiving approval through development plan review in accordance with Article 42.

## §215-33.3

### LIGHTING PLAN

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Lighting plans shall be submitted to as part of the development plan review process. Lighting plans must be prepared by a lighting professional and shall include:

- A. Location of lights with specifications,
- B. Level of illumination at all property lines and five feet beyond based on all proposed and existing light fixtures.
- C. Lighting cut sheets for each proposed lighting style, including lamp types (Incandescent, Fluorescent, Low- or High-Pressure Sodium, etc.) and wattage for each proposed light source.

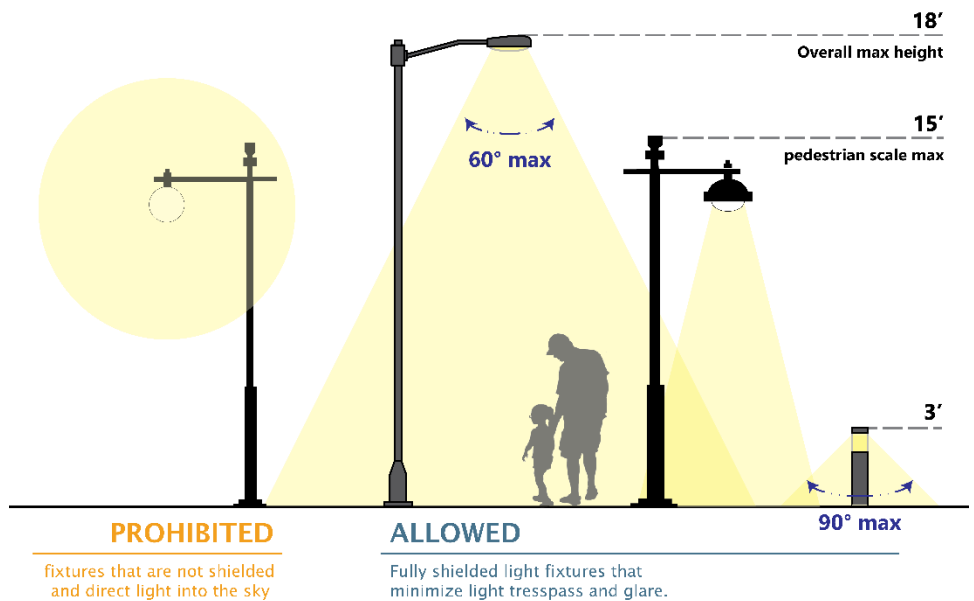
- D. Shielding method proposed to cut-off direct light to adjacent properties.
- E. Height of pole and fixture and/or distance above grade for wall-mounted lighting fixtures.

§215-33.4

LIGHTING DESIGN

- A. The use of lighting fixtures compliant with International Dark Sky Association standards is highly encouraged.
- B. Fixtures shall be fully shielded, pointing downward, to minimize skyglow, glare, and light trespass. Luminaries shall be so hooded or shielded that the maximum angle of the cone of direct illumination shall be 60 degrees drawn perpendicular to the ground. Such angle may be increased to 90 degrees if the luminary is less than three feet above ground (See Figure 33.1).
- C. All lighting fixtures shall be shielded and directed so as not to cast an illumination of more than one (1) foot-candle on adjacent nonresidential properties or more than one-tenth (0.1) foot-candle on adjacent residential properties.
- D. Pedestrian-scale lighting shall be provided along major pedestrian paths and along the Niagara River edge.
- E. Pole-mounted fixtures shall not be mounted higher than 18 feet above grade (see Figure 33.1). Such fixtures may exceed 18 feet in height where NYS or Erie County Department of Transportation, or other such transportation authority regulations require.

FIGURE 33.1 Light Fixture Height & Shielding



- F. All lighting shall be located and designed as an integral part of the entire project of which it is a part and shall consider the architectural and landscape context of the site.

- G. All wiring for lighting shall be installed underground, where applicable.
- H. The illumination of signs shall also conform to the requirements of Article 34 of this Chapter.

**§215-33.5****INTENSITY OF ILLUMINATION**

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- A. A banking institution shall be permitted to have light level in excess of the limit in this subsection, but only to the extent necessary to comply with the requirements of Article II-AA of the New York State Banking Law, commonly referred to as the "ATM Safety Act."
- B. Exterior lighting should be illuminated only when needed, such as during business hours or in areas requiring illumination for security purposes. The use of motion activated sensors or reduced lighting after hours is encouraged.
- C. Fixtures shall be no brighter than necessary to illuminate the site and/or area intended. To the extent practicable, lighting fixtures shall be designed and programmed to adjust to ambient lighting conditions (e.g. decreasing the intensity of illumination at nighttime).
- D. Bulb types should be selected to reduce blue light emissions, which may be hazardous to human health and wildlife. The use of white or amber colored lighting is preferred. No lighting shall have a color temperature exceeding 3000 degrees Kelvin.

# Article 34. Signage

## §215-34.1

### PURPOSE

- A. Purpose.** The purpose of this Article is to promote and protect the public health, welfare, and safety by regulating existing and proposed signs which are visible from streets or other public areas or from one property to another. These regulations are designed to balance the development and promotion of business and industry with the provision of signage in a manner that is not a detriment to the public.
- B. Objectives.** The intent of this Article is to achieve the following objectives:
1. Ensure right to free speech as protected under the Constitution;
  2. Establish a clear and impartial process for those seeking to install signs;
  3. Protect property values and create a more attractive economic and business climate;
  4. Preserve the scenic and natural beauty of designated areas;
  5. Reduce the adverse effects of signage on the desired Town character and foster a visually pleasing community environment;
  6. Provide structures and uses with effective means of identification while reducing visual clutter through the prevention of excessive and confusing sign displays;
  7. Reduce visual distractions and obstructions that may impact traffic safety, and reduce hazards that may be caused by signs overhanging or projecting above public rights-of-way; and
  8. Enforce and encourage the objectives and goals of the Town's Comprehensive Plan and other supporting plans and studies.

## §215-34.2

### APPLICABILITY

- A. Signs Under Regulation.** The requirements of this Article shall govern and control the erection, enlargement, expansion, renovation, operation, maintenance, relocation, and removal of all signs within the Town visible from any street, sidewalk, public right-of-way, or public space. This shall include signage provided both on residential and nonresidential properties.
- B. Exempt Signs.** The provisions of this Article shall not apply to safety signs, road signs, historical markers, or highway directional signs erected by municipal or public agencies. Murals and works of art including no commercial message shall also be exempt.
- C. Customary Decorations Permitted.** This Article shall in no event be construed to prohibit the temporary decoration of premises in any district during religious, patriotic or holiday seasons in a customary manner.

## §215-34.3

### SIGN PERMIT REQUIRED

- A. Permit Required.** Apart from the types of signage exempted in §215-34.13 herein, no sign shall hereafter be erected, enlarged, altered, rebuilt, extended, relocated, or used within the Town of Tonawanda, outside of the corporate limits of the Village of Kenmore, unless a permit for such sign is first obtained from the Code Enforcement Officer of the Town of Tonawanda.
- B. Exempt Actions.** The following actions shall not require the issuance of a new sign permit provided such maintenance, changes, or alterations do not in any way alter the physical size, design, or nature of the sign.
  - 1. Normal maintenance and repair of a sign not involving structure changes, including, but not limited to, repainting, repairing, changing of parts, or cleaning.
  - 2. Changes to the content or message of a sign, provided no change is made to the type, size, design, illumination, location, or other physical sign feature. The issuance of a zoning permit shall be required in accordance with Article 41 to ensure compliance with the provisions of this Article.
  - 3. Changes in the sign user, owner, or owner of the property on which the sign is located.
- C. Signs Requiring Permits.** Sign permits are required for certain sign types, depending upon its location, design, or size. The table below indicates permit requirements by sign type.

SIGN TYPE	PERMIT REQUIRED	SIGN REGULATIONS
<i>A-Frame</i>	<b>NO</b>	<b>34.13 (A)</b>
<i>Awning or Canopy</i>	<b>YES</b>	<b>34.18 (A)</b>
<i>Billboard</i>	<b>YES</b>	<b>34.18 (B)</b>
<i>Directional</i>	<b>NO</b>	<b>34.13 (B)</b>
<i>Governmental</i>	<b>NO</b>	<b>34.13 (C)</b>
<i>Ground</i>	<b>YES</b>	<b>34.18 (C)</b>
<i>Incidental</i>	<b>NO</b>	<b>34.13 (B)</b>
<i>Internal</i>	<b>NO</b>	<b>34.13 (D)</b>
<i>Lawn</i>	<b>NO</b>	<b>34.13 (E)</b>
<i>Marquee</i>	<b>YES</b>	<b>34.18 (D)</b>
<i>Neon</i>	<b>NO</b>	<b>34.13 (G)</b>
<i>Pole</i>	<b>YES</b>	<b>34.18 (E)</b>
<i>Projecting</i>	<b>YES</b>	<b>34.18 (F)</b>
<i>Roof</i>	<b>YES</b>	<b>34.18 (G)</b>
<i>Suspended</i>	<b>YES</b>	<b>34.18 (H)</b>
<i>Wall</i>	<b>YES</b>	<b>34.18 (I)</b>
<i>Window</i>	<b>NO</b>	<b>34.18 (J)</b>
<i>Temporary</i>	<b>YES</b>	<b>34.18 (K)</b>

- D. Alteration.** Any sign for which a permit has been issued shall not be modified, relocated, altered, or replaced, unless an amended or new sign permit is obtained from the Code Enforcement Officer.
- E. Expiration.** A sign permit shall expire if the sign for which the permit has been issued is not fully constructed within 180 days from the date of issuance of the sign permit. The Code Enforcement Officer may grant an extension provided

the applicant submits a written request with sufficient reason for the delay in construction.

- F. Revocation.** The Code Enforcement Officer, at any time for a violation of this Article, may issue a notice of violation. A written notice of the violation including all reasons for the violation shall be mailed to the property, building, and/or sign owner. Said violation must be corrected within 30 days of the date of notice, otherwise the sign permit shall be revoked and the sign in question shall be required to be removed.
- G. Variances.** Notwithstanding any other provision of this Article, upon application to the Zoning Board of Appeals, that Board may vary or adopt the strict application of any of the requirements of this Article.

## §215-34.4

### SIGN PERMIT APPLICATIONS

#### A. Application Submitted.

1. Sign permit applications shall be submitted to the Code Enforcement Officer on the appropriate forms provided by the Town of Tonawanda.
2. Incomplete applications will not be processed. The Code Enforcement Officer shall provide written or electronic notice of application deficiencies to applicants. If such deficiencies are not corrected within 30 days of notice, the application will be considered withdrawn.

#### B. Application Requirements.

The following shall be provided in all sign permit applications. The Code Enforcement Officer may require application materials to be prepared by a licensed engineer or sign professional if deemed necessary for adequate review of the proposed sign.

1. Name, address, contact information, and signature of the applicant.
2. Name, address, and signature of the building and/or property owner (if not the applicant), and a statement of consent for the applicant to seek such sign permit.
3. Dimensions and drawings indicating the size, shape, construct, materials, and layout of the proposed sign(s).
4. Site plan and elevations indicating the proposed location and size of the sign(s) drawn to scale.
5. Color illustrations and/or photographs of the proposed sign and sign area.
6. Proposed illumination system, if any, and the type of lighting to be used.
7. Plan for removal of the sign(s) and restoration of the building façade, ground, or other feature to which the sign(s) is proposed to be attached.
8. Any additional site and/or sign information deemed necessary by the Code Enforcement Officer for the proper review of such application.
9. All applicable permit fee(s).

#### C. Review Criteria.

The approval of sign permit applications shall be based upon the following criteria:

1. The sign is not confusing or distracting, nor will it create a traffic hazard or otherwise adversely impact public safety;

2. The sign follows the design guidelines outlined in §215-34.15 to the greatest extent practicable; and
3. The sign is otherwise compliant with this Article and all other applicable local, state, and federal laws and regulations.

## §215-34.5

### REVIEW PROCEDURES

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#### A. Standard Review Procedures.

1. The Code Enforcement Officer is hereby authorized to review, approve, approve with modifications, or deny a sign application in accordance with this Article.
2. The Code Enforcement Officer may, at their discretion, refer any sign application to the Planning Board for review and issuance of an advisory opinion. Such review may occur at any regularly or specially scheduled Planning Board meeting.
3. The Code Enforcement Officer may utilize the opinion of the Planning Board in the issuance of their decision to approve, approve with modifications, or deny a sign application.
4. Any person aggrieved by a decision for a sign permit by the Code Enforcement Officer may submit an appeal to the Town of Tonawanda Zoning Board of Appeals. Such appeal must be made within 30 days of the date of decision.

#### B. Town Board Review. Applications for temporary signs that encroach upon, hang over, or are located on public property, except for a-frame signs, shall be subject to review and approval by Town Board under the following procedures.

1. Sign permit applications shall be submitted to the Code Enforcement Officer at least 10 business days prior to the Town Board meeting at which such application is to be considered. Upon receipt of all required information, the Code Enforcement Officer will submit all materials to the Town Board for their review.
2. The Town Board shall review all sign applications received from the Code Enforcement Officer. Such review may occur at any regularly or specially scheduled Town Board meeting.
3. The Town Board may approve, approve with modifications, or deny a sign permit application upon consideration of the application's conformance to the applicable requirements contained in this Article, consistency with the architectural style of the building or structure with which the proposed sign or signs is associated, and all other applicable laws and ordinances.
4. The Town Board may, at their discretion, refer any sign application to the Planning Board for review and issuance of an advisory opinion. Such review may occur at any regularly or specially scheduled Planning Board meeting.
5. The Town Board may utilize the opinion of the Planning Board in the issuance of their decision to approve, approve with modifications, or deny a sign application.

#### C. Development Plan or Special Permit Review. Developments subject to review and approval under this Chapter may have proposed signage reviewed and



approved as part of the special permit or development plan review process. In the event of such review, all required sign permit application materials shall be provided as part of the special permit or development plan application.

§215-34.6

MEASUREMENT

FIGURE 34.1

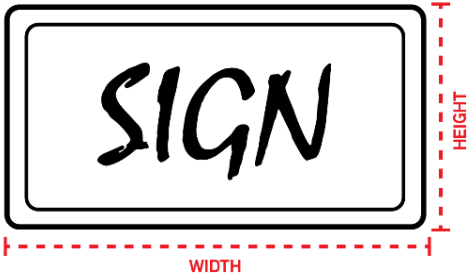
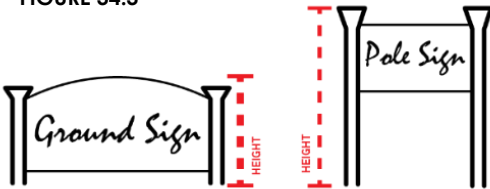


FIGURE 34.2



FIGURE 34.3



A. Sign Area.

1. One-Sided Sign. The area of a sign shall be computed by means of the smallest square, circle, rectangle, triangle, or geometric combination thereof that will encompass the extreme limits of the writing, representation, emblem, graphic, and/or other display, together with any material, backdrop, or structure on which it is placed. **See Figures 34.1 and 34.2.**
2. Two-Sided Sign. In the case of a two-sided sign only one side of the sign is considered in determining sign area if the sides of the sign are back-to-back or diverge at an angle of 45 degrees or less. No sign shall be permitted to have more than two sides.
3. Structural Support Not Included. The supporting structure or bracing of a sign shall not be computed as part of the sign area unless such supporting structure or bracing is made a part of the message with the inclusion of any text or graphics. If such is the case, a combination of regular geometric shapes which can encompass the area of said text or graphics shall be included as part of the total sign area computation.

B. Sign Height.

1. Freestanding Sign. The height of a freestanding sign shall be calculated by measuring the vertical distance between the top part of such sign or its structure, whichever is highest, to the elevation of the ground directly beneath the center of the sign. **See Figure 34.3.**
2. Other Signs. The height of an awning, projecting, suspended, wall, or window sign shall be determined by measuring the vertical distance between the top part of the sign face or structure, whichever is highest, to the bottommost edge of the sign face. **See Figures 34.1 and 34.2.**

§215-34.7

SAFETY PROVISIONS

- A. Signs shall not be attached to or placed upon any portion of a fire escape and shall not in any way interfere with the activities of the Fire Department or other public emergency services.
- B. No sign shall be erected, constructed, or maintained so as to obstruct free egress from a window, door or fire escape, to interfere with any opening required for ventilation, or to become a menace to life, health or property.
- C. No sign shall be of a shape, color, or design that may be confused with any authorized traffic control device.
- D. No rotating beam, beacon, or flashing illumination resembling an emergency light shall be used with any sign display.

§215-34.8

DESIGN & CONSTRUCTION

- A. As a condition to the continuance or issuance of a permit pursuant to this Article, the Code Enforcement Officer may require the owner or applicant to furnish engineering data from an engineer licensed by the State of New York evidencing compliance with this Article.
- B. In general, all signs shall be permanently mounted and securely anchored. All ground signs must be sufficiently secured to prevent movement from wind.
- C. All signs shall be designed according to generally accepted engineering practices to withstand wind pressure at any point on the sign and from any direction as follows:

HEIGHT (GROUND TO TOP OF SIGN)	WIND PRESSURE (LBS/SF)
<i>Under 25 ft</i>	<b>25</b>
<i>25-75 ft</i>	<b>35</b>
<i>76-90 ft</i>	<b>45</b>
<i>Over 90 ft</i>	<b>50</b>

- D. The loads shall be distributed to the structural members of the sign in such a way that these members will not be over-stressed.
- E. All signs shall be constructed of permanent, weather resistant, and durable materials, except for banners, flags, temporary signs, and window signs otherwise in conformance with this Article.
- F. All sign lettering shall be permanently affixed to the sign. Ground signs utilizing manual changeable copy shall be enclosed.
- G. No sign may be constructed of untreated, unfinished, or unpainted wood, or sandblasted metal. All wood components of signs must be sealed and protected from the elements.
- H. All signs in excess of 40 square feet of face area must be constructed of incombustible material, except that moldings and cappings may be of wood or other combustible material.

**§215-34.9**

**ILLUMINATION**

- A. A sign illuminated by electricity or equipped in any way with electric devices or appliances shall require the issuance of an electrical permit in accordance with Chapter 54 of the Town of Tonawanda Code.
- B. Any illuminated sign or lighting device, other than a billboard sign in conformance with this Article, shall employ only lights emitting a light of constant intensity, and no sign shall be illuminated by or contain a flashing, intermittent, rotating or moving light or lights.
- C. In no event shall any illuminated sign or lighting device be placed to permit the beams and illumination therefrom to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- D. The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced.
- E. Overhead wires or exposed wires on a sign or its supporting members are prohibited.

- F. All lighting fixtures shall be dark sky compliant and directed so as not to cast an illumination of more than two foot-candles on adjacent nonresidential properties or more than three-tenths (0.3) of a foot-candle on adjacent residential properties.

### §215-34.10

#### LOCATION

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- A. All signs and displays of merchandise must comply with the unobstructed vision clearance requirements of § 215-25.1 of this Chapter of the Code of the Town of Tonawanda.
- B. No sign shall obscure, alter, or cover the architectural features of any building.
- C. All signs shall be located on the same property for which the sign is intended to be applicable, with the exception of billboards as provided herein.
- D. All signs shall maintain at least a 10-foot setback from all property lines, unless otherwise noted within this Article.

### §215-34.11

#### MAINTENANCE & REPAIR

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- A. All signs shall be maintained in safe and good structural condition, in compliance with all applicable building and electrical codes, and in conformance with this Article at all times.
- B. Such maintenance includes replacement of all defective bulbs, parts, materials, painting, repainting, cleaning, replacement of copy, and other acts required for maintenance of such sign.
- C. If any sign does not comply with these standards, the Code Enforcement Officer may require its removal.

### §215-34.12

#### REMOVAL OF SIGNS

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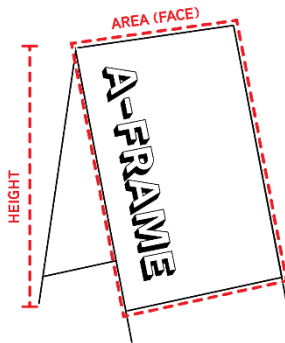
- A. Signs no longer in use must be removed from the premises.
- B. Where required by this Article, the removal of signs shall be the sole responsibility of the property owner. If said sign is not removed within 30 days of the date of written notice by the Code Enforcement Officer, the Code Enforcement Officer or designee is authorized to affect its removal.
- C. The Code Enforcement Officer may remove any sign that is found to be in violation of this Article. The property owner shall subsequently be given written notice of such sign removal. If the sign is not claimed within 30 days of the written notice, the Code Enforcement Officer may dispose of the removed sign.
- D. Any costs incurred for the removal of a sign shall be fully reimbursed to the Town of Tonawanda by the sign permit holder. Such costs may be assessed to the property for collection by the Town.
- E. In the event that a sign has been damaged and presents an immediate threat to the public, the Code Enforcement Officer shall notify the owner or lessee of the property on which the sign is located, or the permittee, to remove the sign or place it in a safe condition. If such owner, lessee or permittee shall refuse or neglect to remove or place the sign in a safe condition within three days after the giving of such notice to the owner, lessee or permittee, the Town may cause the sign to be removed or made safe, and the expense thereof shall be assessed against the premises on which the sign was located.

- F. In the case of an emergency, the Code Enforcement Officer may cause immediate removal of such sign after giving such notice as is practical under the circumstances.

## §215-34.13

## SIGNS AUTHORIZED WITHOUT A PERMIT

The types of signs listed below are exempt from the requirement of a permit. In addition, the face area and number of such exempt signs shall not be counted in determining compliance with the provisions of this Article. Although permits are not required for these signs, they shall conform to all other requirements of this Article or may be subject to removal by the Code Enforcement Officer.



- A. **A-Frame Signs.** A-frame signs shall not require a permit provided the following conditions are met:
1. The sign is located in a nonresidential district and does not interfere with vehicular, pedestrian, or bicycle access or visibility.
  2. There is no more than one a-frame sign per use and the sign does not exceed four feet in height and eight square feet in area.
  3. The sign is not illuminated.
  4. The sign is brought in each day at the close of business.
  5. The Code Enforcement Officer may permit the placement of a-frame signs in the public right-of-way provided the proposed location does not violate Subsection 1 above.
- B. **Directional and Incidental Signs.** Freestanding signs that provide direction to pedestrians, bicyclists, or motorists, and signs erected to identify addresses, warnings, hours and days of operation, and the like, shall not require a sign permit provided the following conditions are met.
1. All signs are located entirely on the property to which they pertain.
  2. No sign exceeds an area of six square feet in a residential district, or 12 square feet in a nonresidential district, and is no more than three feet in height. The cumulative area of all signs shall not exceed 12 square feet in a residential district, or 16 square feet in a nonresidential district.
  3. Signs located within residential districts are not illuminated.
  4. No sign extends above the first floor of any given structure nor projects beyond property lines.
- C. **Governmental Signs.**
1. Signs erected and maintained pursuant to and in discharge of any governmental function, including state or federal historic markers, or required by any law, ordinance, or governmental regulation.
  2. Flags, emblems or insignias of the United States, the State of New York, other countries and states, the United Nations, or similar organizations of which this nation is a member.
- D. **Internal Signs.** Signs within a building not legible from the public right-of-way or adjacent lots, or any sign within an enclosed outdoor space, such as an athletic field, where such sign is intended only to be seen from within the enclosed space and is so oriented.

- E. Lawn Signs.** Lawn signs shall be allowed on any lot without a permit provided the following conditions are met.
  1. No single sign exceeds three feet in height and six square feet in area.
  2. The cumulative area of all signs on the lot does not exceed 16 square feet.
  3. The sign is not illuminated.
  4. The sign is not displayed for more than 60 days in a 180-day period.
  5. In the case of political signs, all signs shall be removed within 10 days after the close of the election.
  6. In the case of construction signs, all signs shall be removed within 10 days after the substantial completion of the project.
- F. Memorial or Historic Signs.** Memorial tablets or signs, locally designated historic markers, names of buildings and dates of erection when cut in any masonry surface or when constructed of bronze or any other noncombustible material.
- G. Neon Signs.** Neon signs are permitted in nonresidential districts without a permit, provided they conform to the following:
  1. The signs are mounted internally and located within a designated window area.
  2. The cumulative area of such signs does not exceed 15% of the window area.
  3. There are no more than three signs per use.

## §215-34.14

### PROHIBITED SIGNS

The construction, erection, alteration, reconstruction, display, ownership, maintenance or operation of any sign within the Town except as provided by this Article is hereby prohibited. The following types of signs are prohibited:

- A.** Any sign for which no sign permit was issued, for which a sign permit was revoked, or any other sign not explicitly authorized herein.
- B.** Any sign that is not properly maintained, considered structurally unsound, hazardous, or otherwise unsafe.
- C.** Any sign on a utility pole, tree, rock, ledge or other natural feature, whether on public or private property.
- D.** Any sign that is no longer applicable or relevant to the use of the premises on which the sign is located.
- E.** Any sign that is located off-premise from the use and/or structure to which it serves, except for billboards as provided by this Article.
- F.** Any sign that contains words or pictures of an obscene or pornographic nature.
- G.** Any sign that emits audible sounds, odor, or visible matter.
- H.** Any sign that may be confused with a traffic control sign, signal or device or the light of an emergency or road equipment vehicle or any sign which hides from public view any traffic or street sign, signal, or device.

- I. Any sign that flashes, blinks, rotates, or revolves, or utilizes unshielded lighting devices, mirrors, or reflective material.
- J. Any sign that is mounted on wheels or mounted on any structure on wheels.
- K. Any sign placed on or otherwise adhered or affixed to a motor vehicle or trailer and parked with the primary purpose of serving as signage for the use.
- L. Any permanent sign on an undeveloped site, except for subdivision signs.
- M. Any sign overhanging, encroaching upon, or located within the public right-of-way except as provided by this Article.

## §215-34.15

### SIGN DESIGN GUIDELINES

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The following sign design guidelines are intended to provide applicants with guidance for best practices in addressing issues related to sign compatibility, legibility, placement, and color.

#### A. Compatibility.

1. Signs should be constructed of high-quality materials compatible with the building form and desired character of the area in which they are located.
2. Signs should be appropriately scaled for the building or site upon which they are located, so as not to dominate the façade or streetscape.
3. Signs on buildings that have a monolithic or plain façade should be used to create visual interest through appropriate sign design features, scale, and proportions.
4. Signs should be designed to include relief in the lettering or sign face to create shadows and provide depth and visual interest.

#### B. Legibility.

1. Hard to read, intricate typefaces should be avoided. The variation of lettering styles on a single sign should be limited to two for small signs and three for larger signs.
2. Letters and words should not be spaced too closely together. Generally, letters should not occupy more than 75% of the sign area.
3. Large areas of blank spaces should be avoided. Generally, 50% or more blank area should be avoided for boxed sign areas or framed signs.
4. Signs should have the minimum of information necessary in order to avoid clutter and confusion. Whenever feasible, signs should be combined into a single sign in order to minimize clutter.

#### C. Placement.

1. Signs should be so located to respect and compliment a building's façade, utilizing logical signage areas created by existing architectural details or ornamentation.
2. Signs should be placed at or near the public entrance to a building to indicate the most direct access.

#### D. Color.

1. Signs should feature substantial contrast between the color and material of the background and text, graphics, or symbols.
2. Sign colors should complement the materials and colors of adjacent buildings, including accent and trim colors, where applicable.
3. Use of color and color combinations utilized for signs should be limited. Generally, a sign should not utilize more than three colors, including accent colors.
4. Day-glo or florescent colors should be avoided.

§215-34.16

REGULATIONS BY ZONING DISTRICT

- A. The following table indicates the number and types of signs permitted in the Town of Tonawanda by zoning district.
1. A "●" indicates that the sign type is permitted and may be illuminated.
  2. A "○" indicates that the sign type is permitted but may not be illuminated.
  3. A "-" indicates the sign type is prohibited.

ZONING DISTRICT	MAX # OF SIGN TYPES (PER USE)	AWNING OR CANOPY	BILLBOARD	GROUND	MARQUEE	POLE	PROJECTING	ROOF	SUSPENDED	WALL	WINDOW <sup>2</sup>	TEMPORARY <sup>2</sup>
<i>R-1, R-2, MR</i>	1	-	-	○	-	-	-	-	-	○	○	○
<i>MU-N</i>	2	● <sup>1</sup>	-	●	-	-	●	-	●	●	○	○
<i>MU-GC</i>	2	●	-	●	●	●	●	-	●	●	○	○
<i>MU-W</i>	2	●	-	●	●	-	●	-	●	●	○	○
<i>MU-I, GI</i>	2	●	● <sup>1</sup>	●	●	●	●	●	●	●	○	○
<i>CF, OS</i>	-	-	-	●	-	-	-	-	-	●	○	○

Regulations by Sign Type

§215-34.18	A	B	C	D	E	F	G	H	I	J	K
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- NOTES:
- (1) Illumination shall be located in the area underneath the awning or canopy. No bulb or illumination device shall hang below the valence area.
  - (2) Billboard signs are only allowed on parcels that adjoin the Elmer G.H. Youngmann Expressway or the Niagara Section of the NYS Thruway.
  - (3) Window and temporary signs shall not count towards the maximum number of signs for any given use.

§215-34.17

UNIQUE BUILDING & DEVELOPMENT CONFIGURATIONS

There are certain building and development configurations that warrant the permission of additional signage to provide adequate visibility and identification for motorists, pedestrians, and bicyclists. The following table indicates the permitted number of signs and sign types for such certain building and development configurations. Unless noted as additional signage, these regulations shall supersede those of Subsection A above.

CONFIGURATION	PERMITTED SIGN TYPE & STANDARDS
<b>Single- or Multi-Family Residential Development</b>	
<i>Per Entrance</i> <sup>1</sup>	<b>One additional ground sign, in conformance with §215-34.18 C</b>
<b>Campus Style Development</b>	
<i>Per Entrance</i> <sup>1</sup>	<b>One additional ground sign, no more than 40 sf in area and 8 ft in height</b>
<b>Mixed-Use or Multi-Tenant Commercial Development</b>	
<i>Per Use or Tenant</i>	<b>Up to 2 sign types in conformance with §215-34.18, except ground and pole signs</b>
<i>Per Entrance</i>	<b>One ground or pole sign not exceeding 60 sf in area</b>
<b>Multi-Story, Mixed-Use or Multi-Tenant Commercial Building</b>	
<i>Per First-Floor Use</i>	<b>Up to 2 different sign types in conformance with §215-34.18</b>
<i>All Upper Floor Uses</i>	<b>One shared wall, projecting, or suspended sign in conformance with §215-34.18</b>

**NOTE:** (1) The additional signage shall be permitted only at entrance points from public streets and/or streets designated as primary entrances.

§215-34.18

REGULATIONS BY SIGN TYPE

**A. Awning or Canopy Sign.** A sign that is part of or attached to a roof-like protective cover of canvas or other flexible material over a door, entrance, window or outdoor service area that projects from the façade of a structure.

1. All awning or canopy signs shall be in conformance with the standards of the following table.

<i>Max Number</i>	<b>1 per Awning/Canopy Structure</b>
<i>Max Area</i>	<b>50% of Valence Area</b>
<i>Max Height</i>	<b>-</b>
<i>Min Ground Clearance</i>	<b>9 ft</b>
<i>Illumination</i>	<b>Permitted</b>

2. Additional Regulations.
  - a. Awning signs shall be limited to the valence area.
  - b. A single use may utilize no more than two awnings for signage. Where a single use has more than one awning, each awning shall match in color and style.



- c. Where an awning relates to more than one use, each use shall be entitled to one sign on such awning provided the color and style of the signs are the same.
- d. Awnings upon which a sign is to be placed shall be comprised of high-quality, weather-resistant materials designed for exterior use.

**B. Billboard Sign.** Any sign that attracts attention to an object, product, service, place, activity, institution, organization, or business not available or not located on the premises where the sign is located.

1. All billboard signs shall be in conformance with the standards of the following table.

<i>Max Number</i>	-
<i>Max Area</i>	<b>672 sf</b>
<i>Max Height <sup>1</sup></i>	<b>45 ft</b>
<i>Min Ground Clearance</i>	<b>10 ft</b>
<i>Max Area of Temporary Embellishments</i>	<b>20% of Face Area</b>
<i>Min Distance from Residential Districts</i>	<b>50 ft</b>
<i>Min Separation between Billboards on Same Side of Highway</i>	<b>1,000 ft</b>
<i>Min Setback</i>	<b>Follow District Requirements (See Part 2)</b>

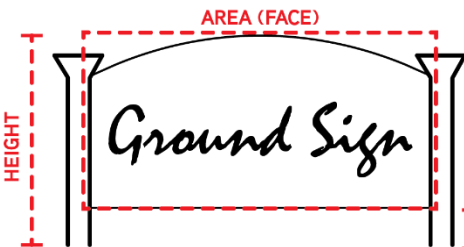
**NOTE:** (1) Measured from the grade of the thoroughfare adjacent to which the billboard is located

2. Additional Regulations.

- a. Billboard signs are permitted to use digital technology for the entire allowable sign face area, provided all applicable regulations of this Article are met.
- b. Billboard signs shall not portray or advertise products containing alcohol, tobacco, or an adult use.

**C. Ground Sign.** A sign not attached to any building or structure, which may be flush with the ground or supported by two columns or posts provided the distance between the ground and bottommost edge of the sign is no greater than three feet.

1. All ground signs shall be in conformance with the standards of the following table.



ZONING DISTRICT	R-1, R-2, MR	MU-N, MU-GC, CF, OS	MU-W, MU-I, GI
<i>Max Number</i>	<b>1 per Lot</b>	<b>1 per Lot</b>	<b>1 per Building</b>
<i>Max Area</i>	<b>6 sf</b>	<b>24 sf</b>	<b>40 sf</b>
<i>Max Height</i>	<b>3 ft</b>	<b>4 ft</b>	<b>10 ft</b>
<i>Min Separation between Signs on Same Premises</i>	-	-	<b>50 ft</b>
<i>Min Setback</i>	<b>15 ft</b>	<b>15 ft</b>	<b>15 ft</b>

2. Additional Regulations.

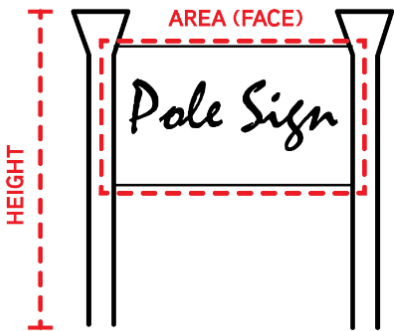
- a. No ground sign shall be permitted where the principal structure on the lot has a front setback of less than 15 feet.
- b. All ground signs must be sufficiently secured to prevent movement from wind.
- c. Ground signs and pole signs may not be used in combination on the same premises.
- d. All ground signs shall have a landscaped area at the base of the sign. The landscaping shall fully surround the sign and utilize appropriate plantings so as not to obscure the visibility of the sign.
- e. All plantings shall be properly manicured and maintained as the season may require. Dead or decaying plant material shall be replaced within 30 days of written notice by the Code Enforcement Officer.
- f. External lighting fixtures may be mounted on the ground or on the sign. Lighting fixtures mounted on the ground shall be shielded and directed to illuminate only the sign face.

D. Marquee Sign

- 1. No building or use may have more than one marquee sign.
- 2. All location, dimensional, and illumination requirements for marquee signs shall be determined with review and approval by the Planning Board.

E. Pole Sign. A sign not attached to any building or structure, which may be supported by one or two columns or posts where the distance between the ground and bottommost edge of the sign is at least 10 feet.

- 1. All pole signs shall be in conformance with the standards of the following table.



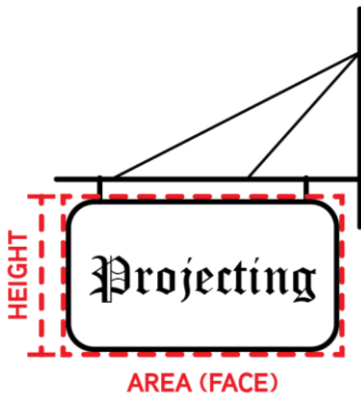
LOT STREET FRONTAGE	<30 FT	30-60 FT	30-120 FT	>120 FT
<i>Max Number</i>	-	1	2	3
<i>Max Area</i>	-	120 sf	120 sf (60 sf each)	120 sf (60 sf each)
<i>Max Height<sup>1</sup></i>	-	30 ft	30 ft	30 ft
<i>Min Separation between Signs on Same Premises</i>	-	-	50 ft	50 ft
<i>Min Setback</i>	-	2 ft	2 ft	2 ft

NOTE: (1) Maximum height shall include the distance from the ground.

2. Additional Regulations.

- a. No sign shall be permitted where the principal structure on the lot has a front setback of less than 10 feet.
- b. Nothing shall be painted on or affixed below the required ground clearance.
- c. No pole sign shall be located so as to create a visual obstruction from or within a public right-of-way.

- d. A pole sign support may include a double-pole support structure with supports of up to 12 inches in diameter and, should architectural skirting be utilized, supports may be up to 24 inches in diameter.
- e. All pole signs shall have a landscaped area at the base of the sign. The landscaping shall fully surround the sign and utilize appropriate plantings so as not to obscure the visibility of the sign.
- f. All plantings shall be properly manicured and maintained as the season may require. Dead or decaying plant material shall be replaced within 30 days of written notice by the Code Enforcement Officer.
- g. External lighting fixtures may be mounted on the sign only.



**F. Projecting Sign.** A sign which is wholly dependent upon a building for support and which projects more than 12 inches from such building.

- 1. All projecting signs shall be in conformance with the standards of the following table.

ZONING DISTRICT	MU-N, MU-GC, MU-W	MU-I, GI
<i>Max Number</i>	<b>1 per use</b>	<b>1 per use</b>
<i>Max Area</i>	<b>1 sf per ft of building frontage</b>	<b>1 sf per ft of building frontage <sup>1</sup></b>
<i>Max Height</i>	<b>2 ft</b>	<b>3 ft</b>
<i>Min Ground Clearance</i>	<b>10 ft</b>	<b>10 ft</b>

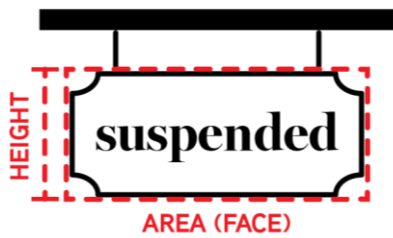
**NOTE:** (1) The combined total area for wall, projecting, and roof signs in the MU-I and GI districts shall not exceed 5 square feet per 1 foot of building frontage.

**G. Roof Sign.** Sign that is supported on the top of a building or structure and constructed of a noncombustible material.

- 1. All roof signs shall be in conformance with the standards of the following table.

<i>Max Number</i>	<b>1 per building</b>
<i>Max Area</i>	<b>5 ft per ft of Building Frontage <sup>1</sup></b>
<i>Max Height above Roof (site of attachment)</i>	<b>15 ft</b>

**NOTE:** (1) The combined total face area for wall, projecting, and roof signs in the MU-I and GI districts shall not exceed 5 square feet per 1 foot of building frontage.



**H. Suspended Sign.** A sign attached to and supported by the underside of a horizontal plane.

1. All suspended signs shall be in conformance with the standards of the following table.

ZONING DISTRICT	MU-N, MU-GC, MU-W	MU-I, GI
<i>Max Number</i>	<b>1 per use</b>	<b>1 per use</b>
<i>Max Area</i>	<b>1 ft per ft of Building Frontage</b>	<b>1 ft per ft of Building Frontage</b>
<i>Max Height</i>	<b>2 ft</b>	<b>3 ft</b>
<i>Min Ground Clearance</i>	<b>10 ft</b>	<b>10 ft</b>

**I. Wall Sign.** A sign fastened to the wall of a building or structure in such a manner that the wall becomes the supporting structure for or forms the background surface of the sign and which does not project outward more than 12 inches from such building or structure.

1. All wall signs shall be in conformance with the standards of the following table.

ZONING DISTRICT	R-1, R-2, MR	MU-N, MU-GC, MU-W	MU-I, GI
<i>Max Number</i>	<b>1 per use</b>	<b>1 per use</b>	<b>1 per façade</b>
<i>Max Area</i>	<b>2 sf</b>	<b>3 sf per ft of Building Frontage OR 300 sf<sup>1</sup></b>	<b>4 sf per ft of Building Frontage<sup>2</sup></b>
<i>Max Height</i>	<b>2 ft</b>	<b>4 ft</b>	<b>6 ft</b>
<i>Min Ground Clearance</i>	<b>5 ft</b>	<b>5 ft</b>	<b>5 ft</b>

**NOTES:** (1) Whichever is less.  
 (2) The combined total face area for wall, projecting, and roof signs in the MU-I and GI districts shall not exceed 5 square feet per feet of building frontage.

2. Additional Regulations.
  - a. Wall signs shall not extend beyond the ends of the wall surface.
  - b. Painted wall signs may be permitted with Planning Board approval.
  - c. The maximum size requirements may be exceeded with Planning Board approval.

- J. **Window Sign.** A sign visible from a sidewalk, street, or other public place, painted or affixed on glass or other window material, or located inside within three feet of the window, but shall not include graphics in connection with customary display of products.
  - 1. All window signs shall be in conformance with the standards of the following table.

<i>Max Number</i>	-
<i>Max Area</i>	<b>20% of Window Area</b>
<i>Max Height</i>	-
<i>Min Ground Clearance</i>	-

- K. **Temporary Sign.** A sign which is not intended to be used for a period exceeding 60 days and is not attached to a building, structure, or ground in a permanent manner.
  - 1. All temporary signs shall be in conformance with the standards of the following table.

<i>Max Number</i>	<b>1 per use</b>
<i>Dimensional Requirements</i>	<b>See Sign Type Most Closely Aligned with Style of Temporary Sign</b>

- 2. Additional Regulations. Temporary signs shall not be displayed for more than 60 days in a 190-day period. This may be extended for up to two additional 60-day periods upon written request to the Code Enforcement Officer setting forth the special circumstances requiring such extension.

**§215-34.19**

**DIGITAL SIGNS**

The following requirements shall apply to any sign utilizing digital technology.

- A. The use of digital sign technology shall be limited to districts where illumination is permitted.
- B. The extent of sign face area utilizing digital sign technology, including any screens or other display area, shall not exceed 50%. Billboards are exempt from this provision.
- C. Digital technology shall not be utilized in any wall sign, projecting sign, suspended sign, awning sign, or window sign.
- D. Digital signs shall display static messages with no animation, no effects simulating animation, and no video.
- E. Changes in copy, message, or graphics shall occur no more than once every 60 seconds.
- F. Each transition shall be accomplished immediately with no fade, scroll, flash, spin, revolve, or shake or include any other type of movement or motion.

- G. Digital signs shall be equipped with photosensitive equipment that is programmed to automatically adjust the brightness and contrast of the sign in direct relation to the ambient outdoor illumination.
- H. The illuminance of a digital sign shall be measured with an illuminance meter set to measure footcandles accurate to at least two decimals. Illuminance shall be measured with the digital sign off, and again with the digital sign displaying a white image for a full color-capable sign, or a solid message for a single-color sign. All measurements shall be taken at a height of at least five feet and a distance determined by the following calculation. All fractions shall round up to the nearest foot.  
  
*Measurement Distance =  $\sqrt{(Area\ of\ Sign\ in\ Square\ Feet\ x\ 100)}$*
- I. The difference between the digital sign measurements when off and when displaying a solid-message (using the digital sign measurement criteria) shall not exceed 0.3 footcandles, regardless of ambient lighting conditions.
- J. All digital signs shall be equipped with a sensor or other device that automatically determines the ambient illumination and programmed to automatically dim according to ambient light conditions, or that can be adjusted to comply with the 0.3 footcandle measurements.
- K. Digital signs shall be programmed or set in such a manner that the display will turn dark and emit no light in case of malfunction.
- L. No digital sign shall be located within 50 feet of a residential district or use as measured in a straight line from the location of the sign to the nearest residential property line.

## §215-34.20

### NONCONFORMING SIGNS

- A. Any sign that does not comply with this Chapter is eligible for characterization as a legal nonconforming sign if the sign complied with all requirements in effect at the time it was erected.
- B. Nonconforming signs must be brought into compliance with this Chapter under the following conditions:
  1. The sign is altered in any way, such as size, design, structure, or type of illumination (except for normal maintenance).
  2. The sign is relocated.
  3. The sign or its structural materials are wholly replaced.
- C. Any nonconforming sign that is removed from its position or siting and not replaced in-kind within 90 days shall be presumed to be abandoned and discontinued, and therefore may not be restored or re-erected except in compliance with this Chapter.
- D. No nonconforming sign may be altered in any way that would increase its nonconformity with the regulations of this Chapter, including but not limited to area, height, setback, and illumination.
- E. Nothing in this section shall relieve the owner or user of a nonconforming sign or owner of the property on which the nonconforming sign is located from complying with the provisions of this Chapter regarding safety, maintenance and repair of signs. Any repainting, cleaning, or routine maintenance or repair of the sign or sign structure shall not be deemed to modify the sign in any way.



# CHAPTER 215. ZONING CODE

## Part 4. Application & Review Procedures

**DRAFT FEBRUARY 1, 2024**

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# Article 40. Application Procedures

## §215-40.1

### APPLICABILITY

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- A. Review Required.** Any person seeking to erect, construct, enlarge, alter, improve, demolish a building or structure; or establish, operate, convert, or change the nature of the use or occupancy of any building or structure within the Town of Tonawanda shall first be required to submit a development plan application and secure all necessary approvals and permits as required by this Zoning Law.
- B. Application Form.** Applications must be submitted in a form and in such numbers as outlined herein. Checklists of application submittal and review requirements may be made available within the Town's Planning and Development Office.
- C. Review Body.** For the purposes of this Zoning Law the terms "reviewing body" or "review body," shall refer to the Town board, commission, committee, official, or other designated decision-making body that is charged with review and/or approval authority as authorized under this Zoning Law and by NYS Law. This may include, but is not limited to the Code Enforcement Officer, Staff Plan Review Committee, Town Board, Planning Board, and Zoning Board of Appeals.
- D. Properties in Violation Prohibited.**
  - 1.** No applications that include a building, structure, property, or use that is in violation of this Zoning Law, other laws of the Town of Tonawanda, or NYS laws, rules, and/or regulations shall be accepted or processed.
  - 2.** Applications which, in whole or in part, include a proposal to rectify violations on such property may be considered in accordance with this Zoning Law.

## §215-40.2

### PRE-APPLICATION CONFERENCE

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- A. Purpose.** The purpose of a pre-application meeting is to provide the applicant with the opportunity to seek nonbinding, advisory direction from the Town to better prepare the applicant and project application for the development review process. This process is optional and has no bearing on action on a formal application.
- B. Conference Recommended.** It is recommended that applicants request a pre-application meeting prior to entering the formal application review process to discuss the nature of the proposed application and to determine the best course of action for submittal. Meetings may be held with the Town Staff Plan Review Committee.
- C. Advisory Opinion.** In no way shall any comments or feedback provided by the Committee during a pre-application meeting be construed as an indication of decision or be legally binding in any way.
- D. Application Material.** Materials presented during the pre-application meeting may be incomplete and/or conceptual in design. A formal, complete application is required to be considered for approval prior to action.

**§215-40.3****GENERAL APPLICATION PROCEDURES**

---

- A. Submittal.** All applications considered under this Chapter shall:
1. Be submitted to and processed by the Town's Planning and Development Department.
  2. Require the signature of the owner(s) of the subject property. Where there are multiple land owners, a written consent agreement among all land owners must be included. Tenants may submit applications with written consent of the property owner(s).
  3. Be provided in the required number and form, including at least 10 hard copies and one electronic copy (digital PDF). Development plan applications shall include one electronic and at least two stamped hard copies of all maps and site plans at the size and scale requested by the Director of Planning and Development.
  4. Include all application fees as established by §215-40.8 and as may be required elsewhere in this Chapter.
- B. Deadlines.** Applications shall be submitted at least 10 business days prior to the meeting at which the applicant wishes to be considered. Supplemental materials and amendments to applications already under review are also due at least 10 business days prior to the meeting of the reviewing body.
- C. Acceptance and Processing.**
1. Within 30 days of an application being filed, the Town's Planning and Development Department shall determine whether to accept the application as ready for processing or reject the application as not ready for processing.
  2. An application is considered accepted and ready for processing only if it is submitted in the appropriate number and form, includes all required materials, and is accompanied by the required fee.
  3. The acceptance of an application by the Town shall in no way be interpreted as a determination of the completeness, adequacy, or accuracy of application materials, but rather serve as an acknowledgement to the receipt of required fee and application materials in the correct number and form.
  4. If an application is determined to be not ready for processing, a paper or electronic written notice shall be provided to the applicant, along with an explanation of all known deficiencies that prevent review.
  5. No further processing of unaccepted applications will occur. When the deficiencies are corrected, the application will be placed in the next available processing cycle. If the deficiencies are not corrected within 62 days, the application will be considered withdrawn.
- D. Applicant Responsibilities.**
1. The applicant and/or their agent is expected to attend all meetings at which the application is to be discussed.
  2. In all cases, the burden is on the applicant to show that their application complies with the Town of Tonawanda local laws and regulations, and any other applicable NYS laws, rules, and regulations.

**§215-40.4****REVIEW BODY ACTION**

---

- A. Initiation of Review.** The review process(es) provided herein shall begin within 30 days of application acceptance by the Town's Planning and Development Department. The review and decision period does not begin until such time that the Town's Planning and Development Department notifies the applicant that the application is ready for processing and the materials submitted are acceptable for review.
- B. Public Hearing.** Where required by this Chapter and NYS Law, the reviewing body shall hold at least one public hearing prior to the issuance of a decision.
- C. State Environmental Quality Review (SEQR).** Where required by NYS Law, the review body shall complete all required documentation and procedures in accordance with the State Environmental Quality Review Act (SEQRA).
- D. Issuance of Decision.**
1. Within 62 days following the close of the public hearing the reviewing body shall issue a decision to approve, approve with conditions or modifications, or deny the proposed application.
  2. Prior to issuing a decision on an accepted application, the reviewing body shall determine by resolution the application to be complete, noting any waived or additional application materials.
  3. Where County referral is required, no decision shall be issued by the reviewing body until the referral process is complete.
  4. The time period in which a decision must be rendered on the application may be extended by mutual consent of the applicant and the reviewing body.
- E. Written Decision.**
1. A written decision shall be provided by the Town explaining the rationale and findings of the reviewing body based upon the standards and review criteria contained in this Zoning Law. The written decision shall also make note of any conditions or modifications of the approval, where applicable.
  2. A copy of the decision shall be promptly filed with the Town Planning and Development Department and sent to the applicant.
- F. Findings.** The findings of the review body may be based on evidence submitted or the personal knowledge of the review body to show that:
1. It has made an intelligent review of the question.
  2. It has considered all the information or evidence.
  3. It has heard all parties in question.
  4. Any intimate knowledge it has of the subject under question has been considered.
  5. It has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.
- G. Waiving Application Requirements.** A reviewing body is authorized to waive or modify, in whole or in part, required application material if in their opinion one or more of the following apply:

1. Any such material, or part thereof, is not requisite in the consideration of impact to public health, safety, or general welfare;
  2. Any such material is inappropriate or irrelevant to the proposal;
  3. Any such material is deemed unnecessary for an adequate, informed review.
- H. **Additional Application Requirements.** A reviewing body may require the applicant to provide additional application material if it is found to be necessary for a complete, adequate, and informed review.

## §215-40.5

### COORDINATED REVIEWS

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- A. **Concurrent Reviews.** In some cases, an application may be subject to multiple reviews by this Chapter and the Town of Tonawanda Code. Where deemed appropriate by the Director of Planning and Development to streamline the application review process the following reviews may be conducted concurrently:
1. Development Plans. In accordance with Article 42.
  2. Special Use Permits. In accordance with Article 43.
  3. Subdivisions. In accordance with Chapter 185 of the Town of Tonawanda Code.
  4. Variances. In accordance with Article 45.
  5. Amendments. In accordance with Article 46.
- B. **Application Requirements.** Where applicable, duplicate application materials may be combined to satisfy submittal requirements.
- C. **Conditions of Approvals.**
1. Special Use Permit. If obtained prior to development plan approval, the special use permit shall be conditioned upon the applicant obtaining development plan approval. In the event that a development plan application is denied, the special use permit shall be considered null and void.
  2. Subdivision. Where a subdivision application is considered alongside a development plan application, the Planning Board shall first issue a decision on the subdivision plat. Should the subdivision application be denied, the development plan shall be considered null and void.
  3. Variance. Where a development plan, special use permit, or subdivision application requires a variance, approval of said variance must be obtained first. Should the variance be denied, the associated development plan, special use permit, and/or subdivision application shall be amended accordingly.
  4. Amendments. Approval(s) for any development action considered under this Chapter, for which a rezoning is also requested or required, shall be conditioned on the approval of the zoning amendment application by the Town Board. Should the rezoning be denied, all other development application approvals conditioned on the rezoning shall be considered null and void.

**§215-40.6****REFERRALS**

---

- A. Internal Referral.** The reviewing body may refer any application to another Town board, committee, department, or official for review, comment, and advisement. Within 45 days receiving body shall submit its findings in writing to the referring body.
- B. Professional Referral.**
  - 1. The reviewing body may seek the opinion of any engineering, architectural, historical, planning, technical, environmental, legal consultant or attorney, or other expert or professional to aid in the review of an application.
  - 2. The applicant shall reimburse the Town for any costs incurred as part of such professional review in accordance with §215-40.8.
- C. County Referral.** The Town shall refer applications to the Erie County Department of Environment and Planning pursuant to NYS GML 239-m and in accordance with any planning referral agreements between the Town and County.
- D. Waterfront Application Referrals.** Applications in waterfront designated districts and the LWRP area may be referred to the NYS Department of State.
- E. Other Local, Regional, and State Referrals.** Referrals to other local, regional, and state agencies shall also be made in accordance with Town, County, and NYS Law.

**§215-40.7****EXPIRATION, REVOCATION OF APPROVAL OR PERMIT**

---

- A. Expiration.** Except for variances granted in accordance with NYS Law, the approval of an application shall expire if one or more of the following occur:
  - 1. The approved use(s) cease operation for more than 12 consecutive months for any reason;
  - 2. The applicant fails to obtain necessary building permits or certificates of occupancy within one year of the approval date;
  - 3. The applicant fails to comply with the conditions of approval within one year of the date of issuance or completion of construction, where applicable;
  - 4. The applicant fails to initiate construction or operation of use within one year of the approval date;
  - 5. The applicant fails to complete construction; or
  - 6. The applicant fails to renew a time limited permit prior to the stated time period ending.
- B. Extensions.** The reviewing body may grant an extension for any condition in Subsection A upon written request by the applicant. The applicant shall include in such request the desired time period for the extension and the reasoning for requesting the extension. A fee may be required to process extension requests. The time period of such extension, if granted, shall be determined by the reviewing body.
- C. Revocation.** The Code Enforcement Officer may revoke the building permit associated with an approved project if the applicant violates the conditions of the approval or engages in any construction, alteration, or operation not

authorized by the approval and/or related permit(s). Such action shall include the revocation of any special use permit or other zoning authorization issued under this Zoning Law.

## §215-40.8

### PUBLIC HEARINGS & NOTICES

- A. Public Hearing Required.** The reviewing body shall schedule, notice, and conduct a public hearing for applications as required by this Zoning Law and NYS Law.
- B. Joint Hearings.** Where there are multiple applications for a single property or use before the reviewing body concurrent or joint public hearings may be held.
- C. Public Notices.** Public notice of public hearings shall be made in accordance with this Zoning Law and NYS Law, this may include mailed, media and posted notice.
- D. Media Notices.** The Town Clerk or designee shall cause publication of a notice in the Town's official newspaper and official website.
- E. Mailed Notices.** Written notice of public hearings to adjacent and nearby properties, adjoining municipalities, Erie County, and the State Commission of Transportation shall be provided where required by NYS Law.
- F. Posted Notices.**
  - 1.** It shall be the responsibility of the applicant to obtain a sign of public notice from the Town's Planning and Development Department and post said sign on the property in question at least seven business days prior to the scheduled public hearing.
  - 2.** The applicant shall place the sign on the property in a manner that is plainly visible from the public right-of-way.
  - 3.** The applicant shall pay an upfront and refundable deposit to the Town at the time of sign pickup. The amount of said deposit shall be provided in the Town's Fee Schedule.
  - 4.** Upon close of the public hearing, the sign shall be returned to the Town within seven business days. The Town shall refund the deposit once the sign has been surrendered. Failure to return to the sign within a timely manner shall result in the forfeiture of the deposit.
- G. Public Notice Expenses.** All costs for a public hearing, including, but not limited to, the legal ad(s), required mail notifications, and posting of signs shall be included in the public hearing fee provided in the Town's Fee Schedule.

## §215-40.9

### FEES

- A. Fee Schedule Established.** A schedule of fees for all permits, applications, and deposits as required in this Zoning Law shall be provided in a Fee Schedule, set by resolution of the Town Board. Such schedule may be amended from time to time as deemed necessary by the Town Board.
- B. Consultant Fees.**
  - 1.** The Town Board, ZBA, Planning Board, Town Development Services Staff, or other such review body may refer an application presented to them for professional engineering, architectural, historical, planning, technical,

environmental, landscaping, or legal consultation, or attorney, as shall be deemed reasonably necessary to enable an adequate, informed review.

2. The amount of a consultant fee shall be determined and approved by the Town Board. Consultants shall estimate their fees based on the services to be rendered on behalf of the Town from a review of the application, including such documents, maps, plans, specifications, drawings and the like as may be a part thereof.
3. The consultant will be retained pursuant to the procurement policy of the Town. The applicant shall make an escrow deposit with the Town, equal to the amount of the fees so determined. This escrow deposit shall be utilized to pay the cost of the special consultant's fees involved. The application shall not be deemed complete until such time as said escrow deposit has been made. If during the review the need for further specialist consultation is deemed reasonably necessary by the Board, the same cost estimate and escrow deposit procedure shall be followed.
4. Upon issuance of decision and within a period of 45 days thereafter, the Town Board shall adopt a resolution specifying whether the escrow deposit amount specified was sufficient, excessive, or insufficient. In the event the Town Board determines that said amount is excessive, the balance shall be returned to the applicant within 60 days. In the event the Board determines that the escrow deposit was insufficient, it shall so specify, and the applicant shall be required to make payment of such additional amount within 60 days.



# Article 41. Zoning & Building Permits

## §215-41.1

### PERMITS REQUIRED

---

No person, firm, or corporation shall commence, cause to be done, or perform any other work associated with the erection, enlargement, alteration, improvement, conversation, or change in the nature of the use or occupancy of any building, structure, or lot without first obtaining a zoning permit, building permit, and certificate of occupancy where required by this Chapter and all other applicable local, state, and federal rules, laws, and regulations.

## §215-41.2

### BUILDING PERMIT & CERTIFICATE OF OCCUPANCY

---

- A. Building permits and certificates of occupancy shall be required and issued in accordance with the NYS Uniform and Fire Prevention Code and Chapter 54 of the Town of Tonawanda Code.
- B. No building permit or certificate of occupancy shall be issued for any development application under this Chapter until a zoning permit is secured by the applicant in accordance with §215-41.3.
- C. Building permit applications for accessory structures over 144 square feet and up to 180 square feet shall also require the issuance of a zoning permit.

## §215-41.3

### ZONING PERMIT

---

- A. Once all required reviews and approvals of this Zoning Law have been obtained and compliance with all standards herein is verified by Town Planning and Development Staff, the applicant shall be granted a zoning permit by the Director of Planning and Development.
- B. The issuance of a zoning permit shall be independent of and in no way indicate approval of a building permit or certificate of occupancy. The authorization and issuance of the latter shall be at the discretion of the Code Enforcement Officer as provided in Chapter 54 of the Town of Tonawanda Code.

# Article 42. Development Plan Review

## §215-42.1

### AUTHORITY

---

- A. This Article is enacted pursuant to the authority granted to the Town Board of the Town of Tonawanda in Article 16 NYS Town Law and Section 10 of NYS Municipal Home Rule Law.
- B. This Article now supersedes and modifies §274-a of NYS Town Law in that authority and procedures are included herein for a sketch plan review process, administrative development plan review process, preliminary site plan review process, and final site plan review process.

## §215-42.2

### PURPOSE & INTENT

---

- A. The purpose of this Article is to define procedures for the Town Staff Plan Review Committee and Planning Board for review of development actions proposed throughout the Town to ensure that design elements are in compliance with the protection of the health, safety and overall welfare of the community.
- B. The intent of development plan review is to evaluate site plans and require changes consistent with minimizing conflicts which may result between the site layout and design of proposed uses and natural site conditions and features and/or existing or planned adjacent uses.
- C. Development plan review also serves the purpose of ensuring applications comply with clearly defined planning goals and policies such as are provided in the Town's Comprehensive Plan and other land use plans and studies.
- D. These regulations provide development plan review application submission requirements and evaluation criteria to allow the Town Staff Plan Review Committee and Planning Board to make a fair and informed decision as to whether the development, as proposed, is in compliance with concern for the health, safety and welfare of the environment, Town residents, and adjacent uses.
- E. For the purposes of this Chapter, a development plan shall refer to all materials necessary and required for administrative and/or site plan review of development actions in accordance with this Article.

## §215-42.3

### OPTIONAL SKETCH PLAN REVIEW

---

- A. **Purpose.** Applicants are strongly encouraged to submit a preliminary sketch plan to the Town Staff Plan Review Committee prior to the preparation of a formal development plan application. The purpose of this review is to:
  - 1. Provide guidance on the review and approval process and generally determine the information necessary for formal development plan review.
  - 2. Advise the applicant as to potential problems and concerns with the proposal.

3. Discuss plans for the applicant's entire holdings, including phasing and define the project and phases to be submitted for development plan review.

**B. Advisory Opinion.**

1. Feedback on the sketch plan will be provided as to whether the proposal aligns with the Town Comprehensive Plan and any other approved plans and studies.
2. To the extent feasible, the Town shall provide the applicant with an indication of whether the proposal, in its major features, is acceptable or offer recommendations for modifications before expenditures for more detailed plans are made.
3. In no way shall any comments or feedback provided by the Town during sketch plan review be construed as an indication of approval by the review body or be legally binding in any way.

**C. Sketch Plan Review Procedure.**

1. Meetings of the Town Staff Plan Review Committee with the applicant shall be held in accordance with §215-14.5 C.
2. The Committee may refer a sketch plan to the Planning Board at the request of the applicant or where, in their opinion, additional feedback from the Planning Board is necessary and appropriate.

**D. Sketch Plan Materials.** The applicant shall provide at least three copies of the following information at a date specified by the Director of Planning and Development prior to the scheduled meeting date.

1. A map showing the applicant's entire holdings, the parcel under consideration and a general description of all properties, subdivisions, streets, rights-of-way, easements and other pertinent features within 500 feet of the boundaries of the parcel, including property uses.
2. All locations and dimensions of principal and accessory structures, ingress and egress, parking areas, signs, existing and proposed vegetation and other existing or planned features on the property.
3. A narrative describing anticipated changes to existing topography and natural features.
4. A description of environmentally sensitive features, including all regulated wetlands, and proposals for their protection.
5. Proposed water supply and sewage and waste disposal facilities.
6. Provisions for stormwater drainage, recreation, and open space and, where applicable, measures and features to comply with flood hazard and flood insurance regulation.

**E. Waiver of Development Plan Application Materials.**

1. Upon review of the sketch plan, the Town Staff Plan Review Committee may waive requirements for submission of application materials.
2. Submission requirements shall only be waived where the Committee finds, due to character, size, location, or special circumstances, such

information is not required to adequately perform development plan review.

3. In this regard, a finding must be made by the Committee in accordance with §215-40.4 F.

F. **State and County Consultation.** Developers of land adjoining state or county highways are advised to consult with the District Engineer of the New York State Department of Transportation or County Highway Superintendent at the sketch plan stage to resolve problems of street openings or stormwater drainage at the earliest possible stage in the design process.

G. **Submittal of Formal Development Plan.** Within six months of the sketch plan conference, the applicant shall submit to the Town a formal development plan application in accordance with Article 40. If six months elapses between the original sketch plan submittal and the submission of the development plan, a resubmission of an updated sketch plan may be requested.

§215-42.4

APPLICABILITY

A. **Review Required.** No construction or site improvement work may commence without development plan review and approval in accordance with the following table.

B. **Exempt Actions.** Actions exempt from development plan review shall still require the issuance of a zoning and/or building permit in accordance with Article 41.

ACTION	EXEMPT	ADMIN REVIEW	SITE PLAN REVIEW
<b>CONSTRUCTION / EXPANSION / ALTERATION</b>			
<b>Residential Use</b>			
Single- or Two-Family Dwelling on an Approved Lot			
Multi-Family Dwelling, up to 4 units			
Multi-Family Dwelling, over 4 units			
<b>Nonresidential or Mixed Use</b>			
Up to 20,000 sf or 25% of Existing Gross Floor Area <sup>2</sup>			
Over 20,000 sf or 25% of Existing Gross Floor Area <sup>2</sup>			
<b>Accessory Use or Structure <sup>1</sup></b>			
Up to 144 sf in Gross Floor Area			
Over 144 sf in Gross Floor Area			
Accessory Dwelling Unit or In-Law Suite			
Outdoor Assembly, Seating, Sales, Display, or Storage Area			
<b>Parks, Pools, or Playgrounds</b>			
Commercial or Public Use			
Private Residential Use			
<b>Landscaping, Exterior Lighting, Mechanical Equipment, or Stormwater/Green Infrastructure</b>			
Residential Use, up to 4 units			
Multi-Family Use, over 4 units			
Nonresidential or Mixed Use			

ACTION	EXEMPT	ADMIN REVIEW	SITE PLAN REVIEW
<b>CONSTRUCTION / EXPANSION / ALTERATION</b>			
<b>Off-Street Parking / Loading Area</b>			
10 Spaces or Less			
Over 10 Spaces			
<b>Driveway</b>			
Residential Use, up to 4 units			
Multi-Family Use, over 4 units			
Nonresidential Use, Within Existing Curbcut, Apron, or Opening			
Nonresidential Use, Requiring New or Altered Curbcut, Apron, or Opening			
<b>Energy Systems and Facilities</b>			
Solar Energy, Small-Scale			
Solar Energy, Large-Scale or Utility Scale			
Wind Energy Conversion System			
Battery Energy Storage System, Tier 1 or 2			
Battery Energy Storage System, Tier 3			
<b>Telecommunications Equipment</b>			
<b>OTHER ACTIONS</b>			
<b>Ordinary Repair, Maintenance, or Replacement In-Kind</b>			
<b>Interior Building Alteration</b>			
<b>Alterations to a Building Facade</b>			
<b>Change of Use</b>			
<b>Improvement in Accordance with a Previously Approved Plan</b>			
<b>Modification or Amendment to Approved Development Plan</b>	Return to Original Issuing Review Body		
<b>Planned Unit Development (PUD) District</b>			
<b>Action Involving the Expansion or Alteration of Utility Infrastructure</b>			

NOTES: (1) Accessory use or structure includes decks, patios, porches, garages, sheds, etc. For full list see §215-24.4.  
 (2) Whichever is less.

**§215-42.5**

**ADMINISTRATIVE REVIEW**

- A. Authorized Review Body.** Actions requiring administrative review, per §215-42.4, shall be reviewed and decided upon by the Town Staff Plan Review Committee.
- B. Application Processing.** Administrative review applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** Administrative review applications shall include all materials as required by §215-42.8. All maps shall be drawn at a scale of 50 feet to one inch or larger or other scale deemed appropriate by the Director of Planning and Development.
- D. Administrative Review Procedure.**
  - 1.** The Town Staff Plan Review Committee shall review and decide upon applications in accordance with §215-40.4.

2. The Committee may refer any administrative review application to the Planning Board if, in their opinion, it is found that such application requires a discretionary or more significant review to determine the appropriateness of such proposal.
  3. Upon referral by the Committee, the Planning Board shall assume final site plan review decision authority in accordance with §215-42.6.
- E. **Review Criteria.** In conducting their review the Committee shall consider the development plan review criteria provided in §215-42.7, as applicable.
  - F. **Public Hearings.** No public hearing shall be required for administrative review applications. Where such application has been referred to the Planning Board, however, the requirements of preliminary and final site plan review shall apply.
  - G. **Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6 and this Article.
  - H. **Coordinated Reviews.** Administrative review may be coordinated with other development applications in accordance with §215-40.5.
  - I. **Endorsement of Approved Plans.** Upon approval, the Director of Planning and Development shall endorse their approval via signature on a copy of the development plan. For conditionally approved plans, the endorsement shall be executed only after demonstration that the plan has been amended to reflect such conditions or modifications.

## §215-42.6

### SITE PLAN REVIEW

#### A. Authorized Review Body.

1. Actions requiring site plan review, per §215-42.4, shall be reviewed and decided upon by the Planning Board.
2. All such applications shall be subject to both preliminary site plan review and final site plan review in accordance with this Section.

#### B. Application Processing.

Preliminary and final site plan review applications shall be submitted and processed in accordance with Article 40 of this Chapter.

#### C. Application Requirements.

1. Preliminary site plan review applications shall include all materials as required by §215-42.9.
2. Final site plan review applications shall include all materials as required by §215-42.10.
3. All site plan maps shall be drawn at a scale of 50 feet to one inch or larger or other scale deemed appropriate by the Planning Board.

#### D. Preliminary Site Plan Review Procedure.

1. The Town Staff Plan Review Committee shall conduct a review of preliminary site plans prior to action by the Planning Board.
2. The Committee's written findings and any recommended modifications shall be referred to the Planning Board for their consideration.
3. Upon receipt of the Town Staff Plan Review Committee's findings and recommendations, the Planning Board shall review and issue a decision on the preliminary site plan in accordance with §215-40.4.

**E. Final Site Plan Review Procedure.**

1. Upon receiving preliminary site plan approval, the applicant shall submit a final site plan application in accordance with Article 40.
2. The Planning Board shall review and issue a decision on the final site plan in accordance with §215-40.4.
3. If more than one year has elapsed since the preliminary site plan was approved, and if conditions have substantially changed, the Director of Planning and Development may require resubmission of a preliminary site plan.

**F. Review Criteria.** In conducting their reviews the Planning Board shall consider the development plan review criteria provided in §215-42.7, as applicable.**G. Public Hearings.**

1. A public hearing for preliminary site plan review applications may be held at the discretion of the Planning Board.
2. A public hearing shall be required for final site plan review.

**H. Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6 and this Article.**I. Coordinated Reviews.** Site plan review may be coordinated with other development applications in accordance with §215-40.5.**J. Endorsement of Approved Plans.** Upon approval, the Planning Board Chair shall endorse their approval via signature on a copy of the development plan. For conditionally approved plans, the endorsement shall be executed only after demonstration that the plan has been amended to reflect such conditions or modifications.**K. Phased Development Plans.**

1. In the case of a proposed development which is to be phased over several years, the applicant shall submit an overall plan for the total development of the project and a phasing plan. The overall plan shall include all preliminary site plan application materials necessary to facilitate the assessment of all potential development impacts of the total planned project.
2. If the overall plan for the project is approved, then the first phase of the project may continue for final site plan review and approval. If there is no substantial change in the overall plan or phasing plan, each succeeding phase of the development need only be reviewed for final site plan approval. If there are substantial changes to the overall plan or phasing plan, subsequent phases shall be required to go back for preliminary site plan review and approval.

**§215-42.7****REVIEW CRITERIA**

The Town Staff Plan Review Committee and Planning Board shall consider the following during administrative, preliminary, and final site plan review, as applicable.

- A. Adopted Plans and Studies.** Conformance with the Town of Tonawanda Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), Tonawanda Opportunity Area (TOA), and other relevant plans and studies.

**B. Zoning Regulations.** Conformance with all:

1. Use, bulk, and dimensional requirements of Part 2 of this Chapter.
2. Design and development standards of Part 3 of this Chapter, including, but not limited to, off-street parking, loading, and access management, landscaping, and screening, building and site design, exterior lighting, and sign regulations.

**C. Building and Site Design.**

1. Compatibility of proposed uses and structures to that of adjacent properties, considering location, arrangement, size, materials, design, and transitional treatments. This may include an assessment of the appropriateness of proposed building and site design elements with the desired character of the district and/or neighborhood.
2. Appropriateness of. This may include the assessment of the compatibility and relationship of proposed structures with the desired character of the district and/or neighborhood.
3. Adequacy, type, and arrangement of trees, shrubs, and other landscaping and screening measures constituting a visual and/or noise deterring buffer between on-site uses and those adjacent thereto.
4. Sufficient protection of adjacent properties from noise, glare, unsightliness, or other objectional features.

**D. Transportation Network.**

1. Adequacy and arrangement of vehicular traffic and circulation, including intersections, road widths, traffic controls, traffic-calming measures, and accessibility by fire and emergency vehicles.
2. Adequacy and arrangement of pedestrian and bicyclist access and circulation, including separation from vehicular traffic and connections provided internally and externally to the site.
3. The location, arrangement, appearance, and sufficiency of off-street parking and loading areas.

**E. Environmental and Recreational Resources.**

1. Preservation of and compatibility with natural site features and critical environmental resources, such as woodlots, watercourses, wetlands, floodplains, and animal habitat areas.
2. Provision and dedication of public open space, parks, and recreational facilities and the adequacy of those facilities for their intended purpose.
3. Preservation or enhancement of public access to the Niagara River, Ellicott Creek, and other public parks and recreation areas.
4. Adequacy of stormwater, drainage, and erosion management plans.
5. Provision of green infrastructure or other such methods to reduce run-off.

**F. Services and Utilities.**

1. Adequacy of sanitary waste disposal and water supply facilities.
2. Adequacy and appropriate location of utility systems.



3. Adequacy of proposed waste and trash management plan.
4. Adequacy of snow storage and/or proposed snow removal plan.

**G. Other Considerations.**

1. Encouragement of the most appropriate use of land and utilization of the site.
2. Adequacy and appropriateness of construction plans and phasing.
3. Potential for adverse effects to the functioning, economic stability, prosperity, and health, safety, or general welfare of nearby property owners and the community.

## §215-42.8

### ADMINISTRATIVE REVIEW APPLICATION MATERIALS

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An administrative review application shall include the following materials, as deemed necessary and appropriate by the Town Staff Plan Review Committee. The Committee may require some or all application material be prepared by duly licensed professionals.

- A. Required application form, including the name, address, and signature of the applicant, property owner, and developer.
- B. Description or narrative of all proposed uses and structures.
- C. Site plans drawn at a scale deemed appropriate by the Committee, with continuation on sheets as necessary for written information. The plans shall indicate the following:
  1. The location of all properties, their ownership, uses thereon, subdivisions, streets, easements, and adjacent buildings within 100 feet of the property in question.
  2. The location and use of all existing and proposed structures on the property in question, including all building and lot dimensions.
  3. The location of all existing and proposed topography as revealed by contours or key elevations, including final site grading.
  4. The location and proposed impacts to environmental features, including, but not limited to, open spaces, trees, watercourses, steep slopes, wetlands, floodplains, and watersheds.
  5. The location and dimensions of existing and proposed landscaping, screening, walls, and fences, including information regarding the size and type of plants and building materials proposed.
  6. The location and dimensions of existing and proposed public and private streets, off-street parking areas, access drives, driveways, sidewalks, ramps, curbs, and paths.
  7. A waste and trash management plan including the type, size, location, appearance, and operation of dumpsters or other trash receptacles.
  8. The type, size, location, appearance, and operation of all outdoor mechanical equipment.
  9. The location, height, intensity, bulb type, and light color of all exterior lighting fixtures.

- 10. The location, height, size, material, and design of all existing and proposed signs.
- 11. The location all new or modified downspouts or stormwater systems, including the configuration of a system for stormwater drainage or green infrastructure.
- 12. The location of existing and proposed utility systems including sewage or septic, water supply, telephone, cable, electric, internet, and fiber.
- D. Building elevations, drawn at a scale deemed appropriate by the Committee and descriptions of all exterior building materials.
- E. Plans for disposal of construction and demolition waste.
- F. Identification of any state or county permits required for the project and record of application for and approval status of such permits.
- G. All NYS SEQR documentation as required by law.

## §215-42.9

### PRELIMINARY SITE PLAN APPLICATION MATERIALS

An application for preliminary site plan review shall include the following materials. Such material shall be prepared and signed by a civil engineer or surveyor licensed to practice in NYS.

#### A. Legal Data.

- 1. The name and address of the owner of record. The name and address of the person, firm or organization preparing the site plan.
- 2. The date, north point, and written and graphic scale.
- 3. Sufficient description or information to precisely define the boundaries of the property. All distances shall be in feet and tenths of a foot. All angles shall be given to the nearest 10 seconds or closer. The error of closure shall not exceed one in 10,000.
- 4. The locations and owners of all lands within 200 feet of the site boundaries, as shown on the latest tax records, and Tax Map identification numbers.
- 5. The existing zoning of the site and all properties within 500 feet of the site's perimeter.
- 6. The location, width, and purpose of all existing and proposed easements, reservations, and areas dedicated to public use within or adjacent to the property, including public infrastructure.
- 7. A complete outline of existing and proposed deed restrictions or covenants applying to the property.

#### B. Vehicular, Pedestrian, and Bicyclist Transportation Network.

- 1. The locations, names, and widths of existing and proposed streets.
- 2. The location of existing and proposed pedestrian and bicycle public accessways on-site and within 200 feet of the site boundaries, including clear demarcation of striping and signage designed to maintain separation of vehicles, pedestrian, and bicycle circulation.

3. Traffic flow patterns within the site, including existing and proposed means of access and egress, driveways, curb cuts, fire lanes and emergency zones, and other paved areas on-site and within 200 feet of the site boundary.
4. Profiles indicating grading and cross-sections of proposed roadways, sidewalks, and bicycle infrastructure and their construction materials.
5. A detailed traffic study for large developments or for those in heavy traffic areas to include:
  - a) The projected number of motor vehicle trips to enter or leave the site, estimated for dairy and peak hour traffic intervals.
  - b) The projected traffic flow pattern, including vehicular movements at all major intersections, likely to be affected by the proposed use of the site to.
  - c) The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities and intersection levels of service. Existing and proposed daily and peak hour traffic volume as well as road capacities and intersection levels of service shall also be given.

**C. Buildings, Structures, and Use of Land.**

1. The location, size, and type of construction of all existing and proposed uses and structures on and within 100 feet of the lot line.
2. For residential uses, include the number of units by type and gross density per acre. For commercial and industrial uses, identify the amount of gross floor area proposed for each use.
3. Elevations illustrating front, rear, and side profiles of all proposed buildings and structures. The elevations shall clearly delineate the bulk and height of all buildings and other permanent structures included in the proposal and the height and dimension of all signs.
4. The location, design, direction, power, and time of use for any outdoor lighting.
5. The location, size, design, and materials for all proposed outdoor signs.
6. The location, size, and design of outdoor storage and waste receptacles and proposed screening for such.
7. The location, size, and design of all existing or proposed site retaining walls and fences.
8. The location and design of all uses not requiring structures, such as off-street parking and loading areas and solid waste storage areas.
9. Any setbacks or other dimensional information required for determining conformance with this Chapter.

**D. Environmental, Recreational, Historic, and Archaeological Features.**

1. Contours of existing site conditions and proposed drainage and grading plans with intervals of two feet or less.

2. Any proposed new grades, indicating clearly how such grades will meet existing grades of adjacent properties.
3. A drainage plan showing the locations, dimensions, grades, and flow direction of existing and proposed drainage ditches, culverts, and other stormwater management facilities. This shall include calculations of the impact to existing drainage created by the proposed development.
4. The location of existing and proposed watercourses.
5. The location of existing local, state, and federal floodplain and wetland boundaries, including areas known to be subject to flooding or stormwater overflows.
6. The location of existing natural habitats, wooded areas, rock outcrops, trees with a diameter of six inches or more measured three feet above the base of the trunk and other significant existing natural and environmental features.
7. The Local, state, and federally recognized historic or archaeological resources on or adjacent to the site and any proposed impacts thereto.
8. The location and design of existing and proposed recreation facilities, parks, and areas of open space, both public and private.
9. The percentage of the site dedicated to open space and vegetative cover.
10. A landscaping plan in accordance with Article 3, including a planting schedule. The dimensions of all landscaped screening or buffer areas shall be clearly marked.

**E. Utilities.**

1. All existing and proposed underground and above ground utilities, including telecommunication and energy generation and distribution facilities such as electrical, gas, or solar energy.
2. The description of the water supply system, including location and size of all proposed water lines, valves and hydrants, and of all sewer lines and alternate means of water supply, storm, and sanitary sewer.

**F. Waterfront Projects.** The following additional submission requirements apply to site plan applications for projects within the MU-W District and LWRP boundary:

1. Elevation plan and building material details for all buildings, facades, or structures visible from existing or proposed public streets or open spaces, including the Niagara River.
2. Graphic representation of existing and proposed views across the site to the Niagara River from public streets and open spaces.

**G. Construction Information.**

1. The estimated project construction schedule and phasing plan, if applicable.
2. A grading plan including stabilization and erosion control measures to be used during and after construction.
3. An estimate of the total cost of the proposed site improvements which shall be confirmed by the Code Enforcement Officer or Town Engineer.

4. A stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 73, Stormwater Management, of the Town Code, if applicable. The SWPPP shall meet the performance and design criteria and standards in §73-9 therein.
5. A record of applications and approval status of all necessary permits from other local, county, state, and federal agencies.

## §215-42.10

### FINAL SITE PLAN REVIEW APPLICATION MATERIALS

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Final site plan applications shall include the following:

- A. Approved Preliminary Site Plan.** All materials of the approved preliminary site plan application.
- B. Subdivision Plat.** A final subdivision plat in accordance with Chapter 185 of the Town of Tonawanda Code, where applicable.
- C. Transportation Network Specifications.**
  1. The lines of existing and proposed streets and sidewalks immediately adjoining and within the site, including geometric layout of proposed streets.
  2. Design and construction specifications and cross-sections of proposed streets, including finished grades in relation to existing ground elevation.
  3. Design and construction specifications and cross-sections of proposed sidewalks, bike facilities, and other multi-modal facilities.
- D. Utilities Plan.**
  1. The location, size and profile of any existing and proposed sewers (stormwater or sanitary), manholes, drain inlets, catch basins, water mains and pipes on the property or into which any connection is proposed.
  2. Provisions for water supply and sewage disposal and evidence that such provisions have been reviewed and approved by the Erie County Department of Health, the Erie County Department of Environment and Planning or the New York State Department of Environmental Conservation, as necessary.
- E. Land Survey.** The location of existing and proposed survey monuments. Before acceptance of the dedication of the highways or streets, a certificate by a licensed land surveyor must be filed certifying that the proposed monuments have been placed where indicated on the map.
- F. Town Design and Construction Specifications.** References to Town standards for all facilities to be constructed or installed and verification of conformance with the requirements therein.
- G. Legal Information.**
  1. The lines and purposes of existing and proposed easements immediately adjoining and within the site.
  2. The lines, dimensions, and areas in square feet of all property that is proposed to be reserved by deed on the site.
  3. A legal description of all areas to be dedicated to the Town.

4. Documentation of all other required local, county, state, and federal licenses and approvals.

## §215-42.11

### GUARANTY OF SITE IMPROVEMENTS

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- A. **General.** Subsequent to the granting of site plan approval, no certificate of occupancy shall be issued until all infrastructure and improvements shown on the site plan are installed or a sufficient performance guaranty has been provided by the applicant for infrastructure and improvements not yet completed.
- B. **Performance Guaranty Options.** In order that the Town has the assurance that the construction and installation of infrastructure and improvements such as storm sewers, water supply, sewage disposal, sidewalks, parking and access roads will be constructed in accordance with Town standards and/or any site plan approval modifications, the Code Enforcement Officer or Town Engineer may require that the applicant enter into one of the following agreements with the Town:
  1. Furnish a bond executed by a surety company in a dollar amount equal to 150% of the cost of construction of such infrastructure and improvements as shown on the plans. Such bond shall be based on an estimate furnished by the applicant, confirmed by the Code Enforcement Officer or Town Engineer and approved by the Town Board.
  2. Deposit a certified check payable to the Town in amount equal to 150% of the total cost of construction of such infrastructure and improvements as shown on the site plan and confirmed as in Subsection B(1) herein.
- C. **Conditions.**
  1. The performance guaranty shall be to the Town and shall provide that the applicant, his/her heirs, successors, assigns or his/her agent will comply with all applicable terms, conditions, provisions and requirements of this Zoning Law and will faithfully perform and complete the work of constructing and installing such infrastructure or improvements in accordance with the approved site plan.
  2. Any such performance guaranty shall require the approval of the Town Board.
  3. Certified checks shall be made payable to the Town of Tonawanda and will be placed in an escrow account established by the Town for this purpose.
  4. Letters of credit shall require the approval of the Town Board in consultation with the Town Attorney as to form, sufficiency and manner of execution and shall be duly notarized.
- D. **Extension of Time.** The construction or installation of any infrastructure and improvements or facilities (other than roads), for which a guaranty has been made by the applicant in the form of a bond or certified check, shall be completed within one year from the date of approval of the site plan. Road improvements shall be completed within two years from the date of approval of the site plan. The applicant may request an extension of time to complete such improvements, provided that the applicant can show reasonable cause for the inability to complete such improvements within the required time. The extension shall not exceed six months, at the end of which time the Town may

use as much of the bond or check deposit to construct the improvements as necessary. The Code Enforcement Officer may also grant the applicant an extension of time whenever construction of improvements is not performed in accordance with applicable standards and specifications.

- E. Schedule of Infrastructure and Improvements.** When a performance guaranty is issued pursuant to the preceding subsections, the Town and applicant shall enter into a written agreement itemizing the schedule of infrastructure and improvements in sequence with the cost opposite each phase of construction or installation, provided that each cost as listed may be repaid to the applicant upon completion and approval after inspection by the Town of such improvement or installation. However, 10% of the guaranty shall not be repaid to the applicant until one year following the completion and inspection by the Town of all construction and installation covered by the check deposit or performance bond.
- F. Inspections.** Inspections during the installation of infrastructure and improvements shall be made by the Code Enforcement Officer or other assigns to ensure conformity with the approved plans and specifications as contained in the contract and this Zoning Law. The applicant shall notify the Code Enforcement Officer or other assigned personnel when each phase of infrastructure and improvements is ready for inspection. Upon acceptance of infrastructure and improvements, the Code Enforcement Officer shall issue a letter to the applicant or his/her representative that provides sufficient evidence for the release by the Town of the portion of the performance guaranty as designated in the contract to cover the cost of such completed work.
- G. Phased Development.** The Code Enforcement Officer may further request, subject to Town Board approval, that the applicant deposit a separate performance guaranty for each phase of development proposed. In this event, 5% of the performance guaranty shall be withheld from the applicant until 60 days following the completion, inspection and acceptance by the Town of all construction and installation covered by such deposit. No subsequent phase of development shall be undertaken until each earlier phase has been completed and approved by the Code Enforcement Officer or other assigns.

# Article 43. Special Use Permits

## §215-43.1

### PURPOSE & INTENT

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- A. The purpose of this Article is to regulate special uses, which by nature of their operation, may have a higher potential for incompatibility with adjacent uses or otherwise unique characteristics which require a case-by-case review of their location, design, configuration, and impacts on the surrounding area.
- B. The standards of this Article are intended to provide for the individual review and approval of such uses to ensure compatibility of the use in its proposed location and mitigate any potential adverse impacts the use may have on the district or neighborhood.

## §215-43.2

### APPLICABILITY

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- A. **Permit Required.** A special use permit shall be obtained for all uses as noted in the district tables of Part 2 of this Chapter prior to their establishment or operation.
- B. **Additional Use Regulations.** In addition to the general district and development requirements of this Chapter, specially permitted uses shall also conform to the requirements of Article 24, where applicable.

## §215-43.3

### REVIEW PROCEDURE

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- A. **Authorized Review Body.** Special use permit applications shall be reviewed and decided upon by the Town Board.
- B. **Application Processing.** Special use permit applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. **Application Requirements.** Special use permit applications shall include all materials as required by §215-43.4.
- D. **Town Board Action.** The Town Board shall review and decide upon applications in accordance with §215-40.4.
- E. **Review Criteria.** In conducting their review, the Town Board shall consider the special use permit review criteria provided in §215-43.5, as applicable.
- F. **Public Hearings.** A public hearing shall be held for all special use permit applications prior to issuance of decision.
- G. **Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6.
- H. **Coordinated Reviews.** The review of special use permit applications may be coordinated with other development applications in accordance with §215-40.5.



**§215-43.4****APPLICATION REQUIREMENTS**

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A special use permit application shall include the following, as applicable:

- A.** A site plan denoting the location of the subject property and all structures thereon, as well as all property, uses, and structures within 300 feet of the proposed use.
- B.** A description of the proposed use and nature of its operation, including:
  - 1.** A business plan, vision, or model, and/or summary of products, goods, and services to be sold or provided;
  - 2.** The proposed hours of operation;
  - 3.** The number of employees at maximum shift;
  - 4.** The maximum seat capacity;
  - 5.** The timing and manner of any and all anticipated deliveries;
  - 6.** A recycling and waste management plan; and
  - 7.** The nature and type of all mechanical equipment provided and/or required.
- C.** An interior floor plan, including, but not limited to, the arrangement of seats, kitchen and/or bar size and location, storage areas, bathroom facilities, and location of machines or other mechanical equipment.
- D.** A narrative describing how the proposed use will satisfy the review criteria of §215-43.5.
- E.** All SEQR Documentation as required by NYS Law.
- F.** Where administrative, preliminary, or final plan review is also required, the application materials of Article 42 shall also apply.

**§215-43.5****REVIEW CRITERIA**

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- A. General Criteria.** In reaching a decision, the Planning Board shall consider and shall determine, either from its own knowledge and investigation or from testimony or other information submitted to it, written findings on whether the proposed use:
  - 1.** Will be generally consistent with the goals of the Town Comprehensive Plan, LWRP, and other adopted plans and studies;
  - 2.** Will meet all relevant standards, guidelines, and requirements set forth in this Zoning Law, including any applicable additional use regulations of Article 24;
  - 3.** Will be an economically viable use of the property and/or will not cause there to be any significant decrease in the future economic viability of the property;
  - 4.** Will be compatible with existing uses adjacent to and near the property;
  - 5.** Will provide adequate measures (such as landscaping and screening) to mitigate potential adverse impacts on surrounding property and preserve or enhance the traditional character of the Town;

6. Will not have an undue burden or effect on the orderly development and character of the neighborhood or upon the development and conduct of other lawful uses in the vicinity;
  7. Will not be a nuisance to adjacent residents and property in terms of the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, traffic, crowds, parking of automobiles, unsightliness, contamination or other similar conditions;
  8. Will not cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water, or degradation of water quality;
  9. Will not destroy or adversely impact significant historic and/or cultural resource sites; and
  10. Will not otherwise be detrimental to the convenience and general health, safety, or welfare of the public.
- B. Standard for Review.** Failure to meet one or more of the above criteria may result in denial of an application.

## §215-43.6

### SPECIAL USE PERMIT TIME LIMITATIONS

- A. Purpose.** The Town Board may impose limitations on the time period for which the special use permit is granted if, in their opinion, the temporary issuance of such permit is necessary to verify the appropriateness and compatibility of the use as proposed.
- B. Duration.** The duration of a special use permit shall of a set period of time determined by the Town Board to provide the applicant with a reasonable return on investment and allow for adequate observation of the use in standard operation.
- C. Renewal of Permit.**
  1. Special uses that have been issued a time limited permit and intend to continue operation thereafter shall be required to reapply for special use permit approval at least 30 days prior to the initial permit's expiration date.
  2. Renewal applications shall be submitted, processed, reviewed, and decided upon in accordance with the provisions of this Article.
  3. In granting special use permit renewal, the Town Board may remove or modify the conditions and time limitation of the initial permit, as deemed necessary or appropriate.
- D. Denial.** The Town Board may deny a renewal of a special use permit when any of the following apply:
  1. The petitioner has failed to comply with one or more of the conditions of the prior approval;
  2. Substantial new issues regarding the permit conditions during the operation of the use have arisen;
  3. The general requirements of this Chapter have not been met; or

4. There are changes in the area or neighborhood that would be incompatible with the special use.

## §215-43.7

### TRANSFER OF PERMITS

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Special use permit approval shall be considered to run with the land rather than applicant. Therefore, where a change of owner, operator, or occupant occurs, the approved special use permit for the property may be transferred in accordance with the following:

- A. **Notice of Change.** The subsequent owner or occupant shall, prior to taking possession of such premises, give written notice to the Town's Planning and Development Department indicating the change of ownership or occupancy of such premises and shall execute such forms as shall be reasonably required by said Department.
- B. **Compliance with Existing Approvals and Conditions.** The subsequent owner or occupant shall continue to comply with all the conditions and provisions of the existing special use permit and any associated site plans. Written acknowledgement of and agreement to the conditions and provisions of these existing approvals shall be provided to the Town by the owner or operator with the notice of change.
- C. **Compliance with Existing Conditions.** Where modifications or alterations to the operation of the authorized special use are proposed by the applicant, a new special use permit shall be required in accordance with this Article.

## §215-43.8

### REAPPLICATION FOR DENIED SPECIAL USE PERMITS

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A reapplication for a special use permit request which has been previously denied shall not be considered unless substantial revisions have been completed from the original application previously denied, as determined by the Town Planning Board.

# Article 44. Planned Unit Development (PUD) Districts

## §215-44.1

### PURPOSE & INTENT

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- A. The purpose of the PUD District is to use the authority granted by NYS Town Law, §261-c and NYS Municipal Home Rule Law to promote flexibility in development to better achieve community goals and to promote consistency with the comprehensive plan.
- B. The procedures herein established are intended to substitute procedural protections and substantive regulations in recognition of the fact that traditional density, bulk, spacing, and use regulations, which are useful in most instances, may impose inappropriate pre-regulations and rigidities upon the development or redevelopment of parcels or areas which lend themselves to an individual, planned approach.

## §215-44.2

### REZONING PROCEDURE

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- A. The Town Zoning Map may be amended from time to time, by local law duly enacted by the Town Board, to provide PUD districts. The provisions of this Article establish special procedures for amending the Town Code and zoning map to permit the mapping of PUD districts and should be read in conjunction with those articles establishing district regulations.
- B. A planned unit development district may be mapped on the zoning map by the adoption of a local law by the Town Board, simultaneously with approval of a preliminary planned unit development plan in accordance with §215-44.4.

## §215-44.3

### COORDINATION WITH SUBDIVISION & SITE PLAN REQUIREMENTS

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- A. **Subdivision Review.** If the applicant proposes the sale of lots as part of the planned unit development, the subdivision review will be carried out simultaneously with the review of the preliminary planned unit development plan, and the subdivision review conducted in any planned unit development district shall be conducted in accordance with Chapter 185, Subdivision of Land.
- B. **Preliminary and Final Plats.** The plans required under this Article must be submitted in a form that will satisfy, when applicable, subdivision requirements for preliminary and final plats.
- C. **Subdivision Standards.** The dimensional regulations, including but not limited to lot area, coverage, height, and yard setbacks, are hereby replaced by an approval process in which the Town Board, after consultation with and recommendation by the Planning Board, shall determine appropriate land use intensity and/or dwelling unit density for individual projects within the PUD as

they are proposed. The determination shall be thoroughly documented, including all facts, opinions and judgements justifying the selection.

- D. Final Site Plan.** The final planned unit development plan shall serve as the final site plan for the purposes of this Chapter.

## §215-44.4

### PRELIMINARY DEVELOPMENT PLAN REVIEW PROCEDURES

The procedure for the review of a preliminary planned unit development plan shall be as follows:

- A. Preapplication Meeting.** Applicants may request a preapplication meeting to review proposed planned unit development concept plans in accordance with §215-42.3.
- B. Application Submittal.**
1. Applicants shall prepare and submit a written request for rezoning to create a planned unit development district in accordance with Article 46 as well as an application for preliminary planned unit development approval in accordance with this Article.
  2. Applications for preliminary planned unit development plan approval shall include the same application requirements as described for preliminary site plan review in §215-42.9.
- C. Application Processing.**
1. Applications shall be accepted and processed in accordance with Article 40.
  2. The Town Board or Planning Board, at the time of initial review, may determine within its sole discretion that the proposed planned unit development plan is not in accordance with the goals and plans of the Town, or otherwise not in the public interest, and deny the application without further review.
- D. Planning Board Review and Recommendation.**
1. The Planning Board shall review the application with the owner to determine if it meets the standards of this Article and Chapter.
  2. The Planning Board may recommend amendments to the preliminary planned unit development plan as are deemed reasonably necessary to protect natural resources, limit impacts, protect the established or permitted uses in the vicinity and to promote the orderly growth and sound development of the Town.
  3. In making its recommendation on the proposed development and changes, if any, the Planning Board shall consider the following factors:
    - a) Conformity with the Town's Comprehensive Land Use Plan.
    - b) The need for the proposed land use in the proposed location.
    - c) The existing character of the neighborhood in which the uses will be located and the redevelopment goals as stated in redevelopment plans prepared by the Town.
    - d) The pedestrian circulation and open space in relation to structures.

- e) The traffic circulation features within the site and the amount, location and access to automobile parking areas, and the impact of the proposal on existing transportation systems.
  - f) The adequacy of the proposed public/private utilities, including water supply, sewage treatment and stormwater drainage facilities.
  - g) The height and bulk of buildings and their relation to other structures in the vicinity.
  - h) The proposed location, type and size of display signs, driveways and/or loading zones and landscaping.
  - i) The safeguards provided to minimize possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general.
  - j) Impacts on the neighborhood, including preservation of resources, open space, and recreational activities, especially the preservation of important viewsheds.
  - k) Economic benefits and costs.
  - l) Such other matters as the Planning Board may consider pertinent, including but not limited to the site plan review criteria of §215-42.7.
4. The Planning Board shall recommend approval, approval with modifications or conditions, or disapproval of the application, and shall make its recommendation to the Town Board within 62 days after referral to the Planning Board, unless mutually extended by the applicant and the Planning Board.

**E. Town Board Review and Decision.**

1. As part of the preliminary planned unit development review, the Town Board shall prepare a proposed local law for the creation of a planned unit development district. The proposed local law shall follow the format of a model law provided by the Town Board, and any recommendations of the Planning Board may then be incorporated into the proposed local law by the Town Board.
2. The Town Board shall hold a public hearing on the proposed rezoning (draft local law) and preliminary planned unit development.
3. The Town Board, in reaching its decision on the proposal, should consider the standards of §215-46.2, this Zoning Law, and any other factors it deems reasonable.
4. Upon receipt of the Planning Board's recommendation, or 62 days after referring the application to the Planning Board, whichever is later, the Town Board may act on the application in accordance with §215-40.4.
5. Any conditions imposed by the Town Board shall run with the land and shall not lapse or be waived as a result of any subsequent change in the tenancy or ownership of any or all of said area.

- F. SEQRA Compliance.** During its review and prior to the approval of a preliminary planned unit development plan pursuant to this Article, the Town shall comply with the provisions of SEQRA.

**§215-44.5****FINAL DEVELOPMENT PLANS & ISSUANCE OF PERMITS**

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**A. Final Development Plans.**

1. Any final planned unit development plans shall be in substantial conformance with the preliminary planned unit development plans.
2. Prior to the issuance of any permits for the erection or enlargement of any buildings within a planned unit development district, final precise site and elevation plans for all buildings and landscaping within the district or approved phase of the development, shall be submitted to the Planning Board for review and recommendation to the Town Board.
3. If the initial application for approval of a preliminary planned unit development plan included final precise plans for the complete development, building permits may be issued in accordance with those plans.
4. If the preliminary planned unit development plan did not include all details, or if the applicant wishes to construct in phases or to modify the preliminary planned unit development plan, including modifying conditions, final planned unit development plans, with all required detail, shall be submitted, as required in final site plan review section of Article 42.
5. Final planned unit development plans shall be submitted to the Town Board. If the proposed final planned unit development plan deviates, in the Town Board's determination, significantly from the preliminary planned unit development plan, the Town Board may elect to treat the proposed final planned unit development plan as an amended preliminary planned unit development plan and restart the Planning Board review and public input process and reconsideration of a new preliminary and/or final planned unit development plan, or relevant portion thereof.
6. Changes/deviations that may be considered significant or substantial shall include, but not be limited to, the following:
  - a) Changes in traffic patterns, access, or circulation, including vehicular or pedestrian, or road standards.
  - b) An increase in density.
  - c) Changes in building height.
  - d) Reductions of proposed open space and/or buffering/screening of adjacent properties.
  - e) Changes in total bedroom counts of more than 5%.
  - f) Changes in bedroom mixes of more than 5%.
  - g) Changes in the development schedule.
  - h) Changes in the final governing agreements, provisions, or covenants, or increased impacts on natural features.
  - i) Changes in phasing, if applicable.
  - j) Changes in proposed use or mix of uses, especially to more intensive uses (e.g., impact to traffic, land coverage, any other impacts to other elements listed).

7. In connection with the review of final planned unit development plans, deviations in any of the conditions previously established may be authorized pursuant to the provisions of this Chapter.
- B. **Permits.** Except as approved by the Town Board, no permit shall be issued for grading, or for the erection, enlargement, or maintenance of buildings or structures in a planned unit development district, and no person shall perform any such development or construction work, except in full compliance with the final development plans approved as herein provided.

## §215-44.6

### TERMINATION OF APPROVAL

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- A. **Termination.** If after one year from date of a preliminary planned unit development plan approval a final planned unit development plan approval has not been received, or if after one year from date of a final planned unit development plan approval substantial site work has not begun, the approvals given under the terms of this Article shall terminate.
- B. **Resubmittal of Final Site Plan.** The land shall remain zoned as a planned unit development district until removed by subsequent adoption of a local law by the Town Board, but no building permits may be issued or construction activity occur until a new or amended final planned unit development plan approval is approved pursuant to the provisions of this Article.
- C. **Extensions.** The applicant may, for valid reasons, request an extension of time from the Town Board from these deadlines, which may be granted in the sole discretion of the Town Board.



# Article 45. Variances & Appeals

## §215-45.1

### VARIANCES & APPEALS

The rules, regulations, and procedures of NYS Town Law §267 shall apply to all applications for variances, appeals, and interpretations considered under this Zoning Law. The following requirements are provided for ease of reference. In the case of conflicts with or amendments to NYS Town Law, the state regulations shall supersede the regulations of this Article.

- A. Authorized Review Body.** The Zoning Board of Appeals (ZBA) shall have the power to review and decide upon all appeal, variance, and interpretation applications.
- B. Application Processing.** All matters for review by the ZBA shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** All applications before the ZBA shall include the materials identified on the Town's application forms or otherwise requested by the Code Enforcement Officer to allow for an adequate and informed review.
- D. ZBA Action.** The ZBA shall review and decide upon applications in accordance with §215-40.4.
- E. Review Criteria.** In conducting their review of variances, the ZBA shall consider the criteria only as provided by this Article and NYS Town Law.
- F. Public Hearings.** A public hearing shall be held by the ZBA for all appeal and variance applications.
- G. Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6.
- H. Coordinated Reviews.** The review of variance applications may be coordinated with other development applications in accordance with §215-40.5.

## §215-45.2

### USE VARIANCE REVIEW CRITERIA

The ZBA shall not grant a use variance without the applicant having shown that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located the following conditions exist:

- A.** The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- B.** The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- C.** The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- D.** That the alleged hardship has not been self-created.

**§215-45.3****AREA VARIANCE REVIEW CRITERIA**

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In making its determination, the ZBA 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 ZBA shall consider the following:

- A. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- B. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- C. Whether the requested area variance is substantial in relation to the requirement;
- D. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- E. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

**§215-45.4****MINIMUM VARIANCE ALLOWABLE**

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The ZBA, in the granting of variances, shall grant the minimum variance that it shall deem necessary and adequate to address the hardship proved by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**§215-45.5****APPEALS PROCEDURE**

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Appeals may be taken by any person aggrieved by the Code Enforcement Officer or other Town official's decision or action; or by an officer, department, or other review body of the Town. Said appeal shall be filed in accordance with the following:

- A. A petition shall be taken within 60 days after the filing in the Town Planning and Development Department of any order, requirement, decision, interpretation, or determination of a review body authorized under this Chapter.
- B. The ZBA shall specify the grounds of said petition and relief sought.
- C. The Code Enforcement Officer or Director of Planning and Development shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken. The Code Enforcement Officer shall, within five days, notify any petitioner of the denial of a petition presented to the Building Department for a building permit on account of violation of the Zoning Law.
- D. An appeal stays all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer, after the notice of appeal shall have been filed with him, certifies to the ZBA that, by reason of acts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In which case proceedings shall not be stayed otherwise than by a restraining order granted by the ZBA, Town Board, or by a court of record on application, on notice to the Code Enforcement Officer and on due cause shown.

# Article 46. Amendments

## §215-46.1

### ZONING AMENDMENTS (REZONINGS)

- A. Authority to File.** Amendments to the zoning text or zoning map (rezonings) may be initiated by the Town Board, recommendation of the Planning Board, or petition presented to the Town Board in accordance with NYS Town Law.
- B. Application Processing.** All applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** All rezoning applications shall include the materials identified on the Town's application forms or otherwise requested by the Director of Planning and Development.
- D. Planning Board Review and Recommendation.** The Planning Board shall conduct a review of amendment applications and provide a written recommendation of decision to the Town Board in accordance with §215-40.4.
- E. Town Board Review and Decision.** Upon receipt of a recommendation from the Planning Board, the Town Board shall review and decide upon the application in accordance with §215-40.4. If the Town Board approves the rezoning the text and/or map shall be amended after publication as required by NYS Law.
- F. Review Criteria.** In conducting their review, the Planning Board and Town Board shall consider the criteria provided by §215-46.2.
- G. Public Hearings.** A public hearing shall be held by the Town Board prior to issuing a decision on the rezoning.
- H. Referrals.** All internal, professional, and required referrals shall be made in accordance with §215-40.6.
- I. Coordinated Reviews.** The review of amendments may be coordinated with other development applications in accordance with §215-40.5.

## §215-46.2

### REVIEW CRITERIA

In reviewing zoning amendments the Planning Board and Town Board must consider the following criteria:

1. Whether the proposed amendment corrects an error or inconsistency in the zoning law or meets the challenge of a changing condition;
2. Whether the proposed amendment is in substantial conformance with the adopted plans and policies of the municipality;
3. Whether the proposed amendment is in the best interests of the municipality as a whole;
4. Whether public facilities (infrastructure) and services will be adequate to serve development allowed by any requested rezoning;
5. Whether any rezoning will substantially harm the public health, safety or general welfare or the value of nearby properties;

6. Whether any rezoning is compatible with the zoning and use of adjacent property;
7. Whether the property in question is suitable for the uses and development to which it has been restricted under the existing zoning regulations; and
8. Whether the gain, if any, to the public health, safety and general welfare due to denial of the application outweighs that of the hardship imposed upon the landowner, if any, as a result of denial of the application.

**Section 3. Severability.**

If any clause, sentence, paragraph or part of this local law or the application thereof to any person or circumstances shall be adjudged by any court to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof or the application thereof to other persons and circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered.

**Section 4. Effective Date**

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.