

**ZONING LAW**  
of the  
**TOWN of OSSIAN**

Ossian, New York

**As Amended by Local Laws 4-2021 and 6-2021**

TOWN OF OSSIAN

LOCAL LAW # 2-2020

ADOPTED DECEMBER 8, 2020

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# ARTICLE 1. GENERAL PROVISIONS

## SECTION 1-1. TITLE

The title of this Code is the "Zoning Law of the Town of Ossian, New York." The Law shall include only this text, and the Appendices attached hereto.

## SECTION 1-2. ENACTMENT OF ZONING LAW

This zoning law is hereby enacted under the powers granted to the Town of Ossian under Article 16 (Zoning and Planning) of the New York State Town Law.

## SECTION 1-3. EFFECTIVE DATE

This Law shall take effect immediately after the same shall have been published and posted, as provided for by the Laws of the State of New York.

## SECTION 1-4. PURPOSE & INTENT

The objectives of this Zoning Law are:

- A. To protect the natural environment of the Town.
- B. To provide for the orderly growth in agricultural, residential, commercial, and industrial use of land, consistent with economic and social needs of the community and with the Town's Comprehensive Plan.
- C. To promote the health, safety and general welfare of the Town consistent with the objectives of New York State's Town Law Section 263.

## SECTION 1-5 CONFLICT WITH OTHER LAWS

- A. This Law shall not repeal, interfere with, abrogate, or annul any provisions of law, rules or regulations previously adopted or issued and still in effect relating to the use of structures or land by the Town, including but not limited to the following local laws as they may have been or may be amended from time to time:
  - 1. Local Law #1 of 2012 – Adoption of the New York State Fire Prevention and Building Code.
  - 2. Local Law #2 of 1999 – A Local Law regulating junkyards and storage of junk in the Town of Ossian.
  - 3. Local Law #1 of 1983 – A Local Law relating to flood damage prevention for the Town of Ossian.

- B. This Law shall not repeal, interfere with, abrogate, or annul any easements, covenants, or other agreements between parties. However, where this Law imposes a greater restriction upon the use of building or premises or upon the heights of buildings or requires larger yards, or other open spaces than are imposed or required by such existing provisions of law or ordinance, or by such rules, regulations, or permits, or by such easements, covenants, or agreements, the provisions of this Law shall control.
- C. Whenever the requirements of this Law are at variance with the requirements of any lawfully adopted rules, regulations, laws or ordinances, the most restrictive or those imposing the higher standards shall govern.
- D. New York State Town Law Section 269 shall apply.

## **SECTION 1-6. VALIDITY AND SEVERABILITY**

If any section, subsection, phrase, sentence or other portion of this law is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

## **SECTION 1-7. REPEAL OF PRIOR ZONING LAW**

Once this Local Law becomes effective, the Town's prior zoning Local Law adopted September 8, 1998, as amended, is hereby terminated and repealed.

## **SECTION 1-8. AMENDMENTS**

- A. The regulations, restrictions, uses and boundaries provided in this Law and the zoning map may be amended, supplemented, changed, modified or repealed in accordance with the provisions of Section 264 and 265 of Article 16 of New York State's Town Law and all other laws of the State of New York applicable thereto, and in accordance with the following procedures:
  - B. Petition for Zoning Law Amendments by a Person or Entity Other Than the Town
    - 1. Whenever any person, firm or corporation other than the Town of Ossian desires that any amendments or changes be made in this Law, there shall be presented to the Town Board a petition requesting such change or amendment. The petition shall clearly describe the properties proposed for rezoning and their boundaries, and shall indicate the existing zoning district and the requested zoning district or districts. The petition shall also show existing highways, municipal boundary lines, state parks and State or County institutions, if such exist, within 500 feet of the proposed zoning change. The petition shall also list the names and addresses of all property owners bordering the proposed change. A filing fee, pursuant to regulation adopted by the Town Board, shall be paid at the time of filing the petition.

2. The Town board shall take action on the petitions as is described in Sections 264 and 265 of the New York State Town Law.

**C. Public Hearing Required.**

1. No amendment shall become effective until after a public hearing, at which parties in interest and citizens shall have an opportunity to be heard.
2. Notice of the place and time of such hearing shall be published in a newspaper of general circulation in the Town of Ossian as required by NYS Town Law Section 264.

**D. Notification to Neighboring Towns.**

1. If the proposed zoning change affects property within 500 feet of boundaries of any town or county, state park or parkway, notice shall be sent to the Clerk of such town or county in the time required by State Law.
2. Such town or county or state park commissions shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment, but shall not have the right of review by a court as herein after provided.

**E. Referral to County Planning Board.**

When the zoning change or amendment affects property within 500 feet of the following, details of the proposed change or amendment shall be sent to the County Planning Board pursuant to Section 239 of General Municipal Law.

1. A municipal boundary;
2. A state or county highway, or a state or county institution;
3. A state or county park or recreation area (existing or proposed);
4. A farm operation within an Agricultural District as defined by Article 25-AA of the New York Agriculture & Markets Law; and/or
5. An existing or proposed right-of-way of any county stream or drainage channel.
6. A boundary of any county- or state-owned building currently existing or presently proposed.

**SECTION 1-9. NO UNREASONABLE REGULATIONS**

Unless it is shown that public health or safety is threatened otherwise, none of the regulations contained in this Chapter shall be construed, interpreted or imposed by the reviewing board or official in such a way as to unreasonably restrict/restrain those farms or farm operations located in a State Certified Agricultural District approved pursuant to New York State Agriculture and Markets Law Article 25-AA. In instances where health or safety has been identified as being threatened by such use, these regulations shall be applicable per law, subject to review by the Department of Agriculture and Markets. By

way of example and without limitation, the requirements for a special permit for a particular farm operation use for an additional accessory building may be reviewed by the farmer with the Code Enforcement Officer, or discussed with the Department of Agriculture and Markets. Pursuant to the existing provisions of the New York State Agriculture and Markets Law (including § 305-a) farm operations located within a State Certified Agricultural District may have certain protections from Zoning laws that unreasonably restrict farm practices. In such instances, while the terms of this Chapter may prohibit or regulate certain activities or uses, any individual farm operation owner may review such proposed prohibition or regulation with the Town's Code Enforcement Officer to determine if such request is unreasonably restrictive. Further, the farm operation may, pursuant to New York State Agriculture and Markets Law §305-a seek a review of the provisions of this Chapter from the New York State Department of Agriculture and Markets for a determination of the applicability of the regulation or restriction.



# ARTICLE 2. DEFINITIONS

## SECTION 2-1. WORD TERMS & DEFINITIONS

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

- A. The word "person" includes a firm association, organization, partnership, trust, company or corporation as well as an individual.
- B. Words used in the present tense include the future tense.
- C. The singular includes the plural.
- D. The words "shall" and "must" are mandatory.
- E. The words "used" or "occupied" include the words intended, designed or arranged to be used or occupied.
- F. The word "lot" includes the words plot or parcel.

## SECTION 2-2. DEFINITIONS

**ACCESSORY USE:** An accessory use or facility services the principle use, is subordinate in area, extent and purpose to the principle use, and is located on the same lot as the principle use. Examples of such facilities include transmission equipment and storage sheds.

**ACCESSORY STRUCTURE:** A subordinate building located on the same lot with the main building occupied by or devoted to an accessory use. Where an accessory structure is attached to the main building in a substantial manner, as by a wall or roof, such accessory structure shall be considered part of the main building.

**ADULT USE:** An Establishment consisting of, including, or having the characteristics of any of the following:

- A. *Adult Bookstore, Newsstand, Video Store, or combination:* An establishment having more than 25% of its stock-in-trade, floor, area, or display area used for the sale or rental of books, magazines, publications, tapes or films that are distinguished or characterized by the emphasis on sexually oriented material depicting, describing, or related to sexual activities or anatomical genital areas.
- B. *Sex Shop:* Any establishment offering, for sale or rent, items from any of the two following categories:
  - sexually oriented books
  - magazines and videos

- leather goods marketed or presented in a context to suggest they are used for sexual activities
  - sexually oriented toys or novelties
  - video viewing booths
  - an establishment that advertises or holds itself out in any forum as a sexually oriented business
- C. *Peep Shows*: Characterized by small private booths rented to individuals to view sexually explicit films or tapes.
- D. *Adult Motion Picture Theater*: A building used for presenting films distinguished or characterized by an emphasis on matter depicting, describing, or relating to sexual activities or anatomical genital areas.
- E. *Adult Cabaret*: An establishment either with or without a liquor license, offering sexually oriented live entertainment, which may include the presentation of male or female impersonators.

**AGRICULTURE/FARM OPERATIONS:** All uses specified under Section 301, Subdivision 11 of the New York State Agriculture and Markets Law (NYSAML) as it may be amended from time to time.

**AGRIBUSINESS:** A commercial or manufacturing or light industrial use of non-animal materials requiring intensive operational characteristics, including but not limited to high water consumption or energy use; employment generating demand for on-site parking; or processes requiring extensive building coverage. Agribusiness may include greenhouses, nurseries, cooking, dehydrating, kiln drying, and refining, packing, warehousing or other treatment of agricultural products. Said definition specifically excludes commercial slaughterhouses, rendering plants, agricultural processing plants, other large scale commercial agricultural operations involving animals, or dealerships for farm equipment or machinery.

**AGRICULTURAL PROCESSING PLANT:** Any structure located on, or other use of, land where agricultural products are cleaned or otherwise processed for further commercial distribution.

**AGRICULTURAL USE:** The use of land, buildings, structures, 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 or a hobby, and including greenhouse, nursery, timber operations, compost, mulch, or other organic biomass crops, beekeeping, commercial horse boarding/equine operations and other agricultural operations as defined in NYS Agriculture and Markets Law Article 25-AA, Section 301, as it may be amended.

**AIRPORT:** Any facility for the purpose of engaging aircraft to flight. Airports shall include a landing strip on private property used primarily for private, non-commercial use by the owner or tenant.

**ALTERATIONS:** As applied to a building or structure, a change or rearrangement in the structural parts, or an enlargement, whether by extending on a side or by increasing in height, the moving from one location to another, or otherwise.

**ALTERNATIVE ENERGY SYSTEMS:** Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on the site and may be attached to or separate from the principal structure. Examples include windmills and solar energy systems.

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

**ANIMAL HUSBANDRY:** The branch of agriculture concerned with animals that are raised for meat, fiber, milk, eggs or other products. It includes day-to-day care, selective breeding, and the raising of livestock.

**ANTENNA:** A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, and microwave communications.

**AUTO SERVICE:** A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles which is licensed or required to be licensed by the State of New York.

**BAR / TAVERN / RESTAURANT:** An establishment in which alcoholic beverages are served for on-site consumption, where food or packaged liquors may also be served or sold, and are subject to regulation by the New York State Liquor Authority.

**BASEMENT:** A story partly underground and having more than one-half (1/2) of its height above the average level of the finished grade at the front of the building.

**BATTERY ENERGY STORAGE SYSTEM:** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle.

**BED AND BREAKFAST:** An owner occupied residential dwelling that makes available sleeping units for overnight accommodations to transient paying guests, with or without inclusion of meals as part of the accommodations provided.

**BREWERY / DISTILLERY:** A facility which produces by distillation spirits for consumption, the sales and distribution of which are subject to regulation by the New York State Liquor Authority. Uses that are clearly incidental to the production of spirits are allowed accessory uses to a distillery.

**BUILDING:** Any structure that has one or more floors and a roof, and is intended for the shelter, housing or enclosure of person, animals or chattel.

**BUILDING HEIGHT:** The vertical distance measured from the main level of the ground surrounding the building to a point midway between the highest and

lowest point of the roof, but not including chimneys, spires, towers, tanks, and similar projection.

**BUILDING LINE:** A line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surfaces. All yard requirements are measured to the building line.

**BUSINESS CONVENIENCE:** Small commercial establishments catering primarily to nearby residential areas providing convenience goods and services, including but not limited to grocery stores, drug stores, beauty salons, barber shops, carry-out dry cleaning and laundry pick-up stations.

**CAMPING TRAILER:** Any vehicle used or arranged for temporary living or sleeping purposes, mounted on wheels and drawn by a power-driven vehicle, or such type vehicle having its wheels removed. This shall include recreational vehicles or "RVs."

**CAMPGROUND:** A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of trailers tents or moveable or temporary dwellings, rooms or sleeping quarters of any kind.

**CARPORT:** A roofed structure, with two enclosing walls, used for the storage of one or more automobiles.

**CARWASH:** Any building or premise used for the washing of motor vehicles.

**CELLAR:** A space with less than one-half of its floor-to-ceiling height above the average finished grade of the adjoining ground.

**CERTIFICATE OF OCCUPANCY:** A document issued by the Code Enforcement Officer allowing the occupancy or use of a building and certifying that the structure or use has been constructed and will be used in compliance with all of the applicable municipal codes and ordinances.

**CLEAR-CUTTING:** Any cutting of all or substantially all trees larger than six inches in diameter at breast height over more than 2,000 square feet of land area.

**CODE ENFORCEMENT OFFICER (CEO):** The official designated to administer and enforce this zoning law.

**COMMUNITY OR SOCIAL ORGANIZATION:** Any organization catering to members and their guests, or premises or buildings for recreational or athletic purposes and not open to the general public, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising, or commercial activities except as required for the membership and purposes of such organization. For the purpose of this code clubs shall include lodges, fraternal organizations, mutual benefit societies, and other like organizations.

**DAYCARE CENTER:** A building or structure where care, protection, and supervision of children, minors, or other human life are provided on a regular schedule for a fee.

**DWELLING:** A building or portion thereof used exclusively as the residence or sleeping place of one or more persons.

**DWELLING, DETACHED:** A dwelling having no party wall in common with another building.

**DWELLING UNIT:** One or more rooms providing living facilities for one family including equipment for cooking living and sleeping purposes and provisions for the same.

**SINGLE-FAMILY DWELLING:** A building or dwelling unit designed for or occupied exclusively by one or more persons living as a single, non-profit house-keeping unit.

**TWO-FAMILY DWELLING:** A building containing two dwelling units and used exclusively for occupancy by two families living independently of each other, or two one-family dwellings have a party wall in common.

**MULTI-FAMILY DWELLING:** A building containing more than two dwelling units and used exclusively for occupancy by more than two families living independently of each other.

**ECOLOGICAL NETWORK:** Buffers around and connecting areas dominated by natural cover or along waterways.

**ECOLOGICAL RESILIENCE:** The ability of an ecosystem to withstand disturbance without significant change in process or structure.

**ESSENTIAL SERVICE:** Services and utilities needed for the health, safety, and general welfare of the community, such as underground, surface, or overhead electrical, gas, telephone, steam, water, sewage, and other utilities and the equipment and appurtenances necessary for such systems to furnish an adequate level of service for the area in which they are located.

**EXCAVATION / MINING OPERATION:** Removal, displacement, or recovery by any means whatsoever of soil, rock, minerals, mineral substances, or organic substances from water or land, on or beneath the surface thereof, or beneath the land surface, whether exposed or submerged. A mine is a cavity in the earth from which minerals are extracted.

**FAMILY:** One or more persons related to each other by blood, marriage or adoption (or not more than four individuals who are not so related), living together as a single housekeeping unit. A group home for not more than 12 persons, 17 years of age or less who are not related, as above, to the adult occupants of the unit shall be considered a family for this ordinance when it has an internal structure akin to a traditional (biological unitary) family and an external appearance of a relatively normal, stable and permanent family unit and is operated or supervised by a qualified social service agency.

**FARM:** Any parcel which is used for gain in the raising of agricultural crops, trees and/ or nursery stock, livestock, poultry or dairy products as defined in NYS Agriculture and Markets Law Article 25-AA, Section 301.

**FARM BUILDINGS:** Any building used for the house of agricultural equipment, product, livestock, or poultry, or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with, and necessary to the operation of the farm as defined by this Article. The term "farm building" shall not include "farm dwelling".

**FARM LABOR CAMP – COMMERCIAL:** Any structure or combination of structures designed or intended to be used for the housing of persons engaged in casual or per diem labor on a profit basis for farmers other than the owner of the camp.

**FARM LABOR CAMP – PRIVATE:** A labor camp housing facilities, building or buildings in which people are housed who are employed in the individual farmer's personal farming operation.

**FARM LAND:** A parcel of land or water body used for onsite or commercial agriculture production.

**FARM STAND:** A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal or temporary in nature and features on-farm produced as well as locally produced agricultural products, enhanced agricultural products and handmade crafts.

**FARM-RELATED BUSINESS:** A business engaged principally in providing supplies, implements, livestock and/or other products or services needed for agricultural uses, including but not limited to seed, fertilizers, herbicides, pesticides, animal feeds, tools, fencing and parts for farm machinery or equipment, blacksmithing, farm implement repair, storage of agricultural products or retail sale of agricultural products. This definition does include agricultural processing plants, dealerships for farm equipment or machinery, slaughterhouses and rendering plants.

**FLAG LOT:** A parcel of land that is situated generally behind a lot or lots fronting on a public highway, which parcel does not have the required highway frontage as per these zoning regulations, but does maintain some highway frontage along the width of an access strip, and is accessible from the highway only over such access strip, which strip is owned in fee simple by the owner(s) of the parcel.

**FLOOR AREA, GROSS:** For the purpose of applying the requirements for off-street parking and loading, "gross floor area" in the case of offices, merchandising or service types of uses, shall mean the total floor area to be used or intended to be used by tenants, or for service to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for display or sales or merchandise. It shall not include areas used principally for non-public purposes such as storage, incidental repair, restrooms fitting or alteration rooms or general maintenance or enclosed or enclosed pedestrian malls or corridors.

**FLOOR AREA, HABITABLE:** The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business.

**FRONT BUILDING LINE:** A line drawn parallel to the adjoining road centerline, which contains the point at the front of a structure that is closest to the road. A corner lot includes two front building lines.

**GARAGES, PRIVATE:** An accessory building not operated for gain and used in conjunction with a principal building which provides for the storage of motor vehicles and/or other household items.

**GARAGES, PUBLIC:** Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, including the supply of gasoline or oil.

**GAS STATION:** Any establishment that sells gasoline to the public. This includes service stations, convenience stores, car washes or any other facility that sells gasoline.

**HOME OCCUPATION:** An occupation conducted in a dwelling unit or customary accessory structure provided that: The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.

**HOSPITAL / MEDICAL SERVICE:** An institution providing primary health service and medical or surgical care to persons suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including inpatient and outpatient services, institution-related facilities, such as diagnostic and treatment facilities, laboratories, training facilities, medical offices, and staff residences.

**HOTEL / MOTEL:** A facility offering transient lodging accommodations to the general public and that may include additional facilities and services, such as restaurants, meeting rooms, entertainment, personal services, and recreational facilities.

**IMPERVIOUS SURFACE:** An area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots and streets unless specifically designed, constructed and maintained to be pervious.

**KENNEL:** Any lot or premises on which four or more dogs more than four months of age are housed, bred, boarded, trained or sold.

**LAND DISTURBANCE:** Alteration of an area from its natural condition as a result of clearing, grading, paving, construction, landscape and other activities.

**LIBRARY:** A place containing books and other research materials, such as newspapers, magazines, artwork, books on tape or compact disk, compact disks, videos. A library may contain computer terminals to allow public access to the internet, spaces for a homework center, and/or lecture areas.

**LINKAGES:** Areas of natural cover usually linear in shape connecting two or more larger areas of natural cover.

**LOT:** A parcel or area of land, the dimensions and extent of which are determined by the latest official records or recordings.

**CORNER LOT:** A parcel of land at the junction of and fronting on two or more intersecting streets.

**THROUGH LOT:** An interior lot having frontage on two parallel or approximately parallel streets.

**LOT AREA:** An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating lot area.

**LOT FRONTAGE:** The front of a lot shall be construed to be the portion nearest the highway. For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to highways shall be considered frontage and yards shall be provided as indicated under "yards" in these definitions.

**LOT LINE:** Any boundary line of a lot.

**LOT WIDTH:** The width of the lot between side lot lines at the front building line as prescribed by the front yard regulations.

**MANUFACTURING / PROCESSING:** Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials, such as oils, plastics, resins, or liquors.

**MOBILE HOME:** A structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including the plumbing, heating, air-conditioning and electrical systems contained therein and complies with Part 1220 of the NYS Uniform Fire Prevention and Building Code and Federal HUD standards, excluding however, travel trailers, motorized homes, pickup coaches and camping trailers. This definition does not include modular manufactured homes as defined by the NYS Uniform Building Code.

**MOBILE HOME, DOUBLE-WIDE:** A mobile home consisting of two sections, combined at the site, with a width of no less than 20 feet, while still retaining their individual chassis for possible future movement and complying with Part 1220 of the NYS Uniform fire Prevention and building Code and Federal HUD standards, excluding however, travel trailers motorized homes, pickup coaches and camping trailers. This definition does not include modular manufactured homes as defined by the NYS Uniform building Code.

**MOBILE HOME PARK:** A parcel of land where two or more mobile homes are parked or which is planned and improved for the placement of mobile homes by the public.



**MODULAR HOMES:** A factory-manufactured home which 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 foundation at a building site. Such home shall be constructed and installed in accordance with the requirements of Subchapter B of the NYS fire Prevention and Building code, and shall bear an insignia of approval issued by the NYS Fire Prevention and Building code Council. Factory-manufactured homes shall be deemed to be one- or two-family or multiple dwellings. This definition does not include double-wide homes as defined by the NYS Uniform Building Code.

**MOTEL:** See Hotel / Motel.

**MUSEUM:** A place containing books, artwork, culturally significant items, and other research materials, such as newspapers, magazines, artwork, books on tape or compact disk, compact disks, videos. A library may contain an open space area for lectures.

**NONCONFORMING LOT:** A lot existing at the time of enactment of this code or any amendment thereto which does not conform to the area regulation of the district or zone in which it is situated.

**NONCONFORMING STRUCTURE:** A structure that fails to conform to the requirements of this law.

**NONCONFORMING USE:** A use of land existing at the time of enactment of this code and which does not conform to the regulations of the district or zone in which it is located.

**NURSING HOME, ASSISTED LIVING:** A long-term facility or a distinct part of a facility licensed by the State of New York as a nursing home, infirmary unit of a home for the elderly, or a governmental medical institution.

**OFFICE:** The office or place of business where professional or administrative services are offered and does not involve retail sales.

**ORDINARY HIGH WATER MARK:** As defined by U.S. Army Corps of Engineers as the line on the stream bank or shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**PARKING SPACE:** Space available for the parking of one motor vehicle exclusive of passageways and driveways giving access thereto. "Off-street" parking spaces shall be those provided on public or private property with a legal means of vehicular access, such as a driveway.

**PARKING SPACE OFF-STREET:** An off-street area of berth with an appropriate means of vehicular access to a street, intended for the temporary storage of vehicles.

**PERMITTED USE (OR USE OF RIGHT):** A land use allowed under the regulations of this code without the requirement of a special use permit.

**PERSONAL SERVICE:** A business or other establishment in which a person provides a service to or on the body of another person. Examples include but are not limited to beauty salons, hair dressers, nail salons, and tattooing parlors.

**PLACE OF PUBLIC ASSEMBLY:** Parks, playgrounds, trails, paths, other recreational areas; scenic and historic sites; schools; and other places where the public is directly or indirectly invited to visit or permitted to congregate.

**PLACE OF WORSHIP:** A church, synagogue, temple, mosque or other facility that is used for prayer by persons of similar beliefs and is designed for the primary use of conducting formal religious services on a regular basis.

**POND:** A human-made excavation or impoundment of surface water designed to retain or detain water.

**PORTABLE SAWMILL:** A sawmill that is mobile through the use of a trailer or other vehicle mechanism which allows for mobility and assembly on different parcels/properties for the processing of timber cut from the parcel/property where said portable sawmill is located or adjacent thereto.

**PRIME FARMLAND:** Land designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSGRO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed forage, fiber and oilseed crops.

**PRINCIPAL OR PRIMARY BUILDING:** The building occupied by the main use of the lot.

**PRINCIPAL OR PRIMARY USE:** The main use by which a building or lot is to be used.

**PRIORITY FARMLAND AREAS:** The location of priority farmland based on active use and high quality farmland soils mapped for the Town of Ossian during development of the Town Agricultural and Farmland Protection Plan.

**PUBLIC AND SEMI-PUBLIC BUILDING AND GROUNDS:** The words "public and semi-public buildings and grounds," as used in this code are intended to designate any one or more of the following uses, including but not limited to grounds and accessory building necessary for their use:

- A. Churches
- B. Public parks, playgrounds and recreational areas when authorized or operated by a governmental authority
- C. Nursery school, elementary schools, high schools, colleges or universities
- D. Golf courses and country clubs, however, not including clubs whose activities include the maintenance, storage or takeoffs or landings of aircraft
- E. Public libraries and museums

- F. Not-for-profit fire, ambulance and public safety buildings
- G. Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes, homes for adults, homes for the aged as the same are defined under the Public Health Law or the Social Services Law of the State of New York, provided they are duly licensed by the State of New York
- H. Not-for-profit membership corporation established for cultural, social, or recreational purposes
- I. Recreational facilities, either for profit or not-for-profit, such as swimming, tennis, platform tennis, bowling, hockey, ice skating or other indoor or outdoor sports
- J. Daycare centers approved by the New York State Department of Social Welfare

**PUBLIC UTILITY:** A closely regulated enterprise with a franchise for providing a utility service deemed necessary for the public health, safety and welfare.

**RECREATION FACILITY, INDOOR:** An establishment providing for recreational or entertainment activities in a completely enclosed structure. Accessory uses may be permitted to include the preparation and serving of food and/or the sale of equipment related to the enclosed recreational uses. Included in this definition shall be indoor arcades, movies, pools, courts, or other facilities where patrons are engaged in and/or spectating sport or game activities.

**RECREATION FACILITY, OUTDOOR:** An establishment providing for recreational or entertainment activities in an open or partially enclosed structure. Accessory uses may be permitted to include the preparation and serving of food and/or the sale of equipment related to the recreational uses. Included in this definition shall be outdoor pools, fields, courts, or other such facilities where patrons are engaged in and/or spectating sport or game activities.

**RESTAURANT:** Any establishment, however designated, at which food is sold for consumption to patrons seated within an enclosed building or on the premises. However, a snack bar or refreshment stand at a public or quasi-public or community pool, playground or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

**RETAIL STORE:** An establishment engaged in the service of selling goods or merchandise for household or individual consumption.

**RIGHT-OF-WAY:** Land set aside for use as a street, alley, or other means of travel.

**ROAD LINE:** That line determining the limit of the highway right-of-way of the public, either existing or contemplated.

**ROAD LOCAL:** Streets or highways which primarily function to give direct access to adjoining property. Local roads are the internal part of the system to provide movement within residential or other land use areas.

**ROAD MAJOR:** Streets or highways connecting through roads with each other and also handle internal movement within the town.

**ROAD SECONDARY:** Streets or highways serving to connect major roads with each other and also to handle internal movement within the town.

**SAWMILL:** Any facility constructed and used for the processing of forestry products, harvested off the premises into milled lumber, cants, treated posts, firewood and wood by-products, such as milled slab wood, wood chips, bark chips, and sawdust, and including planning and sizing facilities, kilns, storage yards and accessory maintenance facilities incidental to sawmill operations.

**SCHOOL:** Any building or part thereof that is designed, constructed, or used for education or instruction in any branch of knowledge.

**SCHOOL, PRIVATE:** Any building or group of buildings, the use of which meets the State of New York requirements for elementary, secondary, or higher education and that does not secure the major part of its funding from any government agency.

**SCHOOL, PUBLIC ELEMENTARY:** Any school that is licensed by the State of New York and meets all requirements for elementary education.

**SCHOOL, PUBLIC SECONDARY:** Any school that is licensed by the State of New York and is authorized to award diplomas for secondary education.

**SCHOOL DISTRICT:** The specific geographical jurisdiction administered by the elected or appointed body of the State of New York, County, or local governmental unit to provide educational services to its residential populations.

**SETBACK, BACK:** The required open unoccupied space measured from the rear lot line to the nearest part of the main or accessory structure.

**SETBACK, FRONT:** The required open unoccupied space between the centerline line of the adjoining road or street and the front of the main structure, but not including porches, entrance steps and other similar structures on the front of the main structure.

**SETBACK, SIDE:** The required open unoccupied space measured from the side lot lines to the nearest part of the main or accessory structure.

**SIGN:** Any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others, but not including any flag, badge or insignia of any public, quasi-public, civic, charitable or religious groups.

**SIGN AREA:** The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight side) geometric shape which most closely outlines the said sign.

**SITE PLAN:** A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, right-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

**SITE PLAN REVIEW:** A review and approval process, conducted by the Planning Board, whereby Site Plans are reviewed utilizing criteria stated in this zoning law.

**SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade.

**SOLAR ENERGY SYSTEMS:** The components and subsystems required to convert solar energy into electric energy suitable for use.

**SOLID FUEL-FIRED HEATING DEVICE (SFHD).** A solid fuel-burning device manufactured or used to burn wood and designed to create heat on a continual basis, by sending heat through water, antifreeze or steam into interconnected piping. An SFHD may also be called by other names, such as: outdoor wood furnace; outdoor wood boiler; outdoor wood burner; closed combustion solid-fuel-burning appliance; accessory boiler; alternative fuel-burning device; or outdoor wood-fired hydronic heater.

**SPECIALLY PERMITTED USE:** A use permitted only when conditioning criteria enumerated in this zoning law are met and a special use permit has been granted in accordance with this zoning law.

**STREET LINE:** The limit of the street width or highway right-of-way, whichever is greater. Also known as road line.

**STORM WATER RETENTION:** Natural or man-made features on the landscape that limit erosion and flooding to contain excess nutrients, sediment and any other contaminants that may be in runoff from storms or snowmelt before it is released into waterways.

**STORY:** That portion of a building between the surface of any floor and the surface of the floor next above, any portion of a building used for human occupancy between the top most floor and the roof. For purposes of height measurement, in determining the permissible number of stories, a basement shall be counted but a cellar shall not be counted.

**STORY, HALF:** A story under a gable, hip or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls are not more than two (2) feet above the floor of such story.

**STREAM CORRIDOR:** All land lying within 150 feet of the top of the bank on each side of the streams mapped on the Town's Environmental Resource Map. Where there is no clearly defined bank, the corridor shall be measured from the centerline of the stream.

**STRUCTURE:** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences, signs, billboards and poster panels.

**SWIMMING POOL:** A water-filled enclosure, permanently constructed or portable, having a depth of more than eighteen (18) inches below the level of the surrounding land; or an above-surface pool, having a depth of more than thirty (30) inches; designed, used and maintained for swimming and bathing.

**SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a)

before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred.

**TELECOMMUNICATION FACILITY:** Any commercial equipment used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, radio and television broadcast communication and private radio communications services, and is regulated by Federal Communications Commission, both in accordance with the Telecommunications Act of 1996 and other federal laws. A Telecommunication Facility shall include monopole, guyed, latticework tower (s), and other similar structures, as well as antenna (s), switching stations principle and accessory telecommunication equipment and supporting masts, wires, structures and buildings.

**TOP OF BANK:** Top of bank is the elevation of land that confines waters of a stream to their natural channel in their normal course of flow, and above such elevation the waters will leave the channel and disperse in an uncontrolled manner.

**UNDEVELOPED AREAS:** Land that has natural cover and has not been cleared of native trees, shrubs, herbaceous vegetation and includes forests, wetlands, streams, shrub lands, and grasslands.

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

**VALUE-ADDED WOOD PROCESSING:** Any use involving a kiln process to artificially dry wood for commercial, manufacturing, and/or industrial purposes, and that can involve the importation of timber and export of wood products via trucking or other means of transportation and storage and facilities onsite. Also see AGRIBUSINESS.

**VARIANCE:** A variance is any departure from the strict letter of these regulations granted by the ZBA as it applies to a particular piece of property, pertaining to dimensional or use requirements. Variances run with the land and are not particular to any one landowner.

**WAREHOUSE / STORAGE:** A building used primarily for the storage of goods and materials by the owner of the goods or operated for a specific commercial establishment or groups of establishments in a particular industry or field.

**WATERCOURSE, MAPPED:** A stream or other watercourse depicted in the Town's Environmental Resources Map.

**WINDMILL:** A structure or device, whether freestanding or mounted on another structure, which is generally intended to operate for the purpose of capturing and utilizing the force of wind.

**YARD:** An open space on the same lot with building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

**YARD, FRONT:** The space within and extending the full width of the lot from the front lot line to the part of the principal building which is nearest to such front line.

**YARD, REAR:** An open space extended across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory structure and open porches.

**YARD, SIDE:** An open space on the same lot with a principal building between the principal building and the side line of the lot extending through from the front yard to the rear yard, into which space there shall be no extension of building parts other than two feet for rain water leaders, window sills, and other such fixtures and open steps.

**ZONING CERTIFICATE OF COMPLIANCE:** A certificate issued by the Code Enforcement Officer stating that a structure or the use thereof is in compliance with this Zoning Law.

**ZONING PERMIT:** A document issued by the Code Enforcement Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity with this zoning law.

## **SECTION 2-3. CONFLICTING DEFINITIONS**

Where conflicting definitions are found either in this Local Law or in this law and other laws, the more restrictive definition shall control.

# ARTICLE 3. ZONING DISTRICTS

## SECTION 3-1. CREATION OF ZONING DISTRICT

There shall only be one Zoning District in the Town, which district shall be designated Agricultural/Residential (A/R). See the Zoning Map at Appendix I.

## SECTION 3-2. AGRICULTURAL/RESIDENTIAL (AR) DISTRICT

### A. Purpose.

The purpose of the AR District is to promote a balance of agriculture and low density residential development, along with other compatible uses, within the Town of Ossian in a manner consistent with the Town of Ossian Comprehensive Plan. Furthermore, the AR District is intended to achieve the objectives outlined in the following subsection.

### B. Objectives.

1. Protect prime farmland as well as Priority Farmland Areas (see Priority Farmland Areas Maps at Appendix II) from nonagricultural development pressures and encourage the continuation of commercial agriculture and the associated operations necessary to support it.
2. Prevent scattered, fragmented growth, and preserve the Town's open space and natural resources, including forests, wetlands and streams, as identified in the Town of Ossian's Comprehensive Plan and Ag and Farmland Protection Plan's Environmental Resources Map, a copy of which is attached at Appendix III.
3. Preserve the rights of property owners while also ensuring compatibility with neighboring properties and reducing land use conflicts.
4. Allow for commercial, industrial, institutional, and other such uses that provide increased economic opportunity for residents and serve the needs of the Ossian community, while preserving the rural character, natural resource integrity, and resident quality of life.

### C. AR District Use Class.

1. Uses permitted by right, uses allowable by special permit, and uses requiring site plan review are provided in accordance with the AR District Use & Lot Requirements Schedule next attached hereto. There shall be no other uses allowed other than those allowed by this law.
2. Uses identified with a "P" in the table are permitted as-of-right, subject to compliance with all other applicable standards of this zoning law.



3. Uses identified with a "SP" in the table may be allowed if reviewed and approved in accordance with the special use permit procedures contained in Article 8.
4. Uses identified with an "A" in the table may be permitted as an accessory use only.

**AR DISTRICT USE, BUILDING & LOT REQUIREMENTS SCHEDULE<sup>11</sup>**

LAND USE	USE	MIN LOT <sup>1</sup>		MAX LOT	MIN BLDG SETBACK			MAX BLDG	ADDITIONAL
	CLASS	AREA	WIDTH <sup>2</sup>	COVERAGE	FRONT <sup>3,4,5</sup>	SIDE	REAR	HEIGHT	REGULATIONS
<b>RESIDENTIAL</b>									
Single / Two-Family Dwelling	P	3 acres	200 ft	25 %	100 ft	30 ft	75 ft	35 ft	See Note 6
Multi-Family Dwelling	SP	5 acres	200 ft	30 %	100 ft	30 ft	75 ft	35 ft	§ 4-19
Nursing Home / Assisted Living	SP	5 acres	200 ft	30 %	100 ft	30 ft	75 ft	35 ft	-
Mobile Home Park	SP	20 acres	-	-	100 ft	-	-	35 ft	§ 4-18
Home Occupations	P	-	-	-	-	-	-	-	§ 5-8
Bed and Breakfast	SP	10 acres	200 ft	30 %	100 ft	30 ft	75 ft	35 ft	§ 4-8
<b>AGRICULTURAL <sup>7</sup></b>									
Animal Husbandry	P	10 acres	250 ft	25 %	100 ft	100 ft	100 ft	35 ft	-
Farmland / Crop Cultivation	P	5 acres	250 ft	25 %	100 ft	100 ft	100 ft	35 ft	-
Farm Labor Camp	P	-	-	-	250 ft	250 ft	250 ft	35 ft	§ 5-4
Farm Stand	P	-	-	-	10 ft	30 ft	50 ft	15 ft	§ 4-14
<b>COMMERCIAL</b>									
Adult Use	SP	3 acres	200 ft	35 %	100 ft	30 ft	75 ft	35 ft	§ 4-3
Airport	SP	15 acres	500 ft	50 %	200 ft	200 ft	200 ft	35 ft	§ 4-4
Animal Hospital / Kennel	SP	3 acres	200 ft	50 %	100 ft	75 ft	75 ft	35 ft	§ 4-5
Bar / Tavern / Restaurant	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	§ 4-6
Brewery / Distillery	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	§ 4-9
Campground	SP	15 acres	200 ft	25 %	100 ft	30 ft	75 ft	35 ft	§ 4-10
Day Care Center	P <sup>8</sup>	3 acres	200 ft	25 %	100 ft	30 ft	75 ft	35 ft	§ 4-12
Gas Station / Auto Service	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	§ 4-15
Hotel / Motel	SP	5 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	§ 4-17
Office	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Retail Store / Personal Service	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Sawmill	SP	3 acres	250 ft	50%	100 ft	30 ft	75 ft	35 ft	§ 4-23

**\*TABLE CONTINUED ON THE FOLLOWING PAGE\***

**AR DISTRICT USE, BUILDING & LOT REQUIREMENTS SCHEDULE<sup>11</sup>**

Agribusiness	P	5 acres	250 ft	50%	200 ft	200 ft	200 ft	35 ft	-
Farm-Related Business	SP	5 acres	250 ft	50%	250 ft	250 ft	250 ft	35 ft	§ 4-15
Excavation / Mining Operation	SP	10 acres	250 ft	50 %	100 ft	100 ft	100 ft	35 ft	§ 4-13 and 5-3
Manufacturing / Processing	SP	5 acres	250 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Warehousing / Storage	SP	5 acres	250 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
<b>INSTITUTIONAL/OTHER</b>									
Community / Social Organization	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	§ 4-10
Hospital / Medical Service Facility	P	5 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Library / Museum	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Place of Worship	P <sup>8</sup>	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Public Utility	SP	3 acres	200 ft	20 %	100 ft	30 ft	75 ft	35 ft	§ 4-21
Recreation Facility, Indoor	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	§ 4-22
Recreation Facility, Outdoor	SP	3 acres	200 ft	30 %	100 ft	30 ft	75 ft	25 ft	§ 4-22
School, Public or Private	SP	3 acres	200 ft	50 %	100 ft	30 ft	75 ft	35 ft	-
Telecommunications Facility	SP	3 acres	200 ft	30 %	100 ft	30 ft	75 ft	-	§ 4-25
<b>OTHER USE</b>									
Accessory Structure / Use	P	-	-	-	100 ft	30 ft	75 ft	20 ft <sup>9</sup>	§ 3-3
Battery Energy Storage Systems <sup>12</sup>	SP	5 acres	250 ft	25%	300ft	100 ft	100 ft	15 ft	§ 4-7
Windmills <sup>13</sup>	SP	3 acres	-	-				-	§ 4-25
Solar Energy Systems <sup>14</sup>	SP	-	-	-	100 ft				§ 4-24
Pond	P	-	-	-	100 ft	100 ft	100 ft	-	§ 4-20
Solid Fuel-Fired Heating Devices	P	-	-	-		30 ft	75 ft	-	§ 5-11
Swimming Pool	P	-	-	-	100 ft	15 ft	15 ft	-	§ 5-12
Use Not Otherwise Listed	<b>Subject to Determination by ZBA<sup>10</sup></b>								

**NOTES:**

- (1) A larger minimum lot area and width may be required should the Livingston County Health Department determine, after reviewing soils and perk test data, that a larger lot size is necessary for adequate operation of an on-site sewage disposal system.
- (2) Minimum lot width shall be measured by the width of the lot at the front building line.
- (3) The front setback shall be measured from the centerline of the roadway.
- (4) If a structure is located more than 200 feet from a public road, a permit for a long driveway is required, subject to the criteria in Section 5-9 of this code.
- (5) For properties on State Route 436, the minimum front setback shall be 120 feet.
- (6) Single/2-family dwellings shall have a minimum area of 800 square feet per family residence.

## AR DISTRICT USE, BUILDING & LOT REQUIREMENTS SCHEDULE<sup>11</sup>

- (7) No regulation herein shall be construed so as to restrict agricultural operations in a manner inconsistent with New York State Agriculture and Markets Law, including but not limited to Section 305-a therein.
- (8) Provided the gross floor area of the use does not exceed 4,000 square feet, otherwise a special use permit shall be required.
- (9) No accessory structure shall be permitted to exceed the height of the primary structure on the lot.
- (10) The ZBA may permit other uses deemed to be similar in nature and appropriate through the issuance of a special use permit.
- (11) This schedule is not all inclusive and is subject to other provisions of this law.
- (12) These Battery Energy Storage System setbacks are the requirements for a Tier 2 System if this law prohibiting such systems is superseded by New York State law.
- (13) Must conform with Section 4-26.
- (14) Must conform with Section 4-24 as to the different requirements for Tier 1, 2 and 3 Systems.

## **SECTION 3-3. ACCESSORY USES & STRUCTURES**

### **A. General Requirements.**

1. Accessory uses and structures are permitted in connection with any principal use lawfully existing within the Town of Ossian. However, no accessory use or structure shall be established until the primary use or structure is constructed.
2. Accessory uses and structures shall conform to all lot coverage and setback requirements of this zoning law.
3. No detached accessory building shall be erected in the area in front of the principal building facing the road; the four sides of said area shall be formed by the road, the largest side of the principal building facing the road, and two (2) parallel lines running from the two farthest corners of said largest side of the principal building their shortest distances to the intersection with said road. On a corner lot, there shall be two (2) such areas, one facing each road. Note that Section 1-9 of the current Town Zoning Law, Local Law 2-2020 of the Town of Ossian, is applicable to farm operations situate in an agricultural district.

### **B. Permitted Residential Accessory Uses and Structures.**

1. Decks, patios, and terraces.
2. Garages or carports, detached or attached.
3. Sheds, barns, or other enclosed storage structures.
4. Playgrounds, playhouses, or swing sets.
5. Nurseries, home gardens, or greenhouses.
6. Alternate energy systems for personal use subject to the requirements of Article 4.
7. Electric vehicle charging stations for personal use.
8. Home occupations subject to the requirements of Section 5-8.

### **C. Permitted Nonresidential Accessory Uses and Structures.**

1. Decks, patios, and terraces.
2. Garages or carports, detached or attached.
3. Parking lots subject to the other provisions of this law and electric vehicle charging stations.
4. Drive-through facilities.
5. Sheds, barns, or other enclosed storage structures.

- 6. Playgrounds, playhouses, or swing sets.
- 7. Alternate energy systems subject to the requirements of Article 4.
- 8. Commercial vending machines.
- 9. Outdoor display of retail merchandise.

**D. Other Accessory Uses and Structures.**

The ZBA may permit other accessory uses and structures deemed to be similar in nature and appropriate through the issuance of a special use permit and/or variance.

**SECTION 3-4. FARM ANIMALS AND LIVESTOCK**

The keeping of farm animals or livestock, including but not limited to those set forth below, in connection with a dwelling on a lot of less than ten (10) acres shall conform to the following conditions:

- A. The farm animals shall be owned by the family residing in the dwelling.
- B. The lot on which farm animals are kept shall have the following minimum area for each type of animal unit, provided however that if more than one animal unit is kept, not less than 50% of minimum lot area per unit shall be provided for each additional unit.

<u>Animal Unit</u>	<u>Minimum Lot Area</u>
1 dairy or beef cattle	160,000 square feet
1 horse, mule, sheep, goat, pony, hog, alpaca or llama, etc.	120,000 square feet

- C. Any building or structure housing farm animals and any riding ring or livestock run or yard shall be set back a minimum of 100 feet from a property line or street right-of-way line. Adequate fencing shall be provided and permanently maintained to contain the farm animals within the lot.
- D. The keeping of farm animals shall not impair the residential character of the premises nor create a hazard to health. Manure heaps shall be screened from view of any lot and shall be a minimum of 100 feet from any property line and from the 100-year floodplain boundary or two hundred (200) feet from the centerline of the stream, whichever is greater.
- E. A minimum of 125-foot setback from State Route 436 centerline shall be required.

# ARTICLE 4. SPECIAL USES ALLOWED

## SECTION 4-1. PURPOSE & APPLICABILITY

### A. Purpose.

The purpose of this Article is to place requirements on specific uses that have a greater potential to adversely impact surrounding properties, but which nonetheless may be made desirable and compatible through proper control and regulation.

### B. Intent.

These requirements are intended to promote not only the general health, safety, and welfare of the public, but also the character of the immediate neighborhood and community of Ossian.

### C. Applicability.

All uses identified within this Article or otherwise identified as "SP" in this Local Law shall be in conformance with the applicable additional standards and regulations contained herein, as well as in Article 8, and as may be otherwise set forth in this Local Law.

### D. Development Standards.

In addition to the requirements outlined in this Article, all uses shall be in conformance with all other requirements of this zoning law.

## SECTION 4-2. GENERAL STATEMENT

The special uses set forth below in this article or as otherwise specified in the schedule attached to the end of Section 3-2 may be allowed if they meet all criteria set forth in this Local Law, obtain Planning Board approval, where required, and a special use permit is first obtained for same from the Zoning Board of Appeals (ZBA).

## SECTION 4-3. ADULT USES

### A. Nature of Use.

Adult uses, including but not limited to adult bookstores, adult entertainment cabarets, adult theaters, and peep shows, are subject to the following requirements in addition to those otherwise set forth in this local law. An establishment will be considered an adult use if more than 25% of the total floor area, sales, or inventory is used for or comprised of adult use services or material.

**B. Location Restrictions.**

1. No adult use shall be allowed within 500 feet of another adult use.
2. No adult use shall be allowed within 5,000 feet of a residential use.
3. No adult use shall be located within 5,000 feet of the following, as measured from the nearest property lines:
  - a) Recreational facilities, parks, playgrounds, cemeteries;
  - b) Schools, libraries, museums, places of worship; or
  - c) Other places of public assembly.
4. Adult uses shall only be allowed in the area shown on the map attached hereto at Appendix IV.

**C. Other Restrictions.**

1. All adult uses shall be conducted within wholly enclosed structures. No specific anatomical area or any specified sexual activity, nor any display, decoration or similar depiction of specified sexual activities or specified anatomical areas, shall be visible from the outside of any structure containing an adult use.
2. The CEO, as well as any other enforcement officials, shall have the right to inspect the premises of adult use establishments for the purpose of ensuring compliance with any section of this code or any other applicable law, rule or regulation at any time said business is open for business, or at such other times as may be reasonable.

**SECTION 4-4. AIRPORTS (INCLUDES PRIVATE LANDING STRIPS)**

**A. Approvals Required.**

Airports and private landing strips shall require a special use permit and site plan approval, and shall have prior approval from the Federal Aviation Administration.

**B. Additional Application Materials.**

1. Classification of the proposed airport (Commercial, noncommercial, or restricted).
2. Type of aviation activities proposed (aircraft sales and service, flight instruction, crop dusting, air taxi, etc.)
3. Type of aircraft expected to be based at the airport (single-engine, multi-engine, turboprop, jet, etc.) and the number of aircraft expected to be based at the airport initially and within five years.
4. Statement as to the anticipated number of daily operations and whether or not an instrument approach procedure will be offered.



5. Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
6. A copy of the New York State Commissioner of Transportation's determination concerning this airport in accordance with the provisions of 249 of the New York State General Business Law.
7. A site plan of the airport at a scale no less than one inch equals 100 feet (1" = 100'), identifying the following:
  - a) Locations of existing and proposed structures.
  - b) Alignment of existing and/or proposed runways in exact location and magnetic bearing to the nearest 30 minutes.
  - c) Existing and proposed contours at five foot intervals.
  - d) Location of aircraft parking and tie-down areas.
  - e) Provisions for vehicular access and off-street parking.
  - f) Provisions for sanitary waste disposal and water supply.
  - g) Location and method of fuel storage.
8. An area map at a scale of no less than one inch equals 500 feet (1" = 500'), identifying the following:
  - a) Distances, power lines, or other possible obstructions within 2,000 feet of the ends of runways.
  - b) Properties within 500 feet of all airport property lines and owners thereof identified.

#### **SECTION 4-5. ANIMAL HOSPITALS & KENNELS**

- A. All animals will be confined to the property and housed in an enclosed structure in humane conditions (i.e., protected from weather, clean, sanitary, adequate space, nonporous surfaces, well-ventilated, etc).
- B. All animals shall be kept within a totally enclosed building between 8:00 p.m. and 6:00 a.m.
- C. All animal hospitals and kennel operations must apply for and secure proper licensing and registration as required by state and local law.
- D. When applying for a special use permit, the applicant shall indicate the maximum number of dogs four (4) months of age or older that will be housed, bred, boarded, trained or sold on the premises.

E. Minimum lot size and frontage:

<u>Number of Dogs</u>	<u>Lot Size</u>	<u>Lot Frontage</u>
4-5 dogs	3 acres	250 feet
6-10 dogs	5 acres	300 feet
11-20 dogs	10 acres	400 feet
21+ dogs	15 acres	400 feet

- F. Adequate landscaping or fencing shall be provided to create a visual, sound and smell buffer between such facilities and adjacent properties. Kennels must have a security fence around perimeter, unless enclosed in a building. Security fence must be eight (8) feet high and made of solid material.
- G. All buildings, structures or other accessory uses shall be at least seventy-five (75) feet from any property line, except that animal runs and structures that house animals shall be at least one hundred (100) feet from any property line.
- H. No outdoor area enclosed by fences for the use of animals shall be permitted within a front yard. Fenced areas shall be set back not less than one hundred (100) feet from any side or rear property line.
- I. Lot coverage shall not exceed twenty-five percent (25%).
- J. Entrance and exit points shall be from major or secondary roads only.
- K. Adequate parking shall be provided in accordance with the size of the facility.
- L. Adjacent properties shall be protected from noise, odors, and unsightly appearance.
- M. Adequate provisions shall be made for disposing of animal waste. Applicants must indicate on the application for permit the method of waste disposal and dead animal disposal. Recommended: septic system with 1,000 gallon tank for waste disposal. The proposed method of disposal of waste and/or dead animal carcasses shall be subject to review and approval by the Planning Board before any such method may be employed by any applicant.
- N. Kennels not in compliance when this zoning goes into effect will have one (1) year to come into compliance to meet this code, or no additional permits/license will be issued, and the kennel shall cease operation as such.

**SECTION 4-6. BARS / TAVERNS / RESTAURANTS**

- A. All bars, taverns and/or restaurants shall be located at least 1,000 feet, as measured from the outside building lines of the primary building thereon on which service to the public is rendered, from the lot lines of all churches, residences, daycare centers, schools, hospitals and nursing homes.
- B. The entire premises of such bar, tavern and/or restaurant cannot be used for any other purpose, including but not limited to a residence.

## **SECTION 4-7. BATTERY ENERGY STORAGE SYSTEMS**

A. This section concerning Battery Energy Storage Systems is adopted pursuant to Article IX of the New York State constitution, § 2(c)(6) and (10), New York Statute of Local Governments, § 10(1) and (7); § 261-263 of the New York State Town Law; and § 20 of the Municipal Home Rule Law.

B. Statement of Purpose

This Section is adopted to permit the construction of Battery Energy Storage Systems in the Town of Ossian in a manner that advances and protects the public health, safety and welfare of the Town of Ossian while facilitating the production of renewable energy. In so doing, this Section seeks to:

1. Provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of battery energy storage systems;
2. Ensure compatible land uses in the vicinity of the areas affected by battery storage energy systems;
3. Mitigate the impacts of battery energy storage systems on natural resources and Prime Farmland/Farmland of Statewide Importance along with wildlife, forests, streams, adjoining properties, and other protected resources.
4. Create synergy between battery energy storage system development and other stated goals of the community pursuant to its Comprehensive Plan.

C. The Town Board of the Town of Ossian makes the following findings:

1. Up to present the Town Board of the Town of Ossian has not prohibited or regulated the erection or creation of Battery Energy Storage Systems.
2. The Town Board of the Town of Ossian recognizes that Battery Energy Storage Systems are capable of supporting solar energy, a clean, readily available and renewable energy source. At this time the Town of Ossian intends to accommodate some use of Battery Energy Storage Systems so long as it may be demonstrated that there are no significant adverse effects on the Town's natural and agricultural resources as defined in the Town's Comprehensive Plan and the Town of Ossian Agricultural and Farmland Protection Plan. This includes the Vision Statement on Page 1 of the Comprehensive Plan stating that the "Town of Ossian recognizes its natural and agricultural resources for the economic benefits, environmental protection, and the significant recreational and scenic value ..." and that protection and stewardship ensures a high quality of life now and in the future and is the foundation of the community. The Town's Comprehensive Plan also includes farmland protection objectives, recognition of unique local conditions (i.e., the prevalence of highly productive soils throughout the entire Town), recognition that fragmentation of the land base is counter to local objectives and threatens the sustainability of agriculture as detailed in the Town of Ossian Agricultural and Farmland Protection Plan and including Figure 4 (Soils Map), Figure 5 (Environmental

Resources Map), Figure 8 (Ag District Map), and Figure 9 (Priority Farmland Areas Map) of the same Plan.

3. The Town Board acknowledges and finds a growing need to properly site renewable energy facilities, including Battery Energy Storage Systems within the boundaries of the Town of Ossian so as to protect the large abundance of Prime Farmland/ Farmland of Statewide Importance within the Town, residential properties, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Ossian, to promote the effective and efficient use and storage of renewable energy, and to protect the health, safety and general welfare of the citizens of the Town of Ossian.
4. Prior to the adoption of this Section, no specific procedures existed to address the siting of Battery Energy Storage Systems or to mitigate their potential impact upon adjoining properties or the public view shed. Accordingly, the Town Board finds that the promulgation of this Section is necessary to direct the location and construction of these systems.
5. Battery Energy Storage Systems need to be regulated for removal when no longer utilized.

D. Definitions

The following definitions shall apply to this section, as well as to other sections of this local law:

ANSI: American National Standards Institute

APPLICANT/OWNER/LANDOWNER/OPERATOR/SUCCESSOR: The person or entity filing an application and seeking approval under this Section and/or operating or assuming ownership or responsibility for a Battery Energy Storage System, including the owners of the real property upon which the Battery Energy Storage System is to be located.

BATTERY (IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

1. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600k Wh and, if in a room or enclosed area, consist of only a single energy system technology.
2. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600k Wh or are comprised of more than one storage battery technology in a room or enclosed area.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store and deliver electrical energy.

COMMISSIONING: A systematic process that provides documented confirmation that a Battery Energy Storage System functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING: A building that is built for the primary intention of housing Battery Energy Storage System equipment, is classified as Group F-1 occupancy as defined in the New York State Building Code, and complies with the following:

1. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
2. No other occupancy types are permitted in the building.
3. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
4. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
  - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
  - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

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

FARMLAND OF STATEWIDE IMPORTANCE: Land, designated as "Farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.

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

IFC: International Fire Code.

LOCAL LAW, ETC.: Any reference herein to a law, local law, code, rule or regulation shall mean said law, local law, code, rule or regulation currently in effect as it may be amended or replaced at any future time.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL): A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC: National Electric Code.

NFPA: National Fire Protection Association.

NON-DEDICATED-USE BUILDING: All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

NON-PARTICIPATING PROPERTY: Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE: Any residence located on Non-participating Property.

OCCUPIED COMMUNITY BUILDING: Any building in Occupancy Group A, B, E, I, R, as defined in the New York State Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY: A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

PRIME FARMLAND: Land designated as "Prime Farmland" in the US Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops.

UL: Underwriters Laboratory, an accredited standards developer in the US.

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

E. Applicability.

The placement, construction and major modification of all Battery Energy Storage Systems, excluding general maintenance and repair, within the boundaries of the Town of Ossian shall be permitted only as follows:

1. A special use permit and electrical permit issued by the Town of Ossian Code Enforcement Officer shall be required for the installation of any Battery Energy Storage System.
2. All Battery Energy Storage Systems existing on the effective date of this local law shall be allowed to continue in usage as such presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. All new construction as well as all changes, modifications and/or additions to current Battery Energy Storage System, other than routine maintenance, shall comply with the requirements of this local law, and shall require a special use permit and electrical permit before construction begins.
3. No Battery Energy Storage System shall hereafter be erected, moved, reconstructed, changed or altered except in conformity with these regulations.
4. Issuance of permits and approvals by the Town of Ossian Code Enforcement Officer and Town Zoning Board of Appeals (ZBA) shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].
5. All new Battery Energy Storage Systems, all Dedicated Use Buildings, all other buildings or structures that contain or are otherwise associated with a battery energy storage system and subject to the Uniform Code and/or the Energy Code, and all additions and modifications to any pre-existing systems, shall be designed, erected, and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code and all of the Local Laws of the Town of Ossian.
6. Any applications pending for Battery Energy Storage Systems on the effective date of this local law shall be subject to the provisions of this law.
7. To the extent this Local Law is inconsistent with any other law, local law, rule, regulation, or code, the more stringent requirements shall apply.
8. Any structure built in accordance with this law will meet or comply with the following:
  - a. The Applicant of any structure shall provide, at no cost to the Town or fire department, fire department training related to potential fire issues that are site specific and could arise from the structure, which training shall be provided when requested by the fire department, but must at least be provided on an annual basis, or as any updated equipment is installed;

- b. If specialized equipment is needed by the fire department, the Applicant of battery energy storage structures will pay for the costs of such equipment or reimburse the applicable fire department or applicable local government office or agency for the purchase of same. If there is more than one (1) Applicant, then such Applicants shall share in the costs on a pro rata basis in proportion to the assessed value of the properties on which the structure owned by each Applicant is located;
- c. If the Town itself does not have a fire department therein, then the requirements of paragraph 8 (a) and (b) directly above shall apply to the fire department(s) contracted by the Town to provide fire protection for the Town.

F. Use Districts Where Allowed.

Subject to the provisions of this Section, certain Battery Energy Storage System Systems shall be allowed as follows:

- 1. a. Tier 1 Battery Energy Storage Systems shall be permitted throughout the Town, subject to the Uniform Code and the "Battery Energy Storage System Special Use Permit," and are exempt from site plan review.
- b. Setbacks. Tier 1 Battery Energy Storage Systems shall comply with the setback requirements set forth on the above Article 3 Schedule for Single/Two-Family Dwellings.
- 2. Tier 2 Battery Energy Storage Systems are not permitted anywhere in the Town.
- 3. Any inconsistent provisions of any local law which purport to or may be interpreted to regulate or to allow Battery Energy Storage Systems other than as set forth in this Chapter are hereby superseded.
- 4. No Tier 1 Battery Energy Storage System, or portion thereof, will be permitted on prime farmland in any portion of the Town unless for on-site agricultural use and/or residential use only.

G. Tier 2 Requirements if This Law is Superseded

Although this law fully prohibits Tier 2 Systems in the Town, if this prohibition is superseded by Article 10 of the Public Service Law or any other Federal or State Law, Rule or Regulation, the following substantive factors should be considered in determining whether any Tier 2 system should be allowed:

- 1. No Tier 2 System, or any portion thereof, shall be allowed on prime agricultural farm land. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland. It is the express intention of the Town of Ossian that no variance or hardship request be granted to permit increased coverage by Tier 2 Systems on Prime Farmland by any board or commission or other



agency having legal authority to consider and grant such a variance or hardship request.

2. The development and operation of a Battery Energy Storage System shall not have a significant adverse impact on agricultural operations or natural resources including Prime Farmland and fish, wildlife or plant species or their critical habitats, or other significant habitats identified by the Town of Ossian or other federal or state regulatory agencies.
3. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
4. Signage.
  - a. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
  - b. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
5. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be dark sky compliant and shielded from all neighboring properties and public roads so as to prevent the illumination of adjoining properties or excessive lighting.
6. Vegetation and tree-cutting. Areas within 10 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
7. Noise. The maximum noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 30 dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

8. Decommissioning for Tier 2 – See Section 4-27.
9. Compliance with Other Laws. The system must be in compliance with all applicable provisions of the IFC, the Uniform Code and its Energy code, and all requirements of this law and other applicable laws, as well as floodplain requirements.
10. Tier 2 Battery Energy Storage Systems applications or submissions shall include the following information:
  - a. Property lines and physical features, including roads, for the project site.
  - b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
  - c. An electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
  - d. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed, to the extent those equipment specification sheets are available. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
  - e. Name, address, and contact information of the system installer and the owner and/or operator of the battery energy storage system shall be submitted prior to the issuance of building permit.
  - f. Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
  - g. Commissioning Plan. Prior to issuance of the building permit, such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town Planning Board prior to final inspection and approval and maintained at an approved on-site location.

- h. Fire Safety Compliance Plan. Prior to issuance of the building permit, such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
- i. System and Property Operations and Maintenance Manual. Prior to issuance of the building permit, such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- j. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- k. Prior to the issuance of the building permit or final approval by the Town Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
- l. Emergency Operation Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information.
- m. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
- n. Procedures for inspection and testing of associated alarms, interlocks, and controls.
- o. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
- p. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.

- q. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
  - r. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
  - s. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
  - t. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
11. Other requirements for Tier 2 systems:
- a. Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements set forth in the aforesaid Article 3 Schedule.
  - b. Height. Systems shall not exceed 15 feet in height from ground level.
  - c. Fencing Requirements. Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
  - d. Screening and Visibility. System structures and devices used to support any Battery Energy Storage System shall be non-reflective and/or painted a subtle or earth-tone color. Battery Energy Storage Systems shall have views minimized from the road and from adjacent properties using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports. Evergreen tree plantings may be required to screen portions of the site from nearby residential property, public roads, and from public sites known to contain important views or vistas, such as gateway entrances to the Town. Battery Energy Storage System Equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties.
  - e. Accessibility. All Tier 2 Systems shall be located so as to be readily accessible for all emergency service vehicles and personnel.
  - f. A fire protection and emergency response plan, created in consultation with and approved by the local fire department and the County Office of Emergency Management.
  - g. Security. Buildings must be protected from vehicle impact, including but not limited to protection provided by bollards.

## H. Safety

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards as applicable:
  - a. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
  - b. UL 1642 (Standard for Lithium Batteries),
  - c. UL 1741 or UL 62109 (Inverters and Power Converters),
  - d. Certified under the applicable electrical, building, and fire prevention codes as required.
  - e. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
2. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if a Battery Energy Storage System is served by a local ambulance district, the local ambulance corps.
3. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.
4. All Battery Energy Storage Systems shall adhere to all applicable federal state, county and Town of Ossian codes, laws, regulations and building, plumbing, electrical and fire codes.

## I. Maintenance, Procedures and Fees

1. Once the required permits are obtained, completion of the project must occur within twenty-four (24) months from issuance of the permits, which TIME IS OF THE ESSENCE. If such construction is timely and properly completed, the Code Enforcement Officer shall issue a Certificate of Compliance. No Battery Energy Storage System may be activated or used until such certificate is issued.

If the project is not completed and fully operational in said twenty-four (24) months, a certificate of compliance shall not be issued, the permits shall be automatically revoked, and before any more work can be done on the project, new permits must be obtained.

2. Inspections. Upon reasonable notice, the Town of Ossian Code Enforcement Officer or his or her designee may enter a lot on which a Battery Energy Storage System has been constructed for the purpose of determining compliance with all requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed one method of reasonable notice. Any fee or expense associated with this inspection shall be borne entirely by the permit holder/applicant and/or owner and/or operator. Irrevocable consent to such inspection shall be deemed given by the applicant upon submission of the application for a permit and shall be contained in the written application for same signed by all property owners.
3. General complaint process. During construction, the Town Code Enforcement Officer can issue a stop order at any time for any violations of a site plan or permit, which stop work order shall be complied with immediately.
4. Continued operation. A Battery Energy Storage System shall be maintained in good condition and in continuous operation at all times subject to reasonable maintenance and repair outages. Further, the Code Enforcement Officer shall also have the right to request documentation from the owner for a Battery Energy Storage System regarding the system's usage at any time, which request shall be complied with within seven (7) days.
5. If the use of an approved Battery Energy Storage System is discontinued for any reason other than temporary repair, the owner or operator shall notify the Code Enforcement Officer within thirty (30) days of such discontinuance. If a Battery Energy Storage System is to be retained and reused, the owner or operator shall also inform the Code Enforcement Officer of this in writing at the same time. Any such reuse shall require new permits. If such new permits are not obtained in one (1) year, the system shall be deemed abandoned.
6. Removal and Remediation. Other than as provided in paragraph 5 directly above, where a Battery Energy Storage System has been discontinued, abandoned, or where the permit has been revoked, such system shall be dismantled as per the required decommissioning plan (see § 4-27) and funds described above. All such removal and remediation shall occur within six months after both (1) such discontinuance, abandonment or revocation has occurred, and (2) the Code Enforcement Officer issues an Order to Remedy directing such removal and remediation with a one-time extension at the discretion of the Code Enforcement Officer. All such work shall be inspected for satisfactory compliance by the Code Enforcement Officer. The soil remediation required is that the land on and near where such systems are located be properly landscaped to the Code Enforcement Officer's satisfaction and planted to support vegetation and natural plant life of that area (native and non-invasive) to the extent such existed prior to installation.

The requirement for said removal and remediation shall be the joint and severable obligation and liability of each and every applicant, landowner, operator, and successor of said system. If said removal and remediation is not completed to the satisfaction of the Code Enforcement Officer in the time allowed, the Town may seek all remedies allowed by this Local Law. As one such remedy, the Town may, but does

not have to, conduct the removal and remediation itself, and charge all costs and expenses to the aforesaid parties obligated to perform same, together with all legal fees and related costs to fully enforce and collect all such sums, along with all civil penalties set forth herein.

7. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Battery Energy Storage System shall be made by the Code Enforcement Officer, who shall provide the Battery Energy Storage System owner, applicant, landowner and successors with written notice and an Order to Remedy by personal service or certified mail. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for one (1) year.
8. Application Fees.
  - a. Fee for issuance of a building permit. Tier 1 applicants shall pay a building permit fee of one half of one percent of the project cost, or such other amount as the Town Board may, from time to time, determine by resolution.
  - b. In addition, the applicant shall be responsible to pay, up front, for all engineering, legal and other professional expenses reasonably incurred by the Town throughout its review process. Failure to pay said fee and expenses shall suspend the site plan review process.
9. Prior to the issuance of a building permit, the applicant shall document to the Town that all applicable federal, state, county and local permits have been obtained.
10. Any changes or alterations during or after construction to a Battery Energy Storage System cannot be done until amendment to any previously issued permit and/or site plan (if required) has (have) first been obtained, subject to all requirements of this Code.

## **SECTION 4-8. BED & BREAKFASTS**

- A. The owner or operator of the bed and breakfast shall live full-time on the premises. Up to two (2) nonresidents of the premises may be permitted as employees of the bed and breakfast operation.
- B. The number of guest rooms shall be limited to eight (8). Guest rooms shall have no provisions for cooking. The maximum length of stay for any guest is 14 consecutive days.
- C. Water and sewer service shall be adequate to serve the number of available rooms.
- D. Screening of the parking area shall be installed when necessary to shield neighboring residents from headlight glare.
- E. Adequate parking shall be provided depending on the number of guest rooms at maximum occupancy.

## **SECTION 4-9. BREWERIES / DISTILLERIES**

All breweries and/or distilleries shall be located at least 1,000 feet, as measured from the outside building lines of the primary building thereon on which service to the public is rendered, from the lot lines of all churches, residences, daycare centers, schools, hospitals and nursing homes.

## **SECTION 4-10. CAMPGROUNDS**

### **A. General Standards.**

1. Campgrounds shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation, and recreation purposes. The removal of wheels and placement of a unit on a foundation in a camping ground is prohibited.
2. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors, or other adverse influences, and no portion of the campgrounds subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
3. A minimum of 8% of the gross area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreational facilities. No travel-trailer site, required buffer strip, street right-of-way, storage area, or utility site shall be counted as meeting recreational purposes.

### **B. Lot and Site Dimensional Requirements.**

1. Not more than 10 travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross site area.
2. A camping ground shall have a minimum of 150 feet of frontage on a public street.
3. Each camp site shall be at least 2,500 square feet in area and have a minimum width of 40 feet.
4. Travel trailers, campers, tents, motor homes and the motor vehicles propelling or carrying the same may be located not closer than 15 feet to any side or rear lot line nor closer than 60 feet to any front lot line of the individual camp site.

### **C. Streets and Access Management.**

1. A camping ground shall be so located that no entrance or exit from a site shall discharge traffic into any residential area nor require movement of traffic from the camping ground through a residential area.



2. Streets in campgrounds shall be private, but shall be constructed with a stabilized travel way and shall meet the following minimum stabilized travel way width requirements.

TRAVEL WAY CONDITIONS	MINIMUM WIDTH
<b>ONE WAY</b>	
No On-Street Parking	<b>12 ft</b>
On-Street Parking One Side	<b>18 ft</b>
<b>TWO WAY</b>	
No On-Street Parking	<b>18 ft</b>
On-Street Parking One Side	<b>27 ft</b>
On-Street Parking Both Sides	<b>34 ft</b>

3. Entrances and exits to campgrounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits.

**D. Utilities and Services.**

1. Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, and other uses and structures customarily incidental to the operation of campgrounds are permitted as accessory uses to the campgrounds and must be approved by the Town Planning Board through site plan review.
2. Retail stores and other convenience establishments may be permitted as accessory uses in campgrounds subject to the following restrictions:
  - a) Such establishments and the parking areas primarily related to their operations shall not occupy more than 5% of the gross area of the campgrounds. Such establishments shall be restricted in their use to occupants of the camping ground.
  - b) Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
  - c) The structures housing such facilities shall not be located closer than 100 feet to any public street and shall not be directly accessible from any public street, but shall be accessible only from a street within the camping ground.
3. Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Health and/or Environmental Conservation, and shall receive approval from said agencies.
4. An adequate lighting system shall be provided for the camping ground.
5. All utilities shall be underground.

6. Not less than one covered 20 gallon garbage receptacle shall be provided for each camp site. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
7. All applicable sanitation standards promulgated by the State of the New York shall be met.

## **SECTION 4-11. COMMUNITY / SOCIAL ORGANIZATIONS**

All community and/or social organizations shall be located at least 1,000 feet, as measured from the outside building lines of the primary building thereon on which service to the public is rendered, from the lot lines of all churches, residences, daycare centers, schools, hospitals and nursing homes.

## **SECTION 4-12. DAY CARE CENTERS**

### **A. State Law Requirements.**

All day care centers shall be maintained and operated according to the regulations set forth by NYS Social Services Law, the NYS Public Health Law, and other applicable laws, rules and regulations, and shall not be permitted within the Town without completion of the proper licensing and registration requirements of the state.

### **B. Play Area Required.**

All day care centers shall provide an active outdoor play area of at least 100 square feet per child. Outdoor play areas must be appropriately fenced in or otherwise protected from roads and nearby properties.

### **C. In-Home Day Care.**

Day care centers may be conducted in a single-family home provided that such day care is owned and operated by said single-family homeowner or resident. The requirements of home occupations (Section 3-14) shall also apply.

## **SECTION 4-13. EXCAVATION & MINING**

This Section shall apply to all commercial excavation and mining operations regulated by New York State. Excavation and grading undertaken by residential property owners or for the purposes of development shall not be regulated by the conditions provided herein.

### **A. General Operating Restrictions.**

1. All excavation and/or mining operators shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law upon application for a special use permit.

2. All equipment used for excavations and processing shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practical, noises and vibrations, and dust conditions which are injurious or a nuisance to persons living in the vicinity.
3. Operations shall be permitted between the hours of 7:00 AM and 7:00 PM only, with no Sunday or holiday activity. Exceptions may be made in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
4. All land which has been excavated must be rehabilitated in accordance with reclamation plans approved by the Planning Board as part of site plan review within one year after the termination of operations. All rehabilitation and reclamation efforts shall be completed at the expense of the operator.

**B. Additional Review Considerations.**

In reviewing a site plan and/or special use permit application for excavation or mining operations, the Planning Board and ZBA shall also consider the following:

1. The current use of the property proposed to be excavated as well as the proposed use of the area subsequent to completion of the excavation and restoration thereof.
2. The potential short-term and long-term effects of the proposal on the aesthetics and natural resources of the area or of surrounding areas.
3. The effect on the property of the proposal that may change the productivity or suitability of the land for agricultural purposes and/or the desirability of feasibility for future development purposes.
4. The amount of time, as estimated by the applicant that will be required for the completion of the proposed excavation and the restoration of the property.
5. Noise and/or vibrations that may be created by the proposed operation.
6. Additional traffic that may be created by the proposed operation. Deleterious effects, if any, on the property in the general area of the proposed operation.
7. All other criteria which from time to time may be relevant to a proposed operation.

**Special Permit Conditions.**

1. Special permits for excavation operations are of two year duration. Upon reapplication, the CEO may grant a permit renewal if all conditions of the original permit are complied with.
2. A performance bond or some other financial guarantee in form and amount approved by the ZBA shall be required to assure that the conditions and reclamation plan(s) stipulated in the approval of the special use permit are carried out.

## **SECTION 4-14. FARM STANDS**

A farm stand may be permitted as a temporary or seasonal accessory use and as such may sell agricultural and horticultural products associated with an agricultural use. Such stands shall be subject to the following additional requirements:

- A.** No more than two structures of a temporary and movable nature, not exceeding 200 square feet each, shall be permitted per lot. Such structures must conform to the dimensional requirements of Article 3.
- B.** A ground display area may be permitted provided it is located immediately adjacent and secondary to the farm stand.
- C.** If adequate parking is not available on the street so as to not interfere with the safety and flow of traffic, the owner must designate a temporary, off-street parking area.
- D.** Should any provision regulating farm stands within this zoning law be in conflict with the New York State Department of Agriculture and Markets Law, the state's provisions shall take precedence.
- E.** Any permanent non-movable structure used for the sale of either on-farm or off-farm produced agricultural products does not fall within this section, and must comply with all other provisions of this law.

## **SECTION 4-15. FARM-RELATED BUSINESSES**

Farm-Related Businesses including both stand-alone operations and home-based businesses, such as on-farm processing, storage, transportation, sale, distribution and other services that support agricultural production may be permitted subject to a special use permit issued by the ZBA and subject to applicable criteria set forth in this law to ensure that they are properly sited and to minimize impacts on neighboring properties. Farm-related businesses as may be permitted in this law may include processing facilities, dealerships for farm equipment or machinery, and commercial slaughterhouses. All farm-related business applications are subject to site plan review.

## **SECTION 4-16. GAS STATIONS & AUTO SERVICE**

### **A. General Site Requirements.**

- 1. Entrance and exit driveways shall have an unrestricted width of not less than 20 feet and not more than 30 feet, and shall be located not nearer than 15 feet from any property line.
- 2. Entrance and exit points shall be from a major or secondary road and shall be designed as to avoid the necessity of any vehicle backing out into any public right-of-way.

3. No such establishment shall be located within a distance of 200 feet of a school, church, hospital, nursing home, senior citizen housing or other place of public assembly designed for occupancy by more than 50 persons. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
4. The entire site area that is traveled by motor vehicles shall be hard surfaced (i.e. asphalt, concrete, or any other surface that does not release dust or debris). The use of pervious or porous paving material is encouraged.
5. No outdoor storage of materials, merchandise or equipment shall be permitted during non-business hours, unless such storage is provided in an enclosed accessory structure as permitted by the zoning law.
6. Landscaped areas of at least 10 feet in width shall be provided along property lines.

**B. Gas Stations.**

1. Gas stations may include retail sales of food, convenience items, and minor automotive supplies or liquids provided that the sales of such items are within an enclosed structure.
2. Gasoline stations shall be under the control of an attendant at all times during the hours of operation.
3. Fuel pumps shall be located no closer than 20 feet from the public right-of-way and 30 feet from any other property lines.

**C. Auto Service Stations.**

1. All maintenance, service, and repairs of motor vehicles shall be performed fully within an enclosed structure.
2. The premises are to be maintained in a neat and clean condition without the outside accumulation of used materials, automobile parts, or dismantled or abandoned vehicles.
3. No more than 10 licensed motor vehicles shall be stored or parked outdoors for more than 48 hours. Such vehicles shall be in areas effectively screened from all property lines and stored in a neat, orderly manner.
4. No unlicensed motor vehicle shall be stored or parked outdoors for more than 30 days. No more than one unlicensed motor vehicles may be stored or parked outdoors at one time.

## **SECTION 4-17. HOTELS / MOTELS**

All hotels and/or motels shall be located at least 1,000 feet, as measured from the outside building lines of the primary building thereon on which service to the public is rendered, from

the lot lines of all churches, residences, daycare centers, schools, hospitals and nursing homes.

## SECTION 4-18. MOBILE HOMES & MOBILE HOME PARKS

### A. Building and Lot Requirements.

1. The following table of requirements shall apply to all lots and structures located within a mobile home park.

STANDARD		MINIMUM REQUIREMENT
<b>LOT DIMENSIONS</b>		
	Area	<b>7,200 sf</b>
	Width	<b>50 ft</b>
<b>SETBACKS</b>		
	Front	<b>20 ft *</b>
	Side	<b>5 ft each (20 ft total)</b>
	Rear	<b>10 ft</b>
	From public streets and mobile home park property lines	<b>50 ft</b>

\* This 20-foot front setback is from the interior park roadway. If the park is situated on a public highway, then any structure on a mobile home lot must have a setback from the centerline of the highway of at least 100 feet.

2. Not more than one mobile home shall be located on any one mobile home lot. Every mobile home within a mobile home park shall be located on a mobile home lot or in a designated storage area shown on the approved site plan for said park.
3. No more than one accessory structure shall be permitted on any mobile home lot.
4. Each mobile home lot must have not less than two off-street parking spaces. Such parking spaces shall be connected to the entrance of the mobile home by a paved sidewalk having a minimum width of 24 inches.
5. No mobile home shall be located on a mobile home lot until the roadways, sanitary sewage disposal system, water supply system and storm drainage system serving said mobile home lot have been installed in accordance with the approved site plan for the mobile home park.

### B. Mobile Home Requirements.

1. The siting of mobile homes other than double-wides, shall be permitted only within an approved Mobile Home Park or farm labor camp.
2. Double-wide mobile homes shall be installed according to manufacturer's instructions and secured with adequate tie downs, upon concrete piers planted at

least three feet into the ground. Piers must be a minimum of 12 inches square or diameter, and set on a concrete pad of six inches thick and 18 inches square or diameter. A double-wide shall be considered a single-family residence, and can be situate outside of a mobile home park.

3. All mobile homes, including double-wides, shall be enclosed at the bottom with a fire resistant skirt or enclosure within 30 days after the placement of the mobile home on the lot. All mobile homes must be skirted and the wheels removed prior to the issuance of a certificate of occupancy.
4. No enclosure or addition, with the exception of carports, door porches, and patios, shall be constructed on or added or attached to the exterior of any mobile home.

### **C. Transportation Infrastructure.**

1. No boats, campers, travel trailers, recreational vehicles, or unregistered or unlicensed motor vehicles shall be parked or stored at any place within a mobile home park except in areas designated and approved for such storage as part of the site plan approval.
2. Every roadway within a mobile home park shall have a minimum pavement width of 22 feet and a minimum right-of-way width of 50 feet. If cul-de-sacs exist they shall have a minimum diameter of 70 feet.
3. Appropriate street lighting shall be installed on interior roadways with the minimum number of lights being one at each intersection of interior roadways with each other, or with abutting public road, and at least every 200 feet where such intersections are more than 200 feet apart.
4. Each roadway shall be named and noted upon signs at each roadway intersection. Each mobile home lot shall be assigned a permanent number which shall be noted on the mobile home lot in a location clearly visible from the roadway.
5. Pedestrian walkways shall be provided along at least one side of all interior streets having a width of at least four feet.
6. Every roadway within a mobile home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants of the park and necessary fire, police, ambulance, public utility maintenance and fuel supply vehicles.
7. The park owner shall be responsible for providing and paying the cost of roadway and sidewalk maintenance and all necessary snow removal.

### **D. Utilities and Services.**

1. Every mobile home park shall have a recreational area or open space for use by the occupants. Such areas shall be as centrally located as the topography and design of the park permit. Such area shall be not less than 10,000 square feet or 1,000 square feet per mobile home lot in the park, whichever is greater.

2. At least one service building shall be constructed in each mobile home park which shall be adequate to provide for storage of all equipment, tools, and materials necessary for the maintenance of the park. All such equipment, tools, and materials shall be stored within said building when they are not in use.
3. A complete water distribution system approved by the Health Department, including a water-service pipe for each mobile home lot and approximately spaced fire hydrants shall be installed.
4. A public sanitary sewage disposal system approved by the Health Department and other appropriate agencies shall be installed, including a sewer connection for each mobile home lot.
5. All public utility, electric gas, cable television and telephone lines shall be installed underground.
6. All fuel tanks used for heating within a mobile home park, including all fuel tanks used for heating within mobile homes, shall be installed underground in accordance with NFPA standards.
7. The park owner shall provide for the regular collection and disposal of garbage, trash, and rubbish.
8. No mobile home shall be offered for sale, display for sale or sold within a mobile home park unless such mobile home is located on a mobile home space and is connected to an electric public utility supply and to a public sewer and public water supply.

**E. Special Permit Conditions.**

1. A landscape plan shall be prepared and carried out assuring an appropriate planting of trees and shrubs will be included in the park design, including screening where necessary.
2. Any sale of a mobile home space or spaces or portion of a mobile home park, other than the entire mobile home park, as shown on the plan of such park approved by the Town, shall thereupon immediately invalidate the permit for such park issued by the Town. Any use of any of the premises within the mobile home park other than as a mobile home park shall thereupon immediately invalidate the special permit of such park approved by the Planning Board.
3. Special use permits for the establishment and operation of mobile home parks are of one-year duration. Upon reapplication the Code Enforcement Officer may grant a permit renewal if all conditions of the original permit are complied with.



## SECTION 4-19. MULTI-FAMILY DWELLINGS

### A. Density.

1. A single multi-family dwelling shall have no more than 20 units.
2. The maximum gross density of a multi-family development shall not exceed eight units per acre.
3. Dwelling units within a multi-family structure shall meet the following minimum habitable floor area requirements.

DWELLING UNIT	MINIMUM HABITABLE FLOOR AREA
<b>TOWNHOUSE STRUCTURE</b>	
2 or fewer Bedrooms	<b>800 sf</b>
3 or more Bedrooms	<b>1,000 sf</b>
<b>APARTMENT</b>	
Studio / Efficiency	<b>550 sf</b>
1 Bedroom	<b>675 sf</b>
2 Bedrooms	<b>800 sf</b>
3 Bedrooms	<b>950 sf</b>

4. No more than 20% of the total units within a multi-family development shall be three or more bedroom units.

### B. Building and Site Design Standards.

1. Minimum distance between buildings shall be 80 feet.
2. All stairways and access hallways shall be located inside the building.
3. Each multi-family development shall provide a passive or active recreation area at a standard of 500 square feet per dwelling unit or 4,000 square feet, whichever is greater.
4. Buildings shall not have large or long continuous wall or roof planes. Varied roof heights, projecting bays, gables, recesses, and porches shall be used to visually divide larger buildings. To prevent an out-of-scale, monolithic appearance larger buildings shall be visually divided into smaller sections no longer than 50 feet in length by gaps, recesses, or other architectural devices.
5. Entrances to units shall have direct pedestrian access provided from the designated parking area.
6. Accessory structures, such as clubhouses, pools, pool buildings, storage buildings, and trash enclosures shall be located in a manner to create a walkable campus environment and should not detract from the public realm of the site (pedestrian walkways, roadways, etc).

7. There shall be at least two (2) motor vehicle parking spaces provided for each residential unit.

**C. Access Management.**

1. All multi-family developments must have direct access to a public road.
2. If there are more than 12 dwelling units in a multi-family development, direct access must be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
3. If there are more than 50 dwelling units in a multi-family development, or if the location or topography of the site indicates the need for additional access, the Planning Board may require such additional access as a condition of site plan approval.

**SECTION 4-20. PONDS**

**A. Exemptions.**

Ponds constructed as part of active agricultural operations and natural ponds left in their natural state shall be exempt from the provisions of this Section.

**B. Regulations.**

1. No pond can interfere with or impede the natural flow of water nor adversely impact any floodplain or wetland area.
2. At least 50% of the pond shall be sloped so that a person or animal can easily get out.
3. The pond shall conform to the requirements of and be approved by the Soil Conservation Service of the United States Department of Agriculture, where required by law.
4. All ponds to be constructed within 500 feet of an existing neighboring residence and/or within 100 feet of an existing public highway or right-of-way shall conform to the requirements of Section 5-12 (swimming pools).
5. A pond or any artificial body of water over a depth of two feet must be set back a minimum of 100 feet from all property lines and existing septic systems.

**SECTION 4-21. PUBLIC UTILITIES**

**A. ZBA Determinations for Approval.**

In determining whether or not to approve a special use permit for a public utility, all relevant factors including but not limited to the following shall be considered:

1. The specific location of the proposed installation is necessary and convenient for the efficiency of the essential service and satisfactorily allows for convenient provision of service to the area in which the particular use is located.
2. The design of any building in connection with such facility conforms to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is to be located.
3. Adequate landscaping is provided to create a visual and sound buffer between the facilities and adjacent property.

**B. General Requirements.**

1. All points of necessary access, or transformers, shall be placed in secure structures at ground level.
2. All major electrical transformer facilities or substations, if above ground, shall be secured by an outer and inner fence, each 10 feet from each other at any point; also no transformer or associated switches shall be closer than 100 feet from any lot line.

## **SECTION 4-22. RECREATION FACILITIES**

**A. Recreation Facilities, Indoor.**

To the greatest extent practicable, mitigation measures shall be provided to eliminate the impacts of noise, light, traffic, and other potential nuisances on nearby residential uses.

**B. Recreation Facilities, Outdoor.**

1. No outdoor recreation or entertainment facilities shall be located closer than 200 feet to the property line of any adjacent residential use,
2. Hours of operation shall be posted on-site.
3. A waste management plan shall be required to ensure proper upkeep of the site and disposal of trash, litter, animal waste, and other refuse.
4. Outside lighting shall be dark sky compliant.

## **SECTION 4-23. SAWMILLS**

A. Sawmills may be allowed with a special use permit.

B. Yards and Buffers

1. For any current sawmill existing at the time of adoption of this Local Law and for any future sawmills to be established, if there then exists a residential structure within one

hundred fifty(150) feet of any lot line of the sawmill premises, the Planning Board shall require landscaped buffers as set forth below. Landscaped buffers are required by the Planning Board in order to assure the protection of adjoining uses by providing barriers that block the glare of lights, reduce noise, serve as a protective barrier by blocking physical passage to dangerous areas, and reduce air pollution, dust and litter, and to otherwise maintain and protect the character of the District.

- a) Type. In determining the type and extent of the buffer required, the Planning Board shall take into consideration the design of the project structure(s) and site, topographic features which may provide natural buffering, existing natural vegetation, and the relationship of the proposed project to adjoining areas.
  - b) Width. The width of the required buffer shall be determined by the Planning Board.
  - c) Vegetative Screening. A mix of ground cover and shrubbery vegetation and canopy trees, of such variety compatible with the local climate, may be required so that a dense screen not less than six (6) feet in height will be formed within three (3) years of planting.
  - d) Berms, Walls and Fences. Berms and landscaped walls or fences compatible with the principal building design, may be incorporated in the required buffer. Front yard buffers shall be provided in the same manner to a height of not less than four (4) feet; however, all clear sight triangles shall be maintained.
  - e) Adjoining Uses. In any case, special considerations shall be given to existing residential uses. In cases where the adjoining use is a commercial use, or when two or more adjacent properties are developed under a common site plan, the width and density of the buffer may be reduced if the Planning Board shall determine that the proposed use and adjoining use(s) are not incompatible.
  - f) Storage of equipment, supplies, products, timber and other materials shall be within the buffered area.
2. The buffer requirements directly above shall not apply with respect to any future residential structures that come into existence after a sawmill obtains a specific use permit.
- C. The restrictions above do not apply to:
1. A portable sawmill that has obtained an operating permit from the Code Enforcement Officer (CEO). Said permit shall only allow the operation of said portable sawmill on a particular premises for one (1) continuous specified period for no more than sixty (60) days in each twelve (12) month period. There shall be no cost for such operating permit.
  2. Facilities that are only for value-added wood processing.

## SECTION 4-24. SOLAR ENERGY SYSTEMS

- A. Statement of Purpose.** This Solar Energy special use section is adopted to permit the construction of certain Solar Energy Systems in the Town of Ossian in a manner that advances and protects the public health, safety and welfare of the Town of Ossian while facilitating the production of renewable energy. In so doing, this section seeks to:
1. Take advantage of a safe, abundant, renewable and non-polluting energy resource.
  2. Preserve and protect the natural resources and Prime Farmland/Farmland of Statewide Importance within the Town of Ossian in accordance with the Town's Comprehensive Plan.
  3. Permit solar installations as hereinafter defined throughout the town for the production of renewable energy to be used principally on-site, subject to reasonable conditions to mitigate potential impacts to adjoining properties and preserve neighborhood aesthetics.
- B. Adoption and Repeal of Local Law 1-2020.** This section incorporates herein specific sections of Local Law 1-2020 entitled Solar Energy Systems. To the extent said local law is not specifically set forth herein, it is repealed.
- C. Findings of Town Board.** The Town Board of the Town of Ossian makes the following findings:
1. The Town Board recognizes the desirability of promulgating regulations as to the siting and construction of Solar Energy Systems in other applications.
  2. The Town Board of the Town of Ossian has not prohibited the erection or creation of small-scale Solar Energy Systems intended to primarily benefit the property on which the Solar Energy System is located. To date, existing Solar Energy Systems in the Town of Ossian have been built and used in residential applications.
  3. The Town Board of the Town of Ossian recognizes that solar energy is a clean, readily available and renewable energy source. At this time, the Town of Ossian intends to accommodate the use of Solar Energy Systems in the context of residential and agricultural applications, as well as single-user commercial applications in which the Solar Energy System provides energy for the commercial property, but is not intended to create sufficient excess solar energy to make its resale as a marketable commodity the purpose of the Solar Energy System, but rather an incidental or subordinate product thereof. The Town Board's determination not to allow Large-Scale Solar Energy Systems (as hereinafter defined) is based on the Town's Comprehensive Plan, the Planning Foundation Report (approved June 11, 2019) and the Town of Ossian Agricultural and Farmland Protection Plan (adopted December 2017). This includes the Vision Statement on Page 1 of the Planning Foundation Report stating that the "Town of Ossian recognizes its natural and agricultural resources for the economic benefits, environmental protection, and the significant recreational and scenic value..." and that protection and stewardship ensures a high quality of life now and in the future and is the foundation of the community. The Town's Planning Foundation Report also includes farmland protection objectives, recognition of unique local conditions (i.e., the prevalence of highly productive soils throughout the entire Town), recognition that fragmentation of the land base is

counter to local objectives and threatens the sustainability of agriculture as detailed in the Town of Ossian agricultural and Farmland Protection Plan and including Figure 4 (Soils Map), Figure 5 (Environmental Resources Map), Figure 8 (Ag District Map) and Figure 9 (Priority Farmland Areas Map) of the same Plan.

4. The Town Board acknowledges and finds a growing need to properly site Solar Energy Systems within the boundaries of the Town of Ossian so as to protect the large abundance of Prime Farmland/Farmland of Statewide Importance within the Town, residential properties, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Ossian, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Ossian.
5. The Town Board finds that the promulgation of this Section is necessary to direct the location and construction of Solar Energy Systems.
6. Solar Energy Systems need to be regulated for removal when no longer utilized.

**D. Definitions for Solar Energy.** The following definitions shall apply to this Section:

**APPLICANT/OWNER/LANDOWNER/OPERATOR/SUCCESSOR:** The person or entity filing an application and seeking approval under this Section and/or operating or assuming ownership or responsibility for Solar Energy Systems, including but not limited to the owners of the real property upon which the Solar Energy System is to be located.

**BUILDING-INTEGRATED SOLAR ENERGY SYSTEM:** A combination of photovoltaic building components integrated into any building envelope system, such as vertical facades, including glass and other façade material, semitransparent skylight systems, roofing materials, and shading over windows.

**BUILDING-MOUNTING SOLAR ENERGY SYSTEM:** Any Solar Energy System that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

**FARMLAND OF STATEWIDE IMPORTANCE:** Land, designated as "farmland of Statewide Importance" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate state agency or agencies.

**GLARE:** The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner to cause annoyance, discomfort or loss in visual performance and visibility in material aspects.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM:** Any Solar Energy System that is affixed directly or indirectly to the ground or land surface, rather than attached to the wall or roof of a structure. Said system is designed and intended to generate electricity solely for use on said lot, or multiple lots owned by the same person, entity, farm or business, potentially for multiple tenants, through a distribution system that is not available to the general public and that may be operated and maintained by a third party by lease

agreement or through a power purchase agreement, but in no event producing power in excess of 110% of the electricity consumed on the site(s).

**LARGE-SCALE SOLAR ENERGY SYSTEM:** A Solar Energy System that is ground-mounted and produces energy primarily for the purpose of offsite sale or consumption. A Large-Scale Solar Energy System is not authorized or permitted and is totally prohibited by this local law.

**LOCAL LAW, ETC.:** Any reference herein to a law, local law, code, rule or regulation shall mean said law, local law, code, rule or regulation currently in effect as it may be amended or replaced at any future time.

**PRIME FARMLAND:** Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber and oilseed crops.

**ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM:** Any Solar Energy System that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on the lot (upon which the structure containing the Solar Energy System is located), potentially for multiple tenants, through a distribution system that is not available to the general public.

**SOLAR ACCESS:** Space open to the sun and clear of overhangs or shade so as to permit the uses of active and/or passive Solar Energy Systems on individual properties.

**SOLAR ENERGY EQUIPMENT:** Electrical storage devices, material, hardware, inverters, or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

**SOLAR ENERGY SYSTEM:** The components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all of the land inside the perimeter of the Solar Energy System which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System as follows:

1. Tier 1 Solar Energy Systems
  - a) Roof-Mounted Solar Energy
  - b) Building-Integrated Solar Energy Systems
  - c) Building-Mounted Solar Energy System
2. Tier 2 Solar Energy Systems include Ground-Mounted Solar Energy Systems that generate no more than 110% of the electricity consumed on the site or more than one site or piece of property within the jurisdictional limits of the Town of Ossian owned by the same person, entity, farm or business, over the previous 12 months. Tier 2 Solar Energy Systems may include Solar Energy Systems that are developed, operated and maintained by a third party by lease agreement or through a power purchase agreement, but in no event shall such systems produce power in excess of the 110% maximum yield as referenced above.
3. Tier 3 Solar Energy Systems are systems that are not included in the list for Tier 1 and Tier 2 Solar Energy Systems.

**SOLAR PANEL:** A photovoltaic device capable of collecting and converting solar energy into electrical energy.

**STORAGE BATTERY:** A device that stores energy and makes it available in an electrical form.

**TILT:** The vertical angle, where a 0° minimum tilt means the panel is lying flat, and a 90° maximum tilt means the panel is vertical.

**E. Applicability.** The placement, construction and major modification of all Tier 1 and Tier 2 Solar Energy Systems within the boundaries of the Town of Ossian shall be permitted only as follows:

1. A special use permit granted by the Zoning Board of Appeals (ZBA) and issued by the Town of Ossian Code Enforcement Officer shall be required for installation of any Solar Energy System.
2. All Solar Energy Systems existing on the effective date of this local law shall be allowed to continue in usage as such presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. All new construction as well as all changes, modifications and/or additions to current solar energy systems, other than routine maintenance, shall comply with the requirements of this local law, and shall require a special use permit before construction begins.
3. No Solar Energy System shall hereafter be erected, moved, reconstructed, changed or altered except in conformity with these regulations.
4. All new Solar Energy Systems and all additions and modifications to any pre-existing systems shall be designed, erected and installed in accordance with all applicable codes, regulations, and industry standards as referenced in the NYS Uniform Fire Prevention and Building Code ("Uniform Code"), the NYS Energy Conservation Code ("Energy Code") and all of the Local Laws of this town.
5. Any applications pending for Solar Energy Systems on the effective date of this local law shall be subject to the provisions of this law.
6. To the extent this Section is inconsistent with any other law, local law, rule, regulation, or code, the more stringent requirements shall apply.

**F. Use Districts Where Allowed.** Subject to the provisions of this Section, certain Solar Energy Systems shall be allowed as follows:

1. Tier 1 Solar Energy Systems are permitted outright throughout the Town.
2. Tier 2 Solar Energy Systems are permitted as accessory structures in the Town.
3. Tier 3 Solar Energy Systems are prohibited throughout the Town.

**G. Permitting Requirements for Solar Energy Systems.**

1. Tier 1 Solar Energy Systems shall be exempt from site plan review under this local law, subject to the following requirements for each type of Solar Energy System.
  - a. Roof-Mounted Solar Energy Systems may be attached to any lawfully permitted building or structure and shall incorporate the following design requirements:



- 1) Roof-Mounted Solar Energy Systems shall not exceed the maximum height restrictions as set forth in the Zoning law and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.
  - 2) Solar panels on pitched roofs shall be mounted with a maximum distance of 12 inches between the roof surface and the highest edge of the system.
  - 3) Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
  - 4) Glare: All solar panels shall have anti-reflective coating(s).
- b. Building-Integrated Solar Energy Systems shall be shown on the plans submitted for the building permit application for any building containing such system.
  - c. Building-Mounted Solar Energy Systems shall not be located or extend more than seven (7) feet from the building wall, and in no instance shall any part of the system extend beyond the roof line or parapet wall.
  - d. Tier 1 Solar Energy Systems situated in a yard shall comply with the setback requirements in the Article 3 Schedule for a one family/two family dwelling.
2. Tier 2 Solar Energy Systems. Site plan approval pursuant to the procedure set forth in this local law is required for Tier 2 Solar Energy Systems to be built or modified for the production of electricity principally for on-site use for residential, commercial or industrial business within the Town of Ossian. However, Tier 2 Solar Energy Systems for farm operations are exempt from site plan approval.
    - a. Tier 2 Solar Energy Systems, other than for farm operations, shall be subject to the following requirements:
      - 1) Setbacks: Tier 2 Solar Energy Systems shall be subject to all setback regulations for an accessory structure as set forth in the Town's Zoning Local Law, except as set forth in subparagraph b directly below.
      - 2) Location: Tier 2 Solar Energy Systems shall be located in the side or rear yard of a property. No placement in a front yard shall be permitted unless the location is a minimum distance of two hundred (200) feet from the road and entirely concealed from view from the road due to topography or landscape conditions that must be maintained for the duration of the installation of said system.
      - 3) Height: Tier 2 Solar Energy Systems shall comply with the height limitations specified for accessory structures as set forth in the Zoning Local Law. The height of panels shall be measured at the highest point when oriented at maximum tilt.
      - 4) Glare: All Solar Panels shall have anti-reflective coating(s).
      - 5) Screening and Visibility: All such Tier 2 Solar Energy Systems shall have views minimized from adjacent properties to the extent reasonably practicable. Evergreen tree plantings may be required to screen portions of the site from nearby residential property, public roads, and from public sites known to contain important views or vistas, such as gateway entrances to the Town. Solar Energy Equipment shall be located in a manner to reasonably avoid

and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

- 6) Native plantings and pollinator plant species shall be seeded beneath installed solar panels.
  - 7) No Tier 2 Solar Energy Systems, other than for agricultural operations, shall be located on prime farmland.
- b. Tier 2 Solar Energy Systems which are a part of a farm operation as defined by Article 25 AA of the New York State Agriculture and Markets Law shall not be subject to site plan review but shall be subject to the following requirements:
- 1) Setbacks: Such Tier 2 Solar Energy Systems shall be subject to the setback regulations for an accessory structure as required by the Zoning Law.
  - 2) Height: Such Tier 2 Solar Energy Systems shall comply with the height limitations specified for accessory structures as set forth in the Zoning Law.
  - 3) Glare: All Solar Panels shall have anti-reflective coating(s).
3. Solar storage batteries. When solar storage batteries are included as part of any Solar Energy System, they shall be placed in secure containers or enclosures meeting the requirements of the New York State Building Code. Electrical storage devices will be permitted under this law so long as they are storing energy that is generated onsite and is consumed onsite, and comply with all provisions of this local law, including but not limited to Section 4-7.
  4. All Solar Energy Systems shall adhere to all applicable federal, state, county and Town of Ossian codes, laws, regulations and building, plumbing electrical and fire codes.
  5. Any Solar Energy System shall be situated in a location which shall be readily accessible for all emergency service vehicles and personnel.
  6. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
  7. 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 and shall otherwise not have any significant impact on said areas.
  8. The 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 Ossian or other federal or state regulatory agencies.
  9. Artificial lighting of any Solar Energy Systems shall be limited to lighting required for safety and operational purposes only and shall be dark sky compliant and shielded from all neighboring properties and public roads so as to prevent the illumination of adjoining properties or excessive lighting.
  10. If the use of an approved Solar Energy System is discontinued for any reason other than temporary repair, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a Solar Energy System is to be retained and

reused, the owner or operator shall also inform the Building Inspector of this in writing at the same time. Any such reuse shall require a new permit, and also site plan review where applicable. If such new permit is not obtained in one (1) year, the system shall be deemed abandoned.

#### **H. Maintenance Procedures and Fees.**

1. Where site plan review is required, a special use permit must be obtained within six (6) months after approval from the Zoning Board of Appeals (ZBA) is received. Otherwise, a new site plan review approval must be first obtained.

Once a special use permit is obtained, completion of the project must occur within twelve (12) months, which time is of the essence. If such construction is timely and properly completed, the Code Enforcement Officer shall issue a Certificate of Compliance. No Solar Energy System may be activated or used until such certificate is issued.

If the project is not completed and fully operational in said twelve (12) months, a certificate of compliance shall not be issued, the special use permit shall be automatically revoked, and before any more work can be done on the project, a new special use permit must be obtained after, where applicable, a new site plan review.

2. Inspections. Upon reasonable notice, the Town of Ossian Code Enforcement Officer (CEO) or his or her designee may enter a lot on which a Solar Energy System has been constructed for the purpose of compliance with all requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed one method of reasonable notice. Any fee or expense associated with this inspection shall be borne entirely by the permit holder/applicant and/or owner and/or operator. Irrevocable consent to such inspection shall be deemed given by the applicant upon submission of the application for a permit and shall be contained in the written application for same signed by all property owners and applicants.
3. General complaint process. During construction the Code Enforcement Officer can issue a stop order at any time for any violations of a site plan or permit, which stop work order shall be complied with immediately.
4. Continued operation. A Solar Energy System shall be maintained in good condition and in continuous operation at all times, subject to reasonable maintenance and repair outages. Further, the Code Enforcement Officer shall also have the right to request documentation from the owner for a Solar Energy System regarding the system's usage at any time, which request shall be complied with within seven (7) days.
5. Removal and Remediation. Other than is provided above where reuse has been requested and timely obtained, where a solar energy system has been discontinued, abandoned, or where the permit has been revoked, such system shall be dismantled, all remnants thereof removed from the property owner(s)'s land, and full soil remediation for ground-mounted systems shall be fully completed. All such removal and remediation shall occur within six (6) months after both (1) such discontinuance, abandonment or revocation has occurred, and (2) the Code Enforcement Officer issues an Order to Remedy directing such removal and

remediation with a one-time extension at the discretion of the Code Enforcement Officer. All such work shall be inspected for satisfactory compliance by the Code Enforcement Officer. The soil remediation required is that the land on and near where such ground-mounted systems are located be properly landscaped to the Code Enforcement Officer's satisfaction and planted to support vegetation and natural plant life (native and non-invasive) of that area to the extent such existed prior to installation.

The requirement for said removal and remediation shall be the joint and severable obligation and liability of each and every applicant, landowner, operator, and successor of said system. If said removal and remediation is not completed to the satisfaction of the Code Enforcement Officer in the time allowed, the Town may seek all remedies allowed by law and this Local Law. As one such remedy, the Town may, but does not have to, conduct the removal and remediation itself, and charge all costs and expenses to the aforesaid parties obligated to perform same, together with all legal fees and related costs to fully enforce and collect all such sums, along with all civil penalties set forth herein.

6. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Solar Energy System shall be made by the Code Enforcement Officer, who shall provide the Solar Energy System owner, applicant, landowner and successors with written notice and an Order to Remedy by personal service or certified mail. The solar energy system shall be considered abandoned when it ceases to operate consistently for one (1) year.
7. Application Fees.
  - a. Site plan application for Ground-Mounted Solar Energy Systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution. In addition, the applicant shall be responsible to pay, up front, for all engineering, legal and other professional expenses reasonably incurred by the Town throughout its review process. Failure to pay said fee and expenses shall suspend the site plan review process.
  - b. Fee for issuance of a special use permit. In addition to any site plan application fee, all applicants shall pay a special use permit fee as follows:

Building-Mounted, Ground-Mounted or Rooftop-Mounted Solar Energy System:  
one-half (1/2) of one percent (1%) of the project cost, or such other amount as the Town Board may, from time to time, determine by resolution.
8. Prior to the issuance of a special use permit, the applicant shall document to the Town that all applicable federal, state, county and local permits have been obtained.
9. In the context of the requirement of site plan approval, the Town of Ossian Planning Board may:

For Ground-Mounted Solar Energy Systems where review is required by the Board pursuant to this Article, grant site plan approval, deny site plan approval, or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a site plan approval, the applicant must obtain a special use permit from

the Zoning Board of Appeals (ZBA) for the Ground-Mounted Solar Energy System before the construction of the project can be commenced.

10. The ZBA, in issuing a special use permit, can condition its issuance on the applicant providing a bond in such amount and on such terms as the ZBA requires for land reclamation at the end of the system's use.
11. Any changes or alterations during or after construction to a Ground-Mounted Solar Energy System cannot be done until amendment to any previously issued building permit and/or site plan (if required) has (have) first been obtained, subject to all requirements of this Code.

**I. Tier 3 Requirements if This Law is Superseded.**

Although this law totally prohibits Tier 3 Solar Energy Systems in the Town of Ossian, if this prohibition is superseded by Article 10 of the Public Service Law or any other Federal or State Law, Rule or Regulation, the following factors should be considered in determining whether any Tier 3 Solar Energy System should be allowed.

1. Tier 3 Battery Energy Storage Systems applications or submissions shall include the following information:
  - a. If the property of the proposed project is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements. Submission of landowner lease to determine consistency with the Decommissioning Plan and other Town requirements.
  - b. Plans and drawings for the Tier 3 Solar Energy System signed by a Professional Engineer showing the proposed layout of the Solar Energy System along with providing a description of all components, existing vegetation, any proposed clearing and grading of the lot(s) involved, any anticipated or possible storm water or erosion disturbances, and utility lines (both above and below ground) on the site and adjacent to the site.
  - c. Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing Buildings or structures and uses on any parcel within 500 feet of the outer perimeter of the Solar Energy System.
  - d. Equipment specification sheets shall be provided for all Solar Panels, significant components, mounting systems, and inverters that are to be installed.
  - e. A Property Operation and Maintenance Plan which describes all ongoing or periodic maintenance of the Solar Energy System and property upkeep, such as mowing and trimming.
  - f. Vegetative Management Plan, including prioritization of native, non-invasive, pollinator species and minimizes the use of pesticides to the greatest extent. Seed mix, seeding dates and establishment methods provided.
  - g. Clearing, grading, storm water and erosion control plan. Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Ossian Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Tier 3 Solar Energy System on the site.

- h. Data on anticipated truck trips per day, including during peak material delivery periods.
  - i. Viewshed/line of sight analysis, at end of construction and in 10 years.
  - j. Visual renderings of the proposed.
  - k. Written and visual record of original site condition.
  - l. Any such additional information as may be required by Town, including the Town's professional engineer or consultant, Town Attorney or Code Enforcement Officer.
  - m. At its sole discretion, the Town may refer an application for a Tier 3 Solar Energy System to one or more private consultants for review to assist such Board in properly fulfilling its duties. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town may require the Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval, either Board may require that additional monies be deposited with the Town before further review of the application will continue. The Town may suspend indefinitely the review of any application as a result of the failure of the Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of decisions for such applications.
  - n. If a Tier 3 Solar Energy System is proposed to be developed on land that is or could be in agricultural production, Applicant shall demonstrate how the proposed development complies with the then current guidelines as may be established by the New York State Department of Agriculture and Markets relating to Solar Energy Projects Construction Mitigation for Agricultural Lands.
2. Other Requirements for Tier 3 Systems:
- a. Height. The system shall have a height restriction of no more than 20 feet above ground level. Panels shall be measured at the highest point when oriented at maximum tilt.
  - b. Setbacks. Tier 3 Solar Energy Systems must be sited to create a front setback of no less than 350 feet from public roadways and setbacks of 100 feet from all side and rear property lines. In addition, no Tier 3 Solar Energy System shall be located closer than 300 feet from any residential structure located on another parcel, measured from the perimeter fence-line of the project or panels.
  - c. Lot/Parcel Size. Tier 3 Solar Energy Systems shall only be located on parcels with a minimum lot size of 25 acres.

- d. Lot/Parcel Coverage.
  - 1) Tier 3 Solar Energy Systems can only cover up to 80% of any lot or parcel, excluding in said calculation any Prime Farmland acreage thereon.
  - 2) No Tier 3 Solar Energy System shall be located on any Prime Farmland. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland. It is the express intention of the Town of Ossian that no variance or hardship request be granted to permit increased coverage by Tier 3 Solar Energy Systems on Prime Farmland by any board or commission or other agency having legal authority to consider and grant such a variance or hardship request.
  - 3) The coverage area shall be determined by the area covered by the perimeter of the Solar Energy System at minimum tilt.
- e. Fencing and Screening. All Tier 3 Solar Energy Systems must be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed and maintained on the entrance and perimeter of the fencing. The fencing and the system may be required to be further screened by landscaping to avoid adverse aesthetic impacts. Enhanced screening and buffering for Tier 3 Solar Energy Systems that are placed adjacent to residentially zoned areas, residential lots or abut a public road shall be required.
- f. Number of Tier 3 Solar Energy Systems Allowed Per Lot. Only one Tier 3 Solar Energy System shall be allowed per lot or parcel, regardless of lot size.
- g. Recent Changes of Lot/Parcel. In order to prevent circumvention of the size and coverage restrictions set forth above, when considering such restrictions the determining board shall consider the lot or parcel to be the smallest configuration of the physical area where the Tier 3 Solar Energy System is being proposed that has existed as a separate lot or parcel (with its own Tax Identifier Map Parcel Number) in the official tax records of the Town of Ossian within the five (5) years immediately preceding the application seeking approval for such Tier 3 Solar Energy System. This provision is specifically intended to prevent any owner of land from combining or subdividing multiple parcels of land in order to permit siting of larger Tier 3 Solar Energy Systems than would have been otherwise allowable pursuant to these regulations.
- h. Vegetation and Habitat. Tier 3 Solar Energy System owners/developers shall develop, implement and maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators. To the extent practicable, when establishing perennial vegetation and beneficial foraging habitat, owners/developers shall use native plant species and seed mixes.
- i. Any Tier 3 Solar Energy System shall be fully accessible on adequate roads for all emergency service vehicles and personnel.
- j. After completion of a Tier 3 Solar Energy System, the Applicant shall provide a post-construction certificate from a Professional Engineer registered in New York

State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.

- k. Compliance with regulatory agencies. The Applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county and local agencies having jurisdiction and approval of powers related to the completion of a Tier 3 Solar Energy System.
- l. The development and operation of a Tier 3 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 Ossian or other federal or state regulatory agencies.
- m. A fire protection and emergency response plan, created in consultation with and approved by the local and/or Town contracted fire department and the County Office of Emergency Management.
- n. Decommissioning. See Section 4-27.
- o. Community Benefit Agreement. The owners or developers and landowners of the property upon which a Tier 3 Solar Energy Systems is to be developed shall be required to enter into a community benefit agreement with the Town for payment by the owners, developers or landowners to the Town of an agreed upon monetary amount or provision of a specified public improvement or improvements that shall act to offset the potential negative impacts that may be associated with a Tier 3 Solar Energy System.
  - 1) At its sole discretion, the Ossian Town Board may refer an application for a Tier 3 Solar Energy System to one or more private consultants to assist such Board in negotiating, drafting and/or reviewing the required community benefit agreement. Such consultants may include a professional engineer, attorney, planning consultant or other specialist. All expenses incurred by the Town for this purpose shall be reimbursed to the Town by the Applicant within thirty (30) days of the Town issuing a detailed invoice to Applicant requesting reimbursement for the same. At its discretion and at any time during the application process, the Town Board may require that Applicant furnish a deposit in an amount that it deems initially sufficient to be used for reimbursement of such expenses. Any such deposit shall be held in a non-interest bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Should such deposit be depleted prior to final approval of the required community benefit agreement, the Town Board may require that additional monies be deposited with the Town before further processing of the community benefit agreement will continue. The Town Board may suspend indefinitely the negotiation and drafting and review of the community benefit agreement as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants.
  - 2) No building permit may be issued for any approved Tier 3 Solar Energy System until such time as a community benefit agreement has been executed by all parties.



- p. Road Use Agreement. Prior to issuance of or as a condition of any required permits for a Tier 3 Solar Energy System, the Applicant and its general contractor shall enter into a written Road Use Agreement benefitting the Town and in a format acceptable to the Town at its sole discretion. Such Road Use Agreement will require Applicant and its General Contractor to indemnify and hold the Town harmless from any and all damage to the roadways within the Town that may result from the development of Applicant's Tier 3 Solar Energy System. As a part of such Road Use Agreement, Applicant shall provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Ossian at its sole discretion), benefitting the Town, that shall ensure the indemnification and hold harmless provisions stated above.
- 1) In the event that any damage is done to any Town road as a result of the development of an Applicant's Tier 3 Solar Energy System, said Applicant and/or its General Contractor shall be responsible to perform repairs to such road that are acceptable to the Town Highway Superintendent in his/her reasonable discretion.
  - 2) Such repairs shall be completed within sixty (60) days of when written notice of a demand to repair was personally served or sent via certified mail to Applicant or its General Contractor. Should Applicant or its General Contractor fail to effectuate such repairs within sixty (60) days, or within a different timeline at the discretion of the Highway Superintendent, the Town shall be permitted to execute on the irrevocable financial security bond (or other form of surety) with written notice to Applicant or its General Contractor.
  - 3) The provisions of the Road Use Agreement required hereby and the requisite financial security bond (or other form of surety) shall remain in full force and effect for no less than one year after all construction has been completed and the project has been certified as complete by a professional engineer.
  - 4) No building permit may be issued for any approved Tier 3 Solar Energy System until such time as a Road Use Agreement has been executed by all parties.
- q. Traffic Routes. Construction and delivery vehicles for Solar Energy Systems shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include;
- 1) Minimizing traffic impacts from construction and delivery vehicles.
  - 2) Minimizing Solar Energy System related traffic during times of school bus activity.
  - 3) Minimizing wear and tear on local roads.
  - 4) Minimizing impacts on local business operations.
  - 5) Solar Energy System Permit conditions may limit solar Energy System related traffic to specified routes and include a plan for disseminating traffic route information to the public.

## **SECTION 4-25. TELECOMMUNICATION FACILITIES**

### **A. Application.**

No telecommunication facility shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a special use permit and in conformity with these regulations. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.

### **B. General Criteria.**

No Special Use Permit or renewal thereof or modification of a current Special Use Permit relating to a Telecommunication Facility shall be authorized by the ZBA unless it finds that such Telecommunication Facility:

1. Is necessary to meet current or expected demands for service;
2. Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies;
3. Is considered a public utility in the State of New York;
4. Is designed and constructed in a manner which minimizes visual impact to the extent practical;
5. Complies with all other requirements of this local law, unless expressly superseded herein;
6. Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.

### **C. Co-Location.**

1. The shared use of existing Telecommunications Facilities shall be preferred to the construction of new Facilities. Additionally, where such shared use is unavailable, location of antenna on pre-existing structures shall be considered. Any special permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within (share) an existing Telecommunication Facility or upon an existing structure. Copies of written requests and responses for shared use shall be provided. The application shall also include an adequate inventory report specifying existing Telecommunication Facility sites and structures exceeding 75% of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to new construction.
2. The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on existing Telecommunications Facility sites or other structures in the inventory due to one or more of the following reasons:

- a) The planned equipment would exceed the structural capacity of existing and approved Telecommunication Facilities or other structures, considering existing and planned use for those facilities;
  - b) The planned equipment would cause radio frequency interference with other existing or planned equipment which cannot be reasonably prevented;
  - c) Existing or approved Telecommunications Facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
  - d) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structure;
  - e) The property owner or owner of the existing Telecommunication Facility or other structure refuses to allow such co-location.
3. The applicant must examine the feasibility of designing a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. The scope of this analysis shall be determined by the ZBA for special use permit approvals. This requirement may be waived, provided that the applicant demonstrates that the provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:
- a) The number of FCC licenses foreseeable available for the area;
  - b) The kind of tower site and structure proposed;
  - c) The number of existing and potential licenses without tower spaces/sites;
  - d) Available spaces on existing and approved towers, and;
  - e) Potential adverse visual impact by a tower designed for shared usage.

**D. Submission of Application and Site Plan.**

All applications for a special use permit shall be by written application on forms provided by the CEO. The application shall include a site plan setting forth the specific site data on a map, acceptable in form and content to the Town ZBA, which shall be prepared to scale and in sufficient detail and accuracy and which shall show the following:

- 1. The location of property lines and permanent easements;
- 2. The location of the communications tower, together with guy wires and guy anchors, if applicable;
- 3. A side elevation or other sketch of the tower showing the proposed antenna;
- 4. The location of all structures on the property and all structures on any adjacent property within 10 feet of the property lines, together with the distance of those structures to the communications tower;
- 5. The names of adjacent landowners as appears on the Town of Ossian's Assessor's records;

6. The location, nature and extent of any proposed fencing, landscaping and/or screening;
7. The location and nature of proposed utility easements and access road, if applicable;
8. A completed visual Environmental Assessment Form (Visual EAF) and a landscaping plan addressing other standards listed within this Section with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the Visual EAF. The board may require submittal of a more detailed visual analysis based on the results of the Visual EAF.
9. A grid or map of all the owners/applicant's existing communications tower site areas in the Town of Ossian and site areas proposed or projected by the owner/applicant for installations for a period of two years.

**E. Dimensional Standards.**

1. A fall zone around any tower constructed as part of a telecommunications facility must have a radius at least equal to the height of the tower and any antenna(s) upon its zenith. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not contain any structure other than those associated with the telecommunications facility. If the facility is attached to an existing structure, relief may be granted by specific permission of the ZBA on a case-by-case basis.
2. All telecommunications facilities shall be located on a single parcel.
3. All telecommunication facilities shall comply with the setback standards of the Agricultural Zoning District. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. A lot leased or owned for the purposed of construction of a tower as part of a telecommunications facility shall not result in the creation of a nonconforming lot.

**F. Lighting and Markings.**

1. Towers shall not be artificially lighted and marked beyond the requirements of the Federal Aviation Administration (FAA).
2. Notwithstanding the preceding paragraph, an applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the ZBA, such a requirement would be of direct benefit to public safety.

**G. Appearance and Buffering.**

1. The use of any portion of a telecommunications facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.

2. The facility shall have the least practical visual effect on the environment, as determined by the ZBA. Any tower that is not subject to FAA-markings shall otherwise:
  - a) Have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the ZBA; or
  - b) Be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its designed function.
3. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
4. The ZBA shall require that the facility have appropriate vegetative buffering around the fences of the tower base area, accessory structure and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, or public roads. Such screening shall include the maximum feasible retention of existing vegetation.
5. Equipment or vehicles not used in direct support, renovations, additions or repair of any telecommunications facility shall not be stored or parked on the facility site.
6. A monopole or guyed tower (if sufficient land is available to applicant) is preferred over a freestanding communications tower.

#### **H. Traffic, Access and Safety.**

1. Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways must provide adequate emergency vehicles and service access. The access way shall be constructed to closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
2. Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out onto a public thoroughfare.
3. Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by fencing at least eight feet in height, the top foot of which may, at the discretion of the ZBA in deference to the character of the neighborhood, be comprised of three strands of barbed wire to discourage unauthorized access to the site.
4. Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting should only occur when the areas within the fenced perimeters has been entered.
5. A locked gate at the junction of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

**I. Security and Removal.**

1. At the time of submittal of the application of a special use permit for a telecommunications facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(s) dedicated solely for use within a telecommunications facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than 12 consecutive months. Upon removal of said facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.
2. At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the telecommunications facility and property restoration with the municipality as the assignee, in an amount approved by the ZBA, but not less than \$30,000.
3. At times of renewal or modification of the special use permit, the ZBA may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the telecommunications facility and property restoration.

**SECTION 4-26. WIND ENERGY FACILITIES**

**A. Purpose**

The Town Board of the Town of Ossian hereby adopts the rules and procedures for creating Wind Energy Facilities to preserve and protect the character of the Town, to allow consideration of the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate the placement of such systems so that prime farmland, important scenic vistas and the public health, safety and welfare will not be jeopardized.

**B. Authority**

The Town Board of the Town of Ossian adopts this Section under the authority granted by:

1. Section 709.00 IX of the New York State Constitution, § 2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6) and (7).
3. New York Municipal Home Rule Law, § 10 (l)(i) and (ii) and § 10 (l)(a)(6), (11), (12) and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3).

5. New York Town Law § 130 (1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of Streets and Highways), (7-a)(Location of Driveways), (11) (Peace, Good Order and Safety), (15)(Promotion of Public Welfare), (15-a)(Excavated Lands), (16)(Unsafe Buildings), (19)(Trespass), and (25)(Building Lines).
6. New York Town Law § 64 (17-a)(Protection of Aesthetic Interests) and (23)(General Powers).

### **C. Findings**

The Town Board of the Town of Ossian finds and declares that:

1. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town, and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
2. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.
5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.
6. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited.
7. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.
8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.
10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

#### **D. Definitions**

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

1. AGRICULTURAL OR FARM OPERATIONS – Means 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 New York Agriculture and Markets Law § 301 and "timber processing" as defined in subdivision 14 of New York Agriculture and Markets Law § 301. 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.
2. EAF – Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.
3. RESIDENCE – Means any dwelling suitable for habitation existing in the Town of Ossian on the date SEQRA for the specific application is completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multi-dwelling or multi-purpose building, but shall not include correctional institutions.
4. SEQRA – The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.
5. SOUND PRESSURE LEVEL – Means the level which is equaled or exceeded a stated percentage of time. An L<sub>10</sub> – 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.
6. SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS") – A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.
7. SITE – The parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind



Energy Facility or has entered an agreement for said Facility or a setback agreement and received the required variance shall not be considered off-site.

8. TOTAL HEIGHT – The height of the tower and the furthest vertical extension of the WECS.
9. WIND ENERGY CONVERSION SYSTEM ("WECS") – A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill"). A WECS is classified as a Tier 1, Tier 2, or Tier 3 WECS as follows:
  - a. Tier 1 – A small Wind Energy Conversion System as defined above.
  - b. Tier 2 – Unless it qualifies as a Tier 1, a Tier 2 WECS is a system that generates no more than 110% of the electricity consumed on the site or more than one site or property within the geographic limits of the Town of Ossian owned by the same person(s), entity, farm or business over the previous 12 months. Such system may include a WECS that is developed, operated and maintained by a third party by lease agreement or through a power purchase agreement, but in no event shall such system produce power in excess of 110% maximum yield as referenced herein.
  - c. Tier 3 – Tier 3 WECS's are systems that are not included in the list for Tier 1 and Tier 2 WECS.
10. WIND ENERGY FACILITY – Any Wind Energy Conversion System, including Small Wind Energy Conversion Systems, or Wind Measurement Tower, including all related infrastructures, electrical lines and substations, access roads, and accessory structures.
11. WIND MEASUREMENT TOWER – A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

**E. Where Allowed**

Subject to the provisions of this section, certain WECS shall be allowed as follows:

1. Tier 1 WECS's are permitted outright throughout the Town.
2. Except for Tier 2 WECS's used onsite for agricultural purposes, no Tier 2 system shall be located on Prime Farmland.
3. All Tier 3 WECS's are prohibited throughout the Town.

## **F. Permits Required**

The following shall apply to all Tier 2 WECS's:

1. No Wind Energy Facility shall be constructed, reconstructed, modified or operated in the Town of Ossian except in compliance with this Section.
2. No WECS, except Small WECS, shall be constructed, reconstructed, modified or operated in the Town of Ossian, except in a Wind Energy Facility, pursuant to an application for special use permit approved pursuant to this Section.
3. No Wind Measurement Tower shall be constructed, modified or operated in the Town of Ossian, except pursuant to a Special Use Permit issued pursuant to this Section, except as allowed by subdivision H of this Section.
4. Special Use Permits for Wind Energy Facilities shall be issued by the Town Zoning Board of Appeals (ZBA).
5. Exemptions. No permit or other approval shall be required under this Section for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and one-half times its total height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in total height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with this Section, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town Code Enforcement Officer to demonstrate compliance with the setback requirements.
6. This Section shall apply to all areas of the town.
7. Transfer. No transfer of any Wind Energy Facility or Special use Permit, nor sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town ZBA, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Section, and the transferee's demonstration, in the sole discretion of the Town ZBA that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor or of any other party under this Section unless the entire interest of the transferor in all facilities in the town is transferred and there are no outstanding obligations or violations, all as determined by the Town ZBA.
8. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town ZBA approval when there will be (1) no increase in total height; (2) no change in

the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

**G. Applicability**

1. The requirements of this Section shall apply to all Wind Energy Facilities proposed, operated, modified or constructed after the effective date of this Local Law.
2. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law shall not be required to meet the requirements of this Section, provided, however, that:
  - a. Any such pre-existing Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Section prior to recommencing production of energy.
  - b. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Section.
  - c. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.
3. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Section shall not be deemed expansions of a nonconforming use or structure.

**H. Applications for Tier 2 Wind Energy Conversion Systems Special Use Permits and Wind Energy Facilities**

A joint application for creation of a Tier 2 Wind Energy Facility and Special Use Permit for individual WECSes shall include the following:

1. Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is

familiar with the proposed applications and (ii) authorizing the submission of the application.

3. Address or other property identification of each proposed tower location, including Tax Map section, block, and lot number.
4. A description of the project, including the number and maximum rated capacity of each WECS.
5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following:
  - a. Property lines and physical dimensions of the site.
  - b. Location, approximate dimensions, and types of major existing structures, including all residences and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed Wind Energy Facilities.
  - c. Location and elevation of each proposed WECS.
  - d. Location of all above ground utility lines on the Site or within one (1) radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.
  - e. Location and size of structures above 35 feet within a five hundred (500) foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas, and slender or open lattice towers are not considered structures.
  - f. Proposed boundaries of the Wind Energy Facilities.
  - g. To demonstrate compliance with the setback requirements of this Section, circles drawn around each proposed tower location equal to:
    - (1) One and one-half (1 1/2) times the tower height radius.
    - (2) Five hundred (500) foot radius.
    - (3) One thousand (1,000) foot radius.
  - h. Location of residential structures within one thousand (1,000) feet of each proposed tower. The distance from the center of the tower to any off-site residence within one thousand (1,000) feet shall be noted.
  - i. All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.
6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest

point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.

7. Landscaping Plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Wind Energy Facilities. The applicant may delay submitting this list until the Town ZBA calls for a public hearing on the application.
10. Decommissioning Plan: See Section 4-27.
11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and include a time limit for acting on a complaint.
12. An application shall include information relating to the construction/installation of the Wind Energy Conservation Facility as follows:
  - a. A construction schedule describing commencement and completion dates; and
  - b. A description of the routes to be used by construction and delivery vehicles, as well as the gross weights and heights of those loaded vehicles.
13. Completed Part I of the Full EAF.
14. Applications for Special Use Permits for Wind Measurement Towers subject to this Section may be jointly submitted with the WECS.
15. For each proposed WECS include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturer's Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town ABA shall issue a positive declaration of environmental significance.
17. If a positive declaration of environmental significance is determined by the ZBA as the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:
  - a. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSes and the expected durations of the flicker at those locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
  - b. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two (2) locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - c. A fire protection and emergency response plan, created in consultation with and approved by the local fire department and the County Office of Emergency Management.
  - d. Noise Analysis: A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site. (If access to the nearest residence is not available, the Town ZBA may modify this requirement.) The noise analysis shall provide pre-existing ambient noise levels and include low frequency noise.
  - e. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties adjoining WECS Sites, including properties across public roads from the Site.
  - f. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, and other wireless communications.

- g. Tower design information sufficient to demonstrate compliance with wind loading requirements.
- h. Analysis of potential ice throwing and damage from blade throw impacts.
- i. A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.

**I. Application for Tier 2 Review Process**

1. Applicants may request a pre-application meeting with the Town ZBA or with consultants retained by the Town ZBA for application review.
2. Three (3) copies of the application shall be submitted to the Town CEO. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
3. The Town CEO or Town-designated consultants shall, within thirty (30) days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Section is included in the application.
4. If the application is deemed incomplete, the Town ZBA or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSes proposed is increased.
5. Upon submission of a complete application, including the grant of any application waiver by the Town ZBA, the Town CEO shall transmit the application to the Town ZBA. The applicant shall post the completed application and any accepted environmental impact statements on the Internet.
6. The Town ZBA shall hold at least one (1) public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Energy Overlay District, and published in the Town's official newspaper, no less than ten (10) nor more than twenty (20) days before any hearing, but, where any hearing is adjourned by the Town ZBA to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
7. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.

8. Notice of the project shall also be given, when applicable, to (1) the County Planning Board, if required by General Municipal Law § 239 and § 239-m, and (2) to adjoining Towns under Town Law § 264.
9. SEQRA Review. Applications for WECS are deemed Type 1 projects under SEQRA. The Town ZBA shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town ZBA may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town ZBA shall issue a Statement of Findings, which Statement may also serve as the Town's decision on the applications.
10. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), and the report of the recommendation of the Town ZBA (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town ZBA may approve, approve with conditions, or deny the applications in accordance with the standards in this Section.
11. All other provisions of this law concerning the review process shall apply.

**J. Standards for Tier 2 WECS**

The following standards shall apply to all WECSes and related infrastructure, unless specifically waived by the Town ZBA as part of a permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
2. No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to Town Codes. Applications may be jointly submitted for WECS and telecommunications facilities.
3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
4. Lighting of Tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
5. All applicants shall use measures to reduce the visual impact of WECSes to the extent possible. WECSes shall use tubular towers. All structures in a project shall be finished in a single non-reflective matte finished color or a



camouflage scheme. Individual WECSes within a Wind Energy Facility shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Town, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising or graphics shall be on any part of the tower, hub or blades.

6. The use of guy wires is prohibited.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference, including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSes causing the interferences.
8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.
9. WECSes shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.
10. WECSes shall be located in a manner that minimizes significant impacts on rare animal species in the vicinity, particularly bird and bat species.
11. WECSes and related infrastructure shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.
13. Construction of the WECS shall be limited to the hours of 7 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.
14. Substations required to serve WECSes shall be screened from public view to the extent possible.

15. The Town of Ossian shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board given the nature and scope of the project proposed by the applicant.
16. Any construction or ground disturbance involving agricultural land shall be done in accordance with the NYS Department of Agriculture and Markets' publication titled *Guidelines for Agricultural Mitigation for Wind Power Projects*.
17. No Tier 2 WECS, other than for agricultural operations, shall be located on Prime Farmland.

**K. Required Safety Measures for Tier 2 WECS**

1. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
2. If the Town ZBA requires, or if the property owner submits a written request that fencing be required, a six (6) foot high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
3. Appropriate warning signs shall be posted. At least one (1) sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24-hour, 7 days a week coverage. The Town ZBA may require additional signs based on safety needs.
4. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole.
5. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.
6. WECSes shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
7. Accurate maps of the underground facilities shall be filed with the town and with "Dig Safely New York (1-800-9627962)" or its successor.

#### **L. Traffic Routes For Tier 2 WECS**

1. Construction of a WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS-related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and minimizing impacts on local business operations. Permit conditions may require remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public, and all applicable state, county, and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.
2. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town ZBA, sufficient to compensate the Town for any damage to local roads.
3. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway, including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway

#### **M. Setbacks for Tier 2 WECS**

1. The statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 30$  dBA measured at the closest exterior wall of any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 30 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
2. In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by

eight (8) dBA for center frequencies between one hundred sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred twenty-five (125) Hz.

3. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
4. Any noise level falling between two whole decibels shall be the lower of the two.
5. Each WECS shall be set back from Site boundaries, measured from the center of the WECS, a minimum distance of:
  - a. 1,400 feet from non-participating Residences, measured from the exterior of each Residence.
  - b. 1.2 times the WTG Total Height from the nearest Site boundary property line.
  - c. 1.2 times the WTG Total Height from the right of way of all public roads.
  - d. 1.2 times the WTG Total Height from above-ground utilities, unless waived by the Utility Companies.
  - e. 1.5 times the WTG Total Height from non-participating permanent structures.
  - f. 100 feet from state-identified wetlands as measured from any part of the base or Foundation.

#### **N. Tier 2 Noise and Setback Easements; Variances**

In the event the noise levels resulting from a WECS exceed the criteria established in this Section, or a setback requirement is not met, a waiver will be granted from such requirement by the Town ZBA in the following circumstances, where the adjoining owner's property is considered part of the Site:

1. Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this Section, and that they wish to be part of the Site as defined herein, and that consent is granted to (a) allow noise levels to exceed the maximum limits otherwise allowed, or (b) allow setbacks less than required; and
2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town ZBA, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Section, or the acquisition of the burdened parcel by the owner of the benefitted parcel or the WECS.
3. In any case where written consent is not obtained, a variance from the Town ZBA shall be required.

**O. Creation of Tier 2 Wind Energy Facility and Issuance of Special Use Permits**

1. Upon completion of the review process, the Town ZBA shall, upon consideration of the standards in this Section and the record of the SEQRA review, issue a written decision setting forth the reasons for approval, conditions of approval, or disapproval.
2. If approved, the Town ZBA will authorize Town CEO to issue a Special Use Permit for each WECS upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Section.
3. The decision of the Town ZBA shall be filed within five (5) days in the offices of the Town Clerk and Town CEO, and a copy mailed to the applicant by first class mail.
4. If any approved WECS is not substantially commenced within two (2) years of issuance of the permit, the Special Use Permit shall expire.

**P. Tier 2 Abatement**

1. If any WECS remains non-functional or inoperative for a continuous period of one (1) year, the applicant agrees that, without any further action by the Town ZBA, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town ZBA that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit

the Town ZBA's ability to order a remedial action plan after public hearing.

2. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEDA, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town ZBA all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested, necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

**Q. Limitations on Approvals; Easements on Town Property**

1. Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
2. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback or wind flow easement on such terms as the Town ZBA deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Section.

**R. Tier 2 Permit Revocation**

1. Testing Fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two (2) years, or more frequently upon request of the Town ZBA in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Section and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town ZBA to cure any deficiency. An extension of the 90-day period may be considered by the Town ZBA, but the total period may not exceed 180 days.
2. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90

days after written notice from the Town ZBA. The applicant shall have 90 days after written notice from the Town ZBA to cure any deficiency. An extension of the 90-day period may be considered by the Town ZBA, but the total period may not exceed 180 days.

3. Notwithstanding any other abatement provision under this Section, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Special Use Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town ZBA shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

## **WIND MEASUREMENT TOWERS**

### **S. Wind Site Assessment**

The Town ZBA acknowledges that prior to construction of a WECS, it may be necessary that a wind Site assessment be conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, may be permitted, but only as Special Use.

### **T. Applications for Wind Measurement Towers**

An application for a Wind Measurement Tower shall include:

1. Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (a) confirming that the property owner is familiar with the proposed applications and (b) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block and lot number.
4. Site plan.
5. Decommissioning Plan, based on the criteria in this Section for WECS, including a security bond or cash for removal.

#### **U. Standards for Wind Measurement Towers**

1. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property, and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
2. Special Use Permits for Wind Measurement Towers may be issued by the Town ZBA for a period of up to two (2) years. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

#### **THE FOLLOWING SECTIONS V THROUGH AA SHALL ONLY APPLY TO TIER 1 SMALL WIND ENERGY CONVERSION SYSTEMS**

#### **V. Purpose and Intent**

The purpose of this portion of this Section is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are used to reduce on-site consumption of utility power. The intent is to encourage the development of small wind energy systems and to protect the public health, safety and community welfare.

#### **W. Permitted Areas**

Small Wind Energy Systems may be permitted in any area of the Town upon issuance of a Special Use Permit. No such permit shall be required when the Tier 1 WECS is used for on-site agricultural purposes only.

#### **X. Applications**

Applications for Small WECS Special Use Permits shall include:

1. Name, address and telephone number of the applicant. If the applicant will be represented by an agent, the application shall include the name, address, and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (a) confirming that the property owner is familiar with the proposed applications and (b) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block, and lot number.



4. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow the manufacturer or distributor of the system.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

#### **Y. Development Standards**

All Small Wind Energy Systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Section that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of three (3) acres in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one (1) Small Wind Energy System tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one (1) lot for purposes of this Section.
3. Small Wind Energy Systems may be used primarily to reduce the on-site consumption of electricity.
4. Tower heights may be allowed as follows:
  - a. 65 feet or less on parcels between one (1) and five (5) acres.
  - b. 120 feet or less on parcels of five (5) or more acres.
  - c. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B

(commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

5. The maximum turbine power output is limited to 100 kW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible, and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible, a Small Wind Energy System:
  - a. Shall not project above the top of ridgelines;
  - b. If visible from public viewing areas, shall use natural landforms and existing vegetation for screening; and
  - c. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
11. At least one sign shall be posted on the tower at a height of five (5) feet, warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logos, or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - a. Tower-climbing apparatus located no closer than 12 feet from the ground.
  - b. A locked anti-climb device installed on the tower.
  - c. A locked, protective fence at least six (6) feet in height that encloses the tower.
13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground.
14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
15. To prevent harmful wind turbulence from existing structure, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250-foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
16. All Small Wind Energy System tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
17. All Small Wind Energy Systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.

## **Z. Standards**

A Small Wind Energy System shall comply with the following standards:

1. **Setback Requirements.** A Small WECS shall not be located closer to a property line than one and one-half (1 1/2) times the Total Height of the facility.
2. **Noise.** Except during short-term events, including utility outages and severe wind storms, a Small WECS shall be designed, installed, and

operated so that noise generated by the system shall not exceed 40 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

**AA. Abandonment of Use**

1. Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town ZBA.
2. All Small WECSes shall be maintained in good condition and in accordance with all requirements of this section.

**MISCELLANEOUS**

**BB. Tier 3 Requirements If This Law is Superseded**

Although this law prohibits Tier 3 WECS's in the Town, if this prohibition is superseded by Article 10 of the Public Service Law or any other State or Federal Law, Rule or Regulation, the following substantive factors should be considered in determining whether any Tier 3 system should be allowed:

1. No Tier 3 WECS shall be located on Prime Farmland. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland. It is the express intention of the Town of Ossian that no variance or hardship request be granted to permit increased coverage by Tier 3 Systems on Prime Farmland by any board or commission or other agency having legal authority to consider and grant such a variance or hardship request.
2. The provisions of paragraphs J, K, L, M and N of this section shall apply.
3. Section 4-27 shall apply.

**CC. Fees**

1. There shall be non-refundable Application fees as follows:
  - a. Tier 2 WECS Special Use Permit: \$50 per megawatt of rated maximum capacity
  - b. Tier 2 Wind Measurement Towers: \$20 per vertical foot per tower
  - c. Tier 2 Wind Measurement Tower Special Use Permit renewals: \$200 per Wind Measurement Tower
  - d. Tier 1 Small WECS: \$200

The cost of all legal notices and mailings shall be assessed to the applicant.

2. Building Permits

a. The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs, which shall be \$100 per permit request, plus the amount charged to the Town by the outside consultants hired by the Town to review the plans and inspect the work. In the alternative, if the Town consents, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for those unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans or certifications, or to conduct inspections as agreed by the parties.

b. The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and/or the applicable transmission Owner.

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

4. The Town Board may amend these fees by resolution after a properly noticed public hearing.

**DD. Tax Exemption**

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by paragraph 8 of that law.

**SECTION 4-27. DECOMMISSIONING**

The following decommissioning requirements shall apply to ALL TIER 2 BATTERY ENERGY STORAGE SYSTEMS, ALL TIER 3 SOLAR ENERGY SYSTEMS, AND ALL WIND ENERGY CONVERSION SYSTEMS, except Small Wind Energy Conversion Systems.

- A. Decommissioning Plan. The Applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
1. A complete description with supporting documentation and photographs detailing the pre-existing condition of the land prior to the building of the System, which must be verified as correct by the Town Board of the Town of Ossian. Any land on which the System is to be built that has been deforested or otherwise modified in whole or in part within two (2) years prior to the application shall be treated as if it were in such condition before such modifications occurred.
  2. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all energy storage and energy system components, structures, equipment, security barriers, and transmission lines from the site;
  3. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
  4. The anticipated life of the system;
  5. The estimated decommissioning costs and how said estimate was determined;
  6. The method of ensuring that funds will be available for decommissioning and restoration;
  7. The method by which the decommissioning cost will be kept current;
  8. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the system, such as but not limited to structural elements, building penetrations, means of egress, and required fire detection and suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  9. A listing of any contingencies for removing an intact operational system from service, and for removing a system from service that has been damaged by a fire or other event.
  10. The Decommissioning Plan shall run to the benefit of the Town of Ossian. It shall be signed and acknowledged by all applicants and all owners of the land on which the System(s) is(are) to be located, and be in such format as to allow it to be recorded in the Office of the Livingston County Clerk. Such plan shall, prior to commencement of construction, be recorded in said County Clerk's Office as an irrevocable deed restriction indexed against the property on which the System is to be constructed and located. All future owners of said property shall

be obligated to comply with the Decommissioning Plan if the Applicant or then owner(s) of the System fails to do so.

B. Decommissioning Fund. The Applicant must provide an irrevocable financial security bond (or other form of irrevocable surety acceptable to the Town of Ossian) for the removal of the System with the town of Ossian as the designated assignee/beneficiary in an amount equal to 110% of the estimated removal cost as determined by an engineering and/or demolition firm acceptable to the Town of Ossian. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation and/or any other anticipated increase in costs of removal. Each year after a System has been constructed, and no later than ten (10) days prior to the anniversary date of the issuance of the building permit for such System, the then owner/permit holder for the System shall provide the Town of Ossian Supervisor with written proof satisfactory to the Town that the aforesaid financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased as required above. Failure to timely comply shall cause an immediate automatic suspension of all permits and operation of all such Systems located on said premises until compliance satisfactory to the Town of Ossian is had. All costs relating in any way to determining the amount, acquiring, and maintaining said bond shall be borne jointly by the property owners and applicant/permit holders.

C. Operation, Removal and Remediation.

1. Continued operation. Each System shall be maintained in good condition and in continuous operation at all times, subject to reasonable maintenance and repair outages. Failure to do so shall be deemed an abandonment. The System shall be considered abandoned when it ceases to operate consistently for one year.
2. Removal and Remediation. Where a System has been discontinued or abandoned, or where the permit has been revoked, such system shall be dismantled, all remnants thereof removed from the property owner(s)'s land, and full remediation of the land to the pre-existing condition in paragraph A 1 directly above shall be fully completed. All such removal and remediation shall occur within six (6) months after such discontinuance, abandonment or revocation has occurred. All such work shall be inspected for satisfactory compliance by the Town Code Enforcement Officer. The soil remediation required is that the land on and near where such systems are located be properly landscaped to the Code Enforcement Officer's satisfaction and planted to support vegetation and natural plant life indigenous to that area to the extent such existed prior to installation.

The requirement for said removal and remediation shall be the joint and severable obligation and liability of each and every applicant, landowner, operator, and successor of said system. If said removal and remediation is not completed to the satisfaction of the Code Enforcement Officer in the time allowed, the Town may seek all remedies allowed by law and this Local Law. As one such remedy, the Town may, but does not have to, conduct the removal and remediation itself, and charge all costs and expenses to the aforesaid

parties obligated to perform same, together with all legal fees and related costs to fully enforce and collect all such sums, along with all civil penalties set forth herein.

3. The applicant(s), land owner(s) and operator(s) of each System shall abide by New York State Department of Agriculture and Markets Guidelines for agriculture mitigation upon decommissioning.



# ARTICLE 5. SUPPLEMENTAL REGULATIONS

## SECTION 5-1. CAMPING TRAILERS

The following regulations concerning camping trailers apply to each tax map parcel in the Town of Ossian, no matter how large or small said parcel may be.

- A.** On each tax map parcel that does not contain a permanent residential dwelling:
1. No more than two (2) camping trailers may be situated on said parcel at any time.
  2. For each camping trailer situated on said parcel, an annual permit must be obtained from the Zoning Officer prior to placing the camping trailer on the parcel, which permit must be renewed every twelve (12) months thereafter. Prior to such permit being issued, the camping trailer must be inspected by the Code Enforcement Officer and found to comply with the then current New York State Property Maintenance Code as well as all other applicable laws. To comply with the Town's Junk Yard Law, if there are two (2) camping trailers situate on the parcel, at least one must be registered and licensed with the New York State Department of Motor Vehicles. For each camping trailer there shall be one (1) combined annual fee for both the permit and the inspection.
- B.** On each tax map parcel that does contain a permanent residential structure:
1. No more than one (1) camping trailer may be situate on said parcel.
  2. No annual permit or fee shall be required.
  3. However, said camping trailer is still subject to all other laws, rules and regulations including but not limited to said Property Maintenance Code and said Junk Yard Law.
- C.** A camping trailer located on any tax map parcel in the town of Ossian, except those located in a licensed campground, cannot be used as a permanent residence on said tax map parcel, nor can it be resided in on said tax map parcel for more than six (6) months in any twelve (12) month period.
- D.** Every camping trailer located on a tax map parcel prior to enactment of this Local Law shall come into compliance with this Local Law within one (1) year after this law becomes effective.
- E.** Camping trailers are also subject to the provision of Section 5-6 B (1) infra with respect to storage.

## **SECTION 5-2. CORNER LOTS**

On corner lots, the sides facing both streets shall be considered front yards. Of the other sides, one shall be considered a rear yard and the other a side yard at the owner's option.

## **SECTION 5-3. EXCAVATION & GRADING FOR DEVELOPMENT**

- A.** No excavation can be done for the purpose of building without first obtaining a zoning permit.
- B.** No persons, firm or corporation shall strip, excavate, or otherwise remove top soil for sale or other use other than for use on the premises from which taken. Any area of land consisting of more than one acre from which top soil has been removed or covered over by fill shall be seeded to provide an effective cover crop within the first growing season following the start of said operation.

## **SECTION 5-4. FARM LABOR CAMPS**

- A.** Should any provision regulating farm labor camps within this zoning law be in conflict with the New York State Department of Agriculture and Markets Law, the state's provisions shall take precedence.
- B.** Farm labor camps shall meet all requirements of the New York State Sanitary Code, Uniform Fire Prevention and Building Code, and all other applicable laws, rules or regulations, including those set forth in this Local Law.

## **SECTION 5-5. FENCES**

No fence, hedge, wall, shrubbery, or other single post or tree shall cause obstruction to vision at street intersections, nor constitute a traffic or safety hazard.

## **SECTION 5-6. GENERAL PROPERTY MAINTENANCE**

### **A. Destroyed Property.**

Structures partially destroyed by any means, shall not be permitted to continue as such for a period in excess of six (6) months, and must be fully rehabilitated within said period.

### **B. Storage**

1. Busses, cars, trucks, truck bodies, shipping or storage containers, truck trailers or camping trailers shall not be used for storage purposes unless stored in an enclosed building, and shall never be used for residential or habitable space.
2. No front yard shall be used for any open storage of boats, camping trailers, utility trailers, motorized camping vans, major appliances or other equipment.

3. No new or used building material shall be left unhoused for more than 30 days unless they are to be used for a building for which a building permit has been issued and shall be removed from the premises not later than the date on which the building permit expires or within 30 days after the occupancy of the dwelling, whichever is the prior date.
- C. The above requirements are in addition to the Town's Junk Yard Law, Unsafe Structure Law and the Uniform Code.

## **SECTION 5-7. HEIGHT EXCEPTIONS**

- A. No building or structure shall exceed three stories in height, unless deemed appropriate by the ZBA.
- B. No building height limitation contained in this zoning law shall restrict the height of the following buildings or structures:
1. Church spires, cupolas, domes, or monuments.
  2. Water towers, chimneys, smokestacks, elevator or stair bulkheads, or cooling towers.
  3. Farm structures, silos, or flagpoles.
  4. Telecommunications facilities or utility transmission lines, poles, towers, or cables.
  5. Wind energy equipment provided that the placement of the equipment does not deprive the adjoining properties of access to solar sky space, and that the fall zone does not endanger other structures.
- C. None of the exceptions to the height regulations shall be used for human occupancy.

## **SECTION 5-8. HOME OCCUPATIONS**

### **A. Permitted Occupations.**

1. Permitted home occupations include, but shall not be limited to: lawyers, accountants, authors, engineers, architects, realtors, insurance agents/brokers, counselors, artists, teachers, beauticians, barbers, tailors, licensed massage therapists, and repair persons (excluding the repair of motor vehicles).
2. The ZBA may determine other professions to be appropriate for operation within a home. The CEO shall request an interpretation from the ZBA before issuing a permit for a profession not listed herein.

### **B. Prohibited Occupations.**

A home occupation shall not be interpreted to include commercial stables and kennels, restaurants, arcades, instruction of or services provided to groups exceeding four

persons, convalescent homes, mortuary establishments, garages or shops for the repair of motor vehicles and other trades and businesses of a similar nature.

**C. General Requirements.**

1. A home occupation shall only be permitted within a dwelling which is the full-time residence of the principal practitioner or in an accessory structure thereto which is normally associated with a residential use.
2. No more than two employees not residing within the dwelling containing the home occupation may report to work at such dwelling.
3. No more than 30% of the gross floor area of such residence shall be used for the conduct of a home occupation. No more than 40% of the floor area of an accessory structure shall be used for a home occupation.
6. In no way shall the appearance of the structure be altered or the occupation be conducted in a manner that would cause the premises to differ from its residential character either by the use of color, materials, construction, lighting, or the emissions of sound, noises, or vibrations.
7. No mechanical or electrical equipment shall be employed other than machinery or equipment customarily found in the home associated with a hobby or avocation not conducted for gain or profit or machinery or equipment which is essential in the conduct of the home occupation.
8. No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.
9. Up to one commercial vehicle may be used in connection with the home occupation. Such vehicle shall be parked in a designated driveway, garage, or other off-street parking area as provided for by this zoning law.
10. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.

**SECTION 5-9. LONG DRIVEWAYS**

For purposes of this Section, driveways which are more than 100 feet in length shall be considered long driveways. All long driveways shall be in conformance with the following:

**A. Design and Construction.**

1. Long driveways must be accessible by and visible to emergency vehicles.

2. Minimum pavement width shall be 14 feet.
3. Maximum Grade shall be 8%.
4. Household address numbers shall be prominently displayed at the entrance to the driveway so as to be clearly visible and identifiable to motorists.

**B. Waivers.**

The ZBA may waive some or all of the design and construction standards for long driveways if in their review it is determined that the driveway will not adversely affect the surrounding area, environment, or the health, safety and general welfare of Town residents.

## **SECTION 5-10. PRINCIPAL BUILDINGS**

- A. No single-family or two-family residential lot shall have erected upon it more than one principal building.
- B. No yard or other open space provided about any building for the purpose of complying with the provisions of this zoning law shall be considered to provide a yard or open space for any other principal building.
- C. When a new lot is formed so as to include within its boundaries any part of a former lot on which there is an existing building or use, the subdivision must be carried out in such a manner as it will not infringe upon any of the provisions of this Law either with respect to any existing structures or use and any proposed structures or use.

## **SECTION 5-11. SOLID FUEL-FIRED HEATING DEVICES**

**A. Purpose.**

The regulations of this section are intended to control the use, installation and operation of outdoor wood or other solid fuel-fired heating devices (SFHDs) to achieve the following objectives:

1. Health. To protect citizens from environmental hazards and to safeguard community health. In particular, to protect the health of citizens from fine particles in emissions generated by SFHDs. The Clean Air Act (CAA) required the U.S. Environmental Protection Agency (EPA) to establish standards for particulate matter. EPA's daily and annual fine particle National Ambient Air Quality Standards (NAAQS) were developed to protect the public from adverse health effects associated with exposure to fine particle pollution exposure. Sensitive populations protected by the CAA include persons who already have heart or lung diseases, children, and older adults. They experience serious health effects such as heart attacks, strokes, acute and chronic bronchitis, asthma episodes, reduced lung function, and other respiratory illnesses as a result of inhaling fine particle smoke which imbeds in their respiratory and circulatory systems. In addition to health effects, scientific studies

show inhalation results in increased hospital and emergency room visits, lost work and school days, and in rare cases, premature death.

2. Fire safety. To protect citizens and structures from fire safety risks from SFHDs that are not properly installed, do not have proper safety equipment such as spark arresters, or are installed in close proximity to other buildings.
3. Welfare. To ensure the welfare of citizens and value of neighboring property are protected from negative effects of SFHDs.
4. Education. To educate citizens about the proper use, installation and operation of SFHDs and assist property owners and managers in maintaining compliance with these regulations.
5. Each solid fuel-fired heating device situated on a tax map parcel must be located a minimum distance of at least fifty feet (50') away from the sides and rear of the structure being heated, as well as fifty feet (50') from all other structures.
6. With respect to a solid fuel-fired heating device situate on a lot prior to the effective date of this Local Law which is not in conformity with the setback and /or distance requirements of this law, said device can continue to exist. If in the future said device needs to be replaced, the new device may continue to be situate on the same footprint as the old, but only if the replacement occurs within one (1) year from the removal of the old device being replaced.

**B. Equipment Subject to Regulation.**

1. The provisions of this ordinance apply to SFHDs that are manufactured or used to burn any of the following:
  - a) Wood;
  - b) Wood pellets;
  - c) Wood and another fuel (a dual-fuel SFHD); or
  - d) Coal.
2. The provisions of this ordinance apply to all outdoor SFHDs, whether a primary, supplemental, residential, commercial, or industrial heat source, which include the following components:
  - a) SFHDs and their piping, chimney stacks, flues, and/or fans; and
  - b) Any other equipment, device, appliance or apparatus, or parts thereof, which are intended to be used as part of an SFHD.
3. Any accessory structure designed to surround the SFHD must meet the provisions of this ordinance. Accessory structures are also regulated by Model Community's zoning and subdivision ordinances.

### **C. Exempt Equipment and Activities.**

The regulations of this Section do not apply to:

1. Outdoor grills. Outdoor devices, equipment, appliance and/or apparatus used to grill or cook food using charcoal, wood, propane, or natural gas;
2. Fireplaces. Natural gas-fired fireplaces or traditional wood-burning fireplaces in the interior of a residential dwelling;
3. Non-SFHD heaters. Indoor heating devices which are not SFHDs, such as wood stoves;
4. Liquid fuel devices. Industrial gas or liquid petroleum fuel devices used on site of temporary construction, demolition, or maintenance activities;
5. Recreational fires. Recreational fires within the limits set by NYS and Livingston County;
6. Fire training and open burning sites. Fire training or permanent tree and brush open burning sites permitted under state, county, and local law;
7. Forced air furnaces. Forced air furnaces designed to burn fuel that warms spaces other than the space where the furnace is located, by the distribution of air heated by the furnace through ducts; and
8. Masonry heaters. Masonry heaters, either site built or factory built devices, in which the heat from intermittent fires burned rapidly in the firebox is stored in the refractory mass for slow release to building spaces. Masonry heaters typically have a firebox and heat exchange channels built from refractory components, through which flue gases are routed.

### **D. SFHD Requirements.**

SFHDs in the Town of Ossian shall meet all of the following requirements:

1. EPA Compliance. SFHDs must meet the EPA's New Source Performance Standards (NSPS) for residential wood heaters under Section 111 of the Clean Air Act. This shall include requirements for certification, installation, operation, and maintenance.
2. State, County, and Local Compliance. SFHDs must meet the most restrictive of applicable chimney stack height and design, and setback requirement found in NYS, Livingston County, or local law.
3. Chimney Stacks. Chimney stacks for SFHDs must meet the following:
  - a) The chimney stack must not have a rain cap installed.
  - b) The minimum exit height of the chimney stack must be at least 15 feet from the ground.

**E. Prohibited Fuels.**

The following shall be prohibited sources of fuel for SFHDs: Animal carcasses; asphalt products; chemicals; composition board; construction and demolition debris; food wastes; furniture; garbage; glossy or colored papers; hazardous solid waste; industrial solid waste; lawn clippings, yard waste or other vegetative matter; manure; materials containing plastic; materials containing synthetic or natural rubber; newsprint; packaging; paints and paint thinners; particleboard; plywood; sheetrock; tires; waste petroleum products; wiring; wood products that are painted, varnished, or treated with preservatives, and any wood that does not fit the definition of clean wood.

**SECTION 5-12. SWIMMING POOLS**

The following regulations shall apply to all permanently constructed swimming pools used for personal bathing or swimming that are 24 inches or more in depth or that have a water surface exceeding 250 square feet. This shall include both in ground and above ground swimming pools.

- A.** Any ladder or steps providing access to an above ground swimming pool shall be capable of being removed, raised, gated, or otherwise protected so that a person may not gain access to said pool when not in use.
- B.** Any swimming pool structure that is less than four feet in height must be safeguarded with a permanent protective fence. All swimming pools shall be surrounded by a fence of at least four feet in height.
- C.** All fencing shall be at least four, but not more than six feet in height and installed so as to encompass the entire perimeter of the swimming pool. Said fencing shall be structurally sound, durable, and must be maintained in sound operation condition.
- D.** All openings in the fencing shall be so constructed to prohibit the passage of a four-inch diameter sphere.
- E.** An entrance gate or gates shall be provided that has a self-closing and self-latching device. The latch shall be placed a minimum of three feet above the base of the fence.
- F.** All swimming pools shall comply with all state laws, rules and regulations.



# ARTICLE 6. DEVELOPMENT STANDARDS

## SECTION 6-1. LAND CONSERVATION

Special use permit approval by the ZBA is required for any proposed use which the Code Enforcement Officer finds fits into one or more of the following categories:

- A. Proposed construction would require the filling in or drainage of a natural, normally year-round swamp, marsh or wetland of one acre or more.
- B. The average slope of the proposed site is 15% or more.
- C. The proposed site is in a 100-year flood plain, as established by Federal Emergency Management Agency (FEMA).
- D. Trees and vegetation are planned to be completely removed from a site of one half (0.5) acre or more on which the average slope is 10% or more, unless under supervision of the Soil Conservation Services.

## SECTION 6-2. LANDSCAPING & SCREENING

### A. Intent.

The following standards are intended to assure an adequate degree of landscaping, screening, and buffering between land uses, particularly between residential and nonresidential uses, providing a balance between developed uses and open space, enhancing the visual and aesthetic appearance of the community, and encouraging preservation of existing natural features. Specifically, these regulations are intended to:

- 1. Encourage the landscaping of developments and to dissuade the unnecessary clearing and disturbing of land so as to preserve the natural and existing growth of vegetation and to replace removed or plant new vegetation which shall be indigenous to the region.
- 2. Provide natural visual screening of parking areas and along property boundaries to protect the existing visual quality of adjacent lands.
- 3. Reduce surface runoff and minimize soil erosion through the natural filtering capability of landscaped areas.
- 4. Provide natural buffers that reduce glare and noise, and protect wetlands, stream corridors and other significant environmental features.
- 5. Moderate the microclimate of parking areas by providing shade, absorbing reflected heat from paved surfaces and creating natural wind breaks.
- 6. Enhance the overall environmental and aesthetic quality of the community in order to provide a healthful and pleasant atmosphere for Town residents and visitors.

7. Encourage the application of green infrastructure to landscaping, screening, and buffering elements for the natural management of storm water and runoff (e.g. Bioswales, bioretention cells, permeable pavement, green roofs, etc.).

**B. Applicability.**

Development activities requiring site plan approval shall submit, as part of such approval, a landscaping plan in accordance with the requirements of this Section. The development or modification of a single- or two-family dwelling shall be exempt from this Section.

**C. General Requirements.**

1. Existing unique, cultural, or natural site features, such as stone walls, shall be incorporated into landscaping plans to the maximum extent feasible. Sites that possess significant ecological properties such as aquifers, public water supply watersheds, wetlands, and streams whose degradation would negatively affect other properties should be developed in a manner that will effectively prevent the possibility of such degradation.
2. Where existing conditions make compliance with these regulations not feasible, the Planning Board, at its discretion, may modify the requirements provided they comply with the intent of these regulations to the maximum extent practicable.
3. The issuance of a Certificate of Occupancy shall require completion of lot grading, seeding and required landscaping, or posting of a performance guaranty acceptable to the CEO. If the applicant cannot perform the work due to reasonable impracticalities, all landscaping work shall be completed by June 30th of the year following the issuance of the temporary Certificate of Occupancy.

**D. Maintenance.**

1. It shall be the responsibility of the property owner and/or lessee to maintain the quality of all plant material, non-plant landscaping, and irrigation systems used in conjunction with the landscaping.
2. Maintenance shall include, but not be limited to; watering, weeding, mowing (including trimming at the base of fencing), fertilizing, mulching, proper pruning, and removal and replacement of dead or diseased trees and shrubs on a regular basis.
3. All landscaping and plant material that is missing, dead, decaying, or injured as of September 30th shall be replaced by June 30th of the following year at the owner's expense. The replacement shall be of the same species and size unless otherwise approved by the CEO.
4. Irrigation systems shall be designed to minimize spray on buildings, neighboring properties, roads or sidewalks; maintained in proper operating condition and conserve water to the greatest extent feasible through proper watering techniques.

5. Improper maintenance shall be determined through periodic inspection by the CEO. The CEO may require a review and status report of plantings by a professional landscaper, arborist, or engineer. All reasonable costs for review and determination shall be at the expense of the property owner.

**E. Perimeter Landscaping and Building Foundations.**

1. Landscaping shall be required along the perimeter of projects and along building foundations. The Planning Board may also consider alternatives to landscaping locations and requirements based on the character of the property and surrounding area.
2. Perimeter landscaping shall be planted with trees, shrubs, perennials, and ground covers. The arrangement of said landscaping shall be provided in the required front, side, and rear setback areas where required by the Planning Board for increased screening.
3. Building foundations shall be mulched and planted with ornamental plant material, such as trees, flowering shrubs, perennials, and ground covers. The arrangement of said landscaping shall be in an area at least two feet wide along the front façade and other facades where principal entrances are present or are visible from the public right-of-way.
4. The linear feet guidelines below are to be used to calculate the number of required plantings; they do not require that plantings be uniformly spaced. Rather, grouping of plants consistent with accepted landscape practice is encouraged.

<b>PLANT MATERIAL</b>	<b>NUMBER</b>	<b>MIN PLANT SIZE</b>
Trees	<b>1 per 40 linear feet</b>	<b>2 inches (caliper)</b>
Shrubs	<b>1 per 10 linear feet</b>	<b>18 inches (height)</b>

**F. Screening Adjacent to Residential Property.**

Planting screens of coniferous and/or deciduous trees, shrubs, ground cover at least ten (10) feet in width and/or fencing will be required along rear and side lot lines in the following situations:

1. Parking and loading areas abutting a residential use or lot;
2. Multi-family dwellings abutting single-family or two-family dwellings;
3. Commercial, industrial, or institutional uses abutting a residential use or lot;
4. Manufactured home communities abutting a residential use or lot; and
5. Commercial and/or industrial development adjacent to active farm operations or vacant, open fields that contain prime agricultural soils.

#### **G. Screening of Dumpsters, Service Areas, and Mechanicals.**

All dumpsters, service areas or mechanical units used or intended to be used for any building or land use, other than single- and two-family dwelling units or agricultural use, shall be subject to the following:

1. All dumpsters, refuse storage, service areas, and mechanicals shall be placed in the rear yard unless otherwise approved by the Planning Board;
2. In instances where neighboring uses are compatible and rear lots are connected, refuse areas shall be combined;
3. All dumpsters, service areas and mechanicals shall be screened from view with either a wall, a solid fence or a combination of fencing and evergreens creating a solid visual barrier from adjacent properties and the public right-of-way. Said barrier shall be at least equal to the height of the containers or mechanicals; and
4. All dumpsters adjacent to a residential use or property shall be located within a screened enclosure with no less than three sides constructed of the same or similar materials found in the principal structure. Where possible, gate access to the enclosure should be located out of direct view from parking areas and principal building entrances, and efforts should be made to maintain the gates in a closed position other than times of refuse pick-up or delivery.

#### **H. Landscaping Plan.**

1. A required landscaping plan must be prepared by a licensed landscape architect, landscape designer, arborist, or other professional unless otherwise waived by the Planning Board. All landscaping plans shall contain the following information:
  - a) A title block with the name of the project, the name of the person preparing the plan, a scale, North arrow and date.
  - b) All existing, significant plant materials on the site.
  - c) Existing and proposed structures.
  - d) Topographical contours at two foot intervals.
  - e) Drainage patterns.
  - f) Location, size and description of all landscape materials existing and proposed, including all trees and shrubs, and shall identify those existing plant materials that are to be protected or removed.
  - g) Landscaping of parking areas, access aisles, entrances, common open areas, recreation areas, and perimeter buffer areas.
  - h) Other information as may be required by the CEO and/or the Planning Board.
2. Relief from any landscape plan requirements that are deemed unnecessary may be granted with Planning Board approval.

## **SECTION 6-3. SIGN REGULATIONS**

### **A. Applicability.**

For the purpose of these regulations, the term "sign" does not include:

1. Signs erected and maintained pursuant to and in discharge of any governmental function, including state or federal historic markers, traffic and highway signs, or other such sign required by law, ordinance or governmental regulation.
2. Repainting, cleaning and other normal maintenance and repair of a sign or sign structure, unless a structural change is made or if the repair is in violation of the sign regulations.
3. Memorial tablets or signs and locally designated historic markers not exceeding two square feet in area.
4. Flags, emblems or insignias of the United States, the State of New York, town, counties, other countries and states, the United Nations or similar organizations of which this nation is a member.
5. Signs for the direction or convenience of the public containing no commercial message thereon, including signs which identify rest rooms or locations of public telephones or traffic control devices. However, the total area of such signs shall not exceed two square feet.

### **B. General Standards.**

1. No sign shall consist of lights which flash or move or appear to move.
2. No sign shall be higher than the principal building to which it is accessory.
3. No sign shall project into a public right-of-way.
4. No sign shall be erected on a public utility pole or traffic control structure.
5. All existing signs at the time of the enactment of this Law shall be allowed to remain as long as they are properly maintained and their use remains current.
6. Temporary unlighted signs may be erected for a 40 day period without permit, provided the sign will not constitute a traffic or safety hazard. Such sign must be removed by the owner on or before the expiration of 48 hours after the event. Failure to remove the sign(s) shall constitute a violation by the sign owner.
7. One sign, either single- or double-sided, is permitted per lot, not to exceed 20 square feet per side (except as otherwise specified in this Law). Traffic direction signs are excluded.

8. Temporary signs that are intended to or are in fact erected for more than 40 days and all permanent signs shall require a sign permit issued by the Code Enforcement Officer before the signs are erected.

**C. Sign Maintenance.**

1. All signs and all components thereof, including supports, braces and anchors, shall be kept in a good state of repair.
2. If the message portion of a sign is removed or a business or other activity is no longer operating, it shall be the property owner's responsibility to assure that the abandoned sign is promptly removed or properly covered to the satisfaction of the CEO.

**SECTION 6-4. ADDRESS NUMBERS ON STRUCTURES**

- A. For the safety of residents and visitors and to ensure ease of identification by emergency personnel and others, all principal buildings shall bear or display at least two sets of street numbers which have been assigned by the Town.
- B. One set of street numbers is to be a minimum height of six (6) inches and mounted in a secure fashion to the building's front wall, or to a porch or other fixed appurtenance in front of the building, or otherwise mounted in a manner approved by the CEO. All street numbers affixed to the building shall be mounted at a height between four feet and 10 feet above grade. Trees, shrubs or other obstructions shall not block the view of the street numbers.
- C. One set of street numbers is to be a minimum height of four inches on both sides of either the mailbox or on a post not more than 10 feet from the roadway. If the mailbox or post is not on the same side of the street as the principal structure, then not more than 10 feet back from the highway roadway on the principal structure side of the highway, the street number must be posted so as to be seen from each direction of travel at a height of four feet.

**SECTION 6-5. PARKING**

- A. This section is designed to reduce problems caused by inadequate or poorly designed parking facilities.
  1. All uses shall provide adequate off-street parking for all vehicles parked during typical peak use periods. Parking should be designed to eliminate the need to back out or to park on the shoulder of public roads. Adequacy of parking shall be determined by the Town Planning Board through the site plan review process.
  2. A violation shall occur if there is parking on off-site areas, neighboring property or road right-of-ways more than three (3) times during one (1) month.

3. A parking space shall not be less than 10' X 20' exclusive of accessways and driveways. Single-family residences need not exclude driveway area.
4. Off-street parking areas for non-residential uses shall provide access lanes to parking spaces. Parking areas for fifty (50) or more vehicles shall delineate fire lanes which include no parking markers.

B. Minimum Parking Standards

Minimum standards supplementary to the basic standard cited above are as follows:

1. One (1) parking space for every three (3) seats in a public meeting place.
2. One (1) parking space for each employee at places of employment, and one (1) parking space per two hundred fifty (250) square feet of gross floor area in a commercial establishment unless otherwise specified herein.
3. One (1) parking space for every one hundred (100) feet of gross floor area in supermarkets and self-service food stores.

C. Accessible parking requirements shall comply with the New York State Building Code as amended from time to time.

# ARTICLE 7. PERMITS & APPLICATION PROCEDURES

## SECTION 7-1. PERMITS REQUIRED

### A. Applicability.

1. Except as herein provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved, or altered unless a zoning permit is first issued in conformity with the uses listed as permitted uses by this Law. Nor shall any open space contiguous to any building be encroached upon or reduced in any manner, unless a zoning permit is first issued in conformity to the area and bulk requirements, off-street parking requirements, and all other regulations designated in this Law. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this Law.
2. No use of land or structures shall be established, changed or added nor structure erected or enlarged, nor land developed until a Zoning Permit has been issued by the Code Enforcement Officer (CEO), who shall issue such permits in accordance with the regulations in this law.

### B. Building and Zoning Permits.

When a building permit is required, pursuant to the NYS Uniform Fire Prevention and Building Code, as administered in the Town of Ossian, the application for a zoning permit shall be submitted before or at the same time as the application for a building permit. No building permit will be granted until a zoning permit has been issued in accordance with the regulations of this Law.

### C. Special Use Permits.

Specially permitted uses, as identified in the AR District Use and Lot Requirements Schedule of Article 3, shall require the issuance of a special use permit prior to receiving a building or zoning permit. Special use permit applications shall be reviewed in accordance with Article 8.

### D. Exceptions.

Accessory structures no more than two stories high detached from the principal building and under 140 square feet total floor area per structure do not require a building permit or a zoning permit. Said accessory structures must comply with all setback and dimensional requirements. No more than two such accessory structures can be erected on any legal lot. There shall be a minimum of 10 feet between roof lines.



## **SECTION 7-2. ZONING PERMITS**

### **A. Review Procedure.**

1. The CEO shall review all applications for zoning permit.
2. If the CEO determines that an application for a permitted use meets the minimum requirements of this law, a zoning permit shall be issued. If the application does not meet the requirements of this zoning law, the CEO must deny the permit. The CEO shall not use discretionary judgment, but enforce the "letter of the law."
3. If the application is determined to require a special use permit the CEO shall forward the application with all necessary information to the ZBA.
4. If the application is determined to require site plan review, the CEO shall forward the application with all necessary information to the Planning Board.
5. An applicant who has been denied a zoning permit may appeal the decision of the CEO to the ZBA in the time required by state law.
6. If an applicant requests an appeal, interpretation, or variance, the CEO shall notify the ZBA and forward all necessary information.

### **B. Application Requirements.**

1. Applications for a Zoning Permit shall be filed with the CEO on forms approved by the Town.
2. The materials to be submitted with each application for a zoning permit shall indicate clearly the conditions on the site at the time of the application, the features of the site which are to be incorporated into the proposed use or building, and the appearance and function of the proposed use or building. At a minimum, the application shall include the following:
  - a) A sketch map drawn approximately to scale indicating the: Dimensions of the lot; Exact size and location of all existing and proposed building on the lot; Existing or proposed location of water and sewage disposal systems, Existing and proposed parking area and driveway locations; Natural water courses, drainage ways and ponds; Significant natural or environmental features such as wooded area, rocky out cropping, and steep slopes (more than 15%); and areas located within the CSO District.
  - b) A location map showing the position of the property within the town, the street address, and the nearest cross-streets.
  - c) When a permit is being sought for a structure that requires a private water source and/or a private septic system, documentation by the Livingston County Health Department or its authorized agent that approved water supply and sewage disposal facilities can be available to the site.

- d) Satisfactory evidence of property ownership or intent to purchase.
- e) Evidence of approved driveway plan, as permitted by the State Department of Transportation, County Highway Superintendent or Town Highway Superintendent, as appropriate.
- f) The license or permit for any use currently licensed or permitted by federal, state, county or town agencies, or evidence of a currently valid license or permit.
- g) The appropriate non-refundable fee established by the Town Board in its duly adopted fee schedule. Such fee shall be paid and collected at the time of application.
- h) The signed consent of the applicant and landowner allowing the CEO to enter onto the premises with 24 hours advance notice to insure compliance.

**C. Expiration and Renewal.**

A zoning permit shall be valid for one year. The zoning permit may be renewed for two additional periods (see Section 7-7 B) provided the applicant presents evidence of reasonable progress towards completion of construction. If construction or change of use is not completed during this time, the zoning permit shall be automatically terminated and the project shall cease immediately.

**SECTION 7-3. FEES**

Permit and application fees shall be collected and paid according to the fee schedule adopted by the Town Board and in effect at the time of application. The current fee schedule is attached at Appendix V. A fee schedule shall be posted at the Town Clerk's Office and available from the Code Enforcement Officer. The current fee schedule is attached hereto and may be amended from time to time.

**SECTION 7-4. GENERAL APPLICATION PROCEDURES**

**A. Applicability.**

1. Applications required under this zoning law must be submitted in a form and in such numbers as outlined herein. Application forms and checklists of required submittal information are available in the Office of the CEO.
2. For the purposes of this zoning law the terms "reviewing board" or "review board," shall refer to the board charged with review and/or approval authority as enacted under this zoning law. For example, site plan review applications shall fall under the purview of the Planning Board, while special use permit applications require ZBA review.
3. No applications provided for by this zoning law or otherwise provided for by any local law of the Town of Ossian shall be accepted or processed with regard to any building, structure, premises, property, or use that is in violation of this law or any

other section of the Town Code. Where an application is proposing to rectify and/or eliminate such violation, it may be considered by the reviewing board.

**B. Submittal.**

1. Applications shall be filed with the CEO on the appropriate forms approved by the Town.
2. Only the property owner or their agent, with legally binding and written permission of the owner, may file an application. Where there are multiple land owners, a written consent agreement among all land owners must be included within the application. All such agreements and consents must be signed by all interested parties.
3. Unless otherwise specified, one hard copy of the signed application and all necessary accompanying documents shall be required.
4. Applications must be submitted at least two (2) weeks prior to the meeting with the CEO at which the applicant wishes to be considered. No use or work applied for shall commence until all required permits are obtained.

**C. Acceptance and Processing.**

1. Once the CEO receives the application and requisite fees and reviews same, he shall notify the applicant whether or not the application is considered accepted and ready for processing.
2. The acceptance of an application by the CEO shall in no way be interpreted as a determination of the completeness, adequacy, or accuracy of application materials, but rather serve as an acknowledgement to the receipt of required application materials. The CEO may consult with other Town departments, officials, boards, committees, or consultants in making such a determination.
3. If an application is determined to be inadequate, the CEO must provide paper or electronic written notice to the applicant along with an explanation of all known deficiencies that will prevent competent review. No further processing will occur until the deficiencies are corrected. If the deficiencies are not corrected within 60 days, the application will be considered withdrawn.
4. No further processing of inadequate applications will occur; applications will be pulled from the processing cycle. When the deficiencies are corrected, the application will be placed in the next available processing cycle.

**D. Applicant Responsibilities.**

The applicant and/or their agent is expected to attend all meetings at which the application is to be discussed. In all cases, the burden is on the applicant to show that their application complies with this zoning law and any other applicable local, county, state, or federal laws, rules, and regulations.

**E. Agricultural Data Statement.**

1. Section 283-a of NYS Town Law requires any application for a site plan approval, subdivision approval, special permit or use variance on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, to include an Agricultural Data Statement.
2. Any such application shall include an agricultural data statement as part of its submittal to the CEO.
3. Upon receipt of an application containing an agricultural data statement, the CEO shall mail a copy of the agricultural data statement to the owners of the land identified by the applicant in the agricultural data statement.
4. The applicant shall be required to reimburse the Town for such mailing upon written request.
5. For the purposes of this Section an agricultural district shall be defined as an agricultural district recognized by the NYS Agriculture and Markets agricultural district program.

**SECTION 7-5. APPLICATION REFERRALS**

**A. Professional Referral.**

The Town Board, Planning Board, ZBA, and/or CEO may seek the opinion of any legal, engineer, design, and/or other professional to aid in the review of an application. Any expenses incurred by the Town as a result of this referral(s) shall be reimbursed by the applicant upon written request. A payment(s) can be required up front or periodically as the Town determines to cover the entire expected cost of the professionals. Failure to make such payments or provide such reimbursement shall cause the process to be suspended and any approvals obtained to be null and void.

**B. Local, County, State, and Federal Consultation.**

To assist in the review of applications, the reviewing board may consult with the town building inspector, fire commissioners, highway department, county planning department and other local county officials, in addition to representatives of federal and state agencies including, but not limited to the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.

**C. County Referral.**

1. The Town shall refer applications to the Livingston County Planning Board where required pursuant to NYS General Municipal Law Section 239-m. This shall include, but is not limited to, any proposal for a special permit, variance, site plan approval, or change in the zoning law text or map (rezoning, amending the zoning law) which

would affect real property lying within a distance of 500 feet from the boundary of the following:

- a) Any county, town, or village;
  - b) Any existing or proposed county or state park;
  - c) Any stream or canal owned by the county;
  - d) Any existing or proposed county or state owned land on which a public building or institution is situated; and
  - e) Any farm operation in an agricultural district pursuant to Article 25-AA of the Agriculture and Markets Law.
2. If the county approves a referral, then the local board's decision is governed by a majority vote.
  3. If the county disapproves or approves subject to stated conditions or modifications, the local board may override the county opinion only by a majority plus one (supermajority) vote.
  4. The local board must send a copy of its final decision and reasons for such decision on a county referral case to the County Planning Board within seven days after the local decision is reached.

**SECTION 7-6. STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) REQUIRED**

- A. The State Environmental Quality Review Act requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and part 617 of Title 6 of the New York Code of Rules and Regulations are hereby adopted by reference.
- B. All actions (8 NYCRR Part 617) shall require the submission, review, and completion of a Long or Short Environmental Assessment Form, as determined appropriate by the lead agency.
- C. For zoning action reviewed by the Town, the following bodies shall be lead agency, unless otherwise delegated by the Town Board.

ACTION	LEAD AGENCY
Zoning Text or Map Amendment	<b>Town Board</b>
Special Use Permit	<b>Zoning Board of Appeals</b>
Variance	<b>Zoning Board of Appeals</b>
Site Plan Review	<b>Planning Board</b>

- D. If in the opinion of the local lead agency, after review of the Environmental Assessment Form, there appears the potential for a significant environmental impact, the lead agency shall cause the applicant at applicant's cost to prepare a Draft Environmental

Impact Statement (EIS) as part of the application. Review, notice and action on the EIS shall be conducted according to Part 617 of 8 NYCRR.

- E. The lead agency for all special use permit applications shall be the Town Zoning Board of Appeals (ZBA).

## **SECTION 7-7. EXPIRATION, REVOCATION & ENFORCEMENT OF PERMIT OR APPROVAL**

### **A. Expiration.**

The approval of an application shall expire if any one of the following occurs:

1. The approved use or uses cease operation for more than one year for any reason;
2. The applicant fails to comply with the conditions of the application's approval within one year of the date of issuance or completion of construction, where applicable;
3. The applicant fails to initiate construction within three (3) months of the approval date;
4. The applicant fails to complete construction within one (1) year of the approval date; or
5. The applicant fails to renew a time limited permit prior to the stated time period ending.

### **B. Extensions.**

The CEO may grant no more than two (2) extensions for any condition in Subsection A upon written request by the applicant. The applicant shall include in such request the desired time period for the extension, not to exceed six (6) months, and the reasoning for requesting the extension. The first extension shall not require a fee. There can be a second extension for another consecutive period of six months which shall require a fee. If the project for which the permit was issued is not completed to the satisfaction of the CEO at the end of said granted extension(s), the permit is terminated and void, and the entire application process must begin anew.

### **C. Revocation.**

The CEO may revoke approval if the applicant violates the conditions of the approval or engages in any construction or alteration not authorized by the approval.

### **D. Enforcement.**

Any violation of the conditions of approval shall be deemed a violation of this law and shall be subject to enforcement action as provided herein.

# ARTICLE 8. PROCEDURE TO OBTAIN SPECIAL USE PERMITS

(New York State Town Law Section 274-b)

## SECTION 8-1. PURPOSE & APPLICABILITY

- A. The purpose of the special use permit application and review process is to determine the level of compatibility of a use in its proposed location. Special uses are generally considered to be uses that have a higher potential for incompatibility with adjacent uses. By requiring the individual review of special use permit applications, the Town can ensure the preservation of the agricultural nature of the Town, property values and quality of life for its residents.
- B. A special use permit application shall be submitted for any proposed use or activity requiring a special use permit under this zoning law.
- C. No zoning permit shall be issued until all the requirements of this Article and all other applicable provisions of this zoning law have been met.

## SECTION 8-2. REVIEW PROCEDURE

### A. ZBA Review Authority.

- 1. The Zoning Board of Appeals (ZBA) is hereby granted authority, pursuant to Section 274b, of NYS Town Law, to issue special use permits for uses listed in this law, subject to criteria specified in this local law. No special use shall be allowed, and no special use permit shall be issued without ZBA approval.
- 2. The Zoning Board of Appeals shall grant special use permits where the application demonstrates that the proposed use meets the conditions specified in this Zoning Law and will not adversely affect the surrounding area, environment, or the health, safety and general welfare of the Town.
- 3. Pursuant to New York State Town Law, Section 274-b, subparagraph 5, the ZBA, when reasonable, may waive any requirements for the approval, approval with modifications, or disapproval of special use permit applications submitted for approval. Such waiver may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare, or are inappropriate to the particular special use permit application.
- 4. Upon receipt of a special use permit application, the Zoning Board of Appeals shall designate a public hearing date within a reasonable period of time, not to exceed 62 days from the date application was accepted for processing by the CEO.

5. The Zoning Board of Appeals, as lead agency, shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the environmental conservation law and its implementing regulations.
6. The Zoning Board of Appeals shall make a factual record of all its proceedings involving the granting or denial of a special permit. The decision of the Zoning Board of Appeals shall contain the reasons for its decision.
7. The Zoning Board of Appeals shall render its decision, either approving, approving with conditions, or denying, within 62 days after the close 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 board.
8. The decision of the Zoning Board of Appeals on the application after the holding of the public hearing shall be filed in the offices of the Town Clerk and the CEO within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant.

**B. Public Notice Requirements.**

1. The Zoning Board of Appeals shall send a notice of the public hearing to the applicant and publish a notice of the public hearing in the official newspaper, one of general circulation in the Town.
2. The notice of the public hearing shall be sent and published in the official newspaper at least five calendar days prior to the date of the public hearing as well as sufficient information so as to identify the property involved and the nature of the proposed action.
3. At least 10 days before the public hearing, the Zoning Board of Appeals shall mail notices thereof to the applicant, to all adjacent landowners within 200 feet, and to the County Planning Board, as required by Section 239 of the NYS General Municipal Law. Such notice shall be accompanied by a full statement of the matter under consideration as defined in Section 239 of the NYS General Municipal Law.
4. The cost of publication and mailings shall be borne by the applicant.

**C. Site Plan Review Coordination.**

1. Where site plan review is also required for a special use permit, the application requirements of Article 9 shall also apply. Duplicate application materials may be combined to satisfy submittal requirements.
2. The applications may be considered concurrently; however, site plan approval shall be considered by the ZBA in its review. The ZBA has ultimate determination of whether a special use permit should be approved.
3. In the event that the special use permit is denied, the site plan decision shall be null and void.



### **SECTION 8-3. APPLICATION REQUIREMENTS**

In addition to all other requirements of this law, a special use permit application shall include, at a minimum, the following:

- A.** All application materials required for zoning permits, as outlined in Section 7-2;
- B.** The location and capacity of existing and proposed vehicular access ways;
- C.** The location and dimensions of any existing and proposed sidewalks, walkways or other areas established for pedestrian use;
- D.** The design and treatment of existing and proposed open areas, parking, buffer areas, and screening devices, including dimensions of all areas devoted to lawns, trees, and other landscaping;
- E.** Provision for water supply, sewage disposal and storm drainage;
- F.** A description of the proposed use and nature of its operation, including but not limited to:
  - 1. A business plan, vision, or model, and/or summary of products, goods, and services to be sold or provided;
  - 2. Proposed hours of operation; number of employees at maximum shift and maximum seat capacity;
  - 3. Timing and manner of any and all anticipated deliveries;
  - 4. Recycling and waste management plan; and
  - 5. Nature and type of all mechanical equipment provided and/or required.
- G.** Documents or narratives prepared by the applicant which demonstrate that the proposed special use meets the standards of this zoning law;
- H.** All SEQR documentation as required by NYS Law; and
- I.** All required fees as established by the Town Board.

### **SECTION 8-4. CONSIDERATIONS & CRITERIA FOR APPROVAL**

#### **A. Considerations.**

To assist in the review of special use permit applications, the ZBA shall consider the following:

1. Conformance with the district, building, use, and lot requirements of this zoning law.
2. Conformance with all applicable regulations for certain uses, as provided for by Article 4 of this zoning law.
3. Whether or not the proposed use (a) is compatible with adjacent properties, uses, and structures, as defined by the potential of the specially permitted use to create a hazard to the public health, safety and general welfare; (b) alters the character of the neighborhood or be detrimental to the residents thereof through the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, unsightliness, contamination or other similar conditions; (c) causes significant traffic congestion or creates a traffic hazard; (d) causes undue harm to or destroy existing sensitive natural features on the site or in the surrounding area; (e) causes adverse environmental impacts such as significant erosion, runoff, sedimentation, slope destruction, flooding, or degradation of water quality; or (f) otherwise results in an excessive or significant negative impact on the community that cannot be mitigated.
4. Adequacy of existing and/or proposed public facilities and services, such as roadway capacity, police and fire protection, drainage structures, water and sewage facilities, refuse disposal, and schools, to serve the proposed use.
5. Location, arrangement, size, and design of proposed on-site signage, external lighting, parking and other incidental building or site amenities.
6. Siting of the proposed use so as to mitigate any potential adverse effect or nuisance to adjacent residential property.

**B. Criteria for Approval.**

No special use permit shall be granted if in the opinion of the ZBA the application does not comply with the following criteria for approval:

1. The proposed building or use will be in harmony with the general purpose, goals, objectives and standards of this local law.
2. The proposed building, or hours of operation, or use will not have a substantial or undue adverse effect upon adjacent property, environmental resource integrity, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare.
3. The proposed building or use will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable zoning regulations.
4. The proposed building or use will be adequately served by essential public facilities and service.
5. The proposed building or use complies with all additional standards imposed on it by the particular provision of this local law authorizing such use.

6. All steps possible have been taken to minimize any adverse effects of the proposed building or use on the immediate, vicinity through building design, site design, landscaping and screening.

## **SECTION 8-5. CONDITIONS & AMENDMENTS**

### **A. Conditions on Special use permits.**

1. The ZBA may impose such reasonable conditions and restrictions on or require modifications of the premises benefited by a special use permit as may be necessary to protect the general health, safety and general welfare of the community and to prevent or minimize adverse effects upon other property in the neighborhood, including limitations on hours of operation or the length of time for which the permit is granted. The ZBA may also impose a monetary fee on the applicant to mitigate the cost to the Town caused by the special use for increased Town costs for public services such as highways, fire department services, etc. Such conditions and restrictions must be directly related to and incidental to the proposed special use permit.
2. Conditions shall be expressly set forth in the motion authorizing the special use permit.
3. If determined appropriate by the ZBA, a performance bond or other suitable financial guaranty in form and amount satisfactory to the ZBA can be required to assure compliance with the conditions of the special use permit, including reclamation of the land after the use ceases.

### **B. Amendments to Special use permits.**

Proposed amendments or revisions to an approved special use permit shall be subject to the application and review process and approval in accordance with this zoning law. The issuance of a new, updated special use permit shall be required.

## **SECTION 8-6. ABANDONMENT OF USE**

The failure to use the land as specially permitted for a period of one (1) year or more shall be deemed an abandonment, at which time the special use shall no longer be allowed.

# ARTICLE 9. SITE PLAN REVIEW

## (New York State Town Law Section 274-a)

### SECTION 9-1. PURPOSE

The purpose of this Section is to set forth additional standards applying to certain land uses and activities. The nature of these uses and activities required special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the Town to accommodate development consistent with the objectives of this zoning law.

### SECTION 9-2. APPLICABILITY

- A. Site plan review by the Planning Board is required for all uses. Excepted are one and two family dwelling and general farming use, and their permitted accessory uses.
- B. No zoning permit shall be issued until all the requirements of this Article and all other applicable provisions of this Code have been met. However, where the decisions of the Planning Board and ZBA conflict, the ZBA's decision shall control.

### SECTION 9-3. REVIEW PROCEDURE

#### A. Planning Board Review.

The Planning Board is the authorized review board for site plan review applications. No site plans shall be effectuated without Planning Board approval.

#### B. Public Hearing Optional.

A public hearing is optional and may be held by the Planning Board if it is determined by a majority of members to be necessary or appropriate. Such hearing shall be held prior to issuing a decision on any site plan review application.

#### C. Waiving Application Requirements

The Planning Board is authorized to waive, in whole or in part, any of the application requirements if it is determined by the review board chairperson that:

1. Any such requirement or part thereof is found not to be requisite in the interest of the public health, safety, or general welfare.
2. Any such requirement is inappropriate or unrelated to the application; and/or

- 3, Any such requirement will not mitigate adverse impacts generated by the proposed project or will not aid in the buffering of dissimilar uses.

**D. Pre-Application Conference.**

A pre-application conference may be held between the Planning Board and applicant to review the basic site design concept and generally determine the information to be required on the site plan.

## **SECTION 9-4. APPLICATION REQUIREMENTS**

A site plan review application shall include, at a minimum, the following:

- A.** Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
- B.** North arrow, scale and date.
- C.** Boundaries of the property plotted to scale, including all properties and existing conditions/features within a 300 foot radius of the subject property boundaries.
- D.** Existing watercourses and bodies of water, including wetlands.
- E.** Location of any slopes of 5% or greater.
- F.** Proposed grading and drainage for full build out, in addition to current proposal if phased.
- G.** Location, proposed use and height of all buildings and site improvements including culvert, drains, retaining walls and fences.
- H.** Location, design and construction materials of all driveways, access roads, parking and truck loading areas, showing points of entry and exit from the site.
- I.** Location of outdoor storage, if any.
- J.** Description of the method of sewage disposal and location of the facilities.
- K.** Identification of water source; including location of well and water lines.
- L.** Location, size and design and construction materials of all proposed sign.
- M.** Location and proposed development of all buffer areas, including existing vegetative cover.
- N.** Location and design of outdoor lighting facilities.
- O.** General landscaping plan as provided for in Section 5-4.

- P.** Names of adjacent property owners and respective location of adjacent owners property lines.
- Q.** As necessary, the Planning Board may require the following:
  - 1. Provision for pedestrian access, if necessary;
  - 2. Location of fire lanes and hydrants;
  - 3. Designation of the amount of building area proposed for retail sales or similar commercial activity;
  - 4. Other elements integral to the proposed development as considered necessary by the Planning Board.

## **SECTION 9-5. SITE PLAN REVIEW CONSIDERATIONS**

To assist in the review of site plan applications, the Planning Board shall consider the following:

- A.** Conformance with the Town of Ossian Comprehensive Plan, Planning Foundation Report, Agriculture and Farmland Protection Plan, other planning studies, and this zoning law.
- B.** Adequacy and arrangement of vehicular traffic access and circulation, including intersection, road widths, pavement surfaces, dividers and traffic controls.
- C.** Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- D.** Location arrangement, appearance and sufficiency of off-street parking and loading.
- E.** Location, arrangement, size and design and general site compatibility of building, lighting and signs.
- F.** Adequacy of stormwater calculation methodology and stormwater and drainage facilities to eliminate off-site runoff and maintain water quality.
- G.** Adequacy of water supply and sewage disposal facilities.
- H.** Adequacy, type and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, includes the maximum feasible retention of existing vegetation.
- I.** Location, arrangement, and use of required open space and adequacy of such open space to preserve scenic views and other natural features, to provide wildlife corridors and habitats, to provide suitable screening and buffering, and to provide required recreation areas.

- J. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
- K. Protection of solar access on adjacent or neighboring properties.
- L. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- M. Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

## **SECTION 9-6. CONDITIONS & AMENDMENTS**

- A. The reviewing board may impose reasonable conditions and restrictions on or require modifications of the premises benefited by site plan approval as may be necessary to prevent or minimize adverse effects upon other property in the neighborhood. Conditions shall be expressly set forth in the motion approving the site plan.
- B. Proposed amendments or revisions to an approved site plan shall be subject to review and approval in accordance with this Article. The issuance of a new, updated site plan shall be required.
- C. If determined appropriate by the Planning Board, a performance bond or other suitable financial guaranty can be required to assure compliance with the conditions of the site plan, and future reclamation of the land.

# ARTICLE 10. VARIANCES & APPEALS

## SECTION 10-1. JURISDICTION

The Zoning Board of Appeals (ZBA) is hereby designated as the sole appropriate body to deal with all appeals, requests for interpretation, and requests for variances.

## SECTION 10-2. REVIEW PROCEDURES

Upon receipt of a variance or appeal application, the ZBA shall:

- A. Schedule a public hearing in accordance with this zoning law and NYS Law.
- B. Refer the application to the County Planning Board as required by NYS General Municipal Law Section 239, if required.
- C. Determine whether the project is subject to SEQRA, and if so, meet all SEQRA requirements as lead agency.
- D. Within 62 days of the public hearing, the ZBA shall render a decision. If the matter was referred to the County Planning Board, a copy of the ZBA's findings and decision must be sent to the County Planning Board.

## SECTION 10-3. NOTICE OF PUBLIC HEARING

The Board shall fix a reasonable time for the hearing of appeals not to exceed 30 days from date the ZBA receives all necessary documents from the applicant and from the Town Planning Board where applicable, such as in site plan review, or not to exceed 60 days when referral to the County Planning Board is necessary.

## SECTION 10-4. VARIANCES

### A. Variance Types.

- 1. Where carrying out the strict letter of the law would lead to unnecessary hardships, the ZBA has the power to vary or modify the provision of this law pursuant to the Standards set forth herein so that the spirit of the law shall be observed, public safety and welfare secured and substantial justice done.
- 2. There shall be two types of variances; Area Variances and Use Variances.
- 3. An area variance is an authorization to use land in a manner, which is not allowed by the dimensional or physical requirements of the zoning law.



4. A Use Variance permits a use of land, which is not permitted by this law.

**B. Criteria for Granting Area Variances.**

The ZBA shall consider all relevant factors required by NYS Town Law Section 267-b, subparagraph 3, including but not limited to the following when deciding on application for area variances:

1. How substantial the variation is in relation to the requirement.
2. The effect, if the variance is allowed, on available governmental facilities (roads, fire protection, water, sewer, etc).
3. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created.
4. Whether the need for a variance can be avoided through some other method feasible for the applicant to pursue.
5. Whether the interests of justice will be served by allowing the variance.

**C. Criteria for Granting Use Variances.**

The ZBA shall consider all relevant factors required by NYS Town Law, Section 267-b, subparagraph 2, including but not limited to the following criteria when deciding on applications for use variances:

1. The land in question cannot yield a reasonable return if used only for a purpose permitted by the zoning. The lack of return must be substantial as demonstrated by competent financial evidence.
2. The plight of the owner is due to unique circumstances and not to general conditions in the neighborhood.
3. The use sought to be authorized by the variance will not alter the essential character of the neighborhood.
4. The use to be authorized by the variance will not be contradictory or detrimental to the spirit or intent of the zoning district or zoning law itself, or harmful to the public good.
5. Any alleged hardships have not been self-created.

**SECTION 10-5. APPEALS**

Every appeal application shall refer to the specific provision of the code involved, and the specific action being appealed. All appeals shall be handled according to the requirements of NYS Town Law Section 267-a.

# ARTICLE 11. ENFORCEMENT

## SECTION 11-1. CODE ENFORCEMENT OFFICER (CEO)

### A. Appointment.

The duty of administering and enforcing this Law is hereby conferred upon the Code Enforcement Officer (CEO). The CEO shall be appointed by the Town Board and receive compensation as the Town Board shall determine.

### B. Powers and Duties.

The CEO shall hereby be authorized to fulfill the following powers and duties:

1. Review, approve, and/or deny zoning permit applications in accordance with Section 7-2.
2. Issue zoning permits in accordance with this zoning law.
  - a) Upon direction of the ZBA, the CEO is hereby empowered to issue zoning permits for uses or structures which have been granted variances, or favorable appeals.
  - b) Upon direction of the ZBA, the CEO is hereby empowered to issue zoning permits for Special Permit Uses and uses with approved site plan by the Planning Board.
3. Issue zoning certificates of compliance; however, no certificate pursuant to the NYS Uniform Fire Prevention and Building Code shall be issued unless the structure or use conforms to plans and conditions under which the zoning permit was granted.
4. Inspect and examine property to ensure compliance with this zoning law and NYS Uniform Fire Prevention and Building Code.
5. Enforce and administer all of the requirements of this zoning law, as well as all orders, directions and determinations of the ZBA and the Planning Board. Where the CEO, in the course of his/her duties, determines that any plans buildings, or premises are in violation of the provisions of this Law, he/she shall order the responsible party, in writing to remedy such conditions. Said written order shall specify:
  - a) The name and address of each alleged violator;
  - b) The nature of the violation found to exist, citing the appropriate section of this Law;
  - c) The remedy ordered and the time by which such remedy must be completed;
  - d) The penalties and remedies which may be invoked by the Town; and
  - e) The violator's rights of appeals; as provided for by this Law.
6. If an Order to Remedy is not fully complied with in the time specified therein, the zoning permit shall automatically and immediately expire and be deemed revoked,

and said land use shall immediately cease operation. Operation shall not resume until there has been full compliance with said order AND a new zoning permit has been obtained, including site plan review and ZBA approval where applicable.

7. The CEO shall, with advance consent of the Town Board, have the authority to obtain from a court of competent jurisdiction a stop order to constrain the continuance of the violation.
8. The CEO, with the advance consent of the Town Board, shall have the right to commence and prosecute all civil and criminal proceedings to enforce the provisions of this Law and to invoke and enforce all penalties and remedies allowed by this Local Law as well as by State Law.
9. Seek interpretation of this law from the ZBA when and if the CEO deems it necessary.
10. Prepare and maintain records and reports, including, but not limited to:
  - a) A permanent record of all matters considered and all actions taken by him/her. Such records shall be filed with the Town Clerk and shall be available for the use of the Town Board and other officials of the Town and available for inspection by the public.
  - b) A written monthly report to be presented to the Town Board, describing and enumerating action taken and permits issued.

## **SECTION 11-2. NONCONFORMING USES, LOTS, AND STRUCTURES**

### **A. Applicability.**

Lots, structures, uses of land and structures and characteristics of use which lawfully existed at the time of the enactment of these regulations and which would be prohibited or restricted under the terms of these regulations may be continued subject to the following provisions.

### **B. Intent.**

It is the intent of these regulations to permit nonconforming uses, lots and structures, to continue until they are removed or discontinued, but not to encourage their survival.

### **C. Unsafe Structures.**

Any pre-existing nonconforming structure or portion thereof declared unsafe by the Code Enforcement Officer or other proper authority pursuant to the Uniform Code must be restored to a safe condition, subject to the terms of subparagraphs E and F directly below. Such restoration must be completed within one year of declaration and/or written notice to the property owner. Otherwise said structure shall no longer be allowed to exist, and the Town Board may take such action as is authorized by local and/or state law and/or regulations.

**D. Enlargement.**

No nonconforming uses or structures shall be enlarged or increased, nor extended to occupy a greater area of land or structure thereon than was occupied at the effective date of the adoption of these regulations.

**E. Alteration.**

A nonconforming structure may not be reconstructed or structurally altered to an extent exceeding in aggregate cost 50% of the full value of said structure, as determined by the Town Assessor, unless the structure shall be changed to a conforming structure. In addition, pursuant to paragraph D above, such reconstruction or alteration shall not occupy a greater area of land.

**F. Restoration.**

No nonconforming structure damaged by fire or other causes to the extent or more than 75% of its full value shall be repaired or rebuilt except in conformity with the requirements of these regulations.

**G. Discontinuance.**

Whenever a nonconforming use or any use on an undersized lot has been discontinued for a period of 12 consecutive months, such use shall not thereafter be reestablished and any future use shall be in conformity with the provisions of these regulations.

**H. Changes.**

Once changed to a conforming lot, no structure or land so changed, or any portion thereof, shall be permitted to revert to a nonconforming lot. No nonconforming use shall be changed or enlarged to include any other type of nonconforming use.

**I. Moving.**

Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.

**J. Subdivision.**

No conforming lot shall be subdivided into one or more nonconforming lots. A lot of nonconforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's property so as to become part of a conforming use.

**K. Existing Undersized Lots of Record.**

Any recorded lot held in single and separate ownership prior to the adoption of these regulations and whose area and/or width and/or depth are less than minimum requirements specified herein, may be considered as complying with these regulations and no variance therefore shall be required provided that:

1. The lot does not adjoin any other lot(s) held by the same owner, the aggregate area of which is equal to or greater than the minimum lot area required.
2. The minimum yard requirements set by these regulations are met.
3. The lot contains no more than one single-family dwelling.
4. Paragraph G directly above shall apply, and the use shall cease if it has been discontinued for one (1) year or more.

### **SECTION 11-3. PENALTIES AND REMEDIES FOR VIOLATIONS**

- A. A violation is deemed to occur if an order to remedy aforesaid is not complied with in the time specified therein.
- B. A violation of this local law is hereby declared to be an offense, punishable by a fine not exceeding \$350.00 or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense; for conviction of a second offense committed within a period of 5 years of the first offense, such second offense is punishable by a fine not less than \$350.00 nor more than \$700.00, or imprisonment for a period not to exceed six (6) months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700.00 nor more than \$1,000.00, or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violation. Each week's continued violation shall constitute a separate additional violation.
- C. For each such violation as specified in subparagraph A directly above, all violators shall also owe the Town of Ossian a civil fine of \$200.00 and an additional civil fine of \$200.00 for each subsequent week of such violation.
- D. In addition to all other remedies allowed, each person and/or entity that violates any provisions of this law shall also owe the Town of Ossian all legal fees, court costs, and disbursements, including expert fees, incurred by the Town of Ossian to enforce this local law, cure said violations, and pursue and collect the remedies allowed herein.

# ARTICLE 12. REVIEW BOARDS

## SECTION 12-1. ZONING BOARD OF APPEALS (ZBA)

### A. Appointment.

The Town Board authorizes the appointment of a five member Zoning Board of Appeals (ZBA) as more fully described in NYS Town Law Section 267. Terms of all ZBA members shall be five years and shall be staggered as the law requires.

### B. Officers, Rules and Expenses.

1. The Town Board must select a Chairman of the ZBA, or on failure to do so, the ZBA shall elect a chairman from its own members.
2. The ZBA may adopt procedural rules or bylaws for its operation not inconsistent with this local law.
3. If a vacancy shall occur otherwise than by expiration of a term, it shall be filled by the Town Board by appointment for the unexpired term.
4. The Town Board may provide an appropriation to the ZBA to cover necessary expenses including the means for the ZBA to maintain a written record of its meetings and public hearings.
5. No member of the Town Board shall be eligible for membership on the ZBA.

### C. Meeting Procedures.

1. All meetings of the ZBA shall be held at the call of the chairman, or at the request of three or more members, and at such other times as such board may determine.
2. The presence of three members shall constitute a quorum for the conduct of business before the board.
3. All decisions shall be by a majority vote of the membership, except in cases where a majority plus one (supermajority) vote is required by NYS Law.
4. All votes of the ZBA shall be taken by roll call.
5. In accordance with General Municipal Law, Section 809, a member of the ZBA having a conflict of interest shall abstain from any discussion or voting on that matter.
6. With the Town Board's advance approval in each case, the ZBA may request and obtain any advice or opinions on the law relating to any matter before the Board from the Town Attorney, who may be requested to attend its meetings with the permission of the Town Board, as well as engineers and other experts. The costs of

the attorney and experts shall be charged to the applicant, who shall pay same in advance or from time to time as the ZBA requires.

7. The ZBA may require the CEO to attend its meetings to present any facts relating to any matter before the Board.
8. All meetings of the ZBA shall be open to the public.
9. The ZBA shall keep minutes of all its meetings.
10. The ZBA shall make factual record of all its proceedings including the reading of the case, public hearing, deliberation, voting and decisions of the Board and the reasons therefore. These factual records may be taken by stenographic and/or tape recorder means and shall be accurate but not necessarily a verbatim transcript but may be in narrative form. The factual record shall be taken by the Secretary of the Board.
11. The ZBA shall make written findings for each decision. Findings shall state the reasoning behind, the basis for, the evidence relied on to reach the decision.

**D. Powers and Duties.**

1. Interpretation. Upon request of the CEO or upon appeal from a decision by the CEO, the ZBA shall decide any question involving interpretation of any provision of this Law, including zoning map boundaries.
2. Variances. The ZBA shall hear requests for variances, upon denial of a zoning permit by the CEO, according to the procedures and standards specified in this Law, and in Section 267 and 267-b of the NYS Town Law.
3. Review and determine special use permit applications.
4. Appeals. The ZBA shall hear any application for appeal by any person aggrieved of a decision by the CEO. Such applications shall be reviewed and decided as provided for by this zoning law and Town Law Section 267-a.

## **SECTION 12-2. PLANNING BOARD**

**A. Appointment.**

The Town Board authorizes the appointment of a seven member Planning Board as more fully described in Town Law Section 271. Terms of all Planning Board members shall be staggered as the law requires.

**B. Officers, Rules and Expenses.**

1. The Town Board must select a Chairman of the Planning Board, or on failure to do so, the Planning Board shall elect a chairman from its own members.

2. The Planning Board may adopt procedural rules or bylaws for its operation not inconsistent with this local law.
3. If a vacancy shall occur otherwise than by expiration of a term, it shall be filled by the Town Board by appointment for the unexpired term.
4. The Town Board may provide an appropriation to the Planning Board to cover necessary expenses including the means for the Planning Board to maintain a written record of its meetings and public hearings.

**C. Powers and Duties.**

1. Comprehensive Plans. Prepare or change a comprehensive land development plan or amendments thereto for the Town Board's consideration.
2. Zoning Amendments. Review and comment on all proposed zoning amendments, if requested by the Town Board.
3. Site Plan Review. Conduct site plan review as authorized by NYS Town Law and this zoning law.
4. Board Assistance. Render assistance to the ZBA on its request and research and report on any matter referred to it by the Town Board.
5. Planning Research. Make investigations, maps, reports, and recommendations in any matter related to Planning and Development as it seems desirable providing expenditures of the Board do not exceed appropriations.