



# CHAPTER 215. ZONING CODE

## Part 1. Introductory Provisions

**DRAFT**

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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

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- 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

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- 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

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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

- 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 adjoined 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.

**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.