

Chapter 120

ZONING

[HISTORY: Adopted by the Town Board of the Town of Canadice 7-9-2007 by L.L. No. 3-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Board of Appeals – See Ch. 5.
Planning Board – See Ch. 19.
Building permits – See Ch. 55.
Uniform Construction Codes – See Ch. 52.
Subdivision of land – See Ch. 108.

ARTICLE I

Enactment and Intent

§ 120-1. Title.

This chapter shall be known and cited as the "Town of Canadice Zoning Local Law." This chapter shall constitute Chapter 120 of the Canadice Town Code and may be referred to herein as "this chapter."

§ 120-2. Intent.

- A. This chapter consolidates into a single chapter many of the various land-use-related local laws adopted by the Town over several decades. This chapter establishes comprehensive controls for the development of land in the Town of Canadice based on the 1996 Comprehensive Plan for the Town and any subsequent amendments thereto.
- B. The intent of this chapter is to establish comprehensive controls and implement the recommendations for the development of land in the Town of Canadice based on the October 1996 Comprehensive Plan, and any subsequent amendments thereto, enacted in order to promote and protect health, safety, comfort, convenience and the general welfare of the people. This chapter seeks to:
 - (1) Encourage the use of lands in accordance with their natural characteristics and adaptability by encouraging development in the most appropriate locations and by limiting building in areas where it would conflict with the Town's rural pattern and scale of settlement.
 - (2) Promote a rural living environment by maintaining large areas of contiguous open space in an undeveloped state.
 - (3) Maintain the purity of the water in our lakes, ravines, and wells and to safeguard wildlife habitat and unique ecological areas by protecting existing shorelines, wooded areas, scenic views, agricultural land, existing and potential recreation areas, waterways, ground and surface waters, ecological systems, wetlands, wildlife habitat,

and unique ecological areas.

- (4) Maintain a reasonable balance of population and land use by encouraging economic activities that require large areas of open space, such as forestry, recreation, tree farming, and the support services that add value to these uses such as wood products and tourist facilities.
- (5) Conserve the expenditure of funds for public improvements and services by maintaining a network of smaller country roads in areas designated for the protection of open space, agriculture, steep slopes, and rural character.
- (6) Conserve the real property values and improvement thereon and to promote uses in harmony with the conservation of land, natural resources, and protection of property values by basing flexible land use regulation on the unique characteristics of the landscape, the needs of the people of the Town, the impact of proposed land uses on the natural and human environment and the purposes articulated in this chapter, and to avoid suburban sprawl and commercial strip patterns of development.
- (7) Minimize congestion on public roads by locating nonresidential uses in a manner that is convenient to residences, reduces use of automobiles and provides freedom for landowners to make beneficial economic use of their land, provided that such uses are not harmful to neighboring properties or the natural environment.
- (8) Provide a flexible system of land use regulation that enables the Town to grow while preserving important natural, historic, architectural, and cultural features.
- (9) Base flexible land use regulation on the unique characteristics of the landscape, the needs of the people of the Town of Canadice, the impact of proposed land uses on the natural and human environments, and the purposes articulated in this chapter.

§ 120-3. Purposes.

These regulations and future amendments shall be made in accordance with the duly adopted Town of Canadice Comprehensive Plan. In accordance with the Town's Comprehensive Plan, this chapter is intended to provide for an orderly development of the Town while preserving neighborhood character and the rural character of the Town that residents hold in such high esteem. Further, this chapter is intended to provide flexibility in development of buildings and uses in a safe and economically viable way that does not impart an undue burden on adjacent property owners nor the community at large, including consideration of both quality of life and property values. Due consideration is also given to the availability of adequate public and private infrastructure such as transportation, water, sewage, schools, parks, electric, etc., to support existing and proposed development.

§ 120-4. Interpretation; application; conflict with other laws.

The interpretation and the application of the provisions of this chapter shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul other rules, regulations, laws or ordinances, provided that where this chapter imposes greater restrictions upon the use of buildings or premises or upon the height or bulk of a building or requires larger open spaces, the provisions of

this chapter shall apply. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or laws, the most restrictive of such shall govern.

§ 120-5. Severability.

If any section, subsection, sentence, clause or phrase of this chapter or the location of any district boundary shown on the Zoning Map¹ that forms a part hereof is for any reason held by a court of competent jurisdiction to be invalid for any reason, such a decision shall not affect the validity of the remaining portions of this chapter or Zoning Map.

§ 120-6. When effective.

This chapter shall take effect immediately upon adoption and filing with the Department of State as provided by the New York State Town Law and Municipal Home Rule Law.

§ 120-7. Amendments.

- A. Town Board may amend. The Town Board may, from time to time on its own motion, on petition, or on recommendation of the Planning Board or the Zoning Board of Appeals, amend, supplement, or repeal the regulations and provisions of this chapter, after public notice and hearing. The Town Board must find, as part of its approval of such an amendment, that the amendment is in harmony with and furthering the goals and objectives identified in the Town of Canadice Comprehensive Plan.
- B. Review by Town Planning Board. Every proposed amendment to this chapter, whether initiated by the Town Board, the Planning Board, or the Zoning Board of Appeals or by petition, shall be referred to the Planning Board for report thereon before the public hearing and within 45 days after the date of referral by the Town Board. Such report by the Planning Board shall state whether each amendment or change proposed is in harmony with the Town's most recently adopted Comprehensive Plan.
- C. Public notice and hearing. The Town Board, by resolution adopted, shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as provided by Town Law or Municipal Home Rule Law.
- D. Notification of property owners of consideration of Zoning Map amendment.²
 - (1) For proposed Zoning Map amendments, all property owners within a distance of 500 feet of any proposed change or amendment shall be notified by regular first-class mail of the date of the public hearing to be held by the Town Board in consideration of such amendment. The cost of said mailing shall be paid by the petitioner.
 - (2) The applicant shall place one sign on the property for which a rezoning is requested. Said sign shall be provided by the Code Enforcement Officer. The sign shall be placed in a location that is easily read from a public road. The sign shall specify the

1. Editor's Note: A copy of the Zoning Map is included at the end of this chapter.

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date, time and place of the public hearing to be held before the Canadice Town Board and a telephone number to call for more specific information. Such sign shall be placed on the site not less than 10 days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.

§ 120-8. (Reserved)

§ 120-9. (Reserved)

ARTICLE II Definitions and Word Usage

§ 120-10. **Interpretations and word usage.**

For the purpose of this chapter, certain terms or words used herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense.
- B. Words used in the singular include the plural, and words used in the plural include the singular.
- C. The word "shall" is mandatory; the word "should" denotes "strongly"; the word "may" is permissive.
- D. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."
- E. A "building" or "structure" includes any part thereof.
- F. The word "unit" shall be interchangeable with the word "individual" and shall refer to but is not limited to the residential and commercial usage of such words as "garage," "dwelling," "building" and "structure."
- G. Any words not specifically defined herein shall be defined in a current standard reference dictionary.

§ 120-11. **Definitions.**

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

ABANDONED VEHICLE — Any automotive vehicle or trailer designed for use on a public highway, which is without currently valid license plate(s), that is left to remain outside of a completely enclosed building in the same lot or part of a lot for more than 60 days and is not insured in any manner.

ACCESS — The ability to permit ingress and egress.

ACCESSORY APARTMENT — An apartment that is in the same building and clearly accessory to the main residence occupancy and conforms to the standards of § 120-105 herein. An accessory apartment is intended to provide homeowners with the ability to provide housing for related family members who need or desire additional care and oversight from other family

members and is not intended to provide a housing unit to be offered for rent to the general public. For the purpose of this definition, a "family member" is someone related by blood, marriage, legal adoption, or civil union.

ACCESSORY STRUCTURE — A detached structure on the same lot with and of a nature customarily incidental and subordinate to the principal structure (for example, such as a detached garage is an accessory structure to a residence).

ACCESSORY USE — A use customarily incidental and subordinate to the principal use of a building or parcel and located on the same lot.

ADDITION — Any structure which is built or placed so as to be attached to a building and have a common wall with the building it is attached to and increases the floor area or size of the structure.

ADULT BOOKSTORE — An establishment having a substantial or significant portion of its stock-in-trade books, magazines and other periodicals that are distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined herein.

ADULT CABARET — An establishment which features live go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity.

ADULT DRIVE-IN THEATER — An outdoor drive-in theater utilized for the presentation of materials distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

ADULT MINI-MOTION-PICTURE THEATER — An enclosed building with a capacity of less than 50 used for presenting materials distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

ADULT MOTION-PICTURE THEATER — A building with a capacity of 50 persons or more used for presenting material distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

ADULT PHYSICAL CONTACT ESTABLISHMENT — Any establishment which offers or purports to offer massage or other physical contact to patrons of either gender by employees or staff of either gender. Medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as a physical therapist or physical therapist assistant and electrolysis, karate, judo and dance studios are not to be considered adult physical contact establishments under this section.

ADULT USE BUSINESS — Any business which:

- A. Uses the land, structure, establishment or location for an adult entertainment business or as an adult physical contact establishment, as defined herein; and

- B. Uses the land, structure, establishment or location and, by the provisions of the Penal Law, restricts access thereto from minors; medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as a physical therapist or physical therapist assistant and electrolysis, karate, judo and dance studios are not to be considered adult physical contact establishments for the purposes of this chapter. Uses the land, structure, establishment or location to feature topless dancers, nude dancers or strippers, male or female; and
- C. Uses the land, structure, establishment or location for presenting, lending or selling motion-picture films, videocassettes, cable television or any other such visual media or the selling of books, magazines, publications, photographs or any other written materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined herein; and
- D. Includes adult bookstores, adult video stores, adult motion-picture theaters, adult mini-motion-picture theaters, adult cabarets and adult drive-in theaters.

ADULT VIDEO STORE — An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes, or other films, digital, and/or other media for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas, as defined herein, for the observation of patrons therein.

AMBIENT NOISE — The amount of noise in the natural background at any given time.

ANIMAL HUSBANDRY — The raising or keeping of one or more cows, cattle, horses, mules, hogs, sheep, goats, donkeys, oxen, or other similar animals, or the raising or keeping of more than four ducks, chickens, rabbits, geese, quail, chinchillas, mink, or any similar small animals, but not including dogs and cats. Such uses include the pasturing, feeding, and sheltering of such animals.

ANTENNA — A device that requires a supporting structure and which is designed to radiate or receive electromagnetic signals.

APPEAL — Any application made to the Zoning Board of Appeals of the Town of Canadice, including, but not limited to, an appeal of a decision by the Code Enforcement Officer pursuant to this chapter, an area variance, a use variance, an interpretation of this chapter or the boundary of the Official Zoning Map of the Town of Canadice.

APPLICANT or DEVELOPER — Landowner or person operating with the written permission of the landowner who submits an application to the Town for a proposed change in use, structure, or building or subdivision of land subject to review under this chapter or Chapter 108 of the Canadice Town Code.³

AREA VARIANCE — Shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

3. Editor's Note: See Ch. 108, Subdivision of Land.

AUTOMOBILE — See "motor vehicle."

AUTOMOBILE GRAVEYARD — Any land or premises used for storage or deposit, whether in connection with a business or not, where more than two junk motor vehicles are held, whether for the purpose of resale of used parts therefrom or for any other purpose. The term shall not include such land and premises where such unregistered and inoperative motor vehicles are stored or parked within a completely enclosed building or garage.

BED-AND-BREAKFAST — A single-family residence operated as an inn entirely within the principal residence, where lodging, with or without meals, is provided for transient guests and where no cooking or dining facilities are provided in individual bedrooms.

BILLBOARD — A large, on- or off-premises sign intended to attract motorists' attention from a great distance for the purpose of advertising a business, service, or product. Many billboards are comprised of standalone structures or mounted on the side or roof of structures. They are often intended to be mechanically or manually changed, so that the owner of the sign can rent the sign in a periodic manner, such as by the day, month, or year, for such advertising. The term "billboard" includes painted signs on the side or roof of a building, structure, or vehicle.

BOARDINGHOUSE — Any dwelling in which more than three persons, whether individually or as families, are housed or lodged for hire, with or without meals. A rooming house gets individual rooms for hire or a furnished-room house shall be deemed a boardinghouse. For example, a bed-and-breakfast establishment where bedrooms in a single-family dwelling are offered for rent to transient guests is considered a boardinghouse.

BUILDING — Any structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals or property. This shall include mobile, modular or manufactured houses.

BUILDING, COMMERCIAL — Any building or structure which is designed and/or used to produce income or having profit as its chief aim, such as but not limited to a public garage, kennel, gasoline service station and restaurant.

BUILDING, HEIGHT OF — See "structure, height of."

BUILDING PERMIT — A document issued by the Code Enforcement Officer pursuant to the New York State Uniform Fire Prevention and Building Code and Chapter 55 of the Canadice Town Code.⁴ A building permit may also be used to signify receipt of a zoning permit. See the "zoning permit" definition.

BUILDING, SUPPORTING MEMBER — Includes but is not limited to bearing walls, columns, beams and girders.

CERTIFICATE OF OCCUPANCY — Written approval issued by the Town Code Enforcement Officer, following certification based on inspection, that said dwelling has duly met all regulations, codes, local laws, and ordinances and is suitable for habitation.

CODE ENFORCEMENT OFFICER — A public official who is appointed by the Town Board of

4. Editor's Note: See Ch. 55, Building Permits.

Canadice, as defined pursuant to Chapter 52 of the Canadice Town Code.⁵

COMMERCIAL USE — Includes the purchase, sale or any other transaction involving the handling, servicing or disposition of any article, substance or commodity, tangible or intangible, and includes retail or wholesale trade, services, offices, recreational and amusement enterprises and any operation where the above-described activities are conducted in return for remuneration of any type. Such uses shall not include industrial uses.

COMMON WALL — A wall dividing two attached structures and being a structural part of both structures.

COMMUNICATIONS TOWER, COMMERCIAL (also **COMMERCIAL COMMUNICATIONS TOWER**) — A structure whose use includes production of income and includes one or more antennas, intended for transmitting and/or receiving radio, television, telephone or microwave communications.

COMMUNICATIONS TOWER, NONCOMMERCIAL (also **NONCOMMERCIAL COMMUNICATIONS TOWER**) — A structure including one or more antennas used either for fire, police and other dispatch communications or exclusively for private radio and television reception and private citizens bands, amateur (ham) radio and other similar communications.

CONDOMINIUM — A type of ownership of property where typically a group of owners or their association owns property "in common" and individuals own and control only a portion, such as a unit in a townhouse development.

CONSTRUCTION — Any type of placement of a structure or disturbance of the ground as relating to access to property, wells and septic systems.

COOPERATIVE — An enterprise or organization owned by and operated for the benefit of those using its services.

CURB CUT — The location where a driveway intersects a public road or private road providing vehicular access to the subject property.

DECK — An exterior platform, usually of wood, usually attached or adjacent to a dwelling. A deck is distinguished from a porch in that it may or may not have a permanent foundation and is normally not completely roofed, where a porch may be roofed and even enclosed.

DEVELOPER — See "applicant."

DIVISIBLE LOT — An existing lot of record that can be divided into one or more lots, all of which conform to all requirements of this chapter.

DRIVEWAY — A paved or unpaved area providing vehicular access to a lot.

DWELLING — A structure which is designed for residential occupancy and/or providing housekeeping facilities, containing sleeping, cooking, and sanitary facilities intended for occupancy by one or more persons.

DWELLING, MULTIPLE-FAMILY — A structure containing three or more dwelling units.

5. Editor's Note: See Ch. 52, Construction Codes, Uniform.

DWELLING, SINGLE-FAMILY — A detached structure containing one dwelling unit and designed for and occupied exclusively by one family.

DWELLING, TWO-FAMILY — A structure containing two dwelling units and designed for and occupied exclusively by two families living contiguously adjoined, independent of each other.

DWELLING UNIT — A group of rooms which are designed for residential occupancy by a single family and providing cooking, sleeping and sanitation facilities.

EAF — The environmental assessment form as defined in 6 NYCRR Part 617.

EASEMENT — An instrument transferring certain defined property rights on a particular property or portion thereof to a party or parties other than the landowner or title holder.

ENVIRONMENT — The physical conditions which will be affected by a proposed action, including land, air, water, scenic vistas, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth and existing community or neighborhood character.

FAMILY — One or more persons occupying a dwelling unit.

FARM — Any parcel of land containing not fewer than 10 acres which is used for economic gain for the raising of agricultural products, livestock, poultry or dairy products, necessary farm structures and the storage of equipment used. A garden accessory to a residential use shall not be deemed a farm or farm use. A principal farm use may include a dwelling or dwellings as an accessory use.

FARM STRUCTURE — Any structure which is accessory to and required for the utilization of a parcel of land for agricultural purposes.

FINAL PLAT or PLAT — Drawings and other documents as finally approved by the Town of Canadice Planning Board as a final subdivision as defined in the Subdivision Regulations of the Town of Canadice, Chapter 108 of the Canadice Town Code.

FLOODPLAIN — A flat or nearly flat area that has a 1% or greater chance of flooding in any year as determined by the Federal Emergency Management Agency or other agency of competent jurisdiction.

FRONTAGE, LAKE — See "lake frontage."

FRONTAGE or LOT FRONTAGE — The horizontal length of the front lot line.

GARAGE, PRIVATE — A building or portion of a building arranged, intended, utilized, or designed to store automobiles, tractors, boats, recreational equipment, and/or miscellaneous items for the owners/tenants of the property only. Owners and tenants of the property may engage in repair and maintenance operations on the vehicles and equipment stored therein. It is not intended to be operated as a commercial storage business, repair shop, or public garage.

GARAGE, PUBLIC — A building or portion of a building arranged, intended, utilized, or designed to be used primarily for the commercial use of making repairs to motor vehicles. This may include any major mechanical and body work, painting, welding, and the accessory storage of vehicles not in operating condition.

GASOLINE SERVICE STATION or MOTOR VEHICLE SERVICE STATION — A building or lot having pumps and storage tanks where fuel, oils or accessories for motor vehicles are dispensed, sold or offered for sale at retail only and where repair and maintenance services for automobiles, trucks, or trailers are provided as an accessory to the retail sales of fuel, oils, or accessories for motor vehicles.

GLARE, DIRECT — The illumination beyond the property by artificial or natural lighting.

HIGHWAY LINE — See "right-of-way line."

HOME OCCUPATION — A business conducted by the resident in the principal dwelling and/or any accessory structures, which is incidental to the residential use and does not disrupt the general residential character of the property. Accountant, barber, dentist, doctor, hairdresser, lawyer, and tax preparer are some examples of home occupation uses. Home occupation uses are allowed only by special use permit in designated districts. Uses defined as a "home office" use shall not be considered a home occupation.

HOME OFFICE — An accessory use to a residence where the business is conducted by the resident wholly within the principal dwelling and does not involve customers physically traveling to the site of the home office.

INDUSTRY, HEAVY — A use engaged in the basic processing and manufacturing of materials or products predominantly from extracted or raw materials or a use engaged in storage of or manufacturing processes using flammable or explosive materials or storage or manufacturing processes that potentially involve hazardous or commonly recognized offensive conditions.

INDUSTRY, LIGHT — A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but exclusive of basic industrial processing and storage of flammable or toxic materials. "Light industry" is also exclusive of uses that require heavy, noisy or otherwise objectionable disturbances, such as vibration, dust and odors.

JUNK MOTOR VEHICLE — Any motor vehicle, or used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicle, which is 1) unlicensed or unregistered; or 2) abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or 3) not in condition for legal use upon the public highways. The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in condition for legal use upon the highways. With respect to any motor vehicle not required to be licensed or a motor vehicle not usually used on public highways, the fact that such motor vehicle is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk motor vehicle unless refuted by verifiable and credible proof. Such definition shall not include the following items where the owner maintains some type of personal property insurance: 1) storage vans; 2) recreational vehicles, such as campers and motor homes; 3) boats and boat trailers; 4) farm equipment; 5) utility trailers; 6) motorcycles; 7) seasonally registered vehicles.

JUNKYARD — Any land or premises where waste or discarded or salvaged materials, such as but not limited to waste, are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled, and shall include but not be limited to automotive wrecking or

dismantling yards, automobile graveyards, house-wrecking yards, and areas where used materials and equipment are stored, kept and exchanged. The term "junkyard" shall not include establishments operated for the sale or purchase of used automobiles and/or trucks in operating condition.

KENNEL — Any structure used to shelter or house four or more dogs, or cats, or other pets, over the age of six months, regardless of whether the kennel is operated as a commercial business or for the enjoyment of the owner or tenant.

LAKEFRONT — For properties adjacent to Honeoye Lake, Canadice Lake, or Hemlock Lake, it is the property line lying at the mean high-water mark dividing said property from the public land below the mean high-water mark that is held in trust for the people of the State of New York.

LAKE FRONTAGE (or FRONTAGE, LAKE) — The horizontal length of the lakefront measured along a straight line between the intersection of the side lot lines and the mean high-water mark of the lake.

LEACH FIELD — See "tile field."

LETTER OF CREDIT/PERFORMANCE PAYMENT — A security in a form and amount designated and approved by the Town Board guaranteeing the funding for the satisfactory completion of certain improvements associated with an approved plan or plat.

LOT or PARCEL — Any lot of record legally existing at the time of adoption of this chapter and those legally created subsequently in conformance with this chapter and Chapter 108 of the Canadice Town Code.⁶ Typically, any parcel of land having fixed boundaries, a description of which has been legally recorded in the office of the Ontario County Clerk in the form of a deed or a previously approved subdivision or other legal conveyance. Described areas or portions of lots that are separated from each other by a public or private road or right-of-way are considered part of a single lot. Real property tax account numbers alone do not define a lot.

LOT AREA — Horizontal area lying between the property lines defining the lot. The area of a lot shall not include area of any public road nor the area covered by a private right-of-way providing access to a public road for one or more adjacent lots.

LOT COVERAGE — The percentage of the total area of a lot covered by impervious and substantially impervious surfaces on or proposed to be permanently located on a lot. Impervious or substantially impervious surfaces shall include any surface through which water will not readily percolate.

LOT DEPTH — The mean horizontal distance between the front and rear lot lines.

LOT FRONTAGE — See "frontage."

LOT LINE, FRONT, or FRONT LOT LINE — The line separating the lot from a road, street, or roadway right-of-way.

LOT LINE, REAR — The lot line connecting the side lot lines that is located on the opposite

⁶. Editor's Note: See Ch. 108, Subdivision of Land.

side of the lot from the front lot line.

LOT LINE, SIDE — The lot lines connecting the front lot line with the rear lot line.

LOT OF RECORD — Any lot that has been legally established as a separate piece of real property by plat, survey record, or deed filed in the Office of the Ontario County Clerk prior to the effective date of this chapter. Normally this will result in the lot being assigned a unique tax parcel identification number at the time of passage of this chapter.

LOT WIDTH — The mean horizontal distance between the side lot lines as measured parallel to the front lot line.

MANUFACTURED HOME — A dwelling unit or units manufactured off-premises in whole or in a small number of large, preassembled sections. Such construction shall comply with either the requirements of the U.S. Department of Housing and Urban Development in effect at the time of its manufacture and bearing a seal evidencing this fact, or shall comply to the New York State Uniform Fire Prevention and Building Code. Such dwelling units were formerly commonly referred to as "mobile homes" and "modular homes."

MOBILE HOME CAMP OR PARK — Any site, lot, parcel or other tract of land (hereinafter referred to merely as "premises") upon which more than two mobile homes or recreational vehicles designed for use or capable of being used as a temporary or permanent sleeping or living quarters are parked, located or otherwise maintained and for which use said premises are offered to the public for a fee or other consideration.

MOTOR VEHICLE — All vehicles propelled or drawn by power other than muscular power originally intended for use on public highways, including but not limited to automobile, bus, trailer, truck, tractor, motor home, motorcycle, and minibicycle. This term shall also include an all-terrain vehicle or snowmobile.

MOTOR VEHICLE SERVICE STATION — See "gasoline service station."

NONCONFORMING LOT OF RECORD or PREEXISTING NONCONFORMING LOT — A lot legally existing at the time of the enactment of this chapter which does not conform to the current dimensional and/or area requirements of the district in which it is situated.

OPEN SPACE — The area unoccupied from the ground up by any building, structure, or parking area.

PARCELS — See "lot or parcel."

PARK — A property in the ownership of government or a not-for-profit corporation or other benevolent organization that is owned and maintained as open space and may include woods, athletic fields, playgrounds, walking trails, arboretums, and similar facilities that are open to the public. Golf courses, driving ranges, batting cages, and similar uses that are operated for profit or where fees are charged for their use are not considered parkland.

PARKING SPACE — An off-road area used for the temporary storage of motorized vehicles.

PERMANENT FOUNDATION — A foundation subject to the approval of the CEO pursuant to

the New York State Uniform Fire Prevention and Building Code.⁷

PLAN — A precise and detailed map or drawing showing the actual and/or proposed divisions, special features, structures, buildings, or uses of a piece of land.

POND — Any natural or man-made body of water more than two feet in depth used for a water supply for agricultural purposes, fire protection, recreation, scenic vistas, nature preserve and/or domestic water supply for the principal use of the lot on which the pond is located.

PORCH — A covered (roofed) or uncovered platform having a foundation, located at an entrance to a building and attached thereto.

PRINCIPAL USE — The main or primary use for which a building, structure or lot is to be used.

PROPERTY LINE — Those lines defined by legal boundary description in deeds or as shown on survey maps or subdivision plats which define the boundaries of a lot.

PROPERTY TYPE CLASSIFICATION CODE CATEGORY — The broad categories of land use as defined in the latest version of the "Property Type Classification and Ownership Codes" by the State Board of Real Property Services and the State Office of Real Property Services as part of the Assessor's Manual. Property type classification code categories are indicated as the first digit of each three-digit property type classification code. A current listing of the categories is available from the Code Enforcement Officer or the Town Assessor. The categories defined therein include 100: agricultural; 200: residential; 300: vacant land; 400: commercial; 500: recreation and entertainment; 600: community services; 700: industrial; 800: public services; 900: wild, forested, conservation lands and public parks.

RECEIVE-ONLY EARTH STATION — An antenna and attendant processing equipment for reception of electronic signals from satellites.

RECREATIONAL VEHICLE — Any vehicle or vehicular unit primarily designed as temporary living or sleeping quarters for recreational, camping or travel use and which has either its own motive power or is mounted on, or drawn by, another vehicle.

RESTAURANT — A permanent building used for the preparation and/or serving of food to the public for either consumption on site or for takeout and, further, where under proper authority, alcoholic beverages may be served.

RIGHT-OF-WAY LINE; HIGHWAY LINE — The line dividing a lot from a public road right-of-way. It is the common boundary line between a lot and a road or highway that determines the road or highway limit.

ROAD — A track for vehicular travel or transportation.

ROAD, PRIVATE — A private thoroughfare which affords the principal means of access to abutting properties.

ROAD, PUBLIC — Any road dedicated and/or maintained by the Town, county, or state.

ROADSIDE STAND — A retail outlet, with all related structures, for the sale of agricultural

7. Editor's Note: See Ch. 52, Construction Codes, Uniform.

products grown or produced primarily on the premises upon which the stand is located.

SEPTIC TANK — A tank in which the organic solid matter of intermittent flowing sewage is deposited and retained.

SEQRA — New York State Environment Quality Review Act, as may be amended.

SETBACK — A horizontal distance specified herein that must separate buildings, structures, or other elements from the lot or property lines of the parcel on which they are situated. Building setbacks are measured from the farthest permanent extension of the building, including overhangs, attached exterior stairs, decks, etc., and not from the foundation. The definition shall not include exterior stairs that are not attached to the primary structure and provide access to the lake.

SEWAGE DISPOSAL SYSTEM — The components of a legal on-site system for collecting, conveying, and treating human sewage and other customary household wastewater. For example, a septic system is composed of the septic tank, pipes, distribution box, and its adjoining leach fields.

SEWER, SANITARY — An artificial, usually underground, conduit used to carry off waste matter or wastewater.

SEWER, STORM — An artificial, usually underground, conduit used to collect and convey stormwater.

SHADOW FLICKER — The motion of the shadow of wind turbine blades as they rotate.

SIGN — Any device designed to inform or attract the attention of persons to the premises to which it refers.

SKETCH PLAN — A rough draft map of potential site alterations detailing the basic proposed site changes by map tax number. A map depicting proposed changes in usage of a lot and/or buildings and structures thereon. A sketch plan shall contain all the maps, drawings, documentation and information required by this chapter.

SPECIFIED ANATOMICAL AREAS — Are:

- A. Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; or
- B. Human male genitals in a discernible turgid state, even if completely or opaquely covered.

SPECIFIED SEXUAL ACTIVITIES — Are:

- A. Human genitals in a state of sexual stimulation or arousal; or
- B. Acts of human masturbation, sexual intercourse or sodomy; or
- C. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

STORY — The portion of a building which is between one floor level and the next higher floor level or the roof.

STRUCTURE — Any building, storage facility, workshop, garage or shed. [Amended 12-14-2015 by L.L. No. 2-2015]

STRUCTURE, HEIGHT OF — The vertical distance measured from the average elevation of the ground at the base of the structure, or, if a building, from the average elevation of the ground at the perimeter of the building, to highest point of the structure.

TELECOMMUNICATIONS TOWER or TOWER — A structure on which transmitting and/or receiving antenna(s) are located. It includes, without limit, freestanding towers, guyed towers, monopoles, and other similar structures.

TILE FIELD or LEACH FIELD — The present or future leach lines of a septic system.

TIMBER HARVESTING — The business of felling trees, cutting them into logs or firewood and transporting the logs to sawmills or to market (also called "logging"). Timber harvesting is considered a temporary principal use and may exist on a parcel containing one or more legally existing principal uses.

TOWER HEIGHT — The distance from existing grade level at the base of the tower to the highest point of the structure or attachments.

TOWNHOUSE — A dwelling unit which is one of a series of units having a common party wall between each adjacent unit, each with private outside entrance.

TURNAROUND — The turning circle at the inner end of a dead-end road.

USE — The purpose for which any structure or premises or any part thereof is occupied or, if unoccupied, for which it may be occupied.

USE, CHANGE IN — The change in occupancy or intended change in occupancy of a lot, property, properties, building, and/or buildings from an existing use to a new use. For the purpose of this chapter, a "change in use" shall be defined as one where the new use is in a different property type classification code category than the existing use.

USE, TEMPORARY — An activity conducted for a specific limited period of time that may not otherwise be permitted by the provisions of this chapter that shall be removed after the completion.

USE VARIANCE — The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

WASTE MATERIAL — Includes but is not limited to the following: garbage, refuse, trash, junk, ashes, decaying vegetation, papers, offal, sewage, hazardous materials, toxic substances, obnoxious and offensive substances.

WATERCOURSE — Any natural or man-made channel in which the flow of water occurs or may occur.

WAY — A thoroughfare used or designated for travel or transportation from place to place.

WECS, COMMERCIAL — A WECS that provides electrical or mechanical power to an individual home occupation, farm, or other single commercial enterprise and can be either the primary or secondary source of energy. Sale or credit of excess electricity to the utility grid is

permitted as a tertiary use.

WECS HEIGHT — The total height of a structure, including blades, at extreme vertical position.

WECS, INDUSTRIAL — A WECS or series of WECS in a facility, whose primary purpose is to generate electricity that is fed into a power grid for sale.

WECS, RESIDENTIAL — A WECS that provides electrical or mechanical power to an individual residence and can be either the primary or secondary source of energy. Sale or credit of excess electricity to the utility grid is permitted as a tertiary use.

WETLAND — Boundaries as shown on New York State Department of Environmental Conservation (NYSDEC) and Army Corps of Engineers wetland maps. Boundaries are not final and are subject to change. Upon application in a wetland, the site shall be referred to the New York State DEC to determine the exact wetland boundary.

WIDTH — See "lot width."

WIND ENERGY CONVERSION SYSTEM (WECS) — Any device, and its supporting systems, that converts the kinetic wind energy into electrical or mechanical energy.

WRECKS — Vehicles in such condition that they cannot be repaired or which have remained unrepaired for 20 days after the damage occurred or which, by reason of age and prior use, are unsuitable for use on the highway.

YARD — The area relating to the space surrounding a structure.

ZONE or ZONING DISTRICT — An area of the Town, as identified on the Official Zoning Map of the Town of Canadice,⁸ characterized by a distinguishing quality or set of characteristics and subject to a uniform set of use and lot dimensional criteria as established herein.

ZONING PERMIT — A permit issued by the Code Enforcement Officer that signifies compliance of a proposed development with this chapter. A zoning permit may take the form of a building permit issued by the Code Enforcement Officer pursuant to the New York State Uniform Fire Prevention and Building Code and Chapter 55 of the Canadice Town Code.⁹ A zoning permit may be in a form designated by the Town for use by the Code Enforcement Officer to document compliance with this chapter and/or the granting of special use permits, site plan approval, or variances pursuant to this chapter.

ARTICLE III

Establishment and Designation of Districts

§ 120-12. Districts established. [Amended 12-15-2008 by L.L. No. 2-2008]

Three basic zoning districts, one floating district (meaning the district has been established but no property is so zoned at the time the district was created), and one overlay zone are hereby established in this Zoning Local Law for the Town of Canadice as further specified in § 120-15 herein.

8. Editor's Note: A copy of the Zoning Map is included at the end of this chapter.

9. Editor's Note: See Ch. 52, Construction Codes, Uniform, and Ch. 55, Building Permits.

§ 120-13. Districts regulated.

Within these districts, no premises, lot, building, or structure shall be used, and no building or structure shall be erected or altered to be used, in whole or in part, unless it complies with the following regulations and with the Zoning Schedule.

§ 120-14. (Reserved)

§ 120-15. Designation of districts. [Amended 12-15-2008 by L.L. No. 2-2008]

A. The Town of Canadice is hereby divided into the following basic zoning districts:

C	Conservation District
HLS	Honeoye Lake Shore District
PRD	Planned Residential District
R	Rural District

B. The following overlay districts shall be superimposed over the basic districts as described in Article IV.

EOL	Environmental Overlay District
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§ 120-16. (Reserved)

§ 120-17. Zoning Map. ¹⁰

A. There shall exist only one Official Zoning Map of the Town of Canadice which shall be kept in the office of the Town Clerk and shall bear the seal of the Town of Canadice, a certification that it is the Official Zoning Map of the Town of Canadice and its date of adoption. Said Zoning Map is hereby adopted and made a part of this chapter by reference, and consists of a map showing the boundaries of the zoning districts and overlay district overtop of Tax Map parcels and road center lines existing within the Town of Canadice with a key, scale, and north arrow.

B. Copies of said Zoning Map shall be made from the digital geographic files which were used to create said Zoning Map and which are archived at the office of the Ontario County Planning Department. Costs of reproduction shall be borne by the person, firm, corporation, or individual requesting said copy. All copies of the map shall be a digital reproduction of the map on file with the Town Clerk of the Town of Canadice. Said digital reproduction shall contain a clause indicating the source of the map as well as a disclaimer indicating that the Official Zoning Map as adopted by the Town is on file in the office of the Town Clerk.

C. Changes made in zoning district boundaries or other features portrayed on the Zoning Map

10. Editor's Note: A copy of the Zoning Map is included at the end of this chapter.

under the provisions set forth herein shall be permanently affixed to the Zoning Map promptly after the amendment has been approved by the Town Board and shall convey information as to the date and nature of the change. No amendment of any Zoning Map nor to this chapter that involves matters portrayed on any Zoning Map shall become effective until passage and filing of a local law making such amendment and until such change and entry has been made on said Zoning Map and has been attested by and filed with the Town Clerk.

§ 120-18. Interpretation of boundaries.

- A. Designation of district boundaries. The district boundary lines are intended generally to follow the center lines of roads, the center of various rights-of-way, existing lot lines, the center line of streams and other waterways (except as provided in Subsection C. below), or municipal boundary lines, all as shown on the Zoning Map¹¹; where a district boundary line does not follow such a line, its position is shown on said Zoning Map by a specific dimension expressing its distance in feet from a road line or other boundary line as indicated.
- B. Where a zoning district boundary divides a lot, the location of such boundary shall be determined by any dimension label shown thereon and, if none, by scaled measurement of the Zoning Map.
- C. Zoning over Honeoye Lake, Canadice Lake, and Hemlock Lake. Zoning districts extend over the entirety of the area constituting Honeoye Lake, Canadice Lake, and Hemlock Lake that is within the boundaries of the Town of Canadice. This inclusion shall in no way preempt the jurisdiction of the State of New York through the Office of General Services or any successor of that agency's authority to review and permit structures constructed on property held by the State of New York in trust for the people of the State of New York. It shall in no way limit or otherwise diminish the right of any agency or member of the public to conduct activities authorized by the State of New York, such as hunting and fishing. The conducting of other uses, such as commercial sales of food or other consumables, shall be subject to the requirements of the district in which the activity, whether actual or proposed, is situate. For example, where commercial activities are not allowed in a district, none shall be conducted except through the granting of a use variance pursuant to this chapter.

§ 120-19. (Reserved)

ARTICLE IV
Schedule of Regulations

§ 120-20. C - Conservation District.

- A. Purpose. To promote a combination of conservation and preservation of existing natural scenic and environmentally significant resource areas, including, but not limited to, woodland, wetland, and open space, within the Town. Limited vehicular access is to be provided to the educational, interpretive, and recreational uses for the public. Forest and

11. Editor's Note: A copy of the Zoning Map is included at the end of this chapter.

water resource protection and management practices, along with public utility management of the public water supply source, are allowed uses, while residential, commercial, and industrial uses are prohibited. The conservation and preservation of the properties in this district contributes greatly to defining the rural character of the Town.

B. Permitted principal uses.

- (1) Public utilities, except for telecommunications facilities.
- (2) Public or private parks, not to include camping.
- (3) Public educational, interpretive centers.
- (4) Watershed and forestry management.
- (5) Public and private water supply/sewage disposal systems.
- (6) Timber harvesting, subject to the requirements of Article VIII and, where required, Article X.

C. Permitted accessory uses.

- (1) Off-street parking and loading areas.
- (2) Signs, as regulated in Article VIII.

D. Uses permitted with special use permit (subject to the requirements of Article IX).

- (1) None.

E. Dimensional requirements. The following dimensional requirements apply to all uses, unless more-restrictive requirements are specified in these regulations:

- (1) Minimum lot area: 50 acres.
- (2) Minimum frontage: 500 feet.
- (3) Minimum width: 500 feet.
- (4) Minimum depth: 500 feet.
- (5) Minimum setbacks from property lines:
 - (a) Front (principal and accessory buildings): 100 feet.
 - (b) Rear: 100 feet.
 - (c) Side: 100 feet.
 - (d) Lake, from mean high-water mark: 100 feet.
- (6) Maximum building height:
 - (a) Stories: 2 1/2.
 - (b) Feet: 35.

- (7) Maximum lot coverage: 5%.
- F. Site plan review. All uses, except watershed management, forestry management, and timber harvesting operations under the limits specified in Article VIII herein, shall require a site plan approval as defined in Article X herein. In approving a site plan for a proposed use, the Planning Board must find that the proposed use does not negatively impact the value of neighboring properties and that the use preserves the rural, small-town character of the Town.

§ 120-21. HLS - Honeoye Lake Shore District.

- A. Purpose. To provide for the continued improvement of the quality of development of primarily residential land uses in close proximity to the shore of Honeoye Lake, including a mix of single-family year round, seasonal, and rental residences and cottages on small lots in close proximity to Honeoye Lake served by municipal sewer, either public or private roads.
- B. Permitted principal uses.
 - (1) Single-family dwellings.
 - (2) Conversion of a seasonal dwelling built prior to the original adoption of this chapter to a year-round single-family residence, provided the resulting single-family dwelling has a habitable floor area of not less than 950 square feet, and provided the resulting single-family dwelling and lot shall meet the off-street parking requirements of this chapter.
 - (3) The following public and semipublic uses:
 - (a) Public and private noncommercial parks.
 - (b) Governmental buildings and uses, such as fire, police, or water station.
 - (4) Essential services, as defined herein.
 - (5) Public utilities, except for telecommunications facilities.
 - (6) Commercial uses that are of a scale and nature so as not to be disruptive to the neighborhood. Such uses shall be contained in a structure of similar scale and appearance as the surrounding neighborhood. During site plan review, the Planning Board shall review the proposed use and shall impose such restrictions and modifications to the plan and operation so as to ensure there is no impact on adjacent properties, including but not limited to those arising from traffic, noise, odors, dust, light, safety, and value of property.
 - (7) Timber harvesting, subject to the requirements of Article VIII and, where applicable, Article X.
- C. Permitted accessory uses.
 - (1) Roadside stands, in accordance with the requirements of § 120-70.
 - (2) Private garages; off-road parking and loading.

- (3) Signs, as regulated in Article VIII.
- (4) Noncommercial recreation (swimming pool, tennis court, etc.).
- (5) Aerials, antennas, and dish antennas when placed on a permanent foundation. Lettering or signs on such structures, other than the manufacturer or commercial service provider's logo, are forbidden.
- (6) Noncommercial storage facility, workshop or other structure for the private use of the landowner. Such structures must meet all requirements for setbacks, height, lot size and lot coverage applicable to principal buildings. Site plan review shall be required for any structure larger than 800 square feet gross floor area, any structure that will be supplied with water service, and any structure for which a new curb cut will be created.
- (7) Docks, boat storage facilities, and associated structures that are constructed past the mean high-water mark and are necessary for gaining access to the water or water craft. These structures shall not be subject to setback requirements from the property line that constitutes the mean high-water mark of the lake. Any proposal for the construction of such facilities and structures shall also be subject to the review and approval process specified by the New York State Office of General Services or its successor.
- (8) Home office.
- (9) Swing sets, lawn swings, lawn games, playground equipment, and garden trellises which are exempt from site plan and setback requirements. [Added 12-14-2015 by L.L. No. 3-2015]

D. Uses allowed with a special use permit (subject to the requirements of Article IX).

- (1) Home occupation.
- (2) Bed-and-breakfast uses.
- (3) Accessory apartments.
- (4) Residential WECS.

E. Dimensional requirements. The following dimensional requirements apply to all uses in the HLS District, unless more-restrictive requirements are specified in these regulations:

- (1) Minimum lot area: 1/2 acre.
- (2) Minimum frontage (lake and road): 50 feet.
- (3) Minimum width: 50 feet.
- (4) Minimum depth: 150 feet.
- (5) Minimum setbacks from property lines:
 - (a) Front (principal and accessory buildings):
 - [1] Collector roads (county or state roads): 50 feet.

- [2] Local or private roads: 20 feet.
- (b) Rear:
 - [1] Principal buildings: 20 feet.
 - [2] Accessory buildings: 20 feet.
- (c) Side:
 - [1] Principal buildings: 10 feet.
 - [2] Accessory buildings: 10 feet.
- (d) Lake (from high-water mark): Minimum 20 feet or the average of the two immediately adjacent properties where greater than 20 feet.
- (6) Maximum building height:
 - (a) Stories: 2 1/2.
 - (b) Feet: 35.
- (7) Maximum lot coverage: 30%.

F. Lake access.

- (1) New access easements for a single property to access the lake across a lakefront property shall be a minimum of 20 feet wide.
- (2) The following requirements apply to deeded or contractual access to Honeoye Lake for two or more lots, parcels, or sites or dwelling units sharing shoreline access (not having separate or distinct ownership of the shoreline):
 - (a) Where two or not more than four dwelling units shall share lake access over a lakefront parcel, the lakefront parcel shall comply with minimum lot size standards of this chapter and shall have no other primary use on such lakefront parcel.
 - (b) Where five to 10 lots or dwelling units are involved, the lakeshore parcel shall contain a total of not less than 200 feet of shoreline.
 - (c) Access to the lake on a single parcel shall not be conveyed by easement, deed ownership, or any other legal means to more than 10 lots or dwelling units.
- (3) Any lake access proposed for new lots or dwellings shall be subject to review and approval during site plan or subdivision review by the Planning Board. Any improvements such as storage sheds, docks, parking areas, etc., shall require site plan review by the Planning Board. Prior to approval, the Planning Board shall consider and determine that the provisions of § 120-118 are met and that adequate provisions are made for maintenance and hours of use of the property and any improvements made thereupon.

G. Site plan review.

- (1) Site plan review is required where all new structures or additions to existing structures are more than 800 square feet; site plan review is not required for replacement of an existing structure with the same dimensions (building footprint and height) as an existing structure, as long as such replacement is substantially completed within two years of the demolition or removal of the original structure.
- (2) The design and placement of proposed structures shall minimize the impacts on views from neighboring properties. In this district, careful attention shall be made to minimizing the impact on lake views from adjacent buildings and properties. The setback from the lake for new or expanded buildings shall comply or be similar to the setback of adjoining properties in order to lessen intrusion on the view of the lake from these adjacent properties.

§ 120-22. R - Rural District.

- A. Purpose. The rural district is an area where a blend of residential, agricultural, home occupation, woodland, and small-scale commercial uses on predominately large lots is allowed that continues to preserve the rural character of the Town. New development is to continue the existing low-density nature of the Town characterized by large setbacks, abundant forest and tree planting, and the minimizing of lot coverage by buildings, decks, and paved areas. This district is currently served by public roads, but sewer and water utilities are not provided nor intended to be provided. The density of new development shall be maintained below the level that would support municipal water and sewer service in order to preserve the rural character of much of the Town in compliance with the goals of the Comprehensive Plan.
- B. Permitted principal uses. All uses are allowed as principal uses except those that are listed as prohibited, accessory, or special uses herein.
- C. Permitted accessory uses.
 - (1) Roadside stands, in accordance with the requirements of § 120-70;
 - (2) Signs, as regulated in Article VIII;
 - (3) Private garages; off-street parking and loading areas;
 - (4) Noncommercial recreation (swimming pool, tennis court, etc.);
 - (5) Aerials, antennas, and dish antennas, when placed on a permanent foundation, not exceeding 35 feet in height above grade. Lettering or signs on such structures, other than the manufacturer or commercial service provider's logo, are forbidden;
 - (6) Noncommercial storage facility, workshop or other structure for the private use of the landowner. Such structures must meet all requirements for setbacks, height, lot size, and lot coverage applicable to principal buildings. Site plan review shall be required for any structure larger than 5,000 square feet gross floor area, any structure that will be supplied with water service, and any structure for which a new curb cut will be created;
 - (7) Home office; or

- (8) Other similar accessory activities normally or customarily associated with the permitted principal uses in this district, as may be determined by the Planning Board during site plan review.
- D. Permitted with a special use permit.
- (1) Home occupation.
 - (2) Communications tower.
 - (3) Adult uses.
 - (4) Bed-and-breakfast.
 - (5) Accessory apartment.
 - (6) WECS (commercial, residential, or industrial).
- E. Dimensional requirements. The following dimensional requirements apply to all uses in the R District, unless more-restrictive requirements are specified elsewhere in this chapter:
- (1) Minimum lot area: three acres.
 - (2) Minimum frontage: 250 feet.
 - (3) Minimum width: 250 feet.
 - (4) Minimum depth: 250 feet.
 - (5) Minimum setbacks from property lines:
 - (a) Front (principal and accessory buildings): 50 feet.
 - (b) Rear: 20 feet.
 - (c) Side: 20 feet.
 - (6) Maximum building height:
 - (a) Stories: 2 1/2.
 - (b) Feet: 35.
 - (7) Maximum lot coverage: 25%.
- F. Site plan review. All uses shall require a site plan approval as defined in Article X herein, unless specifically exempted in Article X. In approving a site plan for a proposed use, the Planning Board must find that the proposed use does not negatively impact the value of neighboring properties and that the use preserves the rural, small-town character of the Town.

§ 120-23. (Reserved)

§ 120-24. (Reserved)

§ 120-25. Planned Residential Development District. [Added 12-15-2008 by L.L. No. 2-2008]

A. Purpose. The Planned Residential Development District:

- (1) Is intended to provide a process for considering rezoning of property within the C Conservation District when such property is not in public ownership or ownership of such property is being considered for removal from public ownership and where development rights are not limited by conservation easements or by means other than this section.
- (2) Establishes special setback and lot size standards intended to ensure a level of residential development within the watersheds of Canadice and Hemlock Lakes to protect the use of the lakes as a public water supply, to establish a density and pattern of residential development that continues to preserve the rural character of the Town while providing public access and enjoyment of the lakes, and to provide for the orderly well-planned development of this environmentally sensitive area of the Town through well-considered design of new public and private roads and associated residential development.

B. Objectives. In order to carry out the intent of this section, a PRD shall achieve the following objectives:

- (1) Establishing a master plan for the orderly development of large tracts of undeveloped land for low-density residential and low-intensity public recreational use;
- (2) Provide meaningful public access to Canadice and/or Hemlock Lake through permanent easements, dedicated open space, and/or other means;
- (3) Creation or preservation of hiking trails through the development and to the lakefront for resident and public use;
- (4) The preservation of trees, outstanding natural topography and geologic features and prevention of soil erosion;
- (5) A creative use of land and related physical development which allows an orderly transition of land from conservation to rural residential and recreation uses;
- (6) An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs;
- (7) A development pattern in harmony with the objectives of the Comprehensive Plan;
- (8) A more desirable environment than would be possible through the strict application of other articles of this chapter.

C. General requirements for planned residential development.

- (1) Minimum area. The minimum area requirement for application for rezoning to PRD shall be 300 contiguous acres of land, all of which must be zoned C Conservation.
- (2) Application. Persons applying for a tract of land to be rezoned to PRD must be or have the written permission of the owner or owners of such tract of land in order to make the application for rezoning to the Town Board.

D. Location of PRD District.

- (1) At the time of adoption of this section of the Code of the Town of Canadice, the PRD District shall be a 'floating zone,' meaning that no property within the Town of Canadice shall be zoned PRD at the time of said adoption.
- (2) Only property zoned C Conservation in the Town of Canadice may be the subject of an application for rezoning to PRD.

E. Permitted principal uses:

- (1) Single-family detached residential.
- (2) Public parks, including walking trails and small boat launches intended for launching nonmotorized boats and watercrafts, such as canoes, small sailboats, and rafts less than 16 feet in length.

F. Permitted accessory uses:

- (1) Signs as regulated in Article VIII.
- (2) Off-street parking and loading areas.
- (3) Noncommercial recreation (swimming pool, tennis court, etc.).
- (4) Aerials, antennas, and dish antennas, when placed on a permanent foundation, not exceeding 35 feet in height above grade. Lettering or signs on such structures, other than the manufacturer or commercial service provider's logo, are forbidden.
- (5) Noncommercial storage facility, workshop or other structure for the private use of the landowner. Such structures must meet all requirements for setbacks, height, lot size, and lot coverage applicable to principal buildings. Site plan review shall be required for any structure larger than 5,000 square feet gross floor area, any structure that will be supplied with water service, and any structure for which a new curb cut will be created.
- (6) Home office or other similar accessory activities normally or customarily associated with the permitted principal uses in this district, as may be determined by the Planning Board during site plan review.

G. Permitted with a special use permit (subject to the requirements of Article IX):

- (1) Home occupation.
- (2) Bed-and-breakfast.
- (3) Accessory apartment.

H. Dimensional requirements. The following dimensional requirements apply to all uses in the C District, unless more restrictive requirements are specified elsewhere in this section:

- (1) Minimum lot area: five acres.
- (2) Minimum frontage (feet): 500.

- (3) Minimum width (feet): 500.
- (4) Minimum depth (feet): 500.
- (5) Minimum setbacks from property lines (feet):
 - (a) Front (principal and accessory buildings): 100.
 - (b) Rear: 50.
 - (c) Side: 100.
 - (d) Mean high-water mark of Canadice and Hemlock Lake: 200.
- (6) Maximum building height:
 - (a) Stories: 2 1/2.
 - (b) Feet: 35.
- (7) Maximum lot coverage: 5%.

I. Application procedure and zoning approval process.

- (1) Application for rezoning of property to PRD Planned Residential Development shall be made to the Town Board of the Town of Canadice.
- (2) The application for rezoning to PRD shall include an application for preliminary subdivision approval for a major subdivision conforming to Chapter 108 of the Code of the Town of Canadice. Such application shall include a plan for the development of public streets, recreational facilities, and residences.
- (3) In addition to the requirements for subdivision applications in Chapter 108 of the Code of the Town of Canadice, subdivision applications within the PRD District shall comply with the following requirements:
 - (a) A minimum of 20% of the area of the subdivision shall be reserved for low-intensity recreational uses such as hiking, bird watching, cross-country skiing, launching of nonmotorized watercraft, and similar uses as determined to be acceptable by the Planning Board. Such open space shall be offered for dedication to the Town or other public entity acceptable to the Town or a homeowners' association and shall be available for public use and enjoyment.
 - (b) Include a trail system to provide public pedestrian and cross-country ski access throughout the development, interconnections to trail systems on adjacent property, and access to the lakeshore area.
 - (c) As part of the recreational space required in Subsection I(3)(a) above, a minimum area of one acre with a minimum of 200 feet of frontage on Canadice or Hemlock Lake with a boat launch area shall be provided for public access.
 - (d) Final subdivision plats shall conform to the preliminary subdivision application as approved and/or modified by the Planning Board and any conditions or modifications imposed by the Town Board in approving the rezoning to PRD.

- (4) Process.
- (a) The Town Board shall refer the preliminary subdivision application to the Planning Board for review under Chapter 108 of the Code of the Town of Canadice and the requirements of this section.
 - (b) Upon receipt of the preliminary subdivision application, the Planning Board shall initiate a coordinated environmental review of the application upon a determination that the preliminary subdivision application is complete.
 - (c) In its review of the preliminary subdivision application, in addition to the requirements of Chapter 108 of the Code of the Town of Canadice, the Planning Board shall consider the following factors:
 - [1] Compliance of the plans with the purposes of this chapter;
 - [2] The long-term maintenance of the rural character of the Town, including preservation of significant views from public roads and public properties, limited visibility between residences, screening the views of residential properties from public roads and highways, preservation of wetlands, forest cover, and natural shoreline areas on Canadice and Hemlock Lakes;
 - [3] The long-term maintenance of public access to wild and forested land;
 - [4] The long-term maintenance of public access to Canadice and Hemlock Lakes;
 - [5] The protection of Canadice and Hemlock Lakes as public water supplies;
 - [6] The efficiency of the layout of new public roads to provide access to residential properties and public recreational facilities.
 - (d) The Planning Board shall make any approval of such preliminary subdivision contingent upon rezoning of the subject property to PRD by the Town Board.
 - (e) The Town Board shall schedule a public hearing on the proposed rezoning upon completion of the environmental review of the application and after the conditional approval of a preliminary subdivision application by the Planning Board.
 - (f) Upon closing of such public hearing, the Town Board shall be free to approve with conditions and/or modifications, deny, or table the application for rezoning.
 - (g) Any approval for rezoning to PRD by the Town Board shall include the condition that the final subdivision approval comply with any preliminary subdivision application approved by the Planning Board as well as any additional conditions or modifications imposed by the Town Board.
 - (h) Upon approval of the rezoning to PRD, the applicant shall have up to one year from the effective date of the rezoning to apply for final subdivision approval. If the applicant fails to apply for final subdivision approval within such time

frame, the subject property shall automatically be rezoned to C Conservation.

- J. Site plan review. All uses and construction totaling more than 400 square feet of ground area that were not approved as part of any final subdivision approval by the Planning Board shall require a site plan approval as defined in Article X herein, unless specifically exempted in Article X. In approving a site plan for a proposed use, the Planning Board must find that the proposed use does not negatively impact the value of neighboring properties, and that the use preserves the rural, small town character of the Town.

§ 120-26. (Reserved)

§ 120-27. (Reserved)

§ 120-28. (Reserved)

§ 120-29. (Reserved)

ARTICLE V

Nonconforming Lots, Uses, and Buildings; Preexisting Special Uses

§ 120-30. Nonconforming lots of record.

- A. All new construction on lots of lesser size recorded prior to the enactment of this chapter shall conform to the standards as stated in Article IV unless otherwise exempted or specified in this article or through variance granted by the Zoning Board of Appeals.
- B. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and customary accessory buildings may be erected on any single lot of record legally existing at the effective date of adoption or amendment of this chapter. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variance of area, width, and yard requirements shall be obtained only through action of the Zoning Board of Appeals. However, the following distance and separation standards shall apply:
- (1) Notwithstanding the provisions of any other section of this chapter, no dwelling, no structure and no part thereof shall be constructed nearer than:
 - (a) Fifty feet or 20% of the lot depth, whichever is less, but no less than 20 feet to the edge of the highway line of any public or private road or lake boundary.
 - (b) Twenty feet or 8% of the lot width, whichever is less, but no less than five feet to any side lot boundary.
 - (c) Twenty feet or 8% of the lot depth, whichever is less, but no less than five feet to any rear lot boundary.

- (2) No well shall be constructed nearer than 10 feet from any lot line.
 - (3) All other construction shall be in conformance with the current revision of the New York State standards as contained in the New York State Department of Health Waste Treatment Handbook, as amended.
- C. Existing nonconforming lots of record in single ownership. Where two or more contiguous, legally existing lots of record are owned by the same person or persons and where some or all of the lots do not meet the requirements for lot width, depth, and/or area as established by this chapter, and where there exists on said lots one or fewer principal structures, the land involved shall be considered to be an undivided parcel (a single lot) for the purpose of this chapter. Prior to the issuance of a building permit, special use permit, or site plan approval on any such lot, the adjacent properties in single ownership shall be legally combined into a single lot. Multiple lots may be created where all dimensional requirements of this chapter can be met. This rule shall apply where such lots are separated by a private right-of-way, private driveway or roadway other than a public highway. This rule shall not apply where such lots are separated by a steep grade, watercourse, or physical obstruction, where the Planning Board finds that vehicular access to each lot or group thereof must be from different roads or driveways and where the setbacks for any new principal structure proposed meet the requirements of the zoning district in which the property is located.

§ 120-31. Nonconforming use of land.

The following regulations shall apply when no buildings are involved:

- A. A nonconforming use of land shall not be changed to another nonconforming use, unless it is a similar or less nonconforming use as determined by the Zoning Board of Appeals. The Zoning Board of Appeals will consider the following characteristics of the existing and proposed nonconforming use in its determination:
- (1) Generation of odor, dust, and noise.
 - (2) Impact on adjacent property values.
 - (3) Traffic impact on adjacent roads and service drives.
 - (4) The amount of topographic and vegetative cover change proposed.
 - (5) Parking facilities.
 - (6) The impact on the character of the surrounding neighborhood.
 - (7) The size, color, lighting, and location of signage.
- B. If the nonconforming use of land, or any portion thereof, ceases for any reason for a period of one year or is changed to a conforming use, any future use of the land shall conform to the provisions of this chapter.
- C. Notwithstanding the above, the Zoning Board of Appeals may extend, to a maximum of two years, the period within which the nonconforming use may be reestablished, provided that:

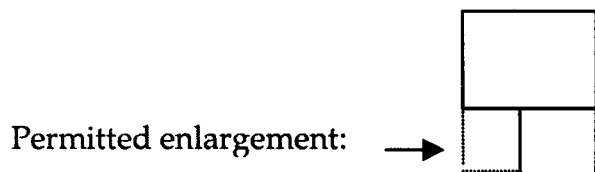
- (1) The property owner or representative submits a statement to the Zoning Board of Appeals, prior to the end of the one-year period, containing sufficient justification of the need for additional time to reestablish the nonconforming use; and
 - (2) The Zoning Board of Appeals determines that the extension is justified due to factors beyond the control of the applicant.
- D. The nonconforming use of land shall not be increased to a greater area than that occupied by such use at the time of the adoption of this chapter.

§ 120-32. Nonconforming uses of buildings.

- A. A nonconforming use of a building or structure may be changed to an equal or less nonconforming use as determined by the Zoning Board of Appeals. The Zoning Board of Appeals shall consider the characteristics of the existing and proposed nonconforming use listed in paragraph § 120-31A above in its determination, in addition to the following in making its determination:
- (1) The degree to which the size and architectural character of the building is in harmony with the surrounding neighborhood.
 - (2) The hours of operation or times of day of operation of any commercial business.
- B. No such building may be enlarged in a way that increases its nonconformity.
- C. Any nonconforming use may be extended throughout any parts of the building that were arranged or designed for such use at the time of the adoption of this chapter, but no such use shall extend to occupy any land outside such building.

§ 120-33. Nonconforming structure or building.

- A. A building or structure that is conforming in use but does not conform as to the height, yard, parking, loading or land coverage requirements of this chapter shall not be enlarged so as to increase the extent of its nonconformity.
- B. However, enlargement of a nonconforming structure shall be permitted, without need for a variance, if the enlargement:
- (1) Does not result in construction closer to the front or side setback than at least 50% of the current building footprint; and
 - (2) Is not part of a use variance, special use, or other area variance application.



§ 120-34. Restoration of nonconforming building.

Should any legally existing building located on a nonconforming lot be destroyed by any means, it may be repaired or reconstructed to the same size and location within two years. The applicant must document such compliance through submission of plans and specifications showing all foundations, overhangs, elevations of the proposed new building that are stamped and signed by an architect or professional engineer.

§ 120-35. Preexisting special uses.

Any use lawfully existing at the time of the adoption of these regulations which was established without the need for a special use permit and which is located in a district in which such use requires a special use permit shall not be subject to the special use permit requirements of this chapter. However, any expansion of such use shall be subject to the special use permit requirements and procedures of this chapter, including site plan review.

§ 120-36. (Reserved)

§ 120-37. (Reserved)

§ 120-38. Preexisting junkyards and automobile graveyards.

A. Automobile graveyards legally existing at the time of adoption of this chapter shall comply with the following:

- (1) Nothing in this chapter shall prohibit the erection of any structure to enclose an automobile graveyard or any part thereof which was in existence in the Town of Canadice as of the date of adoption of this chapter; provided, however, that such structure must comply with all applicable requirements set forth in the applicable laws or ordinances of the Town.
- (2) No automobile graveyard shall be permitted to be enlarged or expanded beyond the existing fence line (as required by New York State law), and the permitted use of an automobile graveyard shall cease if at any time in the future the automobile graveyard operations are terminated or ceased for a period of twelve continuous months or the owner or operator of the automobile graveyard shall transfer ownership and/or fail to obtain a renewal permit as required by this chapter.

B. Junkyards.

- (1) Nothing in this section shall prohibit the erection of any structure to enclose a junkyard or any part thereof which was in existence in the Town of Canadice as of the date of adoption of this chapter; provided, however, that such structure must comply with requirements set forth in all applicable laws and ordinances of the Town.
- (2) Any junkyard existing in the Town of Canadice at the time of enactment of this chapter shall be permitted to continue to so exist, provided that all other provisions of this chapter are complied with from the date of enactment or until abandoned or operated without a permit as set forth in § 120-38A(2) above.

- (3) Upon closure of any existing junkyard or sale of junkyard real property and within 20 days of such act, the owner of said property shall remove all vehicles, waste and accumulated debris and return the land to a natural state. If said removal is not begun and accomplished within the stated required time, the Town of Canadice shall have the right to enter upon the premises and to remove and dispose of all materials. The expense of such removal and disposition shall be a lawful charge against the owner of the premises, and no other penalty under this chapter shall be imposed.
- (4) At no time shall a junkyard display vehicles which are visible from established roadways, and no other related junk shall be permitted such display (refer to Subsection C, Landscaping).
- (5) Temporary storage of wrecks shall be permitted to be retained on the junkyard lot for a time period of no longer than 90 days. Vehicles shall be permitted to be retained at a New York State registered repair shop or a New York State registered dealership for a time period of no longer than 180 days.

C. Landscaping.

- (1) Screening required for all automobile graveyards and junkyards.
 - (a) Automobile graveyards, junkyards and similar establishments legally existing in the Town of Canadice prior to the enactment of this chapter shall be required, within one year of obtaining the initial operating permit, to landscape their property so as to screen it from the public view. Identification of the established business shall be accomplished by the use of approved signage as specified in § 120-79 herein.
 - (b) The preservation of natural and scenic resources in Canadice will be maintained through the use of plants, earth berms and varying textures to improve the appearance of the site and provide screening from the surrounding area.
- (2) Existing vegetation to be retained; screen plantings.
 - (a) When possible, existing vegetation shall be retained and incorporated into the landscaping plan; this is especially true if large trees or other significant plants and vegetation can be salvaged.
 - (b) Fence, hedge and/or screen plantings shall be permitted or, alternately, shall be required, as set forth in Article X, Site Plan Review, herein.
- (3) Buffers and berms. When determined necessary by the Planning Board, buffer areas shall comply with the applicable requirements of Article X, Site Plan Review.

D. Annual permits.

- (1) The application for the initial and annual renewal permit pursuant to Subsection D(5) below of this section shall be obtained from and filed with the Town Clerk of the Town of Canadice and shall be accompanied by a fee determined by the Town Board and available from the Town Clerk, subject to change and revision periodically.
- (2) The application for a renewal permit shall be made on printed forms to be furnished

by the Town Clerk. Where there has been no change in any matter required to be set forth in the application, the requirements of this section shall be deemed to be complied with in full if the applicant shall make a verified statement that there have been no changes in such matters.

- (3) If the fee is vested in some person other than the applicant and the applicant is authorized by him to maintain or operate the junkyard or automobile graveyard and make the application, said authorization is to be affixed annually to the permit and shall include the name, address and telephone number of the owner.
 - (4) Each annual renewal permit shall expire on the 30th day of April following the issuance thereof. No rebates or refunds of the permit fee shall be made in the event of a sale, assignment, transfer or other disposal of said junkyard or automobile graveyard.
 - (5) On or before the first day of May next succeeding the effective date of this chapter and on or before the first day of May each year thereafter, every person legally owning and operating a junkyard or automobile graveyard shall apply for and obtain an annual renewal permit.
 - (6) Inspection required.
 - (a) Before any renewal permit required under this chapter shall be issued by the Town Clerk, the Code Enforcement Officer, duly appointed by the Town Board of the Town of Canadice to enforce the provisions of this chapter, shall make an inspection of the junkyard or automobile graveyard premises to determine that all of the requirements of this chapter have been complied with.
 - (b) The Planning Board may assist the Code Enforcement Officer with said inspection and shall review all initial applications.
 - (c) Satisfactory inspection shall be made before any renewal permit may be issued pursuant to the terms of this chapter.
 - (7) Revocation of permit. If, upon inspection of the Code Enforcement Officer, it shall be found that any person has violated any provisions of this chapter, the Code Enforcement Officer shall have the power to revoke or suspend any junkyard permit and order the cessation of junkyard or automobile graveyard operations upon the premises after 10 days' written notice of such violation directed to the owner and operator of the junkyard or automobile graveyard. The order shall be in writing signed by the Code Enforcement Officer, with a copy served on the owner and operator and a copy filed with the Town Clerk of the Town of Canadice. Such order shall contain a list of those violations not corrected or removed as required in the notice of violation. The owner and/or operator shall have the right to a public hearing regarding such revocation, suspension or order upon written notice to the Zoning Board of Appeals as provided in Article XII herein.
- E. Abatement by Town; cost to be borne by owner. Whenever a violation of this chapter is not removed by the owner and/or operator within the time heretofore prescribed after service of the notice, the Town of Canadice may proceed to correct and/or remove the violation as

provided in the notice or may cause the same to be done. In such event, the cost thereof shall be borne by the owner and/or operator of the premises and also become a public charge against the land.

§ 120-39. (Reserved)

ARTICLE VI
Reserved

§ 120-40. (Reserved)

§ 120-41. (Reserved)

§ 120-42. (Reserved)

§ 120-43. (Reserved)

§ 120-44. (Reserved)

§ 120-45. (Reserved)

§ 120-46. (Reserved)

§ 120-47. (Reserved)

§ 120-48. (Reserved)

§ 120-49. (Reserved)

ARTICLE VII
General Requirements Applicable to All Districts

§ 120-50. **Conformity with and application of regulations.**

No building, structure or land shall be used or occupied, nor shall any building or structure or part thereof be constructed, erected, moved, enlarged or structurally altered, unless in conformity with this chapter. This chapter shall not be applicable to routine maintenance of any structure.

§ 120-51. **General regulations.**

All uses, properties, and buildings within the Town of Canadice are hereby subject to the provisions of this article. The provisions of this article apply to all properties, buildings, and uses regardless of what zoning district they are located in. The only exceptions to these requirements are those uses, parcels, and buildings that legally existed prior to the effective date of this chapter or such uses, lots, and/or buildings for which a variance has been granted by the Zoning Board of Appeals through the process defined in Article XII herein.

§ 120-52. Abandoned uses.

Whenever a use, other than residential or farm use, has been abandoned for a period of two years, such use shall not thereafter be reestablished, and any further use shall be in conformance with this chapter. If an extension of time is desired, a request shall be made, in writing, to the Zoning Board of Appeals prior to the end of the two-year period. Prior to the granting of such time extension, the Zoning Board of Appeals must find that the applicant has been prevented from complying with said two-year time frame through no fault of his own and that the use in question will not have a significant adverse effect on neighboring properties. The Zoning Board of Appeals may attach such conditions to the granting of any such extension of time as it may deem appropriate to reduce preexisting nonconformities in the use, site, or structures involved as it deems practical and prudent in reducing any negative impact on adjacent properties or to further the general health, safety, and welfare of the Town and the residents therein. The applicant shall comply with all conditions established by the Zoning Board of Appeals and commence the use within two years of the granting of said extension or said extension shall become null and void.

§ 120-53. Number of principal uses and buildings.

- A. Site plan review shall be required for all applications for multiple principal buildings and/or uses on any single lot.
- B. Unless legally existing at the time of enactment of this chapter, there shall be but one principal use and one principal building allowed per lot, except as may be allowed pursuant to Subsection C or D below.
- C. More than one principal use and building may be allowed on a lot if the lot is large enough and the principal buildings so arranged that, in the opinion of the Planning Board, the lots may be subdivided in the future in a conforming fashion.
- D. Provided all other requirements of this chapter are met, new construction, occupancy, and use of multiple principal buildings, uses, and structures shall be allowed on a single lot pursuant to site plan review and approval by the Planning Board. In its determination, the Planning Board shall find that the size and configuration of the lot and the arrangement of the buildings thereupon are such that separate lots could be created for each principal building, structure, and use and all lot size, lot width, lot coverage, lot frontage, and building setbacks required in this chapter may be met.

§ 120-54. Expansion of principal use/usage of building.

- A. Site plan review by the Planning Board pursuant to Article X herein shall be required where more than one principal building legally exists at the time of adoption of this chapter.
- B. Such expansion as defined in Subsection A above shall be approved only where:
 - (1) The lot is large enough and the principal buildings so arranged that, in the opinion of the Planning Board, the lot may be subdivided in the future in a manner conforming to the requirements of this chapter. Each principal building shall be capable of being contained on an individual lot meeting all dimensional criteria, including lot area, lot

width, lot depth, lot frontage, access, lot coverage, and all required setbacks.

- (2) To meet the requirements of Subsection B(1) above, a number of principal buildings on the lot may be required to be removed within a time frame established by the Planning Board.

§ 120-55. Frontage on improved road required.

Every structure shall be built upon a lot with frontage on a road improved to meet, at a minimum, the standards as specified in Chapter 108, Subdivision of Land, Article VI, Design Criteria and Construction Specifications for Land Development, and the appendix which is supplemental to Chapter 108, Subdivision of Land. For existing lots accessed by a private road, the owner must demonstrate adequate right to use such private right-of-way. For new lots proposed to be accessed by a private road, the road must have frontage on the private road right-of-way equal to what is required for frontage on a public road, the road must be constructed to the appropriate standard identified in Chapter 108, and adequate provision made for maintenance, repairs, and snowplowing.

§ 120-56. Roadways not to be included in acreage.

Approved roadways granting access to and frontage for a lot shall not be included in the minimum acreage of a lot.

§ 120-57. Location requirements for site improvements.

- A. Septic system leach field location requirements. No leach field shall be constructed nearer than:
 - (1) Eighty feet to the edge of the right-of-way of any public or private road.
 - (2) Eighty feet to any side or rear lot boundary.
 - (3) One hundred feet to any watercourse, lake, pond or well.
- B. No well shall be constructed nearer than:
 - (1) Fifty feet to the highway line of any public or private road.
 - (2) Twenty feet to any side or rear lot boundary.
 - (3) One hundred feet to any leach field or septic system, or other dimension as required by Appendix 75A of the state Department of Health Water Treatment Standards.

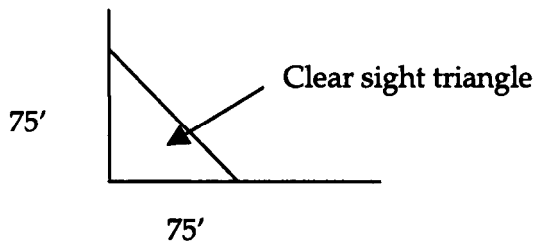
§ 120-58. Corner lots.

Corner lots shall provide at least the minimum front yard requirements for the respective district for intersecting roads.

§ 120-59. Intersection of two or more roads.

At the intersection or interception of two or more streets or roads, no hedge, fence, sign, or wall higher than three feet above the curb level, nor any obstruction to vision, shall be permitted on

any lot within 75 feet of a road or property line nor in the area forming a triangle when these points are connected. (See diagram.)



§ 120-60. (Reserved)

§ 120-61. **Reduction in lot sizes, areas, parking.**

Except as otherwise permitted in this section, the area or dimension of any lot, setback, parking area, or other space shall not be reduced to less than the minimum required by this chapter, and if already lawfully less than the minimum required by this chapter, said area or dimension may be continued but not further reduced.

§ 120-62. (Reserved)

§ 120-63. (Reserved)

§ 120-64. **Height regulations.**

No building or structure shall have a greater number of stories or greater number of feet in height than are permitted in the district where such building is located.

§ 120-65. (Reserved)

§ 120-66. **Recreational vehicles.**

- A. Storage. Up to two recreational vehicles may be put, placed, or parked on private property, including at a residential property, for the purpose of storing said recreational vehicles.
- B. Temporary occupancy. A temporary occupancy permit is required for occupancy of any recreational vehicle for more than fourteen consecutive days or for a total of more than 30 days in any twelve-month period. No temporary occupancy permit shall be issued for more than four months in any calendar year, and no recreational vehicle shall be occupied for more than four months in any calendar year. Application for temporary occupancy permits for recreational vehicles shall be made to the Town Code Enforcement Officer, who shall be responsible for reviewing the application and issuing said permits.

§ 120-67. **Manufactured housing requirements.**

- A. All manufactured housing units proposed to be located and occupied within the Town of

Canadice shall bear a HUD seal signifying compliance with the construction standards established by the United States Department of Housing and Urban Development in effect at the time of the construction of the manufactured housing unit, or shall bear a seal from the State of New York signifying compliance with the New York State Uniform Fire Prevention and Building Code in effect at the time of construction of the manufactured housing unit.¹²

- B. Prior to the location of a manufactured housing unit within the Town of Canadice, a building permit shall be obtained from the Town Code Enforcement Officer. Applicants shall provide details of all improvements subject to the requirements of the New York State Uniform Fire Prevention and Building Code, including but not limited to entry stairs, foundation design, including a copy of the manufacturer's specifications for the location of such foundations, including all anchoring requirements, and utility hookups.
- C. Prior to occupancy of any manufactured housing unit within the Town of Canadice, a certificate of occupancy shall be obtained from the Code Enforcement Officer. The Code Enforcement Officer shall inspect all footings, utility connections, access improvements such as entry stairs, and other site improvements to certify compliance with the New York State Uniform Fire Prevention and Building Code. During said inspection, the Code Enforcement Officer shall verify the manufactured housing unit proposed to be occupied shall bear a HUD seal or a seal from the State of New York in compliance with Subsection A of this section. During said inspection, the Code Enforcement Officer shall verify that the current condition of said unit complies with the HUD or New York State standards in effect upon the date of manufacture of such a unit. In the absence of either a HUD or New York State seal, the manufactured housing unit shall be required to conform to the current standards of the New York State Uniform Fire Prevention and Building Code and shall be subject to obtaining a building permit prior to any site construction. At a minimum, all manufactured housing units shall be anchored in compliance with manufacturer's specifications. Any manufactured housing unit failing to comply with the requirements of this section shall not be occupied within the Town of Canadice. The Code Enforcement Officer shall furnish the applicant with a written list of violations of said codes upon inspection. Such violations shall be remedied by the applicant prior to the issuance of a certificate of occupancy. If such violations are not remedied within 90 days, the unit shall not be occupied within the Town of Canadice and shall be removed from the property at the applicant's or owner's expense.
- D. Manufactured housing units which legally are located and occupied as of the effective date of this chapter shall not be subject to the requirements of Subsections A, B and C of this section, provided that such units are not relocated. The replacement of any existing manufactured housing unit within the Town with another manufactured housing unit shall comply with Subsections A, B and C of this section, shall comply with the site plan review requirements of Article X herein and all applicable setback requirements of the Zoning Local Law of the Town of Canadice.
- E. Subsections A, B, C, and D shall apply equally to all manufactured housing within the Town of Canadice, whether located within manufactured housing parks or on an individual

12. Editor's Note: See Ch. 52, Construction Codes, Uniform.

lot.

§ 120-68. (Reserved)

§ 120-69. Outdoor storage for multiple-residential use.

- A. Purpose. The purpose in regulating outdoor storage and display is to promote aesthetic appeal and end visual pollution and clutter. While recognizing that outdoor storage and display may at times be necessary or desirable, it shall be discouraged and eliminated whenever such may be achieved without the creation of a genuine hardship.
- B. At least one service building or facility shall be constructed in each multiple-residence (apartment, condominium, cooperative or townhouse), commercial and industrial development which shall be adequate to provide for storage of all equipment, tools and materials necessary for the maintenance of said development, and all such equipment, tools and materials shall be stored within said building when they are not in use.
- C. The service building shall comply with the setback requirements specified in the zoning district where the property is located.

§ 120-70. Roadside stands.

- A. Roadside stands. Any person may erect a roadside stand and sell from the same agricultural products produced primarily on his premises.
- B. Any such stand of temporary construction may be erected not nearer than 10 feet to the edge of the road right-of-way, and such stand may be erected and maintained between April 1 and December 31 of any year but must be removed on or before December 31 of the same year.
- C. Temporary roadside stands for the purpose of the sale of Christmas trees, wreaths, Christmas decorations and the like are permitted under the same conditions as set forth above from November 20 through December 31.
- D. There must be provided for any roadside stand an off-road parking area sufficient to accommodate vehicles of customers and to eliminate traffic hazards.
- E. Signage for a roadside stand must be in accordance with Article VIII herein.

§ 120-71. Prohibited uses.

The following uses are not allowed in any zoning district in the Town of Canadice, except those that legally existed at the time of adoption of this chapter:

- A. Automobile graveyard.
- B. Junkyard.
- C. Billboards.
- D. Heavy industry.

- E. Mobile home parks.
- F. Any use not listed as an accessory use or a specially permitted use that the Zoning Board of Appeals determines shall constitute a safety hazard or negatively affect the value of neighboring property.

§ 120-72. (Reserved)

§ 120-73. Waste.

- A. The dumping of any material not expressly permitted by the State Department of Environmental Conservation is hereby declared to be the dumping of waste material and is prohibited in the Town.
- B. It shall be an offense for any person to dump waste material in violation of the provisions of this section or to fail to obey an order issued under the authority granted herein to the authorized official.

§ 120-74. (Reserved)

**ARTICLE VIII
Supplementary Regulations**

§ 120-75. Off-street parking.

- A. General requirements.
 - (1) In all districts, an adequate number of off-street parking spaces shall be provided at the time any building or structure is erected or is enlarged or increased in capacity.
 - (2) Each space shall conform to a minimum size of 10 feet wide by 20 feet deep and shall be served by an aisle not less than 20 feet wide.
 - (3) Entrance and exit lanes shall not be computed as parking spaces.
 - (4) The maximum allowable slope in any direction across a parking space or lot shall be 5%; the minimum is 1%.
 - (5) Location of parking.
 - (a) All vehicular parking and loading shall be located on the parcel or lot (never on any Town, county or state roads). Off-street parking and off-street loading spaces shall be provided within the confines of the lot on which the use is located, and the location, arrangement, appearance and sufficiency of such shall be considered.
 - (b) The parking requirements for all uses proposed on the same lot shall be cumulative unless the Planning Board shall find the parking requirements of a particular land use occur at different hours from those of other contiguous land uses. At the discretion of the Planning Board,
 - (c) The particular land use parking requirements on adjoining lots may be

advantageously used during other nonconflicting hours for the same or other purposes. In this event, the required spaces for particular land uses may be reduced by the Planning Board to a minimum of the greatest number of parking spaces required for any contiguous land uses.

- (6) Lot coverage. Parking lot and paved storage areas shall not encompass more than 20% of the total lot area. This shall not mean that less parking than what is required will be allowed nor that normal construction practices will be waived.
- (7) Off-street parking. Spaces shall be provided for each land use activity in accordance with the following minimum schedule:
 - (a) Assembly hall, church, mortuary and theater: one space per three seats or per 21 square feet of assembly space, whichever will require the largest number of parking spaces.
 - (b) Commercial uses.
 - [1] Beauty shop or barbershop: one space per 100 square feet of floor area.
 - [2] Boardinghouse, rooming house, dormitory or fraternity house: one space per boarder bed.
 - [3] Archery and firearm ranges: one space per 50 square feet of gross floor area and/or three spaces per every two range stations.
 - [4] Bowling alley: four spaces per lane, plus one space for every 30 square feet of sales area of bar, restaurant or coffee shop.
 - [5] Communications tower: at least two off-road spaces and one additional space for each two on-site personnel.
 - [6] Home occupation: one space per 150 square feet of floor area in addition to spaces required for residential and employee parking or as deemed appropriate by Planning Board review.
 - [7] Hotel: one space per guest room.
 - [8] Industry: one space per person per largest shift.
 - [9] Kennel: one space per each five animals the facility has capacity to board.
 - [10] Medical and dental clinics: 1.5 spaces per 100 square feet of floor space, but not fewer than 15 spaces.
 - [11] Motel: one space per rooming unit.
 - [12] Professional office: one space per 100 square feet of floor area, but not fewer than three spaces.
 - [13] Restaurant and bar: one space per 25 square feet of sales area.
 - [14] Retail store: one space per 100 square feet of sales area, but not fewer than five spaces.

- [15] Retail store of appliances, furniture, motor vehicles, hardware and lumber and building materials: one space per 300 square feet of sales area, but not fewer than 10 spaces.
- [16] Service station: one space per 10 square feet of office space plus two spaces per hoist, but not fewer than five spaces.
- (c) Convalescent home and home for the aged: one space per bed.
- (d) Institutional and public assembly use.
 - [1] Golf course: five spaces for each hole.
 - [2] Hiking, nature or bicycle trail: parking shall be provided at a level commensurate with the designed level of use, as determined by the Planning Board.
 - [3] Picnic area: one space for every 5,000 square feet.
 - [4] School: one space per 100 square feet of floor area.
 - [5] Ski slopes: parking shall be provided at a level commensurate with the designed level of use, as determined by the Planning Board.
 - [6] Spectator area or grandstand: one space for every three seats or five linear feet of bench.
 - [7] Stable and riding trail: one space for each stable stall.
 - [8] Stadium and sport area: one space per four seats.
 - [9] Swimming pool: one space per three spectator seats or per five spectator benches or per 40 square feet of pool surface, whichever will require the largest number of parking spaces.
 - [10] Open space uses not otherwise specified, including arboretum and botanical garden: five spaces per acre.
- (e) Residential use: two spaces per dwelling unit.

§ 120-76. (Reserved)

§ 120-77. (Reserved)

§ 120-78. (Reserved)

§ 120-79. Signs.

A. Signage.

- (1) For multiple-structure developments there shall be no display of advertising on the premises, except that one suitable identification sign not exceeding 16 square feet in area may be placed at or near each entrance.

- (2) No sign shall be permitted to be placed on the roof of any structure nor extend above the highest part of any structure nor, if projecting, more than three feet from the structure wall to which the sign is mounted.
- (3) No sign shall rotate, and no sign shall attempt to attract attention by using intermittent or flashing lighting.
- (4) No part of a sign shall consist of streamers, flashers or banners.
- (5) For commercial sites, up to two signs of up to 32 square feet each and illuminated by backlighting or shielded lighting are permitted, so long as no glare is created at the roadway or on adjoining properties. It may not be more than eight feet above ground level as measured to the top of the sign, including supports. Only one sign's information content shall be visible from the roadway at any one time.
- (6) There shall be no signage allowed displaying or exhibiting by means of depiction or decoration any specified anatomical areas, specified sexual activities or sexually suggestive language.
- (7) A roadside stand may have up to three signs, not artificially illuminated, of up to 16 square feet in area each, located as follows:
 - (a) One sign may be placed against the stand.
 - (b) One sign may be placed up to 100 yards in each direction from the stand, as long as the signs are not placed in the road right-of-way and are on the property or lot of the owner where the stand is located.
- (8) Bed-and-breakfast: six square feet.

B. Exception to signage review. The following are excepted from signage review:

- (1) Signs denoting customary home occupations not exceeding four square feet in area and bearing only property numbers, post box numbers, names of occupants of premises or other identification of premises not having commercial connotations. Only one sign, regardless of information content visibility, shall be visible from the roadway at any one time.
- (2) Flags and insignia of any government displayed when not connected with commercial promotion.
- (3) Legal notices, identification, informational or directional signs erected or required by governmental bodies.
- (4) Signs directing and guiding traffic and parking on private property but bearing no advertising matter.
- (5) Temporary signs, provided that they are removed within two calendar days of the completion of the event. The following signs shall be considered temporary signs: garage sale, estate sales, auctions, open house, real estate sale signs, political signs, yard sales, and similar signs of limited duration and need.

§ 120-80. Fences and hedges.

- A. Purpose. The purpose of these regulations is to prohibit the erection of fences and hedges in the Town of Canadice that obstruct a view from neighboring premises, particularly in the areas adjoining Honeoye, Canadice, or Hemlock Lake, or that obstruct visibility on public roads in densely populated areas.
- B. The provisions of this section shall not apply to fences on premises used for farming. Fences, hedges and screen plantings shall be permitted or alternately may be required as provided in this chapter or as a condition of a site plan approval.
- (1) No fence is permitted which is expressly designed with intent to injure or maim anyone who attempts to climb such fence, with exceptions as noted in Subsection B(6) below covering permitted fencing.
 - (2) No fence or solid hedge over eight feet in height shall be erected or maintained within 10 feet of any right-of-way.
 - (3) Screen plantings should be planted in such a manner that upon maturity they shall not encroach upon the neighboring property nor create an obstruction within 75 feet of an intersection.
 - (4) Fences shall be continually maintained, and no fence, hedge or screen planting shall be permitted to become unsightly or in a state of disrepair, as determined by the Code Enforcement Officer.
 - (5) When the fence is electrified, there shall be at least one warning sign installed per side and at intervals of not less than 150 feet.
 - (6) Permitted fencing. A fence with a barbed-wire top, an electric shock or similar materials or devices which could be detrimental to the health, safety or welfare of any person coming in contact with it is permitted, provided that the fence is needed to prevent entry to an area which could be hazardous to the health, safety or welfare of a person or persons as follows:
 - (a) The fence is needed to secure an area where materials and/or equipment is stored.
 - (b) The fence is needed to keep animals other than common household pets, except in a kennel situation, from leaving the site.
 - (c) Where the general community interest or interests of national safety justify the need for such a fence.

§ 120-81. (Reserved)

§ 120-82. Timber harvesting.

- A. Notice. Notification of commencement of timber harvesting operations is required as follows:
- (1) At least 10 days prior to the commencement of timber harvesting, written notice shall

be provided to the Town. This notice shall be provided on forms available from the Canadice Town Clerk and shall include the following items:

- (a) Expected dates for the timber harvesting operations.
 - (b) Roads being used in Town for access to the timber harvesting operation.
 - (c) If exempt from review under this chapter, the reasons for that exemption.
- (2) It is suggested that neighbors be notified of timber harvesting prior to the start of the operation.
 - (3) Notification of adjoining property owners as described in Subsection A(2) above is not required for a timber harvesting operation that will remove 10,000 board feet, 25 standard cords or less.
- B. Site plan approval required. Due to the many steep slopes and shallow, unstable soil often found in the Town of Canadice, timber harvesting carried out to remove more than 10,000 board feet, 25 standard cords (four feet by four feet by eight feet) or equivalent shall require site plan approval from the Planning Board unless exempted as described in § 120-114H and I. The applicant shall comply with the conditions hereto set forth and shall provide all relevant information concerning the stated conditions of the Planning Board.
- C. Site plan application requirements. The applicant shall include the following with an application for site plan approval for timber harvesting:
- (1) A written statement from a Department of Environmental Conservation (DEC) forester, Department of Environmental Conservation recognized cooperating consulting forester or New York State master forest owner. The Planning Board may waive this requirement if it finds that slopes, forest type, and/or other site characteristics are such that having such a statement is not necessary to protect the general health, safety, and welfare of the community. Where required, such a statement shall include:
 - (a) The size of the area to be treated.
 - (b) How material is to be removed.
 - (c) The season of the year activities will be confined to.
 - (d) Restrictions to activities based on weather and ground conditions.
 - (e) Roads to be used for access to the tract.
 - (f) How streams and any watercourses are to be crossed.
 - (g) If a potential for erosion exists, how this problem will be mitigated.
 - (h) If any classified streams are involved, that proper permits have been granted.
 - (i) A plan conforming to the requirements for a sketch plan as specified in Article X herein.

§ 120-83. (Reserved)

§ 120-84. (Reserved)

§ 120-85. (Reserved)

§ 120-86. (Reserved)

§ 120-87. (Reserved)

§ 120-88. (Reserved)

§ 120-89. (Reserved)

ARTICLE IX
Special Use Permit Procedures and Criteria

§ 120-90. Authority and intent.

A. Purpose.

- (1) This section establishes special lot size, setback, and other requirements intended to ensure that specially permitted uses do not have an adverse impact on neighboring properties.
- (2) All such specially permitted uses may possess unique and special characteristics that require consideration on an individual case basis.
- (3) Uses permitted by special use permit shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth in this Article IX in addition to all other requirements of this chapter.

B. Authority for review. The Planning Board of the Town of Canadice is authorized and empowered to review and approve, approve with conditions, or deny applications for special use permits pursuant to the Zoning Local Law of the Town of Canadice.

§ 120-91. Application procedures.

A. Application for a special use permit shall be made to and on forms provided by the Code Enforcement Officer. The application shall include all forms and supporting materials required under the State Environmental Quality Review Act and its implementing regulations found at 6 NYCRR Part 617 (hereinafter referred to as "SEQR").

B. Each application for a special use permit shall be accompanied by a map complying with the requirements for a sketch plan as specified in Article X herein unless specifically stated otherwise.

C. Notification of property owners. The Town shall notify, by regular first-class mail, all owners of property located within 500 feet of the property being the subject of the special use permit application. The cost of such notification shall be paid by the applicant.

D. The Code Enforcement Officer shall issue no permits concerning the property being the

subject of the special use permit application until final action on the special use permit has been taken by the Planning Board.

§ 120-92. Public hearing and final report.

- A. The Planning Board shall hold a public hearing on the requested special use permit within 62 days after the receipt or referral of the application by the Planning Board. Date of receipt shall be considered the first monthly meeting of the Planning Board following submission of the application.
- (1) The notice of public hearing shall be published in accordance with § 274-b of the Town Law of the State of New York.
 - (2) The applicant shall place one sign on the property for which the special use permit is requested. Said sign shall be provided by the Code Enforcement Officer. The sign shall be placed in a location that is easily read from a public road. The sign shall specify the date, time and place of the public hearing and a telephone number to call for more-specific information. Such sign shall be placed on the site not less than seven days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.
- B. Within 62 days after the date of the hearing, the Planning Board shall approve with or without modifications or deny the special use permit. This time may be extended upon mutual consent of the Planning Board and the applicant.
- C. The Planning Board shall, by resolution and in writing, state any changes or modifications in the submitted plans necessary for approval of a special use permit.
- D. Site plan review shall be required of all special uses. The applicant may choose to submit materials required for a site plan review either simultaneous with the application for a special use permit or after approval of the special permit, with or without modifications, has been received from the Planning Board. The Planning Board shall make site plan approval a condition of the granting of all special use permits where site plan approval is not granted at the same meeting of the Planning Board as the special use permit approval.

§ 120-93. Existing violations.

No person shall be issued a special use permit for a property upon which there is an existing violation of this chapter or any other local law.

§ 120-94. Expiration.

A special use permit shall expire if the special use shall cease for more than one year for any reason.

§ 120-95. Waiver authority.

The Planning Board may waive any of the requirements specified in Article IX, provided that such requirements are found not to be essential to the public health, safety or general welfare or are found to be inappropriate to a particular special use permit application.

§ 120-96. Inspection.

The Code Enforcement Officer shall periodically inspect the premises of a use authorized and approved with a special use permit. The Planning Board may specify an inspection interval or schedule that is appropriate to the type of use. The inspection shall determine that the use is being operated consistent with the terms and conditions established by the Planning Board in approving the permit. The Code Enforcement Officer shall provide a report of each inspection to the Planning Board and shall notify the Planning Board of any violation of permit conditions.

§ 120-97. Revocation of special use permit.

The Planning Board shall retain the right to revoke any permit issued hereunder should the applicant or applicant's tenant violate any provision of this article or any condition imposed upon the issuance of the special permit and may further revoke said permit upon a finding that the condition of the premises is not being maintained pursuant to the requirements of this chapter. Said revocation shall be after a hearing held on notice to the applicant and, if known, the tenant. Notice of such hearing shall be delivered in person or via certified mail, return receipt requested, to the holder of such special use permit at least 10 days prior to the date of any hearing held by the Planning Board where the revocation of a special use permit is considered. Notice of such hearing shall also be published in the official newspaper of the Town at least five days prior to any such hearing by the Planning Board.

§ 120-98. Referral to Zoning Board of Appeals.

If the Code Enforcement Officer determines that an area variance is required, he or she shall transmit a copy of the complete application and supporting documents to the Zoning Board of Appeals.

§ 120-99. Change of ownership.

A special use permit shall continue to be valid upon change in ownership of the property, unless the Planning Board specifies a different term in its approval of the special use permit. Upon change of ownership, the new owner shall be subject to all conditions and modifications imposed by the Planning Board in the approval of the subject special use permit.

§ 120-100. General conditions and standards for all special uses.

- A. That the use will not be detrimental in any way to the health, safety, and welfare of the residents of the Town of Canadice.
- B. That the proposed use will be in harmony with the neighborhood in which premises are situated.
- C. That the proposed use will not be detrimental to residents of the neighborhood in which the use is situated or cause a significant decrease in the value of surrounding properties.
- D. That the proposed use and its facilities and appurtenances will in no way, directly or indirectly, materially alter the ecology or increase the eutrophication, or in any other manner contribute to the degrading and deterioration of the quality of waters, of Canadice Lake, Hemlock Lake, and Honeoye Lake and surrounding streams.

- E. For any use which by its nature may be deemed to generate substantial noise, dust, vibration, or other disturbance, whether by mechanical or musical devices or by public participation or any other cause, the Board may require such additional setbacks from property lines and other arrangements as it may deem necessary to insure that said noise, dust, vibration, or other disturbance will not be detrimental or annoying to neighboring properties.
- F. Where business, commercial, or industrial uses lie within 100 feet of residential property, the Planning Board may require fences, walls, or year-round screen planting when necessary to shield adjacent residential uses from impact or disturbance from such use.

§ 120-101. Home occupations.

- A. The establishment of a home occupation requires a special use permit granted by the Planning Board. The applicant shall comply with the conditions hereto set forth and shall provide all relevant information concerning the stated conditions of the Planning Board. A new permit is required if there is a significant change in the home occupation or site ownership.
- B. Permitted activities in connection with such home occupation shall be that which is prepared, produced, assembled or grown on the premises (primary sale of goods). Permitted activities shall include the performance of a profession or service, such as accountant, barber, dentist, doctor, hairdresser, lawyer, and tax preparer, and similar occupations as determined by the Planning Board.
- C. Home occupation standards.
 - (1) The occupation or profession shall be carried on wholly within the principal building and/or other accessory structure thereto, and it shall utilize no more than the equivalent of 25% of the gross floor area of the principal building.
 - (2) Not more than two persons, including volunteers who are not a member of the applicant's immediate family and who are not a resident in the applicant's home, may be employed.
 - (3) Parking spaces needed for the conduct of a home occupation shall be provided off the road in defined areas which are appropriately designed.
 - (4) Off-road parking for customers shall equal one space per 150 feet of floor area devoted to the home occupation in addition to the parking spaces required for residential and employee parking or as deemed appropriate during Planning Board review.
 - (5) For any home occupation involving customers, deliveries, or shipments from the site, the property shall have access either:
 - (a) Directly to a public road.
 - (b) To a public road over a private road or easement. In this case, the applicant must provide evidence that it has the right through easement or other legal conveyance to use said private road and easement.

- (6) Storage of materials, parts, tools or other equipment and all other activities associated with a home occupation shall occur within an enclosed structure or be screened from federal, state, county and public roads and from adjoining property, except for home occupations which involve the care of people (such as by a babysitter or other caregiver) may use yard areas.
- (7) There shall be no unapproved exterior display and no exterior alteration which changes the character thereof.
- (8) The use of electrical or mechanical equipment that would change the fire rating of the structure or create visible or audible interference in radio or television receivers or cause fluctuation in line voltage outside the dwelling unit is prohibited.
- (9) There shall be no noise, vibration, smoke, odors, heat or glare produced as a result of the home occupation which would exceed that normally produced within a single residence.
- (10) After investigation and report of the Code Enforcement Officer of any home occupation that results in an undesirable condition interfering with the general welfare of the surrounding area and after a hearing before the Planning Board, said special use permit may be terminated.

§ 120-102. Communications towers in R District.

- A. The establishment of a communications tower requires a special use permit granted by the Planning Board. The applicant shall comply with the conditions hereto set forth and shall provide all relevant information concerning the stated conditions to the Planning Board.
- B. Intent. Acknowledging the use of electronic communications, the Town of Canadice recognizes and permits with certain restrictions the erection of communications towers. These standards are adopted to preserve the intent and objectives as stated therein in Article I of this chapter and in the Comprehensive Plan of the Town of Canadice. Visual preservation, avoidance of potential damage to adjacent properties from tower failure, falling ice, unknown radiation emission or other adversity shall be achieved through siting, design and vegetative screening.
- C. Applicability. No private home use of satellite dishes and television antennas or amateur radio operations as licensed by the Federal Communications Commission (FCC) and support structures not exceeding 35 feet above grade level are included. Exempt uses include portable, handheld and vehicular transmissions; industrial, scientific and medical equipment; marketed consumer products, such as microwave ovens, citizens band radios and remote-control toys; amateur (ham) radio equipment, dispatch systems and telecommunications devices that only receive radio frequency signals. Shared use of an existing commercial communications tower or other structure shall require an application for a special use permit and site plan review.
- D. Signage/advertising. No use of any portion of a tower for signs for advertising purposes is allowed.
- E. Siting.

- (1) All towers requiring Federal Aviation Administration (FAA) review shall have a copy of said FAA review submitted with the special use permit application.
- (2) No commercial communications tower shall:
 - (a) Exceed 195 feet in height.
 - (b) Be closer than 10,000 feet from a private airport.
 - (c) Be closer than 20,000 feet from a public airport.
 - (d) Be within 8,000 feet of another commercial communications tower to maintain the aesthetic, rural atmosphere that is the intent of this chapter.
- (3) The tower base shall be located on the site so that the distance to adjacent property from the outside perimeter of the tower base shall equal the height of the tower plus 20 feet.
- (4) The distance from the outside perimeter of the tower base to the required buffering zone abutting a public or private road shall equal the height of the tower plus 50 feet.
- (5) When one or more structures are to be built on the property in connection with the operation of the tower, all existing laws and ordinances pertaining to erection of said buildings shall apply.

F. Lighting. No tower shall be artificially lighted, unless required by the FAA and/or other appropriate authority. If the FAA requires the tower to be lighted, a red beacon light during the evening and a white strobe light during the daylight hours shall be used.

G. Submission requirements.

- (1) A preliminary site plan application in compliance with Article X herein.
- (2) For applications for a special use permit for a new commercial communications tower, the applicant shall present an adequate report inventorying existing towers and any other suitable structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communications tower. Said report shall document the reasons that other facilities cannot be used to meet the identified need.
- (3) For all commercial communications towers, a report signed and sealed by a professional engineer. This report shall:
 - (a) Describe the tower and the technical, economic, potential for future modifications and use and other reasons for the tower design.
 - (b) Demonstrate that the tower and site comply with all applicable standards herein required.
 - (c) Demonstrate that the proposed sources of NIER will comply with the restrictions stated under Subsection H, Emission levels, below.
 - (d) The applicant shall submit a written statement that the proposed tower complies with all applicable FAA and FCC regulations or that the tower is exempt from

those regulations.

H. Emission levels. For all commercial communications towers, measurements for emission levels shall be made according to commonly accepted engineering practices and equipment and complying with all applicable current FCC and EPA standards, for NIER (nonionizing electromagnetic radiation). Measurements shall be made when NIER levels are reasonably expected to be highest due to operating and environmental characteristics. Measurements shall be accompanied by exhibits showing:

- (1) Instruments used were calibrated within the manufacturer's suggested periodic calibration interval.
- (2) The calibration method is used by or derived from methods used by the National Institute of Standards and Technology.
- (3) The accuracy of the measurements and certification that the measurements were made in accordance with commonly accepted engineering practice.
- (4) For all commercial communications towers, before establishing a new source of NIER or changing an existing NIER source in a way that increases the amount of radiation pattern of NIER, an applicant shall submit documentation that new telecommunications equipment will not cause ambient NIER standards to be exceeded. This documentation shall include the following information:
 - (a) The name and address of the owner of the transmitter and antenna;
 - (b) The location of the antenna, including address, geographic coordinates and height above grade;
 - (c) Manufacture, type and model of antenna, and antenna radiation patterns to the extent available;
 - (d) All information prepared by the manufacturer of the facility for which a permit is being sought, including but not limited to the manufacturer's suggested maintenance and/or inspection procedures;
 - (e) Frequency and output of transmitter and direction of transmission;
 - (f) Power input to antenna, and gain of antenna with respect to isotropic radiator;
 - (g) The type of modulation and class of service; and
 - (h) A statement of any or all applicable EPA and FCC standards.

I. Termination of permit.

- (1) Special use permits for communications towers that become nonfunctional or are abandoned by the user expire after one year after the date of last use. It shall be the responsibility of the current holder of the special use permit to remove said communications tower within one year of the last use.
- (2) In the event that the Town determines that due to termination of insurance and/or the applicant's failure to abide by any provision of this chapter, said applicant and/or

owner shall be entitled to five days' notice to cure, after which, in the event that the applicant and/or owner does not correct the defect complained of, this permit shall immediately terminate.

- (3) Termination of said permit shall be grounds to immediately revoke said special use permit, and any action taken shall be in the sole determination of the Town Board.

J. Shared use.

- (1) Any new tower shall have the minimum height needed to provide future shared usage.
- (2) Shared use of an existing commercial communications tower or other structure shall require an application for site plan review.
- (3) Where multiple transmission antennas are proposed, the combined NIER levels shall be demonstrated to comply with Subsection H(4) above.
- (4) An applicant proposing to share use of an existing tower shall be required to document intent from an existing tower or structure owner to allow shared use.
- (5) At all times, shared use of existing commercial communications towers or other structures (such as water towers, buildings, etc.) shall be preferred to the construction of new commercial communications towers. An applicant shall be required to present an adequate report inventorying existing towers and any other suitable structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communications tower.
- (6) Where shared usage of an existing tower or structure is found by the Planning Board to be impractical, the applicant shall investigate shared usage of an existing tower/structure site for its ability to accommodate a new tower and accessory uses and to replace the existing tower. The applicant shall prepare and submit the same type of evaluation and documentation for evaluating a shared site as was performed for evaluating the shared use of a tower as detailed above. Any new commercial communications tower approved for an existing tower/structure site shall be subjected to the standards and procedures specified herein for a new tower on a new site as contained in this § 120-102.

K. Conditions of approval. The Planning Board shall require the following items as conditions to all special use permits granted for communications towers:

- (1) Initial operation report. The owner of the tower must submit a signed statement verifying initial inspection within 30 days of commencement of operation for compliance with NIER as established by the FCC, listing the equipment used in conducting the analysis and the name of the inspector and company performing said inspection. The report shall also include a copy of all current applicable FCC licenses for frequencies operating at the site and a statement certifying compliance with all FCC and FAA requirements.
- (2) Annual report required:
 - (a) Comply with all requirements specified in Subsection K(1) above.

- (b) Shall include a review of the structural integrity of the tower that shall be stamped by a professional engineer possessing a currently valid license issued by the New York State Department of Education.
 - (c) The annual report shall be filed in the office of the Town Clerk and a copy forwarded to the Code Enforcement Officer before issuance of the annual operating permit.
 - (d) The annual report shall contain:
 - [1] Names, addresses and telephone numbers of owners, managers and other parties who are responsible for the control and operation of the facility.
 - [2] Names, addresses and telephone numbers of any persons on whose property the facilities are located.
 - [3] Names, addresses and telephone numbers of persons who may be contacted in the event of any emergency.
 - [4] Names, addresses and telephone numbers of any regulator agencies who are involved in any way in the licensing or regulation of the facility, including a statement of any violations cited against the facility and corrective measures mandated.
 - [5] Names, addresses and telephone numbers of insurance companies providing protection against loss or damage to persons or property resulting from the operation or maintenance of the facility.
 - [6] The nature of use and hours of operation.
 - [7] A description of research and development, experimental or testing activities.
 - [8] A certification that the sign posted in Subsection K(3) below is current.
 - (3) A sign be posted on the tower indicating the name and emergency telephone number for emergency service providers to call in the event of a problem with the site and equipment thereon.
 - (4) Annual fee. The applicant shall agree to pay an annual renewal fee as established by resolution of the Town Board at the time of filing the annual inspection and information as required in this section.
 - (5) Any special use permit granted where an existing tower is to be replaced by a new tower shall require, as a condition of such approval, removal of the existing tower within a reasonable amount of time as determined by the Planning Board. The Planning Board shall further require that any surety required by the Town shall include a sum the Planning Board deems reasonable for the demolition and removal of any such tower.
- L. Decision by the Planning Board. The Planning Board may consider a new commercial communications tower on a site not previously developed with an existing tower/structure

when the applicant demonstrates that shared usage of an existing tower site is impractical and submits a report as described in Subsection B.7.b. above.

§ 120-103. Adult use businesses.

A. Findings. Based upon a comprehensive study of the adverse secondary impacts of adult use establishments as documented in accordance with the ruling of the United States Supreme Court in the matter of *City of Renton v. Playtime Theaters, Inc.* [475 U.S. 41 (1986)] and commissioned by the Town Board of the Town of Canadice, the Town of Canadice finds that:

- (1) There are adverse secondary impacts associated with the establishment and operation of adult-oriented businesses within a community.
- (2) Among these adverse secondary impacts are a deterioration in the local quality of life, property values, economic viability; an imposition, whether intentional or unintentional, of exposure to adult-oriented expression undesired by neighbors, pedestrians and passersby; an increase in traffic, noise, litter and nuisance; criminal and illicit sexual behavior; a threat to the health and safety of children and young adults; and an undermining of the established sense of community.
- (3) These adverse secondary impacts resulting from the establishment and operation of adult-oriented businesses are a threat to the general health, safety and economic viability of the community.
- (4) The unregulated establishment and operation of adult-oriented businesses would lead to the widespread imposition of adverse secondary impacts upon the residents, businesses, economic viability, property values and quality of life of the Town and would therefore be detrimental to the general health, safety and economic viability of the community.

B. Statement of intent.

- (1) It is the express intent of the Town of Canadice in adopting this chapter to:
 - (a) Ameliorate, mitigate, reduce or prevent the widespread and unregulated imposition of the adverse secondary impacts of adult-oriented businesses upon the residents, businesses, economic viability, property values, quality of life and general health, safety and welfare of the community.
 - (b) Protect the right of free expression, guaranteed by the United States Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.
- (2) It is not the intent of the Town of Canadice in adopting this chapter to:
 - (a) Deny any person the right of free expression, guaranteed by the United States Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.

- (b) Impose upon any person any additional limitations or restrictions upon the right of free expression, guaranteed by the United States Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the United States Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression. These constitutionally protected rights are understood to include the right to sell, distribute and exhibit the legal goods and services offered by adult-oriented businesses.
 - (c) Impose upon any person any additional limitations or restrictions upon the right to obtain, view or partake of any communications guaranteed by the United States Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses, beyond those granted to the Town under the United States Constitution, the New York State Constitution and the laws of the State of New York regarding the time, place and manner of that free expression.
 - (d) Estimate, decide, determine, resolve, consider, conclude, judge or qualify in any manner or fashion the quality or value of the content, nature, message, form, format, appearance, substance or presentation of the free expression guaranteed by the United States Constitution and the New York State Constitution, as may be expressed and presented in the form of goods and services offered by adult-oriented businesses.
- C. Authorization. Numerous decisions by both federal and State of New York courts regarding the regulation of adult use businesses must be based upon a finding of the adverse secondary impact of these businesses upon the community; and must be directed solely toward the mitigation of these impacts, not be directed toward any form of speech or expression and be no broader than necessary; and must provide alternative locations within the Town for adult use businesses. Therefore, the Town of Canadice hereby adopts the following special use permit requirements of the Zoning Local Law of the Town of Canadice.
- D. Applicability. Every adult use business requires a special permit granted by the Planning Board. The applicant shall comply with the conditions hereto set forth and shall provide all relevant information concerning the stated conditions of the Planning Board.
- E. Standards and requirements.
 - (1) Location.
 - (a) No adult use business shall be established within 750 feet of the property line of any residential use property or within 1,500 feet of the sites of the Canadice Corners Church/Canadice Methodist Church and Canadice Cemetery, the Tibbals Cemetery, the Bald Hill Cemetery, the Canadice Valley Cemetery, the Goetzmann Family Cemetery, the First Baptist Church of Penfield Camp, the Harriet Hollister Spencer State Park, Mueller Field Station, and any other state, county or Town recreational or educational facilities such as exist or may be

created.

- (b) An adult use business may not be established within 2,500 feet of any establishment selling alcoholic beverages, and should a new or existing establishment seek an alcoholic beverage license, it is not to be located within 2,500 feet of an established adult use business.
- (2) Setback and landscaping requirements. Any structures intended for adult uses shall be set back at least 75 feet from any road and be landscaped as follows:
- (a) The preservation of natural and scenic resources in Canadice will be maintained through the use of plants, earth berms and varying textures to improve the appearance of the site and provide screening from the surrounding area.
 - (b) When possible, existing vegetation shall be retained and incorporated into the landscaping plan; this is especially true if large trees or other significant plants and vegetation can be salvaged.

§ 120-104. Bed-and-breakfasts.

- A. The building proposed to be used as a bed-and-breakfast shall be single-family residential in character.
- B. The property shall conform to the minimum lot size requirements of the district it is located in.
- C. The applicant shall document that the property has vehicular access directly from a public road or shall have either a deeded right-of-way solely for the subject property or access rights through a shared private road or right-of-way that expressly allow this use, either of which is deemed adequate by the Planning Board.
- D. Off-street parking shall be provided as follows: two spaces for the existing residential use plus one space for each bedroom proposed to be offered for rent.
- E. The application must state the number of bedrooms that shall be offered for rent.
- F. The septic disposal system must meet all applicable state requirements, if any.
- G. The water supply must meet all applicable state requirements, if any.
- H. Adequate provision must be made to screen parking areas, gardens, and other guest-accessible areas from adjacent properties so that there will be little or no impact on neighboring properties.
- I. One sign identifying a bed-and-breakfast shall be allowed of up to six square feet on a side, and the sign may be double-sided but not internally lighted. The location, design, and dimensions of the sign shall be reviewed as part of the site plan. If the property has vehicular access on more than one road, the Planning Board may allow one sign fronting on each road.

§ 120-105. Accessory apartments.

- A. The establishment of an accessory apartment in the R or HLS Zoning District requires a special permit granted by the Planning Board. The applicant shall comply with the conditions hereto set forth and shall provide all relevant information concerning the stated conditions to the Planning Board.
- B. A separate entrance shall be provided for the accessory apartment at the side or rear of the structure.
- C. No exterior changes shall be made to the dwelling that, in the opinion of the Planning Board, will alter the single-family character of the dwelling. The accessory apartment must be contained within the single-family dwelling (attached to the main dwelling by at least 25% of a common wall).
- D. The accessory apartment shall contain at least 300 square feet and not more than 800 square feet of gross floor area but shall not exceed 35% of the total floor area of the principal residence structure.
- E. The lot shall meet the requirements of the zoning district for a single-family dwelling.
- F. The accessory apartment shall contain no more than two conventional bedrooms.
- G. The owner of the residence in which the accessory unit is created shall occupy at least one of the dwelling units on the premises.
- H. No fewer than three off-street parking spaces suitable for year-round use shall be provided on the lot. No new driveway access to the street shall be permitted. The Board may require the installation of screening and/or planting to buffer parking areas from the street or from adjoining residence.
- I. No more than one accessory apartment may be created on any single property.
- J. The septic disposal system must meet all applicable state requirements, if any.
- K. The water supply must meet all applicable state requirements, if any.
- L. The permit shall be subject to renewal every five years and may be renewed by application to the Code Enforcement Officer. Prior to the renewal of the permit, the Code Enforcement Officer shall inspect the building and determine that all of the criteria above and those imposed upon the original special use permit continue to be met.

§ 120-106. Wind energy conversion systems (WECS).

- A. The establishment of a WECS of any type (residential, commercial, or industrial) requires a special permit granted by the Planning Board. The applicant shall comply with the conditions hereto set forth and shall provide all relevant information concerning the stated conditions to the Planning Board.
- B. An application for a special use permit for a WECS shall include the following:
 - (1) The following information, in addition to the requirements stated in Article X herein for site plans:
 - (a) A plan showing the name of the project, boundary lines of parcel that the

project will be located on, a location map showing the proposed site's location, date, North arrow and scale of the plan.

- (b) Name and address of the owner of the parcel where the development is proposed.
- (c) All existing lot lines, easements and rights-of-way on the subject property.
- (d) A sketch plan of the location of proposed road access, including provisions for paving, if any, proposed transmission lines and accessory facilities, and location of all existing and proposed utility systems to the facility.
- (e) A survey of the land to be leased, if applicable.
- (f) A map showing existing and proposed topography at five-foot contour intervals.
- (g) A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features, including size and type of plant material and erosion control measures.
- (h) Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the as-built aboveground site facilities as they would appear from distances within a three-mile radius of such WECS facility. Pictures from specific locations may be required by the Planning Board, and all pictures shall be no smaller than five inches by seven inches.
- (i) Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any WECS facility and justification for any clearing required.
- (j) Preliminary report prepared by the WECS siting agency describing:
 - [1] Surrounding topography in relation to the capabilities for generation of electricity by wind.
 - [2] Required improvements for construction activities, including those within the public's right-of-way or land controlled by the Town of Canadice.
 - [3] Sanitary facilities, etc., for the construction period; source of water and gravel fill in construction.
 - [4] Proposed mitigation measures for visual impacts of WECS facility.
 - [5] Proposed safety measures to mitigate WECS facility failure.
- (k) Elevation map showing the WECS's height and design, including a cross section of the structure and components; hardware compliance with applicable structural standards; and the WECS's abilities in terms of producing energy.
- (l) Survey of existing road/bridge conditions that will be used by construction and transport equipment.
- (m) A description of the general geographic areas that would be acceptable for

WECS projects with the Town of Canadice; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the WECS facility.

- (n) Description of the applicant's long-range plans which project market demand and long-range facility expansion needs within the Town.
 - (o) Digital elevation model-based project visibility map showing the impact of visibility of the project from other locations, to a distance radius of three miles from the center of the project. The base map used shall be a published topographic map showing natural and structural of built features.
 - (p) Report showing soil logs, soil profile analysis, and stormwater runoff calculations for the area being disturbed.
 - (q) Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties as applicable. There should be preconstruction and postconstruction drainage calculations for the site done by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site.
 - (r) If any license, approval, permit, certification or any type of registration or similar type of endorsement is required from any other agency, the applicant shall notify the Planning Board of such requirement and the Board shall coordinate the review as deemed appropriate.
- C. The site plan shall bear a signed seal of the engineer, architect, or surveyor who prepared the plan.
- D. State environment quality review (SEQR).
- (1) All applications for industrial WECS shall be considered a Type I action as that term is defined in 6 NYCRR Part 617.
 - (2) Environmental assessment form (EAF). A visual EAF addendum must be submitted with Part 1 of an environmental assessment form with all applications for a special use permit for a WECS.
- E. Wildlife impact. The Hemlock-Canadice watershed is an Audubon Society designated important bird area (IBA). As such, the Town of Canadice requires special care be taken to understand the impact of a proposed WECS on wildlife. The applicant must conduct an evaluation of alternative sites in accordance with the USFWS "Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines." The evaluation must be conducted with the participation of a third-party expert such as the NYSDEC or the New York State field office of the USFWS. The evaluation area should include the "footprint" of all turbines and associated structures in each alternative, the adjacent wildlife habitats that might be affected, but excluding transmission lines extending beyond the footprint. All potential development sites within a geographic area should be evaluated before a site is selected for development.
- F. Additional standards and requirements for industrial WECS.

- (1) Placement, setbacks, ice and blade throw, shadow casting and flicker. Setbacks from adjacent property lines, rights-of-way, easements, public ways or power lines (not to include individual residential feed lines) shall be located on the site so that the distance to adjacent property from the outside perimeter of the base of the WECS shall equal the height of the WECS plus 20 feet or 20 feet plus the maximum calculated ice throw distance, whichever is greater, and that such calculation shall be determined by a certified professional engineer at the owner's expense. In areas subject to shadow casting and flicker, WECS facilities shall be no closer than one mile from an occupied building. Individuals living within two miles of any WECS facility must be advised in advance of construction of the potential for flicker/shadow and the time of day when that would occur. The distance from the outside perimeter of the base of the WECS to the required buffering zone abutting a public or private road shall equal the height of the WECS plus 50 feet or 50 feet plus the maximum calculated ice throw distance, whichever is greater.
- (2) Noise level limit. Individual WECS facilities shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed the average nighttime ambient noise levels, measured at the boundaries of all the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application.
- (3) Guy wires and anchors. All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point 10 feet above the ground.
- (4) Lighting. No WECS shall be lighted artificially unless such lighting is required by a state or federal agency. Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration (FAA) shall be subject to on-site field testing before the Planning Board, as a prerequisite to that Board's approval.
- (5) Scenic viewshed impact. No WECS shall be installed in any location where the Planning Board determines the WECS to be detrimental to the general neighborhood character. No individual WECS facility shall be installed in any location that would substantially detract from or block view of a portion of a scenic view, as viewed from any public road right-of-way, publicly owned land or privately owned land within the Town of Canadice or that extends from the Town of Canadice. A WECS facility must use building materials that are in harmony with the surrounding areas. Placement of support buildings must be placed behind ridges or vegetation to screen visibility. Clear cutting will not be allowed.
- (6) Broadcast interference.
 - (a) No individual tower facility shall be installed in any location along the major access of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
 - (b) No individual tower facility shall be installed in any location where its

proximity with an existing fixed broadcast transmission or reception antenna (including residential reception antenna) for radio, television, wireless phone, or other personal communications systems would produce electromagnetic interference with signal transmission or reception.

- (c) The recipient of the special use permit must correct any unforeseen interference to the satisfaction of the Code Enforcement Officer within 60 days of any complaint.
- (7) Specifications.
 - (a) Maximum height limit. Maximum height of the WECS at the top of blade shall be no greater than allowed in this chapter for communications towers.
 - (b) Tower limit: maximum 0.3 megawatt - maximum operating output.
 - (8) Color. Industrial WECS must be battleship gray unless an agency of the state or federal government mandates otherwise.
 - (9) Structure: solid tube as per manufacturer's engineered specifications.
 - (10) Design and specification. Detailed design and specifications will be required during site plan review for all equipment and improvements proposed or required in connection with the WECS, either on site or off site.
 - (11) Wildlife impact. Applicant must be in full compliance with the United States Department of Interior FWS¹³ "Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines" (2003) for evaluation of potential development sites, proper location and design of turbines and associated structures within sites selected for development and pre- and postconstruction research and monitoring to identify and or assess impacts to wildlife.
 - (12) Ice buildup sensors. Ice buildup sensors shall be required for industrial WECS.
 - (13) Transmission lines. All power transmission lines from the WECS electric generation facilities shall be underground, including connection to and improvements to the power grid. Any facilities proposed to be above the ground shall require an area variance granted by the Zoning Board of Appeals and shall be fully documented as to size, location, width of right-of-way, location of all proposed guy wires, and vegetative clearing proposed during and after construction.
 - (14) Blade to ground distance. The lowest portion of the blade may not be closer than 35 feet to the ground.
 - (15) Notice and safety considerations.
 - (a) Signs.
 - [1] Caution signs. Caution signs shall be placed at the setback limits warning of ice and blade throws. Signs shall be placed at fifty-foot intervals and be

13. Editor's Note: "FWS" refers to the Fish and Wildlife Service.

four feet to six feet high (at eye level). Signs shall be a minimum of one foot square and no larger than two feet square in size and shall have the words "CAUTION: FALLING OBJECTS" and emergency telephone numbers.

[2] There shall be a permanent sign erected and maintained on the approach to each tower that will read "STAY OUT" in six-inch letters and have emergency contact numbers listed on its face in one-inch lettering. Lettering will be black on a white background.

- (b) Fencing. Each tower will have a climbing apparatus to no lower than 12 feet from the ground or a locked door to internal stairs if so equipped, or if none of the aforementioned security features are practical, the tower base will be surrounded by a fence of eight feet in height with a minimum six inches of security wire on top surrounding the tower base with a locking gate monitored by a security device.
- (c) Limit tip speed. No WECS facilities will be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, or turbine components.
- (d) Emergency shutdown procedures. Emergency shutdown procedures shall be filed with the Code Enforcement Office.

(16) Use of public roads.

- (a) A survey of the condition of local roads and bridges is to be performed prior to site preparation and construction and submitted with an application for special use permit.
- (b) The applicant is responsible for fortifying roads and bridges prior to use and for any necessary repairs afterwards, through all phases, including decommissioning.
- (c) The applicant must secure financial insurance in a reasonable amount agreed by relevant parties for the purpose of restoring bridges and roadways to the original condition as documented in the initial survey.
- (d) An applicant, owner, operator or supplier proposing to use federal, state, county, township or village roads to transport parts, materials or equipment for construction, operation or maintenance shall identify such public roads and obtain applicable weight and size permits.

(17) Additional access roads.

- (a) Existing roadways will be used when possible.
- (b) Any new roadways will be constructed in a way that is not conspicuous to the surrounding environment.

(18) Operating considerations.

- (a) Removal if not operational. Any WECS which has not been in active service for a period of six months shall be removed from the premises to a place of safe and legal disposal. Additionally, all structures, guy cables, guy anchors and/or enclosures accessory to such WECS shall also be removed. The site shall be restored to a natural condition to a minimum depth of three feet as instructed by the Code Enforcement Officer. Such removal shall be completed at the owner's expense.
- (b) Landscaping. Upon completion of installation, the site shall be returned as close as possible to its natural state.
- (c) Gravel and fill. Gravel and fill required for construction shall not be quarried from land covered by the special use permit.
- (d) Building and grounds maintenance. Any damaged or unused parts shall be removed from the premises within 30 days. All maintenance equipment, spare parts, oil, etc., shall also be removed within 30 days. All tools and materials related to WECS operations must be removed from the site or stored while the site is active or inactive. Storage facilities will be governed by the requirements of Article IV.E above.
- (e) Ownership changes. If the ownership of a WECS operating under a special use permit changes, the special use permit shall remain in force. All conditions of the special use permit, including bonding, letter of credit, or continuing certification requirements of the original owner, will continue to be obligations of the succeeding owner. However, the change in ownership shall be registered with the Code Enforcement Officer. The Town of Canadice will retain the bond throughout the property transfer. The bond will not be returned to the previous owner. The previous owner has the responsibility of negotiating the cost of the bond into the property transfer transaction.
- (f) WECS modification. Any and all modifications, additions or deletions to WECS that operate under a special use permit, whether structural or not, shall be made by special use permit, except that such special use permit shall not be required for repairs which become necessary in the normal course of use of such WECS or become necessary as a result of natural forces, such as wind or ice.
- (g) Wildlife impact. In addition to the preconstruction study required in the application phase, the applicant must monitor all sites for impact on wildlife for a period of three years after startup. Such studies shall conform to the USFWS "Guidelines to Avoid Wildlife Impacts" and be conducted with the participation of third-party experts, such as NYSDEC or the New York field office of the USFWS.¹⁴ All expenses are the responsibility of the owner. After the three-year period, if it is evidenced at any time by the Code Enforcement Officer or any elected official of the Town of Canadice that any WECS is causing the death of migratory birds, bats, raptors or protected species, that WECS shall cease operation until an impact study is completed.

14. Editor's Note: "USFWS" refers to the United States Fish and Wildlife Service.

- (h) Cessation of operation. If transmission service from a WECS is to be discontinued for a period exceeding six months, the owner of such WECS shall notify the Code Enforcement Officer within 30 days of the date of such discontinuance.

(19) Certification.

(a) Inspection.

- [1] An inspection report prepared by an independent professional engineer licensed in the State of New York will be required at the time of installation. The inspection report will be for the structure and the electronics and will be given to the Code Enforcement Officer.
- [2] The owner, manager, or other benefiting party in interest shall, through an independent engineer, complete an annual inspection report. The report will be provided to the Canadice Town Board, and it will also be submitted to the Code Enforcement Officer.
- [3] Each facility subject to this article may be inspected minimally, on an annual basis, by the Code Enforcement Officer, Town Engineer, or any other person appointed by the Town Board to ensure compliance with this article, and a wildlife impact statement will be submitted to the Town of Canadice within 30 days of any such inspection. Any expenses incurred by the inspection or wildlife impact statement will be paid by the applicant.
- [4] National and state standards. The applicant shall show that all applicable manufacturers, New York State, and United States standards for the construction, operation, and maintenance of the proposed WECS are being complied with. WECS shall be built, operated, and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI). The applicant for a WECS special use permit shall furnish evidence, over the signature of a professional engineer licensed to practice in the State of New York, that such WECS is in compliance with the standards.
- [5] Wind speed/wind load. Certification is required by a registered professional engineer or manufacturer's certification stating the tower design is sufficient to withstand windload requirements for structures and established by the Building Code of New York State and will shut down when wind speeds exceed manufacturer's maximum acceptable speed specifications.

G. Additional standards and requirements for residential and commercial WECS.

(1) Placement.

- (a) No more than two WECS are permitted per lot.
- (b) Setbacks; ice and blade throw. Setbacks from adjacent property lines, rights-of-way, easements, public ways or power lines (not to include individual

residential feed lines) shall be located on the site so that the distance to adjacent property from the outside perimeter of the base of the WECS shall equal the height of the WECS plus 20 feet or 20 feet plus the maximum calculated ice throw distance, whichever is greater, and that such calculation shall be determined by a certified professional engineer at the owner's expense. In areas subject to shadow casting and flicker, WECS facilities shall be no closer than one mile from an occupied building. Individuals living within two miles of any WECS facility must be advised in advance of construction of the potential for flicker/shadow and the time of day when that would occur. The distance from the outside perimeter of the base of the WECS to the required buffering zone abutting a public or private road shall equal the height of the tower plus 50 feet or 50 feet plus the maximum calculated ice throw distance, whichever is greater.

- (2) Noise level limit. Individual WECS shall be located with relation to property lines so that the level of noise produced during operation shall not exceed the average nighttime ambient noise levels, measured at the boundaries of all the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of special use permit application.
- (3) Guy wires and anchors. All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point 10 feet above the ground.
- (4) Lighting. No WECS shall be lighted artificially unless such lighting is required by a state or federal agency.
- (5) Scenic viewshed impact. No WECS shall be installed in a location where the Planning Board and subsequent public hearing determine that the WECS is detrimental to the character of the neighborhood.
- (6) Broadcast interference.
 - (a) No individual WECS facility shall be installed in any location along the major access of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation.
 - (b) No individual WECS facility shall be installed in any location where its proximity with existing fixed broadcast transmission or reception antenna (including residential reception antenna) for radio, television, wireless phone, or other personal communications systems would produce electromagnetic interference with signal transmission or reception.
 - (c) The recipient of the building permit must correct any unforeseen interference to the satisfaction of the Code Enforcement Officer within 60 days of any validated complaint.
- (7) Specifications.
 - (a) Maximum height limit. Maximum height limit shall be no greater than 100 feet.
 - (b) KW limit: 20 KW, maximum operating output.

- (c) Color. Residential WECS shall be battleship gray unless the Planning Board determines the manufacturer's color is appropriate to the neighborhood.
 - (d) Structure: lattice or solid tube as per manufacturer's engineered specifications.
 - (e) Design and specifications. Detailed design and specification will be required during site plan review.
 - (f) Ice buildup sensors. Ice buildup sensors are not required.
 - (g) Connecting cables. All power transmission lines from the WECS electricity generation facilities shall be underground, including connection to and improvements to the power grid. Any facilities proposed to be above the ground shall require an area variance granted by the Zoning Board of Appeals and shall be fully documented as to size, location, width of right-of-way, location of all proposed guy wires, and vegetative clearing proposed during and after construction.
 - (h) Blade-to-ground distance. The lowest portion of the blade may not be closer than 15 feet to the ground.
- (8) Notice and safety considerations.
- (a) Access. Tower climbing apparatus shall be no lower than 12 feet from the ground.
 - (b) Limit tip speed. No WECS facility shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, or turbine components.
- (9) Certifications.
- (a) Lightning strikes/grounding. The applicant shall show that all applicable manufacturer's, New York State, and United States standards for the construction, operation, and maintenance of the proposed WECS have been or are being complied with.
 - (b) Wind speed/wind load manufacturer's certification stating that the tower design is sufficient to withstand wind load requirements for structures and established by the Building Code of New York State and will shut down when wind speeds exceed manufacturer's maximum acceptable speed specifications.

H. Liability/indemnity.

- (1) Insurance liability. Prior to issuance of a building permit for an industrial WECS, the applicant shall provide the Town, in the form of a duplicate insurance policy or a certificate of coverage issued by an insurance company for liability insurance of an amount to be determined by the Town Board in consultation with the Town's insurer. This policy or certificate shall be to cover damage or injury which might result from the failure of a tower or any other part(s) of the WECS generation and transmission facility.

(2) Performance bond (removal).

- (a) The owner of a WECS, after such application has been approved and before a building permit is issued, shall submit a letter of credit or other acceptable surety sufficient to ensure the removal of the WECS. The Town Engineer and Town Attorney shall judge this letter of credit or other surety adequate and satisfactory before a building permit is issued, but should be at least 125% of the estimated cost of removal. Said letter of credit shall be forfeited if removal is not completed by the deadline as previously specified in this article. This estimate will be reviewed and updated every two years by the Town.
- (b) If transmission services from a WECS are to be discontinued for a period exceeding six months, the owner of such WECS shall notify the Code Enforcement Officer within 30 days of the date of such discontinuance.
- (c) Any WECS which has not been in active and continuous service for a period of six months shall be removed from the premises to a place of safe and legal disposal. Additionally, all structures, guy cables, guy anchors and/or enclosures accessory to such WECS shall also be removed. The site shall be restored to a natural condition instructed by the Code Enforcement Officer. Such removal shall be completed at the owner's expense within three months of cessation of active and continuous use of such WECS or forfeit bond. Failure to notify and/or remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter, and the cost of removing the towers and accessory structures shall be placed as a lien on the property owner's tax bill.
- (d) Environmental contamination. A performance bond will be required to deal with DEC requirements. The owner of a WECS, after such application has been approved and before a building permit is issued, shall submit the maximum-amount letter of credit or acceptable surety necessary to ensure the cleanup of any contamination in accord with DEC requirements. The Town Engineer and Town Attorney shall judge the letter of credit or other surety adequate and satisfactory before a building permit is issued.
- (e) Continuing obligations. All requirements detailed in the subsections above shall remain in force for the life of the special use permit.
- (f) Enforcement. Any person, firm or corporation which commits an offense against, disobeys, neglects or refuses to comply with or resists the enforcement of any of the provisions of this chapter, upon conviction, be deemed guilty of a violation, punishable by a fine of not more than \$500 or by imprisonment not exceeding 15 days, or both such fine and imprisonment. Each week an offense is continued shall be deemed a separate violation of this chapter and duly punishable as such. In addition to the penalties provided herein, the Town Board may also maintain an action or proceedings in the name of the Town of Canadice in any court of competent jurisdiction to compel compliance with, or to restrain by injunction any violations of, this section, and for damages, including, without limitation, the legal cost and expenses of such action, which

includes attorney's fees.

- (g) Change. No changes can be made to a special use permit for a WECS facility once it has been granted. Any changes to the WECS will require the application for, review of, and receipt of a new special use permit.

§ 120-107. Solar energy systems. [Added 6-10-2019 by L.L. No. 4-2019]

- A. Purpose. This zoning for solar energy law is adopted to advance and protect the public health, safety, and welfare of Town of Canadice including:
 - (1) Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
 - (2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses; and
 - (3) Increasing employment and business development in the region by furthering the installation of solar energy systems.
- B. Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEMS — A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is directly installed on the ground and is not attached or affixed to an existing structure.

HEIGHT — The height of a solar collector is calculated as perpendicular from the ground to the highest point.

LARGE-SCALE ENERGY SYSTEMS — Electricity produced is for sale off site.

NET-METERING — A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

PHOTOVOLTAIC (PV) SYSTEMS — A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

POWER PURCHASING AGREEMENT (P.P.A.) — An electricity power agreement is a contract between two or more parties, one which generates electricity (the seller) and the other who is looking to purchase electricity (the buyer). The P.P.A. defines all the commercial terms for the sale of electricity between the two parties, including when the project will begin commercial operation, schedule for delivery of electricity, payment terms, and termination.

ROOFTOP OR BUILDING-MOUNTED SOLAR SYSTEM — A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as

modules fixed to frames which can be tilted toward the sun at an optimal angle.

SMALL-SCALE ENERGY SYSTEMS — Electrical production of the system is primarily used on site throughout the year and uses net metering or is off grid.

SOLAR ACCESS — Space open to the sun and clear of overhangs or shade, including the orientation of streets and lots to the sun to permit the use of active and/or passive solar energy systems on individual properties.

SOLAR COLLECTOR — A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR EASEMENT — An easement recorded pursuant to NY Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

SOLAR ENERGY EQUIPMENT/SYSTEM — Solar collectors, controls, heat pumps, heat exchangers, and other materials, hardware, or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic, and concentrated solar.

SOLAR PANEL — Allow for "energy transfer" from light energy to heat and electrical.

C. Small-scale energy systems.

(1) Applicability.

- (a) The requirements of this section shall apply to all solar energy systems modified or installed after the effective date of this section.
- (b) All solar energy systems shall be designed, erected, and installed in accordance with the zoning regulations of the Town of Canadice and the uniform code of New York State.
- (c) Solar energy collectors shall be permitted to provide power for use by owners, lessees, tenants, residents, or other occupants of the premises on which they are erected. In addition, nothing contained in this provision shall be construed to prohibit the sale of excess power through a net billing or net-metering arrangement.

(2) Permitting.

- (a) No small-scale solar energy system or device shall be installed or operated in the Town of Canadice except in compliance with this article.
- (b) To the extent practicable, and in accordance with Town law, the accommodation of solar energy systems and equipment and the protection of access to sunlight for such equipment shall be encouraged in the application of the various review and approval provisions of the Town of Canadice Code.
- (c) The equipment specification sheets shall be documented and submitted for all

photovoltaic panels, electrical components, mounting systems, and inverters that are to be installed.

- (d) Rooftop and building-mounted solar collectors. Rooftop and building-mounted solar collectors are permitted as an accessory use in all zoning districts in the Town of Canadice when attached to any lawfully existing and permitted building subject to the following conditions:
 - [1] Building permits, electrical permits and or unified solar permits shall be required for installation of all rooftop and building-mounted solar collectors.
- (e) Roof-mounted solar energy system installations shall incorporate, when feasible, the following design requirements:
 - [1] Panels must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and the highest edge of the system.
- (f) Building-integrated photovoltaic (BIPV) systems. BIPV systems are permitted outright in all zoning districts.
- (g) Ground-mounted and freestanding solar collectors. Ground-mounted and freestanding solar collectors are permitted as accessory structures in all zoning districts of the Town of Canadice, subject to the following conditions:
 - [1] Building permits, electrical permits and or unified solar permits are required for the installation of all ground-mounted solar collectors.
 - [2] The location of the solar collector meets all applicable setback requirements for accessory structures in the zoning district in which it is located.
 - [3] The height of the solar collector and any mounts shall not exceed 15 feet when oriented at maximum tilt.
 - [4] A special use permit shall be required for any solar collector unit exceeding 15 feet.
- (h) Violations.
 - [1] The owner or general agent of a building or premises of land where violation of any provision of this section has been committed or shall exist, or the lessee or tenant of an entire building, or entire premises or land where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or premises or land in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises or land or any part thereof in which any violation shall exist, shall be guilty of a violation/offense and subject to a minimum fine of \$350 or imprisonment for a period of not more than 10 days, or

both, and in addition may be ordered to pay all costs and expenses, including fees and expenses of attorneys and engineers and other experts involved in the enforcement hereof.

[2] Every such person, firm, company, corporation, partnership, limited liability company or other entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue from the expiration of the period stated in the notice to remedy. Each week's continued violation shall constitute a separate additional violation.

[3] In addition, the Town authorities shall have such other remedies as are provided by law to restrain corrects or abates any violation of this section, and the violator shall be liable to the Town of Canadice for a civil penalty of \$500 for each violation.

D. Large-scale solar energy systems.

(1) Applicability.

- (a) The requirements of this section shall apply to all solar energy systems modified or installed after the effective date of this section.
- (b) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and standards.

(2) Permitting.

- (a) Large-scale solar energy systems are permitted through the issuance of a special use permit only in rural zoned district, subject to the requirements set forth in this section including site plan approval. Applications for the installation of a large-scale solar energy system shall be reviewed by the Code Enforcement Officer and referred, with comments to the Planning Board for its review and action, which can include approval, approval with conditions, or denial.
- (b) Special use permit application requirements. The following information must be included with an application for a special use permit for large-scale solar energy systems. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements such as a P.P.A., shall be submitted.

[1] Plans showing the layout of the solar energy system signed by a professional engineer or registered architect shall be required and be shown on the site plan map.

[2] The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.

[3] Design standards.

- [a] Removal of trees and other existing vegetation shall be minimized or offset with planting elsewhere on the property.
 - [b] All on-site utility and transmission lines shall be nonaccessible and meet NEC (National Energy Code) regulations.
 - [c] Buffering may be required and shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties and roads.
 - [d] All mechanical equipment shall be nonaccessible.
 - [e] A large-scale solar energy system application shall include the CESIR (Coordinated Electric System Interconnection Review) report application submitted to the local utility.
 - [f] Each large-scale solar energy system shall be designed to minimize the total acreage of developed land.
 - [g] Site and stormwater management plan for large-scale solar energy systems shall be reviewed by Ontario County Soil and Water District prior to final site plan approval.
- (3) Property operation and maintenance plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing, and trimming, safety concerns, and access. The property operation and maintenance plan shall include details about the proposed use or uses of the remaining property not used for the large-scale solar energy system, as well as ingress and egress to all portions of the property.
- (4) Decommissioning plan. To ensure the proper removal of a large-scale solar energy systems, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special use permit under this section.
- (a) In the event that the owner or leasee of any facility ceases for a period of six months to use or operate the said facility, then in that event, such facility shall be dismantled and removed from the site and the site shall be restored to its natural state by the owner. Failure to dismantle and remove a facility and restore the site to its natural state within 30 days after said facility has been declared abandoned by the Town Board will result in forfeiture of said letter of credit, cash bond, or surety posted by said owner or leasee of said facility. If a website has been established to monitor the activity of the array it shall be provided to the Code Enforcement Office to prove the ongoing operation of the facility. If there is no monitoring system the CEO may request proof of operation from the owner.
 - (b) The plan shall demonstrate how the removal of all infrastructures and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction.

- (c) The plan shall also include an expected timeline for execution.
 - (d) A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer. Cost estimations shall take into account inflation. A letter of credit, bond, or surety shall be issued to the Town of Canadice in that amount. Town must be notified of auto renewals and any notice sent for nonrenewal or cancellation.
 - (e) Removal of large-scale solar energy systems must be completed in accordance with the Decommissioning plan.
 - (f) If the large-scale solar energy system is not decommissioned after being considered abandoned, the Town may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality, in addition to any other remedies available to the Town.
- (5) Special use permit standards. No special use permit for large-scale solar energy shall be issued unless the Planning Board specifically finds that the proposed project is in compliance with each of the following:
- (a) Solar arrays shall not be allowed on lands where a P.D.R. (property development rights) has been obtained.
 - (b) Setbacks. Large-scale solar energy systems shall adhere to the setback requirements for accessory structures of the underlying district, except that minimum side and rear setbacks are set at 50 feet from property lines.
 - (c) Height. Large-scale solar energy systems shall not exceed 15 feet in height.
- (6) Violations.
- (a) The owner or general agent of a building or premises of land where violation of any provision of this section has been committed or shall exist, or the lessee or tenant of an entire building, or entire premises or land where such violation has been committed or shall exist, or the owner, general agent, lessee or tenant of any part of the building or premises or land in which such violation has been committed or shall exist, or the general agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises or land or any part thereof in which any violation shall exist, shall be guilty of a violation/offense and subject to a minimum fine of \$350 or imprisonment for a period of not more than 10 days, or both, and in addition may be ordered to pay all costs and expenses including fees and expenses of attorneys and engineers and other experts involved in the enforcement hereof.
 - (b) Every such person, firm, company, corporation, partnership, limited liability company or other entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue from the expiration of the period stated in the notice to remedy. Each week's continued violation shall constitute a separate additional violation.

- (c) In addition, the Town authorities shall have such other remedies as are provided by law to restrain corrects or abates any violation of this section, and the violator shall be liable to the Town of Canadice for a civil penalty of \$500 for each violation.

E. Administrative relief:

- (1) If an individual is found to be in violation of the provisions of this section for either small- or large-scale solar energy systems, appeals should be made in accordance with the established procedures of the Town of Canadice Code.
- (2) If a building permit for a solar energy device is denied because of a conflict with other goals of the Town of Canadice the applicant may seek relief from the Zoning Board of Appeals, which shall regard solar energy as a factor to be considered, weighed and balanced along with other factors.

F. Transfer of ownership.

- (1) If there is a transfer of ownership of the solar array or its lease the new owners will advise the Town of Canadice. In addition, the new owners shall comply with all original conditions as well as being responsible for bringing the solar array current with regulations in place at the time of sale or lease transfer.

§ 120-108. through § 120-109. (Reserved)

ARTICLE X
Site Plan Review

§ 120-110. Purpose.

This article is adopted in accordance with the goals and objectives of the Canadice Comprehensive Plan. This article seeks to promote the public health, safety and general welfare; to encourage the use of lands in accordance with their natural characteristics and adaptability; to promote a rural living environment; to maintain a reasonable balance of population and land use; to minimize congestion on the public roads; to maintain the purity of the water in our lakes, ravines and wells; to protect wildlife habitat and unique ecological areas; to facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, recreation and other public requirements; to conserve the expenditure of funds for public improvements and services; to conserve the real property values and improvements thereon; and to promote uses in harmony with the conservation of land, natural resources and property values. Further, the review of site plans is meant to reduce or eliminate conflicts between adjoining land uses.

§ 120-111. Authorization.

The power to approve, approve with modifications and/or conditions or deny site plans as required by this chapter is vested in the Planning Board, pursuant to Town Law § 274-a.

§ 120-112. Applicability.

Unless specifically exempted hereunder, prior to the issuance of a building and/or zoning permit for any use in any district, a site plan application shall be submitted by the applicant to the Code Enforcement Officer. In addition, the following activities shall require site plan review:

- A. Change in the supporting members of a building, dimensions or configurations of the roof or exterior walls, except for single-family dwellings or farm construction as noted in § 120-114B below.
- B. Change in use of structure or land where the new use requires a site plan review.
- C. Change from one commercial (including adult use business) or industrial use to another.
- D. Addition of fill or excavation where more than 500 cubic yards of material is involved, or more than one acre of natural surface area is disturbed, or more than 20,000 square feet of natural ground cover is disturbed to a depth of six inches or more.
- E. Any use requiring a special use permit.
- F. The creation or expansion of a use or building on a lot containing more than one principal use, building, or structure. The exemptions listed in § 120-114 herein shall not apply to such lots.

§ 120-113. Issuance of building permits.

- A. Site plan approval shall be obtained from the Planning Board prior to any site work or the issuance of any related building permit unless exempted in § 120-114 herein.
- B. The Code Enforcement Officer shall not issue any building and/or zoning permit for any construction proposal or project until such time as approval of the site plan has been granted by the Planning Board, unless such review and approval is specifically exempted under the provisions of this article.
- C. All building permits issued by the Code Enforcement Officer shall stipulate the applicant's responsibility to comply with the site plan as approved by the Planning Board, including compliance with any and all conditions and modifications made to the site plan by the Planning Board.

§ 120-114. Exemptions.

The following building activities shall not be subject to review under the procedures described in this chapter unless they involve construction on a slope of more than 15%, construction within 200 feet of a NYSDEC-regulated wetland, construction in a floodway or floodplain pursuant to Chapter 67 of the Canadice Town Code, or there are other unique features found on the property such as a building listed in the State or National Register of Historic Places, rock outcroppings, and hilltop outlooks, unless site plan review is specifically required elsewhere in this chapter:

- A. Construction of one single-family dwelling, additions thereto and reasonable accommodations for private garages in the R District.
- B. Construction of farm structures of less than 2,250 square feet of ground cover in the R District. Buildings intended for the housing of livestock, chemicals or manure are not

covered in this exemption.

- C. Change in use of property to one single-family residence in the R District.
- D. Any addition, additions, accessory uses and/or accessory buildings with a combined total area of less than 800 square feet, made or proposed to be made to a single- or two-family detached dwelling or property thereof in the R District.
- E. Applications subject to review under the Subdivision Regulations¹⁵ of the Town of Canadice where the Planning Board finds the applicant has submitted with the subdivision application all the information as required in this section. The Planning Board may, when it finds the applicant has furnished insufficient site development details as part of any subdivision application, require a separate site plan application as a condition of approval of a subdivision, a building permit, a zoning permit, or any combination thereof.
- F. Any accessory building or buildings with a single or combined total area 100 square feet or less made or proposed to be made to any residential property.
- G. The erection of the following signs when complying with all other standards of the Zoning Local Law:
 - (1) Signs denoting customary home occupations not exceeding four square feet in area and bearing only property numbers, post box numbers, names of occupants of premises or other identification of premises not having commercial connotations. Only one sign, regardless of information content visibility, shall be visible from the roadway at any one time.
 - (2) Flags and insignia of any government displayed when not connected with commercial promotion.
 - (3) Legal notices, identification, informational or directional signs erected or required by governmental bodies.
 - (4) Signs directing and guiding traffic and parking on private property but bearing no advertising matter.
- H. Timber harvesting operations where 10,000 board feet, 25 standard cords (four feet by four feet by eight feet) or less, or the equivalent thereof, are to be harvested.
- I. Timber harvesting operations where more than 10,000 board feet or 25 standard cords or less, or the equivalent thereof, are to be harvested, when:
 - (1) The land is under an active 480A Management Plan.
 - (2) The land is under an active Stewardship Incentive Plan.
 - (3) The treatment work is being done by a Department of Environmental Conservation recognized cooperating consulting forester.
 - (4) The land is owned and the work proposed to be done by a New York State master forest owner(s).

15. Editor's Note: See Ch. 108, Subdivision of Land.

- (5) The land is owned and the work being done by a certified tree farmer(s).

§ 120-115. General procedures.

- A. The Planning Board shall adopt and file in the Town Clerk's office such rules of procedure as it may deem necessary to the proper execution of its responsibilities with respect to proposals for site plan review. Rules of procedure shall be printed and on file in the office of the Town Code Enforcement Officer and the Town Clerk.
- B. Application packages for site plan review are available from the Town Code Enforcement Officer (CEO). Questions unresolved by the CEO concerning the application package should be addressed to the Planning Board Chair. Review of the application with the Planning Board Chair is suggested to ensure that the correct portions of the application are completed for Planning Board review.

§ 120-116. Sketch plan conference; contents of sketch plan.

- A. Conference. A sketch plan conference detailing the basic concept of the proposed site change may be held between the Planning Board and the applicant to review the basic site design concept and generally determine the information to be required on the preliminary site plan. A sketch plan conference is an informal discussion that may be held between the Planning Board and the applicant to review the basic site design concept and generally determine the information to be required on the site plan. The Planning Board may, at this stage, suggest changes in the sketch plan involving the road layout, traffic patterns, lot size or shape, preservation of natural features or other matters which, in its opinion, will improve the layout in keeping with the best interests of the Town. The Planning Board shall be permitted a reasonable time to review the sketch plan, but in no instance longer than 45 days.
- B. Sketch plan contents. The sketch plan shall consist of a map or aerial photo of the property showing the following items depicted and drawn roughly to scale:
- (1) Property lines.
 - (2) Ponds, streams, wetland locations on site.
 - (3) Public roads and/or general means of access/egress.
 - (4) Existing and proposed parking.
 - (5) Existing and proposed utilities.
 - (6) Existing and proposed structures and buildings.
 - (7) Ten-foot contour intervals (USGS information is sufficient).
 - (8) Neighboring property and uses.
 - (9) Unique site features or views.

§ 120-117. Public hearing; waiver of hearing.

- A. Public hearing. The Planning Board shall hold a public hearing within 62 days from the day an application is received on every preliminary and final site plan approval application.
- B. Notification.
 - (1) The Planning Board shall mail notice of such hearing to the applicant at least 10 days before the hearing by regular first-class mail.
 - (2) The Planning Board shall give public notice of such hearing in the official Town newspaper at least five days prior to the date of the hearing.
 - (3) Property sign notification. Any application requiring public hearings shall require a sign to be posted within 10 feet of a public highway at a point on or about the ingress/egress to the land for which a change is proposed and at any other location designated by the Board. This posting shall occur at least five days before such hearing and will remain posted until the application has been finally acted upon by the appropriate board. The sign shall be no less than 27 inches in width and 20 inches in height and shall contain the applicant's name, the proposed activity and the date and time when the public hearings will be held.
- C. Waiver of requirement for public hearing on final site plan. The Planning Board may waive the requirement for a public hearing on a final site plan application if a hearing on the preliminary site plan was held and the Planning Board finds that the final site plan being reviewed is in substantial agreement with the approved preliminary site plan review or plat, modified in agreement with any modifications or conditions accompanying such approval, there is no public controversy over the proposed site plan, and a negative declaration of significance has been issued pursuant to SEQR.

§ 120-118. Application for preliminary site plan approval.

- A. An application for preliminary site plan approval with or without a sketch plan conference shall be accompanied by information drawn from a check list established by the Planning Board. The checklist for review shall include but not necessarily be limited to the following information:
 - (1) The title of the project.
 - (2) An area map showing the parcel and Tax Map parcel number under consideration for review; all properties, roads and easements within 500 feet of the boundaries thereof; the internal road pattern; and the location of all existing and proposed structures on the site and current and future use of the same.
 - (3) Existing natural features on the site and the future use of the same.
 - (4) Contour intervals at 20 feet or less and including 200 feet of adjacent property, if required. The Planning Board may require topography at smaller intervals when appropriate.
 - (5) A separate drainage report submitted before the start of any ground alteration.
 - (6) A separate statement as to proposed sources of water supply and method of sewage

disposal.

- (7) A statement disclosing the intended use of the property, including any long-range use or future development intended.
 - (8) A description of the project.
 - (9) Environmental assessment form pursuant to the New York State Environmental Quality Review Act and its implementing regulations found at 6 NYCRR Part 617 (hereinafter collectively referred to as "SEQR").
 - (10) All proposed and/or current maintenance agreements shall be submitted with the site plan application.
- B. The Planning Board may, at this stage, suggest changes in the preliminary plan involving the road layout, traffic patterns, lot size or shape, preservation of natural features or other matters which, in its opinion, will improve the layout in keeping with the best interest of the Town.
 - C. County Planning Board review. Where required by § 239-m of the General Municipal Law and by Ontario County Planning Board Resolution 1-87 or as otherwise required, the preliminary plan shall be submitted to the County Planning Board for review and approval as appropriate.
 - D. The Planning Board shall hold a public hearing within 62 days after receiving a complete preliminary site plan application.
 - E. When common property exists, the ownership of such common property may be either public or private. Where common property exists in private ownership, the Planning Board must approve satisfactory arrangements for the improvement, operation and maintenance of such service, including parking areas, recreational and open space areas, roads, private roads, drives, retention ponds and overflow provisions.

§ 120-119. Action on preliminary site plan.

- A. Within 62 days of the date of the closing of the public hearing, the Planning Board shall render a decision. The Planning Board may approve, approve with modifications or conditions, or deny for cause preliminary site plan applications. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. In addition, the time within which the Planning Board must render its decision shall not include the time spent in complying with SEQR. The Planning Board shall file the decision in the office of the Town Clerk within five business days after the decision is rendered, and a copy of the decision shall be mailed to the applicant by regular first-class mail.
- B. The approved preliminary site plan shall be filed, along with any conditions or modifications, in the office of the Code Enforcement Officer.

§ 120-120. Application for final site plan approval.

- A. After receiving conditional/preliminary site plan approval from the Planning Board and

approval for all necessary permits from appropriate local, state or federal agencies, the applicant shall prepare his final detailed site plan and submit it to the Planning Board for approval.

- B. In addition to the information required for preliminary site plan review, the following information shall accompany an application for final site plan approval:
- (1) An estimated project construction schedule.
 - (2) Certification of compliance with the New York State Uniform Fire Prevention and Building Code, New York State Department of Health and any other applicable codes in effect in the Town of Canadice.
 - (3) A detailed sizing and final material specification of all required improvements.
 - (4) A final site plan, or a portion thereof, prepared by a licensed professional engineer, licensed surveyor, licensed architect or licensed landscape architect and certification of the site or plans by stamp or seal.
 - (5) A colored rendering of the site showing building elevations, materials and related information.
- C. If more than six months has elapsed between the time of the Planning Board's report on the preliminary site plan or if the Planning Board finds that the final site plan does not conform substantially with the preliminary site plan as conditionally approved, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.
- D. The final site plan shall conform substantially to the preliminary site plan that has received preliminary site plan approval. It should incorporate any revisions or other features that have been required by the Planning Board. All such compliance shall be clearly indicated by the applicant on the appropriate submission. If a landscape plan was not submitted on prior applications, such a plan must be submitted with the application for final approval.

§ 120-121. Action on final site plan application.

- A. Within 62 days of the date of the public hearing, or within 62 days of receipt of a complete final site plan application if no public hearing is held, or such time period as may have been mutually agreed upon between the applicant and the Planning Board, the Planning Board shall render a decision. In the case of a modification delay on an incomplete final site plan, the above time period will not commence until the Planning Board deems the application complete. The Planning Board shall file a dated copy of its decision with the Town Clerk.
- B. The Planning Board may, at its discretion, shorten the review time frame and may deem sketch plans to be preliminary plans or preliminary plans to be final plans, provided that all information needed by the Planning Board to make a proper decision has been provided. In any instance, the applicant shall provide to the Planning Board a final copy of the site plan which incorporates all Planning Board restrictions or conditions prior to issuance of a building permit.
- C. Upon approving an application, the Planning Board Chair shall endorse its decision on a

copy of the final site plan and shall forward it to the Code Enforcement Office, who shall then issue a permit to the applicant if the project conforms to all other applicable requirements.

- D. Upon disapproving an application, the Planning Board Chair shall so inform the Code Enforcement Officer, in writing, and he shall deny a permit to the applicant. The Planning Board Chair shall also notify the applicant, in writing, of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.
- E. If no decision is made within said time frame specified in Subsection A above, the final completed site plan shall be considered approved.
- F. Signing of final site plan. Every site plan submitted to the Board for its approval shall carry the following endorsement:

Approved by resolution of the Planning Board of the Town of Canadice, New York, on the ____ day of _____, 2____, subject to all requirements and conditions of said resolution. Any change, erasure, modification or revision of this plan, as approved, shall void this approval. Signed this ____ day of _____, 2____, by _____, Chair, Planning Board.

- G. In the absence of the Chair, the Acting Chair may sign in his place.
- H. If there is a County Official Map, such endorsement shall stipulate that the development not conflict with the County Official Map or, in case where the development fronts on or has access to or is otherwise related to roads or drainage systems shown on the County Map, that such development has been approved by the County Planning Board in the manner specified by Article 12-B, § 239-k, of the General Municipal Law.¹⁶

§ 120-122. Impact of final site plan approval.

- A. Construction must begin within one year after the date of the Planning Board's final approval, or site plan approval shall expire.
- B. Site plan approval will automatically expire 18 months after the date the Planning Board's final approval is granted, unless significant work has commenced on the project.
- C. Approval not to imply acceptance.
 - (1) Approval of site plans shall not be deemed to constitute or imply acceptance by the Town of any road, drainageway, water line, water system, or any other improvement shown on such plan.
 - (2) Offers of dedication of rights-of-way, streets, roads, parkland, easements, and other property or interests of property from the developer to the Town as part of a site plan review application shall not be deemed accepted by the Town until formally accepted by action of the Town Board in compliance with the method prescribed by law.

¹⁶ Editor's Note: Article 12-B, § 239-k, of the General Municipal Law was repealed by L. 1997, c. 451, § 2, eff. 7-1-1998. See now Article 12-B, § 239-f.

§ 120-123. Criteria for site plan review.

The Planning Board's review of a site plan shall include, as appropriate, but not be limited to, the following:

A. General considerations.

- (1) Provisions for environmental protection. Existing features of the site which add value to residential or other development, such as desirable trees, water bodies and watercourses, historic spots and similar irreplaceable assets, should be preserved through harmonious design.
- (2) Provisions for economic protection. Applicants shall provide the Planning Board with an economic impact statement which identifies the cost and benefit effect on the surrounding properties, Town and school districts, relative to the proposed changes. Exemptions from this requirement are applications for home occupations, farm related, timber and clear-cutting, noncommercial communications towers or those applications the Planning Board identifies as not needing this statement.
- (3) All plans shall conform to Chapter 108, Subdivision of Land, Article VI, Design Criteria and Construction Specifications for Land Development, and the appendix which is supplemental to Chapter 108, Subdivision of Land.

B. Environmentally sensitive areas.

- (1) Wetlands. Four percent of the land in the Town of Canadice is defined as "natural wetlands" or "bog." These areas are found, for example, at the south ends of Honeoye Lake, Canadice Lake and Hemlock Lake and include the bog located west of Canadice Hill Road near Harriet Hollister Spencer Park and to the south of the Ross Road and Canadice Hill Road junction. Any development that is proposed on these lands or within 200 feet of a wetland area or having a potential major impact on such areas as determined by the Planning Board shall be designed so as to prevent adverse environmental impact. The Planning Board, in its review, may require additional design features intended to minimize the impact.
- (2) Floodplains. Any proposed development or change of land use within these areas is subject to the current regulation of Chapter 67, Flood Damage Prevention.
- (3) Watercourses. When a proposed development is traversed by or adjacent to a natural lake, pond or stream, the boundaries or alignment of said watercourse shall be preserved unless, in the opinion of the Planning Board, change of realignment will enhance the development and beauty of the plot or the utilization of such features in the future. All proposed changes in watercourse alignment shall be in accordance with the rules and regulations of the New York State Department of Environmental Conservation and will cause no change in stream flow which would result in flood hazards downstream.
- (4) Woodlands. To the fullest extent possible, all existing trees and shrubbery shall be preserved by the developer. Where there is a question as to the desirability of removing a group of trees in order to allow for the use of the land for a lot, the Planning Board may require modification of such lot. Where any land other than that

included in public right-of-way is to be dedicated to the public uses, the developer shall not remove any trees from the site without written permission from the Planning Board.

- (5) Unique features. Features such as historic landmarks and sites, rock outcroppings, hilltop lookouts, desirable natural contours and similar features shall be preserved wherever possible.
 - (6) Ponds. Ponds are unique in their impact on the environment, and the construction of the same may require special consideration. The pond may also be considered for fire safety.
- C. Berms. Berms may be used to mask an area or may be considered as a means for diverting water from an area, provided that there is no significant change to a watercourse as identified in Subsection B(3) above. See also Subsection G(4) below.
- D. Compatibility to adjacent land uses. Evidence of the compatibility of the proposed use with existing and anticipated development must be examined. All development shall be subject to the following regulations:
- (1) Noise.
 - (a) Public address and other sound systems shall emit no noise such that a person of reasonable sensibilities would be disturbed by the noise at the property line adjoining a residential piece of property in an average time frame over one second, but in no event shall any such noise exceed 70 decibels, as measured in the A-weighted scale, at such property line.
 - (b) Noise and/or vibrations created by the proposed operation shall meet all applicable regulations in any other codes and ordinances legally adopted and enforced in the Town.
 - (2) Glare.
 - (a) Direct glare shall be so hooded or shielded that the maximum extent of the base of the cone of direct illumination shall be 60 feet drawn parallel to and at the ground level and 90 feet, with the provision that the luminary is less than four feet above the ground level.
 - (b) For other provisions, see the Town of Canadice Design Criteria and Construction Specifications for Land Development, which is an appendix to the Town of Canadice Subdivision Regulations, Chapter 108 of the Town Code, on file in the Office of the Code Enforcement Officer.
 - (3) Unsightliness.
 - (a) All areas shall be provided with waste disposal containers of sufficient number and size to prevent the accumulation of trash on the property or adjacent areas and shall be cleaned of all litter and trash as is necessary to avoid health and/or visual problems.
 - (b) Waste and sewage facilities shall be approved by the Planning Board, New

York State Department of Health and the Code Enforcement Officer.

E. Water supply and sewage disposal.

- (1) Conditions. A separate statement shall be required as to proposed sources of water supply and method of sewage disposal; who will own the water and sewer systems; a detailed layout of each system and whether necessary districts are formed; the receiving sewage treatment plant; the lines, dimensions and purpose of all utility easements, including properly placed fire hydrants; and preliminary design of bridges and culverts.
- (2) Adequacy of fire flow. The Planning Board shall review and determine that provision is made for sufficient water for fire fighting.
- (3) Approvals.
 - (a) Prior to any site work preparation or installation, the system design shall be approved when appropriate by the New York State Department of Health and/or Department of Environmental Conservation and other agencies as deemed necessary.
 - (b) A submission of as-built engineering drawings bearing the signed seal of a professional engineer certifying conformance to approved plans shall be submitted to the Planning Board and other agencies as deemed necessary when these systems are completed. Such drawing shall be drawn to scale, be capable of being reproduced and shall indicate the following:
 - [1] Dimensions, angles and distances, as applicable.
 - [2] The location of sewer and drain Y-branches, laterals, manholes, catch basins, hydrants, valves and curb shutoffs.
 - [3] Road profiles and center-line elevations.
 - [4] Final grade drawing showing swales, ditches, easements and dedicated roadways.
 - [5] No certificate of occupancy shall be issued until the Code Enforcement Officer and/or the appointed Town Engineer signs the drawings.
 - (c) All plans shall conform to Chapter 108, Subdivision of Land, Article VI, Design Criteria and Construction Specifications for Land Development, and the appendix which is supplemental to Chapter 108, Subdivision of Land.

F. Stormwater drainage and grading.

- (1) Adequacy of stormwater drainage. A separate drainage report must be submitted to and approved by the Planning Board before the start of any ground alteration. It shall clearly indicate the basis of design and the intended method of all stormwater disposal and flood hazard prevention; how all runoff will be handled during grading and development operations; and what erosion and sedimentation prevention measures will be employed.

- (2) Location of construction. All structures shall be constructed or located with a ground elevation so as to provide a sloping grade causing the surface drainage to flow away from the walls of such structures and from adjacent structures on adjacent property. The ground grade of any lot upon which new construction or earth movement is to be conducted shall be related to existing grades, and all drainage systems shall be approved by the Planning Board prior to the start of any construction, excavation or filling.
- (3) Performance standard. Site drainage will be designed in such a way that after construction there should be no deleterious effects to the quality nor undue increases in the quantity of surface drainage beyond the property line than came from the site before construction began. A large project could require detention and/or retention ponds where necessary to mitigate stormwater runoff.
- (4) All plans shall conform to Chapter 108, Subdivision of Land, Article VI, Design Criteria and Construction Specifications for Land Development, and the appendix which is supplemental to Chapter 108, Subdivision of Land.

G. Landscaping.

- (1) Intent.
 - (a) The intention is to provide for the development of sound open-area planning to assure the preservation of natural and scenic resources and maintain and/or create recreational areas. Open spaces, recreational areas, ponds, wildlife habitats and other areas of public use or value shall be incorporated as approved in the site plan.
 - (b) The Planning Board shall encourage the use of plants, earth berms and varying textures to improve the appearance of the site, aid in defining pedestrian areas and provide screening from the surrounding area. When possible, existing vegetation should be retained and incorporated into the landscaping plan. This is particularly true if large trees or other significant plants and landscape elements can be salvaged.
- (2) Fences, hedges and screen plantings.
 - (a) Shall comply with the provisions of § 120-80 herein.
 - (b) The Planning Board may direct and require fences, hedges, and screen plantings to provide screening and/or buffering between adjoining properties and/or land uses as it deems appropriate to provide for general health, safety and welfare.
- (3) Guarantee. In the case of commercial or industrial development, the developer must guarantee the landscape materials will grow for one year or be replaced by the developer.
- (4) Buffers and berms. When determined necessary by the Planning Board so as to provide a visual and/or sound barrier, buffer areas shall provide effective, immediate screening and contain plantings of grass, trees, hedges, shrubs, etc. The following shall be required:

- (a) A buffer base of at least 50 feet in width shall be provided along the road boundary and along the boundary line adjacent to residential development.
- (b) When the proposed development abuts undeveloped property, a buffer of at least 35 feet shall be maintained.
- (c) If properly landscaped with grass, trees and shrubs, a berm, not to exceed eight feet in height, may be created for the purpose of screening and noise reduction.

H. Design, illumination, signage, waste disposal and storage.

(1) Design, location and size.

- (a) All setbacks shall accommodate the buffering standards as set forth in Subsection G, Landscaping, above.
- (b) The design development pattern shall be in harmony with the Town's rural, scenic and wooded nature, thereby complementing adjacent development, especially in the R and C Districts.
- (c) All adult use businesses shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window or by means of a depiction or decoration, or to allow to be displayed or exhibited, any specified anatomical areas or specified sexual activities.

(2) Illumination.

- (a) Where any use, other than for a residential area or for a farm or dairy use, involves operation between the hours of 1/2 hour after sunset and 1/2 hour before sunrise, proper exterior illumination of suitable intensity may be required by the Planning Board at each entrance and exit and along each side of any building and parking area so used.
- (b) Said illumination shall be localized and unobtrusive. The source of illumination shall not be visible off the property.
- (c) All plans shall conform to Chapter 108, Subdivision of Land, Article VI, Design Criteria and Construction Specifications for Land Development, and the appendix that is supplemental to Chapter 108, Subdivision of Land.

(3) Signage: shall comply with the provisions of § 120-79 herein.

(4) Outdoor storage. The purpose in regulating outdoor storage and display is to promote aesthetic appeal and end visual pollution and clutter. While recognizing that outdoor storage and display may at times be necessary or desirable, it shall be discouraged and eliminated whenever such may be achieved without the creation of a genuine hardship.

- (a) At least one service building or facility shall be constructed in each multiple-residence (apartment, condominium, cooperative or townhouse), commercial and industrial development which shall be adequate to provide for

storage of all equipment, tools and materials necessary for the maintenance of said development, and all such equipment, tools and materials shall be stored within said building when they are not in use.

- (b) The service building shall comply with the setback requirements specified in this chapter.

I. Vehicular circulation and parking.

- (1) Private roads and roadways. The owners of any approved private road, as a condition of approval, must grant an easement to the Town allowing access at all times over said road to emergency vehicles, to municipal fire vehicles and to emergency vehicles of such private organizations as the Town may designate.

- (a) Road layout. The road layout has a decisive effect on the development of the land. The Planning Board shall consider the functional, social and aesthetic effects of any proposed circulation system in promoting arterial contact or privacy.

- [1] A statement of the inclusion of this roadway shall be noted in the deed of such proposed lots and filed with the Planning Board before the final site plan is approved.

- [2] The lot line shall extend to the center of the roadway, but lot size and setback standards shall commence at the edge of the roadway.

- (b) All plans shall conform to Chapter 108, Subdivision of Land, Article VI, Design Criteria and Construction Specifications for Land Development, and the appendix which is supplemental to Chapter 108, Subdivision of Land.

- (c) Access provisions for handicapped persons. Minimum New York State standards regarding handicap transportation and safety shall be applied throughout the site plan review. Legislation known as "Section 504 of the Federal Rehabilitation Act," as amended, requires recipients of federal financial assistance to provide accessibility for the disabled in existing programs and services (such as ramps at the building entrances and curbs at pedestrian crosswalks, public rest room facilities, elevators or platform lifts, doors with a minimum of 32 inches for wheelchairs, parking spaces, drinking fountains 36 inches high, public telephones 54 inches high, etc.

- (d) Additional development review criteria shall be as follows:

- [1] A child getting from the car to a school bus.

- [2] Adequate space for snow piling.

- [3] Bicycle safety.

- [4] The views of and from the road.

- [5] Privacy for and from neighbors.

- [6] The parking of trucks or recreational vehicles.

J. Provisions for emergencies. The purpose of this subsection is to facilitate rapid and effective extinguishment of fires and prompt, efficient use of emergency and Town vehicles.

- (1) Required improvements. Applicants may be denied building permits if they fail to demonstrate inclusion of safety features, including but not limited to fire alarm systems, smoke detectors, placement of fire hydrants, adequate lighting, road signs and address numbers.
- (2) Emergency vehicle safety requirements. The following are required:
 - (a) Sufficient frontage and circulation to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles to serve the site and its proposed uses adequately.
 - (b) A dead-end access exceeding 300 feet in length with a turnaround 90 feet in diameter at the closed end.
 - (c) Fire lane standards.
 - [1] The lane shall provide clear, unobstructed access for vehicles and apparatus at all times.
 - [2] The lane shall be graded, compacted and drained as determined by the applicable Town fire district.
 - [3] The lane shall be 20 feet in width to allow for passage of two emergency vehicles.

K. Environmental protection.

- (1) General considerations.
 - (a) Because of the characteristics of the soil as it relates to erosions or suitability for septic systems and depth to bedrock, any alteration of existing slopes which are greater than 15% shall require additional consideration by the Planning Board.
 - (b) Existing features of the site which add value to residential or other development, such as desirable trees, water bodies and watercourses, historic spots and similar irreplaceable assets, will be preserved through harmonious design.
 - (c) A statement by the developer regarding the controls to be put in place for control of stormwater, dust, waste and erosion during and after construction shall be required and approved by the Planning Board for the operations in Subsection K(2) below prior to the commencement of any activity or work, except as otherwise provided by this article.
 - (d) The developer shall field mark all topography changes before any construction begins.
- (2) Construction standards.

(a) Construction control limits. The following operations shall require a statement as provided in Subsection K(1)(c) above:

[1] Excavation.

[a] Any excavation or fill which will impair existing surface drainage, constitute a potential erosion hazard or act as a source of sedimentation to any adjacent land or watercourse.

[b] Any excavation or fill which has final slopes steeper than one foot vertical to two feet horizontal.

[2] Grading.

[a] Any grading which affects one acre (43,560 square feet) or more of natural ground surface.

[b] Any grading which impairs existing surface drainage, constitutes a potential erosion hazard or acts as a source of sedimentation to any adjacent land or watercourse.

[c] Any grading which requires a total of 500 or more cubic yards of material on any lot or parcel thereof.

[d] Stripping of topsoil.

[i] Any stripping which is at a depth of greater than six inches at any point and affects more than 20,000 square feet of natural ground surface.

[ii] Any stripping which impairs existing surface drainage, constitutes a potential erosion hazard or acts as a source of sedimentation to any adjacent land or watercourse.

[iii] Any stripping which results in a total of 500 or more cubic yards of material on any lot or parcel thereof.

[e] Moving or removal of topsoil.

[i] Topsoil moved during the course of construction shall be stockpiled for later redistribution on the site. It shall be kept stabilized by seeding, planting and/or other procedures as deemed necessary by the Planning Board.

[ii] At no time shall topsoil be removed from the site without written permission from the Planning Board.

[f] Prevention of soil erosion.

[i] All structures shall be designed so as to minimize the amount of cutting into any slope, embankment, hill or ravine.

[ii] Unpaved parking and activity areas shall be designed, regulated and/or treated so as to prevent the excessive

production of airborne dust or dirt or soil erosion.

- [iii] The developer shall not be permitted to leave any surface depressions which will collect pools of water, except when specifically designed (said design approved during site plan review) for the purpose of retaining or detaining water.

§ 120-124. Performance guaranty.

- A. No certificate of occupancy shall be issued until all improvements shown on the final site plan are installed or a sufficient performance guaranty has been posted for improvements not yet completed.
- B. The sufficiency of such performance guaranty shall be determined by the Planning Board. The Planning Board may wish to consult with the Town Attorney or other competent persons before determining sufficiency of such performance guaranty.
- C. Performance security. At the discretion of the Planning Board, it may, after approval of the application and before a permit is issued, require the applicant to furnish the Town of Canadice an irrevocable letter of credit, performance payment or similar security in an amount and nature determined to be adequate by and approved by the Planning Board. Such security shall ensure that all items as may be deemed necessary shall be constructed and completed in accordance with this chapter and all other laws and ordinances of the Town of Canadice.

§ 120-125. Inspection of improvements.

The Code Enforcement Officer shall be responsible for the overall inspection of site improvements, including coordination with any engineers, other officials and agencies, as appropriate.

§ 120-126. Special considerations for review of communications towers.

- A. The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications to an existing tower that will increase the height of the existing tower. Construction of a new tower or modification of an existing tower shall be subject to the relevant guidelines and criteria below that are determined by the Planning Board at the presubmission conference to be appropriate:
 - (1) Assessment of "before" and "after" views from key viewpoints both inside and outside the Town, including state highways and other major roads; from state and local parks and other public lands; from any privately owned preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors or travelers.
 - (2) Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and roadways.
 - (3) Assessment of alternative tower designs, such as monopoles.

- B. The Planning Board may request a review of the application by a qualified engineer for evaluation of need for and design of any new tower. The costs associated with such a review shall be borne by the applicant.
- C. Application for site plan review for a communications tower shall include:
 - (1) A site plan or plans drawn to scale and identifying the site boundary, tower, guy-wire anchors, existing and proposed structures, vehicular parking and access, existing vegetation to be retained, removed or replaced and uses, structures and land use designations on the site and abutting parcels.
 - (2) A plan drawn to scale showing proposed landscaping, including species type, size, spacing and other features.
- D. Conditions for site plan approval for all communications towers.
 - (1) Compliance with all conditions and requirements of a special use permit granted for said communications tower.
 - (2) Insurance required. For all commercial communications towers, full insurance is to be carried by the tower owner until the tower is removed.
 - (3) For all commercial communications towers, a performance bond or letter of credit established at the time of erection of said tower shall be posted, renewed and filed annually with the Town Clerk, thus ensuring this work is done. Said bond or letter of credit shall be in the amount of 110% of the current estimated cost of removal.
- E. Analysis by Planning Board.
 - (1) For future shared usage of new towers, the applicant must analyze the feasibility of designing a proposed commercial communications tower to accommodate future demand for commercial communications facilities. The scope of this analysis shall be determined by the Planning Board. This requirement may be waived, provided that the applicant demonstrates that provision for future shared usage of the facility is not feasible and is an unnecessary burden.
 - (2) Unless the requirement for providing shared use has been waived by the Planning Board during review of the special use permit application, plans for a new commercial communications tower should show that the tower owner has agreed to permit other persons to attach other communications apparatus that do not interfere with the primary purposes of the commercial communications tower, provided that such other persons agree to negotiate a mutually agreeable compensation to the owner from such liability as may result from such attachment.
 - (3) The Planning Board shall find that any proposed new tower shall have the minimum height needed to provide future shared usage.
 - (4) The Planning Board may consider a new commercial communications tower instead of shared usage on an existing tower or structure where the applicant demonstrates that shared usage of existing towers and structures is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use of existing towers and/or structures as well as documentation of the physical and/or

financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

§ 120-127. Waiver of requirements.

The Planning Board may, when reasonable, waive any requirements for the approval, approval with modifications, or disapproval of a proposed site plan. A waiver may be granted when the Planning Board makes a finding that such requirements are not necessary to the public health, safety or general welfare or are inappropriate to a particular site plan.

§ 120-128. Consultations.

In its review, the Planning Board may consult with any officials and agencies as it deems appropriate. The Board may require a licensed professional engineer, surveyor, architect and/or landscape architect to prepare the final site plan and certify it by seal and signature.

§ 120-129. Integration of procedures.

- A. Whenever the particular circumstances of a proposed development require compliance with either the special use procedure in this chapter or the requirements of the Town subdivision regulations,¹⁷ the Planning Board shall attempt to integrate the site plan review, as required by this section, with the procedural and submission requirements for such other compliance.
- B. Where a proposed site plan contains one or more features that do not comply with the zoning regulations, an application may be made to the Zoning Board of Appeals for an area variance, without the need for a denial of the zoning permit by the Code Enforcement Officer.

§ 120-130. (Reserved)

§ 120-131. (Reserved)

§ 120-132. (Reserved)

§ 120-133. (Reserved)

§ 120-134. (Reserved)

**ARTICLE XI
Reserved**

§ 120-135. (Reserved)

§ 120-136. (Reserved)

¹⁷. Editor's Note: See Ch. 108, Subdivision of Land.

§ 120-137. (Reserved)

§ 120-138. (Reserved)

§ 120-139. (Reserved)

§ 120-140. (Reserved)

§ 120-141. (Reserved)

§ 120-142. (Reserved)

§ 120-143. (Reserved)

§ 120-144. (Reserved)

§ 120-145. (Reserved)

§ 120-146. (Reserved)

§ 120-147. (Reserved)

§ 120-148. (Reserved)

§ 120-149. (Reserved)

ARTICLE XII
Enforcement and Administration

§ 120-150. Enforcing officer.

This chapter shall be enforced by the Code Enforcement Officer in accordance with the provisions of this chapter.

§ 120-151. Duties and authority of Code Enforcement Officer; responsibility for issuance of zoning permit.

- A. The Town Board shall provide for the services of a Code Enforcement Officer. The Code Enforcement Officer is hereby given the duty, power, and authority to enforce the provisions of this chapter. He or she shall examine all applications for permits, issue permits for the construction, alteration, enlargement, and occupancy of all uses which are in accordance with the requirements of this chapter and all nonconforming uses, record and file all applications for permits with accompanying plans and documents and make reports as may be required.
- B. Zoning permits for a variance from the requirements of this chapter shall be issued only upon written order of the Zoning Board of Appeals.

- C. Zoning permits for such special uses and site plans as may be enumerated in this Zoning Local Law shall be issued only upon written order of the Planning Board.
- D. Duties of the Code Enforcement Officer.
 - (1) It shall be the duty of the Code Enforcement Officer to cause any plans, buildings or premises to be examined or inspected to determine that they are in compliance with the provisions of this chapter.
 - (2) If the Code Enforcement Officer shall find that any of the provisions of this chapter are being violated, he shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action to correct it. He shall order discontinuance of illegal uses of land, buildings or structures or illegal additions, alterations or structural changes, or stop-work or discontinuance of any illegal work being done, or shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.
 - (3) The Code Enforcement Officer shall be authorized and empowered to issue appearance tickets pursuant to § 150.20 of the New York State Criminal Procedure Law.

§ 120-152. Zoning permits and/or requests for zoning compliance.

- A. No building or structure shall be erected, enlarged, structurally altered or moved, no new use shall be established, and no building permit shall be granted pursuant to the New York State Uniform Fire Prevention and Building Code until a zoning permit therefor has been issued by the Code Enforcement Officer, and no alterations to an existing building shall be made without a zoning permit, unless such alterations are exempt from a building permit pursuant to the New York State Uniform Code.¹⁸ No zoning permit, nor any certificate of occupancy or compliance pursuant to the New York State Uniform Code, shall be issued for any building where said construction, addition, alteration, moving or use thereof would be in violation of any of the provisions of this chapter or where any necessary Town Planning Board subdivision approval has not been granted.
- B. No zoning permit nor building permit shall be issued, nor any certificate of occupancy nor certificate of compliance issued, for any structure, use, or addition in the Town of Canadice until the applicant has submitted with the zoning or building permit application a sketch plan indicating the location of access to a public highway (which may be provided via a private right-of-way meeting the requirements of this chapter) and the Code Enforcement Officer determines that either an existing curb cut is sufficient to serve the property or that a curb cut permit for a new access drive or road has been issued by the agency of competent jurisdiction, such as the Town Highway Department, Ontario County Public Works, or New York State Department of Transportation.

§ 120-153. Plot and construction plans.

There shall be submitted with all applications for zoning permits a tape location map or

¹⁸. Editor's Note: See Ch. 52, Construction Codes, Uniform.

surveyor's map showing all property boundaries and existing buildings and setbacks of those buildings.

§ 120-154. Application for permits.

All site plan, variance, building permit, and zoning permit applications shall be made by the owner of the property that is the subject of the application. Applications for such permits when made by a party other than the owner shall be accepted by the Town only when accompanied by an original letter or other instrument from the owner expressly granting such party permission to file said application.

§ 120-155. Complaints of violations.

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record such complaint and immediately investigate the report thereon.

§ 120-156. Penalties for offenses.

- A. It shall be the policy of the Town Board to seek voluntary compliance with the provisions of this chapter. Where such voluntary compliance cannot be obtained within a reasonable time, violators may be dealt with as otherwise provided for in this chapter.
- B. Any person violating any of the provisions of this chapter and any person who shall knowingly assist in the violation of this chapter or any conditions imposed by the Planning Board or the Board of Appeals or who shall build contrary to the plans or specifications submitted to the Enforcement Officer and by him certified as complying with this chapter and any person who shall omit, neglect or refuse to do any act required by this chapter shall be guilty of a violation and subject to a fine of not less than \$50 and no greater than \$250 for each violation.
- C. Every such person shall be deemed guilty of a separate violation for each day such violation, disobedience, omission, neglect or refusal shall continue.
- D. Alternative penalty. In the case of any violation of any of the provisions of this chapter or conditions imposed by the Planning Board or Zoning Board of Appeals, in addition to other remedies herein provided, the Town Board may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use to restrain, correct or abate such violation to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

§ 120-157. Fees.

- A. Costs incurred by the Planning Board or its agents in connection with the review of a proposed site plan and/or review of a special use permit application shall be charged to the applicant.
- B. The Town Board shall, from time to time, establish a schedule of fees for the review of a proposed site plan, special use permit, variance, or interpretation to be charged to the

applicant. Said fees shall be subject to Town Board approval by resolution.

- (1) The schedule of fees, charges and expenses shall be conspicuously posted in the Town Hall.
- (2) The schedule of fees, charges and expenses may be altered or amended by resolution duly adopted by the Town Board.
- (3) No action may be taken on any application or appeal until all applicable fees, charges and expenses have been paid in full and notice thereof forwarded to the appropriate board along with the application.

§ 120-158. Zoning Board of Appeals.

A. Creation and membership.

- (1) There is hereby established a Zoning Board of Appeals having the powers authorized under the Consolidated Laws of the State of New York. Said Board shall consist of five members, appointed by the Town Board. An appointment to a vacancy occurring prior to expiration of term shall be for the remainder of the unexpired term.
- (2) Alternate membership.
 - (a) The Town Board of the Town of Canadice, Ontario County, New York, hereby designates that, in addition to the five regular members of the Town Zoning Board of Appeals, one alternate member shall be appointed to serve on the Town of Canadice Board of Appeals. An alternate member shall be appointed by resolution of the Town Board, and the term of office shall be for five years. The Town Board may provide for compensation to be paid to said alternate.
 - (b) As with regular members, the alternate member shall hold no elective office in the Town of Canadice nor be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest.
 - (c) The alternate member may participate in discussion of the proceedings of the Zoning Board of Appeals but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. No more than five votes shall be cast for any matter. In the event that the alternate member shall be necessary to create a Board of five members for any application, the absent regular member shall not thereafter vote in any manner with respect to that application.
 - (d) The foregoing provisions concerning alternate membership shall, where applicable, specifically amend and supersede § 267 of the Town Law of the State of New York. Where not so amended, § 267 shall remain in full force and effect.
- (3) Appointment of officers; meetings.
 - (a) The Town Board shall appoint a Chairperson. The Zoning Board of Appeals

shall adopt rules and regulations consistent with law. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine.

- (b) The Chairperson or, in his or her absence, the Acting Chairperson may administer oaths and compel the attendance of witnesses.
 - (c) The Zoning Board of Appeals shall establish such rules and regulations as are required by state and local laws for the transaction of its business and may amend, modify and repeal the same from time to time.
- (4) Quorum; voting. The presence of three members shall constitute a quorum. The Zoning Board of Appeals shall act by resolution. The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement or decision or determination of the Code Enforcement Officer or to decide in favor of the applicant any matter upon which it is required to pass under this chapter or to grant any variation from the requirements of this chapter.

B. Powers and duties.

- (1) Action of the Zoning Board of Appeals. In exercising its powers, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may value such order, requirement, decision or determination as in its judgment ought to be made in accordance with the provisions of this chapter and pursuant to the Consolidated Laws of the State of New York.
- (2) Hear and decide appeals.
 - (a) To hear and decide appeals where it is alleged that error or misinterpretation in any order, requirement, decision, grant or refusal made by the Code Enforcement Officer or other administrative official in the carrying out or enforcement of the provisions of this chapter or any local law or ordinance pursuant thereto.
 - (b) Such appeal may be filed by any person aggrieved or by an officer, board, or department of the Town. Such appeal shall be filed within 60 days after the filing in the Town Clerk's office of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer.
 - (c) The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.
- (3) Interpretation. The Zoning Board of Appeals may issue interpretations of the Zoning Local Law upon request from any party. The Zoning Board of Appeals, in making an interpretation, shall consider the language in the Code, the minutes of the Zoning Commission in drafting the Zoning Local Law, the minutes of Town Board in adopting and amending this Zoning Local Law, and the intent of the Comprehensive

Plan.

- (4) Hold public hearings and provide notice thereof.
 - (a) The Zoning Board of Appeals shall hold a public hearing within 62 days from the day an appeal is received on any matter referred to under Town Law § 267-a.
 - (b) Open to the public. Hearings of the Zoning Board of Appeals shall be public. The Board shall keep minutes of its proceedings, showing the action of the Board and the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its inspections and other official actions, all of which shall be a public record.
 - (c) Notification.
 - [1] The Zoning Board of Appeals shall mail notice of such hearing to the originator of the appeal at least seven days before the hearing by regular first-class mail.
 - [2] The Zoning Board of Appeals shall ensure that public notice of such hearing is published in the official Town newspaper at least five days prior to the date of the hearing.
 - [3] Property sign notification. Any appeal requiring a public hearing shall require a sign be posted within 10 feet of a public road at a point on or about the ingress/egress to the land for which a change is proposed and at any other location designated by the Board. This posting shall occur at least five days before such hearing and will remain posted until the appeal has been finally acted upon by the Appeals Board. The sign shall be no less than 27 inches in width and 20 inches in height and shall contain the appealing party's name, the proposed activity and the date and time when the public hearing will be held. Such sign shall be oriented and located so that it is clearly visible from the public road.
- (5) Hear and decide area variances.
 - (a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer or in conjunction with a pending application made to the Planning Board for site plan review or subdivision approval, to grant area variances.
 - (b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the zoning district, neighborhood, or community by such grant. In making such determination, the board shall also consider:
 - [1] Whether an undesirable change will be produced in the character of the zoning district or neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

- [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - [3] Whether the requested area variance is substantial;
 - [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - [5] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance; and
 - [6] In the case a setback variance from a public or private right-of-way would result in a setback of a principal or accessory structure of less than 20 feet from such public or private right-of-way, the Zoning Board of Appeals shall determine that visibility along such right-of-way shall not be unduly compromised and that off-street parking shall be located in such a way that visibility and safety is not unduly compromised, or that the hardship is of such a magnitude that it offsets such compromises in visibility and safety. Wherein the Zoning Board of Appeals finds the latter adjacent to a public right-of-way, the Zoning Board of Appeals shall request a written opinion concerning the magnitude of compromise of visibility and safety from the agency of competent jurisdiction over such public right-of-way (for example, Town Highway Superintendent, County Commissioner of Public Works, or New York State Department of Transportation) and shall factor such opinions into its decision.
- (c) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the zoning district, neighborhood, and the intent of the Town's Comprehensive Plan.
- (6) Hear and decide use variances.
- (a) The Zoning Board of Appeals, on appeal from the decision or determination of the Code Enforcement Officer, shall have the power to grant, grant with conditions, or deny use variances.
 - (b) No such use variance shall be granted by the Zoning Board of Appeals without showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that, for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence provided by the applicant;
 - [2] The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;

[3] The requested use variance, if granted, will not alter the essential character of the neighborhood; and

[4] The alleged hardship has not been self-created.

(c) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the zoning district neighborhood, and the intent of the Comprehensive Plan, and the health, safety and welfare of the community.

- C. Imposition of conditions. The Zoning Board of Appeals may, in the granting of both use variances and area variances, impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact that such variance may have on the zoning district, neighborhood, or community.
- D. Rehearings. Any member of the Zoning Board of Appeals may make a motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board that has not been previously reheard. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing, the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.
- E. Reapplication on denial. No variance application shall be accepted by the Town for a property on which a similar variance has been previously denied for a period of one year after such denial. [Amended 12-14-2015 by L.L. No. 4-2015]
- F. Zoning Board of Appeals office. The office of the Code Enforcement Officer shall be the office of the Zoning Board of Appeals. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in said office as required by the Town Law of the State of New York. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its environmental reviews and determination, its examinations and other official actions.
- G. Article 78 proceeding. An appeal from any final decision of the Zoning Board of Appeals as to any matter over which the Board has final authority may be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department or board of the Town in accordance with Article 78 of the New York Civil Practice Law and Rules.

§ 120-159. Planning Board.

- A. Creation and membership.

- (1) Pursuant to § 271 of the Town Law of the State of New York, there is hereby established a Planning Board having the powers authorized under the Consolidated Laws of the State of New York. Said Board shall consist of seven members, appointed by the Town Board. An appointment to a vacancy occurring prior to expiration of term shall be for the remainder of the unexpired term.
- (2) Pursuant to said section, seven citizens and resident taxpayers of the Town of Canadice shall be and hereby are appointed to the Planning Board of the Town of Canadice, with all powers granted by said Town Law of the State of New York, to hold office for the terms stated as follows: one member for a term of one year; one member for a term of two years; one member for a term of three years; one member for a term of four years; one member for a term of five years; one member for a term of six years; and one member for a term of seven years.
- (3) At the expiration of terms for the initial seven members appointed to the Planning Board as specified in Subsection A(2) above, each member appointed thereafter shall hold office for a staggered term of seven years, with not more than one such term to expire in any one year.
- (4) The Town Board shall select a Chairperson of the Planning Board, or on failure to do so, the Planning Board shall elect a Chairperson from its own members.
- (5) Alternate members.
 - (a) The Town Board of the Town of Canadice, Ontario County, New York, hereby designates that, in addition to the seven regular members of the Town Planning Board, one alternate member shall be appointed to serve on the Town of Canadice Planning Board. An alternate member shall be appointed by resolution of the Town Board, and the term of office shall be for five years. The Town Board may provide for compensation to be paid to said alternate.
 - (b) Incompatible offices/conflict of interest. As with regular members, the alternate member shall hold no elective office in the Town of Canadice nor be permitted to act on any matter in which he or she has either directly or indirectly any personal or financial interest.
 - (c) Procedures regarding alternate members. The alternate member may participate in discussion of the proceedings of the Planning Board but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. No more than seven votes shall be cast for any matter. In the event that the alternate member shall be necessary to create a Board of seven members for any application, the absent regular member shall not thereafter vote in any manner with respect to that application.
 - (d) Amendment of Town Law. The foregoing provisions concerning alternate members shall, where applicable, specifically amend and supersede § 271 of the Town Law of the State of New York. Where not so amended, § 271 shall remain in full force and effect.

B. Powers and duties of the Planning Board. The Planning Board shall have the following powers and duties:

- (1) To review and recommend revisions to the Comprehensive Plan for the development of the Town as provided under § 272-a of Town Law and/or Town Board resolution.
- (2) To review and comment on all proposed zoning amendments and to make investigations, maps, reports and recommendations relating to the planning and development of the Town as it deems desirable. This shall include but not be limited to changes in boundaries of districts, recommended changes in the provisions of this chapter, other land use and development matters of importance to the Planning Board, and to act on any matter lawfully referred to it by the Town Board.
- (3) To review site plans as authorized by New York State Town Law and prescribed in Article X of this chapter. The Planning Board is hereby authorized and empowered to approve site plans, approve site plans with conditions and/or modifications or disapprove site plans with reasons.
- (4) To review applications for special use permits as authorized by Article IX of this chapter and § 274-b of the Town Law of the State of New York. The Planning Board is hereby authorized and empowered to approve special use permits, approve special use permits with conditions and/or modifications or disapprove special use permits with reasons.
- (5) In connection with the review of site plans and special use permits, to conduct public hearings.
 - (a) The Planning Board shall hold a public hearing within 62 days from the day a complete site plan or special use permit application is received.
 - (b) Open to the public. Hearings of the Planning Board shall be public. The Board shall keep minutes of its proceedings, showing the action of the Board and the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its inspections and other official actions, all of which shall be a public record.
 - (c) Notification.
 - [1] The Planning Board shall mail notice of such hearing to the applicant for a site plan or special use permit at least 10 days before the hearing by regular first-class mail.
 - [2] The Planning Board shall ensure that public notice of such hearing is published in the official Town newspaper at least five days prior to the date of the hearing.
 - [3] Property sign notification. Any site plan or special use permit application requiring a public hearing shall require a sign be posted within 10 feet of a public road at a point on or about the ingress/egress to the land for which a change is proposed and at any other location designated by the Board. This posting shall occur at least five days before such hearing and will

remain posted until the appeal has been finally acted upon by the Appeals Board. The sign shall be no less than 27 inches in width and 20 inches in height and shall contain the appealing party's name, the proposed activity and the date and time when the public hearing will be held. Such sign shall be oriented and located so that it is clearly visible from the public road.

- (6) To review proposals to approve or disapprove the laying out, closing off, abandonment or changes in lines of roads, highways and public areas and to make recommendations to the Town Board.
 - (7) To review, act on or provide advisory reports as specified by this chapter.
- C. Planning Board office. The office of the Code Enforcement Officer shall be the office of the Planning Board. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in said office as required by the Town Law of the State of New York. The Planning Board shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its environmental reviews and determination, its examinations and other official actions.
- D. Article 78 proceeding. An appeal from any final decision of the Planning Board as to any matter over which the Board has final authority may be taken within 30 days of the filing of such decision by any person aggrieved or by any authorized officer, department or board of the Town in accordance with Article 78 of the New York Civil Practice Law and Rules.