

A Local Law Amending the Zoning Law for the Town of Minden

it enacted by the Town Board of the Town of Minden, Montgomery County, New York, as follows:

Article I. Title and Scope.

- A. Title. This Local Law shall be known as "A Local Law amending the Zoning Law for the Town of Minden," and adopted as Local Law No. 1 of 2018. This Local Law may be cited as the "Updated Zoning Law of the Town of Minden." This law is referred to herein simply as the "Zoning Law."
- B. Enactment and Authority. This Zoning Law is enacted pursuant to the authority and power granted by Articles 2 and 3 of the New York State Municipal Home Rule Law, by Article 2 of the New York State Statute of Local Governments, and § 264 of the Town Law of the State of New York.
- C. Purposes. The purposes of this local law are to provide an updated zoning law for the Town of Minden consistent with the Town of Minden Comprehensive Plan and for further purposes detailed in 90-2, below.
- D. Supersession. This Town Board hereby declares its legislative intent to supersede any provision of any local law, rule or regulation, or provision of the New York State Town Law inconsistent with this Zoning Law. The New York State Town Law provisions intended to be superseded include all of Article 16 of the Town Law and any other provision of the law that the Town may supersede pursuant to the New York State Municipal Home Rule Law and the New York State Constitution. The courts are directed to take notice of this legislative intent and apply it in the event the Town has failed to specify any provision of law that may require supersession. The Town Board hereby declares that it would have enacted this Zoning Law and superseded such inconsistent provision had it been apparent.
- E. Repeal and Replacement of Prior Development Review Law. By this Local Law, the Town Board of the Town of Minden hereby repeals the Town's prior Chapter 90. This shall take place at the moment this Zoning Law becomes effective.
- F. Separate Validity. If any Article, subsection, paragraph, clause, or other provision of this Law shall be held invalid, the invalidity of such section, subsection, paragraph, clause or other provision shall not affect any of the other provisions of this Law.
- D. Effective Date. This law shall become effective upon filing with the New York State Department of State.

Article 2. Text of Updated Zoning Law.

The following shall encompass the entire updated text of the Zoning Law:

## Chapter 90, ZONING

### GENERAL REFERENCES

Fire prevention and building construction -- See Ch. 50.

Flood damage prevention -- See Ch. 54.

Waste management facilities -- See Ch. 72, Part 2.

Subdivision of land -- See Ch. 77.

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## **ARTICLE I, General Provisions**

### **§ 90-1. Title.**

This chapter shall be known and may be cited as "Town of Minden Zoning Law."

### **§ 90-2. Statutory authority; purposes.**

This chapter is enacted pursuant to the authority and power granted by Article 2 § 10 of the Municipal Home Rule Law of the State of New York and § 264 of the Town Law of the State of New York, to protect and promote public health, safety, morals, comfort, convenience, economy, aesthetics, general welfare and for the following specific purposes:

- A. To ensure that new development is in conformance with the small town and rural character of the Town;
- B. To conserve lands for agriculture and reduce conflicts between farm and non-farm land uses;
- C. To lessen congestion in the streets;
- D. To secure safety from fire, flood, panic and other dangers;
- E. To promote health and general welfare;
- F. To provide adequate light and air;
- G. To prevent overcrowding of land and preserve open spaces;
- H. To avoid undue concentration of population;
- I. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- J. To conserve the value of properties and buildings;
- K. To encourage the most appropriate use of land throughout the Town as consistent with the Town of Minden Comprehensive Plan;
- L. To protect the Town's natural resources and avoid the pollution of air and water;
- M. To ensure the gradual elimination of nonconforming uses;
- N. To preserve and protect lands and buildings that are historically significant.

### **§ 90-3. Right-to-farm. [Amended 7-21-2005 by L.L. No. 1-2005]**

No provision of this chapter shall be interpreted, administered or enforced in a manner that unreasonably restricts agricultural structures and farming practices occurring on land that lies within a Certified Agricultural District established pursuant to Article 25-AA of the New York State Agriculture and Markets Law, unless the public health or safety is threatened. The impacts of non-farm development on agriculture within a Certified Agricultural District shall be evaluated by the Town pursuant to Article 25-AA.

## **ARTICLE II, Definitions**

### **§ 90-4. Word usage.**

- A. For the purpose of this chapter, certain words or terms used herein shall be interpreted or defined as follows.
- B. Words used in the present tense shall include the future. The singular number includes the plural, and the plural the singular. The word "person" includes a corporation as well as an individual.
- C. The word "building" includes the word "plot" or "parcel." The word "used" or "occupied" as applied to any land or building shall be construed to include the words "built, arranged or designed to be used or occupied."

### **§ 90-5. Definitions.**

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

**ACCESSORY BUILDING** -- A building subordinate to the main building on a lot and used for purposes customarily incidental to those of the main building.

**ACCESSORY USE** -- A use customary incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

**AGRICULTURE** – The production, keeping, or maintenance, for sale, lease or personal use, of plants and animals including but not limited to forages, grains and seed crops, dairy animals, poultry, livestock including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of these animals, bees and apiary products, fur animals, fish farming, fish hatcheries, fruits, vegetables, nursery, greenhouse, or flowers.

**AGRICULTURAL DATA STATEMENT** – A written statement required when certain land use determinations within five hundred (500) feet of a farm operation located in a NYS Agricultural District takes place. The statement must include information about the proposed project, and is included in the application for project approval. A notice of the project application is mailed to owners of land associated with the neighboring farm operation identified in the statement. The Planning Board is required to evaluate and consider the statement in its review of possible impacts of a project on nearby farm operations.

**AGRICULTURAL DISTRICT, NEW YORK STATE CERTIFIED** – That portion of the Town of Minden that is included in the New York State Certified Agricultural District established as per State Agriculture and Markets Law 25-AA.

**AGRICULTURAL STRUCTURE** – A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure shall not be a place of human habitation but used in the raising, growing or storage of agricultural products by a farmer engaged in a farming operation including but not limited to barns, sheds, poultry houses and other buildings and equipment on the premises used directly and solely for agricultural purposes.

**AGRITOURISM** -- Activities conducted on a farm and offered to the public, or to invited groups, for the sale of agricultural products, education, recreation or active involvement in the farm operation. An agritourism activity may be secondary to the primary farm use on a property. Agritourism activities may be conducted in an accessory building or structure. Agritourism activities include, but are not limited to on-farm bed and breakfasts, farm stay programs, u-pick operations, and pumpkin patches. This includes, but is not limited to a restaurant associated with one or more farm operations in the Town of Minden.

**AGRI-BUSINESS** – A small business that provides products or services to agricultural producers to support production, marketing, and distribution of their products including but not limited to farm equipment repair, farm equipment sales, soil preparation services, crop services, veterinary and other animal services, farm labor and management services, and seed or fertilizer sales.

**ALLEY** -- A minor way which is used primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

**ANIMAL HOSPITAL/VETERINARY CLINIC** -- A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

**ANTENNA** -- A device used in communications which converts radio frequency electrical energy to radiated electromagnetic energy and vice versa in a transmitting station, an antenna is the device from which radio waves are emitted.

**AQUIFER** - an underground collection of potentially drinkable water.

**AREA, BUILDING** -- The total area taken on a horizontal plane at the main grade level of the principle building and all accessory buildings exclusive of uncovered porches, terraces and steps.

**AREA, FLOOR** -- The total interior floor space measured in square feet of a structure.

**AUCTION FACILITY** – a place where goods or property are sold to the highest bidder.

**BASEMENT** -- A space of full story height partly below grade and having at least half of its clear floor-to-ceiling height above the average grade, and which is not designed or used primarily for year-round living accommodations.

**BED-AND-BREAKFAST** -- An owner-occupied residential building also used for renting accommodations to transient, fee-paying guests, and providing not more than one (1) meal daily to guests only. Not more than ten (10) rooms may be let.

**BILLBOARD** -- See "sign, advertising."

**BOARDING HOUSE** – A house providing food and lodging for paying guests. If there are more than ten sleeping rooms, such building shall be considered an inn or hotel.

**BUFFER AREA** -- An undeveloped part of a property or an entire property specifically intended to separate and thus minimize the effects of a land use activity (noise, dust, visibility, glare, etc.) on adjacent properties.

**BUILDING** -- A structure designed to be used as a place of occupancy, business, storage or shelter. The term "building" shall include the term "structure," as well as receiving and transmitting commercial, radio, television and other utility communication towers, personal wireless service facilities, mobile manufactured homes and factory manufactured homes.

**BUILDING AREA** -- All land covered by structures, interior roads, parking areas, and sidewalks and loading areas.

**BUILDING ENVELOPE** – The space within which a structure and its supporting infrastructure is permitted to be built on a lot and that includes the building, driveway, and any lands disturbed for well and septic systems.

**BUILDING, FLOOR AREA** -- The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, including basement areas devoted to residential use and the area of bays, dormers, roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**BUILDING HEIGHT:** The vertical distance measured from the average finished grade along the wall of the front of the building to the highest point of such building or structure.

**BUILDING LINE --** A line established by law, usually parallel with a property line, beyond which a structure may not extend.

**BUILDING-MOUNTED SOLAR ENERGY SYSTEM-** A solar energy system that is affixed to the roof or side(s) of a building or other structure either directly or by means of support structures or other mounting devices. Solar energy systems constructed over a parking lot are considered building-mounted solar energy systems.

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

**CAMPGROUND --** Any parcel of land on which are located two or more tents, shelters, recreational vehicles, or other accommodations of a design or character suitable for seasonal or temporary living purposes but not including a manufactured home park, boarding house, hotel or motel, bungalow colony, or man camp/worker camp.

**CAR WASH –** Any commercial building or premises or portions thereof used for washing automobiles. This may include automatic or semiautomatic application of cleaner, brushes, rinse water and heat for drying.

**CELLAR --** That space of a building which has more than half of its height, measured from floor to ceiling, below the average grade.

**CHANGE OF INTENSITY –** A change of intensity of use includes, but is not limited to, an increased or different requirement for parking, an increase or change in impervious surface area, placement of a new sign, establishment of additional exterior lighting, structural enlargement, additional site improvements, and change in drainage, landscaping, or screening.

**CHANGE OF USE (CONVERSION) --** The change of use or occupancy of a building from either residential, commercial or industrial to one of the other uses, or change in the intensity of the same use including, but not limited to, changes in use which require the issuance of a Certification of Occupancy pursuant to the New York State Building and Fire Code. Change of occupancy or change of ownership shall not be construed as a change of use.

**CO-LOCATION --** The mounting of personal wireless service facilities shared by two or more persons, firms or corporations on the same equipment mounting structure.

**COMMERCIAL COMPOSTING OPERATION --** The use of any property in the Town for the manufacture or manufacture and storage of compost primarily for commercial resale or any purpose other than for use in a primary farming or other agricultural use on such property where the storage or manufacture occurs. [Added 7-21-2005 by L.L. No. 1-2005]

**COMMERCIAL RECREATION –** An indoor or outdoor place designed and equipped for the conduct of sports and leisure time activities for profit.

**COMMUNITY PARK OR PLAYGROUND --** Land managed by the local municipality and/or public and set aside for public use which may or may not have developed recreational facilities, such as playground, tennis courts, horse and bike trails, baseball fields, picnic areas, swimming pools and/or lavatories.

**COMPLETE APPLICATION:** An application for development that includes all required documents and submittals pursuant to this chapter, and where a negative declaration has been made or a draft environmental impact statement has been accepted by the reviewing agency.

COMPREHENSIVE PLAN -- The Comprehensive Plan adopted by the Town Board for future preservation and development of the Town of Minden pursuant to § 272-a of the Town Law.

CONSERVATION EASEMENT – A grant of a property right stipulating that the described land will remain in its natural or agricultural state and precluding future or additional development.

CONSERVATION SUBDIVISION – A residential subdivision where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be placed on the parcel in a flexible manner, where lot sizes, road frontages, and other bulk dimensions are allowed to be relaxed and where a majority of the remaining land is left in its natural open space condition in perpetuity. Conservation development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

CONVENT -- An establishment used as housing for a religious order or congregation (e.g., parish house, monastery, establishment for nuns or monks).

COVERAGE -- That percentage of the lot covered by the building area, as defined herein.

CUL-DE-SAC – A road with a single common ingress and egress and a designated turn-around area for vehicles at the end.

CUSTOM WORKSHOP – A room, area or small establishment where specialty work is done.

DRIVEWAYS AND PASSAGEWAYS -- Private access routes which directly service a parking area; or serving parking spaces not directly serving more than two dwelling units, and not providing a route for through traffic. Minimum driveway widths shall be as follows:

Parking Angle	Driveway Width
No parking	18 feet
Parallel	20 feet
45° one-way	20 feet
60° one-way	20 feet
90° one-way	24 feet

DWELLING, ONE-FAMILY -- A building, other than a mobile manufactured home designed for exclusive year-round occupancy by one family only.

DWELLING, MULTIPLE-FAMILY -- A building designed for more than two families, including apartment houses, but excluding hotels and rooming houses.

DWELLING, TWO-FAMILY -- A building, other than a trailer or other temporary structure, designed for exclusive year-round occupancy by two families living independently of each other.

DWELLING UNIT -- One or more rooms with provision for living, sanitary and sleeping facilities arranged for the use of one family.

ENVIRONMENTAL ASSESSMENT FORM (EAF) -- A form used to determine whether a project will have significant environmental impacts. Depending on the site's environmental features and the project's magnitude, either a short or long SEQQR Environmental Assessment Form will be completed.

**ENVIRONMENTAL IMPACT STATEMENT (EIS)** -- A document prepared pursuant to SEQR, subsequent to a determination of potential adverse impacts that examines the existing and developed environment, and identifies and presents impacts, mitigation measures and alternatives.

**EQUIPMENT MOUNTING STRUCTURE** -- Any structure used primarily to support reception or transmission equipment, including but not limited to antenna support structures, towers and monopoles.

**FACTORY MANUFACTURED HOME** -- A factory manufactured home incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. Every factory manufactured home or component shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council; falls under the category of one-family dwelling.

**FAMILY** -- Any number of persons or recognized relationships maintaining a common household, including domestic help.

**FARM** -- The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of Section 301 of the Agriculture and Markets Law and "timber processing" as defined in subdivision fourteen of Section 301 of the Agriculture and Markets Law. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

**FARM PRODUCTS PLANT** -- Any operation which starts with a farm product, including but not limited to vegetables, fruits, milk, beef, pork, lamb, chicken, eggs, turkey, etc., and whose end product packages that product in a form suitable for retail market distribution. This definition includes but is not limited to dairies, cheese plants, vegetable/fruit canneries, slaughterhouses etc.

**FARM STAND** -- A temporary use of a structure including small buildings, carts, wagons or stands for the display and sale of farm products produced on the property where the stand is located, and not more than 200 square feet in size..

**FARM WORKER HOUSING** -- an accessory apartment, multi-family dwelling, or other dwelling used to house farm workers on a parcel of land used as an agricultural operation. A mobile manufactured home shall be considered a dwelling for farm workers provided the agricultural operation shall have more than \$10,000 gross sales per year and for which the owner applies for a building permit to erect a mobile manufactured home as an accessory use. In addition, the occupant of a mobile manufactured home as a farm worker accessory use must be a full time employee of the agricultural operation whose total documented compensation, including salary, lodging, board, etc. is not less than \$10,000 a year.

**FARM MARKET** -- a location or structure larger than 200 square feet, where one or more farmers or vendors sell agricultural produce to the public on a permanent basis, whether that market is seasonal or year-round.

**FENCE** -- An artificially constructed barrier, railing, or other upright structure made of woods, wire or vinyl or of any material or combination of materials erected to enclose, screen, separate areas, or control access or prevent escape. A fence may be open (with openings between the materials used in its construction), or solid (constructed of solid material, wood or masonry through which no visual images may be seen).

FIRE STATION -- See Municipal Building.

FLOOD HAZARD, AREA OF -- Land within a community subject to a one percent or greater chance of flooding in any given year; also commonly referred to as "base floodplain" or "one hundred-year floodplain."

FLOODWAY -- The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency.

FOUNDATION – Usually stone or concrete structure that supports a building from underneath, including but not limited to a basement or slab.

FRONT OR FRONTAGE -- That part of a parcel of land or building abutting or facing the principal street or road. In the case of corner lots on two intersecting streets or roads, the parcel will be considered to have two front yards, one side yard and one rear yard at minimum.

FUEL SALES – A facility for the sale of natural gas and propane to local residential and commercial customers. Fuel sales is not associated with or related to any natural gas exploration, extraction, drilling, production, processing, storage of production wastes, or natural gas drilling ancillary uses. A gas station is not considered fuel sales.

FUEL STORAGE – A facility for the temporary storage and distribution of natural gas and propane for delivery to local residential and commercial customers via fuel trucks. Fuel storage is not associated with or related to any natural gas exploration, extraction, drilling, production, processing, storage of production wastes, or natural gas drilling ancillary uses.

FUNERAL HOME/PARLOR – A business that provides burial and funeral services for the dead and their families. These services may include a prepared wake and funeral, and the provision of a chapel for the funeral.

GAS COMPRESSION STATION: An industrial facility used to raise the pressure and/or volume of natural gas during its extraction, transport, and storage.

GARAGE, PRIVATE -- A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

GARAGE, PUBLIC -- A building or part thereof for the storage, hiring, selling, greasing, washing, servicing or repair of motor-driven vehicles, operated for gain.

GASOLINE STATION -- Any area of land, including structures thereon, that is used or designed to be used for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for lubricating, washing, cleaning or otherwise servicing motor vehicles, not including the painting or major repair thereof. The term "gasoline station" shall be deemed to include "filling station" and "service station."

GLARE - The effect produced by brightness sufficient to cause annoyance, discomfort, or loss in visual clarity and visibility.

GOLF COURSE/COUNTRY CLUB –Premises having:

- a. not fewer than nine holes improved with tees, greens, fairways, and hazards for playing the game of golf;
- b. lanes within which golf balls can be hit (driving ranges); and
- c. Recreational facilities containing small putting greens (miniature golf).

- d. Accessory structures and buildings may be associated with these uses including a clubhouse, locker room, food stand, restaurant, banquet or conference rooms, except that overnight accommodations are not permitted.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM-** A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices and that is not attached or affixed to an existing structure. Pole mounted solar energy systems shall be considered ground-mounted solar energy systems for the purposes of this local law Chapter 90-52.24.

**GROUNDWATER:** Water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

**HAZARDOUS SUBSTANCE:** Any substance listed as a hazardous substance in 6 NYCRR Part 597, Hazardous Substance List, or a mixture thereof. In general, a hazardous substance means any substance which: (1) because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed; (2) poses a present or potential hazard to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; (3) because of its toxicity or concentration within biological chains, presents a demonstrated threat to biological life cycles when released into the environment.

**HAZARDOUS WASTE:** A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous wastes include but are not limited to petroleum products, organic chemical solvents, heavy metal sludges, acids with a pH less than or equal to 2.0, alkalies with a pH greater than or equal to 12.5, radioactive substances, pathological or infectious wastes, or any material exhibiting the characteristics of ignitability, corrosivity, reactivity, or fails the Toxicity Characteristic Leaching Procedure (TCLP).

**HISTORIC BUILDING OR SITE --** A building or area which has historic and special public value because of notable architectural or other features relating to the cultural, historic or artistic heritage of the community including but not limited to principal structures, out-buildings, stone walls, mill remnants, rail road beds, barns, cemeteries, and foundations.

**HOME OCCUPATION, HIGH IMPACT--** A business activity resulting in a product or service for financial gain, conducted wholly or partly within a dwelling unit or accessory structure as a non-residential use that is secondary and subordinate to the use of the dwelling for living purposes, and is conducted in a manner which does not change the residential character of the dwelling unit or vicinity. A major home occupation has exterior evidence of a business activity including but not limited to customers, clients or sales representatives entering the premises; equipment, vehicles, or other materials stored outside; requires a sign; or produces noise or odors. Major home occupations are conducted by an owner/operator who must reside on the premises and does not employ more than four persons, in addition to the owner/operator and any other family participants in the home occupation who reside on the premises. A special use permit issued by the Planning Board is required for all major home occupations and all requirements of Article VIII Section 90-52.23 shall be met.

The following shall be considered high impact home occupations:

1. Two low impact home occupations carried on within the same dwelling unit and
  - a. Carried on by two residing family members;
  - b. The use is allowed as in the zoning law;
2. An occupation carried on in a residential accessory building by a residing family member and

- a. The occupation is carried on solely in the accessory building;
- b. The use is allowed as in the zoning law;

3. One low impact home occupation carried out within the dwelling unit along with an occupation that uses an accessory building and these include, but are not limited to flower design/florist, daycare, dentist, family practitioner, antique shop, bakeries needing a 20C license, basket maker, bike shop, building/plumber/electrical contractor, bulk food/canned goods, fabric shop, housewares, nursery/greenhouse, furniture maker, gifts and craft sales, gunsmith, harness maker/tack shop, machinist, produce stand, small engine repair, welding, custom butchering, appliances and small tools.

**HOME OCCUPATION, LOW IMPACT** -- An occupation or profession carried out within the dwelling unit and is clearly incidental and secondary to the use of the dwelling unit for residential purposes. The occupation is carried on by a member of the family residing in the dwelling unit. Low impact home occupations are those where the activity is carried out solely within the dwelling, is a use that is allowed as in the zoning law, and where no accessory building is required. These include, but are not limited to architect, attorney, 20C exempt bakery, bookkeeper/financial services, consulting, crafts/dressmaking, insurance, hairdresser, photographer, real estate agent, engineer/surveyor, and web design/computer business (not sales).

**HOME OWNERS ASSOCIATION** -- An organization of homeowners residing within a particular development whose major purpose is to preserve, maintain, and provide community areas, facilities and services for the common enjoyment of the residents.

**HORSE BOARDING OPERATION** -- An agricultural activity that provides care, housing, health related services and training to animals kept on the premises or on other properties owned or leased by the farm operator. Riding and training activities that are directly related to and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the farm owner for the horse that is boarded at the farm and used for such activities, are part of the farm operation. Horse shows for horses either boarded at or owned by the farm operation, which are not open to the general public, are also part of the farm operation. A riding academy is not considered to be an agricultural activity under the New York State Agriculture and Markets Law. A riding academy generally offers riding lessons to the public and to individuals that do not own or have a long-term lease for the horse that is boarded and used at the facility for such riding.

**HOSPITAL** -- A building or structure for the diagnosis and medical or surgical care of human ailments.

**HOTEL** -- Facility offering transient lodging accommodations to the general public and providing additional service such as restaurants, meeting rooms and recreational facilities. The word "hotel" includes the words "motel," "motel court," "inn," "tourist court" or similar names, excluding rooming houses and bed-and-breakfast establishments.

**HYDROGEOLOGICALLY SENSITIVE AREAS:** The hydrogeologic sensitivity of a location is a relative measure of the ease and speed with which a contaminant could migrate into and within the upper-most water-bearing unit. High to very high hydrogeologic sensitivity ratings indicate that, in general, ground water is more susceptible to be impacted by surface activities.

**IMPERVIOUS SURFACE:** Any man-made material, such as pavement used in parking lots or driveways, or any building or other structure on a lot, that does not allow precipitation and melted snow to penetrate into the soil.

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

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

INDUSTRY, LIGHT (See also Light Assembly Plant) – Use in which a product is manufactured but the manufacturing process and facility have minimal impact on the property where the manufacturing takes place and almost none on adjacent properties, with qualities including:

- A. No creation of noise, vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line;
- B. No change to the character of the surrounding neighborhood;
- C. Adequate screening of outside storage of goods, materials, or equipment;
- D. Signs limited in size;
- E. No chemical, metal, or hazardous waste, or potential contamination of surface or groundwater;
- F. Adherence to all applicable commercial design and other standards cited in this zoning chapter.

JUNK -- No junk vehicles or unregistered vehicles are permitted. The outdoor storage or deposit of any of the following shall constitute junk:

- A. One or more junk vehicles.
- B. One or more junk mobile manufactured homes or travel trailers.
- C. One or more abandoned or inoperable appliances, including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.
- D. One or more abandoned or irreparably damaged pieces of indoor furniture, including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests or drawers.
- E. Any other refuse or household items.
- F. Any combination of the above or parts of the above that total two or more items.

JUNK MOBILE MANUFACTURED HOME -- A structure, transportable in one or more sections, built on a permanent chassis and designed to be used as a dwelling unit, which is currently not inhabited and is no longer habitable under the New York State Uniform Fire Prevention and Building Code; includes, but is not limited to, mobile homes, trailers and campers.

**JUNK STORAGE AREA** -- The areas of any parcel of land or water used or intended to be used for the placement, storage or deposit of junk.

**JUNK VEHICLES** -- Any unregistered motor vehicle, no longer intended or in condition for legal use on the public highways, or used parts or waste materials therefrom. A vehicle is considered junked when it meets one or more of the following conditions for a period of six months:

- A. It is unregistered.
- B. It is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled.
- C. It is not in any condition for legal use upon the public highways.
- D. It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time before such repair.

**JUNKYARD** -- A lot, land or structure, or part thereof, used for the outdoor storage, sale or deposit of any of the following:

- A. One or more junk vehicles.
- B. One or more junk mobile manufactured homes.
- C. One or more junk appliances.
- D. One or more pieces of junk furniture.
- E. Any combination of the above that totals one item.

**KENNEL, BOARDING** -- A commercial use that includes a structure and any accessory uses including but not limited to fenced in areas and runs used for the care, and harboring, for hire, of no more than 10 dogs.

**LANDOWNER** -- A person who owns the land on which a proposed permitted, special permitted, subdivision, or other land use activity is proposed.

**LAUNDRY OR DRY CLEANING PLANT** -- A business premises serviced by municipal sewerage or a NYSDOH-approved system, equipped with individual clothes washing or cleaning machines for use as a wholesale facility and not to be used by individuals in a retail setting.

**LAUNDERETTE** -- A business premises serviced by municipal sewerage or a NYSDOH-approved system, equipped with individual clothes washing or cleaning machines for use by retail customers, exclusive of laundry facilities provided in an apartment, fraternity, sorority, residential hotel or club.

**LESSEE** -- A landowner who has a legally binding contractual lease with the Owner of a piece of land, facility or structure.

**LIGHT ASSEMBLY PLANT** -- A use engaged in the creation, 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 excluding basic industrial processing.

**LIVING AREA** -- The sum of the gross horizontal area of the several floors of a building, including areas below grade devoted to residential use. All dimensions shall be measured between exterior faces of walls.

**LOADING SPACE** -- A paved area designed for the parking, loading and unloading of delivery vehicles.

LOT -- A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

LOT AREA -- The total horizontal area included within lot lines. No part of the area within a public right-of-way may be included in the computation of lot area.

LOT, CORNER -- A lot located at the intersection of and fronting on two or more intersecting streets, and having an interior angle at the corner of intersection of less than 135°.

LOT COVERAGE -- The percentage of the lot area covered by the combined area of all buildings, structures, parking areas or other impervious surfaces on the lot.

LOT DEPTH -- The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

LOT, FLAG -- A large lot not meeting minimum frontage requirements and where access to the public road is by a narrow private right-of-way or driveway.

LOT, INTERIOR -- A lot other than a corner lot.

LOT LINES -- The property lines bounding a lot. The front line shall be the right-of-way line of a street, road, or highway giving access to the lot. In the case of a corner lot, the owner may designate either street, road or highway lot line as the front lot line.

LOT, THROUGH -- A lot having frontage on two approximately parallel or converging streets, other than a corner lot.

LOT WIDTH -- The distance between side lot lines measured parallel to the front lot line at a distance from the front lot line equal to the front yard specified for the district, except as noted in § 90-15.

LOW IMPACT DEVELOPMENT -- is a comprehensive land planning and engineering design approach with a goal of maintaining and enhancing the pre-development hydrologic regime of urban and developing watersheds.

MINERAL: any naturally formed, usually inorganic, solid material located on or below the surface of the earth, peat and topsoil shall be considered minerals

MINE, LARGE: Any excavation from which 1,000 tons or 750 cubic yards or more, of ore, sand, gravel, clay, stone, loam, humus or topsoil within a period of twelve (12) successive calendar months produced for sale or exchange or for commercial, industrial or municipal use or for use other than on the property from which the material is extracted. (Soil mining shall also include any activity requiring a permit from DEC pursuant to Article 23 of the Environmental Conservation Law.) Large mines are prohibited in all areas of the Town of Minden.

MINE, SMALL: Any excavation from which less than 1,000 tons or 750 cubic yards, whichever is less, of ore, sand, gravel, clay, stone, loam, humus or topsoil within a period of twelve (12) successive calendar months produced for sale or exchange or for commercial, industrial or municipal use or for use other than on the property from which the material is extracted. (Soil mining shall also include any activity requiring a permit from DEC pursuant to Article 23 of the Environmental Conservation Law.)

MOBILE MANUFACTURED HOME -- A mobile manufactured home is a structure, transportable in one (single-wide) or more sections (double-wide), which in the traveling mode is 12 body feet or more in width or 40 body feet or more in length, or when erected on site, is 720 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. Every mobile manufactured home shall bear a plate of approval

from HUD. A 'Tiny' Home shall also be considered a mobile manufactured home when it is built with a permanent trailer or chassis.

MOBILE MANUFACTURED HOME PARK -- A parcel of land which has been planned and improved for the placement of six or more mobile manufactured homes for nontransient use in a residential zone that has access to Village water and sewer.

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 automobiles, buses, vans, campers, motor homes, tractor-truck trailer, etc.

MUNICIPAL BUILDING – A building that is used to local government offices and other services. (Example: Town Clerk, Highway Dept, etc.)

NATURAL GAS EXPLORATION, EXTRACTION, DRILLING, PRODUCTION, PROCESSING, STORAGE OF PRODUCTION WASTES OR NATURAL GAS DRILLING ANCILLARY USES -- The exploration for natural gas, the extraction of natural gas from the ground regardless of the extraction method used, and/or the processing of natural gas. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity or ancillary use of land which facilitates or supports natural gas exploration, extraction, or processing. Examples of activities or uses of land expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new gas well, regardless of well type;
- Development of a well operations site and associated structures, infrastructure, and storage;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for, or in connection in any way with, the exploration for or extraction of natural gas (also known as staging areas);
- Installation and/or use or storage (pipe yard) of pipes, conduits or other material transport or gathering equipment or systems used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Natural Gas and/or Petroleum Support Activities.
- It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

NATURAL GAS, LP, AND/OR PETROLEUM SUPPORT ACTIVITIES – mean the construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a natural gas, LP, or petroleum storage facility, or a natural gas, LP or petroleum gathering line, venting station, or compressor associated with the exploration or extraction of natural gas, LP, or petroleum.

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.

**NOISE, NUISANCE** -- An undesired audible sound that interferes with the enjoyment and use of property. For purposes of this law a decibel level exceeding 55 dB measured at the property boundary shall be a nuisance noise.

**NON-CONFORMING BULK** -- That part of a building, other structure or tract of land which does not conform to one or more of the applicable bulk regulations of this Local Law, either following its effective date or as a result of subsequent amendments thereto.

**NON-CONFORMING STRUCTURE** -- A structure or building, the size, dimensions, or location or which was lawful prior to the adoption, revision, or amendment of the zoning law but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of the zoning law.

**NONCONFORMING USE** -- A structure or land occupied by a use which lawfully existed prior to the adoption, revision or amendment of this chapter, but which fails to conform to the requirements of the district in which it is located by reason of such adoption, revision or amendment.

**NURSERY** -- Land or greenhouses used to raise flowers, shrubs and plants for sale.

**NURSING OR CONVALESCENT HOME or HOME FOR THE AGED** -- A building used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are furnished, or for the accommodation and care of persons of advanced age. See also Senior Housing.

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

**OPERATOR OF SOLAR FACILITY** -- A person, corporation or other entity that manages, maintains, and operates a utility-scale solar facility on a day to day basis. An operator of a solar facility may also be the owner of such facility.

**OVERLAY DISTRICT** -- A zoning district that encompasses one or more underlying zones and that imposes additional requirements above that required by the underlying zone. Overlay zones deal with special situations that are not appropriate to a specific zoning district or apply to several districts.

**OWNER/OPERATOR** -- Person, persons, corporation, etc., that owns and/or operates the business or facility.

**OWNER OF SOLAR FACILITY** -- A person, corporation, or other entity that owns a utility-scale solar facility.

**PARKING SPACE** -- The area required for parking one automobile which in this chapter is held to be an area at least nine feet wide and 20 feet long, exclusive of passageways and driveways thereto.

**PERFORMANCE BOND** -- Any security that may be accepted by a municipality to ensure that improvements required as part of an application for development will be satisfactorily completed.

**PERMANENT FOUNDATION** -- Concrete, concrete blocks, stone walls, or pressure treated lumber which support the bottom floor and exterior walls of a building and extending below the ground deeper than the average annual frost level, or a reinforced concrete base below the bottom floor of a building of

sufficient thickness and having a suitable subway to resist shifting and heaving from changes in temperature and moisture conditions in the ground beneath the building.

PERSON -- Any individual, firm, partnership, association, corporation, company or organization of any kind.

PERSONAL SERVICE SHOPS -- Establishments providing services or entertainment, as opposed to products, to the general public, including but not limited to cleaning and garment services, beauty shops, photography shops, shoe repair, barbershops, funeral services, clothing rental, reduction salons and tanning parlors.

PERSONAL WIRELESS SERVICE -- Commercial mobile services, wireless telecommunication services using duly authorized devices which do not require individual licenses (excluding the provision of direct-to-home satellite services) and common carrier wireless exchanges, including cellular radiotelephone, specialized mobile radio systems and personal communication services.

PERSONAL WIRELESS SERVICE FACILITIES -- A facility for the provision of personal wireless services. A personal wireless service facility includes, but is not limited to, an antenna equipment mounting structure and accessory buildings and equipment. For the purposes of this chapter, a personal wireless service facility shall not be included within the definition of a "public utility station or structure," as specified in this chapter, since personal wireless service facilities, although they are facilities operated by public utilities with certain rights under the laws of the United States and the State of New York, are exclusively regulated as such by Article VIII, § 90-31, of this chapter.

PICNIC GROVE – A place for people to hold outdoor gatherings with or without food.

PIPELINE -- A line of pipe connected to valves and other control devices, for conducting fluids, gases, or finely divided solids.

PIPE YARD -- A parcel of land, or part of a parcel of land used to store, cut, bend, fit, or prepare pipes used as part of a pipeline, gas compressor station, or associated with the transmission of gas, oil and other petroleum products.

PORTABLE COMMERCIAL STORAGE UNIT – A large container designed and rented or leased for the temporary storage of commercial or residential household goods, that does not contain a foundation or wheels for movement. Examples of this use include piggyback containers that can be transported by mounting on a chassis, and "POD" type boxes that can be transported on a flatbed or other truck; but do not include prefabricated sheds that are not designed for transport after erection, or commercial trailers used by construction or other uses in the regular performance of their business.

PRIMARY CONSERVATION AREA -- The area delineated in a conservation subdivision to have priority resource areas to be conserved including, but not limited to streams, floodplains, wetlands, critical habitats, steep slopes, areas with rocky outcrops, agricultural lands, and groundwater recharge areas.

PRIME SOILS -- Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and that is available for these uses. It has the combination of soil properties, growing season, and moisture supply needed to produce sustained high yields of crops in an economic manner if it is treated and managed according to acceptable farming methods. In general, prime farmland has an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, an acceptable level of acidity or alkalinity, an acceptable content of salt or sodium, and few or no rocks. Its soils are permeable to water and air. Prime farmland is not excessively eroded or saturated with water for long periods of time, and it either does not flood frequently during the growing season or is protected from flooding.

PRINCIPAL USE -- See "use, principal."

PRIVATE FISH AND GAME CLUB – A club where sportsmen pay membership fees.

PROFESSIONAL OFFICE -- Offices for a person or persons whose vocation or occupation requires advanced training in a liberal art or science and whose service usually involves nonmanual work.

PUBLIC BUILDING -- Any town, county, state or federally owned building(s) or land, including but not limited to town halls and highway department garages.

PUBLIC UTILITY – A State or federal government regulated enterprise with a franchise for providing to the public a utility service deemed necessary for the public health, safety and welfare.

PUBLIC UTILITY STATION OR STRUCTURE -- A facility other than a personal wireless service facility for the provision of public utility services, including facilities constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision or transportation of electricity, gas, steam, heat, communication, water, sewage, collection of other such services to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms and call boxes and other similar equipment, and office buildings or other administration facilities used to support such services.

RECREATIONAL VEHICLE – A vehicular portable structure designed as a temporary dwelling for travel, recreational and vacation use. See also Trailer.

REFLECTOR, SOLAR- A device for which the sole purpose is to increase the solar radiation received by a solar collector.

RESTAURANT -- A building or portion of a building wherein food and beverages are available for on-site or off-site consumption and which may include a drive-through facility.

RESTAURANT ON FARM – A restaurant that is part of a farm operation as defined in this local law and where at least 51% of the primary food products prepared or sold in the restaurant are produced on the farm.

RETAIL FARM MARKET -- The sale of agricultural products either produced on or off the premises.

RETAIL STORE -- Any building or permanent structure or portion thereof in which one or more services or one or more articles of merchandise are sold at retail, including department stores.

RIGHT-OF-WAY – A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a street, sidewalk, road shoulder, crosswalk, railroad, utility line, oil or gas pipeline, water line, sanitary storm sewer, or other similar uses.

ROAD -- A public thoroughfare or right-of-way dedicated, deeded or condemned for use as such, which affords the principal means of access to abutting property.

ROAD, PRIVATE -- An access drive or roadway that is longer than 500 feet, privately owned and maintained, and not meant for use by the general public.

ROOMING HOUSE -- A private house in which rooms are rented for living or staying temporarily.

SALON -- An establishment for the cutting and care of hair or fingernails, tanning, facial makeup consulting, waxing, one or any combination of the above, and other beauty related services.

SAWMILL: A mill or machine used for the processing of lumber products from raw uncut timber obtained onsite or offsite to be sold for commercial purposes.

Portable Sawmill – A mill that can be moved from place to place and used to process timber for less than 2 months per year on any one parcel.

Agricultural Sawmill – means the on-farm processing (including milling and drying) and marketing of timber grown on that same farm operation (as defined in Agriculture and Markets Law 25-AA) into woodland products, including but not limited to logs, lumber, posts and firewood, provided that such farm operation consists of at least seven acres and produces for sale other crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products. An agricultural sawmill may be permanent or portable.

Commercial Sawmill – means the processing (including milling and drying) and marketing of timber grown on off-site parcels into woodland products, including but not limited to logs, lumber, posts and firewood. A commercial sawmill may use portable sawmill equipment on-site.

SCHOOL/EDUCATIONAL/TRAINING FACILITY, PUBLIC OR PRIVATE: A building or part thereof which is designed, constructed, or used for instruction or education including, but is not limited to elementary, parochial, private, secondary or vocational schools, and public higher education facilities, colleges, or universities. It shall also mean a business organized to operate for a profit, or an organization that operates not-for-profit offering instruction and training in a trade, service or art.

SCRAP YARD – A facility or area for storing, selling, dismantling, shredding, compressing, or salvaging scrap ferrous metal materials. A scrap yard also includes the storing, dismantling, compressing or salvaging of any junk motor vehicles.

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

SENIOR HOUSING – Multifamily housing designed for older people. This includes adult retirement community, assisted living facility, continuing care retirement community, and retirement community types of structures.

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

SETBACK -- The distance in feet between the building or other use and any lot line or designated point.

SIGN -- Any device affixed to or painted or represented directly or indirectly upon a building, structure or land and which directs attention to an object, product, place, activity, person, institution, organization or business, but not including any flag, badge or insignia of any government or government agency, school or religious group or of any civic, charitable, religious, patriotic, fraternal or similar organization, nor any official traffic control device. Each display surface shall be considered to be a "sign."

SIGN, ADVERTISING -- A sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere than upon the premises where such sign is located, or to which it is affixed, only incidentally on the premises, if at all.

**SIGN, BUSINESS** -- A sign which directs attention to a business or profession conducted or a commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is affixed. A "For Sale" or "For Let" sign relating to the lot on which it is displayed shall be deemed to be a business sign.

**SIGN, FLASHING** -- Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color when such sign is in use. For the purpose of this chapter, any revolving illuminated sign shall be considered a "flashing sign."

**SIGN, FREESTANDING** -- A sign that is attached to, erected on or supported by some structure such as a pole, mast, frame or other structure that is not itself an integral part of or attached to a building or other structure having a principal function other than the support of the sign.

**SIGN, HEIGHT OF** -- The distance from the ground level, measured from the midpoint of the base of the sign to the top of the sign.

**SIGN, TEMPORARY** -- A sign that advertises or gives direction to a business or activity that will terminate within seven days.

**SITE PLAN** -- A rendering, drawing or sketch prepared to specifications and containing necessary elements, as set forth in the applicable Zoning Law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.

**SITE PLAN REVIEW** -- Review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in this chapter and as authorized by the Town Law.

**SLAUGHTERHOUSE, ON-FARM** -- A place where animals are butchered for food and located on farm where the animals have been grown. On-farm slaughterhouses do not accept animals for butchering from any other farm operation or any outside source.

**SLAUGHTERHOUSE, COMMERCIAL** -- a place where animals are butchered for food and not located on a farm where the animals have been produced. These are not considered part of a farm operation.

**SOILS OF STATEWIDE IMPORTANCE** -- This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and delineating this land are determined by New York State. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. Additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by state law.

**SOLAR ACCESS** -- Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun so as to permit the use of a solar energy system on individual properties.

**SOLAR COLLECTOR**- A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other usable energy.

**SOLAR ENERGY SYSTEM** - A complete system intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other usable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, storage,

maintenance and/ or other accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical structures.

**SOLAR ENERGY SYSTEM, SMALL-SCALE** - Any solar energy system that cumulatively on a lot meets all of the following provisions:

- A. Is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site.
- B. Produce up to ten kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings beyond the lot. Small-scale solar energy systems located on a farm operation (as per Agriculture and Markets Law §301(11) definition of that term) and located in a New York State Agricultural District can produce up to 110% of the farm's needs as per the Department of Agriculture and Markets guidance document.

**SOLAR PANEL** – a device for the direct conversion of solar energy into electricity.

**SOLAR SKYSPACE**- The space between a solar collector and the sun through which solar radiation passes.

**SOLAR THERMAL SYSTEM** – A system that directly heats water or other liquid using sunlight.

**SPECIAL PERMITTED USE** -- A use or property that is basically appropriate to a given zoning district, but which may be incompatible in some locations within the district and therefore is not permitted by right everywhere within such district. A special permitted use, therefore, is one which is allowable only when facts and conditions specified in this chapter as those upon which the use is permitted are found to exist.

**STABLE, PRIVATE** -- A principal or accessory building in which horses are kept for private use and not for hire or sale.

**STABLE, PUBLIC** -- A principal or accessory building in which horses are kept for remuneration, hire or sale.

**STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)** -- Review of an application according to the provisions of the State Environmental Quality Review Act, 6 NYCRR Part 617 which incorporates the consideration of environmental, social and economic factors into the planning, review and decision-making processes of state, county and local government agencies.

**STORAGE FACILITY** -- Any structure constructed, installed or placed on the ground and intended for the holding or safekeeping of goods on a property of any type. Nothing originally intended for use on public highways including but not limited to travel trailer, recreational vehicle, or motor vehicle shall be included in the definition of a storage facility. See definitions for travel trailer, recreational vehicle and motor vehicle. Single-wide mobile homes shall not be used for storage or for housing animals on any property.

**STORY** -- That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF** -- That part of a building between a pitched roof and the uppermost full story, and having a floor area at least half as large as the floor below. Space with less than five feet clear headroom shall not be considered as floor area.

**STREET** -- A public way which affords the principal means of access to abutting property.

STRUCTURAL ALTERATION -- Any change in the supporting members of a building.

STRUCTURE

- A. A static construction of building materials affixed to the ground, including but not limited to a building, dam, display stand, fence, gasoline pump, installed mobile home or travel trailer, reviewing stand, shed, sign, stadium, storage bin or wall.
- B. Anything constructed or built, any edifice or building of any kind, which requires location on the ground or is attached to something having a location on the ground, including, but without limitation, swimming pools, covered patios, towers, poles, sheds, signs, tanks, etc., excepting outdoor areas such as paved areas and walkways.

TAVERN – Premises used primarily for the sale or dispensing of alcoholic beverages by the drink for on-site consumption and where food is available for consumption on the premises as accessory to the principal use.

TEMPORARY USE – A use established for a limited duration with the intent to discontinue such use upon the expiration of the time period permitted by the Town of Minden. Unless noted otherwise, the duration shall not exceed 120 days.

THEATER, OUTDOOR -- An open lot or part thereof, with its appurtenant structures and facilities, devoted primarily to the showing of motion pictures or theatrical production on a paid admission basis.

TINY HOME – a mobile manufactured home that is a residential dwelling, and a minimum of 300 square feet in size, up to 720 square feet. Tiny homes that are built on a permanent basement without a permanent trailer or chassis remaining so that the structure is permanent shall be considered a one-family dwelling. Tiny Homes that are built with a permanent trailer or chassis intact so that the structure can be moved shall be considered a mobile manufactured home.

TOURIST HOME -- A dwelling where transient guests are lodged for a fee.

TOWNHOUSE -- One of several units in a building designed for and occupied exclusively as a residence for not more than one family living independently of any other family, separated from other units by a party wall or walls, and erected on a lot intended to be held in the form a condominium or in a single and separate ownership from any adjoining units.

TRAILER -- A mobile unit designed for camping, recreational travel or vacation use which is equipped with a chassis and provides partial housekeeping facilities such as plumbing, heating, electrical, cooking or refrigeration systems or equipment. A trailer shall not be considered a permanent dwelling unit. See also Recreational Vehicle.

TRAILER CAMP -- An area occupied or designed for occupancy by two or more trailers or recreational vehicles.

TRAVEL TRAILER – A portable vehicle designed as a temporary dwelling for travel, recreational and vacation use.

TRUCK TERMINAL -- A building or area in which freight or materials brought by truck is assembled and/or stored for routing, use or reshipment, or in which semitrailers, including tractor and/or trailer units and other trucks, are parked or stored. This term shall also mean truck and equipment staging areas.

USE, ACCESSORY -- A use or structure which is incidental but associated with the principal use such as a separate garage or shed, fencing and recreational facilities (e.g., pool, tennis court, etc).

USE, PRINCIPAL -- The primary purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

UTILITY-SCALE SOLAR ENERGY SYSTEM OR SOLAR FARM- Energy generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, designed and intended to supply energy solely into a utility grid for sale to the general public.

VARIANCE -- Permission to depart from the literal requirements of this chapter.

VARIANCE, AREA -- A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district, or a departure from any provision of this chapter, except as to use.

VARIANCE, USE -- A variance granted for a use or structure that is not permitted in the zoning district.

WHOLESALE STORAGE OR WAREHOUSE -- A building or buildings used as a wholesale distribution center.

YARD, FRONT -- An open, unoccupied and unobstructed space on the same lot with a main building, extending the full width of the lot and situated between the front property line and the front line of the main building projected to the side lines of the lot.

YARD, REAR -- A space on the same lot with a main building, open and unoccupied except for accessory buildings, extending the full width of the lot and situated between the rear line of the main building projected to the side lines of the lot and the rear line of the lot.

YARD, SIDE -- An open unoccupied space on the same lot with a main building, situated between the side line of the main building and the adjacent side line of the lot extending from the front yard to the rear yard. Any lot line not a front line or rear line shall be deemed a side line.

## **ARTICLE III, Districts and Boundaries**

### **§ 90-6. Establishment of districts.**

- A. For the purpose of this chapter, the Town of Minden is divided into the following types of classes of districts:
- (1) R-1 Residential.
  - (2) A Agricultural.
  - (3) C-1 Commercial.
  - (4) Planned Development District.
  - (5) Stream Corridor Overlay
  - (6) Floodplain Overlay
  - (7) Wetland Overlay
  - (8) Waterfront Recreation/Open Space
- B. Said districts are bounded and defined as shown on a map entitled "Town of Minden Zoning Map," hereinafter called the "Zoning Map," adopted by the Town Board and certified by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is hereby made a part of this chapter.
- C. Purposes of districts.
- (1) R-1 Residential. To allow primarily for residential development and limited, small scale commercial uses and low impact home occupations that are supported by limited soil capacity for on-site septic systems.
  - (2) A Agricultural. To conserve, protect, and encourage the development and improvement of agricultural land for the production of food and other products, and also conserve, protect, and encourage agricultural lands for their natural and scenic benefits; to maintain a critical mass of agricultural land and prevent further fragmentation of the Town's existing farms and farmland; to encourage a development pattern that keeps farmland in productive use or available for future agricultural use consistent with the Town of Minden Comprehensive Plan; to promote active agricultural land uses; to encourage low density residential and limited, small scale commercial land uses and low impact home occupations that are compatible with agricultural uses and available soils and water resources.
  - (3) C-1 Commercial. To allow for a mix of commercial uses that are consistent with the rural scale, dimensions, character, and environment, and to ensure that commercial uses are compatible with residential uses and agricultural uses nearby.
  - (4) PDD Planned Development District. The Planned Resort Development District is an unmapped "floating" zoning district that is established only upon approval of an applicant's submission to the Town of Minden Town Board. The purpose of this floating district is to allow for expansion of or establishment of in residential and commercial uses to be developed as a unit and in a manner that encourages flexibility and innovation in siting, design, and scale of structures to minimize environmental, aesthetic, cultural, or infrastructure impacts.

- (5) SC Stream Corridor Overlay. The purpose of this overlay district is to protect the critical vegetation and banks along the streams located within the Town of Minden.
- (6) F Floodplain Overlay. To ensure the safety, health and welfare of Minden residents and land uses in areas subject to flooding as mapped on the official Town of Minden FIRM maps
- (7) W Wetland Overlay. To protect the ecological and hydrological functioning of the wetland areas in the Town of Minden.
- (8) WRO Waterfront Recreation/Open Space. To protect open spaces along the Mohawk River and to allow for agriculture, low-density, small-scale and recreation and waterfront-related uses.

**§ 90-7. Interpretation of district boundaries.**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines, such center lines, street lines or highway right-of-way lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located midway between the main tracks of said railroad line.
- D. Where the boundary of a district follows a stream or other body of water, said boundary line shall be deemed to be the center line of such stream or body of water unless otherwise indicated.
- E. Where the district boundary lines are indicated to be approximately parallel to a street or highway, they will be considered to be 500 feet from the nearest street or highway line and parallel to it, or along the back line of properties of record fronting on said street or highway, whichever line is closer to the street at the time this chapter becomes effective, unless otherwise noted.

## **ARTICLE IV, Use Regulations**

### **§ 90-8. General provisions.**

The principal permitted uses of each zoning district are permitted as of right. All special permitted uses require both special use permit review and site plan review. Uses not listed as a permitted use or a special permitted use for a specific zoning district are prohibited from that district. Only one residence shall be allowed per parcel of land.

### **§ 90-9. R-1 Residential District.**

In the R-1 Residential District, no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

A. Principal permitted uses:

- (1) One-family dwelling.
- (2) Two-family dwelling.
- (3) Community park, playground, or picnic grove.
- (4) Accessory use and building.
- (5) Low impact Home occupation
- (6) Agriculture, Farm and associated accessory uses where located in a Certified New York State Agricultural District.

B. Uses permitted as a special use permit by the Planning Board:

- (1) Nursing or convalescent home or home for the aged, senior housing.
- (2) Mobile manufactured home park.
- (3) Parish house or convent.
- (4) Launderette.
- (5) Retail store, less than 4,000 square feet.
- (6) Townhouses.
- (7) Multiple-family dwelling.
- (8) Bed-and-breakfast establishment.
- (9) Agriculture, Farm and accessory buildings and uses, including agritourism, farm stand and retail farm market where not located in a Certified New York State Agriculture District.
- (10) Public building.
- (11) Portable Storage Units as per §90-52.10.

### **§ 90-10. A Agricultural District.**

In the A Agricultural District, no building or premises shall be used and no building shall be erected or altered except for one of more of the following uses:

A. Principal permitted uses:

- (1) Agriculture, farm and accessory buildings and uses.

- (2) Picnic grove, fish or game club (private).
  - (3) Nursery.
  - (4) One-family dwelling.
  - (5) Two-family dwelling.
  - (6) Community park or playground.
  - (7) Low Impact Home occupation.
  - (8) Mobile manufactured home as part of a farm operation or for farm worker housing.
  - (9) Accessory buildings and uses.
  - (10) Mobile manufactured home.
  - (11) Farm stand.
  - (12) Horse Breeding Operation
  - (13) Stable, private or public
- B. Uses permitted as a special use permit and site plan review by the Planning Board:
- (1) Commercial recreation.
  - (2) Bed-and-breakfast establishment.
  - (3) Golf course or country club.
  - (4) Nursing or convalescent home or home for the aged, senior housing.
  - (5) Public utility station with building.
  - (6) Farm products plant, on-farm and off-farm.
  - (7) Radio, TV transmitter, receiving tower, personal wireless service facility with building.
  - (8) Boarding or rooming house.
  - (9) Church.
  - (10) Parish house or convent.
  - (11) Animal/veterinary hospital.
  - (12) Public or parochial school or college.
  - (13) Retail farm market.
  - (14) Multiple-family dwelling.
  - (15) Portable commercial storage units as per §90-52.10 and for a temporary period of time to stay as long as a valid building permit is in effect.
  - (16) Boarding Kennel.
  - (17) High impact home occupation.
  - (18) Agritourism.
  - (19) Off-farm slaughterhouse for processing animals not grown on premises.

- (20) Small mine.
- (21) Personal wireless service facility.
- (22) Agri-business.
- (23) Sawmill, temporary, agricultural and commercial as per §90-52.15.
- (24) Solar Farm.
- (25) Wind Energy System.

C. Uses permitted with site plan approval by the Planning Board

- (1) On-farm slaughterhouse for processing animals grown on-farm (See Section 90-52.3).

**§ 90-11. C-1 Commercial District.**

In the C-1 Commercial District, no building or premises shall be used and no building shall be erected or altered except for one or more of the following uses:

A. Principal permitted uses:

- (1) Fire station or municipal building.
- (2) Mobile manufactured home as part of a farm operation.
- (3) Farm and accessory use or building, including farm stand.
- (4) One-family dwelling.
- (5) Accessory use or building.
- (6) Low-impact Home Occupation

B. Uses permitted with site plan approval by the Planning Board

- (1) Bed-and-breakfast establishment.
- (2) Personal service shop.
- (3) Retail store, no greater than 10,000 square feet in size.
- (4) Museum.
- (5) Custom workshop.
- (6) Radio, television or household appliance sales or service.
- (7) Antique shop.
- (8) Animal/veterinary hospital.
- (9) Feed, lumber, seed or fertilizer building.
- (10) Car wash.
- (11) Cabinet, electrical, heating, plumbing or air-conditioner shop.
- (12) Community park or playground.
- (13) Retail bakery.
- (14) Historic building or site.
- (15) Laundry or dry cleaning plant.

- (16) Salons.
- (17) Taverns.
- (18) Professional office, studio
- (19) Bank

C. Uses permitted as a special use permit and site plan review by the Planning Board:

- (1) Gasoline station.
- (2) Hotel or inn
- (3) Retail greater than 10,000 square feet but less than 25,000 square feet.
- (4) Utility substation.
- (5) Hotel.
- (6) Public garage.
- (7) Restaurant.
- (8) Fuel sales and storage.
- (9) Automobile, boat, farm implement or mobile manufactured home sales or rental.
- (10) Indoor storage of nonliquid, nongaseous fuel.
- (11) Light Industry.
- (12) Bowling alley.
- (13) Multiple-family dwelling.
- (14) Two-family dwelling.
- (15) Portable Storage Units as per §90.52.10 and only for temporary uses.
- (16) High Impact Home occupation
- (17) Funeral Home
- (18) Storage facility
- (19) Laundrette

**§ 90-11.1 Waterfront Recreation/Open Space**

A. Principal Permitted Uses

- (1) Agriculture
- (2) Open space

B. Uses permitted as a special use permit and site plan review by the Planning Board:

- (1) Picnic area/pavilion/gazebo
- (2) Boat launch, dock
- (3) Walkway, trails, bike paths
- (4) Parking lot

- (5) Camping area

**§ 90-11.2 Overlay Districts**

Permitted, and specially permitted uses in an overlay district shall be the same as the underlying base district.

**§ 90-12. Planned Development District.**

The Planned Development District (PDD) is hereby established as a floating zone with potential applicability to any property in the Town for the purpose of residential, commercial or light industrial uses.

A. Purpose:

- (1) To provide for well-located, clean, safe and pleasant industrial sites involving a minimum strain on transportation facilities;
- (2) To encourage innovations in residential, commercial and light industrial development so that the growing demands of the population may be met by greater variety in type, design and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings;
- (3) To encourage a more efficient use of land and public services or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may ensure to the benefit of those who need homes;
- (4) To lessen the burden of traffic on streets and highways;
- (5) To conserve the value of land;
- (6) To provide a procedure which can relate the type, design and layout of residential, commercial and industrial development to the particular site thereby encouraging preservation of the site's natural characteristics; and
- (7) To encourage integrated planning in order to achieve the above purposes.

B. Criteria.

- (1) The boundaries of each PDD shall be fixed by amendment to the Official Zoning Map wherever this district is applied. A metes and bounds description of each such district shall be kept on file in the office of the Town Clerk. Although it is anticipated that the PDD rezoning applications will be submitted on a voluntary basis by applicants, the Town Board may, on its own motion, rezone property to a PDD. This district is intended for sites of at least 30 acres, but the Town Board may consider applications for smaller properties if special circumstances warrant.
- (2) The following is a list of standards to be considered when reviewing a PDD:
  - (a) Compatibility with the surrounding area and the air, water, open space, and other natural resources and environment of the Town and region.
  - (b) Harmony with the rural or agricultural character of the neighborhood.
  - (c) Need for the proposed development.
  - (d) The effect of the proposed PDD on the immediate area and Town is negligible.
  - (e) The effect of any growth inducing aspects of the proposed PDD on the future development of the area.

- (f) Whether or not an exception from this chapter's requirements and limitations is warranted by virtue of design and amenities incorporated in the development plan.
- (g) That land surrounding the proposed PDD can be planned in coordination with the proposed PDD.
- (h) That the proposed change to a PDD District is in conformance with the general intent of the Comprehensive Plan.
- (i) That the existing and proposed roads are suitable and adequate to carry anticipated traffic in and around the proposed district.
- (j) That existing and proposed utility services are adequate for the proposed development.
- (k) That the PDD creates a desirable and stable environment.
- (l) That the PDD makes it possible for the creation of a creative, innovative, and efficient use of the property.
- (m) That the site is adequate in size to support the proposed quantity of development.
- (n) That the site is suitable in terms of topography, soils and other physical attributes and location for the proposed use(s).
- (o) That ground water supply levels and other natural resources, including critical habitats, are protected to the maximum extent practical and that the project does not disrupt scenic vistas, historic or archaeologically sensitive areas, or other important cultural areas to a significant degree.
- (p) That the project's visual, noise, light, and other impacts on neighborhood character are acceptable compared to the benefits of the project to the community.

C. Procedure.

- (1) Pre-application conference: Prior to the submission of a PDD application, the applicant shall meet with the Town Board to generally discuss the proposal.
- (2) Application: Seven (7) copies of an application to amend the zoning map to establish a PDD shall be submitted to the Town Board. Such application shall include fees as established by the Town Board, deeds of current owners of all property within the proposed PDD as recorded with Montgomery County, names and current mailing addresses of all persons owning property within five hundred (500) feet of the proposed development, and a general plan as described in this section. The Town Board shall send written notice of the application consideration to all owners of property within five hundred (500) feet of the proposed PDD.
- (3) Town Board Approval: The establishment of a PDD in the Town of Minden is a legislative act, similar to a rezoning. As a consequence, the establishment of a PDD requires the approval of the Town Board. Because the establishment of a PDD is a legislative act, the Town Board of the Town of Minden has the same amount of discretion in deciding whether to adopt a PDD proposal as it does for any other legislative act. Applicants shall have no entitlement to any approval of a PDD proposal and the granting of applications shall be in the sole discretion of the Town Board. The Town Board may adopt a PDD only if it complies with the standards set in this Zoning Chapter, if it is in accordance with the letter and spirit of the adopted Comprehensive Plan of the Town of Minden and if it is in the best interests of the health, safety and general welfare of the people of the Town. The following steps shall be followed:

- (a) Creation of a PDD is subject to the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law). Consistent with the regulations implementing SEQRA, a coordinated review<sup>1</sup> shall be conducted. No PDD application shall be considered complete for consideration by the Town Board until either a negative declaration establishing that the proposal will not have a significant impact on the environment or SEQRA Findings Statement setting forth the necessary mitigation measures and conditions necessary to ensure that the impacts of the proposal will be mitigated to the maximum extent practicable.
- (b) Local and County Planning Board Referral: The Town Board shall, prior to establishing a PDD, and upon receipt of an application, submit the proposal to the Town of Minden Planning Board and receive a recommendation from that Board. At this juncture, the Planning Board's review shall not be a full Site Plan or subdivision review, instead, its review shall be focused on whether the proposed PDD is consistent with the Town Comprehensive Plan and whether the Planning Board recommends amendment of the Zoning Law to establish the PDD. The Planning Board may also, at their discretion and at the expense of the applicant, consult with any engineer, attorney, planner, or other such professional reasonably necessary to assist the Planning Board in making its evaluation, recommendation and advisory opinion.
  - (1) Within thirty-one (31) days of receipt of the application, the Town Board shall refer the application, general plan and all SEQRA materials to the Town Planning Board, and to the Montgomery County Planning Board pursuant to General Municipal Law Section 239-m. However, if the Town Board determines, in its sole discretion, that the proposal does not merit review because it does not meet the objectives of this Zoning Law or the Town's Comprehensive Plan, it shall so notify the applicant, and shall not refer the application to the Planning Board or the County Planning Board, and no further action on the application shall be taken.
  - (2) Planning Board Procedures: Upon referral, the Planning Board shall provide to the Town Board an advisory opinion on the proposed PDD within sixty (60) days of the next meeting of the Town Board following the Planning Board's receipt of the PDD application. The Planning Board may request additional information reasonably related to the PDD application. If the Planning Board requests additional information, it's time to render an advisory opinion is extended to the next meeting of the Town Board following receipt of such additional information. The time of receipt of such information shall be deemed to be the date of the regular meeting following submission of the information to the Planning Board. The Planning Board may call upon the County Planning Department or Board, the Natural Resource Conservation Service, Soil Water Conservation District or any other public or private consultants that it feels are necessary to provide a sound review of the proposal. The advisory opinion shall be in the form of a report and shall contain the following content:
    - (a) A recommendation to the Town Board that the application be accepted and that a public hearing be held for the purpose of considering PDD districting, or a recommendation that the Town Board reject the PDD application. This opinion shall be based on the following findings which shall be included as part of the report:

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<sup>1</sup> The Planning Board shall be included in the coordinated review due to the requirement for site plan and special use permit approvals for a PDD application pursuant to 6 NYCRR Part 617.3 (g).

[1] How the proposal conforms to the Comprehensive Plan.

[2] How the proposal meets the intent and objectives of the PDD in the Zoning Law.

[3] How the proposal meets all the general requirements of the PDD.

[4] That the proposal is conceptually sound in that it meets a community need and it conforms to accepted design principals in the proposed functional roadway system, land use configuration, open space system, drainage system and scale of the elements.

[5] That there are adequate services and utilities available or proposed to be made available in the construction of the development.

- (b) The reasons for an unfavorable report shall be stated clearly. If appropriate, the report shall point out to the applicant what elements of the proposed project might be changed in order to better meet the criteria set forth in the immediately preceding subsection.
- (c) Public Hearing: The Town Board shall not vote to approve a PDD until it has held at least one (1) public hearing on the application following the submission of a complete application, and receipt of the Planning Board's recommendation on the application, has received the report of the Montgomery County Planning Board referral pursuant to GML 239-m, and has completed the SEQRA process. If the Montgomery County Planning Board disapproves of the proposed action, then the Town Board shall require a majority plus one vote in order to approve the PDD. If the Montgomery County Planning Board fails to take action within 30 days from the time they received the application, the Town Board may take final action without the County's report. Any such report received after thirty days or such longer period as may have been agreed upon with the Town Board, but two or more days prior to final action by the Town Board, shall be subject to a vote of a majority plus one of all the Town Board members.
- (d) The Town Board may, after receiving a recommendation from the Planning Board and the Montgomery County Planning Board, approve the general outline of the proposed PDD. This approval shall include establishment of the uses and densities that are allowable in the PDD as well as whether they are permitted uses or uses subject to Special Use Permits.

Following Town Board approval of a PDD application, the property shall be labeled "PDD" on the official zoning map of the Town of Minden with a notation that any development within this zone must be in accordance with the general plan approved in conjunction with approval of the PDD.

No permits for development shall be issued within any area designated as PDD unless Site Plan approval is obtained pursuant to this chapter. If Site Plan approval for one or more phases of the general plan is not granted within three (3) years of such PDD zoning designation, the Town Board shall reserve the right, after notice and hearing, to rezone the undeveloped portion of the property to its prior zoning classification.

- (4) Review of Application: The Town Board may engage experts, including but not limited to, professional planners, architects, attorneys and engineers in reviewing the PDD proposal and associated SEQRA submissions. All costs incurred by the Town Board for private consultation fees, fees for technical and engineering services, legal fees, or other expenses in connection with the review of PDD application including review of the SEQRA materials as per 6 NYCRR Part

617, shall be charged to the applicant. Such reimbursable costs shall be in addition to any fee established by the Town Board.

The Town Board shall make a reasonable estimate of the amount of expenses that it expects to incur during the course of each application for a PDD. The amount so determined by the Town Board shall be deposited by the applicant in escrow with the Town Clerk prior to the Town Board's commencing any review of the application. If the amount so deposited is exhausted or diminished to the point that the Town Board determines that the remaining amount will not be sufficient to complete the review of the application, then the Town Board shall notify the applicant of the additional amount that must be deposited with the Town Clerk.

If the applicant fails to replenish the escrow account or there are unpaid amounts for which the applicant is responsible pursuant to this provision, the Town Board, in its discretion, may cease review of the application until such amounts are paid or deny the application. In no event, however, shall any PDD approval be made until such sums have been paid in full.

- (5) Adoption of PDD: The Town Board shall not act on any application until all SEQRA requirements have been met. The Town Board shall act on an application to establish a PDD within ninety (90) days following completion of all SEQRA requirements. The Town Board's failure to act on a PDD application within this period shall not be deemed to constitute a default approval of the application.

The Town Board may adopt a PDD only after following the procedures described above and making written findings regarding each of the standards set forth above for adoption of a PDD. The approval shall include a list of permitted uses, Special Use Permitted uses and any other minimum land use standards that the Town Board deems appropriate. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, visual and acoustical screening, lighting restrictions, land use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, firehouses and libraries, protection of natural and/or historic sites and other such physical or social demands.

- (6) Role of the Planning Board after Adoption of a PDD. The Planning Board's role after adoption of a PDD by the Town Board is to review Site Plans, subdivisions, and Special Use Permits for uses in the PDD pursuant to the requirements for those approvals in this Zoning Law and in the Town of Minden Subdivision Law.

- D. PDD General Plan Requirements. A plan clearly showing the following information shall be submitted:

- (1) Survey of bounds showing courses and distances, zoning districts and lot lines within the tract and of all abutting property, existing easements burdening and benefiting the tract, and structures existing on the tract and within five hundred (500) feet of its boundaries.
- (2) Flood hazard areas, including base flood elevations.
- (3) Topographic contours at a maximum of two (2) foot intervals showing existing grades.
- (4) Existing vegetation, land forms and water bodies.
- (5) Roadway plans for primary and secondary traffic circulation patterns showing proposed and existing right-of-ways and easements.

- (6) Utility plans for public water, sanitary sewer, storm sewer, drainage, natural gas and underground electrical utilities.
  - (7) Delineation of development phases and acreage of each phase.
  - (8) Delineation of residential and non-residential use areas.
  - (9) Delineation of existing and proposed open space.
  - (10) Principal ties to the community at large with respect to transportation, water supply and sewage disposal.
  - (11) General description of the provision of other community facilities, such as fire protection services and cultural and recreational facilities, if any, and some indication of how these needs are proposed to be accommodated.
  - (12) Natural features overlay showing other significant features including but not limited to, critical wildlife habitats, wetlands and wetland buffers, scenic views, floodplains, and ridgelines.
  - (13) Evidence showing how the applicant's particular mix of land uses meets existing community demands and impacts of proposed development of water, sewer, public safety, and emergency services of the Town and evidence showing that utilities and services are adequate to serve the demands of the proposed development. (Note: Evidence may be in the form of specific studies or reports initiated by the applicant or in the form of references to existing studies or reports relevant to the project in question.)
  - (14) Evidence that the proposal is compatible with the goals of the official Town of Minden Comprehensive Plan.
  - (15) A general statement as to how common open space is to be owned and maintained.
  - (16) Evidence demonstrating the applicant's commercial capability and competence to carry out the plan along with his/her acknowledgment of the scope of the physical and financial obligations on applicant that the project will involve. (Evidence may be in the form of specific studies or reports initiated by the developer or in the form of references to existing studies or reports relevant to the project in question.)
  - (17) Summary table of residential uses, non-residential uses, and open space planned for each development phase and for the entire development.
  - (18) Visual Impact or Traffic Analysis, if required by the Town or Planning Board.
  - (19) Existing agricultural operations within one-half mile of the proposed site.
  - (20) Agricultural Data Statement if located in a Certified New York State Agricultural District.
  - (21) Full Environmental Assessment Form, Part I filled out.
  - (22) Narrative explaining potential impacts on groundwater resources using the Town of Minden Groundwater Study as a basis.
- E. Filing of Approved PDD and Zoning Map Amendment. Following approval by the Town Board of a PDD, the zoning text and zoning map shall be duly amended by the Town Board to reflect the development location, standards, and requirements as approved by the Town Board. Such map and text shall be filed, as required, as local law with the State of New York Department of State, and a copy shall be filed in the Montgomery County Clerk's Office, and Office of the Town Clerk. The approved map amendment shall be identified on the Zoning Map with a name or number.

F. Site Plan and Special Use Review and Approval by the Planning Board. The zoning of the property as a PDD by the Town Board does not create any vested rights in the applicant or property owner. The applicant shall be required upon approval of the PDD zoning to make a complete application to the Planning Board for site plan, subdivision, and/or special use permits, as may be required by the Town Board. The Planning Board may utilize all information submitted to the Town Board by the applicant in preparation for site plan and/or special use permit applications. The Planning Board may, at its own discretion, require such additional information as needed for conducting the special use and/or site plan reviews.

G. Expiration of PDD District. The applicant shall submit an application for site plan, special use or subdivision approvals, as the case may be, within one year of the date of approval by the Town Board of the PDD zoning. If this application is not made within one (1) year of the date the PDD zoning is granted, the rezoning shall become null and void and the land which is the subject of the PDD rezoning shall revert to the underlying zone. Prior to said one-year (1) period, the applicant may request from the Town Board an extension of time for the submission of a plan and reasons for such extension. The Town Board, in its discretion, may approve or deny the extension.

Special use permit approval for one or more phases of an approved PDD or the entire PDD must be obtained no later than three (3) years following the approval of the PDD. All components of the PDD shall be completed no later than five (5) years after final approval of the PDD, provided that the Town Board may grant extensions of time where the developer demonstrates that it is making a good faith effort to complete the development and there are no outstanding violations of this zoning law with respect to the PDD. Any failure to meet these deadlines shall result in the expiration of the PDD which shall become null and void.

If the PDD becomes null and void, the Town Board shall notify the owners of land within the PDD of such change, place notice of such change in the official newspaper of the Town, and cause the official zoning map to be amended to remove the PDD designation.

H. Changes. Any significant changes to building location, sizes, type, use, configuration, site plan, or changes which the Planning Board deems may have the potential to have a significant impact or represents a significant deviation from the plans upon which the FBD zone is based, shall be referred back to the Town Board for its review and consideration. The Town Board shall determine whether any changes require amendments to the PDD plan.

I. Design Standards

(1) Architectural Character. Buildings may be either traditional in their architectural character, or be a contemporary expression of traditional styles and forms respecting the scale, proportion, character and materials of historic village and hamlet structures common to the Town of Minden.

(2) Architectural Variety. A variety of architectural features and building materials is encouraged to give each building or group of buildings a distinct character.

(3) Scale. The scale of new construction, including the arrangement of windows, doors and other openings within the façade, shall be compatible or similar with historic buildings in the region.

(4) Building Mass. Buildings of eighty (80) feet or more in width shall be visually divided into smaller increments to reduce their apparent size and contribute to a human scale development. The mass of these buildings shall be de-emphasized in a variety of ways through architectural details such as divisions or breaks in materials, window bays, separate entrances and entry

treatments, variation in rooflines, awnings, or the use of sections that may project or be recessed up to ten (10) feet.

- (5) Consistent Cornice Lines. Attached buildings shall maintain cornice lines in buildings of the same height.
- (6) Fenestration. Windows and other openings shall have proportions and a rhythm of solids to voids similar to historic buildings in the region.
- (7) Roof Materials. Roof materials and color should be traditional, meaning they should be within the range of colors found on historic buildings in the region. The use of fascias, dormers and gables is encouraged to provide visual interest.
- (8) Exterior Wall Materials. Exterior wall materials and texture should be similar to that found on historic buildings in the region.
- (9) Colors. Colors on exterior surfaces shall use pallets that blend with the surrounding landscape, or that are harmonious with surrounding development, whichever the Planning Board determines to be most compatible with the rural character of the neighborhood and the Town.
- (10) Accessory Structures. All accessory structures, screen walls and exposed areas of retaining walls shall be of a similar type, quality and appearance as the principal structure.
- (11) The Planning Board may require pedestrian facilities, including hiking or bicycle trails; streetscape and landscaping standards, including materials, street furniture, illumination, cross walks, and preservation of existing specimen trees.
- (12) All other development standards of this zoning law for commercial structures including, but not limited to, lighting, landscaping, and signage standards shall be met.

## **ARTICLE V, Area and Height Regulations Lots, Yards and Buildings**

### **§ 90-13. Regulations in Schedule A.**

- A. Regulations governing lot area and lot width; front, side and rear yards; building coverage and building height are specified in Schedule A and in the additional regulations of Article V, VI and supplementary regulations of Article VIII. Schedule A accompanies and is hereby made a part of this chapter.
- B. Only one single-family or two-family residence per parcel shall be allowed. See Section 90-52.8 for multi-family dwellings.
- C. Conservation Subdivision and Clustering. It is the policy of the Town of Minden to preserve its open space and encourage development that is compatible with the existing character of the town.
  - (1) Clustered Subdivision. Accordingly, the Planning Board may vary the dimensional requirements specified in Schedule A and in Article V and supplementary regulations of Article VIII during the subdivision review process to provide for a clustered subdivision pursuant to New York State Town Law Section 278, provided that it issues a written explanation of the reasons for such variation. A clustered subdivision shall only be permitted where a municipal or small on-site centralized sewer is available or proposed.
    - (a) Groundwater Protection. In a clustered subdivision, the guiding design standard is to maintain or replicate the predevelopment hydrologic functions of storage, infiltration, and groundwater recharge. This can be done by using stormwater retention and detention areas, reducing impervious surfaces, lengthening flow paths and runoff time, and preserving environmentally sensitive site features. Low-impact development and better site design, and proper wastewater management is to be designed to return or recharge groundwater.
  - (2) Conservation Subdivision. It is a purpose of this section to plan for the orderly, economic, aesthetic, environmentally sound and efficient development of the Town that is consistent with its community character and the continuing needs of its people for conservation of agriculture, open space, natural and cultural resources, quality residential building sites and enjoyable open space. The Town of Minden is home to important agricultural lands, significant scenic viewsheds, historic architecture, natural beauty, and rural landscapes. This section has been carefully designed in recognition of the need to protect such resources as part of the land development process.
    - (a) Applicability. Pursuant to Section 278 of the New York State Town Law, the Planning Board is authorized to require a conservation subdivision layout for any proposed major subdivision when, in their discretion, they determine that the project or parcel contains significant features of value to the community including but not limited to flood plains, steep slopes, wetlands, historic features, critical habitats, farmlands, or important scenic views.
    - (b) Compliance with Subdivision Chapter 77. Chapter 77 of the Subdivision Regulations shall be followed for all procedural, layout, and design requirements and shall be coordinated with all provisions of the Town of Minden Zoning Chapter. Whenever the circumstance of a proposed development or application requires compliance with this Conservation Subdivision sub-section, the Planning Board shall integrate the applicable procedures, submission and design requirements with Chapter 77.

- (c) Groundwater Protection. In a conservation subdivision, the guiding design standard is to maintain or replicate the predevelopment hydrologic functions of storage, infiltration, and groundwater recharge. This can be done by using stormwater retention and detention areas, reducing impervious surfaces, lengthening flow paths and runoff time, and preserving environmentally sensitive site features. Low-impact development and better site design, and proper wastewater management is to be designed to return or recharge groundwater.
- (d) Dimensional Standards. Lot dimensions as required by the Department of Health, or by this zoning chapter shall be used to determine the total density of development allowed on any parcel. Use of the conservation subdivision technique pursuant to this section does not change the development potential of any parcel. The Planning Board shall allow alteration of lot dimensions within a conservation subdivision in order to properly accomplish the purposes of the Town of Minden Comprehensive Plan to preserve the maximum amount of open space when a subdivision is planned. Lots shall be arranged in a way that preserves open space, agriculture, and promotes land conservation as described in this sub-section and in Chapter 77.
  - (1) A conservation subdivision must preserve at least fifty percent (50%) of the parcel's acreage as open space land.
  - (2) Minimum road frontage per lot shall be thirty-five (35) feet.
  - (3) Minimum lot size. The conservation subdivision technique allows flexibility in lot sizes to result in optimum subdivision layout of lots to meet the goals of the Town. As such, the minimum lot size can be varied but where individual wells and septic systems are required, shall be at least equal to that required by the New York State Department of Health to meet standards for water and septic system approvals. For lots in major subdivisions that do not need individual well and septic systems, the minimum lot size shall be fifteen thousand (15,000) square feet, on average.
  - (4) Maximum impervious surface shall be fifteen (15%) on each lot.
  - (5) Setbacks from cropland or pasture land shall be one hundred (100) feet. The setback from barnyards housing livestock shall be three hundred (300) feet. Other setbacks shall be determined at the time of subdivision.
  - (6) There shall be a minimum twenty five feet (25') vegetated buffer along all streams. The applicant shall submit a plan that details maintenance or creation of this vegetated buffer that preferably includes use of trees. Buffers may also be required to be maintained along wetlands and other hydrologically sensitive areas where there shall be no disturbance.
  - (7) A conservation subdivision that results in a clustered design shall only be permitted where a municipal or small on-site centralized sewer is available or proposed.

**§ 90-14. Area regulations.**

A. Lots of less than required dimensions.

- (1) Any single lot or parcel of land which was of record at the time of adoption of this chapter that does not meet the requirements for minimum lot width and area, may be utilized for a permitted principal use.
- (2) In the event that compliance with the yard and coverage requirements of the district would result in a residential structure of less width than 24 feet, the Board of Appeals shall determine

and fix yard and coverage requirements for said lot to permit its reasonable utilization for a permitted use.

- B. Reduction of lot area. The minimum yards and open spaces, including lot area per family, required by this chapter shall not be encroached upon nor considered as yard or open space requirements for any other building, nor shall any lot be reduced below the district requirements of this chapter.
- C. Corner lots. On a corner lot in any district where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on each such street. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his application for a permit. The Board of Appeals shall determine the yards and building width of a corner lot facing an intersecting street, and of record at the time of the passage of this chapter, if the yard requirements would result in a residential structure less than 24 feet wide.
- D. Visibility at street corners. On a corner lot in any district where a front yard is required, no fence, hedge, wall or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines. Intersections with county or state road shall be in accordance with corresponding transportation department regulations and restrictions imposed by this chapter.
- E. Front yard exceptions. The minimum front yard of all principal buildings and structures hereafter constructed within a Residential District shall conform with Schedule A; and in addition, shall be not less than the average front yard of all principal buildings in the block for a distance of 300 feet on each side of such building. A vacant lot within the three-hundred-foot distance shall be considered as having the minimum front yard required in the district for the purpose of computing such average front yard.
- F. Transition yard requirements.
  - (1) Where two districts abut on the same street between two intersecting streets, and the front yard requirements of one district are less than those of the other district, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the district boundary line in the less restricted district a front yard equal in depth to the average of the required depth in the two districts.
  - (2) Where the side or rear yard of a lot in a Residential District abuts a side or rear yard of a lot in a Commercial District, there shall be provided along such abutting line or lines in the Commercial District a side or rear yard equal in depth to that required in the more restricted district; and in addition, a planting buffer at least 10 feet wide, having evergreen vegetative screening and/or opaque fencing at least eight feet high, may be required by the Town Planning Board in an easement in any Commercial District.
- G. Overlay District boundaries. Where Overlay District boundaries are based upon natural features such as steep slopes, contour lines, elevations, soil types or ecological communities, such boundaries may be more precisely established through field investigation by a qualified professional. In all other cases, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon.
- H. Projecting architectural features, terraces, porches, fire escapes.

- (1) The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than two feet into any required yard.
  - (2) A paved terrace shall not be considered as part of a building in the determination of yard size or lot coverage, provided that such terrace is without a roof and without walls, parapets or other form of enclosure exceeding six feet in height.
  - (3) In determining the percentage of building coverage or the size of yards for the purpose of this chapter, enclosed porches, or porches open at the side but roofed, shall be considered a part of the building.
  - (4) An open fire escape may extend into any required yard no more than four feet six inches, provided such fire escape shall not be closer than four feet at any point to any lot line.
  - (5) Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard a distance not to exceed six feet.
- I. Walls, fences and hedges. The yard requirements of this chapter shall not prohibit any necessary retaining wall nor any fence, wall or hedge permitted by this chapter, provided that in any Residential District such fence, wall or hedge shall be no closer to any front, side or rear lot line than two feet, and shall comply with visibility at street corners as provided in this article.

**§ 90-15. Height regulations.**

- A. Chimneys, spires, etc. The height limitations of this chapter shall not apply to belfries, church spires, cupolas and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks or other storage tanks/silos and necessary mechanical appurtenances usually carried above the roof level; nor to silos or structures used for agricultural purposes; nor to flagpoles, monuments, transmission towers and cables, radio and television antennas or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose for which they are intended, and are subject to Planning Board review and approval. No advertising device of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations.
- B. On through lots. On through lots 120 feet or less in depth, the height of a building may be measured from the grade of either street. On through lots more than 120 feet deep, the height regulations and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than 120 feet from that street.

## **ARTICLE VI. Preservation Overlay Districts**

### **§ 90-16. General.**

- A. Purpose. The Town of Minden declares that the protection of its stream corridors, floodplains, wetlands and steep slopes is an important public purpose and that, to the extent practicable, future development of the town should minimize disturbance of these areas.
- B. Effect of regulations.
  - (1) In furtherance of the objective in Subsection A above, the town hereby creates Overlay Districts which regulate the use of these areas of public importance. The restrictions applicable in these districts are supplementary to, and do not replace, the underlying use, density and dimensional regulations in each base zoning district (.e.g. A Agricultural, R-1 Residential, C-1 Commercial).
  - (2) These regulations do not limit or reduce the allowable density of residential development permitted in Article V.
  - (3) In considering any application for special use permit, site plan, subdivision or zoning amendment, the Zoning Board of Appeals, Planning Board or Town Board shall attempt, to the extent practicable, to maintain areas delineated in Preservation Overlay Districts as open space, directing permissible development into those areas not mapped as Overlay Districts.
- C. Mapping of districts. The Town Board may adopt and revise, as part of the Zoning Map, an Overlay District Map or Maps delineating the districts established herein. The provisions of this article shall take effect only when each Overlay District created herein has been placed on a specific map.
- D. Interpretation of boundaries. In the event of uncertainty as to the exact boundaries of any Overlay District, the Zoning Board of Appeals shall interpret this article by designating the exact boundary pursuant to the criteria established below for creating each Overlay District, with information prepared by a professional consultant as provided in Article V, § 90-14G.

### **§ 90-17. Stream Corridor Overlay District (SC).**

- A. Purpose. The protection of stream corridors is essential to the maintenance of water quality and the scenic beauty of the town. It is, therefore, necessary to protect these stream corridors from sedimentation and water pollution.
- B. Boundaries. The Stream Corridor Overlay District shall consist of all lands lying within 200 feet of either side of the center line of all streams classified by the New York State Department of Environmental Conservation, as well as such other streams and tributaries as may be designated and mapped by the Town Board. Where these streams are split into two or more channels by islands, the SC Overlay District shall include such islands, and district boundaries shall be measured from the center lines of the outer channels.
- C. Regulations. The Stream Corridor Overlay District regulates activities within the delineated corridors. Within this district, a special use permit shall be required for any construction, filling, excavation, clear-cutting of more than 10,000 square feet of vegetation over a five-year period, grading or other alteration of the natural landscape, application of fertilizers or pesticides or dumping or disposal of any materials. This regulation shall not apply to agricultural uses existing as of the adoption of this chapter.

- D. Special use permit requirements. The Planning Board may issue a special use permit pursuant to § 90-16, Subsection B(3) above, only if it finds that the granting of the special use permit, with appropriate conditions attached, will not result in erosion or stream pollution from surface or subsurface runoff.

**§ 90-18. Floodplain Overlay District (FP).**

Development of land lying within an area of special flood hazard (one-hundred-year floodplain), as delineated on the Flood Insurance Rate Map (FIRM) for the Town of Minden which is produced by the Federal Emergency Management Agency, or as delineated by any succeeding local law regulating floodplains, shall require compliance with such local law. All requirements of Chapter 54 (Flood Damage Prevention) shall be followed. Development within any designated floodway shall be prohibited.

**§ 90-19. Wetland Overlay District (W).**

- A. Purpose. The purpose of this overlay zone is to protect the town from overdevelopment in and around natural areas important to the people and the future of the Town of Minden.
- B. Boundaries: all land areas within 100 feet of a New York State regulated wetland.
- C. Procedure. No permit shall be issued by the Code Enforcement and/or Zoning Officer for any construction within 100 feet of a New York State regulated wetland until the applicant has obtained applicable approvals from the New York State Department of Environmental Conservation.

**ARTICLE VII, Site Plan Approval and Special Use Permits**

**§ 90-20. Purpose and authorization.**

- A. The purpose of site plan approval and special use permit approval is to ensure compliance with the objectives of this chapter, thereby promoting the public health, safety and general welfare.
- B. This article of the Minden Zoning Law is enacted under the authority of § 274-a of the Town Law of the State of New York to protect the health, safety, convenience and general welfare of the inhabitants of the town. This article regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development proposals to eliminate or minimize potential problems and nuisances.
- C. The power to approve, approve with conditions, or deny site plans and special use permits as required by this article is vested in the Planning Board. All site plan and special use permit applications shall comply with the adopted current requirements and procedures of the Planning Board.

**§ 90-21. Developments requiring site plan review.**

All special use permits require site plan review. Site plan review and special use permit review should be conducted jointly and concurrently by the Planning Board. Any change of use as defined in this Chapter shall require new site plan and/or special use permit approvals before being undertaken pursuant to 90-9, 10, and 11.

**§ 90-22. Procedure.**

- A. Prior to the submission of a formal site plan, a pre-submission conference may be held wherein the applicant shall meet in person with the Code Enforcement Officer to discuss the proposed site plan

so that the necessary subsequent steps may be undertaken with a clear understanding of the town's requirements in matters relating to the development of the site.

- B. Within six months following the pre-submission conference, seven copies of the site plan and any related information shall be submitted to the Code Enforcement Officer, accompanied by a fee in accordance with the schedule of fees of the Town of Minden, payable to the Town Clerk. If the application is not submitted within this six-month period, another pre-submission conference may be required. An Environmental Assessment Form, as required by the State Environmental Quality Review Act, shall also be submitted with the application.
- C. The Code Enforcement Officer shall certify on each site plan or amendment whether or not the application is complete in accordance with the requirements of this section, and whether the plan meets the requirements of all zoning law provisions other than those of this section, such as setbacks, number of parking spaces, etc. The Code Enforcement Officer shall act to certify the application or return it to the applicant for completion or revision within 10 days of submission by the applicant.
- D. Following certification of a complete application, the Code Enforcement Officer shall forward the application to the Planning Board no later than 20 days prior to its next meeting.
- E. The Planning Board may, at its discretion, hold a public hearing on the application. If the application for site plan review is because a special use permit is required, then the public hearing is mandatory. Said hearing shall be held within 62 days of submission to the Planning Board of said complete application. The Planning Board shall mail notice of said hearing to the applicant at least 10 days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the town at least five days prior to the date of the hearing. If action is subject to review by the County Planning Board in accordance with § 239-m of General Municipal Law, then the Planning Board shall mail notice to the County Planning Board at least 10 days before such hearing; this notice shall be accompanied by a full statement of such proposed action, as defined in Subdivision 1 of § 239-m of General Municipal Law.
- F. The Planning Board shall make a determination of significance of the proposed site plan according to SEQR. The time limitations of Subsection H of this section shall not apply until the conclusion of the SEQR process.
- G. Whenever any site plan involves real property in an area described in § 239-m of the General Municipal Law, said site plan shall be referred to the County Planning Board, which Board shall report its recommendations to the Town Planning Board. Failure of the County Planning Board to report within 30 days may be construed to be an approval. The concurring vote of a majority plus one of the Town Planning Board shall be necessary to override County Planning Board recommendations of approval with modifications or disapproval. The Town Planning Board shall file a report of the final action with the County Planning Board within 30 days.
- H. Planning Board approval.
  - (1) The Planning Board shall within 62 days of the public hearing, if one is held, or within 62 days of the receipt of a complete site plan application, either:
    - (a) Approve the site plan if the Planning Board finds that the plan meets the requirements of this chapter and any other applicable rules and regulations; or
    - (b) Conditionally approve the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be set forth in writing by the Planning Board; or

(c) Disapprove the site plan, the reasons for such action to be set forth in writing by the Planning Board.

(2) Failure to act by the Planning Board within the required time shall be deemed approval. Should the Planning Board need an additional amount of time to consider the application, then it may do so with the consent of the applicant. Said agreement shall be recorded in the minutes.

I. Review of amendments to an approved site plan shall be acted upon in the same manner as the review of the original plan.

**§ 90-23. Enforcement.**

- A. The Planning Board may require the posting of a bond or other similar performance guaranty to ensure compliance with the plan and stated conditions of approval. The Code Enforcement Officer may suspend any permit or license when work is not performed as required.
- B. Any special use permit issued or continued under this article shall lapse within one year and revert back to its original use if a substantial use thereof has not commenced, except for good cause. The time required to pursue and await determination of a judicial appeal pursuant to § 274-b of the Town Law shall be included within the one-year time limit.
- C. The Planning Board may adopt additional detailed design guidelines and performance standards, as it deems necessary by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing shall be advertised once in a newspaper of general local circulation, at least seven days prior to the hearing. Such standards and guidelines shall not become effective until adopted by the Town Board following a public hearing.
- D. No topsoil, tree, shrubs or other vegetation shall be removed from the site until a site plan has been approved for the property in question.

**§ 90-24. Submission requirements.**

- A. The site plan shall include the following data, details and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan except in accordance with § 90-24, Subsection B below.
- B. The Planning Board may waive any of the requirements of § 90-24, Subsections C or D or parts thereof, prior to the submission of a formal site plan, when such requirements are not material to the project under review.
- C. Site plans shall be prepared by a surveyor, registered professional engineer, architect, landscape architect at a scale of one inch equals 20 feet or less on standard twenty-four-inch by thirty-six-inch sheets, with continuation on eight-and-one-half-inch by eleven-inch sheets as necessary for written information.
- D. Items required for submission include:
  - (1) Name of the project, boundaries, location maps showing site's location in the town, date, North arrow and graphic scale of the plan.
  - (2) Name and address of the owner or record, developer and seal of the engineer, architect, surveyor or landscape architect.
  - (3) Name and address of all owners of record of abutting parcels and those within 500 feet of the property line.

- (4) Identification of any active agricultural operations existing on or within five hundred (500) feet of the proposed project, including owners' names and addresses (see Agriculture Data Statement).
- (5) Identification if any prime farmlands pursuant to the Town of Minden Comprehensive Plan maps are present on parcel.
- (6) Description of all land uses of abutting parcels and those within 500 feet of the property line.
- (7) All existing lot lines, easements and rights-of-way. Include all areas in acres or square feet, abutting land uses and the location and size of structures within 500 feet of the site.
- (8) The location, size, design, type of construction, and use of all existing and proposed buildings and structures within the development, including historic structures and cemeteries. Include all dimensions of height and floor area, and show all exterior entrances and all anticipated future additions and alterations.
- (9) The location of all present and proposed public and private ways, parking areas, driveways, sidewalks, ramps, curbs, fences, paths, landscaping and walls. Location, type and screening details for all waste disposal containers shall also be shown.
- (10) The location, height, intensity and bulb type (e.g., fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.
- (11) The location, height, size, materials and design of all proposed signage.
- (12) The location of all present and proposed utility systems, including:
  - (a) Sewage or septic systems.
  - (b) Water supply system.
  - (c) Telephone, cable and electrical systems.
  - (d) Storm drainage system, including existing and proposed drainage lines, culverts, catch basins, headwalls, end walls, hydrants, manholes and drainage swales. The Planning Board may also require soil logs, soil profile analysis (deep hole test pits), percolation test and stormwater runoff calculations for large developments in environmentally sensitive areas.
- (13) Plans to prevent the pollution of surface or groundwater erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table and flooding of other properties, as applicable. There shall be pre- and post-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. The use of ponds, dry wells, etc., shall be used, but all sites shall have zero increase in runoff so as not to disturb neighboring properties.
- (14) Existing and proposed topography at five-foot contour intervals. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the one-hundred-year floodplain, the area will be shown and base flood elevations given. Indicate areas within the site where ground removal or filling is required, and give its approximate volume in cubic yards.
- (15) A landscape plan showing all existing and natural land features, trees, forest cover and water sources, and all proposed changes to these features, including size and type of plant material,

and erosion control measures. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains and drainage retention areas.

- (16) Zoning district boundaries within 200 feet of the sites perimeter shall be drawn and identified on the plan.
- (17) Traffic flow patterns within the site, entrances and exits, loading and unloading areas, curb cuts on the site and within 200 feet of the site. The Planning Board may require a detailed traffic study for large developments or for those in heavy traffic areas to include:
  - (a) The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour traffic levels;
  - (b) The projected traffic flow pattern, including vehicular movements at all major intersections likely to be affected by the proposed use of the site;
  - (c) The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.
- (18) For new construction or alterations to any existing building, a table containing the following information must be included:
  - (a) Area of building to be used for a particular use such as operation, office, storage, etc.;
  - (b) Maximum number of employees;
  - (c) Maximum seating capacity, where applicable;
  - (d) Number of parking spaces existing and required by this chapter for the intended use.
- (19) Elevation plans at a scale of 1/4 inch equals one foot for all exterior facades of the proposed structures and/or existing facades, plus addition(s) showing design features and indicating the type of color of materials to be used.
- (20) Copies of New York State Department of Environmental Conservation Well Completion Reports for completed well(s) (including the well log and pump test data).
- (21) Water related data including:
  - (a) Any and all water quality testing results.
  - (b) The location(s) of all public water systems and other groundwater users within 1,500 feet of the proposed development boundaries;
  - (c) A description of the pollution control measures proposed to prevent ground water or
  - (d) surface water contamination; and
  - (e) A statement as to the degree of threat to water quality and quantity that could result if the control measures failed.
- (22) A hydrogeological study may be required by the Planning Board for any proposed project in Minden that has projected on-site groundwater withdrawals and/or on-site sewage disposal flows equal to or exceeding an average of 1,000 or 2,000 gallons per day (gpd). These types of projects could include, but are not limited to, recreational developments (golf courses, water theme parks, etc.), multi-family housing (apartments, condominiums, townhouses, etc.), industrial, or commercial developments.

- E. An Environmental Assessment Form (either short or long form, depending upon the nature of the proposal) shall be submitted with the site plan to ensure compliance with the New York State Environmental Quality Review Act (6 NYCRR 617), to identify the potential environmental impacts of the project.
- F. Required Agricultural Review and Agricultural data statement. An application for a site plan review must also contain an agricultural data statement if any portion of the project is located on property within a New York State Certified Agricultural District containing a farm operation, or other property with boundaries within five hundred (500) feet of a farm operation located in such agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement. The Planning Board shall cause a written notice of such application and date of public hearing to be mailed to the owners of land as identified by the applicant in the agricultural data statement. The Planning Board shall evaluate the impact of the proposal on existing agricultural operations in that district. The Montgomery County Planning Board, Montgomery County Soil and Water District, New York State Department of Agriculture and Markets or other suitable agencies as needed with any costs borne by the applicant.

G. Additional Requirements for Site Plans.

If, upon a review of the materials submitted by the applicant, the Planning Board determines that a proposed project could have traffic or visual impacts the Planning Board may require the applicant to prepare and submit a traffic impact analysis and/or a visual impact assessment. Costs for all reports, assessments, or plans required by the Planning Board shall be borne by the applicant.

(1) Traffic Report. Traffic Reports shall include the following for the study area:

- (a) Internal traffic flow analysis.
- (b) Existing and projected average daily traffic and peak hour levels.
- (c) Existing and projected intersection levels of service (LOS).
- (d) Directional vehicular flows resulting from the proposed project.
- (e) Proposed methods to mitigate the estimated traffic impact.
- (f) Identification of any pedestrian crossing issues.
- (g) The methodology and sources used to derive existing data and estimations.

(2) Visual Impact Report. The Visual Impact Assessment shall be prepared by a registered Landscape Architect or other qualified professional and shall include:

- (a) A report that visually illustrates and evaluates the relationship of proposed new structures or alterations to nearby natural landscapes and to pre-existing structures in terms of visual character and intensity/scale of use (e.g. scale, materials, color, door and window size and locations, setbacks, roof and cornice lines, and other major design elements).
- (b) An analysis of the visual impacts on neighboring properties from the proposed development and alterations, and of the location and configuration of proposed structures, parking areas, open space, and gradient changes.

- (c) The Planning Board may require use of photo-simulations or balloon tests as part of the visual impact assessment.

**§ 90-25. Standards for review.**

The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Pursuant to § 90-23, Subsection C, detailed design guidelines and performance standards may be adopted by the Planning Board to guide decisions with respect to these objectives and to help ensure consistency in the review of all applications.

- A. The site plan is compatible with the goals, policies and standards set forth in the Town of Minden Comprehensive Plan.
- B. Adjacent properties are protected from nuisance caused by noise, traffic, noxious or harmful odor, fumes, vibration and glare of lights.
- C. Significant natural, ecological, cultural, and historical features on the site are preserved as much as possible (i.e. hills, water bodies, wetlands, streams, wooded areas, rock outcrops, native plants, wildlife habitats, scenic locations, historical locations, cemeteries, and other areas of aesthetic and ecological interest). The project preserves to the maximum extent possible, woodlands along roadways, property lines, streams, and hedgerows to preserve the largest unfragmented expanse of woodlands possible.
- D. Adequate facilities for off street parking and loading, drainage, snow removal, fire protection and methods of solid waste disposal are provided on site.
- E. Roads, pedestrian ways, access driveways, loading areas and parking facilities are properly designed and operated for public convenience, universal accessibility, public safety, and for consistency with rural road standards and desired aesthetic character.
- F. Pollution of air, streams, wetlands, ponds, lakes, soils and groundwater supplies is avoided to the maximum extent practicable or mitigated.
- G. Development will be compatible with its surroundings and in keeping with the character of the Town of Minden.
- H. There is consistency with commercial design standards as required by the Town of Minden Zoning Law, if any, and if applicable.
- I. The location, arrangement, size, design and general siting are compatible with buildings, lighting and signs, including compatibility with setbacks and build-to lines of surrounding structures.
- J. Glare and light pollution that may be associated with new development and the degree to which these negative impacts are minimized or eliminated.
- K. There is consistency with the Town of Minden Highway Specifications and adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- L. Adequacy of location, arrangement, appearance and sufficiency of off-street parking, screening and loading.
- M. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience. The Planning Board may require a traffic study. All entrance and exit driveways shall be reviewed and approved by the appropriate state, county, or local agencies or departments prior to the granting of site plan approval.

- N. Adequacy of stormwater and drainage facilities. Minimize grading, cut and fill, and retain, to the maximum extent practicable, the natural contours and features of the land. All grading, erosion, and stormwater requirements of the New York State Department of Environmental Conservation for stormwater pollution prevention plans shall be met. The development should cause the least disturbance to natural infiltration of water to the groundwater table as possible.
- O. Adequacy of water supply and sewage disposal facilities including adequacy of control measures to prevent ground water or surface water contamination. The proposed use will not result in reductions in groundwater levels or changes in groundwater quality that limit the ability of a groundwater user to withdraw groundwater.
- P. Adequacy, type and arrangement of trees, shrubs and other landscaping. The Planning Board may require use of a visual and/or noise buffer between the land of the applicant and adjoining lands, including the maximum retention of existing vegetation on applicant's property.
- Q. Adequacy of utilities. Newly installed utility service systems and service revisions shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground.
- R. Adequacy of site accessibility, fire lanes and other emergency zones and the provision of fire hydrants. All buildings shall be accessible to emergency vehicles. If the Planning Board deems it necessary, it shall refer the application to the applicable emergency services providers and to the engineer retained by the Planning Board for comment on the proposed access arrangements.
- S. Adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion. These shall be reviewed and approved by an engineer and reviewed by the Planning Board.
- T. Relationship of buildings and site to adjoining areas. Site plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to minimizing the impact of the commercial development on such district or use.
- U. Individual buildings shall relate to each other, and to traditional structures in the surrounding area, in lot placement, scale, height, build-to lines, and connections to harmonize visually and physically with the traditional character of the area.
- V. The Planning Board shall evaluate the impact to, and compatibility of, these design features with existing neighborhoods. Treatment of the roof, sides and rear of all buildings shall be comparable in amenity and appearance to the treatment given to street frontages of these same buildings. When commercial projects involve the renovation/reuse of an existing building, the traditional character and architectural elements shall be maintained as may be required by the Planning Board.
- W. Compatibility with active agricultural activities. The Planning Board shall ensure that there are no negative impacts to further operation of farms or agricultural activities adjacent to or near the proposed development. The significance, location and type of agricultural activities that may be impacted by the proposed development shall be identified and impacts mitigated to the maximum extent practical.

**§ 90-26. Consultant review.**

In its review, the Planning Board may consult with the Town Code Enforcement Officer, Fire Commissioners, Highway Superintendent and other local and county officials, and its private consultants, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of Transportation, the State Department of

Environmental Conservation and the State Department of Health. If a consultant is retained by the Planning Board, the developer shall agree to pay his/her fees. An estimate of his/her fees shall be provided at the beginning of the project. The developer will be required to pay 1/3 at this time, another third at the time of the public hearing and a final third before a decision is rendered by the Planning Board.

**§ 90-27. Additional requirements.**

The Planning Board may require such additional provisions and conditions that appear necessary for advancement of the public environment. Such shall be included, but shall not be limited to, the following:

- A. Reimbursable costs. Costs incurred by the Planning Board for private consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant. Such reimbursable costs shall be in addition to the fee required in the Town of Minden Schedule of Fees for site plan review.
- B. Performance guaranty. No Certificate of Occupancy shall be issued until all improvements shown on the final site plan are installed or a performance guaranty, a letter of credit or certificate of deposit has been posted for improvements not yet completed. Other requirements relating to performance guaranties may be established from time to time by the Town Board. The amount and sufficiency of such performance guaranty shall be established by the Planning Board after consultation with the Building Inspector, Attorney(s) for the town and the Planning Board's designated consultants, or other competent persons.
- C. Inspection of improvements. The Code Enforcement Officer shall be responsible for the overall inspection of site improvements, including coordination with the town's private consultants, as may be appropriate on multifamily residential, commercial and industrial projects.

**§ 90-28. Appeals.**

Any person or persons jointly or severally aggrieved by any decision of the Planning Board concerning review of a site plan may bring a proceeding to review in a manner provided by Article 78 of the Civil Practice Laws and Rules in a court of record.

**§ 90-29. Special use permits.**

- A. Purpose. Special Uses are considered permitted uses and are allowed, but only upon the issuance of a "special use permit" subject to conditions that are designed to protect surrounding properties and the neighborhood from the negative impacts of that permitted use. Because of their characteristics, or the unique characteristics of the area in which they are to be located, special uses require different consideration by the Planning Board so that they may be properly located with respect to the objectives of the law and their effect on surrounding properties.
- B. Authorization to grant or deny special uses. The Town Board authorizes the Planning Board to grant or deny special uses in accordance with the requirements set forth in this section. No special use listed in this law may be permitted, enlarged or altered unless approved by the Planning Board.
- C. Application for special use.

Any application for a special use permit shall be made in writing. The application and required information shall be received at least fifteen (15) days prior to the date of the next regular meeting of the Planning Board. Seven copies of the application and required information as set forth below shall be submitted.

- (1) The application must include an Environmental Assessment Form (EAF) and all necessary documentation to comply with State Environmental Quality Review Act (SEQRA). No application shall be deemed complete until a Determination of No Significance has been made, or until a Draft Environmental Impact Statement has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.
- (2) Site Plan required. A Site Plan application and any required information from the Town of Minden Site Plan Section shall accompany the special use permit application. Upon request by the applicant, the Planning Board may waive the submission of information that is deemed to be unnecessary and not required in making its decision on the special use permit application. The Planning Board shall review Site Plans and special use permit applications at the same time.
- (3) Fees. Fees for the special use permit application shall be in accordance with any fees established by the Town of Minden. All application fees are in addition to any required escrow fees.
- (4) Expenses. The applicant shall be responsible for the total cost of environmental reviews that are determined to be necessary to meet the requirements of SEQRA. The Board may require assistance in this review in the form of professional review of the application by a designated private planner, engineer, attorney, or other type of consultant., In that case, or if the Board incurs other extraordinary expense in order to properly to review documents or conduct special studies in connection with the proposed application, the reasonable costs incurred by the Planning Board for private consultation fees, fees for technical and engineering services, legal fees, or other expenses in connection with the review of a special use permit application, Special Use Permit expansion application, or Special Use Permit renewal application, shall be charged to the applicant. The Planning Board shall make a reasonable estimate of the amount of expenses that it expects to incur during the course of each application for a special use permit, special use expansion or special use permit renewal. The amount so determined by the Planning Board shall be deposited by the applicant in escrow with the Town Clerk prior to the Planning Board's commencing any review of the application. If the amount so deposited is exhausted or diminished to the point that the Planning Board determines that the remaining amount will not be sufficient to complete the review of the application, then the Planning Board shall notify the applicant of the additional amount that must be deposited with the Town Clerk. If the applicant fails to replenish the escrow account or there are unpaid amounts for which the applicant is responsible pursuant to this provision, the Planning Board, in its discretion, may cease review of the application until such amounts are paid or deny the application. In no event, however, shall any special use permit, special use expansion or special use permit renewal be approved until such sums have been paid in full.

#### D. Procedures

- (1) Public Hearing Required. Within sixty-two (62) days of receipt of a complete application, the Planning Board shall hold a public hearing. Notice of the public hearing shall be published in the official newspaper at least ten (10) days prior to the date set for public hearing. In addition, not less than (10) days before the date of the hearing (not counting the date of the hearing), written notice of the public hearing shall be mailed to the owners of all property abutting the exterior boundaries of the land involved in the application, and to all other landowners having property located within five hundred (500) feet of the exterior boundaries of the land involved in the application at the mailing addresses for those owners as shown on the last completed assessment roll of the Town. The notice shall include the name of the project, the location of the project site, a brief description of the project, and the date, place, time and subject of the public hearing at which the Site Plan will be reviewed. If an application for special use permit

approval contains an agricultural data statement, written notice of such application, including a description of the proposed project and its location, shall be mailed to the owners of land as identified by the applicant in the agricultural data statement.

- (2) Site Plan Review. All requirements and procedures of the Site Plan Section of this Chapter as may be amended from time to time shall be met. The Planning Board shall conduct Site Plan and Special Use Permit reviews simultaneously.
- (3) Notice to Applicant and Montgomery County Planning Board
  - (a) At least ten (10) days before such hearing, the Planning Board shall mail such notices thereof to the applicant and the Montgomery County Planning Board as required by Section 239-m of the General Municipal Law. The Montgomery County Planning Board shall have thirty (30) days to review the full statement of the proposed action.
- (4) SEQRA. The Planning Board shall comply with the provisions of the New York State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations. An application shall not be deemed complete until a Negative Declaration has been adopted, or until a draft environmental impact statement has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.
- (5) Decisions
  - (a) Time of decision. The Planning Board shall decide upon the special use permit application within sixty-two (62) days after the close of the public hearing, subject to compliance with the requirements of SEQRA and the General Municipal Law Sections 239-l and 239-m. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
  - (b) Type of Decision. In rendering its decision, the Planning Board shall approve, disapprove or approve with modifications and conditions the special use permit application. In authorizing the issuance of a special use permit, the Planning Board has the authority to impose such reasonable conditions and restrictions as are directly related to, and incidental to, the proposed special use.
  - (c) Filing. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days of the date such decision is rendered and a copy thereof shall be mailed to the applicant.
  - (d) Once a special use permit has been granted, it shall run with the land and apply to the approved use, as well as to any subsequent use of the property in the same use category, provided that such use has no greater impact on adjoining properties, complies with all terms and conditions of the special use permit, and does not involve new construction, enlargement, exterior alteration of existing structures, increased parking, or other changed use of outdoor areas.
- (6) Other Agency Review.
  - (a) In its review, the Planning Board may consult with professionals such as but not limited to an engineer, attorney, surveyor, or planner and other Town and county officials and board, as well as with representatives of federal and state agencies, including the Soil and Water Conservation District, the United States Army Corps of Engineers or the New York State Department of Environmental Conservation. All fees related to consultation with professionals shall be borne by the applicant as per above.

- (b) The Planning Board shall require proof that all permits required by other agencies have been applied-for prior to final approval.
- (7) Expiration of Special Use Permit. A special use permit shall become void one (1) year after approval if there has been no construction or a lapse in construction of more than one (1) year. The Planning Board may extend the period one time for a period of no more than six (6) months. If a special use permit is deemed void, the use reverts back to uses as allowed by this Zoning Law.
- (8) Renewal of Permit. The Planning Board, as a condition of approval, may require that special use permits be renewed periodically. Thirty (30) days prior to the expiration of a special use permit, the applicant shall apply to the Code Enforcement Officer for renewal of the special use permit. The Code Enforcement Officer shall inspect premises, verify that conditions of the permit have been met, and renew the permit for a time equal to the original special use permit. Where the Code Enforcement Officer determines that the applicant has not complied with the special use permit, permit renewal shall require Planning Board approval.
- (9) Area variance. Application for an area variance related to any special use permit proposal may be made directly to the Zoning Board of Appeals without the necessity of a decision or determination of the Code Enforcement Officer. All use variance applications to the Zoning Board of Appeals shall be made only after denial of a permit by the Code Enforcement Officer.
- (10) Existing violation. No special use permit shall be issued for a property in violation of this Zoning Law unless the granting of a special use permit and Site Plan approval will result in the correction of the violation.
- (11) Deemed to be conforming. Any use for which a special use permit may be granted shall be deemed a conforming use in the district in which the use is located, provided that the special use permit shall affect only the lot, or portion thereof, which is the subject of the special use permit application.
- (12) Expansion of special use. The expansion of any special use shall require amendment and approval of the special use permit by the Planning Board in accordance with the procedures set forth in this Zoning Law. For purposes of this section, expansion shall be interpreted to mean an increase in the floor or lot area allocated to the special use, an increase in development coverage, increased hours of operation, or an increase in the intensity of the use, e.g., an increase in traffic or need for on-site parking.

E. Factors for consideration.

- (1.) In authorizing the issuance of a special use permit, the Planning Board shall take into consideration the public health, safety, and welfare and shall prescribe appropriate conditions and safeguards to ensure accomplishment of the following objectives:
  - (a) Compatibility of the proposed use with adjoining properties, and with the natural, cultural, historical and built environment in the area.
  - (b) Adequacy of parking for the proposed use and use of shared parking where feasible.
  - (c) Accessibility to fire, police, and emergency vehicles.
  - (d) Suitability of the property for the proposed use considering its size, topography, vegetation, soils, and hydrology and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.

- (e) The proposed use shall protect natural environmental features, historic features, and not impact traffic, or generate excess noise, dust, odors, release of harmful substances, solid waste disposal, glare, or any other nuisances.
  - (f) Vehicular traffic access and circulation, including intersections, road widths, drainage channelization structures and traffic controls shall be adequate to serve the special use and not negatively impact the overall traffic circulation system of the neighborhood and the Town.
  - (g) Pedestrian traffic access and circulation will be provided-for in a safe and effective manner.
  - (h) Location, arrangement, size, and design of the special use, including all principal and accessory structures associated with that use, shall be compatible with the neighborhood in which it is located and with the rural and small town character of the Town of Minden.
  - (i) Landscaping is appropriate to act as a visual and/or noise deterring buffer between the project and adjoining properties.
  - (j) Usable open space for playgrounds and recreation is provided for multi-family developments.
  - (k) Stormwater and drainage, sanitary waste and sewage, water supplies for fire protection, drinking and general consumption, solid waste disposal and snow removal storage areas are adequate to serve the use.
  - (l) The character of the town, neighborhood and values of surrounding properties are safeguarded, including protection against noise, glare, unsightliness, or other objectionable features.
  - (m) The special use shall not negatively impact historic, scenic, or natural environmental features.
  - (n) The location and size of the proposed use, the nature and intensity of operations involved in or conducted in connection with the use, the size of the site in relation to the use, and its site layout are all compatible with existing neighborhood uses and the environment.
- F. Appeals. Any person or persons jointly or severally aggrieved by any decision of the Planning Board concerning review of a special use permit may bring a proceeding to review in a manner provided by Article 78 of the Civil Practice Laws and Rules in a court of record. Such proceedings shall be instituted within thirty days after the filing of a decision by the Planning Board in the office of the Town Clerk.

## **ARTICLE VIII, Supplementary Regulations**

### **§ 90-30. General land use performance standards.**

In any district, the following performance standards for all land uses shall apply, subject to the limitations on the regulation of agricultural uses contained in Article I, §90-2 and 90-3:

- A. No offensive or objectionable vibration, glare or odor shall be noticeable at or beyond the property line, and no building materials, junk, leaves or other waste materials shall be deposited within 10 feet of a property line.
- B. No activity shall create a safety or health hazard, by reason of fire, explosion, radiation or other such cause, to persons or property.
- C. There shall be no discharge of liquid or solid waste or of any other materials in a manner that may contaminate surface water or groundwater.
- D. There shall be no storage of any material either indoors or outdoors that endangers public health and safety or the natural environment.
- E. Emission into the ambient air of smoke, dust, gases or other material which can cause damage to the health of persons, animals, plants or damage to property is prohibited.
- F. Only one permitted principal use or special use permitted use is allowed per lot. This Section § 90-30F shall not be applicable to a mobile manufactured home as part of a farm operation.

### **§ 90-30.1. Commercial Design Standards**

All commercial land uses except agriculture, farm stands, farm and accessory use and building, home occupations, and bed and breakfast establishments shall comply with the following requirements:

- A. General. These standards are in addition to all requirements of the New York State Uniform Fire Prevention and Building Code. It is not the intent of this sub-section to discourage contemporary architectural expression but rather to preserve the integrity and authenticity of the zoning district and to ensure the compatibility of new structures within the existing district zoning. The standards established in this sub-section are for the purpose of promoting quality development that is attractive, convenient and compatible with surrounding. These standards are intended to be general in nature and not to restrict creativity, variety or innovation. During project development and review, attention should be given to the compatibility of adjoining developments when reviewing project proposals.
- B. Applicability. These standards apply to all commercial development required to have site plan or special use permit approval.
- C. Context and Compatibility. These standards and guidelines establish an expectation that new development is similar in context and compatible with existing development. Context and compatibility with respected neighborhood buildings can be judged by the following major points of comparison:
  - (1) Roof shapes, slopes and cornices are consistent with the prevalent types in the area.
  - (2) Rhythm of building spacing along the street and overall scale are not interrupted. In order to minimize the apparent scale of buildings greater than 40' in width, facades facing the main street should be broken by periodic setbacks, façade breaks, and rooflines should include offsets

and changes in pitch. Other design features such as porches or cupolas, window bays, separate entrances and entry treatments, or the use of sections that may project or be recessed may also be used.

- (3) Proportions for facades and window openings are in harmony with the traditional types within the district. Blank walls shall be discouraged. The front façade of the building shall be parallel to the main street unless traditional orientation of buildings on that street differs for the majority of buildings.
- (4) Materials, textures, and colors are similar, with natural and traditional building materials preferred.
- (5) Site details (porches, entrances, signs, landscaping, lighting, screened parking and mechanical systems) complement traditional examples in the area.
- (6) Formula-based architectural styles. All businesses, including commercial franchise or formula-based businesses shall meet all design standards of this Zoning Law. Formula-based architectural styles including, but not limited to uniform color schemes, facades, or signage shall be allowed provided it is of a style consistent with the design standards of this sub-section. In order to protect the public health, safety and welfare of the Town of Minden, this provision is intended to preserve the Town's unique neighborhood and community character and to contribute to the establishment of a diverse economy and revitalized hamlets as established as critical goals in the Town of Minden Comprehensive Plan

**§ 90-31. Personal wireless service facilities.**

All personal wireless services facilities shall comply with the following requirements in addition to all the requirements of the underlying zoning requirements:

A. Purpose.

- (1) The purpose of these regulations is to promote the health, safety and general welfare of the residents of the Town of Minden.
- (2) The purpose of the Personal Wireless Service Facilities Overlay District is to provide a suitable choice of locations for the establishment, construction and maintenance of personal wireless services facilities, while protecting the integrity of the established neighborhoods of the Town of Minden.
- (3) To provide standards for the safe provision of wireless telecommunications facilities consistent with applicable federal and state regulations, and to protect the natural features and aesthetic character of the Town of Minden.
- (4) To accommodate the need for wireless telecommunications facilities while regulating their location and number in the Town of Minden.
- (5) To minimize the adverse visual effects of wireless telecommunications facilities support structures through proper design, siting and vegetative screening.
- (6) To avoid potential damage to adjacent properties from wireless telecommunications facilities support structure failure and falling ice through engineering and proper siting of such towers.
- (7) To encourage the joint use of any new wireless telecommunications facilities, thereby reducing the number of towers needed in the future.

B. Permitted uses. All new personal wireless service facilities shall be allowed by special use permit granted by the Town of Minden Planning Board. All new personal wireless service facilities, and all

additions and/or modifications to currently existing personal wireless service facilities, shall be allowed only in the Personal Wireless Service Facilities Overlay District. The Personal Wireless Service Facilities Overlay District shall apply to all property within the following zoning districts: Agricultural (A) and Commercial (C-1). In no event shall any personal wireless services facility be allowed within any zoning district without completing the procedural and other requirements of the Personal Wireless Service Facilities Overlay District.

C. Conditional uses.

- (1) All new personal wireless service facilities shall be allowed by special use permit granted by the Town of Minden Planning Board, after a public hearing.
- (2) Data requirements. Applications for site plan approval shall file with the Planning Board seven copies of the following documents:
  - (a) Site plan. An applicant shall be required to submit a site plan which will show all existing and proposed wireless telecommunications facilities structures (plan and elevation of the facility) and improvements, including roads, buildings, tower, guy wire anchors, parking and landscaping, and will include grading plans for new facilities and roads.
  - (b) Supporting documentation. An applicant shall be required to submit documentation on the intent and capacity of use as well as justification for the height of any tower or antenna and justification for any clearing required.
  - (c) Environmental Assessment Form. A Full Environmental Assessment Form (EAF), including the Visual EAF Addendum.
  - (d) Structural engineering report. A report prepared by a New York State licensed professional engineer specializing in structural engineering as to the structural integrity of the personal wireless service facility. In the case of a tower or monopole, the structural engineering report shall describe the structure's height and design, including a cross section of the structure, demonstrating the structure's compliance with applicable structural standards and describing the structure's capacity, including the number of antennas it can accommodate and the precise point at which the antenna shall be mounted. In the case of an antenna mounted on an existing structure, the structural engineering report shall indicate the ability of the existing structure to accept the antenna, the proposed method of affixing the antenna to the structure and the precise point at which the antenna shall be mounted.
  - (e) Engineering analysis of radio emissions. An engineering analysis of the radio emissions, and a propagation map for the proposed personal wireless service facilities. The analysis shall be prepared and signed by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio-communication facilities. The results from the analysis must clearly show that the power density levels of the electromagnetic energy generated from the proposed facility are within the allowable limits established by the FCC which are in effect at the time of the application. If the proposed personal wireless service facilities would be co-located with an existing facility, the cumulative effects of the facilities must also be analyzed. The power density analysis shall be based on the assumption that all antennas mounted on the proposed facility are simultaneously transmitting radio energy at a power level equal to the maximum antenna power rating specified by the antenna manufacturer.
  - (f) Map of proposed coverage and existing facilities. A map showing the area of coverage of the proposed facility and listing all existing personal wireless service facilities in the town and

bordering municipalities containing personal wireless service facilities used by the applicant, and a detailed report indicating why the proposed personal wireless service facilities is required to provide service to locations which the applicant is not able to serve with existing facilities which are located within and outside the town by co-location and otherwise.

- (g) Shared use of existing towers. The co-location of existing personal wireless service facilities only within the Personal Wireless Service Facilities Overlay District shall be strongly preferred to the construction of a new personal wireless service facilities. If a new site for a personal wireless service facilities is proposed, the applicant shall submit a report setting forth in detail an inventory of existing personal wireless service facilities within the Personal Wireless Service Facilities Overlay District which are within a reasonable distance from the proposed facility with respect to coverage; an inventory of existing personal wireless service facilities in other municipalities which can be utilized or modified in order to provide coverage to the locations the applicant is seeking to serve; and a report on the possibilities and opportunities for co-location as an alternative to a new site. The applicant must demonstrate that the proposed personal wireless service facilities cannot be accommodated on a existing facility within the Personal Wireless Service Facilities Overlay District or on a existing facility in another municipality due to one or more of the following reasons:
  - (1) The proposed equipment would exceed the existing and reasonably potential structural capacity of existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District, considering existing and planned use for those facilities.
  - (2) The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be prevented or mitigated.
  - (3) Existing or approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District or in neighboring municipalities do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and the applicant has not been able, following a good faith effort, to reach an agreement with the owners of such facilities.
  - (4) Other reasons make it impracticable to place the proposed equipment on existing and approved personal wireless service facilities within the Personal Wireless Service Facilities Overlay District on existing facilities in other municipalities.
  - (5) Service to the locations to which the applicant seeks to provide service cannot be provided by existing facilities within or outside the town.
- (h) Any application for a new tower, or for modifying or updating an existing tower and or facility shall not be considered by the Planning Board until the permit fee as established by the Town Board is received by the Town of Minden Town Clerk.

D. Standards.

- (1) Personal wireless service facilities. No personal wireless service facility shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a commercial communications tower unless in conformity with these regulations.
- (2) Siting and visual impact. All antenna and accessory facilities shall be sited to have the least practical adverse visual effect on the community. Applicant shall be required to perform a visual

impact test at the proposed site and notify the Town of Minden 10 days in advance of visual test.

- (3) Maintenance of facility (annual inspections).
  - (a) Unless otherwise preempted by federal or state law, personal wireless service facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for structural integrity, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement Officer. The structural inspection shall be performed by a New York State licensed professional engineer specializing in structural engineering. The structural inspection report shall describe the structural integrity of the personal wireless service facility, maintenance issues and repairs need or made, if any. In the event that the structural inspection indicates structural deficiencies, then the deficiencies must be remedied within the time reasonable set by the Code Enforcement Officer.
  - (b) Unless otherwise preempted by federal or state law, personal wireless service facilities, including towers, monopoles and antennas, shall be inspected annually at the applicant's expense for radio emissions, and a copy of the inspection report shall be promptly transmitted to the Code Enforcement Officer. Radio emission inspection shall be performed by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities. The radio emission inspection shall describe the power density levels of the electromagnetic energy generated from the facility, including the cumulative effects of co-located antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the facility are above the allowable limits stated within applicable FCC and ANSI standards or other applicable state or federal guidelines in effect at the time of the inspection, the applicant shall cease all use of the facility until such time as it proves to the satisfaction of the Code Enforcement Officer that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.
- (4) Location. The applicant shall demonstrate, using technological evidence, that the antenna must be placed where it is proposed in order to satisfy its function in the company's grid system.
- (5) Co-location. If the applicant proposes to build a tower as opposed to mounting the antenna on an existing structure, the town may require the applicant to demonstrate that it contacted the owners of tall structures within not less than a mile radius of the site proposed, asked for permission to install the antenna on those structures, and was denied for reasons other than economic ones.
- (6) Antenna height. The applicant shall demonstrate that the antenna is the minimum height required to function satisfactory. No antenna that is taller than this minimum height shall be approved.
- (7) Minimum lot size. The minimum lot size for a wireless telecommunication facility antenna shall be equal to the square of twice the tower or monopole height or the minimum lot size required by the underlying zoning district, whichever is greater.
- (8) Setbacks from base of antenna support structure. If a new antenna support structure is constructed as opposed to mounting the antenna on an existing structure, the minimum distance between the base of the support structure and the property lines shall be 10% greater than the height of the antenna. All personal wireless service facilities shall be separated from all residential dwellings by a distance of no less than 500 feet, and by no less than 500 feet from

the road right-of-way. All guy wire anchors and accessory facilities shall be set back a minimum of 30 feet from the property line.

- (9) Antenna support structure safety. The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris, electromagnetic fields or radio frequency interference. All support structures shall be fitted with anti-climbing devices, as approved by manufacturers.
- (10) Fencing. Fencing will be required around the antenna support structure and other equipment including each guy anchor. The fence shall be a minimum of eight feet in height. Barbed wire shall be used along the top of the fence to preclude unauthorized access to the tower.
- (11) Landscaping. Vegetative screening shall be provided to effectively screen the tower base and accessory facilities. At a minimum, screening shall consist of one row of native evergreen shrubs or evergreen trees capable of forming continuous hedge. Existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute of or in supplement toward meeting landscaping requirements. Additional screening may be required to screen portions of the structure from nearby residential property or important views. All landscaping shall be properly maintained to ensure good health and viability.
- (12) Signage. Signage shall be prohibited on personal wireless service facilities except for signage to identify the facility which is located along the right-of-way frontage. Except as specifically required by federal, state or local authority, no signage shall be permitted on equipment mounting structures or antennas.
- (13) Other uses. In order to reduce the number of antenna support structures needed in the community in the future, the proposed support structure shall be required to accommodate other users, including other cellular phone companies and local fire, police and ambulance companies.
- (14) Licenses. The applicant must demonstrate that it has obtained the required licenses from the Federal Communications Commission, the State of New York and other necessary agencies.
- (15) Access and parking. A road and parking area shall be constructed to provide adequate emergency and service access. The road shall be constructed to town standards, the parking shall be constructed to the number of required parking spaces needed to accommodate all of the people needed to maintain this facility under normal circumstances.
- (16) Lighting and color. No antenna support structure shall be artificially lighted except when required by the Federal Aviation Administration (FAA). In order to reduce the visual impact, the tower or monopole shall either have a galvanized finish or be painted gray or blue gray above the surrounding treeline and gray, green or tannish brown below the surrounding treeline.
- (17) Performance bond or other security. Prior to site plan approval, a performance bond or other security sufficient to cover the full cost of the removal and disposal of the personal wireless service facility upon abandonment of said facility shall be provided by the owner/operator. This cost shall be determined by an estimate of the town-designated engineer. Any such security must be provided pursuant to a written security agreement with the town, approved by the Town Board and also approved by the town attorney as to form, sufficiency and manner of execution. The form of security shall be limited to those permissible under New York State Town Law.

- (18) Abandonment. The applicant shall annually file a declaration with the Town of Minden as to the continuing operation of every facility installed to these standards. A communication tower and appurtenances shall be removed within 120 days of the date that such tower ceases to be used for communication. Failure to file the yearly report will constitute nonuse.

**§ 90-32. Access to improved street.**

In any district, a lot to be used for building purposes shall have direct frontage on a improved street or highway or on a street in a subdivision plot approved by the Planning Board.

**§ 90-33. Lots in two districts.**

Where a district boundary line divides a lot in one ownership at the time of adoption of said district line, the regulation for either district may be used up to 100 feet into the other district, provided the lot has the minimum required frontage on a street.

**§ 90-34. Drive-in food services.**

Any drive-in food service building shall be located 60 feet or more from any public right-of-way. Such businesses, where persons are served in automobiles, shall not be closer than 200 feet to a Residential District. Arrangements of ingress and egress of vehicles, lights, fences and screening shall be approved by the Planning Board in such a way as not to interfere with uses in the Residential District.

**§ 90-35. Accessory buildings: number, height and location.**

- A. Number. On any lot intended or used primarily for residential purposes, an accessory building, such as private garage for use in connection with the principal dwelling, is permitted.
- B. Height. Maximum height of accessory buildings shall be 25 feet, except that there shall be no height limitation on barns, silos and other farm structures.
- C. Location.
- (1) Accessory private garage buildings in Residential Districts which are not attached to a principal building may be erected within the rear yard accordance with the following requirements:
- (a) Rear yard: five feet from side or rear property line, except when abutting an alley, then 10 feet.
- (b) Side yard. Street side of corner lot: same as for principal building.
- (c) Not closer to a principal or accessory building than 10 feet.
- (2) In any district, accessory buildings other than private garages shall comply with front and side yard requirements for the principal building to which they are accessory and shall be not closer to any rear property line than 10 feet.
- D. Attached accessory building in Residential District. When an accessory building is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.
- E. Maximum lot coverage is to include all principal and accessory structures.

**§ 90-36. Mineral extraction (Mine).**

In any district, the removal of more than 1,000 tons or 750 cubic yards per year of soil, sand, gravel or quarried stone for sale, except when incidental to or connected with construction of a building on the same premises, requires a New York State Department of Environmental Conservation (DEC) permit and approval. Local review by the Planning Board is not authorized. The Planning Board will be sent a copy of

the applicant's proposal and may make suggestions on ingress, egress and hours of operation, but final decisions are that of the DEC.

**§ 90-37. Junkyards.**

No junk shall be located so as to be visible from public roads.

- A. Location. Except as a continuation of a nonconforming use, no junk storage area shall be located within:
  - (1) One hundred feet of any adjoining property line;
  - (2) Five hundred feet of any existing dwellings;
  - (3) Five hundred feet of any public park, church, educational facility, nursing home, public building or other place of public gathering;
  - (4) Two hundred feet of any stream, lake, pond, wetland or other body of water;
  - (5) Two hundred feet from the right-of-way of any public highway.
- B. Fencing. There must be erected and maintained an eight-foot-high fence enclosing the entire junkyard and a locking gate, adequate to prohibit the entrance of children and others into the area of the activity or business and to contain within such fence the materials dealt with by the operator of the junkyard.
- C. Screening. Where a junkyard is or would be visible from a public highway or from neighboring properties, the fence provided in § 90-37B above shall be of wood or other materials sufficient to totally screen the junkyard from view.
- D. Burning. No materials shall be burned in a junkyard except in compliance with the New York State Codes, Rules and Regulations on open fires (see 6 NYCRR Part 215).
- E. Burying. No junkyard items shall be buried in a junkyard except in compliance with the New York State Codes, Rules and Regulations on Solid Waste Management Facilities (see 6 NYCRR Part 360).
- F. Approved junkyard items. No junkyard items shall be stored in any junk storage area other than those items specified on a junkyard permit approved by the Town Board pursuant to this section.
- G. Fire lane. Inside and adjacent to and contiguous with the fence mentioned in § 90-37B above, a strip of land at least 15 feet in width shall be kept free of all dry grass or other growth or combustible material so as to provide a fire lane or line around the whole junkyard. There shall be internal fire lanes within every 100 feet apart, and 15 feet in width.
- H. Junkyard permit.
  - (1) No person shall establish or maintain a junkyard within the Town of Minden unless a permit has first been issued for such junkyard pursuant to this section, and all New York State requirements for a junkyard have been met.
  - (2) No person owning, having any right to or interest in any real property within the Town of Minden shall license, rent, lease or otherwise permit the use of such real property or any part thereof for a junkyard unless a permit has first been issued for such junkyard pursuant to this section.
  - (3) All permits issued shall be effective for one year from the date of its issuance until the 30th day of June of the following year, after which a new application for a permit must be made yearly if the permittee desires to continue such activity or business.

(4) A junkyard permit is non-transferable to any subsequent owner.

I. Application procedure:

(1) The applicant for a junkyard permit shall obtain application forms from the Town Clerk. The completed forms along with one copy of the proposed site plan, and the appropriate fees, shall be returned to the Town Clerk. The Town Clerk shall submit the application materials to the Town Planning Board. The Planning Board shall review the junkyard permit and prepare an advisory opinion on the approval or disapproval of a junkyard permit for the Town Board within 45 days of receipt of a complete junkyard application from the Town Clerk.

(2) Site plan contents. The site plan shall be drawn to scale or indicating all dimensions and show:

- (a) All existing and proposed structures, including fences;
- (b) All property lines, including the names of owners of adjacent property;
- (c) All streams, lakes, wetlands, floodplains and other water bodies;
- (d) All well and sanitary facilities;
- (e) All roads and easements;
- (f) All existing and proposed junk storage areas;
- (g) All existing and proposed accessways, and parking and loading areas.

(3) Environmental impact statement. An Environmental Assessment Form shall be completed and submitted with all applications pursuant to the provisions of the State Environmental Quality Act, 6 NYCRR Part 617. If the EAF indicates that the proposed activity may have significant environmental consequences, the Town Board shall require that a Draft Environmental Impact Statement (DEIS) be submitted with the application. The application shall not be considered complete until the DEIS has been accepted by the Town Board.

(4) Application fee. An application fee as set from time to time by resolution of the Town Board shall accompany all applications.

(5) Public hearing. After receipt of the advisory opinion from the Planning Board, the Town Board shall fix a time for a public hearing. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. At the hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for a junkyard permit.

(6) Town Board action. Within 45 days of said hearing the Town Board shall render decision to approve, approve subject to conditions, or disapprove the application for a junkyard permit. The forty-five day period may be extended by mutual consent of the applicant and the Town Board. All findings of the Town Board shall be entered into the official minutes of the town. The decision of the Town Board shall immediately be filed in the office of the Town Clerk and the applicant shall be notified of the decision and the reasons for such decision by certified mail within five days of the decision of the Town Board. Upon approval of the site plan and application, and payment of the fees and reimbursable costs due the town, the Town Board shall endorse its approval upon a copy of the final site plan and application.

(7) Issuance of permit:

- (a) If the application is approved by the Town Board, a junkyard permit shall be issued by the Clerk.

- (b) If the application is approved with conditions by the Town Board, the Town Clerk shall issue a junkyard permit upon notification by the Code Enforcement Officer that said conditions have been complied with.

J. General considerations.

- (1) Aesthetic considerations. In granting or denying a permit, the Town Board shall take the following aesthetic factors into consideration:

- (a) Type of road servicing the junkyard or from which the junkyard can be seen.
- (b) Natural or artificial barriers protecting the junkyard from view.
- (c) Proximity of the site to established residential or recreational areas or main access routes thereto.

- (2) Locational considerations. In granting or denying a permit, the Town Board shall take the following locational factors into consideration:

- (a) The nature and development of surrounding property, such as the proximity of public parks, churches, educational facilities, nursing homes, public buildings or places of public gathering.
- (b) Whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
- (c) The proximity of streams, lakes, wetlands, floodplains, groundwater supplies and public water supplies.
- (d) Local drainage patterns.
- (e) The long-range Comprehensive Plan for the town.
- (f) Proximity of the site to established residential or recreational areas.
- (g) Availability of other suitable sites for the junkyard.

- K. Revocation of permit. The Town Board may revoke a junkyard permit upon reasonable cause should the applicant fail to comply with any provision of this chapter. Before a permit may be revoked, a public hearing shall be held by the Town Board. Notice of the hearing shall be made in the official newspaper at least five days prior to the date thereof. The permit holder shall be notified of the hearing by certified mail at least five days prior to the hearing. At the hearing the Town Board shall hear the permit holder and all other persons wishing to be heard on the revocation of the junkyard permit. Should the Town Board decide to revoke a permit, the reasons for such revocation shall be stated in the Town Board minutes. The permit holder shall be immediately notified of the revocation by certified mail.

**§ 90-38. Signs.**

Signs shall comply with the following regulations.

- A. General. A sign shall be permitted to advertise nonresidential uses on site. Signs shall be of such design and construction so as to convey information with clarity and without disruption to the character of the community. Such signs shall conform to the following general design principles:

- (1) The lowest point of a hanging sign in a pedestrian circulation area should be at least 7 1/2 feet above ground.

- (2) Signs should be a subordinate part of the local landscape and as small as practicable.
  - (3) Signs should have a minimum of information in order to avoid clutter and confusion.
  - (4) Whenever feasible, multiple signs should be combined into one to avoid clutter.
  - (5) No sign shall be located so as to project into the public right-of-way or to be a hazard to traffic or pedestrians, to obstruct any door, window, ventilating system or fire escape or to cause any other hazard to public safety or peril.
  - (6) If sign is illuminated, the source of light shall not be visible.
- B. Exempt signs. The following signs shall be exempt from the requirements from the requirements of this section:
- (1) Historical markers, tablets and statues, memorial signs and plaques, names of buildings and dates of erection, when cut into masonry surface or when constructed or bronze, stainless steel or similar materials; and emblems installed by government agencies, religious or nonprofit organizations; not exceeding 32 square feet.
  - (2) Flags and insignia of any government except when displayed in connection with a commercial promotion.
  - (3) Traffic or other municipal signs.
  - (4) Legal notices or such temporary, emergency or non-advertising signs may be authorized by the town.
  - (5) A farm produce sign not exceeding six square feet.
  - (6) Temporary nonilluminated signs on the premises for up to one year for the following purposes:
    - (a) Real estate "For Sale" or "For Rent" signs not exceeding six square feet and located on the front wall of the building or if freestanding, not nearer than 10 feet from a roadway edge on the subject property.
    - (b) Signs which announce anticipated occupancy of a site or building or identifies the contractors, architects, engineers, etc., on a building or site under construction, not exceeding 20 square feet in area. Such sign shall be a minimum of 10 feet from a roadway edge on the subject property.
  - (7) Temporary off-premises directional signs for the convenience of the general public not exceeding two square feet in area.
  - (8) Signs or bulletin board customarily incidental to places of worship, libraries or museums, erected on the premises for purposes of displaying temporary public information notices, not exceeding 15 square feet in area.
- C. Prohibitions. The following signs shall be prohibited unless otherwise exempted by the Planning Board:
- (1) Except for holiday seasons, grand openings and other special or temporary events, not to exceed 30 days, no sign shall include or consist of pennants, ribbons, streamers, spinners or other moving, fluttering or revolving devices.
  - (2) No sign shall contain flashing lights.
  - (3) No revolving, moving or animated signs shall be permitted.

- (4) No advertising sign (i.e., billboard) shall be allowed on-site.
- (5) No temporary, movable signs, except for holiday seasons, grand openings and other special events, for up to 60 days, shall be allowed.

D. Freestanding signs. All freestanding signs shall comply with the following standards:

- (1) Only one freestanding sign, which may be double-faced, shall be permitted for the primary frontage of a property on a public street. Not more than one freestanding sign shall be permitted for each business structure, plaza, etc. regardless of the number of stores housed therein.
- (2) All signs should be erected a minimum of 15 feet from any roadway edge.
- (3) The maximum height for a freestanding sign, unless otherwise indicated, shall be 15 feet.
- (4) Total area of freestanding sign, not including supports, is 30 square feet.

E. Building signs. Signs attached to a building shall conform to the following standards:

- (1) The maximum area of the sign shall not exceed 10% of the building face area.
- (2) Signs shall not project above the highest point along the face of the building.
- (3) Iconic signs, such as barber poles, eyeglasses, etc., which are traditional in appearance and size should not extend more than four feet from a building wall, nor occupy a space of more than 15 square feet when viewed from any angle.
- (4) One sign not exceeding four square feet in area may be hung under a roof overhang perpendicular to each store front in a shopping center.
- (5) Directional signs for pedestrian and traffic control should not exceed four square feet in area each.

F. In R-1 Residential and A Agricultural Districts, non-illuminated and non-advertising signs are permitted as follows:

- (1) One nameplate, identification or professional sign, not to exceed an aggregate of 12 square feet of sign area, showing the name or permitted home occupation of the occupant of the premises.
- (2) One sign not to exceed six square feet of sign area during and pertaining to the sale, lease or rental of the land or building.

G. In C-1 Commercial and R-1 Residential and A Agricultural Districts (if applicable), a business sign is permitted, provided it is in conformance with § 90-38A, C, D and E above.

**§ 90-39. Permanent building foundations.**

All dwellings, including one-family, two-family, multiple-family, boarding or rooming houses, tiny houses, mobile manufactured homes and factory manufactured homes, shall be placed upon a permanent foundation, except for temporary (no longer than six months) mobile manufactured homes permitted by special use permit by the Planning Board.

**§ 90-40. Vision clearance at intersections.**

No obstructions to vision, such as shrubbery, brush, trees, earth or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center lines and a line drawn between points along such lines 20 feet distance from their point of intersection.

**§ 90-41. Landscaping and Buffering requirements.**

- A. Where any permitted nonresidential land use, multiple-family development, mobile manufactured home park, etc., abuts an existing residential parcel or vacant parcel where residential development could occur, a strip of land at least 20 feet wide shall be maintained as a landscaped area in the front, side and/or rear yard which adjoin these uses.
- B. Required landscaping shall be installed and maintained in a healthy growing condition and shall be such that a minimum of a four-foot high screening or hedge consisting of well-kept grassed areas or ground cover with shade trees, deciduous shrubs, or evergreens.
- C. Buffers between Farm and Non-farm Uses, and Protection of Agricultural Lands
  - (1) All major subdivisions and commercial developments in the A District shall provide for an agricultural buffer between itself and an agricultural operation that may be present. Buffers shall be established to reduce the exposure of non-farm uses to odors, noise, and other potential nuisances associated with the agricultural operation and to protect the agricultural operation from potential complaints related to same. Buffers shall also be required between new agricultural-related businesses and residential areas or uses in the A District.
  - (2) Agricultural buffers between farms and minor subdivisions and single and two-family residences are not required provided the applicant states, in writing, that they acknowledge the potential odors, sounds and other potential nuisances associated with an adjacent agricultural operation, that they accept those nuisances, and that they choose to not provide an effective buffer against those agricultural operations and effects. This written statement shall be entered into the official file for that application with the Planning Board. Absent such a written statement, the Planning Board may require an agricultural buffer to be provided for by the non-farm applicant.
  - (3) When a buffer is required, the following standards shall be met.
    - (a) Such buffers may consist of vegetative screening, woodlands, vegetated berms, or natural topographic features and shall be no less than fifty (50) feet in width. This buffer shall be within the prescribed setbacks, rather than in addition to the setbacks required for such district. If the setback is less than fifty (50) feet, the buffer shall be to the extent of the setback.
    - (b) Buffers may be required to be larger depending upon the type of agriculture or farm use adjacent to the non-farm use, the topography and the proposed design and planting of such buffer.
    - (c) It shall be the responsibility of the non-farm applicant, including new agricultural-related businesses, subject to approval by the Planning Board, to provide an effective buffer that will reasonably protect adjacent non-farm areas from agricultural procedures.
    - (d) For all site plan, abbreviated site plan, special use permits, and subdivision approvals, land disturbance shall be identified and located in a manner to protect the maximum amount of prime and statewide important farmland soils insofar as practical as follows:
      - (1) On the least fertile soils for agricultural uses and in a manner which permits access to active agricultural land.
      - (2) Within any woodland contained within the parcel, or along the far edges of open fields adjacent to any woodland, to reduce impact on agricultural operations and to enable new construction to be visually absorbed by natural landscape features.

(3) In locations least likely to block or interrupt scenic vistas as seen from public roadways.

D. The Planning Board may require retention of existing vegetation and maintenance or creation of topography to buffer and screen new buildings. Removal of existing vegetation shall be minimized.

**§ 90-42. Corner and through lots.**

Front yard setbacks and minimum road frontages are required on both road fronts. The two remaining yards shall be designated by the applicant as to which will be the rear yard and which will be the side yard.

**§ 90-43. Flag lots.**

- A. The access strip of land shall be a minimum of 60 feet wide and no more than 300 feet deep.
- B. The minimum lot area, lot width and lot depth requirements shall be met excluding the land contained in the access strip.
- C. Minimum front, side and rear setback requirements shall be met, excluding the narrow access strip.
- D. No more than one flag lot shall be served by a single access strip.
- E. Access strips shall be a minimum distance apart of at least the minimum lot width in the zoning district.
- F. Access strip shall not be a deeded right-of-way but shall be owned in fee title by the owner of the flag parcel.
- G. No more than 10% of the lots in a new residential subdivision approved after the date of the adoption of this chapter shall be flag lots.

**§ 90-44. Environmental Quality Review.**

The State Environmental Quality Review requires that local government examine the environmental impact of all actions they permit, fund or construct. Article 8 of the Environmental Conservation Law and Part 617 of Title 6 of the New York Code of Rules and Regulations as may be amended from time to time are hereby adopted by reference.

**§ 90-45. Dish antennas.**

- A. All dish antennas over 36 inches shall be located in either the side or rear yards, unless the owner can prove his/her only "window of reception" is in the front yard. In the event that no "window of reception" is available on the ground, such antennas may be placed on the roof of the dwelling structure.
- B. The location and design of dish antennas shall minimize the visual impact on adjacent property as determined by the Enforcement Officer, appealable to the Zoning Board of Appeals.

**§ 90-46. Exterior lighting.**

In no case shall any exterior lighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots. All exterior lighting, including security lighting, signs or other uses shall be directed away from adjoining streets and properties. No direct glare shall be permitted and all lighting fixtures shall be shielded so that the angle of illumination is directed downwards rather than out.

- A. Light source locations shall be chosen to minimize the hazards of glare. The ratio of spacing to mounting height shall not exceed a 4:1 ratio.

- B. All poles or standards used to support outdoor lighting fixtures shall be anodized or otherwise coated to minimize glare from the light source.
- C. The maximum height of the luminaire shall not exceed 18 feet.
- D. The installation of any mercury-vapor fixture or lamp for use as outdoor lighting is prohibited.
- E. The Planning Board may require all exterior lights to be extinguished 30 minutes after the close of business or after 11:00 PM unless the use is open 24 hours per day. Emergency lighting and pedestrian security lighting may be allowed to remain on after the close of business.

**§ 90-47. Mobile manufactured homes including Tiny Homes.**

Individual mobile manufactured homes shall be subject to all the regulations pertaining to detached one-family dwellings, in addition to the following standards:

- A. General requirements.
  - (1) All mobile manufactured homes shall have an adequate supply of pure water for drinking and domestic purposes, and a sewage disposal system. Both systems shall satisfy the requirements of the New York State Department of Health.
  - (2) Unless classified as a tiny home, all mobile manufactured homes shall have a minimum size of 720 square feet of living area and a minimum width of 14 feet, and not over twenty (20) years old at the date of application.
- B. No additions shall be made to a mobile manufactured home except a canopy and/or porch open on three sides, or an addition made by the mobile manufactured home manufacturer and/or built in conformance with New York State Uniform Fire Prevention and Building Code Regulations.
- C. All mobile manufactured homes installed in the town shall meet current U.S. Department of Housing and Urban Development (HUD) standards and shall have a seal by HUD designating and verifying the age of the mobile manufactured home, with the exception of tiny homes.
- D. Foundation construction. Each mobile manufactured home shall be set on a foundation constructed as follows:
  - (1) Foundation to consist of a six-inch minimum reinforced concrete slab and must be equal to the external measurements of the mobile manufactured home to facilitate fastening of the foundation enclosure.
  - (2) Slab must have at least eight inches of compactible material under it.
  - (3) Suitable tie down anchors must be installed under the main rails of the mobile manufactured home in the concrete; maximum of 15 feet apart.
  - (4) A 10 feet by six feet by six inches reinforced concrete slab is required where the main door to the mobile manufactured home is located.
- E. Foundation closure. The mobile manufactured home foundation shall be enclosed by a skirt securely fastened and extending from the outside wall of the mobile manufactured home to ground level around the entire perimeter of the mobile manufactured home. The skirt shall be constructed of sturdy wood, plastic, masonry or metal material capable of withstanding extreme weather conditions over extended periods of time. No skirt shall be required where a perimeter foundation fully encloses the area between the unit and the ground level. The tongue must be removed or fully enclosed by the skirt. No mobile manufactured home foundation shall exceed 48 inches in height above ground level.

- F. No mobile manufactured home shall be used as a storage facility nor for housing of animals on any property.
- G. All mobile manufactured homes shall be placed so that the longest side of the structure is parallel to the road upon which it has access to.
- H. Only one mobile manufactured home shall be allowed per lot.

**§ 90-48. Travel Trailers and Recreational Vehicles.**

A. Trailers and recreational vehicles are not to be considered a permanent dwelling unit. No trailer shall be used for storage nor for housing animals on any property.

- (1) Use during Construction of a Permanent Dwelling. The use of a travel trailer or recreational vehicle as a temporary dwelling is allowed as a permitted use only on the same site where construction of a permanent dwelling or commercial building is taking place and subject to the following requirements. No trailer or recreational vehicle shall be used for the temporary or long-term housing needs related to commercial enterprises for any other circumstance.
  - (a) Location. The use of a temporary dwelling during the construction of a permanent dwelling shall be allowed upon issuance of a building permit for the permanent dwelling.
  - (b) Time Limit. A temporary dwelling shall be allowed for a maximum of one year, unless an extension of one year is obtained. An extension beyond the second year shall require approval by the Planning Board.
  - (c) Water and Sewer. The temporary dwelling shall be connected to water supply and sewage disposal facilities approved by the Code Enforcement official. In no event shall permanent connections to such facilities be provided.
- (2) Use for Recreational Purposes. The use of a travel trailer or recreational vehicle as a temporary dwelling for recreational purposes shall be allowed as follows:
  - (a) The owner of a travel trailer or recreational vehicle may park it on his own property having a permanent dwelling on it no closer than twenty feet to any lot line. A travel trailer or recreational vehicle so parked shall not be used as living quarters and shall not be hooked up to any utilities except that such vehicles may be used for a period not to exceed 30 days during any calendar year.
  - (b) A property owner may park his own or another person's travel trailer or recreational vehicle on his property not having a permanent dwelling on it, and this may be used as temporary, seasonal living quarters for more than 30 days but not to exceed four months during any calendar year. Only one such travel trailer or recreational vehicle per lot shall be so occupied. Prior to use, it shall obtain special use permit approval from the Planning Board of this Chapter if it is to be occupied for more than 30 days in any calendar year. The special use permit shall be valid for two years and then must be reviewed and renewed by the Planning Board to ensure that all original conditions and requirements are still being met. The temporary dwelling shall also meet the following requirements:
    - (1) Be placed on the lot so all setback requirements can be met.
    - (2) Have a lot size equivalent to that for a single-family dwelling in the A district.
    - (3) Show proof of on-site potable water supplies.
    - (4) Show proof there will be adequate and safe control of all wastes as approved by the Health Department.

**§ 90-49. Public utility and facilities.**

Public utility substations and similar structures shall comply with the following:

- A. Facility shall be surrounded by a fence set back from property lines in conformance with district regulations for front, side and rear yards.
- B. Landscaped area at least 20 feet wide shall be maintained in front, side and rear yards.
- C. Utility poles and attendant lines will be allowed, as necessary, in all districts.
- D. Public utilities and facilities need to comply with all local regulations regarding lighting, noise, traffic and dust.

**§ 90-50. Swimming pools.**

- A. Accessory to single-family dwellings. Swimming pools, whether permanent or portable, having depth of at least two feet, shall meet the front, rear and side setback requirements.
- B. Accessory to residential developments. Swimming pools accessory to residential developments, whether clustered single-family dwellings, seasonal dwelling, bungalow colonies, camps or multifamily dwelling, shall be of permanent construction and shall be located not closer than 10 feet to any lot line and not closer than 10 feet to any dwelling unit and shall meet the setback of the existing house.
- C. Nonresidential. Swimming pools that are part of nonresidential uses, whether commercial or noncommercial, such as hotels, motels, clubs, campgrounds, day-use recreational facilities or institution, shall be of permanent construction and shall be located not closer than the setback requirements for the district in which it is located.
- D. Fencing. Fencing of swimming pools shall comply with the New York State Uniform Fire Prevention and Building Construction Code requirements.

**§ 90-51. Sanitary regulations.**

- A. A separate and independent waste disposal system shall be provided for in new construction for individual household systems. No septic tank, absorption field, seepage pit, chemical toilet, privy, pipe or other means for the disposal or discharge of sewage or sink wastes shall be installed anywhere in the Town of Minden except as herein provided for in this § 90-51.
- B. In addition to the individual aspects of the sewage treatment systems discussed in this section, the design and construction of all individual sewage treatment systems shall conform with the New York State Department of Health standards as filed with the New York State Secretary of State, 10 NYCRR Appendix 75-A, and any amendments or revisions thereto, more commonly known as "Wastewater Treatment Handbook, Individual Household Systems" (Waste Treatment Handbook, from hereon referred to as the "Handbook"), a copy of which is on file at the Town Clerk's office.
- C. General standards.
  - (1) Only sewage may be discharged into the on-site sewage disposal system. Surface and subsurface water, including roof, cellar, foundation and storm drainage, shall be excluded from such systems and shall be disposed of so they will in no way affect the septic system.
  - (2) No leaching facilities shall be located under driveways, roads, parking areas or areas subject to heavy loading unless approved by the Code Enforcement Officer. Driveways shall not be constructed in a manner that will cause water to flow to, or drain to adjacent properties.
  - (3) No leaching facility will be permitted within 200 feet of the shoreline of a lake, river, pond, stream if the percolation rate is less than three minutes per inch or less.

- (4) Any alternative system must be designed in accordance with approved standards by a licensed professional engineer and must be approved by the New York State Department of Health.
- (5) The design capacity of the sewage systems shall be calculated as provided for in the Handbook, with the following exception to septic tank capacity:
  - (1) All septic capacities will be based on the number of household bedrooms, including an expansion attic which is to be considered as a individual bedroom, and percolation test results. The minimum size of an approved septic tank for the Town of Minden for any zone shall be 1,000 gallons or working capacity and shall be one-piece concrete, fiberglass or plastic and not steel or metal. Homes with more than three bedrooms shall be guided by the following table. Based on percolation test results, the Code Enforcement Officer shall have the authority to require a larger septic tank than referenced in the table below, and the Code Enforcement Officer may also require a leaching field be installed with larger dimensions than planned.

Number of Bedrooms	Minimum Capacity (in gallons)
1, 2 or 3	1,000
4	1,200
5 or more	1,250

- (6) All building sites constructing new sanitary septic systems and existing sites considering rehabilitation of the septic tank, leach field, etc. (restoring the existing septic system to its original state, condition or proper function), must have a percolation test performed at the site as described in the Handbook. A permit is not required to make minor repairs to the septic system that does not directly disturb the septic tank and/or the leaching areas (i.e., replacing or repairing the drain line from the house to the septic tank, having the septic tank pumped by an authorized company). The time for the stabilization rate of percolation is the basis for determining the absorption or leaching area required for the proposed sewage system. The results of the percolation test can be applied to the Required Absorption Area Tables in the Handbook to determine the necessary size of the leaching area. An investigation of subsoil conditions and a percolation test shall be made in conformance with the procedures described in the New York State Department of Health's Waste Treatment Handbook or in an amended and revised edition of the Handbook.

D. Sewage flows.

- (1) The design capacity of sewage systems shall be calculated as provided for in the Handbook as long as the minimum septic tank requirements as set forth in the above table have been met. Discharge into the sewage system shall be limited to wastes from plumbing fixtures. As required by the Handbook, salt wastes from water softeners and surface and subsurface water shall be excluded from the sewage disposal system.
- (2) All other aspects of the sewage system, including but not limited to the distribution devices, tile field, seepage pits, maintenance, installation shall conform to the Handbook's requirements.

E. Application procedure.

- (1) No installation, alteration or extension of any septic tank, absorption field, seepage pit, chemical toilet, privy, pipe or other discharge of sewage or sink waters shall be begun on new installations, or rehabilitation or reconstruction of existing installations, nor shall construction or

erection of any structure or the placement of any mobile manufactured home intended for human occupancy be commenced until an application is filed with and approved by the Code Enforcement Officer. All applications for disposal systems must be made only by the owner or lessee of the lot which the system is proposed or by his duly authorized agent or assign.

- (2) A permit is needed for any modifications, alterations, extensions of or repairs to an existing on-site sewage disposal system.
- (3) This section has application to single-family and two-family dwellings only and does not apply to community, public, industrial, multiple-family (more than two) dwellings, subdivisions or other sewage disposal systems.
- (4) All applications shall be submitted to the Code Enforcement Officer and include such information as the Code Enforcement Officer shall require, including the following:
  - (a) The name and address of the applicant.
  - (b) A copy of the Tax Map section with specific location of the property on which the construction, alteration, repair or extension is proposed.
  - (c) A plan of the proposed disposal system with substantiating data indicating that the minimum standards set forth in this section would be complied with.
  - (d) A sketch of the property showing the location of the proposed disposal system construction, alteration, repair or extension and including delineation of the property lines and sources of water supply for the property and adjoining properties.
  - (e) Evidence to demonstrate to the satisfaction of the Code Enforcement Officer that there is no public sewer available into which the sewage can be discharged from plumbing facilities in the proposed site, or that it is impracticable to discharge sewage from on-site plumbing facilities into a public sewer system.
  - (f) A percolation test is required for the site of a proposed leaching facility. The percolation rate shall be determined by the methods described in the New York State Department of Health's Waste Treatment Handbook - Individual Household System, a copy of which is on file at the Town Clerk's office.
  - (g) Site data which might affect, or be affected by, the proposed system, including but not limited to specifications regarding soil types, topography, depth to seasonal high groundwater, depth to impervious materials, depth to bedrock and distance to surface bodies of water. The determination of depth to seasonal high groundwater shall be made in the months of March, April, May or June, within six weeks of the time that the frost leaves the ground. All determinations shall be accompanied by a statement of the testing methods used as well as the basis for the determination.
  - (h) It shall be the duty of the applicant to notify the Code Enforcement Officer when the installation of the disposal system is ready for inspection. **NO SUCH INSTALLATION SHALL BE COVERED UNTIL IT HAS BEEN APPROVED.**
- (5) The Code Enforcement Officer may verify any and/or all results of such tests and require supporting information from the applicant necessary for his review and approval. When his discretion warrants, the Code Enforcement Officer shall request an individual designated by the Town Board to conduct any and all tests he deems necessary to complete his review. When this is necessary, all charges will be assumed by the applicant.

- (6) The Code Enforcement Officer shall determine whether or not an application is complete. The Code Enforcement Officer shall have the authority to require certification on retesting to verify information submitted as part of the application.
- (7) The Code Enforcement Officer may conduct such investigations, examinations, tests and site evaluations as he/she deems necessary to verify information contained in an application for a disposal system building permit, and the application or owner of the land on which the system is proposed shall grant the Code Enforcement Officer or his agent permission to enter on his land for these purposes.
- (8) The Code Enforcement Officer shall not issue an approval for a disposal system unless all pertinent site data has been submitted, verified and certified as required by this section, all permit fees have been paid, and the Code Enforcement Officer has determined that the alteration, repair or construction as proposed in the application complies with all specifications contained in this section. Further, all septic tanks must be filled with water before dye tests are completed.
- (9) The Code Enforcement Officer may, by written notice, order all further work stopped on any individual sewage disposal system which is being constructed or installed in violation of this section.

**§ 90-52 Supplementary Requirements for Specific Uses.**

**§ 90-52.1. Commercial composting operations. [Added 7-21-2005 by L.L. No. 1-2005]**

Commercial composting operations shall be prohibited in the Town of Minden. This provision shall not be interpreted, administered or enforced in a manner that unreasonably restricts the use, manufacture and sale of compost in normal farming or other agricultural practices in the Town of Minden. Farms that compost to remove excess agricultural waste generated on-site, when off-farm material (e.g., leaves as a carbon source; bulking agents; manure for nutrient content; etc.) is only a minor component of the composting stream and is necessary to properly compost the farm operation's waste, may sell all of the compost generated. Farms that obtain material from off-site sources to compost for agricultural use on the property where the composting occurs may sell not more than 25% of the total compost produced.

**§ 90-52.2 Farm Stands and Farm Markets**

- A. Such use will not interfere with the normal flow of traffic or present a hazard by way of its proximity to the highway and in this regard that adequate pull-off and parking area is provided.
- B. Such use will not present a nuisance or be objectionable to neighboring uses in terms of traffic, noise or unsightliness.
- C. As per Article 17 of the NYS Agriculture and Markets Law, all packaged food products sold at farm stands and farm markets must be properly labeled in accordance with NYS food labeling requirements. No packaging, cutting, slicing, or portioning of agricultural products or ready-to-eat foods is permitted at farm stands or farm markets unless the proper retail food store sanitary facilities are provided as per Department Circular 962 rules and regulations related to retail food stores. Circular 962 outlines that certain food products may not be sold at farm stands and farm markets unless the proper refrigeration or preparation methods as per NYS Sanitary Rules for Direct Marketing are met.

- D. Structures used for Farm Markets must meet the State Uniform Fire Prevention and Building Code, Fire Code and Health Department requirements and receive a Building Permit from the Town of Minden.
- E. All front and side yard required setbacks as per the district schedule of this zoning law shall be met. When a site plan review is required for a farm stand or farm market, the Planning Board shall ensure that there will be adequate ingress, egress, parking, and site distances to ensure vehicular and pedestrian safety. All parking requirements shall be met. All parking for a farm stand or farm market shall be provided outside of the roadway or right of way so that no parked cars are in any travel or right of way at any time. If a farm stand is located on a State or County Road, it shall also receive NYS DOT or Montgomery County DPW approval prior to local issuance of an operational permit.
- F. All signage shall meet requirements of this zoning law.
- G. Farm Markets may sell some agricultural products grown off the farm operation. However, a predominance of on-farm products is required.
- H. Farm Markets with on-site preparation of processed foods and consumption of foods on-site shall be considered part of a farm operation as per New York State Department of Agriculture if the products that are prepared or consumed are composed primarily of ingredients produced on-farm.
- I. Farm Markets shall show proof that facilities are in compliance with local, county and state health requirements.

### **§ 90-52.3 Slaughterhouses**

- A. On-Farm Slaughterhouse. An on-farm slaughter facility is a permitted agricultural use in an Agricultural District established pursuant to Article 25-AA of the New York State Agriculture and Markets Law, subject to the following requirements and restrictions:
  - (1) This section shall not be construed to prohibit or regulate custom slaughtering or the slaughtering or processing of animals exempt from the licensing provisions of Article 5-A of the New York State Agriculture and Markets Law pursuant to the enumerated exemptions contained within section 96-d of such article.
  - (2) The facility shall be located on the premises of a farm operation, as such term is defined in section 301 of the New York State Agriculture and Markets Law. A facility that slaughters or processes up to 250 turkeys or 1,000 rabbits or 250 poultry birds of other species annually or that is exempt from the licensing provisions of Article 5-A of the New York State Agriculture and Markets Law pursuant to section 96-d of such article shall be exempt from the requirements and restrictions of this subdivision.
  - (3) No animals except those raised on the premises of the farm operation on which the slaughtering facility is located shall be permitted to be slaughtered or processed. An animal shall be considered "raised" on the host farm operation if it was fed, sheltered, or otherwise tended to on the premises of such farm operation for at least seventy-five percent (75%) of its life span immediately preceding its slaughter and processing.
  - (4) There shall be a limit of 8,000 poultry or rabbits, or 2,000 turkeys, or a proportional combination thereof, slaughtered or processed in any calendar year. Any slaughterhouse that exceeds this number, or that is considered to be a regulated 5A slaughterhouse shall be considered a commercial slaughterhouse as defined in this local law and shall follow requirements of 90-52.3 (B).

- (5) No person shall operate a slaughter facility unless that person has first obtained any and all required state and federal licenses or permits, including USDA certification, where required. The facility must meet all state and county regulations applicable to the facility and must be brought up-to-date when such regulations are revised.
- (6) The room or area within a structure where processing will take place must be set back a minimum of two hundred feet from any property line.
- (7) Any new structure must be located a minimum of 100 feet from any stream, pond, lake, or other water body or wetland.
- (8) These requirements apply whether the facility is newly constructed or a re-use of a barn or other existing structure.

**B. Commercial Slaughterhouse.**

- (1) A commercial slaughterhouse shall require both a special use permit and site plan approval by the Planning Board.
- (2) The slaughter of animals shall take place inside a closed building in a confined area to prevent the transmission of sound associated with the slaughter to the outside. The maximum area for the keeping or slaughtering of animals shall not exceed twenty percent of the individual lot or parcel site.
- (3) Parking for all traffic utilizing the business shall be provided for on-site and off public roads.
- (4) The main entrance to the facility must be located on a state highway or county road.
- (5) Disposal of waste shall be in accordance with all applicable state and county laws and regulations. The facility must have all necessary federal and state permits and approvals and comply with all health and safety regulations. This is meant to include, but is not limited to all sewage, processed and unprocessed animal parts, manure, entrails, blood, hides, and bones.
- (6) No feedlot shall be allowed on-site.
- (7) Live animals may be held on the site for no more than twenty-four hours.
- (8) All loading and unloading areas shall be screened from view from adjacent properties and public streets. All exterior storage areas shall be fenced and fully screened from adjacent property and public streets.
- (9) Animals shall be enclosed in gated enclosures with a minimum height of six feet. Fencing shall be sufficient to provide adequate screening and contain animals securely on the property at all times.
- (10) There shall be a setback of 250 feet from any property line.
- (11) There should be a minimum lot size of 10 acres.

**§ 90-52.4 Nursing Home**

- A. The building shall not exceed two stories in height. Multiple buildings containing dwelling units are permitted on a single parcel provided each building is separated by at least 25 feet. The maximum number of dwelling units within a single building shall be permitted at a density equivalent to four dwellings per acre, with a maximum of 20 units if the parcel size can accommodate that density.

- B. The building shall conform to the setback and lot coverage standards generally applicable within the zoning district.
- C. Applicants shall consult the Fair Housing Accessibility Guidelines (available online at [www.hud.gov/fhefhag.html](http://www.hud.gov/fhefhag.html)). The applicant shall comply with Section 804(f)(5)(C) of the Fair Housing Act of 1988 and the implementing regulations codified at 24 C.F. R. 100.205.
- D. Common open space areas of 500 square feet per dwelling unit shall be required on the parcel. Open space provided shall be accessible to all residents of the development.
- E. Sidewalks shall be provided for within the interior of the development to link residential buildings with other destinations, such as, but not limited to parking, mailboxes, trash disposal, adjoining sidewalks or open spaces, and on-site amenities such as recreation areas.
- F. Building design shall emulate the typical single-family residence in Minden. No monotonous, "barracks"-style buildings shall be allowed. Buildings having facades wider than 80 feet shall incorporate wall plane projections or recesses. Ground-floor facades that face public streets shall have windows, entry areas, awnings or other such features for at least 60 percent of the horizontal length.
- G. No one building shall exceed 150 feet in length.
- H. Buildings shall be arranged so that they are aligned parallel to a sidewalk, or around common open space such as courtyards or greens. Buildings shall not face the rear of other buildings on the same lot or parcel.
- I. Entryways shall face a street, sidewalk, or common area.
- J. Parking areas and drives shall be located no closer than 25 feet to a residential building in order to accommodate sidewalks. The distance between parking areas and drives may be reduced where the Planning Board determines that resident mobility needs demand closer placement.
- K. A landscaping plan, lighting plan, building elevations, and floor plans for each residential dwelling shall be submitted as part of the review.
- L. A centralized location, screened from view, shall be provided for on-site solid waste storage and recycling receptacles.
- M. Any nursing home facility shall be connected to a public water and sewer system.

**§ 90-52.5 Mobile Manufactured Home Park (MHP)**

- A. Mobile Manufactured Home Parks shall be located on a minimum of five (5) acres and a maximum of ten (10) acres;
- B. Grading. The Park site shall be properly graded to ensure rapid drainage so that no portion of the site is subject to predictable sudden flooding or erosion;

- C. Minimum Frontage. The site shall have a minimum of four hundred (400) feet of frontage on the highway providing primary access to the site.
- D. Rent/Ownership. The land lying wholly within the perimeter boundaries of any proposed or established MHP shall be held in single ownership and shall consist of separately dimensioned, individual lots, collectively held in single ownership and used entirely for rental purposes only.
- E. Density/Lot Standards. Each MHP shall be designed to accommodate separately identified mobile manufactured home lots as follows:

**Minimum Lot Area**

- Single wide unit.....10,000 s.f.
  - Double wide unit.....12,000 s.f.
  - Maximum # Units/Gross Acre.....2
  - Minimum Setback from Public Highway Right-of-Way Line.....100 ft
  - Minimum Setback from Non-Dedicated Street Centerline.....75 ft
  - Minimum Unit Separation.....50 ft
  - Minimum Mobile Manufactured Home Lot Width....100 ft
- F. Mobile Manufactured homes installed in the Town of Minden shall be installed in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code Act. Each manufactured home lot shall be improved to provide an adequate stand for the placement and tie-down of the manufactured home, thereby securing the structure against uplift, sliding, rotation, and overturning. Each manufactured home stand shall consist of a foundation designed for support of a manufactured home so as to prevent heaving, shifting, and uneven settling as required by the International Building Code. Architectural, stamped drawings shall be required to show compliance of building code provisions.
  - G. Mobile Manufactured Home Lot Access. All designated lots within a MHP shall have direct access to streets designed to Town of Minden specifications and be approved by the Town Superintendent of Highways.
  - H. Refuse and Recycling Receptacles. Adequate refuse receptacles with tight fitting covers shall be provided for each mobile manufactured home unit by the owner/renter of that unit. These receptacles shall be kept in sanitary condition and emptied weekly. A central location for dumpsters to be used by residents may also be provided for by the manufactured home park operator, in which case, such dumpsters shall be screened from view by fencing and/or landscaping.
  - I. Required Parking. Two (2) off-street parking spaces shall be provided for each mobile manufactured home, with one (1) additional space for each four (4) manufactured homes. Every parking space shall be at least ten (10) feet in width and twenty (20) feet in length, and have adequate provision for maneuvering and for passage to and from streets. ADA standards for parking shall be met where required.
  - J. Mobile Manufactured Home Park Caretaker. Each MHP shall provide on-site at all times a duly authorized attendant or caretaker who shall be in charge at all times in keeping the MHP and its facilities and equipment in a clean, orderly, and sanitary condition. The attendant or caretaker shall

be answerable, with the Permittee, for the violation of any provision of this Law to which the Permittee is subject.

- K. Mobile Manufactured Home Unit Expansion. Any manufactured home unit, whether it is a single-wide or partial double-wide unit, may be expanded to a maximum size of twice the original single-wide unit; however,
- (1) The increase must be of a standard manufactured home unit expansion type;
  - (2) Any expansion must conform to the minimum unit separation;
  - (3) Any expansion must receive Site Plan Approval from the Town of Minden Planning Board prior to the issuance of a Building Permit for such manufactured home unit expansion; and,
  - (4) Any single-wide unit proposed for expansion shall have a minimum lot area equal to that of a double-wide unit as specified herein.
- L. Open Space/Landscape Plantings. All areas of the site not occupied by buildings, units, parking areas, driveways or walkways shall be maintained as lawn area with landscape plantings of trees and shrubs, or as natural areas as follows:
- (1) All margins along the front, side and rear property lines of the MHP site shall be planted with evergreen or deciduous trees in a mass planting or hedgerow, for the purpose of visual screening and noise abatement. Such plantings shall be provided to the extent needed in order to provide for the screening of objectionable views, adequate shade, and suitable settings for the manufactured home and other facilities as approved by the Planning Board;
  - (2) The design of individual sites shall take into consideration the natural growth presently on the site and the nature and condition of the terrain as well as the relationship of the site itself with respect to adjoining lands. Screening and/or landscape plantings for such individual sites shall be provided as deemed necessary by the Town of Minden Planning Board.
- M. Utilities.
- Each individual manufactured home unit shall be served by public water and sewer supply facilities.
- (1) An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all manufactured home lots and buildings within the Neighborhood to meet the requirements of the Neighborhood;
  - (2) Each manufactured home lot shall be provided with a sewer, which shall connect to the manufactured home situated on the lot to receive the waste from shower, tub, flush toilets, lavatory and kitchen sink in such home. The sewer shall be connected to a public sewer system so as not to present a health hazard. Sewer connections in unoccupied lots shall be so sealed as to prevent the emission of any odors and the creation of breeding places for insects;
  - (3) Plumbing connections to each manufactured home shall comply with all regulations of the New York State Plumbing Code;
  - (4) Weatherproof electrical service connections and outlets shall be of a type approved by the New York State Board of Fire Underwriters;
- N. Required Storage Space.
- Storage space for the use of neighborhood residents shall be provided within one building.

O. Required Recreation Area.

A recreation area shall be incorporated into the design of the MHP to be a minimum of one thousand (1000) square feet per mobile manufactured home unit with appropriate facilities to satisfy the needs of the neighborhood residents.

- (1) Such recreation area shall have at least one (1) common area of a minimum of five thousand (5000) square feet and the Planning Board shall establish such conditions on the Park owner, use and maintenance of this area as it deems necessary to assure the preservation of the recreation area
- (2) The Planning Board shall also have the authority to require the location within any proposed MHP of a community recreation service building and consistent with such authority may require that such building contain certain designated facilities, including, among them, but not being limited to, laundry facilities, public telephone, recreational facilities, meeting room and rest rooms;

P. Pedestrian ways shall form a logical, safe, and convenient system of pedestrian access to all project facilities.

Q. The Permittee shall be responsible for snow removal on all internal roadways and sidewalks, and shall have adequate snow storage areas.

R. Street lighting shall be provided at all entrances and exits to the MHP and on all internal streets, intersections, walkways and common areas. Such lighting shall provide an illumination of .6 foot candles to those areas. All lights shall be fully shielded to direct light downwards. Lighting provided on the site to ensure safe movement of persons and vehicles and for security purposes shall conform to the following standards:

- (1) All lighting shall be designed and arranged so as to prevent glare and reflection on adjacent properties.
- (2) The maximum height of pole-mounted lights should not exceed eighteen (18) feet.
- (3) The source of the lights shall be shielded or located such that it shall not be visible outside the boundaries of the parcel being developed.

S. Applicants for a MHP shall provide suitable and operable fire extinguishers and other fire alarm and protection devices as may be prescribed by the fire district wherein said MHP is located. There shall be clear numbering of manufactured homes within the MHP with a layout map provided to the fire and disaster coordinator and to ambulance and police agencies. Water supplies should be adequate as determined by the County Fire Coordinator to permit the effective operation of at least two (2) one and one half (1-1/2) inch hose streams on any fire in a MHP, whether the supply is derived from hydrants connected to an underground water supply system or reservoir or a water supply source of not less than sixty thousand (60,000) gallons suitably accessible for fire department drafting operations. Smoke detectors shall be installed and operable in all manufactured homes not so equipped prior to occupancy of such manufactured home.

T. All MHPs shall have separate entrance and exits points and shall be designed as follows:

- (1) Such entrances and exits shall be designed and strategically located for the safe and convenient movement into and out of the MHP, and to minimize friction with the free movement of traffic on a public highway;
- (2) All entrances and exits shall be at right angles to the existing public highway;

- (3) All entrances and exits shall be free of any material which would impede the visibility of the driver on a public highway;
- (4) All entrances and exits shall be of sufficient width to facilitate the turning movements of vehicles with manufactured homes attached.
- (5) All streets shall be one-way with allowable parking on one side of the street only.

U. Street Standards.

Each MHP shall have a street or streets provided with a smooth, hard and dust free surface, which shall be durable and well drained under normal use and weather conditions to provide for the convenient accessibility to all manufactured home lots and other important facilities within the MHP. Access to such abutting Town Highways may be permitted for the primary purpose of providing emergency vehicle access unless otherwise approved by the Planning Board. All streets shall be built as per Town of Minden Highway Superintendent and Montgomery County Fire Coordinator requirements. Private roads (those not maintained by the Town of Minden) within a MHP shall not exceed an average grade of eight percent (8%). No section shall exceed a grade of ten percent (10%) unless otherwise allowed by town standards. The local fire department and ambulance service shall be consulted to ensure adequate accessibility for emergency vehicles and services.

V. Secondary Access.

Access connections to improved Town Highways abutting the MHP site are permitted only to those highways currently meeting the Town of Minden Highway Specifications. The location and design regarding access to a Town Highway shall be determined as a result of the Town's Site Plan Review and Approval procedure and shall be subject to such review and approval by the Planning Board and Town Board of the Town of Minden.

W Performance Bonds.

Prior to the issuance of an occupancy permit, or renewal thereof, for the operation of the MHP, a certificate by the Town Clerk shall be submitted certifying that the applicant has complied with one of the following:

- (1) That all public improvements have been installed to the satisfaction of the Planning Board or any other official or body authorized by law to act in accordance with the requirements as specified herein; or
- (2) That a performance guarantee bond or certified check has been posted in a sufficient amount to assure such completion of all required improvements and is available to the Town of Minden. Such performance guarantee shall be posted in accordance with the requirements and procedures specified in Sections 274-a (7) and 277(9) of the New York State Town Law.. The amount and sufficiency of such performance guarantee shall be determined by the Planning Board after consultation with the Town Attorney, the Consulting Engineer, other local officials, or the Planning Board's designated private consultants. When a performance guarantee is issue, the Town and applicant shall enter into a written agreement itemizing the schedule of improvements in sequence with the cost opposite each phase of construction or installation, provided that each cost as listed may be repaid to the applicant upon completion and approval after inspection of such improvement or installation. However, ten percent (10%) of the check deposit or performance bond shall not be repaid to the applicant until one (1) year following the

completion and inspection by the Town of all construction and installation covered by the performance guarantee.

- (3) Maintenance. It shall be the responsibility of the permittee, through the on-site caretaker or attendant, to adequately maintain the MHP at all times. If, however, in an emergency situation, it is necessary for the Town of Minden to perform such maintenance, it shall be performed as authorized by the Code Enforcement Officer and Town Health Officer and all costs incurred in the performance of such maintenance shall be reimbursed to the Town of Minden by the permittee.

X. Manufactured Home Park inspection.

Before any MHP commences operation, the CEO shall make an inspection of the premises to determine that all requirements of this Law have been met and issue a permit. No uses shall be permitted until such a Permit has been issued. The Town Board shall have the authority to enter and inspect for health, sanitary, and other provisions of this Local Law, any facility licensed hereunder, at any reasonable time.

**§ 90-52.6 Launderette/Laundry or Dry Cleaning Plant**

- A. A dry cleaning facility shall meet all requirements of 6NYCRR Part 232 (Perchloroethylene Dry Cleaning Facilities) prior to final issuance of a special use permit.
- B. All Laundromat or commercial laundry facilities shall:
  - (1) Ensure that an adequate water supply exists to meet the needed capacity. The Planning Board may require additional water capacity testing both on and off-premise to ensure adequate water exists and that such use does not impact nearby wells.
  - (2) Ensure that use of large quantities of water from a well on premises does not negatively impact water capacity from nearby wells;
  - (3) Provide engineered plans for all on-site waste water treatment to ensure adequate treatment of water used in the facility and that discharges to streams, wetlands, floodplains, or groundwater are prevented.

**§ 90-52.7 Retail Store**

- A. No retail use shall be larger than 25,000 square feet in building footprint size, pursuant to use and size requirements of Article IV of this local law.
- B. All commercial design standards of Section 90-30.1 shall apply.
- C. During site plan review or special use permit approval, the Planning Board may require parking lots to be placed to the side of the building.
- D. Applicants must clearly demonstrate that the use will be compatible with the adjoining uses, particularly with regard to traffic circulation, parking, and appearance.
- E. No more than two curb cuts per lot frontage shall be allowed.
- F. Where a residential building is proposed to be converted to a retail business, exterior alterations shall be made in a manner that preserves the essential residential character of the building.
- G. All parking, lighting, landscaping, and other requirements of this zoning law shall also be met.

**§ 90-52.8 Multi-family Dwelling**

- A. There shall be a minimum dimension of 800 square feet per unit.
- B. All structures containing multiple family units shall have a minimum roof pitch of 6 over 12.
- C. All front yards attached to multiple family structures shall have a clearly defined front yard using landscaping, fencing, hedging, or brick or stone wall. Front yards of attached townhouses may be unified into one common yard treated as a single front yard for the entire building.
- D. All multiple family units shall have the following dimensions:
  - (1) The maximum impervious surface area coverage, excluding paved areas for recreational facilities, such as a basketball or tennis court or a pool, shall be fifty percent (50%).
  - (2) Maximum building size and density: The maximum number of dwellings shall be no more than the residential density established for that district. The Planning Board shall ensure that any proposed density will meet all New York State Board of Health requirements for waste water treatment systems and water supplies. When multiple structures are included within a multi-family development, there shall be no more than four dwelling units per individual structure provided that density is allowed pursuant to Table 1 and 2.
  - (3) Open space between buildings on the same lot: minimum 30 feet
  - (4) Rear yard garage or parking shall be provided.
  - (5) All front, side and rear yards shall be as required by the dimensions table.
- E. All multiple family developments shall:
  - (1) Consist of structure of an architectural style that emulates single-family residences in building design, entrance, and other architectural details.
  - (2) Buildings should vary in appearance but share a common design style.
- F. Paved off-street parking areas shall be provided as follows:
  - (1) On-site pedestrian and vehicle circulation shall be designed to limit traffic hazards.
  - (2) Parking spaces shall be required as per Section 90-53.
  - (3) Parking and traffic circulation should include appropriate signs and striping to direct traffic on and off-site.
  - (4) Sidewalks shall be provided, as appropriate, to connect the residential units with parking areas, public streets, recreation areas, and other apartment building(s) and other existing sidewalks if present.
  - (5) Parking areas and drives shall be located no closer than 25 feet to a residential building in order to provide an adequate buffer between vehicular areas and residential uses, and to accommodate sidewalks from parking areas to the building. The distance between parking areas and drives may be reduced or eliminated where the Planning Board determines that resident mobility needs demand closer placement of parking areas to the building served.
- G. Buffer areas shall be used to maintain natural areas between multi-family structures. Buffer strips shall consist of trees, hedges, dense plantings, earth berms, and other changes in grade.

- H. Landscaping, lighting, and building elevation plans for each structure shall be submitted to the Planning Board for review. Landscaping and screening shall conform to the following minimum standards:
- (1) Use of existing vegetation to the greatest extent possible.
  - (2) Along road frontage, a ten (10) foot wide, landscaped buffer shall be provided and designed so as not to obstruct sight distance at road access points.
  - (3) Units shall be sited for maximum preservation of mature trees (trees of twelve (12) inches or more in diameter at breast height).
  - (4) Clear cutting of the entire parcel is prohibited.
  - (5) Lighting provided on the site to ensure safe movement of persons and vehicles and for security purposes shall conform to the following standards:
    - (a) All lighting shall be designed and arranged so as to prevent glare and reflection on adjacent properties.
    - (b) The maximum height of pole-mounted lights should not exceed eighteen (18) feet.
    - (c) The source of the lights shall be shielded or located such that it shall not be visible outside the boundaries of the parcel being developed.
  - (6) The Planning Board may require that all utilities, exclusive of transformers, be placed underground at the time of initial construction. Required utilities may include water, sewer, storm drainage, telephone, TV cable, electricity, gas, and wiring for streetlights.
  - (7) Solid waste and recycling receptacles of adequate capacity shall be provided for the maximum number of residents. Receptacles shall be screened from view by fencing or landscaping and regularly emptied to prevent odor and unsanitary conditions. The receptacle shall be designed to prevent loose litter.
  - (8) Snow storage areas shall be indicated on the site plan and shall not interfere with required parking or traffic circulation.
- I. One sign per entrance that identifies the development is permitted and should be compatible with the general environment of the project site. Signs shall conform to Section 90-38.
- J. Private roads (those not maintained by the Town of Minden) within a multi-family development shall not exceed an average grade of eight percent (8%). No section shall exceed a grade of ten percent (10%) unless otherwise allowed by town standards. The local fire department and ambulance service shall be consulted to ensure adequate accessibility for emergency vehicles and services.

**§ 90-52.9 Bed and Breakfasts**

- A. Bed and breakfasts shall be owner-occupied and their Certificate of Occupancy shall so stipulate. Further, all bed and breakfasts must also be consistent with all New York State Uniform Fire Prevention and Building Code standards.
- B. Off-street parking shall not be located in a front yard and shall be screened from roads and adjacent properties so as to provide no variation from the residential character of the site. Off-street parking spaces for members of the owner's family residing in the dwelling unit as well as one (1) parking space per room shall be provided.
- C. Each bed-and-breakfast shall be established, maintained and operated so as to preserve and complement the residential character and integrity of the surrounding area.

- D. A single exterior sign or display may be established on the site of the bed-and-breakfast. The sign or display shall not exceed six (6) square feet in area. No freestanding sign shall be located less than fifteen (15) feet from the front property line or less than five (5) feet from the side property line. Further, the sign or display shall be as unobtrusive as reasonably possible and may be externally illuminated.
- E. During Site Plan Review, the Planning Board shall consider the
  - (1) Adequacy and arrangement of vehicle traffic access and circulation,
  - (2) Location, arrangement, appearance and sufficiency of off-street parking,
  - (3) Location, arrangement, size and design of lighting and signs,
  - (4) Relationship and compatibility of proposed use (bed-and-breakfast) to uses of adjacent parcels in the immediate vicinity, together with their scale,
  - (5) Adequacy, type and arrangement of trees, shrubs, fences and other landscaping or improvement constituting a visual or noise-deterring buffer between the site and adjacent or adjoining uses.

**§ 90-52.10 Portable Storage Units**

- A. Portable storage units are not allowed except in the event of a disaster such as a fire or flood, home building or renovation, or relocation of personal belongings. All portable storage units shall receive a permit issued by the CEO prior to use and shall be valid for a period of one (1) year with the possibility of one six (6) month extension. When permitted, the portable storage unit shall:
  - (1) be structurally sound and pose no detriment to public health, safety, convenience or property values.
  - (2) meet the same side, front and rear setback and coverage requirements as would a conventional structure. No storage trailer shall be sited in front of a principal structure.
  - (3) be located so that it does not take up parking spaces required for other uses on the site and does not obstruct emergency access or other essential circulation patterns.
  - (4) not have an aggregate area covered by storage unit exceeding 10 percent of the total floor area of all buildings on the site.

**§ 90-52.11 Commercial Recreation**

- A. Parking shall not be permitted in the front yard.
- B. One or more recreational uses are allowed on a lot.
- C. The Planning Board may require that facilities be screened through use of vegetation, fencing or a combination thereof from adjoining residential properties.
- D. Hours of operation. The hours of operation may be limited to minimize impacts associated with noise, lighting, traffic and similar potential effects which may be disruptive to adjoining uses.
- E. Site lighting. A lighting plan shall be provided and designed so as not to affect adjoining residential properties.
- F. Noise. Adequate evidence shall be furnished by the applicant demonstrating that noise levels will not likely disturb nearby residential properties. Such evidence must take into account the nature of the activity, the general demeanor of the participants, the frequency of the activity and the time and day of the proposed activity. Public address systems are prohibited.

- G. Waste. The site plan shall demonstrate that wastes, including runoff containing fertilizer, pesticides, as well as solid waste will be contained, treated and disposed of in accordance with applicable local, county, state and federal regulations.
- H. Special considerations. Because the range of recreational activities allowed as components of commercial recreation establishments are broad and the characteristics and intensity of use may vary, the approving Board may impose such additional requirements as may be necessary to provide adequate protection to adjoining and nearby properties, considering the proposed activity, the proposed location and the nature of the adjoining community.

**Recreational Facility (outdoor – skating, skateboarding, pool, gym, miniature golf, etc.)**

- A. No portion of any outdoor commercial recreation facility area shall be located closer than one hundred (100) feet to any property line. Parking shall not be permitted in the front yard.
- B. Consideration shall be given to locating outdoor facilities away from residential property lines. The Planning Board may require that these facilities be screened through use of vegetation, fencing or a combination thereof from adjoining residential properties.
- C. Hours of operation. The hours of operation may be limited to minimize impacts associated with noise, lighting, traffic and similar potential effects which may be disruptive to adjoining uses.
- D. Site lighting. A site lighting plan shall be provided with lighting designed so as not to affect adjoining residential properties. The Planning Board may approve a light fixture that exceeds the height set forth in Zoning Schedule A for an outdoor recreation use provided it finds that there will be no detrimental impact on adjoining uses.
- E. Noise. Adequate evidence shall be furnished by the applicant demonstrating that noise levels will not disturb nearby residential properties. Such evidence must take into account the nature of the activity, the general demeanor of the participants, the frequency of the activity and the time and day of the proposed activity.
- F. Waste. The Site Plan shall demonstrate that wastes, including runoff containing fertilizer, pesticides, as well as solid waste will be contained, treated and disposed of in accordance with applicable local, county, state and federal regulations. The Planning Board shall approve the location of any portable toilet device or other temporary waste disposal system that may be allowed in conjunction with an outdoor recreation facility.
- G. Special considerations. Because the range of recreational activities allowed as components of commercial recreation establishments are broad and the characteristics and intensity of use may vary, the Planning Board may impose such additional requirements as may be necessary to provide adequate protection to adjoining and nearby properties, considering the proposed activity, the proposed location and the nature of the adjoining community

**§ 90-52.12 Golf Course**

- A. A special use permit shall be required to operate a golf course, including all uses and structures accessory thereto. The following uses shall be permitted as accessory uses to a golf course: clubhouse (including dining rooms, common rooms, pro shop, social rooms, kitchen and locker rooms), snack bar/refreshment stand, a groundskeeper residence, putting greens, practice range, parking, maintenance facility, garage, cart storage facility, and water supply impoundments. The proposed golf course shall be integrated with any existing development and land uses adjacent to the site, including safe locations for golf holes (tees, holes and greens), and practice areas, as related to adjacent roads, residential development, and other neighboring improvements.

- B. Assurances shall be provided by the applicant that the necessary infrastructure and utilities, including sanitary disposal system, potable water and irrigation water are available from on-site municipal or private systems. The provision of infrastructure and utilities shall not have a detrimental impact on groundwater or surface water resources.
- C. The golf course shall have two safe and adequate access points from one or more public roads. One of the two accesses may be provided for emergency access only, if, in the determination of the Planning Board, said arrangement provides adequate access. The two means of access shall be connected internally and may be achieved by use of a stabilized surface sufficient to allow passage by emergency vehicles.
- D. Adequate provisions shall be made for solid waste collection and storage. All solid waste storage shall be adequately screened and buffered.
- E. All signs shall meet all requirements of Section 90-38.
- F. Amplifier systems shall be designed so as not to be audible beyond the property lines.
- G. The number of parking spaces shall be as few as necessary to serve the golf course and accessory uses. The number shall be determined by a parking needs study to be conducted by the applicant and submitted at the same time as the special use permit application.
- H. A minimum vegetative buffer shall be maintained between any watercourse or wetland and any turf area which is to be treated chemically. The Planning Board shall retain an ecologist and/or other specialist(s) to review the plans and recommend appropriate buffer sizes which will depend on the specific nature of the watercourse or wetland to be protected. The buffer shall be of sufficient size and design to protect the surface water from chemicals carried by stormwater runoff. The Planning Board may consider alternative methods of protecting wetlands and water courses, e.g., diversion of runoff via swales, where it determines that said methods protect watercourses, wetlands and other natural water bodies.
- I. Adequate provisions shall be made by the golf course operator, after conferring with the areas Fire Department, EMT, County Fire Coordinator, and Sheriff, to handle the crowd generated by special events open to the public such as tournaments, and to satisfactorily mitigate off-site impacts including traffic management, parking, trash removal and waste disposal, security and safety and utility demand. The golf course may be required to post a performance guarantee for these purposes. All local permissions and permits required for a special event shall be obtained prior to the event.
- J. The course shall be designed, to the extent possible, in a manner that preserves existing woodland and wooded corridors. Clearance of woodland shall not exceed 50 percent of the total acreage of the lot on which the golf course shall be situated.
- K. Turf management and water quality. As part of the application for site plan approval, the applicant shall submit a turf management plan and an integrated pest management plan specific to the operation and maintenance of the proposed golf course. These plans shall be prepared in accordance with any guidelines established by the New York State Department of Environmental Conservation and shall also take into consideration guidelines established by the United States Golf Association.

These plans must include best management practices to prevent or minimize adverse impacts of chemical applications on the groundwater and surface water resources to which the golf course contributes drainage.

- L. Assurances shall be provided that any adverse impacts on groundwater or surface water quality resulting attributable to the golf course will be mitigated. The applicant shall provide for the monitoring of water quality of groundwater and surface water resources. The monitoring program, including the timing and frequency of testing and the identification of chemical parameters to be tested shall be established at the time the integrated turf management plan and integrated pest management plan are approved as part of the application. The applicant may be required to install permanent water quality monitoring devices to monitor water quality on an ongoing basis. The Planning Board and the applicant shall mutually agree to an independent consultant who shall be responsible for carrying out the monitoring program and the cost of the monitoring shall be borne by the applicant/owner of the golf course facility. The results and findings of any water quality monitoring shall be submitted by the owner to the Town to ensure compliance with the conditions of special use permit approval.

**§ 90-52.13 Kennel, Boarding**

- A. See Town of Minden Chapter 40 for Dog Law and Dog Licensing.
- B. Boarding Kennels. The Planning Board shall review any such proposed use to determine that it will not adversely affect the existing character of the neighborhood or surrounding area. Any special use permit issued for a kennel shall be for a term of one year. Such permit shall be renewable by the Zoning Enforcement Officer provided all original special use permit conditions continue to be met. In particular, the Board shall review any application for such use according to the following:
  - (1) In considering the application for a special use permit for a boarding kennel, the Planning Board shall consider the size, breed, and temperament of the animals to be boarded and impose reasonable conditions to protect proximate uses, aesthetic impact and safety of the animals to be boarded in order to ensure the health, safety and general welfare of the community.
  - (2) Animals may be boarded up to a maximum of 31 days at any one time.
  - (3) No breeding of animals or raising of litters will be allowed.
  - (4) Animal waste shall be disposed of in a manner acceptable to the Montgomery Department of Health.
  - (5) Crematoria or land burial of animals in association with the Kennel shall be prohibited.
  - (6) The minimum lot size shall be two acres plus 500 square feet for each large animal and 25 square feet for each small animal for the total number of animals to be boarded.
  - (7) All facilities associated directly with the kennel, whether indoors or outdoors shall be setback a minimum of 200 feet from any property line.
  - (8) The planning Board shall evaluate potential noise impacts and shall minimize negative impacts on adjacent uses which may include the use of sound proofing or use of noise barriers.
  - (9) The Planning Board may require screening of outdoor runs from view.
  - (10) A maximum of 10 dogs will be allowed at any one time.
  - (11) The dog warden or agent acting on behalf of the Town of Minden shall inspect the facility at least twice a year and/or anytime unannounced.

- (12) Unless stated in this section animal care will follow the guidelines of the NYS Agriculture and Markets Law Article 26A, Section 401 (Minimal Standards of Animal Care).
- (13) Veterinary care shall follow the guidelines set forth in the NYS Agriculture and Markets Law Article 26A Section 401 (5) as deemed necessary (Veterinary Care).
- (14) Unless stated in this section the exercising requirements of animals shall follow the guidelines of the NYS Agriculture and Markets Article 26A, Section 401 (7) (Exercise Requirements)

**§ 90-52.14 Small Mine**

- A. All small mines, except as exempted in sub-section (b) of this section, shall require a special use permit and site plan approval by the Planning Board. However, for certain mining activities, the New York State Mined Land Reclamation Law (MLRL), Article 23, Title 27 of the Environmental Conservation Law, establishes that New York State Department of Environmental Conservation (NYS DEC) is responsible for the regulation and permitting of mining activities and reclamation of same for operations that extract one thousand (1,000) tons or seven hundred fifty (750) cubic yards or more of a mineral during twelve (12) consecutive calendar months. The NYS DEC is the entity responsible for administering a MLRL permit for mining.
- B. Exemptions. The following activities shall not require a gravel mining special use permit, but may require a permit from the CEO:
  - (1) The removal of up to seven hundred and forty-nine (749) cubic yards of earth material in twelve (12) consecutive months as set forth above.
  - (2) Operations in connection with construction of improvements, changing of contours, and grading of lots in an approved subdivision, or on a parcel associated with an approved Site Plan provided that no more than seven hundred and forty-nine (749) cubic yards of earth materials are removed from the lot.
  - (3) Construction of a pond where no more than eight thousand (8,000) cubic yards of material are removed from the site.
- C. For Small Mines (no more than 749 cubic yards) where no NYS DEC MLRL Permit is required but a permit from the CEO is required, the following standards shall be met:
  - (1) No mining may take place within seventy five (75) feet of any property boundary nor within two hundred (200) feet from any public roadway.
  - (2) To guard against erosion, no mining may take place on slopes greater than 33%.
  - (3) If land disturbance is to be one acre or larger, a stormwater and erosion control plan shall be developed and filed with New York State pursuant to the SWPPP requirements of [SPDES General Permit for Stormwater Discharges from Construction Activity - GP-0-10-001](#).
  - (4) The hours of operation shall not exceed twelve (12) hours in any one day nor commence before 7:00 a.m. on any day nor extend beyond 7:00 p.m. on any day, nor shall there be any operation conducted on Sunday.
  - (5) No sharp pits, depressions or soil erosion problems shall be created and no slopes or banks shall exceed whatever slope is necessary in order to obtain stability.
  - (6) No dumping or other disposal of either solid or liquid waste shall be allowed as part of the mining operation.

- D. In addition to any other Site Plan, Special Use or DEC Mining Permit Applications that may be required, an application for a local mining approval shall also show the following:
- (1) The full names, signatures and addresses of the owner, lessee, operator and applicant and the written consent of the mortgagee, if any.
  - (2) Proof of ownership of the property and the names and addresses of all parties having an interest in any entity involved as the owner or operator of the site, such as a limited liability company, corporation or limited partnership which owns or has an interest in the property. If the property is owned in whole or in part by a corporation or limited liability company, the applicant shall provide the names and addresses of all officers, stock shareholders or members of each entity.
  - (3) Description of proposed operations. A statement clearly detailing the nature and extent of operations, including the type and amount of material to be filled, re-graded or removed, the manner in which it will be accomplished, the proposed hours of operation, and a time schedule for the completion of the various stages of the operation.
  - (4) Site Plan Map. A Site Plan map drawn to scale, prepared by an engineer or surveyor licensed to practice in the State of New York, showing all improvements on the property as well as the proposed area for mining and other improvements to be constructed in connection with the mining operation.
  - (5) Boundaries of property. The boundaries of property where the excavation is proposed and the area to be excavated, filled or re-graded.
  - (6) Existing contours. Existing contours in the area of operations and the proposed contours after completion of the work, which contours shall be prepared from an actual field survey, shall be based on a bench mark note and described on the map and shall be drawn to a scale of not less than one hundred (100) feet to the inch and with a contour interval not to exceed two (2) feet. If necessary, the Planning Board may require more detailed contours.
  - (7) Existing and proposed water bodies and drainage. Existing and proposed watercourses, water bodies, erosion control and drainage on the premises.
  - (8) Surrounding area. Surrounding streets and property lines and names of property owners, natural features, existing and proposed structures, a phasing plan, if any, and the environmental assessment form necessary to comply with SEQRA.
  - (9) Other. Such other maps, plans, boring tests, feasibility studies and engineering data as may be required by the Planning Board in order to determine and provide for the proper enforcement of these regulations.
- E. The Planning Board shall determine the length of any mining permit issued, however, no mining permit shall be issued for more than five years. If it is contemplated that the mining operation will take more than 5 years, then the applicant shall apply to the Planning Board for renewal of the permit before the expiration of the 5-year period.
- F. With respect to mines which currently are being operated in the Town of Minden pursuant to valid permits which have not expired, the owner of any such property shall be entitled to continue the operation of same pursuant to the provisions of a valid permit currently in effect through the time that such permit expires. Thereafter, any application for renewal of an existing valid permit shall be subject to the provisions of this law.

**§ 90-52.15 Sawmill**

- A. All sawmills shall require a Special Use Permit and Site Plan Review by the Planning Board.
- B. Hours of operation shall be limited to 7AM to 6PM, Monday through Friday and Saturday 7AM to 12 noon. Operation of the sawmill business shall not occur on the following holidays: Memorial Day, Labor Day, July 4th, Thanksgiving, Christmas and New Year's Day.
- C. Vehicular access to the sawmill shall be by means of an access drive at least twelve feet (12') wide and the first fifty feet (50') of which from the road along the drive must be paved. The rest of the drive beyond the first fifty feet (50') can be a stone surface.
- D. All aspects of the sawmill operation (except access drives) shall be set back no less than 200 hundred feet (200') from the front and rear of the property and one hundred feet (100') from the side property lines and five hundred feet (500') from any residentially zoned and used property or church or school. The Planning Board may require a visual screen comprised of evergreen trees to be planted along any site boundary line that abuts one or more residential lots. The Planning Board shall have the discretion to require greater front, back and side setbacks of up to five hundred feet (500') and/or to require a berm or other appropriate noise barriers where circumstances require to prevent a disturbance to persons or farm animals on neighboring properties.
- E. All sawmill by-products shall be disposed of on a regular basis so as not to create a nuisance or hazard and shall in no event be allowed to accumulate longer than three (3) months before being removed and properly disposed of. No storage of logs, lumber, sawdust, bark, scrap wood or equipment of any kind shall be permitted within any yard setback area at any time. Lumber/logs shall be piled with due regard to stability of piles and in no case higher than twenty (20) feet.
- F. No sawmill activity or storage shall be within one hundred feet (100') from the edge of any stream or any wetland as defined by state or federal law.
- G. The minimum lot size for a sawmill shall be five (5) acre with four hundred feet (400') of road frontage, provided however, that in the event a residence is located on the premises, which is limited to being the residence of the owner/operator of the sawmill, then the minimum lot size shall be seven (7) acres with six hundred feet (600') of road frontage.
- H. Timber and logs shall not be skidded across any roads or highways nor shall log skidders cross same as part of operations at any time.
- I. At such times as the sawmill is operating the maximum noise level may not exceed 55 decibels at all property lines. Should complaints arise concerning noise levels, the Town CEO shall take noise readings at the property lines. Should noise levels exceed the 55 decibel level at any property line, the Town Planning Board may require sound mitigation measures as it deems appropriate which could include building insulation, vegetation, buffering along the property lines, equipment silencers, etc. If found in violation of the 55 decibel noise level, the owner/operator has thirty (30) days to comply or a stop work order will be issued by the Town CEO.
- J. Sawmills shall be housed in the confines of a building.
- K. No burning of shavings, sawdust and refuse materials shall be permitted on the premises.

- L. These sawmill regulations apply to all operations involving the processing of timber not constituting a "timber operation" as defined in Section 301 I subdivision 14 of the NYS Agriculture and Markets Law.

**§ 90-52.16 Gas Station**

- A. Filling stations (and that portion of a convenience store that may have gas facilities) shall be permitted only on lots having at least one (1) acre of area and having at least two hundred fifty (250) feet of road frontage.
- B. Principal buildings shall be oriented to the street.
- C. Except for any access drive, the area to be used by motor vehicles as well as any structure shall not encroach on any required yard area.
- D. No fuel pump shall be located closer than twenty (20) feet from any side lot line nor closer than thirty-five (35) feet from any street line, as measured from the outside of the fuel island. Pumps shall be sited to the side or rear of the structure and not between the building and the street.
- E. All repair work and storage shall be conducted within a completely enclosed building. The maximum height of that building shall be twenty-five (25) feet.
- F. Canopies (the protective cover that is not enclosed on any of its four sides and is provided for a service area designated for the dispensing of gasoline, oil, antifreeze, and similar products) shall not exceed 16 feet in height or the height of the principal building, whichever is less. Canopies shall be architecturally integrated with the principal building through the use of the same or compatible materials, colors and roof pitch. Any lighting fixtures that are a part of the underside of the canopy shall be recessed into the underside of the canopy so as not to protrude below the canopy ceiling surface more than 2 inches.
- G. The Planning Board may limit the number of gas pumps to ensure consistency in scale between the gas filling station and adjacent land uses.
- H. There shall be no glare of gas pump island canopies outside the boundaries of the site. All gas pump island canopy lights shall be recessed with no bulb, lens or globes extending below the casing or canopy ceiling.
- I. No signs shall be allowed on the canopy mansard, fascia or roof area covering gas pumps.
- J. There shall be no amplified sound audible at property lines. The Planning Board may prohibit the outdoor use of amplified sound for gas stations if, in their opinion, such sound could disturb adjacent residences.
- K. All pumps, pump islands, tanks, piping and canopies shall be removed when fuel dispensing activity has been inactive for a period of twelve (12) months.
- L. The gas pump island canopy shall reflect the design of the building and be consistent with the main structure's roofline.
- M. Construction, maintenance and inspection of any gas filling station shall use all applicable federal, state and county environmental protection and mitigation requirements relative to installation, use and removal of tanks and pumps.
- N. The Planning Board shall require a traffic impact analysis.

- O. Applicants shall prepare and maintain on site, an acceptable Spill Prevention, Control and Countermeasure Plan prepared under the supervision of a professional licensed engineer.
- P. Employees shall be up-to-date in Spill Prevention training.
- Q. The Planning Board may limit hours of operation or limit acceptable hours of fuel delivery where a gas station is adjacent to residential uses.
- R. Applicants shall evaluate site conditions and provide information, analysis, and evidence that the proposed gasoline filling station will not degrade the quality of groundwater. Mitigation measures if needed, including, but not limited to use of encased above ground tanks shall be implemented to reduce or eliminate risks to groundwater.

**§ 90-52.17 Hotel**

- A. The minimum lot area shall be two (2) acres. One or more principal buildings may be located on a lot. A principal building shall be separated from another principal building a distance of no less than twenty-five (25) feet.
- B. Guest sleeping rooms shall not contain full kitchen facilities and shall not be used as apartments for non-transient tenants.
- C. The following accessory uses shall be permitted:
  - (1) One (1) apartment, with or without kitchen facilities, for the use of the hotel or motel manager or caretaker and his family within the lodging facility.
  - (2) A coffee shop/dining room. Such facilities shall be located within the principal building.
- D. The Town promotes adaptive reuse of buildings, and encourages the preservation of any historical structures.
- E. The lot shall be of adequate size and shape to provide one (1) parking spot for each guest room, employee and property owner, located to the rear of the residence where possible.
- F. The Planning Board may require fencing, earth berms, evergreen vegetation or other buffers to reduce visual conflicts with neighbors.
- G. No guest, employee or owner parking shall be located on the street.
- H. No more than one (1) free standing sign to identify the property is permitted.
- I. Meals offered to the general public shall be allowed as an accessory use. When meals are also offered to the general public all parking shall be in accordance with Section 90-52 of these regulations.
- J. Recreational facilities for the sole use of guests are permitted as accessory uses including pool, playground, tennis or other game courts, game or recreation rooms, office and lobby.

**§ 90-52.18 Restaurant.**

Restaurants are allowed with site plan and special use permit approval by the Planning Board in the Commercial District.

**§ 90-52.19 Fuel Sales and Storage**

- A. All underground and above ground storage facilities for fuel, including but not limited to gas, diesel, natural gas, propane, and fuel oil shall meet all County, State and federal requirements.

- B. Any such installation of flammable liquids or gas shall be in conformance with the applicable recommendations of the National Board of Fire Underwriters and in compliance of New York State Building Code, and all other State, County and federal requirements.
- C. The recommendations of the local fire chief having jurisdiction shall also be considered prior to approval of such a use.
- D. All such uses shall be located on sites large enough to contain the impact of any potential accident that might result from their existence without damage to adjacent properties.
- E. No church, school, library, playground or similar place of public assembly shall be within 500 feet of the site.

**§ 90-52.20 Light Industry**

- A. The minimum lot area for any manufacturing uses shall be two (2) acres and the lot shall have no less than two hundred (200) feet of frontage on a county or state road. The manufacturing building shall be set back no less than one hundred (100) feet from any lot line.
- B. No sales to the general public shall be permitted from the premises.
- C. All uses, processes and storage shall be within a fully enclosed structure, and no tanks or other apparatus incidental to the processing or manufacturing shall be visible outside of a manufacturing building. The façade of buildings and structures shall be compatible with the rural character and adjacent development.
- D. The applicant shall submit a list of any other permits that may be required for the operation as well as a list of the goods and materials to be stored and manufactured.
- E. Parking shall not be permitted in the front yard.
- F. There shall be no glare emitted beyond the property boundaries. All lights shall use full cut-off shielded fixtures. The location and all on-site lighting shall be approved by the Planning Board.
- G. The Planning Board may require a wall, fence, landscaping or other buffer to be installed where a property adjoins a residential use. Said buffer shall be no less than ten (10) feet in width.
- H. The Planning Board may require a noise analysis, and if needed, noise mitigation to maintain the area's existing ambient noise levels.

**§ 90-52.21 Storage Facility**

- A. The lot size shall be a minimum of two acres and a maximum of five acres. The minimum front setback shall be thirty-five (35) feet. The total area covered by buildings shall not exceed 70% of the site.
- B. Security fencing, security gate, or other obstruction to vehicle access shall be permitted in the required front yard or in any required transitional yard. Security fencing shall not include electrically charged, barbed wire or razor wire, and shall not be placed in a required front yard setback area.
- C. No door opening for any storage unit shall be constructed facing any residential use.
- D. Door openings for storage units shall face the interior of the site unless impracticable.
- E. An on-site office for a manager may be approved by the Planning Board as part of the business.
- F. The roof shape and materials shall be pitched and compatible with the design and materials of neighboring buildings and shall meet all design and siting requirements as set forth in Section 90-30.1.

- G. All parking shall be to the rear of the building or to the side, and if on the side, must be adequately screened.
- H. Storage units shall not be used for: the servicing or repair of motor vehicles, boats, recreational vehicles, motorcycles, trailers, lawn mowers and other similar equipment; or for office, retail, manufacturing or other similar uses. The storage of hazardous, toxic, or explosive substances is prohibited.
- I. No activities such as miscellaneous garage sales or auctions shall be conducted on the premises. However, the owner shall have the ability to have a sale for foreclosure purposes.
- J. All storage uses shall be inside an enclosed building. No outside storage is permitted.
- K. Spacing between structures shall be a minimum of twenty (20) feet and emergency access shall be provided to at least three (3) sides of all structures. Access drives shall be designed to handle automobiles, vans, light trucks, and other two-axle vehicles.
- L. All outdoor dumpsters shall be screened.

**§ 90-52.22 Campground**

- A. The minimum lot area shall be twenty-five (25) acres.
- B. Multiple buildings for sleeping quarters and tents may be permitted on the lot. No building or structure shall be closer than one hundred (100) feet from any lot line and all activities shall be effectively screened as required by the Planning Board from adjacent lots.
- C. Amplifier systems shall be designed so as not to be audible beyond the 55 decibel level at the property lines.
- D. Sanitary and wastewater disposal systems shall be approved by the New York State Department of Health. Sufficient supply of pure drinking water shall be provided for each camp site. Camps must be kept in a clean and sanitary condition and free of physical or fire hazards at all times and must in all respects conform to the provisions of 10 NYCRR Chapter 1. State Sanitary Code Part 7, Subpart 7-1 entitled "Temporary Residences," which chapter and part are hereby incorporated herein by reference as though set forth herein at length. All campgrounds shall be provided with toilets, showers, sinks, and other sanitary facilities. Toilet facilities shall consist of not less than one flush toilet for every ten camp sites, one urinal for every ten camp sites, one shower with individual dressing accommodations for every ten camp sites, and one sink for every five camp sites.
- E. Adequate emergency access shall be provided throughout the camp site.
- F. No permanent dwellings shall be permitted except for one dwelling to be used by the owner or resident manager of the camp.
- G. Summer camps shall be operational only between Memorial Day and Labor Day.
- H. Any camping site within the campground shall contain not less than 1,600 square feet and shall not be less than 40 feet on its shortest dimension. No two temporary dwellings shall be so located that they are within 20 feet of each other. No camp site shall be located within 50 feet of any public highway or public street line or within 50 feet of any adjacent property line. All units shall be consecutively numbered with the number conspicuously posted on each camp site.
- I. Garbage receptacles. Each camping ground shall provide equipment sufficient to prevent littering of the grounds, in or around the grounds with rubbish, garbage and refuse, and must provide metal depositories with tight-fitting covers at convenient locations throughout the grounds. Such

depositories shall be located so that no camp site will be more than 100 feet from a depository collected daily.

- J. Electric service and connections. All such connections and service outlets shall be weatherproof and shall be of the type approved by the New York Board of Fire Underwriters.

**§90-52.23 Low and High Impact Home Occupation**

A. General Standards for Low and High Impact Home Occupations

- (1) No home-based business shall generate significantly greater traffic volumes or increased traffic hazards than would normally be expected in a residential district.
- (2) The home-based business must be clearly incidental and subordinate to the residential use.
- (3) The home-based business shall be allowed to be conducted within the dwelling unit or an accessory structure on the parcel.
- (4) The residential character of the single-family dwelling or accessory building and the lot shall not be altered to accommodate a home-based business.
- (5) The equipment used by the home-based business and the operation of the home-based business shall:
  - (a) Not create any vibration, heat, glare, dust, odor, or smoke discernible at the property lines,
  - (b) Not generate noise exceeding 55 decibels at the property line from 8:00 A.M. to 6:00 P.M.,
  - (c) Not generate any noise discernible by the human ear at the property lines from 6:00 P.M. to 8:00 A.M.,
  - (d) Not create electrical, magnetic or other interference off the premises,
  - (e) Not consume utility quantities that negatively impact the delivery of those utilities to surrounding properties, or
  - (f) Use or store hazardous materials in excess of the quantities permitted in a residential structure.
- (6) No other business shall be permitted to share, let or sublet space for professional use.

B. Low impact Home Occupations

- (1) No external evidence of such use shall be permitted.
- (2) No more than fifteen percent (15%) of floor area of the dwelling unit or 500 square feet of an accessory building may be used in connection with a low impact home occupation, whichever is lesser.
- (3) There shall be no exterior storage of materials to be used in conjunction with a low impact home occupation. All storage used in conjunction with a low impact home occupation must be stored within the structure and not be visible from the public way or adjacent properties.
- (4) There shall be no heavy earth moving equipment, tractor trailers, or other similar specialized vehicles upon the property utilized for the low impact home occupation.
- (5) Only the person or persons who occupy the dwelling and one additional person may be employed by the low impact home occupation at any one time.

C. High Impact Home Occupations

- (1) No more than twenty-five percent (25%) of the floor area of the dwelling unit or 1499 square feet or less of an accessory building may be used in connection with a high impact home occupation.
- (2) All storage of equipment, materials, goods, or supplies used in conjunction with a high impact home occupation must be stored within the structure and not visible from the public way or adjacent properties.
- (3) Only the person or persons who occupy the dwelling and four (4) additional persons may be employed by the high impact home occupation at any one time.
- (4) Adequate parking shall be provided for all high impact home occupants, employees and customers so as not to cause parking congestion or a visual disturbance to the character of the neighborhood. The Planning Board may require all parking areas to be screened with fencing or vegetation.
- (5) One non-illuminated identification sign not more than six square feet shall be permitted.
- (6) All lighting, noise, sign and parking requirements of this zoning law shall be met.
- (7) In order to ensure that a high impact home occupation is consistent with the neighborhood in which it is located, the Planning Board may specify one or more of the following conditions:
  - (a) Hours of operation.
  - (b) Maximum number of customer/client visits that may occur in any one (1) day.
  - (c) Maximum number of customers/clients that can be present at any one time.
  - (d) Limit retail sales to goods made and/or prepared on site.
  - (e) Additional screening to reduce visual or noise impacts upon neighbors.
  - (f) Other conditions as determined by the Planning Board.
- (8) Any high impact home occupation that expands to exceed the definition and standards of this sub-section shall require a site plan approval by the Planning Board prior to operation pursuant to Article VII (Site Plan Review).

**§ 90-52.24 Solar Facilities**

A. Purpose and Intent

- (1) The Town of Minden recognizes that solar energy is a clean, readily available, and renewable energy source. It further recognizes that energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated.
- (2) The Town of Minden has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Town, its residents, and its businesses. This section aims to accommodate solar energy systems while balancing the potential impact on neighbors while preserving the rights of property owners to install solar energy systems. This section is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to be consistent with the Town of Minden Comprehensive Plan; to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the environment, and on aesthetic qualities and character of the Town.

- (3) Intent; greater restrictions to prevail. It is not intended by this section to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this section imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this section shall control.

B. Applicability

- (1) The requirements of this section shall apply to all solar energy system and equipment installations modified or installed after the effective date of this local law.
- (2) Solar energy system installations for which a valid building permit has been issued, or, if no building permit is presently required, for which installation has commenced before the effective date of this local law shall not be required to meet the requirements of this local law.
- (3) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the State Building Code.

C. Requirements for Small Scale Solar Energy Systems

- (1) No small scale solar energy system shall be installed or operated in the Town except in compliance with this section.
- (2) The installation of a solar collector or panel, whether attached to the main structure, an accessory structure, or as a detached, free standing or ground mounted solar collector is permitted as an accessory structure, shall meet all requirements of this sub-section (C), and shall require a building permit.
- (3) All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- (4) Setbacks for Solar Energy Systems: Solar collectors or panels shall be set back a minimum of 25 feet on any side and rear lot. No solar collector is allowed to be ground mounted in the required front yard setback except in the following circumstance:
  - (a) In the case where a lot's width and road frontage is greater than the depth, and where it is not feasible to meet all setbacks to place ground mounted solar panels in the rear, ground mounted solar panels may be placed in the front yard setback placed to the side of the principal structure. No ground mounted solar panels may be placed directly in front of the home or principal structure.
- (5) Height limits for solar collectors mounted on buildings shall be five feet above the level of the permitted building height. The height of ground mounted or freestanding solar collectors height shall not exceed 20 feet when oriented at maximum tilt.
- (6) All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
- (7) Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are

exempt from the requirements of this section. However, all applicable building codes shall be met and necessary permits obtained. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered exempt or not.

- (8) In order to ensure the safety of firefighter and other emergency responders, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and pathways to provide space on the roof for walking around all solar collectors and panels.
- (9) Free standing or ground mounted solar collectors are permitted as accessory structures in all zoning districts of the Town subject to the following additional conditions:
  - (a) In the Agricultural and Residential districts, a lot must have a minimum size of 2 acres in order for a ground-mounted or free standing solar system to be permitted.
  - (b) Screening shall be provided when practicable from adjoining lots through the use of architectural features, earth berms, landscaping, fencing, or other screening which will harmonize with the character of the property and surrounding area. The proposed screening shall not interfere with normal operation of the solar collectors.
  - (c) The total surface areas of all ground mounted and freestanding solar collectors shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, not including patios and decks.

#### D. Solar Farms/Utility-Scale Solar Energy Systems

##### (1) Applicability

- (a) Any utility-scale solar energy system erected, constructed, modified, or operated in the Town of Minden after the effective date of this local law shall be in compliance with this Section. Subsection D is applicable to utility-scale solar energy systems and shall not apply to small-scale solar energy systems, as defined herein.
- (b) Utility-scale solar energy systems are allowed with a special use permit and site plan review by the Planning Board only in the Agricultural District. Such systems are prohibited from all other zoning districts in the Town of Minden.
- (c) In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this section. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.

##### (2) Applications, Permits and Approvals Required and Applicable Zoning Districts

- (a) All applications for utility-scale solar energy systems shall be accompanied by an application for special use permit and site plan review, and all applicable fees as may be established by the Town Board. Both site plan and special use permit reviews and approvals are required. The Planning Board shall however, concurrently review the site plan and special use permit applications. All applications shall include the name and contact information for both the landowner(s) of the parcel where the project is proposed and the solar facility operators.

- (b) All applications for utility-scale solar energy systems shall include the following:
- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of site plan approval.
  - (2) An electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices identified.
  - (3) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
  - (4) Plan for clearing and/or grading of the site. The clearing and grading plan shall also include methods to stockpile, reduce erosion of, and reuse all top soil from the site.
  - (5) A stormwater pollution prevention plan as per NYS DEC requirements to detail stormwater runoff management and erosion control plans for the site.
  - (6) Documentation of utility notification, including an electric service order number.
  - (7) Decommissioning plan and description of financial surety that satisfies the Town that all required improvements shall be made for utility-scale systems only. For all utility-scale solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value.
  - (8) The Town shall require any applicant to pay all associated costs for any application review, including but not limited to engineering, legal, environmental, planning, and the review required under SEQRA to the Town Clerk. When the Planning Board determines that a review will require engineering, legal, environmental, or planning costs, they shall provide an estimate to the applicant. Subsequently, such payment shall be made prior to commencement of any further Planning Board review.
  - (9) Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specifications and photos of the proposed solar energy system, solar collectors, and all other components.
  - (10) Part I of the Full Environmental Assessment Form filled out.
  - (11) Details of the proposed noise that may be generated by inverter fans. The Planning Board shall require a noise analysis to determine potential adverse noise impacts.

(3) General Provisions

All applications for utility-scale solar energy systems shall be in accordance with the following:

- (a) All utility-scale solar energy systems shall adhere to all applicable Town of Minden building, plumbing, electrical, and fire codes.

- (b) A minimum parcel size of twenty (20) acres is required for utility-scale solar energy systems.
- (c) Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Minden or other federal or state regulatory agencies. Applicants shall use the adopted Town of Minden Comprehensive Plan, showing sensitive environmental features along with other site information to identify and describe how the proposed utility scale solar energy system shall avoid or mitigate adverse impacts to these resources. Lands which have the highest ecological values as evidenced by large, contiguous areas of forest, undisturbed drainage areas, wetlands, or NYS DEC identified critical habitats or rare plant and animal populations shall be avoided.
- (d) There shall be a minimum 100-foot buffer between any component of the utility-scale solar energy system and the parcel boundary line. The Planning Board is authorized to increase the width of this buffer after analysis of site conditions and adjacent land uses.
- (e) Any site containing a utility-scale solar energy system shall be enclosed by perimeter fencing at a height of 8 ½ feet to restrict unauthorized access.
- (f) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
- (g) Previously cleared or disturbed areas are preferred locations for solar panel arrays. The clearing of additional lands to accommodate a proposed utility-scale solar facility may be permitted, provided the percentage of newly cleared land on any parcel does not exceed 30% of the existing woodlands on that parcel.
- (h) Solar arrays and agriculture. In accordance with the Comprehensive Plan, the Town of Minden does not support conversion of productive farmland to support grid-supply facilities. When proposed on an active farm located within the New York State Certified Agricultural District in Minden, a utility-scale solar energy system may occupy up to 20% of any farmed parcel but in no case shall exceed ten (10) acres. Arrays shall be located on a parcel in such a manner as to avoid, to the maximum extent feasible, soils classified as prime farmland by the USDA, NYS or NRCS.
- (i) Native grasses and vegetation shall be maintained below the arrays.
- (j) The solar facility, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid or minimize visual impacts as viewed from:
  - (1) Publicly dedicated roads and highways, including Route 5S, 163, 80 and I-90;
  - (2) Existing residential dwellings located on contiguous parcels;
- (k) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of fully screening the site, shall be provided (See example illustration, below).

Figure 1: Example of a landscaped berm designed to fully screen a utility-scale solar energy facility.



- (l) The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- (m) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color to aid in blending the facility into the existing environment.
- (n) All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- (o) Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- (p) Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations. The manufacturers or installer's identification, contact information, and appropriate warning signage shall be posted at the site and clearly visible.
- (q) The average height of the solar panel arrays shall not exceed fifteen feet.
- (r) Due to the need to keep the solar skyspace for solar energy systems free from obstructions, the Planning Board may recommend modifying the landscaping requirements on an adjacent parcel when it is subject to a site plan or special use permit request to ensure that any landscaping proposed there is low-growth vegetation that will not obstruct the solar skyspace at mature height.

- (s) Following construction of a large-scale or utility-scale ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
- (t) Special use permits granted for utility-scale solar energy systems shall be assignable or transferable to future landowners of that system on the approved parcel so long as they are in full compliance with this section and all conditions, and the Code Enforcement Officer is notified of the property transfer at least 15 days prior thereto.
- (u) Any post-construction changes or alterations to the solar energy system shall be done by amendment to the special use permit only and subject to the requirements of this article.
- (v) After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

E. Abandonment or Decommissioning of Utility-Scale Systems

- (1) All applications for a utility-scale solar energy facility shall be accompanied by a decommissioning plan to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the utility-scale solar energy facility or structure. Prior to issuance of a building permit, the owner or operator of the facility or structure shall post a performance bond or other suitable guarantee in a face amount of not less than 150% of the estimated cost, as determined by the engineer retained by the Town, to ensure removal of the facility or structure in accordance with the decommissioning plan described below. The form of the guarantee must be reviewed and approved by the consulting Engineer and Town Attorney, and the guarantee must remain in effect until the system is removed. Review of the guarantee by the consulting Engineer and Town Attorney shall be paid from an escrow established by the applicant. Prior to removal of a utility-scale solar energy facility or structure, a demolition permit for removal activities shall be obtained from the Town of Minden.
- (2) If the applicant ceases operation of the utility-scale solar energy facility or structure for a period of 18 months, or begins but does not complete construction of the project within 18 months after receiving final site plan approval, the applicant will submit a decommissioning plan that ensures that the site will be restored to a useful, nonhazardous condition without delay, including but not limited to the following:
  - (a) Removal of all aboveground and belowground equipment, structures and foundations including but not limited to ground anchors, cables, wiring, concrete foundations, switchyards, control houses, fencing, and inverters.
  - (b) Restoration of the-surface grade and top soil after removal of equipment. Compacted portions shall be decompacted and excavations shall be backfilled to restore the site.
  - (c) Revegetation of restored top soil areas with native seed mixes, excluding any invasive species.
  - (d) The plan shall include a time frame for the completion of site restoration work.
- (3) In the event that construction of the utility-scale solar energy facility or structure has been started but is not completed and functioning within 18 months of the issuance of the final site plan, the Town may notify the operator and/or the owner to complete construction and

installation of the facility within 180 days. If the owner and/or operator fails to perform, the Town may notify the owner and/or operator to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of notification by the Town.

- (4) Upon cessation of activity of a fully constructed utility-scale solar energy facility or structure for a period of one year, the Town may notify the owner and/or operator of the facility to implement the decommissioning plan. Within 180 days of notice being served, the owner and/or operator shall either restore operation equal to at least 80% of approved capacity, or implement the decommissioning plan.
- (5) If the owner and/or operator fails to fully implement the decommissioning plan within the 180-day time period and restore the site as required, the Town may, at its own expense, provide for the restoration of the site in accordance with the decommissioning plan and may, in accordance with the law, recover all expenses incurred for such activities from the defaulted owner and/or operator. The cost incurred by the Town shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the same officer and in the same manner as other taxes.
- (6) The Planning Board is authorized to seek and use legal, engineering, planning, or other professional assistance for the review of any utility-scale solar energy facility. All costs incurred related to retention of any such assistance shall be paid in full by the applicant.

**§ 90-52.25. Unregistered Vehicles.**

- A. One (1) property maintenance vehicle such as a plow truck is allowed per parcel.
- B. One (1) unregistered vehicle is allowed per parcel, such as, but not limited to:
  - (1) Car taken off of the road for a short duration because of a student going to college;
  - (2) Vehicle taken off the road for a season.
- C. Restoration vehicles must be stored inside.
- D. Vehicles used for restoration parts must be stored inside.
- E. Vehicles used in an active farm operation are permitted.

**ARTICLE IX, Off-Street Parking and Loading**

**§ 90-53. Automobile parking facilities.**

- A. Where one or more motor or other vehicle recurrently parks by reason of the use and occupancy of the premises, there shall be provided on or in convenient connection therewith adequate garage or vehicular parking spaces for the number and in proportion to the size of the vehicles which so park, the minimum to be not less than 180 square feet per automobile, in addition to driveway and backing and turning space. The recurrent parking of any such vehicle shall be evidence of the failure to provide adequate and suitable garage or parking source on or in convenient connection with such premises.
- B. Parking requirements for certain uses are specified in Schedule B For uses not specified, the Board of Appeals shall establish parking requirements after recommendation of the Planning Board.
- C. For any building having more than one use, parking shall be required for each use.

**§ 90-54. Off-street loading facilities.**

- A. Off-street loading facilities shall be provided for each commercial or industrial establishment hereafter erected or substantially altered and shall be so arranged as not to interfere with pedestrian or motor traffic on the public street or highway.
- B. Loading space requirements for certain uses are specified in Schedule B, For uses not specified, the Board of Appeals shall establish loading requirements, after recommendation of the Planning Board.
- C. Loading requirements apply to each separate occupancy and are exclusive of driveways, aisles and other necessary circulation areas.

**ARTICLE X, Nonconforming Uses**

**§ 90-55. Continuation of nonconforming uses.**

The lawful use of any land or building existing at the time of adoption of this chapter may be continued although such use does not conform with the provisions of this chapter. Any such building may be reconstructed or structurally altered and the nonconforming use thereby changed, provided the following conditions prevail.

**§ 90-56. Nonconforming uses of buildings.**

- A. Reconstruction or alteration. A nonconforming building may not be reconstructed or altered during its life to exceed 50% of its fair value, unless such building is changed from a nonconforming use to a conforming use as defined by this chapter, except that a mobile manufactured home which is a pre-existing nonconforming use may be replaced with a new or larger mobile manufactured home, provided that such exchange is made within 30 days, and the owner has obtained a building permit to make the exchange.
- B. Restoration. A building, nonconforming as to use, which has been damaged by fire or other causes to the extent of 75% of its fair value, and has not been repaired or reconstructed for the same nonconforming use within a period of 12 months, shall not be repaired or reconstructed except in conformance with the regulations of the district in which such building is located.
- C. Discontinuance. When a nonconforming use has been discontinued for a period of 12 months, any future use of such building shall conform with the regulation for the district in which it is located.
- D. Changes. A nonconforming use may not be changed to another nonconforming use under the provisions of this section.
- E. Completion of building. Any building lawfully under construction at the time of enactment of this chapter may be completed.

**§ 90-57. Nonconforming use of land.**

The nonconforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of adoption of this chapter. A nonconforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of adoption of this chapter. If a nonconforming use of land is discontinued for a period of 12 consecutive months, it shall not be renewed, and any subsequent use of the land shall conform to the regulations of the district in which the land is located.

## **ARTICLE XI, Administration**

### **§ 90-58. Enforcement.**

This chapter shall be enforced by the Code Enforcement Officer designated by the Town Board. The Code Enforcement Officer shall in no case grant any building permit where the proposed erection, alteration, relocation or use would be in violation of any provision of this chapter. The Code Enforcement Officer shall make inspections of buildings or premises necessary to carry out his duties. No permit or certificate of occupancy required hereunder shall be issued by the Code Enforcement Officer except in compliance with the provisions of this chapter or as directed by the Zoning Board of Appeals under the provisions of Article XII.

### **§ 90-59. Stop Work Orders, Complaints, and Record Keeping**

- A. Authority to issue Stop Work Orders. The Code Enforcement Officer is authorized to issue stop work orders pursuant to this section for any work that is determined by the Code Enforcement Officer to be conducted in violation of the Zoning Law, including, but not limited to, work being conducted on land and/or work being conducted on a building or structure for which a special use permit or site plan approval is required but has not been obtained.
- B. Content of Stop Work Order. A stop work order shall:
- (1) Be in writing;
  - (2) Be dated and signed by issuing Officer;
  - (3) State the reason or reasons for issuance; and
  - (4) If applicable, state the conditions that must be satisfied before work will be permitted to resume.
- C. Service of stop work order. The CEO shall cause the stop work order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by registered or certified mail. The CEO shall be permitted, but not required, to cause the stop work order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop work order, personally or by registered or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop work order.
- D. Effect of stop work order. When a stop work order is issued, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work that is the subject of the stop work order.
- E. Complaints. The CEO shall review and investigate complaints that allege or assert the existence of conditions or activities that fail to comply with this Zoning Law. The process for responding to a complaint shall include any of the following steps the CEO may deem to be appropriate:
- (1) Performing an inspection of the property, conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
  - (2) If a violation is found to exist, providing the owner of the affected property, and any other person who may be responsible for the violation, with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner authorized in this Zoning Law;
  - (3) If appropriate, issuing a stop work order and/or compliance order;

- (4) If a violation that was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing the report with the complaint; and
- (5) Notify the complainant about the outcome of any investigation initiated as a result of their complaint.

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

- (1) All applications received, reviewed and approved or denied;
- (2) All plans, specifications and construction documents approved;
- (3) All zoning permits, temporary certificates, stop work orders, operating permits, and certificates of use issued;
- (4) All inspections and tests, including all third party inspections and tests, required and performed;
- (5) All statements and reports issued and a master list of all reports to be received;
- (6) All complaints received;
- (7) All investigations conducted;
- (8) All other features and activities specified in or contemplated by this Section of the Zoning Law; and
- (9) All fees charged and collected.

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

G. Program review and reporting. The CEO, along with the Deputy CEO, if applicable, shall annually submit to the Town Board a written report and summary of all business conducted by the CEO office, including a report and summary of all transactions and activities and a report and summary of all appeals or litigation pending or concluded.

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

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

- (1) be in writing;
- (2) be dated, shall identify the CEO, and be signed by the CEO;
- (3) specify the condition or activity that violates this Zoning Law;

- (4) specify the provision or provisions of this Zoning Law that is/are violated by the specified condition or activity;
- (5) specify the period of time the CEO believes is reasonably necessary for achieving compliance;
- (6) direct that compliance be achieved within the specified period of time; and
- (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.

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

- I. Appearance tickets. The CEO is authorized to issue appearance tickets for any violation of the Zoning Law.

#### **§ 90-60. Penalties and Injunctive Relief**

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

- A. Criminal penalties and enforcement. Any violation of the Zoning Law is hereby declared to be an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense; upon conviction of a second offense, both of which were committed within a period of five (5) years, punishable by a fine not less than \$350, nor more than \$700, or imprisonment for a period not to exceed six (6) months, or both; and upon conviction of a third or subsequent offense, all of which were committed within a period of five (5) years, punishable by a fine not less than \$700, nor more than \$1,000, or imprisonment for a period not to exceed six (6) months, or both. For the purpose of conferring jurisdiction upon the Courts and judicial officers generally, violations of the Zoning Law shall be deemed misdemeanors and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- B. Injunctive relief. An action or proceeding may be instituted by the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Zoning Law. No court action or proceeding shall be commenced without the appropriate authorization from the Town Board. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of this Zoning Law, or any Stop Work Order, Compliance Order or other order obtained under this Zoning Law, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions.
- C. Remedies not exclusive. No remedy or penalty specified in this Section shall be the exclusive remedy or penalty available to address any violation described in this Section, and each remedy or penalty specified in this Section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified this Section or in any other applicable law. Any remedy or

penalty specified in this Section, including stop work orders, may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Section or any other applicable law.

In particular, but not by way of limitation, each remedy and penalty specified in this section, including stop work orders, shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of Section 381 of the New York State Executive Law (Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation and Construction Code), and any remedy or penalty specified in this Section, including stop work orders, may be pursued at any time, whether prior to, or simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of Section 381 of the New York State Executive Law.

**§ 90-61. Building permit and Certificate of Occupancy**

- A. No building shall hereafter be erected, relocated or altered as to outside dimensions or so as to permit a change in its use and no excavation for any building shall be begun unless and until a permit therefor has been issued by the Code Enforcement Officer.
- B. No such permit shall be issued until there has been filed with the Code Enforcement Officer a sketch or plot plan showing the actual dimensions and angles of the lot to be built upon, the exact size and location of the lot of the building or accessory buildings to be erected, relocated or altered and such other information of this chapter. Each application shall state the purpose for which the structure of land is to be used and a general description of the type of construction. A working drawing of any proposed building shall be filed with the application for a building permit.
- C. The Code Enforcement Officer shall act upon all applications for building permits within a reasonable time not to exceed ten (10) days, and shall, within such period, issue or refuse to issue such permits. Notice of refusal to issue any permit shall be given to the owner or to his authorized representative, in writing, and shall state the reason for said refusal. The fee for any such permit shall be determined by the Town Board from time to time by resolution of the Board.
- D. Permits will not be necessary for minor repairs, painting, plumbing, and corncribs, provided they conform to the present use of the land or buildings, as provided for in this chapter. New water wells shall require permits from the Town and NYS DEC. All swimming pools and new roofs shall require a building permit.
- E. A building permit shall be issued for a period of one year and may be renewed for two additional periods. If the improvements described in the application for a building permit have not been completed within three years from the date that the permit is issued, the owner shall apply to the Zoning Board of Appeals to continue the permit in force.
- F. No building permit shall be issued for lots in an approved subdivision except as provided for in the subdivision regulations.
- G. No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Code Enforcement Officer. A temporary Certificate of Occupancy for not more than thirty (30) days for a part of a building may be issued by the Code Enforcement Officer. For previously existing construction, the Code Enforcement Officer may, on request, issue such certificate if he determines that the use of the building in question meets the requirements of this chapter.
- H. A Certificate of Occupancy shall be issued only if the proposed use and construction of the building or land conforms to the provisions of this chapter and to the plot plan, purpose and description of

which the permit was issued. The Code Enforcement Officer shall make or cause to have made an inspection of each building or lot for which a Certificate of Occupancy has been applied before issuing such certificate. Such inspection shall be made within ten (10) days from the date of application, Saturday, Sundays and legal holidays excepted.

- I. The Code Enforcement Officer shall deny a Certificate of Occupancy if any violation of the state or county health regulations is discovered. The issuance of a Certificate of Occupancy shall not be construed as a representation by the town that the premises comply with such health regulations, but solely that no violations have been found.

## **ARTICLE XII, Zoning Board of Appeals**

### **§ 90-62. Creation, appointment and organization.**

#### **A. Membership**

- (1) A Zoning Board of Appeals is hereby established in accordance with Article 16, Section 267 of the New York State (NYS) Town Law. It shall consist of five (5) members, each to serve for a term of five (5) years. The term of office of the members of the Board of Appeals and the manner of their appointment shall be in accordance with the provisions of Article 16, Section 267 of the NYS Town Law. A member of the Board of Appeals shall not at the same time be a member of the Town Board. Vacancies occurring on the Board shall be filled for such unexpired period only.
- (2) The Town Board shall designate its chairperson and shall provide for such expenses as may be necessary and proper. In the absence of a chairperson, the Zoning Board of Appeals members may designate a member to serve as acting chairperson.
- (3) The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after a legally noticed public hearing.

#### **B. Powers**

- (1) The Zoning Board of Appeals shall have the duties, rights, powers and functions conferred upon it by Section 267 of Article 16 of the NYS Town Law, and any other provisions of law applicable to appeals to review any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of this Zoning Law.
- (2) Hearing appeals. The jurisdiction of the Board of Appeals shall be appellate and shall include hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

### **§ 90-63. Conduct of Business, Procedures, Actions**

#### **A. Conduct of Business**

- (1) The Zoning Board of Appeals may employ such clerical or other staff as may be necessary, provided that it shall not incur expenses beyond the amount of appropriations made available by the Town Board for such purposes.
- (2) Meetings, minutes, records. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the New York State Public Officer's Law (the Open Meetings Law). The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- (3) Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.
- (4) Assistance to Zoning Board of Appeals. The Board shall have the authority to call upon any professional to assist in its review of the application which shall provide the Board with necessary technical information required for the Board to carry out its duties. All expenses shall be incurred by the applicant.

- (5) The Zoning Board of Appeals shall have the power to promulgate written rules of procedure, by-laws, and forms in order to fulfill its responsibilities under the New York State Town Law and this Zoning Law.
- (6) All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Board may determine.
- (7) Time of appeal. An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer, by filing with such officer and with the Board of Appeals, a notice of appeal, specifying the grounds thereof and the relief sought on forms prescribed by the Zoning Board of Appeals. All applications for variances shall be in writing on forms established by the Zoning Board of Appeals and available from the Code Enforcement Officer. Such application shall refer to the specific provision of this Zoning Law involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision or determination of an administrative official. It shall establish the details of why the variance should be granted. The Code Enforcement Officer shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- (8) If an agricultural data statement has been submitted, the Clerk of the Zoning Board of Appeals shall, upon receipt of the variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.
- (9) Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
- (10) Hearing on appeal. The Board of Appeals shall schedule a public hearing within sixty-two (62) days upon receipt of a completed application. The Zoning Board of Appeals shall give public notice of such hearing by publication in a paper of general circulation in the town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. The Zoning Board of Appeals shall notify the applicant of the date of the public hearing at least fifteen (15) days in advance of such hearing. Upon the hearing, any party may appear in person, or by agent or attorney. In addition to the public notice of a hearing, notice shall be given in writing to all property owners of the land included in such proposed change, and the land immediately adjacent extending five hundred (500) feet there from, and the land directly opposite thereto extending five hundred (500) feet from the street or highway frontage of such opposite land, as said property owners and addresses appear on the latest completed assessment roll of the town.
- (11) The 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 in the premises and to that end shall have all the powers of the officer from whom the appeal is taken.

- (12) Notice to County Planning Board. At least five (5) days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties to the County Planning Board as required by Section 239-m of the New York State (NYS) General Municipal Law. This notice shall be accompanied by a full statement of the proposed action, as defined in subdivision one of section 239-m of the NYS General Municipal Law. No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or thirty (30) days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the thirty (30) day requirements for the County Planning Board's review. A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval from the County Planning Board, along with a resolution setting forth the reasons for such contrary action.
- (13) Time of decision on appeal. The Board of Appeals shall decide upon the appeal within sixty-two (62) days after the closing of the public hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Zoning Board of Appeals.
- (14) Voting requirements and Decisions.
  - (a) Decision of the board. Every decision of the Zoning Board of Appeals shall be by resolution, each of which contains a full record of the findings of the Zoning Board of Appeals in the particular case. A decision shall be made within sixty-two (62) days of the close of the public hearing. Every motion or resolution of a Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency the voting provisions of Section 239-m of the NYS General Municipal Law shall apply.
  - (b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Code Enforcement Officer within the time allowed, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth this Section.
  - (c) Each resolution shall be filed in the office of the Town Clerk by case number under one or another of the following headings: Interpretations, Use Variances and Area Variances; together with all documents pertaining thereto. The Zoning Board of Appeals shall notify the Town Board and the Planning Board of each variance granted under the provisions of this chapter.
- (15) Filing of decision and notice. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- (16) Compliance with State Environmental Quality Review Act (SEQRA). The Board of Appeals shall comply with the provisions of SEQRA under Article 8 of the New York State Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Code of Rules and Regulations.
- (17) Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of

the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

B. Permitted action by Board of Appeals.

(1) Appeals, orders, requirements, decisions, interpretations, determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement the Zoning Law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

(2) Use variances.

(a) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of the Zoning Law, shall have the power to grant use variances, as defined in this Zoning Law.

(b) No use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The applicant shall have the burden of proving unnecessary hardship to the satisfaction of the Zoning Board of Appeals. The Zoning Board of Appeals shall not determine that an applicant has successfully proved unnecessary hardship unless it determines that the applicant has demonstrated that, for each and every permitted use under the zoning regulations for the particular district where the property is located, the following four criteria have been met for each such permitted use:

(1) that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(4) that the alleged hardship has not been self-created.

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

(3) Area variances.

(a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of this Zoning Law, to grant area variances as defined in this Zoning Law.

- (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 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 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; and
  - (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (c) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (4) Imposition of conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to, and incidental to, the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- (5) Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

#### C. Court Review of Board Decisions

- (1) Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the New York State Civil Practice Law and Rules and Section 267-c of the New York State Town Law.
- (2) Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within twelve (12) months of the date of such decision.
- (3) Grant of Variance. The grant of a variance shall serve as authorization for the Code Enforcement Officer to issue a project permit, provided that the project complies with all applicable provisions of this Zoning Law and other applicable regulations.

## **ARTICLE XIII, Amendments**

### **§ 90-64. Amendments; how initiated.**

- A. The Town Board may, from time to time, on its own motion, amend, supplement, repeal or change the regulations or district boundaries established by this chapter.
- B. Whenever the owners of 50% or more of the frontage in any district or part thereof included in such change shall present a petition duly signed and acknowledged the Town Board requesting an amendment, supplement or change of the regulations prescribed for such district or part thereof, it shall be the duty of the Town Board to vote upon said petition within one hundred eight (180) days after the filing of the same by the petitioners with the Town Clerk.
- C. The Planning Board may, by resolution, propose an amendment to the Town Board suggesting a change or repeal of specific portions of the regulation. Within ninety (90) days from the time such resolution is filed with the Town Clerk, it shall be the duty of the Town Board to vote on such proposed amendment.

### **§ 90-65. SEQRA and Referral of amendments to Town Planning Board and County Planning Board.**

- A. Prior to adoption of any proposed amendment, supplement or change, all requirements of SEQRA, Part 617 shall be met.
- B. All proposed amendments, supplements or changes originating by petition, or by motion of the Town Board, shall be referred to the Planning Board for a report and recommendation thereon. The Planning Board shall submit its report within ninety (90) days after receiving referral. Failure of the Planning Board to report within the required time may be deemed to be approval of the proposed amendment.
- C. All proposed amendments, supplements or changes shall also be referred to the Montgomery County Planning Board for a report and recommendation thereon pursuant to GML 239-m.

### **§ 90-66. Hearing on proposed amendment.**

Before any amendment, supplement or change in the regulations or district boundaries, there shall be a public notice and hearing thereon as provided by law. The notice of hearing shall be published in the official newspaper at least ten (10) days prior to the hearing. Such hearing shall be held by the Town Board. Any such hearing shall also be duly noticed to any adjacent town that is within 500 feet of an area subject to the amendment.

### **§ 90-67. Adoption of amendment.**

After the public hearing, and referral to and report by the Planning Board, a majority vote of the members of the Town Board shall be required to amend this chapter except as described in § 90-68, Protest petition.

### **§ 90-68. Protest petition.**

If a protest against a proposed amendment, supplement or change is presented to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of the land included in such proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet therefrom, or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of 3/4 of the Town Board.

## **ARTICLE XIV, Miscellaneous**

### **§ 90-69. Periodic review of Zoning Law.**

From time to time, at intervals of not more than five years, the Planning Board shall re-examine the provisions of this chapter and the location of district boundary lines and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or the general welfare.

### **§ 90-70. Interpretation of provisions.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules or regulations or laws, the more restrictive, or that imposing the higher standard, shall govern.

### Zoning Schedule A

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size Area Acres or sf	Minimum Lot Size Width Lineal Feet (Lf)	Maximum Lot Coverage %	Minimum Living Area sf <sup>2</sup>	Building Height Stories	Building Height Feet	Setback Feet			
										Front	Side One	Side Both	Rear
A	Agriculture, farm and accessory buildings and uses			****	****	****	****	****	****	40	25	50	50
	Picnic grove, fish and game club (private)			****	****	****	****	2.5	35	40	25	50	50
	Nursery			2 acres	200 Lf	25%	****	****	****	40	25	50	50
	1-family dwelling			2 acres	200 Lf	25%	720 sf	2.5	35	40	10	20	25
	2-family dwelling			2 acres	200 Lf	25%	1,000 sf per unit	2.5	35	40	10	20	25
	Community park or playground			20,000 sf	100 Lf	25%	****	1	15	50	10	20	10
	Accessory use and building			****	****	See § 90-35	****	2	35	40	10	20	10
	Home occupation, low impact			2 acres	200 Lf	25%	1,000 sf	2.5	35	40	10	20	25
	Mobile manufactured home as part of a farm operation or for farm worker housing			2 acres	200 Lf	25%	720 sf	1	15	40	10	20	25
	Mobile Manufactured Home												

<sup>2</sup> Unless it is classified as a Tiny House as per this local law

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size Area Acres or sf	Minimum Lot Size Width Lineal Feet (Lf)	Maximum Lot Coverage %	Minimum Living Area sf <sup>2</sup>	Building Height Stories	Building Height Feet	Setback Feet			
			Farm Stand					1	15				
	Horse Breeding Operation (Same as Farm)												
	Stable, Private or Public (Same as Farm)												
		Commercial recreation		25 acres	600 Lf	25%	****	2.5	35	100	100	200	100
		Bed-and-breakfast establishment		2 acres	200 Lf	25%	1,000 sf	2.5	35	40	10	20	25
		Golf course or country club		75 acres	500 Lf	****	****	2.5	35	100	50	100	100
		Nursing, convalescent or home for aged, senior housing		2 acres	200 Lf	25%	1,000 sf	2.5	35	40	25	50	50
		Public utility station with building		2 acres	200 Lf	25%	****	1	35	40	25	50	50
		Farm products plant, on-farm and off-farm		****	****	****	****	****	****	100	100	200	100
		Radio, TV transmitter, receiving tower, personal wireless		10,000 sf	100 Lf	25%	****	****	****	40	25	50	50

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size Area Acres or sf	Minimum Lot Size Width Lineal Feet (Lf)	Maximum Lot Coverage %	Minimum Living Area sf <sup>2</sup>	Building Height Stories	Building Height Feet	Setback Feet			
		service facility with building											
		Boarding or rooming house		2 acres	200 Lf	25%	1,200 sf	2.5	35	40	25	50	50
		Church		2 acres	200 Lf	30%	****	****	****	40	25	50	50
		Parish house or convent		2 acres	200 Lf	30%	1,000 sf	2.5	35	40	25	50	50
		Animal/veterinary hospital		2 acres	200 Lf	30%	****	1	30	40	25	50	50
		Public, parochial school or college		5.0 acres	500 Lf	30%	****	2	35	40	50	50	50
		Retail farm market		2 acres	200 Lf	75%	****	2	35	40	25	25	50
		Multiple family dwelling		2 acres	200 Lf	25%	1,000 sf/unit	2.5	35	40	25	50	50
		Portable commercial storage units		As stated in 90-52.10									
		Home Occupation, High Impact		2 acres	200	25%	1,499 sf	1	25	40	25	50	50
		School or college		5 acres	500 Lf	30%		2	35	40	40	50	50
		Agritourism		See page 125 for Agriculture									
		Commercial slaughterhouse for processing											

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District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size	Minimum Lot Size	Maximum Lot Coverage	Minimum Living Area	Building Height	Building Height	Setback Feet			
				Area Acres or sf	Width Lineal Feet (Lf)	%	sf <sup>2</sup>	Stories	Feet				
		animals not grown on premises											
	On-farm slaughterhouse for processing animals not grown on premises												
		Small mine											
		Agri-business		2 acres	200 Lf	50%		2	35	40	25	50	50
		Sawmill (See 90-52.15)											
		Restaurant associated with one or more farm operations in Minden		See agriculture requirements.									
R-1	1-family dwelling			2 acres	200 Lf	25%	720 sf	2.5	35	40	10	20	25
	2-family dwelling			2 acres	200 Lf	25%	1,000 sf/unit	2.5	35	40	10	20	25
	Community park or playground, picnic grove			5 acres	200 Lf	****	****	2.5	15	50	10	20	25
	Accessory use and building			****	****	See § 90-35	****	2	35	40	10	20	10
	Home occupation, low impact			2 acres	200 Lf	25%	1,000 sf	2.5	35	40	10	20	25
	Agriculture, farm and associated accessory												

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size	Minimum Lot Size	Maximum Lot Coverage	Minimum Living Area	Building Height	Building Height	Setback Feet			
				Area Acres or sf	Width Lineal Feet (Lf)	%	sf <sup>2</sup>	Stories	Feet				
	uses where located in a certified NYS Agricultural District												
		Mobile manufactured home park		6,000 sf/M.H.	600 Lf	25% per M.H.	720 sf per MH	1	15	100	50	100	50
		Nursing, convalescent or home for aged, senior citizen		2 acres	200 Lf	25%	1,000 sf	2.5	35	50	25	50	50
		Parish house or Convent		2 acres	200 Lf	25%	1,000 sf	2.5	35	50	25	50	50
		Launderette		2 acres	200 Lf	30%	****	1	35	50	25	50	50
		Retail store less than 4,000 square feet		2 acres	200 Lf	30%	****	1	35	50	25	50	50
		Townhouse		2 acres	200 Lf	30%	1,000 sf/unit	2.5	35	50	25	50	50
		Multifamily dwelling		2 acres	200 Lf	25%	1,000 sf/unit	2.5	35	40	25	50	50
		Bed-and-breakfast establishment		2 acres	200 Lf	25%	1,000 sf	2.5	35	50	10	20	25
		Agriculture, farm and accessory use or building including agritourism, farm stand and retail farm market		****	****	****	****	****	****	50	25	50	50

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District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size Area Acres or sf	Minimum Lot Size Width Lineal Feet (Lf)	Maximum Lot Coverage %	Minimum Living Area sf <sup>2</sup>	Building Height Stories	Building Height Feet	Setback Feet			
		where not located in a certified NYS Agricultural District											
		Public building		****	****	****	****	****	****	50	25	50	50
		Portable Commercial Storage Units		See 90-52.10									
C-1	Fire Station or Municipal Building			****						40	10	20	25
	Mobile manufactured home as part of a farm operation			2 acres	200	25%	720 sf	1	15	40	10	20	25
	Farm and accessory use or building, including farm stand									50	25	50	50
	1-family dwelling			2 acres	200 Lf	25%	720 sf	2.5	35	35	25	50	25
	Home occupation, Low Impact			2 acres	200 Lf	25%	720 sf	2.5	35	35	25	50	25
C - 1			Bed-and-breakfast establishment	1acre	150 Lf,	40%	1,000 sf	2.5	35	35	10	20	25
			Personal service shop	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Retail store, no greater	1 acre	150 Lf	40%	****	1	30	35	10	20	25

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size Area Acres or sf	Minimum Lot Size Width Lineal Feet (Lf)	Maximum Lot Coverage %	Minimum Living Area sf <sup>2</sup>	Building Height Stories	Building Height Feet	Setback Feet			
			than 10,000 square feet in size										
			Museum	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Custom work shop	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Radio, TV or household appliance sales or service	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Bank	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Antique shop	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Animal/veterinary hospital	1 acre	150 Lf	40%	****	****	****	35	10	20	25
			Feed, lumber, seed or fertilizer building	1 acre	150 Lf	40%	****	****	****	35	10	20	25
			Carwash	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Fire station or municipal building	****	****	****	****	****	****	35	10	20	25
			Cabinet, electrical, heating, plumbing or air-	1 acre	150 Lf	40%	****	1	30	35	10	20	25

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size	Minimum Lot Size	Maximum Lot Coverage	Minimum Living Area	Building Height	Building Height	Setback Feet			
				Area Acres or sf	Width Lineal Feet (Lf)	%	sf <sup>2</sup>	Stories	Feet				
			conditioner shop										
			Professional office, studio	1 acre	150	40%	****	1	30	35	10	20	25
			Community park or playground	20,000 sf	100 Lf	30%	****	1	15	50	10	20	30
			Retail bakery	1 acre	150 Lf	40%	****	1	30	35	10	20	25
			Historic building or site	****	****	****	****	****	****	****	*** *	****	****
			Laundry or dry-cleaning plant	1 acre	150 Lf	40%	****	2.5	35	35	10	20	25
			Salon	1 acre	150Lf	40%	****	1	30	35	10	20	25
			Tavern	1 acre	150 Lf	40%	****	1	30	35	10	20	25
	Accessory use or building			****	****	See § 90-35	****	****	****	35	10	20	10
		Gasoline station		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Retail greater than 10,000 square feet but less than 25,000 square feet		1 acre	150 Lf	50%	****	2	35	35	10	20	25
		Utility substation		10,000 w/o bldg	150 Lf	40%	****	1	30	35	10	20	25

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size	Minimum Lot Size	Maximum Lot Coverage	Minimum Living Area	Building Height	Building Height	Setback Feet			
				Area Acres or sf	Width Lineal Feet (Lf)	%	sf <sup>2</sup>	Stories	Feet				
		Hotel or Inn		****	****	40%	****	****	30	35	10	20	25
		Public garage		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Restaurant		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Light industry		5 acres	500 Lf	40%	****	1	30	100	20	40	40
		Fuel sales and storage		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Automobile, boat, farm Implement or mobile home sales or rental		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Indoor storage of non-liquid, nongaseous fuel		1 acre	150Lf	40%	****	1	30	35	10	20	25
		Bowling alley		1 acre	150 Lf	40%	****	1	35	35	10	20	25
		2-family dwelling		2 acres	200Lf	25%	1,000 sf/un	2.5	35	35	25	50	25
		Multifamily dwelling		2 acres	200 Lf	25%	1,000 sf/un	2.5	35	35	25	50	25
		Funeral Home		1 acre	150 Lf	40%	****	1	30	35	10	20	25
		Portable Commercial Storage Units		See 90-52.10									
		Home Occupation, High Impact		2 acres	200 Lf	25%	720 sf	2.5	35	40	10	20	25
		Storage Facility		2 acres	200 Lf	25%		1	14	40	10	20	25

District	Permitted Principle Uses	Requires Special Use Permit	Requires Site Plan Approval	Minimum Lot Size Area Acres or sf	Minimum Lot Size Width Lineal Feet (Lf)	Maximum Lot Coverage %	Minimum Living Area sf <sup>2</sup>	Building Height Stories	Building Height Feet	Setback Feet			
		Laundrette		1 acre	150 Lf	40%	1	1	25	35	10	20	25
WRO	Agriculture												
	Open Spaces												
		Picnic Area, pavilion, gazebo		1 acre	200 Lf	75%		1	25	35	10	20	25
		Boat launch and dock		1 acre	200 Lf	75%		1	25	35	10	20	25
		Walkway, trails, bike paths											
		Parking lot	****										
		Campground	****	25 acres	200 Lf	75%		1	25	35	10	20	25

NOTES: \*\*\*\*Planning Board shall determine if applicable. If item is applicable, the exact measurement(s) shall be determined during site plan review.

### Schedule B

#### Off-Street Parking and Loading

##### Parking Use

1. Dwelling
2. Rooming house, tourist home, hotel, motel
3. Administrative, professional, utility, governmental office or eleemosynary
4. Funeral home

##### Spaces Required

- 2 spaces for each dwelling unit or 1 1/2 space per dwelling w/3+ units
- 1 space for each guest room
- 1 space for each 400 square feet (sf) of floor space
- 10 spaces, plus space for all employee and resident personnel

5.	Church	1 space for each	3 seating spaces in main assembly room
6.	Elementary school		2 spaces for each classroom
7.	High school		4 spaces for each classroom
8.	Theater or other place of assembly		1 space for each 2 seating spaces, plus 1 for each employee
9.	Hospital		1 space for each 3 beds, plus 1 for each staff member (max. shift)
10.	Nursing or convalescent home		1 space for each 4 beds, plus 1 for each staff member (max. shift)
11.	Retail store or bank		3 spaces for each 250 square feet of floor space devoted to customer use
12.	Clubs or restaurants		1 space for each 2 customer seats, plus 1 for each employee based on maximum working shift
13.	Bowling alley		5 spaces for each alley, plus 1 for each employee (max. shift)
14.	Wholesale, storage, freight terminal or utility use		1 space for each 1,000 square feet of gross floor area
15.	Industrial		1 space for each 2 employees for manufacturing use based on the maximum w working shift
16.	Home occupation		1 space for each client or patient

**Off-Street Loading Use**

**Spaces Required**

1.	All commercial use		1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area
2.	All industrial use		1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area
3.	Institution		1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area
4.	Hospital		1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area

5. Hotel

1 space for 5,000 sf or more gross floor area, plus 1 space for each additional 6,000 sf gross floor area