

VILLAGE OF ELBA ZONING LAW
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ARTICLE I **INTENT AND PURPOSE**

SECTION 101 **LEGISLATIVE INTENT**

This Zoning Law is intended to promote the orderly development of the Village of Elba, Genesee County, New York, in accordance with the State of New York and the Comprehensive Plan of the Village of Elba and/or any of the component parts thereof.

SECTION 102 **PURPOSE**

The Zoning Law is adopted for the following reasons:

A. To secure safety from fire, floods, other dangers and to promote the public health and welfare, including, so as conditions may permit, provision for adequate light, air and convenience of access, made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it might be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adopted; and to conserve the value of buildings and enhance the value of land throughout the village.

B. To regulate and restrict the location of trades and industries and the location of buildings designed for specific uses, and, for said purposes, to divide the Village into districts, prescribing for each such district the trades and industries which may be included therein or subjected to special regulations and the uses for which buildings may not be erected or enlarged. These regulations are designed to promote the public health, safety and general welfare and are made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan.

C. To provide for the preservation of places, buildings, structures, works of art and other objects having a special character or special historical or aesthetic interest or value.

SECTION 103 **NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE**

No provision of this Zoning Law shall be construed to repeal, modify or constitute an alternative to the New York State Uniform Fire Prevention and Building Code (hereafter referred to as the Uniform Code) or its successor. Village residents and other individuals using these zoning regulations should make sure they refer to the Uniform Code in order to determine its' applicability to their specific project.

SECTION 104

APPLICATION OF REGULATIONS

No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Zoning Law, with the exception of the performance of necessary repairs which do not involve material alteration of structural features, and/or plumbing, electrical or heating/ventilation systems. Such necessary repairs shall include, for example, the replacement of siding and roofing materials. No building, structure or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious or offensive by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the comfort, peace, enjoyment, health or safety of the community, or tends to its disturbance, inconvenience, discomfort or annoyance.

In interpreting and applying this Zoning Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals and general welfare. This Zoning Law shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties provided, however, that where this Zoning Law imposes a greater restriction upon the use of buildings or land, or upon the creation, erection, construction, establishment, moving, alterations or enlargement of buildings than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Zoning Law shall prevail.

This Zoning Law shall not apply to uses which were legal, prior, existing, nonconforming uses as defined herein.

Nothing herein contained shall require any change in plans or construction of a building for which a building/zoning permit has been issued.

All buildings under construction at the time this Zoning Law is adopted shall conform to the Zoning Law in effect at the time construction was commenced.

SECTION 105

VALIDITY

If any clause, sentence, paragraph, section or part of this Zoning Law shall be adjudged by any court to be invalid, or void, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 106 **RULES AND USAGE: DEFINITIONS**

A. In the construction of this Zoning Law, the rules and definitions contained in this Article shall be observed and applied, except where the word usage clearly indicates otherwise. In further amplification and for clarity of interpretation of the context, the following definitions of word use shall apply.

1. Words used in the present tense shall include the future; and words used in the singular number shall include the plural number, and the plural the singular.
2. The word "shall" is mandatory and not discretionary.
3. The word "may" is permissive.
4. The word "lot" shall include the words "piece", "parcel" and "place"; and the phrase "used for" shall include the phrases "arranged for", "designed for", "maintained for" and "occupied for".
5. All "measured distances" shall be to the nearest "integral foot". If a fraction is one-half (½) foot or less, the "integral foot" next below shall be taken.

B. **Definitions.** For the purpose of this Zoning Law the terms used herein are defined as follows:

Accessory Building: A building, subordinate to the principal building on the lot and used for purposes customarily incidental to that of said main building.

Accessory Structure: A structure, the use of which is incidental to the primary use of the main structure and which is attached thereto or located on the same lot. "Accessory structures" include, but are not limited to, portable, demountable or permanent enclosures, shade structures, carports and swimming pools.

Accessory Use: Use customarily incidental and subordinate to the principal use of buildings, and located on the same lot (i.e. a garden is accessory to a residence). For the purposes of this Zoning Law a Family Day Care Home, Roadside Stand and Home Occupation (as defined herein) shall be considered accessory uses to a principal use on a lot; however, they and other accessory uses may be subject to additional requirements and review provisions set forth in this Zoning Law (i.e. a Home Occupation II requires issuance of a special use permit).

Additions: As applied to a building or a structure, whether by extending on a side or increasing in height; under relocation or the moving from one location to another.

Adult Care: The provision of temporary or long term residential care and services to adults

who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29, and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

Adult Care Facility: A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by NYS Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses: The definitions associated with adult uses are contained in Section 411.

Alley: Narrow supplementary thoroughfare for the public use of vehicles or pedestrians, affording access to abutting property.

Alteration: Structural change, rearrangement, change of location, addition to, or deletion from a building, other than repair and modification in building equipment systems (i.e., heating, cooling, electrical, etc.).

Amusement Game: Any mechanical, electric or electronic device used or designated to be operated for entertainment or as a game by the insertion of a coin, slug, token, plate, disc, key or any other article into a slot, crevice, or other opening or by paying money to have it activated. Not included are rides, bowling alleys, any device maintained within a residence for the not-for-profit use of occupants thereof and their guests, any gambling device, or juke boxes.

Animal Shelter: Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

Animal Waste Storage Facility: Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

Antenna - An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves.

Apartment House: See Dwelling, Multi-Family

Arcade: Any establishment having three (3) or more video or pinball games.

Area of Special Flood Hazard: Land subject to a one percent (1%) or greater chance of flooding in any given year, and part of Zone A on the Federal Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM).

Area Variance: The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Law.

Automobile Service Station: Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, dry-cleaning or otherwise cleaning or servicing such motor vehicles.

Bed and Breakfast: An owner-occupied one-family dwelling in which a room or rooms are rented on a nightly basis for periods of less than two (2) weeks. Meals may or may not be provided.

Boarding House: Owner-occupied dwelling wherein more than three (3) non-related, non-transient people are sheltered for profit.

Buffer Strip: A continuous strip of trees and/or shrubs not less than ten (10) feet in depth and not less than six (6) feet in height, densely planted to provide a physical screen preventing visual access from one use to another and to reduce the escape and/or intrusion of litter, fumes, dust, smoke, noise or other noxious or objectionable elements. This requirement may be modified by the Planning Board through the site plan review process.

Building: Any structure having a roof supported by columns, piers or walls, including tents, lunch wagons, trailers, dining cars, camp cars or other structures on wheels, and intended for the shelter, housing or enclosure of persons, animals, chattels or property of any kind.

Building Area: The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

Building Height: The vertical dimension measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat roofs, to the deckline of a mansard roof, and to the highest point of the ridge line.

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 surface. All yard requirements are measured to the "building line".

Building, Primary: A building or buildings in which is conducted the main or principal use of the lot on which said building is situated.

Building, Front Line Of: The line of that face of the building nearest the street line, or if there are street lines on two or more sides of the building, it is the line of that face of the building frontage on that street line where the principal entrance is located. This face includes covered porches whether

enclosed or unenclosed, but does not include steps.

Building Permit: A permit issued by the Code Enforcement Officer, stating that plans for the proposed construction of a building are in conformance with the New York State Uniform Fire Prevention and Building Code.

Building Temporary: A "temporary building" or "temporary structure" (other than residential occupancy) is one erected, constructed or placed upon the premises, to exist there for a brief or temporary duration of time, not exceeding six (6) months. All other buildings or structures shall be deemed and considered as permanent for the purposes of this Zoning Law.

Certificate of Compliance: A certificate issued by the zoning officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and such adjustment thereto granted by the Board of Appeals and/or the Planning Board.

Certificate of Occupancy: A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

Child Day Care: Shall mean care for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity (blood relationship) of the parents or stepparents of such child.

Child day care does not refer to care provided in:

- (1) A summer day camp, traveling summer day camp or children's overnight camp as defined in the State Sanitary Code;
- (2) A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;
- (3) A facility providing day services under an operating certificate issued by the NYS Department of Social Services;
- (4) A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office of Mental Retardation and Developmental Disabilities; or
- (5) A kindergarten, pre-kindergarten or nursery school for children three (3) years of age or older, or a program for school-age children three (3) years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or

by a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the elementary or secondary education is provided.

Child Day Care Center: Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program, as defined in this Section.

Club: A group of persons organized in accordance with the Not-For-Profit Corporation Law for social and/or recreational purposes (example - fish and game clubs).

Cluster Development: A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs, while maintaining the overall density limitation imposed by said minimum lot area through the provision of open space as part of the site development plan.

Commercial Communication Tower: A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Community Center: Any meeting hall, place of assembly, museum, art gallery or library, not operated primarily for profit.

Community Residence: A supervised community home operated in compliance with the New York State Mental Hygiene Law which houses not more than fourteen (14) individuals and provides client supervision on a 24-hour basis. For the purposes of this Zoning Law, an approved community residence as defined herein is considered a one-family dwelling.

Contractor's Yard: Outside storage associated with a businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services

Coverage: That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

Development: Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, utilities, mining, dredging, filling, grading, paving,

excavation, or drilling operations, which would lead to increased flood damage, excluding normal maintenance to farm roads.

Disposal: The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, radioactive, hazardous waste, or wastewater into or on any land or water so that such solid waste, radioactive, material, hazardous waste, or wastewater will remain on the land or water and will not be removed.

Disposal Transfer Station: A solid waste management facility, other than a Recyclables Handling and Recovery Facility exclusively handling non-putrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

Domestic Animal: Animals commonly kept as household pets including, but not limited to: dogs, cats, caged birds, rabbits, guinea pigs, non-poisonous snakes, fish, turtles, frogs, mice, and ferrets. Species of animals which are considered harmful (i.e., poisonous) to humans shall not be considered domestic animals for the purposes of this Zoning Law.

Drive-In Service: Building or use where a product is sold to, or a service performed for customers while they are in or near their motor vehicle including, but not limited to, fast food restaurants, drive-up bank tellers, film processing service booths, etc.

Dwelling: A detached building designed or used exclusively as living quarters for one (1) or more families; the term shall not be deemed to include motel, boarding or rooming house, mobile home, recreation vehicle, tourist home or tent.

Dwelling Unit: One (1) or more rooms providing living facilities for one (1) family, including equipment for cooking and provisions for the same and necessary sanitary facilities.

Dwelling, One Family: A dwelling containing one (1) dwelling unit only.

Dwelling, Two-Family: A dwelling containing two (2) dwelling units only.

Dwelling Unit, Multi-family: A dwelling to accommodate three (3) or more families in separate dwelling units, including apartment houses and flats.

Dwelling Unit, Efficiency: A dwelling unit consisting of not more than one habitable room (as defined in NYS Uniform Code) together with kitchen or kitchenette and sanitary facilities.

Educational Institution, Private: Any non-public school or other organization or institution conducting a regularly scheduled curriculum of study similar to that of the public schools and operated under the Education Law of New York State and recognized by the appropriate educational authorities.

Factory Manufactured Home (Modular Home): A factory-manufactured home structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. Such home shall be constructed and installed in accordance with the requirements of Subchapter B of the State Fire Prevention and Building Code and shall bear an Insignia of Approval issued by the State Fire Prevention and Building Code Council. Factory-manufactured homes shall be deemed to be one (1) or two (2) family or multiple dwellings.

Family: One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

Family Day Care Home: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for under NYS Department of Social Services. An additional two children who are of school-age may be cared for when done in compliance with NYS Department of Social Services regulations. The name, description or form of the entity which operates a family day care home does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an accessory use to a one (1) family dwelling.

Family-Type Home: Adult care operated and provided for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Farm Animal: Animals other than those customarily kept as domestic household pets.

Floor Area of a Building: The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement or cellar floor areas and not devoted to habitable use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Floor Lowest: Lowest level including basement, cellar, crawl space, or garage of lowest enclosed area.

Frontage: The extent of a building or a lot along one (1) public street as defined herein.

Game Room: A building or place containing five (5) or more amusement games as defined herein (see Amusement).

Garage Private: An enclosed space for the storage of one (1) or more motor vehicles,

provided that no business, occupation or service is conducted for profit herein nor space therein for more than one (1) car is leased to a nonresident of the premises.

Garage Public: Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, adjusting or equipping of automobiles or other motor vehicles.

Gasoline Station: Any building or land or any part thereof used for sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubricating, washing or servicing vehicles, but not including painting or body repairs.

Gasoline Station-Market (Convenience Store): A gasoline station which provides a second commercial service such as a restaurant, dairy bar, beverage market, food or grocery market, or a commercial use which provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Group Family Day Care: Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for under NYS Department of Social Services. An additional two children who are of school-age may be cared for when done in compliance with NYS Department of Social Services regulations. For the purposes of this Zoning Law, a family day care home shall be considered a home occupation use.

Habitable Floor Area: Any floor usable for living purposes, which includes working, sleeping, eating, cooking, or recreation or combination thereof. A floor used only for storage purposes is not "habitable".

Hazardous Substance: Any substance listed as a hazardous substance in a 6 NYCRR Part 597, List of Hazardous Substances, or a mixture thereof.

Hazardous Waste: A waste, or combination of wastes, which are identified or listed as hazardous pursuant to 6 NYCRR Part 371, Identification and Listing of Hazardous Wastes. Hazardous waste, because of its quantity, concentration, or physical, chemical, or infectious characteristics poses a significant hazard to human health or safety if improperly treated, stored, transported, disposed of, or otherwise managed.

Home Occupation: An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. Home occupations shall be carried on by a resident member of the family.

In particular, a home occupation may include, but is not limited to, the following: art studio; barber shop/beauty parlors (limited to two work stations); cleaning services; contractors; computer

programmer; cook; day nursing; direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman; dressmaker or tailor; electrical/radio/television repair; financial planning and investment services; insurance agent; musician; photographer; professional offices of a physician, dentist, lawyer, accountant, engineer or architect; real estate office; teaching or tutoring (limited to two students at one time); telephone answering; upholsterer; group family day care home; school-age child care and family-type home.

Garage sales, yard sales and other similar sales conducted for cumulative total of more than 15 days, either consecutive or non-consecutive, within a calendar year, shall be considered a home occupation.

However, a home occupation shall not be interpreted to include the following: motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants or furniture refinisher (involving "dip tanks" or stripping).

Hospital: Hospital, sanitarium, clinic, rest home, nursing home, convalescent home, home for aged, and any place for diagnosis and treatment of human ailments, except a doctor's office.

Hospital, Animal: An establishment for the medical and/or surgical care of sick or injured animals.

Junk: Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material, tires, lumber, pallets and other wood debris.

Junkyard: Outside storage or deposit, whether in connection with another business or not, where one or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles and/or material defined as junk by this Zoning Law which, taken together equal in volume one hundred (100) cubic feet, a junkyard shall include any land or structure used for collecting, storage, sale or disposal of junk, scrap metal, or other discarded materials. The following conditions do not constitute a junkyard: 1) storage of a single motor vehicle for use on a seasonal basis (i.e. a winter car) provided such vehicle is intact, located in other than the front yard, and has a N.Y.S. Motor Vehicle Inspection sticker which was issued within the previous twelve months; and 2) a single motor vehicle offered for sale for a total period of time, consecutive or nonconsecutive, not to exceed thirty (30) days.

Kennel: Any building or land or part thereof used for harboring three (3) or more dogs over six (6) months old.

Light Industrial: The processing, fabrication, assembly or packaging of previously prepared or refined materials.

Lot: A parcel or area of land, the dimensions and extent of which are determined by the latest official records or by the latest approved map of a subdivision of which the "lot" is a part.

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, Corner: A parcel of land at the junction of and fronting on two (2) or more intersecting streets.

Lot Depth: The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot, Interior: A lot, other than a corner lot, which has frontage on only one (1) street other than an alley.

Lot Lines: The property lines bounding a lot as defined herein.

Lot Line, Front: In the case of a lot abutting upon only one street, the line separating the lot from the street right-of-way; in the case of a lot abutting more than one street, each street line shall be considered a front lot line.

Lot Line, Rear: The lot line which is generally opposite the front lot line, if the rear lot line is less than ten (10) feet in length, or if the lot comes to a point at the rear, the rear lot line shall be deemed to be a line parallel to the front line, not less than ten (10) feet long, lying wholly within the lot and farthest from the front lot line.

Lot Line, Side: The property line or lines extending from the front lot line to the rear lot line.

Lot of Record: An area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed as filed in the official records of the County Clerk.

Lot, Through: A lot, other than a corner lot, which has frontage on more than one (1) street.

Lot Width (Frontage): The horizontal distance between the side lot lines, measured at right angles to its depth at the street line.

Lot, Zoning: A parcel of land occupied, or to be occupied by a principal use or uses, together with permitted accessory uses, yards and open spaces, having frontage on an officially accepted street

and having not less than the minimum area required by these regulations for a lot in the zoning district within which said parcel of land is located. A lot of record may or may not be a "zoning lot".

Medical facility: A facility for the provision of medical care including treatment of illnesses and/or injury of persons limited to outpatient care.

Mobile Home: A structure, whether occupied or not, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. For the purpose of this Zoning Law, an unoccupied mobile home shall be considered the same as an occupied unit.

Mobile Home Park: A parcel which has been improved for the rental or lease of two (2) or more lots and the provision of services for mobile homes for nontransient residential use.

Motel/Hotel: A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room may be provided within the building or in an accessory building.

Motor Vehicle Repair Shop: Any building or structure used for repair and servicing of motor vehicles, other than the building's owner, for profit or as part of a commercial operation.

Non-Conforming Lot: A lot of record legally existing at the date of the passage of this Zoning Law which does not have the minimum frontage or contain the minimum area for the zone in which it is located.

Non-Conforming Use: A use of a building or of land that does not conform to the regulations as to use and area in the district in which it is situated, which was lawful under any applicable preceding ordinances or laws at the time the use was established, or if established before 1964 was lawful before such date and in either event has not been extended after becoming a nonconforming use or otherwise been rendered an illegal use pursuant to provisions of any prior law or ordinance.

Nursing Home: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Office Building: A building used primarily for conducting the affairs of a business, profession, service, industry or government, or like activity, that may include ancillary services for office workers such as a restaurant, coffee shop, newspaper or candy stand.

Outdoor Recreation: Includes, but is not limited to, golf courses; golf driving range; trap, skeet, and archery range; swimming pool; skating rink; tennis court; recreation stadium; baseball and softball fields; skiing facility; hunting preserve; and similar places of outdoor recreation.

Outdoor Solid Fuel Burning Device: A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

Owner: An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

Parking Space: An off-street space available for the parking of one (1) motor vehicle on a transient basis and having a width of ten (10) feet, and an area of not less than two hundred (200) square feet, exclusive of passageways and driveways, and having access to a street. Handicapped parking spaces may be larger and therefore require more space; however, regardless of their size, such space shall constitute a single parking space.

Patio: A level landscaped, and/o surfaced area directly adjacent to a principal building at finished grade and not covered by a permanent roof, excluding sidewalks and/or driveways.

Personal Services: Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

Planning Board: That Board appointed by the Village Board to carry out the provisions of New York Village Law and Section 208 of this Zoning Law.

Primary Use: The main or principal use for which a building or lot is to be used.

Professional Office - A office used by a duly New York State licensed/registered architect, attorney, dentist, certified counselor, certified public account (CPA), chiropractor, engineer, insurance broker or salesman, message therapist, optometrist, physician or surgeon, physical therapist, psychologist, real estate broker or salesperson, surveyor, teacher or veterinarian.

Recreation, Indoor: Includes, but is not limited to, bowling alley, theater, table tennis, and pool hall, skating rink, gymnasium, swimming pool, hobby workshop, arcade, and similar places of indoor recreation.

Recreation, Outdoor: Includes, but is not limited to, golf courses, golf driving range, trap, skeet, and archery range, swimming pool, skating rink, riding stable, tennis court, recreation stadium, skiing facility, hunting preserve, and similar places of outdoor recreation.

Recreational Vehicle: A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by a motor vehicle (see also Sport Recreational Vehicle). The basic entities are:

A. Travel Trailer: A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motor vehicle.

B. Camp Trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by a motor vehicle.

C. Truck Camper: A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:

1. Slide-in camper: A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.

2. Chassis-mount camper: A portable unit designed to be affixed to a truck chassis.

D. Motor Home: A vehicular unit built on a self-propelled motor vehicle chassis.

Recyclables Handling and Recovery Facility: Recyclables handling and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected and which is regulated by 6 NYCRR Part 360.

Religious Institution: Church, temple, parish house, convent, seminary and retreat house.

Residential Care Facility: A residential facility operated by either a public or private agency and regulated by the NYS Department of Social Services, exercising custody of dependent, neglected, abused, maltreated, abandoned or delinquent children, homes or shelters for unmarried mothers, residential programs for victims of domestic violence, or adult care facilities.

Restaurant: Any establishment, however designed, at which food is sold for consumption on the premises to patrons seated within an enclosed building and where the taking of food and drink from said building is incidental. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

Retail Store/Service: Enclosed store for sale of retail goods and services including, but not limited to, the following: barber, beauty, dry clean, personal service shop, department store and restaurant/tavern. Retail store/service shall not be interpreted to include the following: drive-up service, freestanding retail stand, gasoline station, gasoline station-market, motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

Satellite Dish: A structure which is designed and/or intended to receive, relay or send television signals to or from orbiting or geostationary satellites.

School: Parochial, private and public school, college, university and accessory uses operated in compliance with the Education Law of the State of New York and recognized by the appropriate

educational authorities; and shall exclude commercially operated schools of beauty, culture, business, dancing, driving, music and similar establishment.

School-Age Child Care Program: Care provided on a regular basis to more than six school-age children under 13 years of age or who are incapable of caring for themselves where such children attend a school higher than kindergarten or attend full day (at least six hours) kindergarten at a public or private school whether such care is provided for compensation or otherwise.

Self-Service Storage Facility: A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self storage facility.

Shopping Center: A group of businesses occupying adjoining structures, having adequate space for loading and unloading and adequate off-street parking.

Sign - Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

Sign, Advertising - A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot.

Sign, Commercial - A sign which directs attention to a business or profession conducted or to products sold upon the same lot.

Sign, Directional - A sign limited to providing information on the location of an activity, business or event.

Sign, Limited Purpose - A content neutral sign including real estate for sale signs, real estate for rent signs, yard sale signs, garage sale signs, open house signs; community, civic, political, charitable, social, or educational message signs. Such sign shall be treated as a temporary sign.

Sign, Non-Commercial - A sign which identifies a mobile home park, school, church, cemetery, public park or building, or volunteer fire department facility.

Sign, Portable - A sign, whether on its own trailer, wheels, or otherwise designed to

be movable and not structurally attached to the ground, a building, a structure or another sign.

Sign, Temporary - A sign related to a single activity or event having a duration of no more than sixty (60) days.

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 (4) sided (straight sides) geometric shape which most closely outlines the said sign.

Site Plan: A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Law, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan. Plats showing lot, blocks or sites which are subject to review under Section 7-728 of NYS Village Law and/or any local laws of the Village of Elba regulating the division of property shall not be subject to review as site plans under this Zoning Law unless a zoning application is submitted.

Skilled Trade Shop: A shop where an individual involved in a skilled building trade (i.e. carpenter, plumber, electrician, etc.) assembles custom fixtures, cabinet, etc. for installation by him/her at a job site location. No retail sales of materials and/or products directly to the public shall be allowed on site.

Special Use Permit: A specifically designated use that would not be appropriate generally without restriction in a zoning district, but which, if controlled as to number, area, location, relation to the neighborhood, or otherwise, in the opinion of the Planning Board, promotes the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and/or the general welfare.

Sport Recreation Vehicle: Motor vehicles for personal use by occupants of a household. Examples of recreational vehicles shall include motorcycles, all terrain vehicles, snowmobiles, and boats. Examples of sport recreational vehicles shall not include vehicles for sale or lease (see also Recreational Vehicle).

Stabling of Agricultural Animals: A concentration of animals, permitted under agricultural us (other than a private stable or public stable) within a building, structure or other defined area for the purpose of housing or feeding.

Street: A public thoroughfare which has been dedicated or deeded to the public use and which has been improved in accordance with municipal standards.

Street Line: Right-of-way line of a street as dedicated by a deed of record. If no such deed exists, then by any other record establishing such right-of-way line of a street.

Structure: A combination of materials to form a construction for use, occupancy or

ornamentation, including, but not limited to, buildings, solar collector, mobile homes, towers, wind energy conversion systems (WECS), antennas, satellite dishes, or gas or liquid storage tanks, that are principally above ground.

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.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Swimming Pool: A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a recirculating and/or controlled water supply over 100 gallons with a depth of greater than two (2) feet.

Temporary Use: An activity conducted for a specified limited period of time which may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction which are removed after the completion of the construction work.

Tourist Home: Owner-occupied dwelling in which overnight accommodation, with or without meals, is provided for transient guests for profit. Term includes "bed and breakfast" establishments.

Trailer: Any vehicle which may be towed and used for carrying or storing goods, equipment, machinery, construction materials, snowmobiles, boats, all terrain vehicles (ATV), motor vehicles or as a site office.

Use Variance: The authorization by the Zoning Board of Appeals for use of land for a purpose which is not allowed or is prohibited by this Zoning Law.

Utility Public: Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television.

Veterinary Facility: A facility for the provision of medical care including treatment of illnesses and/or injury of domestic household pets. Boarding of animals is limited to short-term care incidental to their treatment.

Yard: A required open space located on the same lot as the principal building, unoccupied and unobstructed from ground to sky except for accessory uses and for tree or shrub growth, fences, walls or other encroachments expressly permitted elsewhere in these regulations.

Yard Area, Front: An open, unoccupied space on the same lot as the principal building, extending the full width of the lot and situated between the edge of the established right-of-way and the front line of the building projected to the side lines of that lot. Setback line shall be synonymous with the rear limit of the required "front yard area".

Yard, Rear: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a "rear yard" shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

Yard, Side: An open, unoccupied space between the side line of the lot and the nearest line of the building. It shall extend from the front yard to the rear yard, or in the absence of either, to the street or rear lot line, as the case may be. The width of a "side yard" shall be measured at right angles to the side line of the lot.

Zoning Board of Appeals: That board appointed by the Village Board, specifically to hear all appeals as provided by these regulations and other duties specifically set forth in this Zoning Law or as assigned to it by the Village Board.

Zoning Enforcement Officer: The officially established Zoning Enforcement Officer of the Village of Elba.

Zoning Permit: A permit issued by the Zoning Enforcement Officer, stating that the purpose for which a building or land is to be used is in conformance with the uses permitted and all other requirements of this Zoning Law.

ARTICLE II ADMINISTRATION

SECTION 201 ENFORCEMENT

The duty of administering and enforcing the provisions of this Zoning Law is hereby conferred upon the Zoning Enforcement Officer, who shall have such powers as are conferred upon him/her by this Zoning Law and as reasonably may be implied therefrom. He/she shall be appointed by the Village Board and shall receive compensation as the Village Board shall determine. The Zoning Enforcement Officer shall have such other and further duties as may be assigned by the Village Board pursuant to this Zoning Law or otherwise.

SECTION 202 DUTIES OF THE ZONING ENFORCEMENT OFFICER

A. **Inspection and Review.** It shall be the duty of the Zoning Enforcement Officer, or his/her duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Zoning Law.

The Zoning Enforcement Officer and all his/her duly authorized assistants shall be entitled to enter any building or premises (which includes the internal premises such as basement, etc.) for the purpose of inspection, observation, measurement, testing and records examination in performing his/her duties set forth in this Zoning Law, and for the further purpose of ascertaining whether the provisions of this Zoning Law are being met and all requirements are being complied with. Persons or occupants of premises to be entered shall allow the Zoning Enforcement Officer and/or his/her assistants ready access at all reasonable times to all parts of the premises to carry out the actions specified herein. Where any owner or occupant has security measures in force which would require proper identification and clearance before entry into their premises, the owner or occupant shall make necessary arrangements with their security guards so that upon presentation of suitable identification, authorized personnel from the Village will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

The Zoning Enforcement Officer or any of his/her duly authorized assistants seeking to enter private property pursuant to the provisions of this Zoning Law may enter such property on the consent of the owner or occupant. In the event such consent is denied or if said Zoning Enforcement Officer or assistant determines that it is preferable to obtain a search warrant without first seeking such consent, said Zoning Enforcement Officer or assistant shall be entitled to obtain a search warrant pursuant to the applicable provisions of law from a court of competent jurisdiction to compel the owner or occupant to permit immediate entry and inspection.

Notwithstanding the provisions contained in the immediately preceding paragraph, in the event an emergency situation exists, said Zoning Enforcement Officer and/or assistants shall be entitled to immediately enter upon any private property for the purposes set forth in this Zoning Law either with or without a search warrant.

B. Violations and Written Orders. Where the Zoning Enforcement Officer, in the course of his/her duties, determines that any plans, buildings or premises are in violation of the provisions of this Zoning Law, he/she shall order the responsible party in writing to remedy such conditions. Said written order shall comply with the provisions of this Zoning Law.

C. Revocation of Certificate of Compliance. On the serving of notice and failure to comply with the time limits specified in such notice by the Zoning Enforcement Officer to the owner in any violation of any of the provisions of this Zoning Law, any Certificate of Compliance previously issued for such buildings or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.

D. Records. The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him/her. Such records shall form a part of the records of his/her office and shall be filed and maintained in the Village Office and records of all acts and serving of all notices by either the Zoning Enforcement Officer or the Code Enforcement Officer shall be filed with the Village Clerk within five (5) days of such action(s) and shall be a public record. The records to be maintained shall include at least the following:

(1) Property File. Each application for a permit provided for by this Zoning Law shall be maintained in the permanent Property File established at the time the application is made. Said file shall contain one (1) copy of the application and all supporting documents and plans; notations regarding pertinent dates and fees, and the like; as appropriate, one (1) copy of the resolution of the Planning Board and/or Zoning Board of Appeals in acting on the application if such action is required; and the date the permit applied for was issued or denied by the Zoning Enforcement Officer as well as a copy of any permit issued by the Zoning Enforcement Officer and any correspondence sent or received by the Zoning Enforcement Officer regarding such application.

(2) Bi-Monthly Report. The Zoning Enforcement Officer shall prepare a bi-monthly report for the Village Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him/her; all permits and certificates issued and denied; and all complaints of violations received and all violations found by him/her, and the action taken by him/her consequent thereto. A copy of this monthly report shall also be transmitted by the Zoning Enforcement Officer to the Tax Assessor, Planning Board and Board of Appeals at the same time it is transmitted to the Village Board.

SECTION 203 CERTIFICATES AND PERMITS

The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this Zoning Law.

A. Zoning Permit. The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or structures or

part of any building, or the change in the use of any land or building or part thereof, where he/she shall determine that such plans are not in violation of the provisions of this Zoning Law.

B. Temporary Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit. A temporary use permit shall only be effective for a period not to exceed twelve (12) months; such permit may be extended by the Zoning Enforcement Officer not more than once for an additional period not to exceed six (6) months.

C. Special Use Permit. Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue any special use permit provided for by this Zoning Law.

D. Certificate of Compliance. The Zoning Enforcement Officer is hereby empowered to issue a certificate of compliance which shall certify that all provisions of this Zoning Law have been complied with in respect to the location and use of the building, structure or premises in question.

SECTION 204 APPLICATION PROCEDURES

A. Application. Applications for zoning permits shall be accompanied by a layout sketch, drawn to an acceptable scale, showing the shape and dimensions of the lot to be built upon, the size and location of all buildings or structures proposed as well as those that shall remain, the intended use of each building or structure, and any such other information with regard to the lot and neighboring lots, buildings and/or structures as the Zoning Enforcement Officer may in his/her discretion deem necessary to determine and provide for the enforcement of this Zoning Law. Applications, together, with a layout sketch shall be submitted in triplicate. The Zoning Enforcement Officer shall carefully consider the application and supporting documents for compliance with this Zoning Law and either issue or deny the zoning permit applied for. When the application is for any non-residential use within the Village the Zoning Enforcement Officer shall, prior to the issuance of any permit, refer one (1) copy of such plans, drawings and statements to the Planning Board for site plan review.

B. Issuance of Zoning Permit. The Zoning Enforcement Officer shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and all required variances and special use permits have been obtained.

C. Installation of Foundation. The Zoning Enforcement Officer shall be notified that the site is prepared for installation of the foundation of a structure, and shall inspect the site to check the location of the structure.

D. Initiation of Construction. If a zoning permit is not obtained by the applicant within ninety (90) days after final approval, such approval shall be void.

E. Completion of Construction. A zoning permit shall be void if construction is not substantially completed within a period of one year from the date of said permit. The Zoning Enforcement Officer may issue a six-month extension of a permit for good cause shown. Two such extensions of a permit will be allowed.

F. Location of Permit. The zoning permit shall be located in a place readily visible to the public during construction activities.

SECTION 205 **FEES**

Fees may be charged for permits issued, and processing of applications for amendments, variances, site plan review, special use permits and other administrative and/or enforcement activities. A fee schedule shall be set by resolution of the Village Board and may be changed from time to time in the same manner.

SECTION 206 **CERTIFICATES OF COMPLIANCE**

No land shall be used or occupied and no building hereafter erected, altered, or extended shall be used or changed in use until a certificate of compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of this Zoning Law.

SECTION 207 **BOARD OF APPEALS**

A. Organization

The Board of Appeals shall consist of five (5) regular members including a chairperson and a deputy chairperson, and two (2) alternate member(s) all of whom shall be appointed by the Mayor subject to the approval of the Village Board. The term of office for regular members shall be governed by the applicable provisions of New York Village Law and the term of office for the alternate member(s) shall be two (2) years. The Chairperson of the Board of Appeals may designate an alternate member to substitute for a regular member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of a regular member. Such designation shall be entered into the minutes of the initial Board of Appeals meeting at which such substitution is made. All provisions of State Law relating to Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any Village requirements related to training, compensation and attendance, shall also apply to alternate members.

B. Meetings, Minutes and Records

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

C. Filing Requirements

Every rule, regulation, amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Village Clerk within five (5) business days and shall be a public record.

D. Hearing Appeals

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Zoning Board of Appeals is necessary to override a County Planning Board recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Village.

E. Time of Appeal

Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Village Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer or Village Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party and shall be paid to the Village Clerk prior to the hearing of such appeal.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Enforcement Officer, from whom the appeal is taken, certifies to the Board of Appeals, after notice of appeal shall have been filed with the Zoning Enforcement Officer, that by reason of the facts stated in the certificate, a stay would, in his/her opinion, cause eminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Zoning Enforcement Officer from whom the appeal is taken and undue cause shown.

F. Public Hearing Notice and Referrals

A public hearing shall be held by the Zoning Board of Appeals before deciding an appeal, such public hearing shall be advertised in accordance with Section 214 of this Zoning Law. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.

At least thirty (30) days before the date of the public hearing unless such time limit is waived by the Planning Board, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

G. Time of Decision

The Zoning Board of Appeals shall decide upon an appeal within sixty-two (62) days after the conduct of the public hearing. Prior to rendering its decision the Board shall first complete the SEQR process. Said time of decision may be extended by mutual consent of the applicant and Zoning Board of Appeals.

H. Filing of Decision and Notice

The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Village Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant by regular mail.

I. Permitted Action by the Zoning Board of Appeals

1. Interpretations, Requirements, Decisions and Determinations

The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made.

2. Use Variances

The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every use allowed under the zoning regulations for the particular district where the property is located:

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

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

3. Area Variances

The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances from the area or dimensional requirements of this Zoning Law.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- c. Whether the requested area variance is substantial;
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and

e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

J. Solar Access

Pursuant to Chapter 74-2 of the Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.

K. Rehearing

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

SECTION 208 PLANNING BOARD

A. Organization

The Planning Board shall consist of five (5) members including a chairperson and a deputy chairperson and two (2) alternate member(s) all of whom shall be appointed by the Mayor subject to the approval of the Village Board whose term shall be governed by the applicable provisions of New York Village Law. If the Mayor fails to designate a chairperson, the Planning Board may then itself select one. The term of office for regular members shall be governed by the applicable provisions of New York Village Law and the term of office for the alternate member(s) shall be two (2) years. The Chairperson of the Planning Board may designate an alternate member to substitute for a regular member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of a regular member. Such designation shall be entered into the minutes of the initial Planning Board meeting at which such substitution is made. All provisions of State Law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any Village requirements related to training, compensation and attendance, shall also apply to alternate members.

B. Powers and Duties

Powers and duties of the Planning Board shall be as follows.

1. Site Plan Review

Review of site plans in accordance with NYS Village Law Section 7-725-a set forth in Subsection C of this Section, for any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings unless otherwise required by this Zoning Law (i.e., special use permit).

2. Special Use Permits

Granting of special use permits in accordance with NYS Village Law Section 7-725-b as set forth in this Zoning Law based upon the criteria set forth in Subsection D of this Section.

3. Review Use Variances

Review in an advisory capacity variances referred to the Planning Board as set forth in Section 207.

4. Temporary Uses and Structures

Grants permits for temporary uses and structures.

a. The Planning Board may direct the Zoning Enforcement Officer to issue a temporary permit for a period of time not to exceed 12 months, for incidental nonconforming uses and structures as follows provided the public hearing and notification requirements set forth in Section 214 have been met:

- (1) Temporary uses incidental to a construction project.
- (2) Temporary real estate sales office incidental to a subdivision.
- (3) Other similar temporary incidental uses which:
 - (a) In no way exert a detrimental effect upon the lawful use of land and activities normally permitted in the zone in question, and
 - (b) Contribute materially to the welfare and well-being of the Village.

b. Permits shall be conditioned upon an agreement by the applicant to remove the use upon expiration of the permit.

c. Permits may be reissued a maximum of one (1) time for an additional period of up to six (6) months.

5. Other Powers and Duties

The Planning Board shall have such other powers and duties as are provided by law including this Zoning Law or as are otherwise assigned to it by the Village Board.

C. Site Plan Review

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings and their accessory uses and/or buildings.

1. Notice and Public Hearing

The Planning Board shall notify all property owners within the Village of Elba which own land that is either contiguous or directly across from the involved property. Such notice shall be sent by regular mail, at least ten (10) days before the meeting. In those instances when the Planning Board holds an optional public hearing (see following paragraph) on a site plan review, this notice to contiguous property owners is not required.

The Planning Board may, in its sole discretion, hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is received by it and such public hearing shall be advertised in accordance with Section 214 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

2. Submission of Site Plan and Data

The applicant shall submit to the Village Clerk ten (10) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.

- a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structures, streets, rights-of-way, zoning and ownership of surrounding property.
- b. Layout sketch showing proposed lots, blocks, building locations and land use area.
- c. Traffic circulation, parking and loading spaces, and pedestrian walks.
- d. Landscaping plans including site grading, landscape design, open space and buffer zone.
- e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- f. Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
- g. Engineering feasibility study of any anticipated problem which may arise from the proposed development, as required by the Planning Board.
- h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- j. Description of proposed measures to control runoff and drainage from the site and when required by NYS DEC and/or SEQR process, a Stormwater Management and

Erosion Control Plan.

k. A description of the proposed generation, storage and/or disposal of hazardous materials and/or hazardous wastes on-site, including estimates of amounts involved and provisions for transport, storage and environmental protection.

l. Together with any other permits or applications made to other governmental agencies and any additional information requested by the Planning Board.

3. Site Plan Review Criteria

The Village Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:

a. Harmonious relationship between proposed uses and existing adjacent uses.

b. Maximum safety of vehicular circulation between the site and street including emergency vehicle access.

c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.

d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.

e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater treatment systems, storm water control systems, and fire protection.

4. Area Variances

Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with the zoning regulations, applications may be made to the Zoning Board of Appeals for an area variance pursuant to NYS Village Law Section 7-725-a, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

5. Modifications and Conditions

The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to insure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning

Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Village.

6. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and 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 inappropriate to a particular site plan.

7. Reservation of Parkland on Site Plans Containing Residential Units

a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or Zoning Law, a park or parks suitably located for playground or other recreational purposes.

b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Village. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Village based on projected population growth to which the particular site plan will contribute.

c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Village Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this Section, shall be deposited into a trust fund to be used by the Village exclusively for park, playground or other recreational purposes, including the acquisition of property.

d. Notwithstanding the foregoing provisions of this subdivision, if the land

included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to NYS Village Law Section 7-728, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval

The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Village Attorney for an amount approved by the Village Board.

9. Performance Standards

In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental standards. However, final responsibility for compliance with all environmental laws and regulations lies with the applicant.

10. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to which the site plan and all supporting data required by this Article are submitted to the Village Clerk. Such time may be extended by mutual consent of the Planning Board and the developer. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Village Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

11. Changes and Revisions

Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

D. Special Use Permit

The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a special use permit. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the public welfare. Also, the Building Inspector shall at least annually inspect the use of the property in question to insure compliance with conditions which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Law.

1. Application

Applications for special use permits shall be made in writing on the appropriate form obtained from the Building Inspector. Four (4) copies of each application, including site plan, shall be submitted to the Building Inspector, who shall review the application for completeness prior to forwarding it to the Village Clerk and the Planning Board. One (1) copy shall be retained by the Building Inspector. Such site plan shall show location of all buildings, parking, access and circulation, open space, landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law.

2. Area Variance

Where a proposed special use permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to Section 7-725-b of Village Law, without the necessity of a decision or determination of the Building Inspector.

3. Notice and Public Hearing

The Planning Board shall hold a public hearing as part of the special use permit review process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for a special use permit is received by it and such public hearing shall be advertised in accordance with Section 214 of this Zoning Law. When necessary under Section 239 of the General Municipal Law, the authorizing board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.

4. Conditions

The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed special use permit plan. Upon its approval of said special use permit, any such conditions must be met in connection with the issuance of the special use permit by the Building Inspector.

5. Waiver of Requirements

The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law, and 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 inappropriate to a particular special use permit.

6. Decisions

The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a special use permit request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Village Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

7. Abandonment of Special Use Permit

A special use permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the special use permit.

8. Standards Applicable for all Special Use Permits

The Planning Board may issue a special use permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions contained elsewhere in this Zoning Law.

- a. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.
- b. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
- c. The operation of any such use shall not be more objectionable to nearby properties than would be operation of any permitted use.
- d. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.
- e. When a commercial or industrial special use abuts a residential property the Planning Board may find it necessary to require screening of sufficient height and density (i.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
- f. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
- g. The proposed use shall meet the off-street parking and loading requirements of similar uses.
- h. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
- i. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards. The Planning Board shall review and approve all such proposals.
- j. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.
- k. A special use permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Law unrelated to the use which is the subject of the requested special use permit, as determined by the Planning Board.
- l. As a condition of all special use permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.

m. In addition to the general standards for special permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements, it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Law.

n. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e., mining.

SECTION 209 VIOLATION AND PENALTY

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any land, building or structure or part thereof in a manner not permitted by an approved zoning permit or certificate of compliance.

B. Any person violating any provision of this Zoning Law shall be served by the Zoning Enforcement Officer with a written Notice of Violation and Correction Order stating the nature of the violation found to exist, the remedy ordered and providing a time limit for the satisfactory correction thereof. Unless a different time limit is provided by this Zoning Law for the correction of any violation, which alternate time limit shall prevail, said Notice of Violation and Correction Order shall provide a time limit of thirty (30) days for the satisfactory correction of the violation. The Notice of Violation shall further inform the violator of his/her right to appeal the Zoning Enforcement Officer's interpretation to the Zoning Board of Appeals.

Service of the Notice of Violation/Correction Order shall be sufficient if directed to the owner, operator or occupant of a residence, commercial or industrial facility, as the case may be, violating this Zoning Law. Service of said Notice of Violation/Correction Order shall be made personally upon the alleged violator, if said violator can be found with due diligence; otherwise, service of said Notice of Violation/Correction Order shall be sufficient if service is completed by delivering the same to a person of suitable age or discretion at the actual residence, commercial or industrial facility at which said violation is occurring and by mailing the Notice to the person to be served at his/her last known residence or business address; or, where service cannot otherwise be made with due diligence, by affixing said Notice of Violation/Correction Order to the door of the residence, commercial or industrial facility at which said violation is occurring and by mailing said Notice to such person at his/her last known residence or place of business. It shall be unlawful for any person to fail to comply with a written Notice of Violation/Correction Order of the Zoning Enforcement Officer within the time fixed for compliance therewith.

C. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part or assisting in the construction, repair or use of any land, building or structure to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates of the Zoning Enforcement Officer made hereunder.

D. Any violation of this Section and/or this Zoning Law is hereby declared to be an offense, punishable by a fine not exceeding three hundred and fifty (350) dollars or imprisonment not to exceed six months, or both for a conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty (350) dollars nor more than seven hundred (700) dollars or imprisonment not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed with a period of five years, punishable by a fine not less than seven hundred (700) dollars nor more than one thousand (1000) dollars or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this Zoning Law shall be deemed misdemeanors and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

E. The Zoning Enforcement Officer may, with permission of the Village Board, institute court action to enforce the provisions of this Zoning Law, or may refer the matter to the Village Board for its action.

F. Any person violating any provision of this Zoning Law shall be liable to the Village for any and all losses, damages and expenses incurred by the Village or for which the Village may be held liable as a result of said violation. The Village or Zoning Enforcement Officer shall have the right to obtain reimbursement for any loss, damage or expense incurred by it as a result of any violation of this Zoning Law including, but not limited to, attorney's fees and court costs incurred as a result of any legal proceedings brought hereunder.

Nothing contained in this Zoning Law shall prevent the Village or Zoning Enforcement Officer, either alone or in conjunction with the foregoing penalties, from maintaining an action or proceeding in the name of the Village or Zoning Enforcement Officer in any court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this Zoning Law.

SECTION 210 COMPLAINT OF VIOLATION

Whenever a violation of this Zoning Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint and immediately investigate it. Where the Zoning Enforcement Officer finds such violation, he/she shall take appropriate action and/or submit the results of his/her investigation in writing to the Village Board if action by them is required.

SECTION 211 PROCEDURE FOR AMENDMENT

- A. The Village Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law after official notice has been given and a public hearing has been held by the Village Board as required by law.

- B. Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner and filed in triplicate, accompanied by the required fee.

- C. Every such proposed amendment shall be referred to the Planning Board for a report prior to any public hearing.

- D. Prior to adoption by the Village Board, a proposed amendment may, in the proper case, have to be referred to the County Planning Board pursuant to law.

- E. In case of a protest against such change signed by the owners of twenty (20) per centum or more, either of the area of the land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet therefrom or of that directly opposite thereto, extending one hundred (100) feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) of the members of the Village Board.

SECTION 212 REMEDIES

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is divided into lots, blocks or sites in violation of this act, or of any Zoning Law or other regulation made under authority conferred thereby, the proper local authorities of the village, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises. All issues in any action or proceeding for any of the purposes herein stated shall have preference over all other civil actions and proceedings.

SECTION 213 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

- A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 3 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above

mentioned activities.

B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Village is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified below:

Zoning text amendment	Village Board
Zoning district amendment	Village Board
Site Plan Review	Planning Board
Special permit	Planning Board
Zoning permit (if necessary)	Planning Board
Variance	Zoning Board of Appeals

When a project involves two (2) or more separate zoning actions, the board (agency) having the final (last) approval would typically be the lead agency. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

SECTION 214 PUBLIC HEARING AND NOTICE REQUIREMENTS

When a public hearing is required by this Zoning Law the requirements set forth in this Section as well as the applicable requirements of NYS Village shall be followed. All costs for the public hearing including, but not limited to, the legal ad(s), required mail notifications, and posting of signs, shall be paid by the applicant.

A. Legal Advertisement

Each notice of a public hearing shall be published in a newspaper of general circulation in the Village at least five (5) days prior to the date of the hearing for all zoning public hearings conducted by the Planning Board and Zoning Board of Appeals. Public hearing notices conducted by the Village Board for zoning law amendments and zoning map amendments shall be published at least ten (10) days prior to the date of the hearing.

B. Notices To Surrounding Property Owners

Notice of a required public hearing shall be mailed by first class mail service to all owners of property located within two hundred (200) feet of the property which is the subject of the application, at least ten (10) days before the date of the hearing. For this purpose, the names and addresses of owners as shown on the latest assessment records of the Village of Elba shall be used.

C. Sign Postings

At least ten (10) days prior to the date set for a public hearing on a conditional use, variance or site plan application, the applicant shall post their property with a sign(s) containing the following information:

1. The nature of the application being presented at the public hearing.
2. The date, time and location of the public hearing.
3. A sign shall be prominently displayed along each road frontage, no closer than eight (8) feet and no further than fifteen (15) feet from the front property line.
4. The sign(s) required by this Section shall be made in accordance with specifications approved by the Village Board by separate resolution, and shall be provided to the applicant by the Village Clerk. Up to two (2) signs shall be provided to the applicant without charge, with each additional sign provided at a cost provided in the Village's fee schedule.
5. Failure by the applicant to maintain the required signs for the full ten day period prior to the date of the public hearing may result in the tabling of the application until the next regular meeting of the appropriate board. All signs posted pursuant to this section shall be removed by the applicant within five (5) days after the conclusion of the public hearing.
6. The sign shall be posted in such a manner so as to not blow or fall down and to not be obscured by grass, shrubs, snow, trees, vehicles etc. nor shall it impair traffic safety.

D. Recess or Adjournment of a Public Hearing

The Planning Board, Village Board or Zoning Board of Appeals may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or to persons it decides may be interested in the proposal being considered. Upon recessing or adjournment, the time and date when the hearing is to be resumed shall be announced. No further notice of publication will be necessary.

ARTICLE III ZONING DISTRICT REGULATIONS - ZONING MAP

SECTION 301 GENERAL REGULATIONS

The provisions of this Zoning Law shall be subject to such exceptions, additions, or modifications as herein provided by the following general supplementary regulations. The dimensional requirements and restrictions set forth in Schedule "A" annexed hereto are incorporated herein and made a part of this Zoning Law. No building or structure shall be erected and no land used in violation of those dimensional requirements and restrictions.

A. Buildings, Uses and Lots

1. One Principal Building and Use Per Lot

There shall not be more than one (1) principal structure and one (1) principal use on any lot in the residential districts (R-1, and R-2), except as provided for in the following:

a. An approved multifamily dwelling project,

b. A single family dwelling accompanying a non-residential use, or uses, permitted on a lot in the R-1 or R-2 Districts, if approved by the Planning Board as part of the Special Use Permit Application Process, provided there is only one use of a non-residential nature on the lot.

2. Yard and Open Space for Every Building

No part of any yard or other open space required about any building or structure for the purpose of complying with the provisions of this Zoning Law shall be included as part of the yard or other open space similarly required for another structure. Also, no yard or other open space on one lot shall be considered as a yard or open space for a building or structure on any other lot other than as provided for in Section 411 for Cluster Residential Development.

3. Established Front Yard

Where front yards in any District have been established for more than fifty percent (50%) of the frontage in any block at a depth greater than the minimum required for the District, the depth of the required front yard shall be increased to comply with such established depth. In no case shall the depth of the required front yard be less than that specified for the District in which it is located.

4. Subdivision of a Lot

Where a lot is hereafter formed from part of a lot already occupied by a building, such separation shall be effected so as not to violate any of the requirements of this Zoning Law with respect to the existing building, including yards and other required spaces in connection therewith.

No zoning permit shall be issued for the erection of a building on the new lot thus created unless there is full compliance with all the provisions of this Zoning Law.

5. Irregularly Shaped Lots

Where a question exists as to the proper application of any of the requirements of this Zoning Law to a particular lot or parcel, the matter shall be referred to the Zoning Board of Appeals and dealt with in accordance with the applicable provision of Section 207.

6. Required Street Frontage

No zoning permit shall be issued for any structure unless the lot which that structure is to be built upon has the required frontage on a street, as defined herein, which frontage provides the actual access to such structure, and which street shall have been suitably improved to Village Board standards or a bond posted therefor to the satisfaction of the Village Board and Planning Board.

7. Parts of Lot Not Counted Toward Area Requirements

No part of any lot less in width than one-half ($\frac{1}{2}$) of the minimum lot width requirement for the district in which it is located, shall be counted as part of the minimum lot area.

8. Adjacent Lots

Where two (2) or more adjacent lots are at the time of the effective date of this Zoning Law in the same ownership, they shall not be considered a single lot, unless they are described as one parcel in a deed recorded at the Genesee County Clerk's Office.

9. Corner Lots

Corner lots shall have two (2) front yards (those along public streets) and the remaining two (2) yards will be considered side yards for the purposes of applying the yard regulations contained in this Zoning Law.

10. Supplementary Yard Regulations

a. Porches, Decks

A porch and/or deck shall be considered a part of the building in determining the yard requirements or amount of lot coverage.

b. Projecting Horizontal Architectural Features

Architectural features, such as window sills, belt courses, chimneys, cornices, eaves or bay windows, shall not project more than three (3) feet into any required yard.

c. Visibility at Intersections

On a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three (3) feet in height shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line joining said street lines at points which are twenty (20) feet distant from the point of intersection, measured along said street lines. This paragraph shall not apply to existing trees, provided that no branches are closer than six (6) feet to the ground.

d. Swimming Pools

All swimming pools, attached decks and associated equipment shall be located behind the principal building and set back from the side and rear lot lines in compliance with Section 301 Subsection B. Pools shall be fenced and protected by an appropriate gate as set forth in the New York State Uniform Fire Prevention and Building Code.

e. Buffer Strip

Wherever a buffer strip is required by this Zoning Law (see also Section 504) it shall meet the following standards:

(1) Be at least ten (10) feet in width along any commercial or industrial lot line abutting a lot in a residential district.

(2) Be of evergreen planting of such type, height and spacing as, in the judgement of the Planning Board, will screen the activities on the lot from view of a person standing at street level on the adjoining lot. The plan and specifications for such planting shall be filed with the approved plan for the use of the lot.

(3) A wall or fence of location, height, and design approved by the Planning Board may be substituted for the required planting.

f. Patio

A patio shall be allowed only within the side and rear yard areas and shall not be placed closer than five (5) foot to a property line.

11. Open Space - Industrial Districts

Where an industrial district abuts a residential district, there shall be at least one hundred (100) feet of open space within the industrial district along such abutting line, which open space shall include a buffer strip.

12. Excavation

In any construction, open excavations shall be limited to a maximum of thirty (30) days and shall have appropriate fencing, barricades, or covering to limit access and otherwise assure public safety.

13. Waste Containers/Dumpsters - The location of all waste containers and/or dumpsters for multi-family and nonresidential uses shall be determined by the Planning Board through the site plan review process. Relocation of existing waste containers and/or dumpsters shall also be subject to review and approval by the Planning Board. The Planning Board may require screening of waste containers/dumpsters. This provision shall not apply to the temporary placement of garbage cans awaiting collection or the temporary use of dumpsters or "roll-offs" during a cleaning, moving or construction project.

14. Height Exceptions

1. District building height regulations shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, or any similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten percent (10%) of the roof area of the building and provided such structure(s) poses no hazards to aircraft operations.

2. District building height regulations shall not apply to radio or television antennas and commercial communications towers provided such structure(s) poses no hazards to aircraft operations.

B. Location of Accessory Buildings, Structures and Satellite Dishes

1. Accessory Buildings are Permitted as Follows:

a. A one (1) story accessory building having a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall not be located in the front yard nor closer than five (5) feet to the rear and side lot lines in the rear yard areas.

b. The location of accessory buildings having a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in

compliance with the required yard areas of the respective district and shall not be located in front of the principal building, i.e., the front yard.

2. Accessory Structures, other than Buildings, are Permitted as Follows:
(for Fences see Section 508)

a. Accessory structures equal to or less than fifteen (15) feet in height, shall not be located closer than three (3) feet to the rear and side lot lines in the rear yard area.

b. Accessory structures greater than fifteen (15) feet in height, shall be located in compliance with the required yard areas of the respective district and shall not be located in front of the principal building, i.e., the front yard.

c. Antennas, including satellite dishes shall be permitted as follows:

(1) Satellite dish antennas with a diameter of forty (40) inches or less may be located anywhere on a lot provided the minimum front and side yard setbacks are maintained along with a minimum five (5) foot setback from the rear property line.

(2) Satellite dish antennas with a diameter over forty (40) inches shall not be located in front of the principal building and shall comply with the minimum required rear and side yard setbacks of the respective district (according to Schedule A of this Zoning Law).

C. Nonconforming Uses, Structures and Lots

1. Lawful Existing Uses or Structures

Except as otherwise provided in this Section, the lawful use of land or structures existing at the effective date of this Zoning Law may be continued, although such use or structure does not conform to the regulations specified in this Zoning Law for the zone in which such land or structure is located, provided, however:

a. That no nonconforming lot shall be further reduced in size.

b. That no nonconforming building be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance.

c. That no nonconforming use may be expanded.

d. No existing conforming use shall be changed to a nonconforming use.

2. Abandonment

A nonconforming use shall be abandoned when there occurs a cessation of any such use or activity and a failure on the part of the tenant or owner to reinstate such use within a period of one (1) year from the date of cessation or discontinuance.

3. Restoration and Repair

Nothing in this Zoning Law shall prevent the restoration and repair or continuation of use of a legal nonconforming building destroyed or partly destroyed by a disaster, provided that restoration is commenced within six (6) months after date of destruction and is completed within twelve (12) months after date of destruction.

4. Reversion

No nonconforming use shall, if once changed into a conforming use, be changed back again to a nonconforming use.

5. Alterations

A nonconforming building may not be structurally altered during its life to an extent exceeding, in aggregate cost, fifty percent (50%) of the assessed value of the building unless said building is changed to conform to the requirements of this Zoning Law.

6. District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, the foregoing provisions shall also apply to any nonconforming use existing therein or created thereby.

D. Uses Not Permitted

Uses which are not specifically allowed by this Zoning Law are prohibited.

E. Dwelling Front Yard Grade

Surface grade of front yards of dwellings measured at the midpoint of the front wall, shall be at least one foot above the elevation of the street center line, unless adequate site drainage is provided otherwise and approved by the Village Superintendent of Public Works.

F. Minimum Dimensional Criteria

All one (1) and two (2) family dwelling units located on individual lots shall have a minimum

outside width of at least twenty (20) feet. This provision shall not prohibit the construction of smaller additions or projections from larger units (less than twenty (20) feet wide) provided a twenty (20) foot minimum width is clearly established for the overall unit.

G. Minimum Enclosed Living Area

1. One (1) family dwellings shall have a minimum enclosed living area (not including garage but also not limited to only habitable floor area) as follows:

- a. One (1) story dwellings 950 square feet on the first floor.
- b. Two story (2) dwellings 750 square feet on the first floor.

2. Two (2) family dwellings shall have a enclosed living area of at least seven hundred fifty (750) square feet per unit.

3. Multiple family dwellings shall have a enclosed living area per unit as follows:

<u># of Bedrooms Per Unit</u>	<u>Minimum Square Footage</u>
Efficiency	300
1 bedroom	550
2 bedroom	650
3 bedroom	800
4 bedroom	1,000
5+ bedroom	As determined by Planning Board

H. Stabling Farm Animals and Storage of Fertilizer, Agricultural Chemicals and Manure

1. There shall be no stabling of farm animals or storage of manure within the Village.

2. There shall be no storage of bulk quantities of fertilizer, pesticides, and/or herbicides, or similar odor or dust producing or hazardous substances within the Residential or Commercial Districts. Bulk storage of such substances within the Industrial District is permitted only after site plan approval.

I. Harboring of Animals

Only domestic animals as defined by this Zoning Law or through successful appeal to the Zoning Board of Appeals, shall be harbored within the Village.”

J. Outside Solid Fuel Burning Devices

Outside solid fuel burning devices shall not be permitted within the Village of Elba.

K. Open Burning:

Open burning within the Village of Elba is prohibited by New York State Environmental Conservation Law (NYS ECL) Part 215. As defined by Part 215, an "Open Fire" is any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. The prohibition in Part 215 covers the open burning of garbage, refuse and rubbish including, but not limited to: solid or liquid waste material; paper and paper products; rags; tress or leaves, needles and branches therefrom; vines; lawn and garden debris; furniture; cans; crockery; plastics; cartons; chemicals; paint; grease; sludges; oils and other petroleum products; wood; saw dust and demolition materials. For further information on this issue residents should obtain a complete copy of NYS ECL Part 215 and/or contact the Region 8 Office of the NYS Department of Environmental Conservation.

SECTION 302 **ZONING DISTRICT CLASSIFICATION**

The Village of Elba is hereby divided into the following zoning districts and overlay zones:

- R-1 Residential 1 District
- R-2 Residential 2 District
- C-1 Neighborhood Commercial District
- C-2 Central Commercial District
- I Industrial District
- PUD Planned Unit Development District
- MHO Mobile Home Overlay Zone
- FPO Flood Plain Overlay Zone

SECTION 303 **NEWLY ANNEXED LANDS**

In order to promote orderly development and the general welfare of the community, where land is newly annexed but before legislative action can be taken to zone said land designating said land as being in one of the districts referred to in Section 302 of this Article, such newly annexed land shall not be improved or developed in any manner, including the erection of any buildings or other structures or alteration of any existing buildings or other structures thereon or change of any use with respect thereto until such legislative action is taken; provided, however, that if such legislative action is not taken and such designation is not made within one hundred eighty (180) days of the effective date of the annexation, the restrictions contained in this Section shall no longer apply.

SECTION 304 **ZONING MAP**

The zoning districts are shown, defined and bounded on the zoning map accompanying this Zoning Law which map is made a part of this Zoning Law. The zoning map is hereby made a part of this Zoning Law and shall be on file in the Village Clerk's Office.

SECTION 305 **INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

- A. Questions concerning the exact location of district boundary lines as shown on the zoning map shall be resolved by the Zoning Enforcement Officer with the option of appeal of such determination to the Zoning Board of Appeals pursuant to the provisions of Section 207 of this Zoning Law.

- B. Where a district boundary line divides an existing lot of record, the regulations for the less restricted part of such lot shall extend to the lot line in the more restrictive district or fifty (50) feet or whichever is less, provided the lot has frontage on a street in the less restricted district.

SECTION 306

EXISTING LOTS OF RECORD

Yard and area requirements for previously undeveloped lots of record existing prior to the effective date of this Zoning Law shall be determined by the Zoning Board of Appeals. In making their determination the Zoning Board of Appeals shall take into consideration the yard and area requirements for the zoning district in which the undeveloped lot is located in and the existing yard and area dimensions found for other lots in the general vicinity.

SECTION 307

RESIDENTIAL R-1

The R-1 District is designed to accommodate primarily single-family residential uses on lots with a minimum area of 20,000 square feet. The primary purpose of this district is to encourage quality residential development in those newly developed or still undeveloped areas of the Village.

A. The following uses are permitted in R-1 Districts:

1. Single family dwelling
2. Accessory building
3. Swimming pool (noncommercial)
4. Home Occupation

B. The following uses are permitted in the R-1 District upon the issuance of a special use permit:

1. Two-family dwelling
2. Multi-family dwelling
3. School, including nursery and pre-school
4. Church
5. Governmental Use
6. Funeral home
7. Social organization/club
8. Day care center
9. Bed and breakfast
10. Community center
11. Professional office
12. Cemetery

SECTION 308

RESIDENTIAL R-2

The R-2 District is designed to accommodate primarily single and two family dwellings on lots with a minimum area of 15,000 and 20,000 square feet, respectively. The primary purpose of this district is to encourage the retention of a positive community character within those developed residential areas of the Village.

A. The following uses are permitted in R-2 Districts:

1. Single family dwelling
2. Two family dwelling
3. Accessory building
4. Swimming pool (noncommercial)
5. Home Occupation

B. The following uses are permitted in R-2 Districts upon the issuance of a special use permit:

1. Multi-family dwelling
2. School, including nursery and pre-school
3. Church
4. Governmental Use
5. Funeral home
6. Social organization/club
7. Boarding/rooming house
8. Day care center
9. Bed and breakfast
10. Community center
11. Professional office
12. Cemetery
13. Cluster residential (see Section 411)

SECTION 309

NEIGHBORHOOD COMMERCIAL C-1

The C-1 District is designed to accommodate primarily commercial uses on lots with a minimum area of twenty thousand (20,000) square feet. The primary purpose of this district is to provide areas for small to medium sized commercial uses. Site plan review is required of all uses in C-1 Districts.

A. The following uses are permitted in C-1 Districts:

1. Retail stores/services
2. Funeral homes
3. Business and professional offices
4. Social organization/club
5. Adult Use (see Section 410)
6. Accessory building

B. The following uses are permitted in C-1 Districts upon the issuance of a special use permit.

1. Motor vehicle sales and service
2. Residential use
3. Commercial recreation use
4. Restaurant
5. Day care center
6. Self-service storage facility
7. Commercial communications tower (see Section 413)

SECTION 310

CENTRAL COMMERCIAL C-2

The C-2 District is designed to accommodate primarily concentrated commercial development. Site plan review is required of all uses in C-2 Districts.

A. The following uses are permitted in C-2 Districts:

1. Retail store/service
2. Business and professional office
3. Restaurant
5. Funeral home
5. Bank
7. Social organization/club
8. Medical/veterinary facility
9. Adult Use (see Section 410)

B. The following uses are permitted in C-2 Districts upon the issuance of a special use permit.

1. Drive-in establishments
2. Commercial recreation
3. Motor vehicle sales and service (see Section 405)
4. Night club/tavern
5. Residential uses
6. Hotel/motel
7. Gasoline station
8. Gasoline station/market
9. Warehouse (no hazardous materials)
10. Self-service storage facility

SECTION 311 **INDUSTRIAL DISTRICT I**

The I District is designed to accommodate industrial uses. Site plan review is required of all uses in the I District.

A. The following uses are permitted in I Districts:

1. Enclosed manufacturing industry
2. Enclosed warehouse or wholesale use
3. Public utility
4. Enclosed service and repair
5. Machinery and transportation equipment, sales, service and repair
6. Enclosed industrial processes and service
7. Freight or trucking terminal
8. Contractor's yard
9. Public garage
10. Accessory building and use
11. Self-service storage facility
12. Adult Use (see Section 410)

B. The following uses are permitted in I Districts upon the issuance of a special use permit:

1. Manufacturing use (not enclosed)
2. Warehouse or wholesale use (not enclosed)
3. Service and repair (not enclosed)
4. Other industrial uses upon the finding that such use is of the same general character as those permitted and will not be detrimental to other uses within the district or to adjoining land uses.
5. Commercial communications tower (see Section 413)

SECTION 312 **PLANNED UNIT DEVELOPMENT - PUD**

A. Purpose

The purpose of the Planned Unit Development District is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities; to provide for both individual building sites and common property which are planned and developed as a unit; to provide harmonious land uses which offer a high level of amenities; to permit a variety of residential types and/or non-residential uses; and to preserve natural and scenic qualities of the site during the development process.

B. General Requirements

1. Minimum Area

The minimum area required to qualify for a Planned Unit Development shall be two (2) contiguous acres of land.

2. Ownership

The tract of land for a Planned Unit Development may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner, or jointly by owners, of all property included in a project. In the case of multiple ownership, the approved Planned Unit Development plan is binding on all owners.

3. Location

The Planned Unit Development District shall be applicable to any zoning district or parts of zoning districts where the applicant can demonstrate that the characteristics of his holdings and plan will meet the objectives of this Section.

4. Common Open Space

Common open space in a Planned Unit Development may be one (1) or more sites for use in common by all of the occupants within the project area or by the residents of the Village as a whole, depending upon dedication of such sites. Such common open space may be retained in private ownership or received in dedication by the Village. If the open space remains in private ownership, arrangements for the operation, maintenance, improvement and liability of such common property and facilities must be approved by the Village Board. No common open space, so designated by the proposal and approved by the Village Board, may be thereafter developed or disposed of except with the approval of the Village Board.

5. Permitted Uses

Any uses identified as permitted uses or uses allowed by special permit as set forth in this Zoning Law may be permitted in a Planned Unit Development.

6. Mix of Uses

The mix of permissible uses shall be determined by the Village Board.

C. Application Procedure and Approval Process

1. Conceptual Review

Before submission of a petition for rezoning as a Planned Unit Development, the developer is encouraged to meet with the Village Planning Board to determine the feasibility and suitability of his proposal before entering into any binding commitments or incurring substantial expenses of site plan preparation and the required documentation.

2. Rezoning Procedure

a. Submission of Petition

All petitions for the establishment of Planned Unit Development districts shall be submitted to the Village Clerk (see Paragraph d. of this Subsection).

b. Notification and Referral

Within five (5) working days, the Village Clerk shall notify the Village Board of the petition and shall refer the petition and all supporting documentation to the Village Planning Board for their review and recommendations.

c. Planning Board Review

Within sixty-two (62) days of receipt of the application, the Village Planning Board shall review the petition and shall recommend approval, approval with modifications or disapproval. Failure to act within 62 days or such longer period as may be consented to shall cause such application to be forwarded to the Village Board without a recommendation.

d. Submission Requirements

The applicant shall submit a minimum of four (4) sets of such plans, and drawings (additional sets may be required). These four (4) sets shall be submitted to the Village Clerk. The preliminary plans shall be accompanied by such maps, charts and written material necessary for the Boards to make a preliminary judgement on the suitability and impact of the proposed Planned Unit Development on the Village. Preliminary plans should include the following:

(1) A preliminary site plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.); the number and type of residential structures and dwelling units within each residential area; the approximate square footage of non-residential use within each nonresidential area; the amount of open space; traffic circulation; and the surrounding land uses.

(2) A written preliminary description of the proposal including the total number of acres in the site; the estimated number and type of housing units; the estimated residential and nonresidential density; the major planning assumptions and objectives; the probable effect on adjoining properties; and the effect on the overall Village development plan and the effect on this Zoning Law.

e. Review Considerations - In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Law, and the impact on the established land uses in the area, overall density of development, traffic circulation, the provision of open spaces, and the effect on schools and other municipal facilities.

f. Village Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Village Board may, after a public hearing and review of the proposed zone change by the County Planning Board, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved for the Planned Unit Development, such action does not authorize improvements to the rezoned land.

3. Final Plan

a. Ownership - Before final approval of the Planned Unit Development, the applicant must show evidence of the full legal ownership in the land.

b. Submission of Final Plan

Upon approval of the zone change, the applicant has one year in which to submit a final plan to the Village Clerk.

c. Notification and Referral

Within five (5) working days, the Village Clerk shall notify the Village Board of the petition and shall refer the petition and all supporting documentation to the Village Planning Board for their review and recommendation.

d. Planning Board Review

Within sixty-two (62) days of receipt of the application, the Village Planning Board shall review the petition and shall recommend approval, approval with modifications or disapproval. Failure to act within sixty-two days or such longer period as may be consented to shall cause such application to be forwarded to the Village Board without a recommendation.

e. Submission Requirements

The applicant shall submit a minimum of four (4) complete sets of the final plan and drawings (additional sets may be required). These four (4) sets shall be submitted to the Village Clerk. The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat. The final plan shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Village to make an impartial judgement on the suitability and impact of the proposed Planned Unit Development on the Village. Such material shall include, but not be limited to, the following:

(1) A mapped development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, multi-family housing areas, commercial and open space areas, etc.), the number of residential structures and dwelling units within each residential area, the approximate square footage of non-residential use within each nonresidential area and the amount of open space.

(2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Village development plan and the effect on this Zoning Law.

(3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of nonresidential floor area including the approximate selling and/or rental price, the development schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

(4) Such other written or graphic material as is necessary for the Planning Board to judge the impact of the proposal on the Village. Such material shall include, but not be limited to: the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Village due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.

f. Review Considerations - In review of the final plan, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another; the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental

effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Village; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.

g. Village Board Review and Approval - Upon receipt of the Planning Board's recommendation, the Village Board may, after a public hearing and review of the final plan by the County Planning Board, approve, approve with modifications or disapprove the final plan. The Village Board shall make final decision in accordance with official village development policies and may impose conditions relating to that plan.

D. Design Standards

1. Area Requirements

Overall area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except where the Planning Board finds that it is in the public interest to modify these requirements and the Village Board approves such modifications.

2. Traffic and Circulation

All proposed public roads shall meet the design and construction specifications set forth by the Village.

Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.

3. Common Open Space

All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:

- a. Public dedication
- b. Establishment of a Home Owners Association
- c. Retention of responsibilities, control and maintenance by the developer.

4. Performance and Maintenance Bonds

Performance and maintenance bonds may be required at the discretion of the

Village Board.

SECTION 313 **MOBILE HOME OVERLAY ZONE - MHO**

The purpose of the Mobile Home Overlay Zone is to provide a defined area for the development of quality mobile home parks. The Mobile Home Overlay Zone will provide for these additional uses in that portion of the base zoning district which it overlays.

A. **Uses Requiring a Special Use Permit**

The following uses are permitted in the Mobile Home Overlay Zone upon issuance of a special use permit, in addition to those permitted in the base zoning district:

1. Mobile home park in compliance with the criteria set forth in Section 415

SECTION 314 **FLOOD PLAIN OVERLAY ZONE - FPO (Information only)**

The Flood Plain Overlay Zone is shown on the zoning map of the Village of Elba for information purposes only to identify potential areas of special flood hazard, to insure coordinated review of zoning and flood damage prevention regulations, and to minimize the threat of flood damages. Exact boundaries of the special flood hazard areas can be found on the Federal Emergency Management Agency's (FEMA) most current Flood Insurance Rate Map (FIRM), or equivalent map for the Village of Elba Community Number 361499A).

In addition to the Zoning Law, areas within special flood hazard areas are regulated by Zoning Law # 2 of 1987 for the Village of Elba. These requirements are in addition to those contained in the underlying zoning district.

ARTICLE IV **SUPPLEMENTARY REGULATIONS**

SECTION 401 **OFF-STREET PARKING SPACE REQUIREMENTS**

For every building here after erected, altered or changed in use, there shall be provided at least the minimum number of off-street parking spaces set forth under this Section. All off-street parking for nonresidential and multifamily use shall be designed in such a manner as to allow vehicles to exit onto a street without backing out onto it.

Off-street parking in Commercial and Industrial Districts may be provided in any yard space, but shall not be closer than ten (10) feet to any front property line. In Residential Districts parking shall be provided in compliance with the Village's manual on acceptable parking layouts and may be provided in any yard space except front yard space. However, parking in front yard space shall be allowed on hard surfaced driveways provided that the parking of such vehicles shall not obstruct visibility or traffic and shall not exceed one-fourth (1/4) of the front yard. The term vehicle as used in this paragraph shall include but not be limited to automobiles, motorcycles, trucks, motor homes, campers and trailers, including recreational and boat trailers.

Weight Limit. Not more than one commercial vehicle over one-half (1/2) ton shall be garaged or parked on any lot in a Residential (R-1 or R-2) District. As used herein, a commercial vehicle shall not include and tractor, tractor trailer combinations, or trucks in excess of five (5) tons gross weight. The parking of any vehicle used for the purpose of removing, transporting or disposing of any sewage, sludge, human or animal excreta, industrial waste, garbage or any refuse shall be prohibited in a Residential or Commercial District, or within three hundred (300) feet of any Residential or Commercial District.”

A. **Residential Uses**

Two (2) parking spaces for every dwelling unit.

B. **Home Occupation**

Three (3) parking spaces, plus one (1) additional parking space for every two hundred (200) square feet of office space or other nonresidential use, in addition to any other required spaces.

C. **Motel**

Three (3) parking spaces, plus one (1) space for every guest room.

D. **Places of Public Assembly**

One (1) parking space for every five (5) seats or one (1) parking space for every one hundred (100) square feet of floor area.

E. Professional Offices

Two (2) parking spaces, plus one (1) space for every two hundred (200) square feet of office space.

F. Commercial

One (1) parking space for every motor vehicle used directly in the business, plus one (1) parking space for every two hundred (200) square feet of business area.

G. Restaurant, Eating and Drinking Establishment (other than Drive-In)

One (1) parking space for every one hundred (100) square feet of floor area.

H. Industrial, Freight, and Trucking Uses

One (1) parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.

I. Unspecified Uses

As required by the Planning Board, based upon use intensity, turnover, customers, employees and vehicles used.

SECTION 402 **OFF-STREET LOADING SPACE REQUIREMENTS**

Every building occupied for the purpose of business or industry shall provide adequate space for off-street loading and unloading vehicles.

SECTION 403 **MODIFICATION OF PARKING AND LOADING REQUIREMENTS**

The Planning Board, under its powers of site plan review and approval, may modify requirements for parking and loading spaces.

SECTION 404 **LAND ABUTTING A RESIDENTIAL USE**

Where in any district a commercial or industrial use is created adjacent to an existing residential use, a buffer strip shall be established by the nonresidential use along the lot line adjacent to the residential use.

SECTION 405

GASOLINE STATION, GASOLINE STATION-MARKET, MOTOR VEHICLE REPAIR SHOP, MOTOR VEHICLE SALES AGENCY, DRIVE-IN BUSINESS

A. Gasoline stations, gasoline station-markets, motor vehicle repair shop, motor vehicle sales agencies, and drive-in business shall comply with the following:

1. Lots containing such uses shall not be located within three hundred (300) feet of any lot occupied by a school, playground, library or religious institution. Measurement shall be made between the nearest respective lot lines.
2. Lot size shall be at least forty thousand (40,000) square feet.
3. Lot frontage shall be at least two hundred (200) feet.
4. Lot depth shall be at least one hundred fifty (150) feet.
5. Pumps, other service devices, and fuel and oil storage shall be located at least thirty (30) feet from all lot lines.
6. Automobile parts and dismantled vehicles are to be stored within the building and no major repair work is to be performed outside the building.
7. There shall be no more than two (2) access driveways from any street. Maximum width of each access driveway shall be thirty (30) feet.

SECTION 406

PUBLIC UTILITY FACILITY

Public utility installations shall comply with the following:

1. Such facility shall be surrounded by a fence if required by the Planning Board.
2. The facility shall be landscaped in a manner approved by the Planning Board.
3. To the extent practicable, equipment shall be stored so as not to be visible from surrounding properties.
4. Any other requirements as determined by the Planning Board.

SECTION 407 SIGNS

The purpose of this Section is to promote and protect the public health, welfare and safety by regulating existing and proposed outdoor advertising signs and outdoor signs of all types. It is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community. It is further intended hereby to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more visual open space, and curb the deterioration of the community's appearance and attractiveness.

This Section is intended to promote attractive signs which clearly present the visual message in a manner that is compatible with its surroundings. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their messages clearly and simply to enhance their surroundings.

A. Permit Required

It is unlawful for any person to erect, alter or relocate any sign other than those identified as exempt in Subsection B of this Section, within the Village without first obtaining a sign permit, paying the fee therefor as provided in this Zoning Law and complying with all applicable regulations.

1. Application Procedure

Applications shall be made in writing to the Zoning Enforcement Officer on forms prescribed and provided by the Village and shall contain the following information:

- a. Name, address and telephone number of:
 - (1) Applicant
 - (2) Owner of the property
- b. Location of the building, structure or land upon which the sign now exists or is to be erected.
- c. If a new sign is to be erected, elevation and plan drawings to scale shall be included.

In addition, a full description of the placement and appearance of the proposed sign shall be included and shall cover the following:

- (1) Location on the premises, specifically, its position in relation to

adjacent buildings, structures and property lines.

(2) The method of illumination, if any, and the position of lighting or other extraneous devices, and a copy of the NYS Uniform Code permit (if required).

(3) Graphic design including symbols, letters, materials and colors.

(4) The visual message, text, copy or content of the sign.

d. Written consent, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is not the owner.

2. Permit

Upon the filing of a completed application for a sign permit and the payment of the required fee, the Zoning Enforcement Officer shall examine the plans, specifications, and other data submitted and the premises on which the sign is to be erected or now exists. The Zoning Enforcement Officer shall refer this sign application to the Planning Board when appropriate for Site Plan Review.

If required, a sign shall bear the permit number, permanently and visibly shown. Failure to do so shall constitute cause for revocation of the permit.

B. Specific Sign Regulations

1. Exempt Signs - (Require No Permits)

a. Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material; and emblems installed by governmental agencies, religious or nonprofit organizations; not exceeding six (6) square feet.

b. Flags and insignia of any government, except when displayed in connection with commercial promotion.

c. On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or nonilluminated, not exceeding four (4) square feet per face and six (6) feet in height. Business names and advertising messages shall not be allowed as part of such signs.

d. Non-illuminated warning, private drive, posted or no trespassing signs, not exceeding two (2) square feet per face.

- e. One (1) on-premises sign, either freestanding or attached, in connection with any residential building in any zoning district, for permitted professional office or home occupation, not exceeding two (2) square feet and set back at least ten (10) feet from any property line or public right-of-way. Such sign shall state name and vocation only. Illumination shall not produce a direct glare beyond the limits of the property line.
- f. Number and name plates identifying residents, mounted on house, apartment or mailbox, not exceeding one (1) square foot in area.
- g. Lawn signs identifying residents, not exceeding one (1) square foot (per side). Such signs are to be nonilluminated except by a light which is an integral part of a lamp post if used as a support, with no advertising message thereon.
- h. Private-owner merchandise sale signs for garage sales and auctions, not exceeding four (4) square feet for a period not exceeding four (4) days within a given month.
- i. Temporary nonilluminated "For Sale", "For Rent", real estate signs and signs of similar nature, concerning the premises upon which the sign is located. In a residential zoning district, one sign not exceeding ten (10) square feet per side. In a commercial or industrial zoning district, one (1) sign not exceeding fifty (50) square feet set back at least fifteen (15) feet from any property lines or public right-of-way. All such signs shall be removed within three (3) days after the sale, lease or rental of the premises, or cessation of an approved temporary use permit.
- j. Temporary, nonilluminated window signs and posters not exceeding twenty-five (25) percent of the window surface, when such signs are located within eighteen (18) inches of the window surface.
- k. Holiday decorations of a noncommercial nature, including lighting, are exempt from the provisions of this Zoning Law and may be displayed in any district without a permit.
- l. Temporary directional signs for meetings, conventions, and other assemblies.
- m. One (1) sign, not exceeding six (6) square feet in the residential districts nor sixteen (16) square feet in the nonresidential districts, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation or repair is in progress.
- n. Political posters, banners, promotional devices and similar signs, not exceeding four (4) square feet in the residential districts nor sixteen (16) square feet in nonresidential districts. Such signs shall be removed within forty-eight (48) hours of the election or event.
- o. Signs required by Federal, State, County or Village regulations (i.e., NYS registered motor vehicle shop and NYS inspection stations).

2. Prohibited Signs and Acts

- a. No off-premise signs shall be allowed other than as permitted under the Exempt Signs provision of this Section.
- b. No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights except to show time and temperature.
- c. No sign shall impair or cause confusion of vehicular or pedestrian traffic, in its design, color or placement. No such sign shall impair visibility for the motorist at a street corner or intersection by placement or location.
- d. No sign or sign supports shall be placed upon the roof of any building.
- e. No sign shall consist of banners, pennants, ribbons, streamers, spinners or similar moving, fluttering or revolving devices.
- f. No advertising message shall be extended over more than one (1) sign placed along a street or highway.
- g. Temporary and/or portable signs, including copy-change signs, not otherwise specifically permitted in this Section.
- h. No sign, temporary, portable, and/or permanent, shall not be attached to or placed upon any tree, lamp post, utility pole, hydrant, bridge or fence located within a public right-of-way.

3. Temporary Signs

- a. All signs of a temporary nature, except as otherwise provided by this Section, shall be permitted for a period not exceeding six (6) weeks prior to the activity or event nor exceeding four (4) days after the activity or event. Such signs shall not exceed sixteen (16) square feet in business or industrial districts nor eight (8) square feet in residential districts, nor be attached to fences, trees, utility poles, rocks or other facets of the natural landscape, nor be placed in a position that will obstruct or impair traffic or in any manner create a hazard or disturbance to the health, safety and welfare of the general public.
- b. A cash deposit equal to the fee shall be deposited with the Zoning Enforcement Officer to insure removal of such signs upon expiration of the permit period. The Zoning Enforcement Officer, after seven (7) days written notice to the permit holder to remove such signs, and after the failure of the permit holder to do so, shall cause said signs to be removed, and the cash deposit shall be forfeited to help defray the cost of removal. The seven (7) days written notice provided herein shall be computed from the date of mailing said notice. Said notice shall be directed to the permit holder

at the address provided to the Zoning Enforcement Officer on the permit application, and shall be sent to the owner by regular first-class mail.

4. Permanent Signs

a. Residential Districts

(1) Signs advertising a use in a Residential District such as a public or quasi-public building or buildings used solely for nonprofit, church, school, hospital or other like purposes shall be permitted provided such sign is located on the same premises as the use that it advertises. No such sign shall exceed twelve (12) square feet in area and such sign shall be located not less than ten (10) feet from property lines.

(2) For large scale multifamily developments one (1) project identification sign shall be permitted which shall not exceed twelve (12) square feet in area and shall be situated not less than ten (10) feet from the property lines. The sign may include only the name of the property, the street address, and the presence or lack of vacancies.

b. Commercial and Industrial Districts

(1) The total number of permitted signs on a single business or industrial lot shall not exceed one (1) sign per wall per use and one (1) freestanding for the building.

(2) The total cumulative sign area of all signs permitted on such lot shall be calculated at the rate of two (2) square feet of sign area per lineal foot of building frontage, but in no case shall exceed one hundred fifty (150) square feet, whichever is less, except as provided for in subparagraph S below. In calculating the total cumulative sign area, only one (1) side, or wall, of a building, shall be used.

(3) The surface area of a freestanding sign shall be calculated as follows: freestanding sign area up to twenty-five (25) square feet (per side) shall be deducted from the total sign area permitted on a one (1) to one (1) basis; freestanding sign area between twenty-five (25) and forty (40) square feet (per side) shall be deducted from the total sign area permitted on a four (4) to one (1) basis; freestanding sign area over forty (40) square feet shall be prohibited except as set forth in subparagraph 5 below.

(4) Where groups of two (2) or more contiguous stores are located together in a shopping center (mall or plaza) or where a lesser number of stores total not less than twenty thousand (20,000) square feet of gross leasable area, one (1) common freestanding sign denoting the name of the shopping facility shall be permitted, not exceeding fifty (50) square feet (per side) and with bottom panel not less than eight (8) feet above grade. All other signs shall be attached to buildings, of a wall or soffit type, and coordinated in material, shape, lettering, color and/or decorative elements. Total sign area permitted for the entire shopping center shall be calculated at

the rate of one (1) square foot of sign per linear foot of building frontage, and such exterior signs shall be permitted upon, and identify only, the uses which allow direct public access from outside the mall building.

(5) Representational signs shall not project in any direction more than four (4) feet beyond the principal structure to which they are attached, or extend over a public right-of-way, and shall not exceed fifteen (15) square feet. Only one (1) such sign per establishment shall be permitted, with the area of such sign structure deducted from the total sign area permitted.

(6) Illuminated signs which indicate the time, temperature, date or similar public service information shall not exceed thirty-two (32) square feet and shall not employ less than sixty (60) percent of the total sign area, each side, for said public service information.

(7) Gasoline service stations shall additionally be permitted two (2) price/product (type of gas: i.e. regular, no lead, etc.) signs each, not exceeding six (6) square feet per side, if located on the pump island, or set not closer than ten (10) feet from the edge of the pavement, not exceeding eight (8) feet above grade nor situated so as to impair visibility for pedestrians or motorists. The sign area for these signs shall be deducted from total sign area for that building.

5. Portable Signs

A new business, or a business in a new location, awaiting installation of a permanent sign, may utilize a portable sign for a period of not more than sixty (60) days or until installation of a permanent sign, whichever occurs first. Such a portable sign must meet all the construction standards of the NYS Uniform Fire Prevention and Building Code (or its successor). A separate permit for such a portable sign shall be required.

6. Nonconforming Signs

A nonconforming sign shall not be enlarged, altered or replaced by another nonconforming sign. Any maintenance, repair or alteration of a nonconforming sign shall not cost more than fifty (50) percent of the current depreciated value of the sign as of the date of alteration or repair. No repair or alteration exceeding fifty (50) percent of the current depreciative value shall be made without making the sign a conforming sign.

7. Removal of Signs

Any sign, existing on or after the effective date of this amendment, which no longer advertises an existing business conducted or product sold on the premises upon which such sign is located, shall be removed. In addition, where the permit for a sign is revoked for any reason, the sign shall be removed immediately.

- a. If the Zoning Enforcement Officer shall find that any sign regulated in this

Section is not used, does not advertise a current product or service available on the property, is abandoned, unsafe or insecure, or is a menace to the public, the Zoning Enforcement Officer shall give written notice to the named owner of the land upon which it is located, who shall remove or repair the sign within thirty (30) days from the date of the notice. If the sign is not removed or repaired within said time period, the Zoning Enforcement Officer shall revoke the permit issued for such sign and may remove or repair the sign and assess the owner for all costs incurred for such service.

b. The Zoning Enforcement Officer may cause any sign which is a source of immediate peril to persons or property to be removed immediately and without notice.

8. Construction Standards

All signs shall be constructed and installed in conformance with the NYS Uniform Fire Prevention and Building Code.

a. Wall Signs

(1) Wall signs shall not extend beyond the ends or over the top of the walls to which attached, and shall not extend above the level of the second floor of the building. Such signs shall be limited to three (3) feet in height.

(2) Wall signs shall not extend more than nine (9) inches from the face of the buildings to which attached, except that copy-change signs may extend fifteen (15) inches.

(3) Any part of a sign extending over pedestrian traffic areas shall have a minimum clearance of eight (8) feet.

(4) Copy-change wall signs shall be permitted on theaters only.

b. Free-Standing Signs

(1) No freestanding sign shall be located less than ten (10) feet from the front property line nor less than five (5) feet from the side property line. No freestanding sign may be located less than fifty (50) feet from any other freestanding sign.

(2) If for any reason the property line is changed at some future date, any freestanding sign made nonconforming thereby must be relocated within ninety (90) days to conform with the minimum setback requirements.

(3) No freestanding sign shall be more than twenty-five (25) feet in height above finished grade. Such height shall be measured vertically from the established average grade directly below the sign or entry level of the building or structure, whichever is less, to the highest

point of the sign, including supporting structures.

(4) No freestanding sign shall extend over or into the public right-of-way, nor shall it overhang the property lines.

(5) Freestanding signs under which a pedestrian walkway or driveway passes must have ten (10) feet vertical clearance.

(6) Masonry wall-type signs shall not exceed four (4) feet in height and shall not be placed so as to impair visibility for motorists.

c. Projecting Signs

(1) Projecting signs shall not have more than two (2) faces, and shall not be more than three (3) feet in height. For the purposes of this subsection projecting signs shall be considered those signs which extend more than nine (9) inches from the face of a building, unless such sign is a copy-change which may extend up to fifteen (15) inches before being considered a projecting sign.

(2) The exterior edge of a projecting sign shall extend not more than five (5) feet from the building face, or extend over a public right-of-way or property line.

(3) No part of a projecting sign shall extend into vehicular traffic areas, and any part extending over pedestrian areas shall have a minimum clearance of ten (10) feet.

(4) Projecting signs shall not extend above the level of the second floor of the buildings to which attached, or in any case be higher than twelve (12) feet.

(5) No projecting sign shall be closer than fifteen (15) feet from the corner of a building located at a street intersection.

d. Other Signs

(1) Windows Signs

(a) The area of a window sign(s) shall not exceed twenty-five (25) percent of the area of the window.

(b) Copy-change window signs shall not exceed three (3) square feet.

(2) Sign Directories

(a) Sign directories shall contain identification of and direction to several business enterprises, but shall contain no promotion advertising.

(3) Awning Signs

(a) No sign shall project from an awning.

(b) Awning graphics may be painted or affixed flat to the surface of the front or sides, and shall indicate only the name and/or address of the enterprise or premises.

(c) Awning graphics shall be a single line of lettering not exceeding six (6) inches in height.

C. Appeal Procedures

Any person aggrieved by a decision of the Zoning Enforcement Officer relative to the provision of this Section may appeal such decision in writing to the Board of Appeals as provided in Section 207 and shall comply with all procedural requirements prescribed by the Board of Appeals.

At least thirty (30) days prior to hearing such appeal, the Board of Appeals shall refer the application to the Planning Board for its review and recommendation. The Planning Board shall review such application at a regular meeting and forward its recommendation to the Board of Appeals. Failure on the part of the Planning Board to forward a recommendation within thirty (30) days shall constitute an approval.

In granting any variance for the provision of this Section, the Board of Appeals must find that the variance is necessary for the reasonable use of the land or buildings, that granting the variance is in harmony with the general purposes and intent of this Section, that such will not be injurious to the neighborhood character or otherwise detrimental to the public welfare, and that denial of the variance would result in practical difficulty or unnecessary hardship to the applicant.

SECTION 408 **FENCES**

The installation, or replacement, of a fence within the Village does not require a permit provided the following criteria are met:

A. All Fencing

1. All fencing must be installed, or replaced, in conformance with the NYS Uniform Code where applicable. Fencing shall be located on an individual's own property and not on adjoining

property or directly upon a property line.

2. No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.

3. Fences shall be installed so that the "good side" or "outside" faces the neighbor's property.

4. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e. grass, weeds) around a fence is regularly mowed. Failure on the part of a property owner to maintain his/her fence in accordance with these provisions shall constitute a violation of this Zoning Law.

B. Fencing-Front Yard

1. Fencing located within front yards shall be located not closer than one (1) foot to the edge of a public sidewalk or three (3) feet from the front property line, whichever is less.

2. Fencing located in the front yard shall not exceed three (3) feet in height for closed fencing, or four (4) feet in height for open fencing. For the purposes of this Section the term open fencing shall refer to fencing which is at least 75% open (i.e., chain link type fencing). Fencing which is less than 75% open shall be considered closed fencing.

3. Plantings and bushes used in lieu of a man made fence as set forth above (i.e., a hedge) shall not exceed three (3) feet in height.

C. Fencing - Side and Rear Yards

Fencing located in side or rear yards shall not exceed six (6) feet in height.

SECTION 409 EXTERIOR SECURITY LIGHTING

Exterior security lighting (i.e., mercury vapor, high pressure sodium, spot or flood lights) shall not be installed or maintained so as to shine directly in or upon adjoining residential dwellings. Such lighting shall not be installed or maintained so as to pose a hazard for vehicular traffic.

SECTION 410 ADULT USES

A. Purposes

The Village of Elba conducted a study of the potential secondary affects posed by adult uses. This study along with other similar studies has shown buildings and establishments operated as adult uses pose secondary effects that have a detrimental and harmful to the health, safety, morals and general welfare of a community. In order to promote the health, safety, morals and general welfare of the residents of the Village of Elba, this Section is intended to control those secondary affects of adult uses by restricting adult uses to non-residential areas of the Village, and otherwise regulating their operation.

B. Definitions

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

1. Adult Establishment - A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult message establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

a. An adult bookstore is a bookstore which has as a "substantial portion" (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:

(1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical area"; or,

(2) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

b. An adult eating or drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:

(1) Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities"; or,

(2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas", and

(3) Employees who as part of their employment, regularly expose to patrons "specified anatomical areas", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

c. An adult theater is a theater which regularly features one or more of the following:

(1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or,

(2) Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.

An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.

d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.

e. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

f. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.

g. Any other adult commercial establishment is a facility - other than an adult bookstore, adult eating or drinking establishment, adult theater, commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons "specified anatomical areas" and which is not customarily open to the general public during

such features because it excludes minors by reason of age.

For the purpose of defining adult establishments, "specified sexual activities" are: (i) human genitals in a state of sexual stimulation or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

"Specified anatomical areas" are: (i) less than completely and opaquely concealed (a) human genitals, pubic region, (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.

For the purpose of determining whether a "substantial portion" of an establishment includes an adult bookstore the following factors shall be considered: (1) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (2) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.

For the purpose of determining whether a bookstore has a "substantial portion" (equal to or greater than 25%) of its stock in materials defined in paragraphs (a) (1) or (a) (2) hereof, the following factors shall be considered: (1) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (2) the amount of floor area and cellar space accessible to customers containing such stock; and (3) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.

2. Person - A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

3. Substantial - For the purposes of the Section the term "substantial" shall mean an amount equal to or greater than 25 percent of the total

C. Restrictions Affecting Adult Uses

Adult uses, including but not limited to adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, and adult entertainment cabaret shall be permitted subject to the following restrictions:

1. No such adult uses shall be within one hundred (100) feet of another existing adult use.

2. No such adult use shall be located within one hundred (100) feet of the boundaries of any Residential Zoning District (R-1 or R-2).

3. No such adult use shall be located within four hundred (400) feet of a pre-existing school, place of worship, children's playground, park, or community center.

4. No such adult use shall be located in any zoning district except the Central Commercial, Neighborhood Commercial or Industrial Districts (C-2, C-1, I).

5. Only one adult establishment shall be permitted on a zoning lot.

D. Prohibition Regarding Public Observation

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

SECTION 411 CLUSTER RESIDENTIAL DEVELOPMENT

Cluster residential development of one-family dwellings may be permitted, as specified in the NYS Village Law Section 7-738 in the R-2 District of the Village provided that a special use permit is obtained and the following conditions are observed:

A. The project shall encompass a minimum land area of five (5) acres.

B. The developer shall dedicate all unsubdivided lands to permanent open space. In no case shall such lands be less than twenty-five (25) percent of the total project area. All such lands shall be suitable, in the opinion of the Planning Board, for the intended use. Such lands shall be offered for dedication to the Village Board.

C. The developer shall seek preliminary, nonbinding, informal conditional approval of the Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filing the special use permit application.

D. The overall density, maximum building height and maximum lot coverage requirements as set forth in Zoning Schedule A of this Zoning Law for the district involved apply to the entire cluster development project, whereas the minimum frontage, and side and rear yard requirements for the applicable district apply only to the outer lots of said cluster residential development. All other area requirements as set forth in Zoning Schedule A may be modified by the Planning Board.

SECTION 412 HOME OCCUPATIONS

A. Purpose

The purpose of this provision is to allow for home occupations which are compatible with the neighborhoods in which they are located.

Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

B. Process

An applicant shall apply to the Zoning Enforcement Officer for a zoning permit for a home occupation.

C. Conditions

The following conditions are intended to insure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.
3. No more than one (1) nonresident persons shall be employed actually on-site at the residence in a Home Occupation.
4. Not more than 25% of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (not including accessory buildings and structures) shall not exceed 500 sq. ft.
5. There shall be no exterior advertising of the home occupation, except for a sign no larger than two (2) square feet for which a permit has been obtained pursuant to the provisions of Section 407.
6. There shall be no exterior storage of materials used in the home occupation.
7. No home occupation shall result in:

a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.

b. Hazard of fire, explosion, release of toxic or harmful substances (including solvents and waste products) or other physical hazard to any person, building, vegetation, or ground water.

c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

8. Adequate parking shall be provided as set forth in Section 401. Such off-street parking shall be located not less than ten (10) feet from any property line.

9. No residential lot shall contain more than one (1) home occupation. No residential lot shall contain a home occupation together with a skilled trade shop or any other non-residential use requiring a special use permit.

SECTION 413 COMMERCIAL COMMUNICATION TOWERS

No commercial communication tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

At all times, shared use of existing towers and/or structures (i.e., a water tower, building, etc.) shall be preferred to the construction of new commercial communication towers. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower. The installation of a commercial communications antenna(s) on an existing structure located within the C-1 and I Districts shall be considered a permitted use not subject to Site Plan Review, provided the following criteria are met:

1. The existing structure is not increased in height or otherwise modified so as to change its visual appearance,

2. The antenna(s) do not extend above such structure more than ten (10) feet, and

3. The applicant provides the necessary documentation to the Building Inspector to verify the existing structure and proposed antenna(s) installation would comply with the NYS

Uniform Fire Prevention and Building Code.

4. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

The Planning Board may, at its sole discretion, consider a new or altered (including towers or structures which are modified, reconstructed, or changed) commercial communication tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers/structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.

The applicant shall be required to submit a site plan in accordance with Section 208 for all commercial communication towers that are proposed to be erected, moved, reconstructed, changed or altered. Site Plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section. In addition to Section 208, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

Where shared usage of an existing tower/structure is found to be impractical, as determined by the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower/structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection B, Paragraphs 1 and 2 of this Section. Any new commercial communication tower approved for an existing tower/structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location

The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower/structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined by the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section.

F. Future Shared Usage of New Towers

The applicant must design a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. This requirement may be waived, in the sole discretion of the Planning Board, provided that the applicant demonstrate that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

1. The number of Federal Communications Commission (FCC) licenses foreseeably available for the area;
2. The kind of tower site and structure proposed;
3. The number of existing and potential licenses without tower spaces;
4. Available spaces on existing and approved towers; and
5. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

1. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater. The minimum setback requirement of this paragraph may be increased at the discretion of the Planning Board, or it may be decreased in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area. Such tower design and collapse zone must be acceptable to the Village Engineer and the Planning Board.

2. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Visual Impact Assessment

The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to the relevant guidelines and criteria below that are determined, by the sole discretion of the Planning Board, at the pre-submission conference to be appropriate.

1. Assessment of "before and after" views from key viewpoints both inside and outside of the Village, including state highways and other major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.

2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.

3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

I. New Tower Design

Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owner of the commercial communication tower has agreed to permit other persons to attach other communication apparatus which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment. The design of a proposed new tower shall comply with the following:

1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.

2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).

3. The Planning Board may request a review of the application by the Village Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of

any new tower. The costs associated for such review shall be borne by the applicant.

4. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.

6. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.

7. Space on communication towers shall be made available for public safety purposes (i.e., Genesee County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special permit.

K. Screening

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

L. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking

Parking shall be provided in accordance with Section 401. No parking space shall be located in any required yard.

N. Fencing

Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Village Clerk a maintenance and/or performance bond or other form of security acceptable to the Village Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/ Unused Facilities

Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

SECTION 414 **EMERGENCY HOUSING SITUATION**

Recreational vehicles may be permitted as a temporary residence in any district upon the determination that an emergency housing situation exists. Such emergency housing situation shall be limited to either man-made or natural disasters (i.e. fire, flooding, hazardous material incidents, etc.) which rendered the existing housing unit(s) uninhabitable. The Zoning Enforcement Officer may grant a non-renewable temporary emergency housing permit for a period of time not exceeding ninety (90) days. Any extension of an emergency housing permit past this initial ninety (90) day period shall only be granted by the Planning Board as set forth under Section 208 of this Zoning Law.

SECTION 415 **MOBILE HOME PARKS**

Mobile home parks may be permitted in the Mobile Home Overlay Zone upon the issuance of a special use permit provided the following standards and requirements are complied with:

- A. Size - The size of all mobile home parks shall be a minimum of ten (10) acres.
- B. Construction and Safety Standards

All mobile homes within the park shall comply with the current construction and safety standards set forth by the U.S. Department of Housing and Urban Development.

- 1. Mobile homes shall have a minimum habitable floor area of eight hundred (800) square feet.
- 2. Solid fuel burning devices shall not be permitted within any mobile home in a mobile home park.

C. Layout and Design

1. Double Access - All mobile home parks containing twenty (20) or more units shall have access to a public highway at two points, with such points being separated by at least one hundred (100) feet. This provision may be waived by the Planning Board if the applicant's proposal contains acceptable alternatives for emergency access.

2. Buffer Zone - The site shall be located and laid out so that no mobile home is located within 100 feet of any adjacent public highway right-of way or within 35 feet of any other adjoining property line. Additional buffer areas may be required by the Planning Board if deemed necessary in order to avoid potential conflicts with existing or planned land uses.

3. Sales Area - Commercial areas may be provided for the display and sales of mobile homes within the confines of the mobile home park, except on the frontage established in the buffer zone. Model units shall only be placed upon individual lots, limited to one unit per lot.

4. Other Principal Structures - A private conventional residence may be located within the confines of the mobile home park. Lot location and minimum distances shall be fixed by the Planning Board after due consideration of each case.

5. Interior Roadways - The layout of interior roadways, driveways, and walkways shall be designed and maintained in such a manner as to provide for safe, efficient and orderly vehicular and pedestrian traffic acceptable to the Planning Board. In addition, all interior roadways

shall be clearly identified by signs at each intersection. Such signs shall be acceptable to the Planning Board.

6. Roadway (or Driveway) Clear Zone Width -

All roadways shall have a minimum clear zone width of forty (40) feet which is completely clear of obstructions to a height of twelve (12) feet.

7. Roadway Grades - The maximum roadway grade shall be seven (7) percent.

Entrance gradients shall be less than three (3) percent for a distance of seventy-five (75) feet from the edge of the right-of-way of the public highway.

8. Minimum Radius - The minimum radius of curvature for any street shall be

seventy-five (75) feet.

9. Alignment - Roadways shall be laid out so as to intersect as nearly as possible

at right angles, and in no case shall any angle or intersection be less than seventy-five (75) degrees. Roadways in four way intersections shall be directly across from one another or offset a minimum of 125 feet.

10. Roadways - Roadway or driveway pavement shall be located in the center of

the roadway clear zone and shall be at least twenty (20) feet wide or as designated by the Planning Board. If parking provision is made within the roadway clear zone such parking shall be off the pavement and the clear zone shall be increased accordingly.

11. Parking - Two (2) parking spaces shall be provided for each mobile home lot

to meet the needs of occupants of the mobile home park and their guests without interference with normal movement of vehicular or pedestrian traffic. Such parking may be in tandem. Each parking space shall have minimum dimensions of at least ten (10) feet by twenty (20) feet per vehicle and shall have an all weather surfacing.

12. Auxiliary Parking - Auxiliary parking areas for motor vehicles shall be

provided at a ratio of one parking space to every five mobile home units. Additional auxiliary parking areas are to be provided for parking trucks, maintenance equipment, boat trailers, utility trailers, and similar such equipment and vehicles.

13. Mobile Home Lot Size - All lots shall be a minimum of eight thousand (8,000)

square feet exclusive of any common areas and shall have a minimum dimension of eighty (80) feet across the lot. No common areas such as buffer zones, roadway clear zones, auxiliary parking lots, recreational areas, service buildings and areas, sales areas, etc., shall be counted towards required individual mobile home lot areas.

14. Walkways - Walkways shall be laid out so as to connect service buildings, dry

yards, and storage lockers with roadways. Walkways shall also provide access to recreation areas

if such areas are not located adjacent to a roadway. Each roadway shall have a walkway running parallel to it, separated from the roadway by a minimum distance of seven (7) feet. Additional walkways may also be placed along the rear of each lot. All walkways shall be a minimum of three (3) feet wide and thickness of four (4) inches and shall be provided with joints so designed as to minimize cracking. All walkways shall be made of concrete or blacktop or other similar material approved by the Planning Board.

15. Recreation Areas - Recreation areas shall be provided in central locations at an amount equal to ten percent (10%) of the total park area. Recreational areas shall include playgrounds for children and separate areas for more passive enjoyment by adults. The playgrounds shall be equipped with play equipment for children under ten years of age and should be away from traffic.

16. Public Telephone - If public telephones are provided within the court, they shall be located directly adjacent to service buildings.

17. Mailboxes - Mailboxes shall be located in compliance with U.S. Postal Service regulations and shall not be placed in any location where they constitute a safety hazard to pedestrians or to vehicles.

18. Trees - All existing trees shall be preserved insofar as possible in the design of the park.

D. Siting of Mobile Homes - Mobile homes shall be so situated within the mobile home park in conformance with the following:

1. The following minimum distances shall be maintained when providing specific locations of mobile homes as related to each other within the park.

a. Laterally - (side of mobile home facing the side of another) thirty (30) feet.

b. Longitudinally - (end of mobile home facing the end of another) twenty (20) feet.

c. Perpendicularly - (end of one mobile home facing the side of another) twenty-five (25) feet.

2. In cases of irregularly shaped lots the Planning Board shall determine the application of the above listed provisions but in no case shall any two (2) mobile homes be closer than twenty (20) feet from one another.

3. No mobile home shall be located less than fifty (50) feet from any service or

storage building other than approved accessory buildings located on and serving the specific mobile home lot as set forth in sub-section E, paragraph 12 of this Section.

4. The minimum setback from the roadway line (clear zone rather than pavement) shall be fifteen (15) feet. Minimum setback from all interior lot lines shall be five (5) feet.

5. The percent lot coverage for an individual mobile home lot shall be no greater than twenty-five percent (25%).

6. The minimum distance between a mobile home and a parking space for motor vehicles shall be ten (10) feet.

7. No occupied travel or vacation trailer or other form of temporary type living units shall be permitted in a mobile home park.

8. Every mobile home lot shall be clearly identified by a number located on a sign or light post located on the lot.

E. Required Improvements

1. Water and Sewage System. Water supply and sewage treatment facilities shall be installed and maintained in compliance with the requirements of the New York State Health Department, Department of Environmental Conservation and the Genesee County Health Department.

2. Underground Utilities. Electrical systems, gas piping systems, cable and telephone wires, and community and individual fuel storage shall be installed underground and maintained in compliance with the N.Y.S. Uniform Code.

3. Artificial Lighting. Artificial lighting shall be provided from dusk to dawn to illuminate walks, driveways, roadways and parking spaces for the safe movement of pedestrians and vehicles. Specifically, roadway lighting standards shall be provided as follows:

a. Overhead roadway lighting standards shall be placed no farther than one hundred (100) feet apart, have a minimum clearance above the pavement of twelve (12) feet and shall have a minimum capacity of 100 watts or as specified by the Planning Board.

b. Service buildings shall have sufficient exterior lighting fixtures so as to properly illuminate entrances and drying yards connected therewith.

4. Refuse Disposal. It shall be the responsibility of the park owner to insure that garbage and rubbish shall be collected and properly disposed of outside the park as frequently as may be necessary to insure that garbage receptacles do not overflow. This responsibility shall include

either the provision of garbage cans with tight fitting covers to each unit or dumpsters which service a number of units. Exterior property areas shall be maintained free from organic and inorganic material that might become a health, incident or fire hazard. Suitable screening shall be provided for all community refuse (dumpster) areas.

5. Roadway Paving. All roadways within the park shall be paved for a minimum width of twenty (20) feet in accordance with specifications acceptable to the Planning Board.

6. Parking Area Paving. Areas for motor vehicle parking and access driveways shall be surfaced with asphalt or concrete.

7. Mobile Home Lot. Each mobile home lot shall contain a mobile home stand to provide adequate support for the placement and tiedown of the mobile home. The stand shall not heave, shift, or settle unevenly under the weight of the mobile home as a result of any frost action, inadequate drainage, vibration or other such forces. The material used in constructing the stand should be durable and capable of supporting the expected load regardless of the weather, and shall be constructed in compliance with the N.Y.S. Uniform Code. In addition, the footings and the load-carrying portion of the ground anchors shall extend below the frost line.

8. Patios/Decks. Mobile home lots may be provided with patios and/or decks. If installed, patios and/or decks may be covered and shall conform to distance separations, lot setbacks and percent lot coverage requirements, and shall not be enclosed (insect screening is allowable).

9. Storm Water Drainage. Mobile home parks shall have adequate facilities for drainage of surface and subsurface water. The entire mobile home park shall be graded to facilitate the safe and efficient drainage of surface water and to permit no ponding areas where water will stand for lengths of time so as to constitute a health or other hazard. Drainage ditches shall be provided where necessary to provide for the removal of surface drainage. Such ditches shall be provided in such a way as not to constitute a hazard to pedestrians. Gutters, culverts, catch basins, drain inlets, storm water sewers or other satisfactory drainage systems shall be utilized where deemed necessary and shall be acceptable for a size specified by the Planning Board and the Genesee County Soil and Water Conservation District.

10. Landscaping. Each mobile home lot shall be provided with at least two (2) shade trees with trunks not less than one and one-half (1 1/2) inches in diameter as measured three (3) feet from the ground. Poplars, silver or soft maples, box elders, catalpas, and horse chestnuts shall not be planted. The planting of elms is not recommended. Shade trees shall also be planted at intervals of not less than fifty (50) feet within the buffer areas to the sides and rear of the mobile home court. Shade trees are recommended in the buffer area between the public highway and the adjacent mobile home lots. Due regard shall be had to the obstructive qualities of limbs and branches along mobile home movement and accessways.

11. Service Buildings. The developer shall be required to furnish service buildings in conformance with the following:

a. Service buildings shall be located in such a way as to prohibit primary access directly adjacent to a mobile home lot.

b. Service buildings housing sanitation and laundry facilities or any other facilities shall be permanent structures complying with the N.Y.S. Uniform Code and the New York State Sanitary Code.

c. The service buildings shall be well lighted at all times from dusk to dawn and shall be well ventilated with screened openings, shall be constructed of such moisture proof material, including painted woodwork, as shall permit repeated cleaning and washing, and be maintained at a temperature of at least 68 degree Fahrenheit during the period of October 1 to June 1. The floors of such buildings shall be of concrete and supplied with drains.

12. Additional Structures on Mobile Home Lots. Additional structures on mobile home lots are subject to the following:

a. No non-integral structural addition or other accessory building or structure in excess of one hundred (100) square feet shall be permitted on any mobile home lot.

b. Structural additions, accessory buildings, car ports and awnings shall conform to distance separations, lot setbacks and percent lot coverage requirements.

c. Accessory buildings shall not be placed in front yards.

13. Mobile Home Park Owner Obligations. In general, mobile home parks shall be properly maintained so as to insure the desirable residential character of the property. Specifically, the following shall apply:

a. Yard Maintenance. Mobile home parks shall be maintained reasonably free from holes and excavations, sharp protrusions, and other objects or conditions which might be a potential cause of personal injury. Walks, steps, driveways and roadways that contain holes or tripping hazards shall be filled, repaired, or replaced as the need indicates. Trees, or limbs of trees, that constitute a hazard, shall be removed. Snow removal is the responsibility of the mobile home park owner.

b. Noxious Weeds. Ragweed and other noxious weeds considered detrimental to health such as a poison ivy or poison sumac shall be completely eliminated from all areas of the mobile home park. Open areas shall be maintained free of heavy undergrowths of any description.

c. Accessory Structures. All accessory buildings or structures shall be kept in good repair, free from health, fire and accident hazards. They shall be of durable construction and appropriate for intended use and location, exterior wood surface of all structures that are not inherently resistant to deterioration shall be periodically treated with a protective coating or paint or other suitable preservative.

d. Gravel Areas. All areas surfaced with gravel shall be kept clear of all forms of vegetation.

e. Infestation. Grounds and structures shall be maintained free of insect, vermin, and rodent harborage and infestation. Methods used for purposes of extermination shall conform with generally accepted practice.

f. Skirts. Skirts for individual mobile homes are required and shall conform to the New York State Uniform Code. Such skirting shall be installed within thirty (30) days of the installation of the mobile home and must be maintained.

14. Mobile Home Park Plans and Registration of Mobile Home Park Occupants.

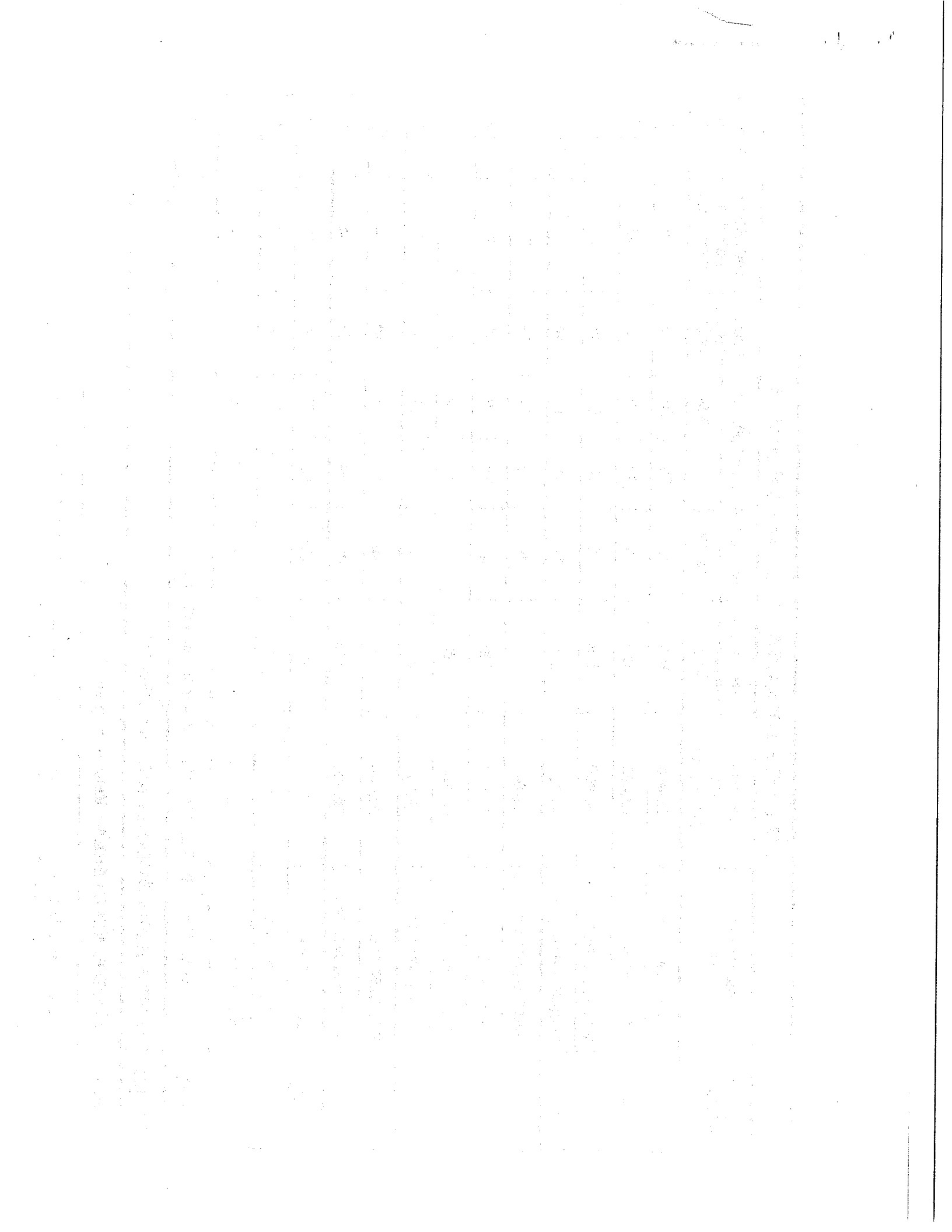
It shall be the duty of each mobile home park owner/operator to keep a register containing a record of all mobile home owners and occupants located within the park. This register shall contain the following:

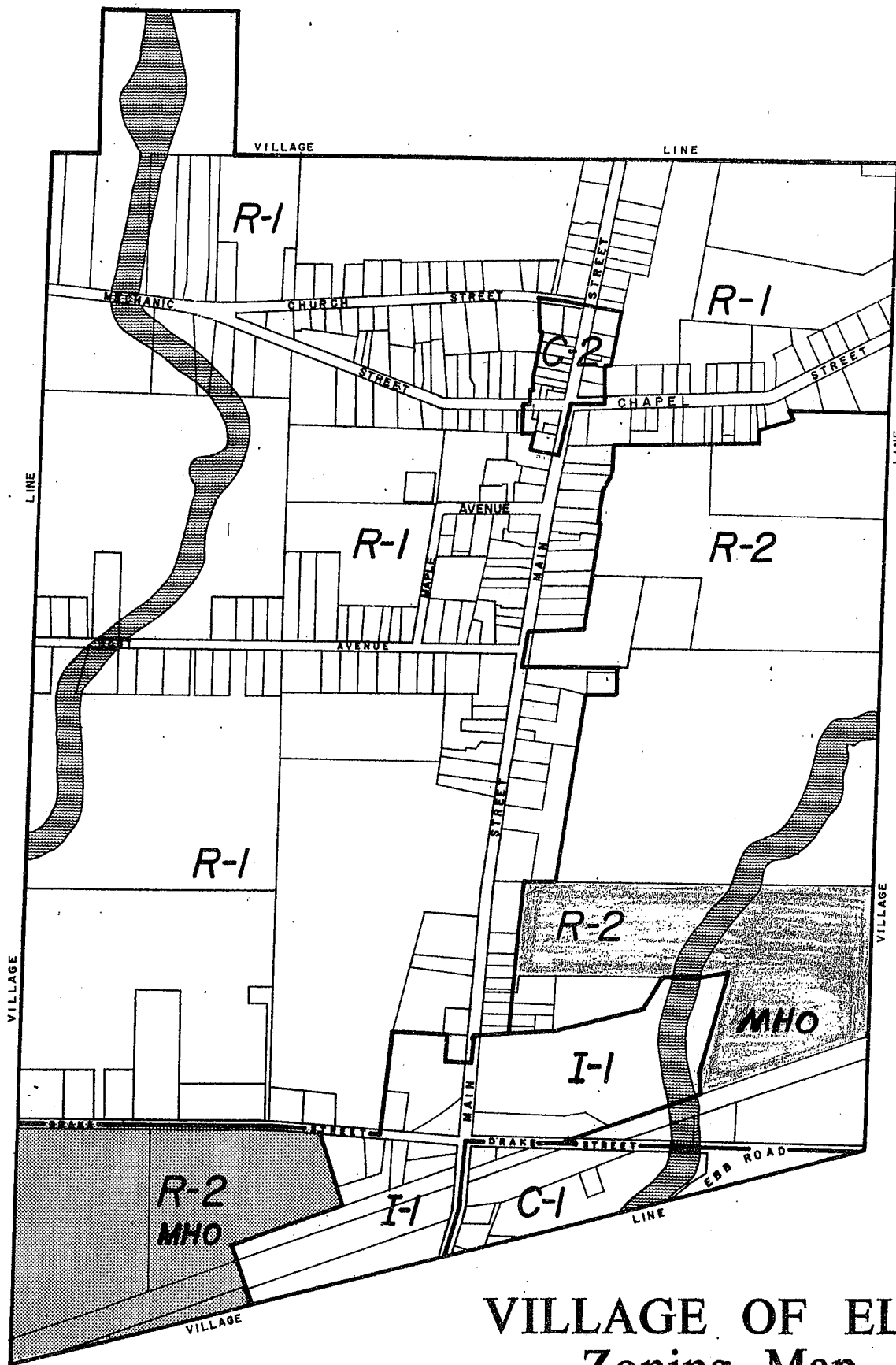
- a. The name and legal address of all occupants.
- b. The name and address of the owner of each mobile home.
- c. The make, model, year, and license number of each mobile home.

VILLAGE OF ELBA Zoning Schedule A

ZONING DISTRICT	PERMITTED USES	MINIMUM LOT SIZE (sq. ft.)	MINIMUM FRONTAGE (FEET)	MINIMUM YARDS (FEET)			MAX. HEIGHT (FEET)	MAXIMUM LOT (%) COVERAGE	SITE PLAN REQ.
				FRONT	REAR	SIDE			
R-1	SINGLE-FAMILY	10,000	100	40	30	15	35	20	NO
	TWO-FAMILY	12,000	125	40	30	15	35	20	YES
	MULTI-FAMILY ^①	+4,000	125	50	30	15	35	20	YES
	NON-RESIDENTIAL	40,000	200	50	35	25	40	30	YES
R-2	SINGLE-FAMILY	8,000	75	40	30	10	35	20	NO
	TWO-FAMILY	10,000	100	40	30	10	35	20	YES
	MULTI-FAMILY ^①	+4,000	100	50	30	20	35	30	YES
	NON-RESIDENTIAL	40,000	200	50	35	25	40	30	YES
C-1	RESIDENTIAL	20,000	100	40	30	15	40	25	YES
	NON-RESIDENTIAL	20,000	100	40	30	15	40	25	YES
	RESIDENTIAL	②	②	②	②	②	40	60	YES
C-2	NON-RESIDENTIAL	②	②	②	②	②	40	60	YES
	INDUSTRIAL	40,000	200	50	50	50	40	35	YES
PUD	PLANNED UNIT DEVELOPMENT Refer to Section 312								
MHO	MOBILE HOME OVERLAY Refer to Section 313								
FPO	FLOOD PLAIN OVERLAY Refer to Section 314								

NOTES: ① Two Family minimum lot size plus 2,000 sq. ft. per family for each additional unit over two.
 ② Dimensional Criteria for residential uses determined through site plan review process.





VILLAGE OF ELBA
 Zoning Map
 (UNOFFICIAL)

