ZONING

Chapter 130

From the

CODE

of the

Town of Erwin

COUNTY OF STEUBEN

STATE OF NEW YORK

[Printed as last amended by the Town Board on October 11, 2005. Consult municipal records for possible amendments adopted thereafter and for date of Code adoption.]

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ZONING

Chapter 130

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ZONING ORDINANCE
OF THE
TOWN OF ERWIN, NEW YORK

LEGISLATIVE HISTORY


AMENDMENTS:

Following Amendments Adopted 1-12-1988
Sections 130-5B;
130-7B;
130-39B(1)(i);
130-44;
130-50B(2)(h);
130-51;
130-66A;
130-91A;
130-92A;
130-93 A; and
130-94 A; and
Use Regulation Table

Following Article and Sections Amended 5-11-99
ARTICLE III Zoning Districts:
   Map Amendment § 130-8 Zoning Districts;
ARTICLE IV Use Regulations:
   § 130-11;
ARTICLE V Area and Bulk Regulations:
   Density Control Schedule § 130-14;
ARTICLE IX Site Plan Review § 130-41:
   Intent and Objective § 130-46;
ARTICLE X Supplemental Regulations § 130-58:
   § 130-61;
   § 130-63;
   § 130-70;
   Off-street parking and loading, § 130-77;

Legislative History
Streets § 130-81;  
Design Standards for Selected Districts § 130-82 (new);  
Noise (new)  

**Following Articles and Sections Amended**  

**12-16-03**  
**Article II Definitions**  
Definitions and Word Usage § 130-5  
**Article III Zoning District and Zoning Map:**  
Zoning Districts § 130-8;  
Zoning Map §130-9.  
**Article IV Use Regulations:**  
Use Districts § 130-11  
Prohibited Uses § 130-12  
**Article V Area and Bulk Regulations**  
Density Control Schedule § 130-14  
**Article X Supplemental Regulations:**  
Introduction to Article; Special Use Permit Criteria and Considerations for Site Plan Review; Compliance Required § 130-56;  
Campgrounds/Campsites (Including Travel Trailer Parks) § 130-62;  
Cemeteries and Crematories § 130-64;  
Communications Towers § 130-65;  
Excavation § 130-70;  
Gasoline Filling Stations, Mini-Marts, Service and Repair Garages, and Automobile Sales Areas § 130-71;  
Home Occupation, On-site Service § 130-72;  
Manufactured/Mobile Home Park § 130-76;  
Motel § 130-77;  
Signs § 130-81;  
Timber Harvesting § 130-86;  
Noise Control § 130-90;  
**Article XI Nonconforming Buildings, Uses and Lots:**  
Continuation of Nonconformance § 130-94;  
Maintenance and Repair § 130-96;  
Change in Nonconforming Use § 130-97;  
Construction Initiated Prior to Regulations § 130-98;  
Expansion or Alterations § 130-102.
Following Sections Added 12-16-03

Article VIII Overlay District:
Stream Corridor Overlay District § 130-38;
Viewshed Protection Overlay (VP-O) District § 130-38.1

Article IX Special Use Permit and Site Plan Review:
Planning Board Review – General Criteria § 130-50

Article X Supplemental Regulations:
Adult Uses – Special Use Permit Criteria § 130-58;
Agriculture and Livestock Uses Requiring a SPDES Permit § 130-59;
Bed and Breakfast § 130-60;
Car Wash § 130-63;
Contractor’s Yard § 130-66;
Dwellings – Multi-Unit and Townhouse Developments § 130-68;
Equipment/Large Rental or Sales Yard § 130-69;
Kennels § 130-73;
Property Maintenance Law § 130-91;
Town of Erwin Aesthetics Mitigation Strategy § 130-92.

Following Sections Repealed 12-16-03

Special Use Permits §130-102 (combined into §130-56 “Special Use Permit Criteria and Consideration for Site Plan Review”)

Following Articles and Sections Amended 12-29-03

Article II Definitions:
Definitions and Word Usage § 130-5

Article V Area and Bulk Regulations:
Buildable Land Calculations § 130-15

Article X Supplemental Regulations:
Accessory Buildings and Uses § 130-57;
Noise Control § 130-90;
Property Maintenance Law § 130-91.
**ROADMAP FOR THE REORGANIZED CHAPTER 130**

**December 29, 2003**

The following is a guide to aid readers in understanding which Articles and Sections from the old Chapter 130 dated 2001 have been reorganized, consolidated or replaced in the new Chapter 130 dated December 29, 2003.

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AMENDMENTS TO CHAPTER 130 SUBSEQUENT TO THE
OCTOBER 11, 2005 AMENDMENTS
ARTICLE I
General Provisions

§ 130-1. Title.
This chapter shall be known as and may be cited and referred to as the “Zoning Law of the Town of Erwin, New York.”

§ 130-2. Authority.
Pursuant to the Municipal Home Rule Law of the Consolidated Laws of New York State, the Town Board of the Town of Erwin, in the County of Steuben, State of New York, hereby resolves, enacts, and publishes as follows:

§ 130-2.1. Purpose.
The Zoning Regulations and Districts herein set forth and as identified upon the Zoning Map of the Town of Erwin are made to protect and promote public health, safety, and the general welfare of the Town of Erwin; and specifically:

A. To promote and effectuate the orderly physical development of the Town of Erwin in accordance with the “Comprehensive Master Plan 2010” and subsequent revisions;

B. To encourage the most appropriate use of land in the community in order to conserve and enhance the value of property which benefits both the owner and the Town;

C. To eliminate the spread of low density sprawl business development and provide for more adequate and suitably located commercial facilities and consequently eliminate many roadside hazards and add to community attractiveness;

D. To create a suitable system of open spaces and recreation areas and to protect and enhance existing wooded areas, scenic areas, and waterways;

E. To regulate building densities in order to assure access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, and to provide efficient municipal utility services;
F. To improve transportation facilities, to provide for efficient traffic flow on streets and highways, to improve onsite traffic circulation, and to provide adequate off-street parking and loading facilities;

G. To realize a land use plan properly designed to conserve the use of land and control the cost of municipal services;

H. To assure privacy for residents and freedom from nuisances and things harmful to the senses;

I. To protect the community against unsightly, obtrusive, and noisome land uses and operations;

J. To enhance the aesthetic aspects throughout the entire town and maintain its natural beauty;

K. To provide an opportunity for occupancy of housing or use of land to all people, regardless of race, creed, sex, or color; and

L. To protect groundwater resources which serve as public and private sources of water supply.

These purposes are achieved through this Zoning Law, regulating and restricting the height, number of stories, and size of buildings and other structures; restricting the density of population; regulating the sizes of yards and other open spaces; regulating and restricting the location and use of buildings, structures, and land for trade, industry, residential, or other purposes; creating districts for such purposes; and establishing boundaries. The regulations herein contained provide for continuing a Zoning Board of Appeals to determine and vary the application of various provisions of this Zoning Law in harmony with its general purposes and intent in accordance with general and specific rules and providing for the enforcement of such rules.

§ 130-3. Effect on Other Legislation.

A. This Zoning Law shall not interfere with, abrogate, annul, or repeal any ordinance or any rule, regulation, or permit previously or hereafter enacted, adopted, or issued pursuant to law, provided that, unless
specifically excepted, where this Zoning Law imposes greater restrictions, its provisions shall control.

B. When two or more provisions or requirements of this Chapter conflict, the most restrictive shall prevail.

§ 130-4. Interpretation and Application.

In their interpretation and application, the provisions of this Zoning Law shall be held to be the minimum requirements adopted for the promotion of the public health, safety, and general welfare.
ARTICLE II
Definitions

§ 130-5. Definitions and Word Usage.
(Amended 12-16-03, 12-29-03, 10-11-05)

A. The following rules of construction of language shall apply to the text of this chapter:

1. Words used in the present tense include the future tense.

2. Words used in the singular include the plural, and words used in the plural include the singular.

3. The word “lot” includes the word “plot” or “parcel.”

4. The word “person” includes an individual, firm, or corporation.

5. The word “shall” is always mandatory; the word “may” is always permissive.

6. The words “used” or “occupied,” as applied to any land or building, shall be construed to include the words “intended, arranged, or designed to be used or occupied.”

7. A building or structure includes any part thereof.

8. The phrases “to erect,” “to construct,” and “to build” a building, all have the same meaning and include to excavate for a building and to relocate a building by moving it from one location to another.

B. The following words or phrases, as used in this chapter, are defined as follows:

ADULT USE – Shall be interpreted to mean only the following:
1. ADULT CABARET: A nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of anatomical areas or by specified sexual activities. Adult cabarets shall not have enclosed viewing booths.

2. ADULT MOTION PICTURE THEATER: an establishment where, for any form of consideration, films or motion pictures are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of sexual activities or anatomical areas. Adult Motion Picture Theaters shall not have enclosed viewing booths.

3. ADULT RETAIL: An establishment that has as a substantial portion (25% or more) of the store's total gross floor area devoted to any one or more of the following: 1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, videos, slides, or other visual representations that are characterized by an emphasis upon the depiction or description of sexual activities or anatomical areas; or 2) instruments, devices, or paraphernalia that are designed for use in connection with sexual activities. Adult bookstores and/or video stores shall not have enclosed viewing booths.

The following are definitions of uses prohibited from locating and/or operating in any District within the Town of Erwin:

1. ADULT HOTEL/MOTEL– A hotel or motel or similar business establishment offering public accommodations for any form of consideration that (1) provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions characterized by an emphasis upon the depiction or description of sexual activities or sexual activities or anatomical areas; and/or (2) rents, leases, or lets any room for less than a six-hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

2. ADULT MASSAGE PARLOR – An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric
or magnetic treatment, or similar treatment or manipulation of the human body is administered, *unless* such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the state.

3. **ADULT MODELING STUDIO** – An establishment whose primary business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

4. **ADULT SAUNA** – A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, using steam or hot air as a cleaning, relaxing, or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on sexual activities or anatomical areas.

5. **ADULT USE – Sexual Encounter Establishment** – An establishment other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort in connection with specified sexual activities or the exposure of anatomical areas. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

**AGRICULTURE, BUILDING** – A single-purpose structure necessary for the raising of crops and livestock.

**AGRICULTURE, FOR CROPS** – Any parcel of land, including a garden, used for the raising of fruits, vegetables and the like, but not for the raising or keeping of animals.
AGRICULTURE, FOR LIVESTOCK – Any parcel of land used for the raising of animals for commercial purposes, including livestock, horses, poultry, dairy cattle, bees, fur-bearing animals, and other such farm animals, but excluding pets and kennels.

AGRICULTURE, MANUFACTURE – Any parcel of land used for the processing of crops and livestock, such as a cheese factory, tannery, food processing plant, and the like.

AGRICULTURE, NURSERY – A wholesale or retail business which sells primarily trees, shrubs, plants, and other landscaping materials and may sell related lawn and garden supplies and ornaments as an accessory use.

ALTERATION – As applied to a building or structure, a change or rearrangement in the structural parts or existing facilities of such building or structure, or any enlargement thereof, whether by extension on any side or by any increase in height, or the moving of such building or structure from one location to another.

AMBIENT SOUND LEVEL – The total sound pressure level in the area of interest including the noise source of interest.

ANTENNA – A system of electrical conductors that transmit or receive telephone, television, or radio frequency waves. Such devices shall include cellular, paging, and personal communication services (PCS) and satellite dishes.

AQUIFER – An underground water-bearing volume of permeable rock, sand, or gravel.

AQUIFER PROTECTION OVERLAY DISTRICTS (APOD). Those areas as defined below which contribute water to the Town of Erwin public and community water supply.

1. APOD #1: WELL HEAD PROTECTION AREA: The land area immediately around a well which contributes water to the public and community wells as shown on the Aquifer Protection Overlay District Map. For all community wells and existing public wells, this area is defined as a circle centered on the well with a two
Article II - Definitions

hundred (200) foot radius. For new public wells, water at the outermost boundary of the Wellhead Protection Area will reach the wells within a minimum of one-hundred (100) days.

2. APOD #2: AQUIFER RECHARGE AREA: The aquifer upgradient from the Wellhead Protection Area which contributes water to the Town of Erwin public wells as shown on the Aquifer Protection Overlay District Map. For the existing Morningside Heights wells, this area is as defined by NYSDEC in June 1985 and described in the STC “Final Report of the Central Southern Tier Groundwater Critical Recharge Area Program.” For new public wells, water at the outermost boundary will reach the public wells within a minimum of two (2) years.

3. APOD #3: WATERSHED TRIBUTARY AREA: The upland watershed which contributes water to the Aquifer Recharge Areas and the remaining Primary Aquifer as shown on the Aquifer Protection Overlay District Map.

AREA, BUILDING – The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of terraces and uncovered steps.

AUTOMOBILE SALES AREA – A premises, including open areas other than a street or road and showrooms enclosed within a building, used for the storage, display, or sale of new or used automobiles, trucks, and cargo trailers.

A-WEIGHTING – Is the electronic filtering in sound level meters that models human hearing frequency sensitivity.

AZIMUTH – The angular distance between true south and the point on the horizon directly below the sun. Values to the east of south (in the morning) shall be negative. Values to the west of south (in the afternoon) shall be positive.

BACKGROUND SOUND LEVEL – The total sound pressure level in the area of interest excluding the noise source of interest.
BARRIER – A structure and/or plant material that obstructs visual and/or noise impact on a use from another use and which may or may not be located on a buffer. Barriers include “fences,” “walls,” and “hedges.”

BOARD FOOT – Measure of lumber 12” x 12” x 1”.

BUFFER – An area of land forming a physical separation between two land uses.

BUILDING – Any structure which is permanently affixed to the land, has one (1) or more floors and a roof, and is intended for the shelter, housing, or enclosure of persons, animals, or chattel (except for in the case of Government Buildings which may or may not include offices as further defined below). A building includes attached deck(s) and porch(es).

BUILDING, ACCESSORY – A detached building subordinate to a principal building used for purposes customarily incidental to those of the principal building.

BUILDING, DETACHED – A building surrounded by open space on the same lot.

BUILDING GROUP – A group of two (2) or more principal buildings and any buildings accessory thereto occupying a lot in one (1) ownership and having any yard in common.

BUILDING LINE – The line, established by statute, local law, or ordinance, beyond which a building shall not extend, as specifically provided by law.

BUILDING, GOVERNMENT – A building which is owned and solely occupied by a state or local agency, which may have office space, and is solely used for the purposes of carrying out the agency’s official duties.

BUILDING, PRINCIPAL – A building in which is conducted the main or principal use of the lot on which said building is situated.
BULK – A term used to describe the size, volume, area, and shape of structures and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures or other walls of the same building, and all open spaces required in connection with a building, other structure, or tract of land.

BULK, NONCONFORMING – That part of a building, other structure, or tract of land which was lawfully existing prior to the adoption or amendment of this chapter but which does not conform to one (1) or more of the applicable building regulations of this Zoning Law by reason of such adoption or amendment.

CAFÉ, OUTDOOR (OUTDOOR DINING AREAS) – A temporary dining area (to be removed during the winter months) of a designated size with seating and/or tables located outdoors of a restaurant, coffee shop, or other food service establishment, which is a) located entirely outside the walls of the subject building; b) enclosed on two sides or fewer by the walls of the building with or without a solid roof cover; or c) enclosed on three sides by the walls of the building without a solid roof cover. The seating may be in addition to the indoor seating or it may be the only seating available for the restaurant. The outdoor dining area must be visually and architecturally integrated to the main building and shall conform to the applicable design standards set forth in this Chapter.

CAMP, COMMERCIAL – A property providing one (1) or more sites for a fee for the parking of occupied travel trailers and/or the erection of tents or other shelters serving as temporary residences, as defined by Part 7 of the New York State Sanitary Code, and all buildings and facilities pertaining thereto.

CAMP, PRIVATE – Property used for the parking of occupied travel trailers and/or the erection of tents or other shelters as temporary residences for the personal use of the owner and/or guests.

CARRIER – A provider of communications service.

CHURCH - A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings
and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such places for worship and religious activities.

CLUB, MEMBERSHIP – An organization catering exclusively to members and their guests, or premises and buildings for social, educational, recreational, or athletic purposes which are not conducted primarily for gain, provided that there are not conducted any vending stands, merchandising, or commercial activities except as required generally for the purposes of such club.

CO-LOCATION – The use of a communications tower by more than one carrier. Co-location shall include:

1. Mounting or installing an antenna facility on a pre-existing structure, and/or
2. Modifying a structure for the purpose of mounting or installing an antenna facility on that structure. Modification of a structure for purposes of co-location shall include the reasonable replacement and/or relocation of an existing structure to accommodate the addition of a new Communications Tower on an existing structure. For purposes of Co-location, there shall be no net increase in the total number of poles.

COMMERCIAL AREA – A group of commercial facilities and the abutting public right-of-way and public spaces.

COMMERCIAL PARKING LOT – A tract of land which is used for the storage of motor vehicles, which is not accessory to any other use on the same or any other lot, and which contains parking space rented to the general public or reserved for individuals by the hour, day, week, or month.

COMMERCIAL VEHICLE – A vehicle of more than one-ton capacity used for the transportation of persons or goods primarily for gain or a vehicle of any capacity carrying a permanently affixed sign exceeding one (1) square foot in area or lettering of a commercial nature.

COMMUNICATIONS TOWER – A structure on which transmitting and/or receiving antennae are located. This includes but is not limited to freestanding towers, guyed towers, monopoles, and similar structures as defined below:
1. FREESTANDING LATTICE TOWER onto which antennas are affixed. (Added)

2. GUYED TOWER – Lattice tower supported by wire anchors.

3. MONOPOLE – A single pole of variable cross section onto which antennas are affixed.

4. WIRELESS TELECOMMUNICATIONS FACILITY, SMALL CELL OR MICRO-CELL as such term is used in the industry and described in 47 CFR § 1.1312(e)(2).

COMPREHENSIVE PLAN – The Comprehensive Plan (as defined under § 272-a of The Town Law) most recently adopted by the Town Board, and all adopted amendments thereto.

CONSTRUCTION – Any site preparation, assembly, erection, repair, alteration, or similar action, or demolition of buildings and structures.

CONTIGUOUS PARCEL – A tract of land under the control of the applicant or his agent that is not divided by any natural or man-made barriers such as existing roads, highways, railroad tracks, areas with slopes greater than thirty-five (35%) percent, and rivers, and that is not totally bisected by any water bodies.

CONTRACTOR’S YARD – Any space, whether inside or outside a building, used for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, or materials which are in active use by a construction contractor.

COVERAGE – That lot area or percentage of lot area covered by buildings or structures, including accessory buildings and structures, and impervious surfaces such as driveways and parking lots, but not including detached solar equipment used by solar energy systems.

C-WEIGHTING – The electronic filtering in sound level meters that models a flat response (output equals input) over the range of maximum human hearing frequency sensitivity.

DAY CARE CENTER – A facility duly permitted by the New York State Department of Social Welfare for the care of three (3) or more persons away
from their homes for more than three (3) but less than twenty-four (24) hours each day with or without compensation. This definition includes “children’s day care center” and “adult day care center.” A DAY CARE CENTER is also a facility providing day care services under an operating certificate issued by the Department of Mental Health. This does not include “family day care,” “nursery school,” or “day camp” as defined by the New York State-State Sanitary Code, a school program
operated for the primary purpose of religious education, or a facility operated by a public school district.

DAY CARE, FAMILY HOME – A one-family dwelling in which day care is provided for persons in accordance with NYS Department of Social Services definitions and regulations.

dBA – The A-weighted unit of sound pressure level.

dBC – The C-weighted unit of sound pressure level.

DEBRIS – As used in this chapter, the term “debris” includes all materials resulting from the construction, excavation, renovation, equipping, remodeling, repair or demolition of structures, property, or roads, as well as materials consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related clean up. Such materials include but are not limited to: bricks, concrete, and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphalt pavement, glass, window frames, electrical wiring and components, plastics, carpeting, foam padding, linoleum, materials, or any combination thereof which are incidental to construction, excavation, renovation, equipping, remodeling, repair, or demolition.

DECIBEL (dB) – The unit of measurement for sound pressure level at a specified location.

DRIVE-IN MOVIE – An open lot, or part thereof, with appurtenant facilities devoted primarily to the showing of moving pictures, on a paid-admission basis, to patrons seated in automobiles or in outdoor seats.

DWELLING UNIT – One or more rooms connected together, consisting of a separate, independent housekeeping establishment, for owner occupancy, rental, or lease, that contains independent cooking, sanitary, and sleeping facilities for one (1) family. This shall include sectional, modular, and manufactured/mobile home units, but shall not include motels, hotels, or lodging establishments for transient occupancy.
EASEMENT – Authorization by a property owner for the use by another person of any designated part of his property for a specified purpose.

EMERGENCY WORK – Any work or action necessary to deliver essential services including, but not limited to, repairing water, gas, electric, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, or abating life-threatening conditions.

EQUIPMENT/LARGE PRODUCT RENTAL OR SALES ESTABLISHMENT - Establishments primarily engaged in the sale or rental of tools, trucks, tractors, construction equipment, agricultural implements, and similar industrial equipment, and the rental of mobile homes.

EXCAVATION – Extraction of an amount equal to or less than 1000 tons or 750 cubic yards of earth material during a period of twelve (12) successive months, (the threshold above which a permit is required pursuant to the New York State Mined Land Reclamation Law [Environmental Conservation Law Article 23, Title 27] as of June 27, 2005), for commercial purposes such as gravel pits, rock quarrying, stripping of topsoil, subsoil removal, and/or removal of such materials for sale, other than what may be required for the erection of buildings.

ESSENTIAL FACILITIES AND SERVICES – Those accessory facilities and services designed for the use of the residents in the Planned Residential District. This includes, but is not limited to, a medical and/or emergency medical center, restaurant, coffee shop, small retail stores, and bank.

FAMILY – Any single person or group of persons who live together in a one-dwelling unit and maintain a common household.

FARM MACHINERY – Any piece of equipment commonly used in farming, including but not limited to plows, discs, combines, wagons, choppers, elevators, etc. This is to include any and all parts of such machinery.
FARM VEHICLE – Any vehicle bearing a “farm” plate issued by the State of New York.

FENCE – An artificially constructed linear barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials erected for the enclosure of yard areas or erected to act as a barrier. “Fence” includes “wall” but does not include decorative fencing material six (6) feet or under in height, such as split rail fencing, which does not act as a barrier or enclosure. Decorative fencing shall be considered a structure for the purposes of these regulations.

FINISHED GRADE – The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure (except for signs – refer to Section 130-81). If the line of intersection is not reasonably horizontal, the “finished grade,” in computing the height of buildings and other structures or for other purposes, shall be the average elevation of all finished grade elevations around the periphery of the building, except that this average shall not exceed one-half (½) of the floor-to-ceiling height.

FLOOR AREA – The aggregate sum of the gross horizontal areas of the several floors of the building or buildings, measured from the exterior walls or from the centerlines of walls, separating the buildings as defined by the NYS Fire Protection and Building Code.

GARAGE, SERVICE, AND REPAIR – An enclosed building for the indoor repair of motor vehicles, including painting and sale of parts and accessories. A “junkyard” or “auto salvage yard” is not to be construed as a garage.

GARBAGE – Includes all putrescible animal and vegetable waste resulting from growing, processing, marketing and preparation of food items, including container in which packaged and animal feces from household pets.

GASOLINE FILLING STATION – A building or other structure or a tract of land with pumps and storage tanks used primarily for the storage and sale of gasoline or other motor fuels and for other uses accessory thereto. The sale of lubricants, accessories, or supplies and the repair of motor
vehicles (which does not require mechanical equipment) are permitted accessory uses.

HAZARDOUS SUBSTANCES – All substances defined in 6NYCRR Part 597 and all hazardous wastes as defined in 6NYCRR Part 371.

HEIGHT OF BUILDING – The vertical distance measured from the average finished grade along the wall of the building or adjacent to the side of the structure to the highest point of such building or structure.

HOME OCCUPATION – A business conducted as an accessory use which is clearly incidental to or secondary to the residential use of the dwelling unit and does not change the character thereof and is carried on wholly within the enclosed walls of a dwelling unit or accessory building by the occupant(s) of such dwelling and in which not more than one (1) person not residing in such dwelling unit may be employed on site. Home Occupations are either “off site” or “on site.”

1. HOME OCCUPATION, OFF SITE SERVICE – A home occupation in which the owner meets customers off premises or electronically and thus does not generate additional traffic.

2. HOME OCCUPATION, ON SITE SERVICE – A home occupation in which the owner meets customers on premises and thus the business generates additional traffic.

HOSPITAL – A building containing beds for four (4) or more patients and used for the diagnosis, treatment, or other care of human ailments.

HOUSING, NON-TRANSIENT – A building designed or used principally as the permanent living quarters for one or more families. Such housing is also known as a “residence” but shall not be deemed to include a motel, hotel, or other accommodations used for transient occupancy and shall include the following:

1. DWELLING, ONE-UNIT DETACHED – A building containing one (1) dwelling unit only on one lot.
2. DWELLING, ONE-UNIT ATTACHED – A building containing two (2) dwelling units on separate lots. This includes “zero-lot line” one-unit homes.

3. DWELLING, TWO-UNIT – A building containing two (2) dwelling units on one lot. This includes “duplex.”

4. DWELLING, MULTI-UNIT – A building or series of buildings comprising three (3) or more dwelling units with shared entrances and other essential facilities and services on one lot.

5. DWELLING GROUP – A group of three (3) or more, but not over ten (10), attached one- or two-unit dwellings with party walls between.

6. GROUP HOME – A one-unit dwelling in which resides a group of mentally and/or physically challenged persons, not related by blood, marriage, or adoption who maintain a common household as governed by state law. “Group home” includes “community residence.”

7. ROOMING HOUSE – A one-unit dwelling containing a common kitchen and dining facility, in which at least three (3) sleeping rooms are offered for rent, with or without meals. A “lodging house” shall be deemed a “rooming house.”

8. SHARED HOUSING – A one-unit dwelling in which persons not related by blood, marriage, or adoption live together and maintain a common household.

6. TOWNHOUSE – A building consisting of three or more attached one-unit dwellings each having separate entrances and common vertical walls on separate lots.

HOUSING, TRANSIENT – Any buildings that serve as principle lodging or residence for more than one transient individual that occupies such building briefly and temporarily. Such housing shall include the following:
1. BED AND BREAKFAST (B&B) – An owner-occupied establishment (formerly a residential dwelling) that offers sleeping accommodations to guests in fifteen (15) or fewer single or double occupancy rooms for rent for no more than twenty-one (21) consecutive days; serves only breakfast in a dining area to guests renting rooms; meets all the tax, fire, building, and health requirements for the size and use of the property; and fully complies with the special use permit requirements of this law.

2. HOTEL – A building, or any part thereof, which contains living and sleeping accommodations for more than 15 transient occupancy for compensation, has a common exterior entrance or entrances, and which may contain one (1) or more dining rooms.

3. MOTEL – A building or group of buildings not over two stories in height containing individual living and sleeping accommodations for hire, each of which is provided with a separate exterior entrance and a parking space and is offered for rental and use principally by motor vehicle travelers. The term “motel” includes but is not limited to “auto court,” “motor hotel,” “motor court,” “motor inn,” “motor lodge,” “tourist cabin,” or “roadside hotel.”

IMPULSIVE SOUND – A sound having a duration of less than one (1) second with an abrupt onset and rapid decay.

INACTIVE FARM – Property located in the Agricultural zoning district as defined by the Town Zoning Law, which is no longer actively being farmed. Any property which was actively farmed and is left fallow for a period of one year shall be considered an “inactive farm.”

INDUSTRIAL FACILITY – Any activity and its related premises, property, facilities, or equipment involving the fabrication, manufacture, or production of durable or nondurable goods.

INDUSTRY, LIGHT – A use engaged in research and development activities, as well as the processing, manufacturing, compounding, assembly, packaging, storage, treatment, or fabrication of materials and products, from processed or previously manufactured materials. Light industry is capable of operation in such a manner as to control the external
effects of the manufacturing process, such as smoke, noise, soot, dirt, vibration, odor, etc.

JUNKED MOTOR VEHICLE – Shall mean a motor vehicle as defined above which is discarded, wrecked, abandoned, dismantled, or partially dismantled and which is in such a deteriorated condition that it cannot be legally operated upon the public highways without substantial repairs. With respect to any motor vehicle not required to be licensed or motor vehicles not usually used on public highways, the fact that such motor vehicle has remained unused for six months or more and is not in condition to be moved under its own power shall be presumptive evidence that such motor vehicle is a junked motor vehicle.

JUNKYARD – An area of land, with or without buildings, used for or occupied by the storage, keeping, or abandonment of junk, including scrap metals or other scrap or used or salvaged building materials, or the dismantling, demolition, or abandonment of automobiles or other vehicles or machinery or parts thereof. This includes “salvage yard,” “dump,” “auto junkyard,” and “solid waste disposal facility.”

KENNEL – Any place at which there are kept four (4) or more dogs more than four (4) months of age or any number of dogs that are kept for the primary purpose of sale or for boarding, care, or breeding, for which a fee is charged or paid.

LANDING – Open or cleared areas used for loading logs onto trucks or any general purpose such as storing logs or servicing equipment.

LOG RULE, INTERNATIONAL 1/4", DOYLE, OR SCRIBNER – Professionally recognized and accepted method of determining the amount of lumber in board feet, that can be obtained from logs or trees.

LOT – A contiguous parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use, or ownership, and the customary accessories and open spaces belonging to the same. A “lot” shall abut and be accessible from a public or private street.
LOT, CORNER – A lot situated at the junction of and adjacent to two (2) or more intersecting streets, when the interior angle of intersection does not exceed one hundred thirty-five degrees (135°).

LOT, COVERAGE – See “coverage.”

LOT, DEPTH OF – The length of a line perpendicular or radial to the lot frontage measured from the midpoint of the lot frontage to the rear lot line.

LOT LINE, FRONT – A lot line which is coincident with the right-of-way line of a public road or a line fifteen (15) feet from the road surface of a private road.

LOT LINES – The lines bounding a lot as defined herein.

LOT, THROUGH – A lot which faces on two (2) streets at opposite ends of the lot and which is not a corner lot.

LOT WIDTH – The width along the rear line of the required front yard setback.

MANUFACTURED/MOBILE HOME – A one-family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code or a mobile home constructed before 1975 which has been renovated to meet federal standards as approved by the Code Enforcement Officer. Manufactured/mobile home does not include Department of Motor Vehicle registered “recreational vehicles,” “travel trailers,” or “modular homes.”

MANUFACTURED/MOBILE HOME PARK – A contiguous parcel of land, which is planned and improved specifically for such a purpose, on which two (2) or more manufactured/mobile homes (with or without the wheels and axles in place), are located. Such a park consists entirely of manufactured/mobile homes, each located on a site leased or rented to its occupants who either own, rent, or lease the living unit as a permanent residence.
MANUFACTURED/MOBILE HOME SPACE (LOT) – The site in a mobile home park that is rented to an individual for the exclusive right of occupancy which can accommodate one manufactured/mobile home, off-street parking, private outdoor space and patios, storage buildings, and other accessory structures.

MANUFACTURED/MOBILE HOME STAND – That part of an individual manufactured/mobile home lot which has been reserved for the placement of the manufactured/mobile home.

MEAN HIGH WATER MARK (MHWM) – The average annual high water level.

MEASURING INSTRUMENT – An instrument such as a sound level meter, integrating sound level meter, or dosimeter used to measure sound pressure levels conforming to Type 1 or Type 2 standards as specified in the latest version of ANSI Standard § 1.4-1983.

MINING – Extraction of more than 1000 tons or 750 cubic yards of earth material (whichever is less) during twelve (12) successive months, (the threshold for which a permit is required pursuant to the New York State Mined Land Reclamation Law [Environmental Conservation Law Article 23, Title 27] as of June 27, 2005), for commercial purposes such as gravel pits, rock quarrying, subsoil removal, and/or removal of such materials for sale, other than what may be required for the erection of buildings.

MIXED USE – A building or a lot used for more than one permitted principal use.

MODULAR HOME – A dwelling unit constructed in a factory in one or more parts and transported to and assembled on a permanent foundation. Every modular home or component shall bear an Insignia of Approval issued by the New York State Fire Prevention and Building Code Council which certifies that the home or component is in compliance with the NYS Fire Prevention and Building Code. “Modular home” includes “sectional home.”

MOTOR VEHICLE – As used in this chapter, the term “motor vehicle” includes all vehicles as defined by NYS Vehicle and Traffic Law § 125.
The term “motor vehicle” as used in this chapter shall also include “all terrain vehicles” as defined by NYS Vehicle and Traffic Law § 2281 and snowmobiles as defined by NYS Vehicle and Traffic Law § 2221.

MUFFLER – A sound-dissipative device or system for attenuating the sound of escaping gases of an internal combustion engine.

NAVIGABLE WATERBODY – A waterbody or any portion thereof where a canoe can navigate through at any point during the calendar year.

NOISE – Any sound of such level and duration as to be or tend to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the Municipality or in any portions thereof, but excludes all aspects of the employer-employee relationship involving health and safety hazards within the confines of a place of employment.

NOISE DISTURBANCE – Any sounds that (a) endanger the safety or health of any person; (b) disturb a reasonable person of normal sensitivities; or (c) endanger personal or real property.

NONCONFORMING USE – Any use of a building, other structure, or tract of land which was lawfully existing prior to the adoption or amendment of this chapter but which does not conform to the use regulations for the district in which such use is located by reason of such adoption or amendment.

NURSERY SCHOOL – A non-public school organized for the purpose of providing regular daytime care or instruction for three or more children less than seven years of age for less than three hours per day (two session may be held daily), as registered and certified by the NYS Education Department. This includes “day nursery” or “kindergarten” but does not include “day care center.”

NURSING HOME OR CONVALESCENT HOME – A building where persons are lodged and furnished with meals and long term or permanent skilled nursing care as defined by the NYS Department of Social Services. This definition includes “assisted care living units,” “health care services
facility,” and “home for the aged,” but does not include “hospital” or “halfway home.”

PERSON – Any individual, corporation, company, association, society, firm partnership, joint stock company, the Municipality, or any political subdivision, agency, or instrumentality of the Municipality

PETROLEUM BULK STORAGE REGULATIONS – New York State’s standards and regulations of petroleum administered by the New York State Department of Environmental Conservation as defined in 6NYCRR Parts 611 through 614.

PLANNED RESIDENTIAL DISTRICT – A form of residential development characterized by a unified site design and providing density increases, a mix of building types, and common open space. It permits the calculation of densities over the entire parcel and involves additional requirements as set forth in Article VII.

POND – Any body of water that in its natural state has a surface area of one (1) acre or more, and any body of water artificially formed or increased that has a surface area of one (1) acre or more.

PREMISES – A lot, together with all the buildings and uses thereon.

PROFESSIONAL FORESTER – A graduate forester from an accredited forestry college who has at least two years experience in forest management or timber harvesting.

PUBLIC RIGHT-OF-WAY – Any street, avenue, boulevard, road, highway, sidewalk, or alley that is leased, owned, or controlled by a governmental entity.

PUBLIC SPACE – Any real property or structures thereon that is owned, leased, or controlled by a governmental entity.

PURE TONE – Any sounds that can be judged as a single pitch or set of single pitches by the Code Enforcement Officer.
REAL PROPERTY LINE – Either (a) the imaginary line, including its vertical extension, that separates one parcel of real property from another; or (b) the vertical and horizontal boundaries of a dwelling unit that is one in a multi-unit dwelling building.

RESEARCH LABORATORIES (Added 12-29-03)– Scientific or research laboratories, including biological, chemical, dental, electronic, pharmaceutical, and general, including incidental pilot plants in connection therewith.

RESIDENCE – A building, or any part of a building, which contains living and sleeping accommodations for permanent occupancy. “Residence,” therefore, includes all non-transient housing. However, “residence” shall not include the following:

1. Transient housing, such as hotels and motels.

2. That part of a mixed-use which is used for any non-residential use.

RESIDENTIAL AREA – A group of residential properties and the abutting public rights-of-way and public spaces.

RESIDENTIAL CLUSTER DEVELOPMENT – A development of residential subdivision lots, each containing less than the minimum lot area required for the zoning district within which such development occurs but maintaining the imposed density limitations through the provision of open space.

RIGHT-OF-WAY – Property under easement normally used for the movement of vehicles, including but not limited to the pavement area.

RIGHT-OF-WAY LINE –The line determining the street or highway public limit or ownership. This shall include areas referred to as the “Street Line.”

RESIDENTIAL PROPERTY – Property used for human habitation, including but not limited to:

1. Private property used for human habitation;
2. Commercial living accommodations and commercial property used for human habitation;
3. Recreational and entertainment property used for human habitation; and
4. Community service property used for human habitation.

RETAIL – An establishment engaged in selling goods or merchandise to the general public in small quantities for personal or household consumption and rendering services incidental to the sale of such goods.

ROAD, COLLECTOR – Roads which carry traffic from minor roads to major roads, including the principal entrance roads of a residential development and roads for circulation within a development as shown on the Town of Erwin Zoning Map. This includes “secondary street.”

ROAD, DEAD-END – A road or portion of a road with only one vehicular access.

ROAD, MAJOR – Roads which are used or designed primarily for through or heavy traffic (county, state, and federal roads). This includes “primary road.”

ROAD, MINOR – Roads, which are used primarily for access to the abutting properties. This includes “local street.”

ROAD, PRIVATE – A road, serving not more than two residential lots, built to town specifications and that remains in the ownership of and is maintained by the developer or development association and is not dedicated to the town. This includes “private street.”

ROAD, PUBLIC – A right-of-way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, place, alley, or however otherwise designated, that is built to town specifications and dedicated to the town for maintenance, but not including a private road serving one or two properties. This includes “street.”

ROAD STAND – A light structure, either attached to the ground or movable, intended for the sale of local produce to the general public.

RUBBISH – As used in this chapter, the term “rubbish” includes all
discarded or worthless non-putrescible solid wastes consisting of both combustible and noncombustible wastes, including but not limited to
paper and paper products, rags, wrappings, cigarettes, cardboard, tin cans, yard clippings, wood, glass, metals, plastics, tires, bedding, cloth, crockery, furniture, appliances, and similar items.

SALVAGE YARD – See “JUNKYARD.”

SATELLITE DISH – An antenna capable of receiving communications from space.

SETBACK – The required distance between any building and any lot line of the lot on which it is located.

SHOPPING MALL – A building or group of buildings containing a combination of three or more separate shops, stores, or offices on a single lot providing primarily retail services with supporting service and office establishments. This includes “shopping center.”

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 lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking, or representation used as or which is in the nature of an announcement, direction, or advertisement. A “sign” includes a billboard but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious, or similar organization, campaign, drive, movement, or event, which is temporary in nature.

SIGN, ACCESSORY – Any sign, other than the principal business sign, which relates to the business or professional conducted or to a commodity or service sold or offered upon the premises.

SIGN AREA – The area within the shortest straight lines that can be drawn around the outside perimeter of a sign, including all decorations and lights, but excluding the supports if they are not used for advertising purposes. Each separate face of a sign shall be counted as part of the “sign area,” except that any neon tube, string of lights or similar device shall be deemed to have minimum dimensions of one (1) foot within a sign.
SIGN, BANNER – A sign made of flexible materials and supported along one or more sides or at two or more corners by staples, tape, wires, ropes, strings, or other supporting materials.

SIGN, BILLBOARD – A sign which directs attention to an idea, product, business activity, service, or entertainment which is conducted, sold, or offered elsewhere than upon the same premises upon which such sign is situated.

SIGN, CANOPY AND AWNING – Signs on traditional canvas awning and signs on the edges of structural canopies.

SIGN, DIRECTIONAL – Any on-premise sign whose message is exclusively limited to guiding the circulation of motorists, such as enter and exit signs.

SIGN, FREE STANDING – Any sign supported by one or more posts, poles, columns, or other structures or supports; acts as a directory for one of more businesses, is permanently affixed to the ground, and is not itself an integral part of or attached to a building or other structure. Also known as or referred too as a monument sign.

SIGN, FREE STANDING HIGH RISE – Generally, a larger scale “high rise” identification sign supported by one or more poles, posts or columns. Previously referred to as a “Pole Sign,” or “Pole mounted sign,” in earlier zoning amendments.

SIGN, FUEL PUMP ADVERTISEMENT – A sign affixed to or mounted on a fuel pump that advertises products other than the price of fuel.

SIGN, FUEL PUMP PRICE – A changeable copy sign located on top of a fuel pump advertising fuel prices.

SIGN, GAS STATION CANOPY – Any sign depicting the oil company or convenience store name/logo located on a canopy that covers fuel pumps.
SIGN, ILLUMINATED – A sign designed to give forth any artificial light or designed to reflect such light deriving from any source which is intended to cause such light or reflection.

1. DIRECTLY ILLUMINATED – A sign which incorporates any artificial lighting as an inherent part of its feature or which depends for its illumination on transparent or translucent material or electricity or radio activated or gaseous material or substance.

2. FLASHING – An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

3. INDIRECTLY ILLUMINATED – A sign illuminated with an artificial light, which is separated from or is not an intrinsic part of the sign itself.

SIGN, MARQUEE – A sign designed to have a changeable message, either manually or electronically. Marquee signs may be freestanding or wall signs.

SIGN, NAMEPLATE – A sign indicating the name and address of a building; or the name of an occupant thereof, and the practice of a permitted occupation therein.

SIGN, MONUMENT – A freestanding sign supported primarily by an internal structural framework other than support poles, commonly acts as a directory for multiple businesses, and is permanently affixed to the ground. Also known as or referred too as a freestanding sign.

SIGN, OFF-SITE – See Sign, Billboard.

SIGN, ON-SITE – Any sign identifying or advertising a business, person, activity, goods, products, or services, located on the premises where the sign is installed and maintained.

SIGN, PERMANENT CHANGEABLE MESSAGE – A sign designed to be permanent and having an interchangeable message area. For the purposes of this Chapter, a Portable Changeable Message Sign as defined
below, which is anchored into the ground shall not be considered a Permanent Changeable Message Sign.

SIGN, POLITICAL – A sign announcing or supporting a particular election issue, political party, or candidate for public office.

SIGN, PORTABLE – A sign whose principal supporting structure is intended, by design and construction, to be used by resting upon the ground for support, is not attached to a structure, and may be easily moved or relocated for reuse. Portable signs under this definition shall include A-frames, T-frames, curb or sidewalk signs, and sandwich boards.

SIGN, PORTABLE CHANGEABLE MESSAGE – A sign with or without flashing lights and/or arrows, having interchangeable message areas, is transportable on a trailer or is placed on the ground supported by stands, is not permanently affixed to the ground, or has not been designed to be permanently affixed to the ground.

SIGN, PRINCIPAL BUSINESS – The primary sign or signs which direct attention to a business or profession conducted on the premises. A “for sale” sign or a “to let” sign relating to the property on which it is displayed shall not be deemed a “principal business sign.”

SIGN, PROJECTING – A sign that is attached to a building face or wall, and whose leading edge projects 12 inches or more from said building face or wall, but not more than 5 feet.

SIGN, PUBLIC SERVICE – A sign which gives the public necessary or desirable information, as opposed to a sign which primarily advertises a commercial business.

SIGN, RESIDENTIAL – Any noncommercial sign placed on a residential property by the owner of occupant of said property.

SIGN, ROOF – A sign, which is either painted on or incorporated into and flush with a buildings roof structure (i.e., roofing tiles); mounted on the roof of a building or which is dependent upon a building for support and
extends above the top edge of the wall of a flat-roofed building, above the eave line of a building with a hip, gambrel, or gable roof or the deck line of a building with a mansard roof.

SIGN, SPECIAL EVENT – A sign temporary in nature, intended to be displayed for a limited time period, is not permanently attached to the ground or the surface of another sign or a sign support structure, is one of the permitted Special Event Sign types identified in this Chapter, and used to advertise only the Special Events identified in this Chapter or other events considered similar by the Code Enforcement Officer.

SIGN, SPECIAL SALES – A sign that is temporary in nature, intended to be displayed for a limited time period, is not permanently attached to the ground or another sign surface, is one of the permitted Special Sales Signs identified in this Chapter, and used to advertise only the Special Sales Events identified in this Chapter or other events considered similar by the Code Enforcement Officer.

SIGN, TEMPORARY ADVERTISEMENT – A temporary sign shall include symbols, figures, balloons or other inflatable objects; pinwheels, spot lights, and other types of signs constructed of non-rigid materials which are designed and intended to be displayed for a brief period and advertising or promoting a sale, event or the price of a product or service. This definition excludes Special Sales Signs, as defined above.

SIGN, TRANSLUCENT CANOPY – Canopy signs constructed of translucent materials that use letters or logos on a lighted background

SIGN, V-TYPE, – A “V” shaped sign having two connected display areas with the angle between the two outer surfaces being equal to or less than 90 degrees.

SIGN, WALL – A sign that is either painted on, incorporated into and flush with, or mounted flat against and projecting less than twelve (12) inches from a building face or wall.

SIGN, WINDOW – A sign painted on, affixed to, or placed immediately behind a windowpane so as to attract the attention of persons outside the building. For the purposes of this Chapter, the word “window” shall be
construed to mean any glass that comprises part of the surface of the wall, regardless of its movability, including doors.

SINGLE OWNERSHIP – Possession of land under single or unified control, whether by sole, joint, common, or other ownership, or by a lease having a term of not less than thirty (30) years, regardless of any division of such land into parcels for the purpose of financing.

SITE PLAN – A plan, to scale, showing uses and structures proposed for a parcel of land, and supporting information as required in Article IX.

SOLAR COLLECTOR – A device or combination of devices, or a structure or part of a device or structure, that transforms direct solar energy into thermal, chemical, or electrical energy and that contributes significantly to a structure’s energy supply, and components for containing and supporting such device.

SOLAR COLLECTOR, DETACHED – A solar collector, as defined herein, physically detached from the structure for which solar energy is to be supplied.

SOLAR ENERGY SYSTEM – A complete design or assembly consisting of a solar energy collector, herein called a “solar collector,” an energy storage facility, where used, and components for the distribution of transformed energy, to the extent that they cannot be used jointly with a conventional energy system. Passive solar energy systems are included in this definition, but not to the extent that they fulfill other functions such as structural and recreational functions.

SOLAR EQUIPMENT – includes “solar collector,” “solar collector, detached,” “solar energy system,” and “solar reflector.”

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

SOLID WASTE – Includes all putrescible and non-putrescible materials and substances discarded or rejected as having served their original intended use or as being spent, useless, worthless or in excess of the owner at the time of such discard or rejection including but not limited to
household and commercial garbage, industrial waste, rubbish, debris, litter, and ashes.

SOLID WASTE DISPOSAL FACILITY – See “JUNKYARD.”

SOUND LEVEL – The instantaneous sound pressure level measured in decibels with a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.

SOUND PRESSURE LEVEL (SPL) – 20 multiplied by the logarithm, to the base 10 of the measured sound pressure, divided by the sound pressure associated with the threshold of human hearing, in units of decibels.

SPECIAL USE PERMIT – An authorization of a particular land use which is permitted in the Town of Erwin Zoning Law subject to requirements imposed to assure that the proposed use is in harmony with the law and will not adversely affect the neighborhood if the requirements are met.

STANDARD CORD – A cut pile of wood measuring 4’ x 4’ x 8’.

STORAGE FACILITY, INDOOR – A building or grouping of buildings designed and constructed for the common, long-term, and/or seasonal interior storage of individual or business property for compensation. The wholesale storage and/or transfer of goods by commercial enterprises shall not meet this definition. See also “TRUCKING TERMINAL” and “WAREHOUSE.”

STORAGE FACILITY, OUTDOOR – A lot designed for and/or used for the common, long-term, and/or seasonal outdoor storage of individual or business property for compensation.

STREET LINE – See Right-of-Way.

STREET WIDTH – The width of the right-of-way or the distance between property lines on opposite sides of a street.

STRUCTURE – A static construction of building materials as portable, demountable, or permanent detached enclosures, including buildings, stadiums, platforms, towers, storage sheds, display stands, storage bins,
signs, reviewing stands, gasoline pumps, mobile dwellings (whether mobile or stationary at the time), shade structures, carports, garages, and the like.

STRUCTURE, ACCESSORY – A structure detached from and subordinate to a principal building on the same lot used for purposes customarily incidental to those of the principal building. Accessory structures are non-inhabitable and have no sewer or water utilities.

TIMBER HARVESTING – The removal of timber in any quantities greater than twenty (20) standard cords, 2560 cubic feet, or 15,000 board feet measured by the International 1/4”, Doyle, or Scribner Log Rule, on any one ownership of land within any consecutive twelve-month period. Also known as a “logging operation.”

TRANSFER STATION (Added 12-29-03)– See Trucking Terminal.

TRANSIENT GUEST – Any person who shares a dwelling unit on a non-permanent basis for not more than 21 days.

TRUCK STOP - An establishment engaged primarily in the fueling, servicing, repair, or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers, or restaurant facilities primarily for the use of truck crews.

TRUCKING TERMINAL (Amended 12-29-03)– A structure or part of a structure or premises used for the short-term storage and/or transfer of goods, materials, wares, and merchandise for the owner or others by truck transport.
USE:

1. The purpose for which any buildings, other structures, or lot may be arranged, designed, intended, maintained, or occupied.

2. Any occupation, business activity, or operation conducted in a building or other structure or on the lot.

USE, ACCESSORY – A use customarily incidental and subordinate to the principal use and located on the same lot with such principal use or building. An accessory use does not have any greater impact on the environment than the principal use.

USE, PRINCIPAL – The main or primary permitted use of the lot or structure.

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

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

WAREHOUSE – A structure or premises for storing of goods, wares, and merchandise, whether for the owner or for others, prior to shipment to final retail sale operation, whether it is in public or private ownership and use.

WEEKDAY – Any day, Monday through Friday, that is not a legal holiday.

WELL, COMMUNITY – A potable water supply regulated by the NYS Department of Health which serves mobile home parks, industry, restaurants, schools, and the like.

WELL - PUBLIC – A municipally owned water supply system.
YARD, FRONT – A yard extending along the full length of the front lot line between the side lot lines, not including any land within the right-of-way of any public or private road.

YARD, REAR – A yard extending along the full length of the rear lot line between the side lot lines.

YARD, REQUIRED – That portion of the open area of a lot extending open and unobstructed from the ground upward along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included, as part of a yard or other open space similarly required for buildings on another lot.

YARD, SIDE – A yard situated between the building and the sideline of a lot and extending from the front yard rear line (or from the front lot line, if there is no required front yard) to the rear yard front line (or rear lot line).
ARTICLE III
Zoning Districts and Zoning Map

§ 130-6. Application of Regulations.

No building or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.

§ 130-7. General Regulations.

A. No building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of dwelling units, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards, or side yards than specified herein for the district in which such building or structure is located.

B. No part of a required yard or other open space about any building required for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building.

C. No lot shall be so reduced in size such that its area or any of its dimensions or open spaces shall be smaller than required by this chapter.

D. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of public health, safety, and general welfare.

E. Any uses not specifically permitted shall be deemed to be prohibited.

F. Regardless of other provisions of this chapter, any use that is noxious or offensive by reason of emission of odor, dust, noise, vibration, smoke, gas, fumes, or radiation or which presents a hazard to public health and safety, is prohibited.
§ 130-8.  **Zoning Districts.**
(Amended 12-16-03, 10-11-05)

A.  In order to fulfill the purpose of this Zoning Law, the Town of Erwin establishes and is hereby divided into the following districts:

- **RD** Rural District
- **R-12.5** Low Density Residence
- **R-10** Medium Density Residence
- **R-7.5** High Density Residence
- **B1** Business 1 – Community Service
- **B2** Business 2 – Office/Commercial District
- **B3** Business 3 – Neighborhood Services District
- **MU** Multi-Use District
- **RS** Regional Service
- **TC** Town Center
- **I-1** Industrial 1
- **I-2** Industrial 2

B.  This chapter also establishes two (2) flexible districts that may be applicable anywhere in the town that the specified criteria and conditions are met:

- **RCD** Residential Cluster Development District
- **PRD** Planned Residential District

C.  This chapter also establishes three (3) overlay districts, which impose additional requirements. The following overlay districts are depicted on the “Town of Erwin Environmental Resources Overlay Map”:

1.  **A POD** Aquifer Protection Overlay District
    - **A POD #1** Wellhead Protection Area
    - **A POD #2** Aquifer Recharge Area
    - **A POD #3** Watershed Tributary Area

2.  **Stream Corridor Overlay District:** All lands within 100 feet of the mean high water mark of a waterbody or wetland designated on the Town of Erwin Environmental Resources Overlay Map.

(Amended 12-16-03, 10-11-05)

The location and boundaries of said zoning districts are shown on the map designated the “Official Zoning Map of the Town of Erwin” located at the end of this Article, and on the “Town of Erwin Environmental Resources Overlay Map” located at the end of Article VIII, with the most recent version of each are kept on file and available for public viewing in the Town Office. Said maps, together with everything shown thereon and all amendments thereto, are hereby adopted and are declared to be an appurtenant part of this chapter.

§ 130-10. District Boundaries.

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

A. Centerlines and Right-of-Way Lines. Where district boundaries are indicated as approximately following the centerlines or right-of-way lines of streets, highways, public utility easements, or watercourses, said boundaries shall be construed to be coincident with such lines. Such boundaries shall be deemed to be automatically moved if a center line or right-of-way of such street, highway, public utility, or watercourse is moved a maximum of fifty (50) feet.

B. Lot or Boundary Lines. Where district boundaries are indicated as approximately following the town boundary line, property lines, lot lines, or projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.

C. Parallel to Lot or Boundary Lines. Where district boundaries are so indicated that they are approximately parallel to the town boundary line, property lines, lot lines, right-of-way lines, or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.
D. In all other cases, where not dimensioned, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon, but in no instance shall a district depth be less than the specified minimum lot depth required for each district in the Density Control Schedule.
TOWN OF ERWIN ZONING MAP
ARTICLE IV
Use Regulations

§ 130-11. Use Districts.
(Amended 12-16-03, 10-11-05)

See the Town of Erwin Use Regulation Table for Permitted Uses in each zone. See the Town of Erwin Density Control Schedule for area and bulk controls.

A. Rural District (RD) Intent:

To delineate those existing substantially undeveloped portions of the Town that exhibit a rural character due to the lack of services and serious natural limitations to development, to preserve a cohesive network of open space, stream corridors, wetlands, and other natural habitats and to conserve the remaining buildable land for less intensive, low density residential, agricultural, agri-business, and mixed uses in conformance with the natural and man-made limitations.

To allow each farmland owner a reasonable amount of development of his land, while minimizing strip frontage development and keeping most good farmland available for agricultural production.

B. Low Density (R-12.5) Residential Intent:

To delineate those areas where one-unit detached dwellings are located on large lots (12,500 square feet or larger) with public sewer and water services currently or potentially provided, while minimizing strip frontage development.

C. Medium Density (R-10) Residential Intent:

To delineate those areas suitable for the development of varied dwelling units, such as one- and two-unit detached houses, townhouses, and multi-unit dwellings, while maintaining the style and character of existing developments but at a medium density (minimum lot size: 10,000 square feet).
D. High Density (R-7.2) Residential Intent:

To delineate existing developed residential areas with a mixture of available housing, such as one- and two-unit dwellings, townhouses, and multi-unit dwellings and allow for similar development in other areas at a higher density (minimum lot size: 7,200 square feet), while maintaining the style and character of the older residential areas.

E. Town Center (TC). This district encompasses a large portion of the Town’s core gateway area and is immediately adjacent to residential single-family neighborhoods, natural features, and high-density residential development. The purpose of this district is to preserve, protect, and enhance the image and quality of the core area by encouraging mixed-use development with strong pedestrian elements in a coordinated manner, and to serve as the civic, social, and commercial hub of the community through a mixture of retail establishments, commercial services, office development, and public spaces. The district should also possess strong pedestrian linkages to the surrounding residential developments.

F. Business 1 (B1). The purpose of this district is to complement the Town Center District and provide neighborhood-scale commercial uses that serve the needs of local residents. The district should possess strong pedestrian linkages to the surrounding neighborhoods off of Beartown Road, Erwin Street, and Forest Drive.

G. Business 2 (B2). The purpose of the district is to complement the Town Center District and provide local and regional commercial and office development while protecting the Town’s gateway entrance from the Village of Painted Post. The district should also possess strong pedestrian linkages to the surrounding commercial developments and the Village of Painted Post.

H. Business 3 (B3). The purpose of this district is to provide local and community-based retail and services, such as restaurants, entertainment, small-scale retail, automobile dealerships, and day care, and other uses that support the activities at the Industrial Park. This district is not intended to support large commercial developments on large building footprints.
I. Multi-Use (MU). The purpose of this district is to allow high-density residential uses, skilled nursing centers, airport-related office activities, and light commercial operations, which could include but would not be limited to, greenhouses, automobile dealerships, and indoor storage operations. This district is not intended to support large commercial developments on large building footprints.

J. Regional Service (RS). The purpose of this district is to serve regional commercial development on large building footprints. The district should also have an architectural style compatible with the surrounding commercial districts and residential neighborhoods through the use of building materials, colors, and other architectural features.

K. Industrial –1 (I-1), and Industrial – 2 (I-2):  
(Amended 12-29-03, 10-11-05)

To delineate those areas in the Town that are appropriately suited to certain manufacturing, process, and light industrial uses subject to the specific design standards set forth in § 130-89 of this Chapter, and to preserve these areas for such uses and related uses that will not create a detrimental or significant adverse impact on the environment and the welfare of the community.

1. Special Provisions for Uses in the Industrial District (Added 12-16-03)

a) Prohibited Uses:

In addition to uses not listed in the Use Regulation Table; uses which do not conform to the definition of a “Light Industrial Use” as defined in this Chapter (i.e., those uses that result in noxious smoke, noise, soot, dirt, vibration, odor, and other noxious impacts); and uses that do not meet the noise and design standard requirements of this Chapter, the following uses are specifically prohibited from operating within the Industrial Districts of the Town of Erwin:
Abattoir
Forage Plants
Fuel Storage Yards
Junk Yards
Pulp Mills
Rolling Mills
Rubber Manufacturers
Stock Yards
Grease, Lard, Fat, or Tallow Rendering or Refining or Reduction
Petroleum Refining
Smelting, Tanning, or Curing of Raw Hides or Skins, Wool Pulling, or Scouring
Steel Mills

b) Manufacture of:

Acetylene, Ammonia, Bleaching Powder, Chlorine
Animal Black, Bone Black, Lamp Black
Asphalt
Celluloid or Pyroxyline
Disinfectant or Insecticides
Explosive, Fireworks, Gun Powder, or Storage of same
Fertilizers
Gas for Illuminating or Heating
Glue, Size, or Gelatin (where process includes the refining or recovery of products from fish, animal refuse, or offal)
Matches
Paint, Oil, Shellac, Turpentine, or Varnish
Potash
Rubber reclaiming
Shoe Blacking or Polish
Sulfuric, Nitrate, Hydrochloric, or other corrosive acids
Tallow, Grease, or Lard
Tar Roofing and Waterproofing (or other tar products or distillates thereof)
L. Residential Cluster Development District. See Article VI.

M. Planned Residential District. See Article VII.

N. Aquifer Protection Overlay District. See Article VIII.

O. (Added 12-16-03) Hillside and Ridgeline Overlay District. See Article VIII.

P. (Added 12-16-03) Viewshed Protection Overlay District. See Article VIII.

(Amended 12-16-03)

A. Uses prohibited in certain districts.

Uses other than those listed for each district in the Use Regulation Table are prohibited uses in that district.

B. Uses prohibited in all districts.

1. Unless conducted under proper and adequate standards, no use shall be permitted which will produce corrosive, toxic, or noxious fumes, glare, fire, explosion, electromagnetic disturbance, radiation, smoke, cinders, odors, obnoxious dust or waste, undue noise or vibration, or other objectionable features so as to be detrimental to the public health, safety, or general welfare.

2. Dumping or storage of material in a manner that facilitates the breeding of vermin or endangers health in any way shall not be permitted.

3. No effluent or matter of any kind shall be discharged into any stream or body of water or any public or private disposal system or directly into the ground, which violates established stream standards of the NYS Department of Environmental Conservation or otherwise causes odors or fumes or which is poisonous or injurious to human, plant, or animal life. Chapter 101 of this Code.
(Sewers) regulates the construction and operation of sewers and waste disposal.

4. The following Adult Uses as they are defined in Article II of this Chapter shall be prohibited from locating and/or operating in any District within the Town of Erwin:

a) Adult Hotel/Motel

b) Adult Massage Parlor

c) Adult Modeling Studio

d) Adult Sauna

e) Adult Use – Sexual Encounter Establishment
ARTICLE V
Area and Bulk Regulations

§ 130-13. Purpose.

In order to provide adequate open spaces for access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, and to lessen congestion on streets, no building or premises shall be erected, altered, or used except in accordance with the standards set forth in this Article.

§ 130-14. Density Control Schedule.

The attached schedule of density control regulations (refer to Appendix B Density Control Schedule) is hereby adopted and declared to be a part of this Zoning Law and is hereinafter referred to as the “Density Control Schedule.”

(Amended 12-29-03)

Density is calculated on net acreage, not gross acreage, of buildable land according to the following guidelines:

A. Applicant shall identify and subtract all acreage considered to be undevelopable as follows:

1. steep slopes 25% or greater
2. floodways
3. wetlands, both state and federal
4. lands covered by water bodies
5. Aquifer Protection Areas APODs #1 and #2
6. stream corridors (50' setback from each streambank)

B. The applicant shall then calculate the acreage that is determined to be buildable and apply the bulk density control schedule minimum square footage per dwelling unit for the zoning district to determine the maximum number of permitted dwelling units or principal buildings. All density values shall be rounded to the nearest whole number of dwelling units or principal buildings.

§ 130-16. Sewage Disposal.

If the use of any lot or building involves the disposal of sewage or wastewater, an adequate sanitary sewage disposal system shall be installed in accordance with the regulations of the New York State Departments of Health and Environmental Conservation, as well as with such other regulations as may be adopted and amended by the Town Board. Said system shall be maintained on such lot at all times.

§ 130-17. Projections into Required Yards.

A. The following projections into required yards are prohibited:

1. Open fire escapes

2. Awnings or movable canopies and overhangs, except for those allowed under the Design Standards of this Chapter

3. Cornices, eaves, insulation walls and roofs, and other similar architectural features

B. Apparatus needed for the operation of active or passive solar energy systems, including detached solar collectors, reflectors, piping or duct work, and insulation necessary for efficient utilization thereof may be approved within the required yard setbacks subject to site plan approval.

C. Non-roofed paved terraces shall not be considered a part of the building. Any unenclosed or unroofed paved surface may project up to lot line(s).
D. Exterior uncovered and unenclosed handicap access facilities may project up to the lot lines if necessary to meet access standards.

§ 130-18. Compliance with Maximum Average Residential Density Requirements.

A residential lot of required or larger than required size as set forth in the Zoning Law shall not be reduced in size for transfer of ownership if such lot so subdivided will form one (1) or more lots which shall not be in compliance with the requirements for the maximum average residential density for the district in which such lot or lots are situated, except as provided in § 130-19, and Articles VI and VII.


In all districts where mixed uses are permitted, a lot held in single ownership may be improved for a mixed use. The lot must meet at least one minimum lot size, as required for each of the permitted uses in a mixed use, whichever is largest. The lot must also accommodate all requirements for each of the uses, such as parking, buffering, coverage, etc. The building group, as a unit, must meet all setbacks. The construction of a new building must provide for future partition of the lot by providing adequate width and yards to allow the creation of conforming lots.

§ 130-20. Distance Between Principal Buildings on Same Lot.

Where there is more than one (1) principal building on a lot in any district, the space between such buildings shall be at least equal to the height of the taller of the nearest building.

§ 130-21. Height Restrictions.

A. Communications Towers. See § 130-62 for regulations.

B. No other structure except a silo or church steeple shall be constructed over thirty-five (35) feet in height unless built of noncombustible materials.

C. Additional height restrictions apply for projects within the Viewshed Protection Overlay District and those projects subject to the Design Standards of this Chapter.
§ 130-22. **Yard Requirements.**

All yards must meet the requirements defined in the Density Control Schedule with the following exceptions.

**A. Transitional Yard Requirements.**

Where a non-residential district abuts a side or rear yard in a residential district, there shall be provided in the non-residential district a side or rear yard at least equal in depth to that required in the residential district. In no case, shall the abutting rear yard be less than twenty-five (25) feet.

**B. Exceptions to Front Yard Requirements.**

1. If there are principal structures on both abutting lots with front yards of less than the depth required for the district, the front yard for the proposed lot need not exceed the average front yard of abutting structures.

2. If there is a principal structure on the abutting lot with a front yard less than the depth required for the district, the front yard of the proposed lot need not exceed a depth equal to the average of the depth of the abutting lot and the required front yard depth.

**C. Exceptions to Side Yard Requirements.**

Where the sidewall of a building is not parallel to the side lot line or the side lot line is broken or otherwise irregular, the side yard may be varied. In such case, the average width of the side yard shall not be less than the otherwise required minimum width; provided that such yard shall not be narrower at any point than one-half (½) the otherwise required minimum width.

**D. Corner Lots.**

Wherever a residential side or rear yard is adjacent to a street, the standards for front yards shall apply. Refer to § 130-89 Design Standards for commercial yard requirements.
E. Side Yards for Multi-Unit Dwellings.

Side yards for all multi-unit dwelling units, where permitted, shall be required at the ends of the total structure only.

F. Accessory Uses in Rear Yards.

Accessory uses and buildings may be located in a rear yard in accordance with §130-57.
ARTICLE VI
Residential Cluster Development

§ 130-23. Intent.

The intent of this Article is to enable and encourage flexibility in the design and development of land in such a manner as to promote the most appropriate use of land, to facilitate adequate and economical provision of services, to protect and conserve open space uses and environmentally sensitive features, to preserve scenic qualities, and to preserve those areas in the Town that are suitable for farm and agricultural uses.


Residential Cluster Development shall be considered applicable in the RD, R- 12.5, and R-10 Zoning Districts.

§ 130-25. Permitted Uses.

All permitted principal and accessory uses are specified in the Use Regulation Table for the applicable districts.

§ 130-26. Varied Dimensional Requirements.

Dimensional requirements are set forth in the Density Control Bulk Schedule and may be varied by the Planning Board based on set conditions and the merits of the specific proposal in meeting the objectives of this Article.

§ 130-27. Authorization to Grant or Deny Residential Cluster Development.

Section 278 of the Town Law empowers the Planning Board to grant or deny variations simultaneously with the approval of a plat or plats, to modify the applicable bulk and density provisions of the zoning ordinance, subject to the conditions hereinafter set forth, where such modification would benefit the Town by providing an alternative permitted method of development of the plat or plats. In no instance shall the number of dwelling units or principal uses exceed the number which would be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming with the minimum lot size and density
requirements of the applicable zoning districts. The Town Board, pursuant to § 278 of the Town Law, authorizes the Planning Board to require that the owner submit an application which reflects and incorporates such modifications where the objectives stated herein and/or in Article I are met to a greater degree than if the development were permitted to occur in a conventional manner. The Planning Board shall comply with all procedures and standards set forth in this Article when implementing such power.


Any cluster development considered shall conform to the following standards, which are regarded as minimum requirements:

A. This procedure shall apply only to a contiguous parcel a minimum of ten (10) acres in size except as follows: Where the applicant can demonstrate that the characteristics of his holdings meet the objectives of this Article, the Planning Board may consider parcels of lesser acreage.

B. Applicants are encouraged to propose cluster development in order to create an environment that is in conformity with the objectives of this Article and the “Comprehensive Master Plan 2010”—that is, developed in accordance with the existing zoning requirements—and that will guarantee permanent retention of open space areas and ensure the care and maintenance of the same.

C. When such developments are proposed adjacent to any existing residence or residential area, an appropriate buffer/barrier as defined in Article X shall be installed along the parcel’s perimeter.

D. All cluster development plans shall be prepared with competent professional assistance of a properly licensed official, and shall be consistent with the spirit and intent of the Zoning Law.

E. In areas without public water and sewer, any reduction in lot size allowed under this Article shall be dependent on approval of the on-lot water and sewer system by the Town of Erwin, N.Y.S. Department of Health, and/or the N.Y.S. Department of Environmental Conservation, whichever applies.
F. The size of lots in a cluster development may vary from the normal requirements of the district as follows:

1. One-unit detached houses, single non-residential principal use, one-unit attached dwellings, or two-unit dwellings.

   a) These dwellings may be grouped in clusters with lot sizes reduced for each residence no smaller than as follows:

<table>
<thead>
<tr>
<th>District</th>
<th>Maximum Lot Size Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>RD</td>
<td>Depends on onsite sewage disposal and water.</td>
</tr>
<tr>
<td>R-12.5</td>
<td>10,000 sf</td>
</tr>
<tr>
<td>R-10</td>
<td>7,200 sf</td>
</tr>
</tbody>
</table>

   b) They shall be subject to the following minimum yard requirements:

<table>
<thead>
<tr>
<th>Yard</th>
<th>Minimum Required Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>30</td>
</tr>
<tr>
<td>Rear</td>
<td>25</td>
</tr>
<tr>
<td>Side</td>
<td>10</td>
</tr>
</tbody>
</table>

2. Townhouse and multi-unit developments shall comply with standards set forth in § 130-89 68.

G. Land designated as open space.

1. All such land shall be contiguous and of such size and shape as to be usable for recreation, agriculture, or natural buffer areas.

2. Such land shall either be assigned to the adjoining lot with a permanent deed restriction as defined by the Planning Board, be deeded to the town, have conservation easements given to or acquired by the Town or appropriate land trust, or be held in corporate ownership by the owners of lots within the development. If held in corporate ownership, the developer shall incorporate into
the deeds of all property within the development, if appropriate, a clause giving to the owners an interest in such open land, which shall be used for recreational, cultural, or agricultural uses.

3. The open space lands shall be subject to taxation, unless deeded to the town. In the case of such tracts of five (5) or more acres, the developer may petition to the town to take over the land to be used in perpetuity as open space.

H. Construction must start within one (1) year of the date of approval and be completed within five (5) years or within a time frame agreed upon by the Planning Board and the developer. If such time frame is not met by the developer, the cluster development approval shall expire.

I. Further subdivision of land designated as open space, or its use for other than non-commercial recreation, conservation, or agriculture (except for easements for underground utilities), shall be prohibited. Structures and buildings accessory to non-commercial recreation, conservation, or agriculture may be erected on land designated as open space, subject to the Town of Erwin Site Plan Review.

J. Failure to maintain common property.

1. In the event that the Code Enforcement Officer serves notice to the organization established to own and maintain common property, or any successor organization, that they have failed to maintain the common property in reasonable order and condition in accordance with the plan, said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof. If the deficiencies are not cured within this time, the Town of Erwin Town Board may serve written notice upon such organization or upon the residents and owners of the development setting forth the manner in which the organization has failed to maintain the common property in reasonable condition, and shall state the date and place of a hearing thereon, which shall be held within fourteen (14) days of the notice.
2. At such a hearing, the Town Board may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof shall not be cured within thirty (30) days of any extension thereof, the Town may enter upon said common open space and maintain the same for a period of one (1) year. This action is to preserve the taxable values of the properties within the development and to prevent the common property from becoming a public nuisance. Said entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the residents and owners. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common property, call a public hearing. Notice shall be served to such organization or to the residents and owners of the development at which hearing, to be held by the Town, such organization or the residents and owners of the development shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year.

3. If the Town Board shall determine that such organization is ready and able to maintain said common property in reasonable condition, it shall cease to maintain said common property at the end of said year. If the Town shall determine that such organization is not ready and able to maintain said common property in a reasonable condition, the Town may, at its discretion, continue to maintain said common property during the next succeeding year, subject to a similar hearing and determination in each year thereafter.

4. The cost of such maintenance by the Town shall be assessed at the same proportion as each unit’s assessed value bears to the total assessment of the development.

§ 130-29. Review of Plans.

The approval procedure shall be generally the same as that specified in Chapter 112, Subdivision of Land, for the review and approval of a proposed subdivision of land. The applicant shall submit at successive stages a sketch plan, preliminary
layout, and subdivision plat in accordance with the requirements of Chapter 112, Subdivision of Land, and in accordance with the four step “conservation subdivision” design approach as outlined in the “Growing Greener Workbook” written for the Pennsylvania Department of Conservation and Natural Resources by the Natural Lands Trust, January 1999 as amended. In addition, the applicant, at each stage, shall provide the following information:

A. The proposed number of dwelling units and a computation of the maximum density as defined in this Article.

B. A tabulation of the total number of acres in the proposed project and the percentage designated for each use area.

C. The proposed location and acreage for parks, playgrounds, natural watercourses, and other open spaces.

§ 130-30. **Public Hearing Required.**

A Cluster Development shall not be approved as a subdivision plat by the Planning Board until a public hearing has been held on the proposal in a manner specified in Chapter 112, Subdivision of Land, and by § 278 of the Town Law.
ARTICLE VII
Planned Residential District.

§ 130-31. Intent.

It is the intent of this Article to provide flexible land use and design regulations through the use of performance criteria so that small to large neighborhoods, or portions thereof, that incorporate a variety of residential densities, and building types, and related community or business services for use by residents in the District may be developed. This District may contain both individual building sites and common property, which is planned and developed as a unit. The Planned Residential District designation is a zoning amendment that shall be subject to site plan review and approval in accordance with Article IX.

In order to carry out the purpose of this district, a development shall achieve the following objectives:

A. A maximum choice in the types of environment, occupancy, tenure, types of housing, lot sizes, and community facilities available to existing and potential Town residents at all economic levels.

B. More usable open space and recreation areas.

C. The preservation of trees and outstanding natural features.

D. Creative uses of land and related physical development.

E. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower costs.

F. A development pattern in harmony with the objectives of the “Comprehensive Master Plan 2010.”

G. Compatibility with all applicable guidelines and standards set forth in Article X.

H. Maintenance or creation of acceptable traffic patterns and levels on the existing road network, especially in established residential areas.
I. Related community or business services for the convenience of the District’s residents, if appropriate.

§ 130-32. Applicable Zoning Districts.

The Planned Residential District shall be applicable only in residentially zoned districts of the Town and by Special Use Permit in a Rural District as specified in the Use Regulation Table, where the applicant can demonstrate that the characteristics of his holdings meet the objectives of this Article.

§ 130-33. Permitted Uses.

All non-transient residential uses, and nursing homes or convalescent homes and their accessory uses or other essential facilities or services shall be permitted subject to site plan review and approval.

§ 130-34. Standards Governing the PRD.

Any development proposal to be considered as a Planned Residential District allowing density area increases shall conform to the following standards, which are regarded as minimum requirements, in addition to applicable standards in other sections of this chapter:

A. Lot area. The minimum area required for a PRD designation shall be a contiguous parcel of ten (10) acres in size. Where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this Article, the Planning Board may consider projects with less acreage.

B. Water and Sewer Service. All parcels shall be serviced by community water and sanitary sewer systems.

C. Density. The Planning Board shall determine in each case the appropriate dwelling unit density and placement of such units on the parcel. The gross density shall in no instance exceed twelve (12) dwelling units per acre. Such density shall be calculated using the total parcel acreage.

D. Recreation Requirements. All development proposals shall meet the requirements of § 130-71 Open Space, Parks, and Playgrounds.
E. Open Space. The development shall have dedicated for open space purposes all undeveloped lands that are not included in any required yard areas.

F. Buffer Yard Requirements. All PRD developments shall meet the requirements of § 130-58 Buffers, Landscaping, and Barriers.

G. Access. A minimum of two (2) vehicular access points is preferred. Such access shall be provided from a road with a minimum classification as a collector road. Single access points shall be justified in terms of safety concerns.

H. One-Unit Dwellings. One-unit detached and attached housing developments shall meet the following standards:

1. Yard requirements.

<table>
<thead>
<tr>
<th>Yard</th>
<th>Minimum Required Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>30</td>
</tr>
<tr>
<td>Rear</td>
<td>25</td>
</tr>
<tr>
<td>Side</td>
<td>10</td>
</tr>
</tbody>
</table>

2. Minimum Habitable Space: 900 square feet

3. Maximum Lot Coverage: 20%

I. Townhouse and multi-unit dwelling developments shall comply with standards set forth in § 130-89.

§ 130-35. Ownership of Common Property; Maintenance.

A. The tract of land proposed for a PRD may be owned, leased, or controlled at the time of approval either by a single person or corporation, or a group of individuals or corporations. An application shall be filed by the owner or jointly by the owners and any other such controlling interest of all
property included in a project. In the case of multiple ownership, the approved plan shall be binding on all parties.

B. When common property exists, the ownership of such common property may be either public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvements, operation, and maintenance of common property and facilities, including private streets, utilities, drives, service and parking areas, and recreational and open space areas.

C. In the event that the organization established to own and maintain common property, or any successor organization, fails to maintain such property in reasonable order, the Town Board may cause such property to be maintained in accordance with the procedure set forth in § 130-28.

D. For the purposes of regulating the development and use of property after initial construction and occupancy, any changes shall be subject to a site plan approval by the Planning Board. Properties lying in the PRD are unique and shall be so considered by the Planning Board when evaluating these requests, and maintenance of the intent and function of the planned unit shall be of primary importance.


A. Any applicant seeking approval for a Planned Residential District shall submit his request for an amendment to the zoning law to the Town Board and the Planning Board filed on appropriate forms accompanied by a concept site plan as defined in § 130-46, a filing fee, and a request to develop the PRD in phases with a schedule for that development, if applicable.

B. The Planning Board shall make its recommendation in accordance with § 130-103.

C. The Town Board shall hold a hearing, undertake environmental review in accordance with SEQR, consider protests, and make a decision on the rezoning request in accordance with Article XIII Amendments. The decision shall include a schedule for phased development, if appropriate, and shall be conditioned upon Site Plan review and approval by the
Planning Board of the entire PRD or of the first section if the PRD is a phased development.

D. If the Planned Residential District proposal involves the subdivision of land into parcels for sale to individual owners, the site plan review required for the PRD shall suffice for Planning Board review under Chapter 112, Subdivision of Land. In such cases, the developer shall prepare a subdivision plat suitable for filing with the Steuben County Clerk in addition to the required site plan drawings. Site plan approval shall constitute final plat approval under the Town Subdivision Regulations; the plat shall be signed by the Planning Board Chairman, or his designate, and filed with the County Clerk in the manner prescribed by said regulations.

E. Upon the expiration of the schedule for submitting site plans for phased development as approved as part of the PRD zoning amendment, the PRD zoning designation shall be removed from the remaining sections and the property shall return to the zoning designations at the time of PRD approval.
ARTICLE VIII
Overlay Districts

§ 130-37 Aquifer Protection Overlay Districts.

A. Statement of Purpose.

The majority of Town of Erwin residents depends on public wells, which draw water from the unconsolidated sand and gravel aquifer underlying the Canisteo, Cohocton, and Tioga River valleys. This aquifer is replenished in part by rainfall within the watershed and in part by the rivers. The Town of Erwin, with its residential, commercial, industrial, and other uses, overlies the recharge area for its public water supply. Contamination can be contributed to the groundwater by improper handling and disposal of hazardous substances, petroleum products, and other sources and by accidental spills along the nearby roads and railroads, which can lead to public and private losses and costs, business interruptions, and damage to facilities and utilities.

The purpose of this law is to protect the public health, safety, and welfare of the people of the Town of Erwin by minimizing continued and future water supply contamination without applying burdensome regulations on land use. This purpose will be accomplished by regulating certain uses that have been determined to be potentially damaging to groundwater quality, and by establishing minimum documentation and submittal requirements to ensure that other uses will not adversely affect the groundwater and quantity.

B. Regulations Applicable in all APODs.

1. Permitted Uses. Any use permitted in the portions of the APODs so overlaid shall be permitted subject to all the provisions of this Section. In any cases where conflicts arise between these supplemental requirements and any other existing requirement, the more restrictive shall apply.

2. Discharge of hazardous substances. The discharge or disposal of any hazardous substance, petroleum, or radioactive material is prohibited, except as allowed by a valid permit per regulations.
promulgated under the NYS Environmental conservation Law Articles 1, 3, 8, 15, 17, 19, 23, 27, 52, and 70 and the NYS Public Health Law Section 225 and amendments thereto.

This includes:

a) The use of septic system cleaners which contain toxic substances or hazardous materials.

b) The disposal of toxic substances or hazardous materials by means of discharge to a septic system.

c) Land spreading of septic waste without a valid permit from NYSDEC.

3. Leaks or spills. Any spill, leak, or discharge or other release to the environment, actual or suspected, must be reported to the New York State Department of Environmental Conservation Spill Hotline (800-457-7362) pursuant to New York State Chemical Bulk Storage Regulations (6NYCRR Part 595) and Petroleum Bulk Storage Regulations (6NYCRR 611-614), within two hours of the release.

a) Spill Response. Should a spill occur, the owner and/or operator must take immediate action to stop the spill and restore the environment in accordance with the Town of Erwin Emergency Spill Response Plan.

b) Production of Hazardous Materials. Any principal use that is the production or processing of any hazardous material or toxic substance shall be prohibited.

c) Snow Disposal. The dumping or disposal of snow or ice collected off-site from roadways or parking areas into any watercourse shall be prohibited.

d) New APODS. Upon delineation, any new or revised Aquifer Protection Overlay District boundaries within the
Town of Erwin shall be subject to all applicable rules and requirements established herein.

C. Regulations Applicable in APOD #1.

1. Prohibitions:

   a) The open storage of pesticides, herbicides, or fungicides. All other storage of such material is also prohibited unless authorization has been obtained from the New York State Department of Environmental Conservation as provided in the New York Environmental Conservation Law.

   b) Solid waste disposal facility.

   c) The bulk storage of coal or salt, except in a watertight structure constructed on an impervious material.

   d) The dumping or disposal of snow or ice collected off-site from roadways or parking areas.

   e) All mining unless permitted by New York State Department of Environmental Conservation.

1. Other Regulations:

   a) All new development shall be served by sewer and water.

   b) For any new development proposing stormwater management systems, such systems shall be designed to filter and remove contaminants from the collected runoff in accordance with NYSDEC and Town stormwater management guidelines.
D. Regulations in APODs #2 and #3:

1. Prohibitions:

   The open storage of pesticides, herbicides, fungicides, and fertilizers within one hundred (100) feet linear distance of any watercourse.

   The open storage of salt within one hundred (100) feet linear distance of any watercourse.

2. Other Regulations:

   a) Hazardous Materials Storage Compliance. All commercial and industrial uses and home occupations shall comply with all local, state, and federal requirement concerning storage, use, and disposal of toxic substances, hazardous materials, and hazardous wastes.

      i. All commercial and industrial uses and home occupations shall provide to the Town Code Enforcement Officer lists of all toxic substances, hazardous materials, or hazardous wastes known to be used or stored on a lot together with sufficient detail to apprise the Town of the method of storage and the amount of toxic substances, hazardous materials, or hazardous wastes on the lots.

      ii. In the case of existing uses, this information shall be supplied within six (6) months of enactment of this law. In the case of proposed use, this information will be supplied as part of the plans prepared for site plan approval.

   b) Petroleum Bulk Storage Registration. Petroleum bulk storage facilities installed above or below ground shall comply with New York State
Department of Environmental Conservation requirements.

c) Abandoned Wells. All abandoned wells shall be properly closed to prevent groundwater contamination.

d) Application of pesticides, herbicides, fungicides, or chemical fertilizers. Application of pesticides, herbicides, fungicides, or chemical fertilizers shall be performed in accordance with the recommendations and label of the manufacturer.

e) Establishment or protection of buffers/wetlands along waterways. All landowners are encouraged to establish or maintain permanent vegetated buffers and/or wetlands along waterways to filter water from croplands before entering the stream. Recommended buffer width shall be one hundred (100) feet, depending on nature of the streambank and adjacent land use.

f) Outside Storage. Any outside storage area shall be designed so as to prevent seepage and runoff from entering the ground water or any watercourse.

§ 130-38 Stream Corridor Overlay District.
(Added 12-16-03)

A. Statement of Purpose.

The Town of Erwin finds that special protection of the shorelines of its rivers, streams, wetlands, ponds, and other open waterbodies is necessary to preserve their scenic character and water quality, as well as to reduce the risk of damage from flooding. Within the Stream Corridor Overlay (SC-O) District, as defined below, and shown on the Town of Erwin Environmental Resources Overlay Map (located at the end of this Section), the underlying land use district rules shall remain in effect, except as modified below in this section.
B. Boundaries of the SC-O District.

All areas within one hundred (100) feet of the Mean High Water Mark (MHWM) of all ponds, and Department of Environmental Conservation (DEC) classified streams, and all areas within one hundred (100) feet of the edge of all federal or state classified wetlands.

The Erwin Town Board reserves the right to designate non-classified streams (permanent or intermittent), drainageways, or other waterbodies as Protected Waterbodies that are deserving of the full protection provided under the SC-O District Regulations.

Note: For the purposes of this Law, all ponds and Department of Environmental Conservation (DEC) classified streams, and all additional non-classified streams (permanent or intermittent), drainageways, or other waterbodies so designated by the Erwin Town Board shall hereinafter be referred to as the “Protected Waterbodies.” All federal and state protected wetlands shall be referred to as Protected Wetlands.

C. Regulations Applicable to the Stream Corridor Overlay District.

1. In addition to the requirements of this local law, applicants shall comply with all requirements of the DEC and the U.S. Army Corps of Engineers.

2. Within the SC-O District, all development in excess of two hundred (200) square feet, clear-cutting of more than five thousand (5,000) square feet of vegetation over a five (5) year period, or grading or other alteration of more than five thousand (5,000) square feet of the natural landscape within any one-year period shall require a Special Use Permit as provided in existing local law. This requirement shall not apply to agricultural uses or to the repair and maintenance of existing structures existing at the time of adoption of this local law.

3. In addition to the criteria set forth in Articles IX and X (if applicable), and § 130-39 “Viewshed Protection Overlay District” of this Article (if applicable), the Planning Board may grant
approval of a proposal within the SC-O District only if it finds that the proposed activity:

a) Will not result in any adverse impacts on Aesthetic Resources of Local and/or Statewide Significance, and if potential impacts are anticipated, said impacts are mitigated to the maximum extent practicable in accordance with § 130-90 “Town of Erwin Visual Impact Mitigation Strategy Regulations” (if applicable) as such may be amended from time to time; and any adverse impacts on the rural character of the Town are also mitigated to the maximum extent practicable using the universal list of mitigation measures as set forth in § 130-90 of this Chapter as such may be amended from time to time,

b) Will not result in erosion or pollution that affects a Protected Waterbody or Protected Wetland, from surface or subsurface runoff. In making such a determination, the Planning Board shall consider slopes, drainage patterns, water entry points, soil erosivity, depth to bedrock and high water table, and other relevant factors.

c) Will employ the Best Management Practices (BMP) available.

4. Shoreline Structures and Setbacks:

a) No structure or improvement other than a stationary dock shall be built or expanded within one hundred (100) feet of the delineated edge of any Protected Wetland and/or within one hundred (100) feet of the MHWM of any navigable Protected Waterbody. No structure or improvement other than a stationary dock shall be built or expanded within fifty (50) feet of a non-navigable Protected Waterbody. Refer to Figure 1 on the following page for reference.

b) No expansion of existing structures located within one hundred (100) feet of the MHWM of a navigable Protected Waterbody shall be permitted.
c) All stationary docks shall be constructed with a minimum side setback of twenty (20) feet from the adjacent property line.

d) Stationary docks shall be constructed to withstand the forces of flowing water, waves, and ice.

e) No stationary dock shall be constructed or placed in a manner that will interfere with normal navigation of access to adjacent land or docks.

f) No change of grade shall be permitted within one hundred (100) feet of the delineated edge of a Protected Wetland or within one hundred (100) feet of the MHWM of any Protected Waterbody without Site Plan approval which shall include a stabilization and planting plan.

g) All public utilities and facilities shall be located and constructed to minimize or eliminate potential flood damage.

h) No storage of materials or equipment that are buoyant, flammable, explosive, or could otherwise be injurious to human, animal, or plant life shall be permitted.

i) Wetlands. No development shall take place within 100 feet of the delineated edge of a Protected Wetland.

5. Removal of Vegetation. The removal of vegetation, including trees, shall be permitted only if the following standards are met:

a) No vegetation shall be removed from within one hundred (100) feet of the delineated edge of a Protected Wetland.

b) Within one hundred (100) feet of the MHWM of any Protected Waterbody, not more than thirty (30) percent of the trees in excess of six (6) inches diameter at breast
height (DBH) existing at any time may be cut over any ten-year period.

c) Within ten (10) feet of the MHWM of any Protected Waterbody, no more than twenty (20) percent of the shorefront may be cleared of vegetation on any individual lot. Refer to Figure 1 below for reference.

d) The above cutting standards shall not prevent the removal of diseased vegetation or of rotten or damaged trees or of other vegetation that presents safety or health hazards.

**Figure 1 Shoreline Setback and Cutting Diagram**

6 Plans shall be submitted showing such information as may be necessary to determine the suitability of the particular site for the proposed development or use, which information shall include but
not be limited to the following in addition to the requirements of Articles IX and X (as applicable) of this Chapter:

a) The location of the lot or construction site in relation to affected watercourses or other bodies of water, boundaries of the Stream Corridor Overlay District, topography of the site with elevations in relation to mean sea level, existing and proposed buildings and other structures, fill, drainage facilities, and the location and description of any materials proposed to be stored within the SC-O District on either a permanent or temporary basis incidental with the proposed project.

b) Elevation in relation to mean sea level of the lowest floor, including basement, of all existing and proposed structures.

c) A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

d) All applications for the construction of waterfront structures shall be accompanied by a certificate acceptable to the reviewing board or official that all materials to be used in such construction are free of leachable toxic substances. Pressure treated lumber not containing chromated copper arsenate (CCA) shall be deemed to be free of leachable toxic substances.

§ 130-39 Viewshed Protection Overlay (VP-O) District.
(Added 12-16-03)

A. Statement of Purpose.

It is the purpose of this overlay district to protect the aesthetic, scenic, and ecological character and nature of the higher elevation areas of the Town of Erwin. Ridgelines and hilltops are exceptional aesthetic and ecological resources, and ensuring that tree lines are uninterrupted and ridgetops are free (to the maximum extent practicable) from manmade structures will prevent the degradation of the rural character and scenic beauty of the
Town. The Viewshed Protection Overlay (VP-O) District provides standards for regulating the numbers, height, design, placement, and impacts of any structure proposed to be located from an elevation of 1,000 feet above mean sea level to the delineated ridgelines and hilltops, and down 200 ft in elevation on the other side of the ridgelines and hill tops, as depicted on the Town of Erwin Environmental Resources Overlay Map, that have the potential of being visible from an Aesthetic Resource of Local and/or Statewide Significance, as defined and listed in § 130-90 of this Chapter, in order to minimize structural intrusions upon the visual landscape, to preserve ecological integrity, and maintain the rural and scenic character of the Town.

B. Boundaries of the Viewshed Protection Overlay District.

The VP-O District shall include all areas from an elevation of 1,000 feet above mean sea level to the delineated ridgelines and hilltops, as depicted on the Town of Erwin Environmental Resources Overlay Map located at the end of this Section.

C. Exemptions.

1. Any proposed development within the VP-O District which will not be visible from any designated Aesthetic Resource of Local and/or Statewide Significance due to intervening topography or landforms, except vegetation, as demonstrated by the Applicant through a line of sight profile or computer-simulated visual impact analysis, the results of which to be approved by the Planning Board, shall be exempt from the specific requirements of the VP-O District.

D. General Provisions.

1. Any proposed new construction, development, or improvements within the VP-O District shall require a Special Use Permit pursuant to the requirements of Article IX, and if applicable, Article X and § 130-89 of this Chapter. In addition to those requirements, the following standards and procedures set forth in this section shall also apply.
2. Should an applicant request a variance from the regulations in this Section, the proposed action will be considered a Type I Action.

E. Standards

In preparing its decision concerning any application for development subject to the jurisdiction of this Section, the Planning Board shall consider the requirements detailed in Article IX, and if applicable, Article X and § 130-89 of this Chapter and other applicable requirements of this Chapter, as well as the following Standards:

1. Clearing for Preliminary Site Planning and Surveying. Vegetation removal and thinning to facilitate preliminary site planning and surveying needs shall be kept to a minimum, and shall be restricted to: one unimproved access path no wider than eight (8) feet per lot; parcel boundaries for surveying needs; and selective patches for soil testing or other ground investigations. Said selective patches shall have a minimum separation distance of ten (10) feet. At no time shall any vegetation four (4) or more inches DBH and/or any vegetation four (4) or more feet in height be removed from the site prior to approval by the Planning Board. All clearing undertaken prior to application submission shall be depicted on the required Special Use Permit application materials.


   a) Clearing of any form of vegetation for the construction of the proposed principal building as defined by this Chapter shall be limited to a distance of forty (40) feet beyond the proposed foundation/footprint.

   b) Twenty (20) feet of clearing beyond the foundation/footprint shall be allowed for the construction of any detached accessory building.

   c) Five (5) feet of clearing beyond the foundation/footprint for all structures having one hundred (100) square feet in floor area or less shall be permitted.
d) All vegetation beyond the allowed clearing area shall be protected from encroachment by tree fences.

e) When a NYS Licensed Engineer determines that the above vegetative clearing allowances are insufficient to allow for safe construction of a proposed structure, limited additional clearing may be allowed providing that any additional clearing is in compliance with the four requirements set forth below under “Additional Clearing.”

3. Additional Clearing.

a) When construction is completed and additional clearing of vegetation is desired, or if additional clearing is necessary to allow for safe construction as demonstrated by a NYS Licensed Engineer, a tree-by-tree inventory shall be prepared by a NYS Licensed Forester or NYS Licensed Landscape Architect showing the location, type, and DBH of every tree four (4) or more inches DBH lying outside the permitted building envelope described above, and within the boundary in which clearing or trimming is proposed. Said inventory should be made a part of any submission for final project approval. Such a plan shall also assure that:

i. A moderate forest density remain in place sufficient enough to screen the proposed structure from any designated Aesthetic Resource of Local and/or Statewide Significance.

ii. No tree root areas are filled above the natural grade.

iii. Trimming is conducted in a manner (a) sufficient only to allow a filtered view from the property towards a public vantage point, (b) that will not result in the visibility of any proposed structure on the lot from any designated Aesthetic Resource of Local and/or Statewide Significance, and (c) that assures continued health of each tree left standing.
iv. Clearing shall, in no case, render any ground area on the lot ¼ of an acre or greater visible from any designated Aesthetic Resource of Local and/or Statewide Significance.

b) When additional clearing of vegetation is desired, or if additional clearing is necessary to allow for safe construction as demonstrated by a NYS Licensed Engineer, the result of which will be the visibility of the proposed structure(s) from any designated Aesthetic Resource of Local and/or Statewide Significance, the Applicant shall be required to utilize any combination of the mitigation measures outlined in § 130-90 “Town of Erwin Visual Impact Mitigation Strategies” as deemed necessary by the Planning Board to mitigate the adverse visual impact(s) to the maximum extent practicable.

Note: The above cutting restrictions shall not prohibit the removal of diseased vegetation or of rotten or damage trees or of other vegetation that presents safety or health hazards.

4. Lot Siting. All structures, access roads, buffers, setbacks, fences, and all other facility appurtenances shall be located on one lot and shall not straddle a boundary line.

5. Setbacks. The proposed yard setbacks from the property line must be no less than 1.5 times the height of the proposed structure or the setback requirements of this Chapter, whichever are greater.

6. Signage. No signage is permitted which will be visible above the existing tree canopy. In addition, the following signs are prohibited: signs which are visible from more than two hundred (200) feet off-site, larger than nine (9) square feet, or more than twelve (12) feet off the ground. Refer to § 130-81 Signs for additional sign regulations.
7. **Height.**

   a) If the lot *does not* contain a sufficient number of trees greater than four (4) inches DBH within fifty (50) feet of the proposed building and any accessory building or element, *that are not* capable of completely screening the proposed building(s) from any designated Aesthetic Resource of Local and/or Statewide Significance after clearing the maximum vegetation allowed during construction as outlined above, the height of the proposed structure and any accessory element shall not extend more than twenty-five (25) feet above ground level.

   b) If the property *does* contain a sufficient number of trees greater than four (4) inches DBH within fifty (50) feet of the proposed building and any accessory building or element *which is* capable of completely screening the proposed building(s) from any designated Aesthetic Resource of Local and/or Statewide Significance after clearing the maximum vegetation allowed during construction as outlined above, the height of the proposed building(s) and any accessory element shall not exceed five (5) feet above the existing tree canopy’s average height, and at no time shall the height exceed thirty (30) feet above ground level, whichever is more restrictive.

   c) At no time shall any proposed structure or any appurtenances affixed thereto exceed the ridgeline, and as a result have no vegetation as a backdrop as seen from any designated Aesthetic Resource of Local and/or Statewide Significance.

**Note:** The height of any structure or accessory elements attached thereto shall be measured from the lowest natural or manmade grade (whichever is lowest) to the top of the structure or the top of the uppermost fixture or appurtenance affixed thereto, whichever is highest.
8. Rooflines. Rooflines and roof surfaces shall be specified in the building design and shall, insofar as possible, reflect the natural slope of the terrain.


a) No reflective finishes shall be used on exterior surfaces including, but without limitation, the exterior surfaces of roofs, all projections above roofs, retaining walls, doors, trim fences, pipes, or equipment (see below with respect to windows).

b) Siding shall be of the following: painted or stained wood, timbers, logs, natural stone masonry, synthetic stucco, or non-reflective vinyl (unpainted).

c) Colors shall be muted and “earth tone,” representative of those found in the surrounding environment. White or other light colors are prohibited.

d) The following colors shall also be prohibited: fluorescent colors of any kind, orange, teal, yellow, blue, purple, pink, and any other color or combination thereof not normally found on a year-round basis in the surrounding natural environment.

e) Exterior colors, textures, and materials, including roofing materials, must be described in the plans and specifications, including their location on the completed structure.

f) Large unbroken expanses of similar-colored or similar-textured walls or foundations shall be avoided. The use of natural materials and plantings to shield foundations is strongly recommended.
10. Windows.
   
a) It is recommended that large, uninterrupted expanses of glass and repetitive bands of windows be avoided in favor of combinations of smaller windows.

b) Windows must be of high performance, tinted, non-mirrored, low-reflectivity glass.

c) Metal window panels shall be painted to decrease the potential for reflection.

11. Lighting (Primarily for Residential Uses).
   
a) All exterior lighting must subtly illuminate functional areas only.

b) The maximum allowed total exterior lumens will be 80,000 for any lot.

c) Attached and unattached lighting fixtures must be hooded and angled at 45 degrees towards the ground. No light may escape from above the horizontal plane, and at no time shall the light source be visible.

d) Floodlights shall be hooded, have motion detectors, and illuminate functional areas only, such as garage doors, storage areas, walks, and drives.

e) Fixtures on buildings shall not be located above the eave line or above the top of the parapet wall, nor in any case 21 feet above the lowest grade elevation (natural or manmade).

f) It is recommended that bulbs rated 75 watts or less, preferably warm colored, be used for continuously lit areas.

g) No landscaping lighting, continuously illuminated floodlights, continuously illuminated light bulbs over 75 watts, or exposed bulbs shall be used.
F. Mitigation Techniques and Procedures.

1. Mitigation when the existing vegetation does not allow the screening of the proposed structures from any designated Aesthetic Resource of Local and/or Statewide Significance: A mix of vegetation matching both in species and density, indigenous to the area and within good soil shall be planted such that, within five years, they can reasonably be expected to screen all new proposed buildings from said public vantage point(s). All planted vegetation shall be no smaller that four (4) inches DBH and no less than eight (8) feet in height at the time of planting. All vegetation shall be planted in a manner representative of natural conditions and shall not have the appearance of a suburban style hedgerow.

2. Mitigation when the proposed structure cannot be fully screened from any designated Aesthetic Resource of Local and/or Statewide Significance by the planting of additional vegetation: When the use of additional vegetation will not fully screen proposed structures, the mitigation strategies and procedures outlined in § 130-92 “Town of Erwin Visual Impact Mitigation Strategies” shall be utilized. These mitigation strategies include: design and siting, screening, relocation, camouflage, low profile, downsizing, alternate technologies, non-specular materials, lighting, maintenance/decommissioning, and offsets.

3. The use of earth berms not in character with the immediate natural surroundings to screen a structure shall be prohibited.

G. Application Procedures for Viewshed Protection Overlay District Special Use Permits.

When applying for a Special Use Permit for development within the VP-O District, the Applicant shall follow all procedures and shall submit all forms, plans, documentation, and fees required by Article IX, and, if applicable, Article X and other applicable Sections of this Chapter.

1. Submittal Requirements. An application for development within the VP-O District shall be complete and in a form acceptable to the Planning Board and shall contain the following:
2. Alterations. All modifications to a structure shall require that the Applicant submit a new Special Use Permit Application to the Planning Board.

3. Duration of Special Use Permits. If construction of either a residential or non-residential use does not begin within one (1) year of the date of issuance of the Special Use Permit, the permit shall expire.

4. Renewal of Special Use Permits.

   a) Renewal must not be unreasonably withheld if the Applicant is in conformance with the original approval and all conditions are attached thereto.

   b) No fewer than sixty (60) days prior to the expiration of a Special Use Permit, the holder of the Special Use Permit
must submit to the Code Enforcement Officer a Renewal Application for Special Use Permit. If the holder fails to submit the application within the sixty (60) day period, and has not arranged with the Code Enforcement Officer for an extension of the sixty (60) day period, the Special Use Permit will expire. The renewal application shall contain the following:

i. A current, updated build out plan.

ii. A Special Use Permit Renewal Application.

iii. Clear and convincing proof of the continued necessity for the structure.

iv. Other materials or information deemed necessary by the Code Enforcement Officer.

c) Within forty-five (45) days of the submission of a completed application and a determination by the Code Enforcement Officer that the application is technically sufficient, the Code Enforcement Officer shall act to renew or revoke the Special Use Permit. A copy of the Code Enforcement Officer’s decision shall be filed in the office of the Town Clerk, Code Enforcement Officer, and mailed to the Applicant.

5. Structure Removal. If a Special Use Permit has been revoked per Article IX of this Chapter or has expired, all non-residential structures and improvements shall be removed.

6. Copies of all Permits issued for proposed projects subject to the requirements of this Section and all approved Site Plan maps and Subdivision Plats (if applicable) shall have the following language:

“This Permit is binding on the (Applicant and Owners), and all present and future owners or lessees of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and the site plan map/subdivision plats referred to
herein shall be furnished by both applicants to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows ‘The lands conveyed are subject to Town of Erwin Special Use Permit (………..) issued (………..), the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees.’”
§ 130-40. Reserved.
§ 130-41. Intent, Objective, and Applicability.

A. Intent. Pursuant to the Comprehensive Plan of the Town of Erwin, it is the policy of the Town of Erwin to balance the allowance and encouragement of a variety of uses of land and to foster economic opportunities within the municipal boundaries of the Town, provided that such uses do not unreasonably and adversely affect neighboring properties, the natural environment, the unique rural character, and aesthetic and scenic qualities of the Town or the long-term development of the Town. In this regard, the Town utilizes two complementary zoning methods and processes: special use permits and site plan review. Many uses are, therefore, permitted only upon issuance of a special use permit by the Planning Board, including any use that requires a Use Variance in order to ensure that these uses are appropriate on a case-by-case basis as to their proposed location in the Town in relation to their specific surroundings. Such uses must thereby satisfy performance criteria before a determination is made on their aprovability in the proposed location. All uses that require a special use permit will also require site plan review and approval once a special use permit is issued. There are also certain uses that only require site plan review and approval. This Article addresses the applicability and the procedural requirements for both special use permits and site plan approvals.

B. Objective.

1. Special Uses. Those uses, which by their nature, intensity, size, and/or type of operation are inherently problematic, will need mitigation measures, and, depending on their specific location and surroundings, require a special use permit from the Planning Board in order to allow the proposed use in its proposed location. The function and
The objective of the special use permit process is to ensure that the proposed use is compatible with surrounding areas and properties. Thus, the proposed use is deemed not to be allowed until the special use permit is issued by the Planning Board.

2. Site Plan Uses. Those uses which have been found to be generally acceptable in a particular area but may have certain issues of concern with respect to the construction and layout of the proposed structure and uses, or operation of the use on the proposed site requires a site plan to be approved by the Planning Board in order to minimize any impacts on nearby areas and properties. Thus, the function and objective of the site plan review process is to evaluate such land uses and the development of particular sites in relation to the conditions of the site and the site’s relation with the natural conditions and uses in the nearby area so as to minimize any adverse effects from the proposed development or use of the site that concern the health, safety, and overall welfare of the residents and property owners of the community.

3. Combination of procedures. All uses requiring special use permits also require site plan review and approval because the special use permit process determines whether the use is allowed in the location proposed, and the site plan review assumes that the use is allowed in that location as long as the proposal is compatible with the site. In certain cases, it may be appropriate to conduct both the special use permit process and the site plan review process concurrently. In such cases, the applicant may request the Planning Board to run both processes concurrently.

C. Applicability. Uses requiring Special Use Permits or Site Plan Approval are listed for each Land Use District in the Use Regulation Table located in Appendix A of this Chapter. Accessory uses or structures used in connection with a Special Use Permit or Site Plan Approval use shall be subject to the same Special Use Permit or Site Plan approval requirements as the
principal structure or use. Any change in use, expansion of the use, or change in the intensity of the use shall require a new Special Use Permit or Site Plan approval or both, whichever may be applicable depending on the requirements of the Use Regulation Table or the existing permit or approval.

§ 130-42 Power and Authority of Planning Board.

A. Special Use Permits. The power and authority to issue, with or without conditions, or deny the issuance of special use permits as required by this chapter is vested in the Planning Board pursuant to § 274-b of the Town Law and this Chapter. Prior to issuance of a building permit and/or certificate of occupancy for the construction, operation, expansion, or change of any use specified in § 130-41 (and the Use Regulation Table), an application for a special use permit together with supporting documentation shall be submitted to the Planning Board for its review and approval. The Planning Board, in its review of any such application, shall be guided by the criteria set forth in this Article and in Article X.

B. Site Plan Review. The power to approve, approve with modifications and/or conditions, or deny site plans as required by this Chapter is vested in the Planning Board pursuant to § 274-a of the Town Law and this Chapter. Prior to issuance of a building permit and/or certificate of occupancy for the construction, operation, expansion, or change of any use specified in § 130-41 (and the Use Regulation Table), a site plan, together with supporting documentation, shall be submitted to the Planning Board for its review and approval. The Planning Board, in its review of any site plan, shall be guided by the criteria set forth in this Article and the standards and guidelines set forth in Article X. The Planning Board may require that the site plans be prepared by a licensed architect, landscape architect, or engineer. Such requirement shall depend upon the complexity of the site features and of the proposed structure(s) or land use as related to the same.
§ 130-43.  Application for an Area Variance.

Not withstanding any provision of law to the contrary, where a proposed site plan or an application for a special use permit contains one or more features which do not comply with the minimum area or dimensional requirements set forth in these zoning regulations, the Planning Board shall direct the applicant to the Zoning Board of Appeals for an area variance pursuant to 267-b of the Town Law, without the necessity of a decision or determination of the Code Enforcement Officer.

§ 130-44.  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 use requiring a special use permit and/or to a site plan. Upon the Planning Board’s issuance of a special use permit and/or approval of a site plan, any such conditions must be met in connection with the issuance of permits and certificate of occupancy by the Code Enforcement Officer.

§ 130-45.  Waiver of Requirements.

The Planning Board is authorized to waive any requirements of this Article in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare, impose an undue hardship due to factors such as existing conditions, site topography, or site configurations, or are inappropriate to a particular site plan or proposed land use requiring a special use permit.

§ 130-46.  Concept Plan Submittal and Pre-Application Conference.

Submittal of a concept plan or attendance at a pre-application meeting is optional. However, it is recommended that before filing an application for either a special use permit or site plan approval, the applicant should attend a Pre-Application Conference to discuss the nature of the proposal and to determine the information that will need to be submitted and the issues that may be involved. The purpose of this meeting is to encourage the applicant to consult early and informally with the Planning Board in order to save time and money and to make the most of opportunities for desirable development.
A. Submittal. If prepared, three (3) copies of the concept plan shall be submitted to the Planning Board or other designee as prescribed in the procedures of the Planning Board. Developers of land adjoining state or county highways are advised to consult with the District Engineer of the New York State Department of Transportation or the County Highway Superintendent at the concept stage in order to resolve problems of street openings or storm water drainage at the earliest possible stage in the design process.

B. If the project is located in the Town Center, Business 1, 2, 3, the Multi-Use District, and the Regional Service District, or the Industrial Districts, the applicant shall refer to § 130-89 Design Standards for Selected Districts for compliance prior to submitting the necessary information to the Planning Board.

C. Submittal Requirements. The concept plan shall include one or more of the following as may be applicable:

1. An area map, such as the real property tax parcel map, showing that portion of the applicant’s property under consideration for development and any contiguous parcels owned by the applicant with acreage and dimensions noted.

2. A copy of the Town of Erwin Zoning Map locating the property.

3. A copy of the Town of Erwin Flood Boundary and Floodway Map locating the property, if applicable.

4. A copy of the Town of Erwin Environmental Resources Overlay Map locating the property.

5. A copy of a map of site topography (United States Geological Survey topographic map).

6. A copy of the Steuben County Soils Map locating the property if general grades exceed fifteen (15%) percent or
portions of the site have susceptibility to erosion, flooding, or ponding.

7. A site development map, generally to scale, showing all proposed structures and improvements.

8. Additional Data:

   a) Name/Address of applicant and/or site owner, if different.

   b) Concise description of the nature of the applicant’s business.

D. Action on the Concept Plan. The Planning Board or the appropriate designee shall provide written advisory comments to the applicant on the proposal and concept plan in relation to the applicable requirements of Article X and to existing and/or potential development of the adjacent area, the Comprehensive Plan and the Town of Erwin Corridor Management Plan, June 2000, and other applicable sections of this zoning ordinance. In the course of its review, the Planning Board or the appropriate designee may consult with other appropriate public agencies.

§ 130-47. Application.

Application for a special use permit and/or site plan approval shall be filed with the Code Enforcement Officer in a form prescribed by the procedures of the Planning Board, with no fewer than eleven (11) copies nor fifteen (15) days prior to a scheduled Planning Board meeting. The Code Enforcement Officer shall refer all special use permit and site plan applications to the Planning Board for its review and approval. For the purposes of this Section, the submission date shall be taken as the date of the first regular Planning Board meeting following the submission to the Code Enforcement Officer.


A. Special Use Permit Application Requirements.
Because the impact of Special Use Permit uses varies greatly, the information required to be submitted for a Special Use Permit may vary depending upon the scale, intensity, nature of the proposed use, and its proposed location. An applicant for a Special Use Permit shall submit at least the following together with whatever other information the Planning Board deems appropriate.

1. A Town of Erwin Special Use Permit application form. One original and three copies are required.

2. A plot plan drawn to scale with accurate dimensions. The plan shall, at a minimum, conform to the requirements for a site plan as set forth in § 130-48. The Planning Board may require additional information to be included on the plan if the Board deems such information as necessary in order to make an informed decision. Eleven (11) copies of the plan are required.

3. A narrative describing the proposed use and operation. The operation details shall include the nature of the operation, hours of operation, occupancy levels, emitted noise levels, anticipated pedestrian and vehicular traffic rates, water consumption, sewage usage, and other information necessary to determine if the proposed special use meets the requirements of this Chapter. Eleven (11) copies of the narrative are required.

4. A copy of the deed to the property, and if the applicant is not the owner of the property, a letter of authorization from the owner for the applicant to make application to the Planning Board on his/her behalf.

5. A list of the names and addresses of all property owners abutting the subject property within five hundred (500) feet or as otherwise deemed appropriate by the Planning Board.

6. A SEQRA Environmental Assessment Form (EAF).

7. An agricultural data statement, if applicable.
8. The application fee as established by the Town Board, and an escrow deposit (if required).

9. The need for the structure if located in the Viewshed Protection Overlay District Zone.

B. Site Plan Application Requirements.

1. An area map showing that portion of the applicant’s property under consideration for development, any adjacent parcels owned by the applicant, and all properties, their ownership, uses thereon, subdivisions, streets, zoning districts, including state-designated Agricultural Districts, easements, and adjacent buildings within five hundred (500) feet of the applicant’s property.

2. A site plan shall include the following information as applicable:

   a) Title of the drawing, including the name and address of the applicant.

   b) North point, scale, and date.

   c) Boundaries of the project plotted to a scale of not more than one hundred (100) feet to one (1) inch on a survey map prepared by a New York Licensed Surveyor.

   d) Existing natural features such as watercourses, water bodies, wetlands, 100-year flood hazard areas, wooded areas, individual trees of 8 inches DBH or greater, the aquifer and the watershed tributary area, and all other environmental features on the project site that are depicted on the Town of Erwin Environmental Resources Overlay Map. Features to be retained should be noted.
e) Existing and proposed contours at intervals of not more than five (5) feet of elevation.

f) Location and area (in acres) of proposed land uses.

g) Location, proposed use, and height of all buildings.

h) Location, design, and use of all existing or proposed site improvements, including streets, drains, culverts, retaining walls, fences, and easements, whether public or private.

i) Description of sewage disposal and water systems and the location of such facilities.

j) Location and proposed development of buffer areas and other landscaping.

k) Delineation of the various residential areas, if applicable, indicating for each such area its general extent, description, and composition of dwelling unit type and a calculation of the residential density in dwelling units per square footage for each such area.

l) Location of all parking and truck-loading areas, with access and egress drives thereto.

m) Location, design, and size of all lighting facilities.

n) Location, design, size, and construction material of all outdoor signs.

o) The approximate locations and dimensions of areas proposed for neighborhood parks or playgrounds or other permanent open space.

p) Building orientation and site design for energy efficiency.
q) Location, design, and construction material of all energy distribution facilities, including electrical, gas, and solar energy.

r) Grading and erosion plan, including information specified in the Town of Erwin Drainage Standards for Land Development.

s) Location and design for storm water management facilities as specified in the Town of Erwin Drainage Standards for Land Development.

t) Description of hazardous materials to be used or stored on-site and the location of such storage facilities.

u) Description of methods and locations for disposal of construction demolition debris.

v) Drainage report including supporting design data and copies of computations used as a basis for the design capacities and performance of drainage facilities.

w) The lines, dimensions, and purpose indicated for all public use dedications within and adjoining the property.

x) All proposed property that is to be reserved by deed covenant for the common use of the property owners of the development.

3. The Planning Board may require such additional information that appears necessary for a complete assessment of the project.

C. The Planning Board may, in its review of the Special Use Permit application or Site Plan, confer with appropriate agencies.
D. Pursuant to § 130-45, the Planning Board may waive or add any requirements for an application submission that it deems appropriate in order to accomplish the purposes set forth herein.

§ 130-49. Planning Board Review – Procedures.

A. First Meeting. At the first meeting at which an application is first presented as an agenda item, the Planning Board shall determine whether the application is complete for purposes of commencing the review process. If an application is determined to be incomplete, the Planning Board shall notify the Applicant in writing as to what aspects of the application submittal are lacking or are otherwise insufficient to start the process. The time-frames for Planning Board action during the review process shall not commence until the submission of a fully complete application with supporting documents and materials and the determination by the Planning Board that the application is complete. Pursuant to § 130-43 above, where an application requires an area variance, the application will not be deemed complete until after said variance is obtained unless both the Planning Board and the applicant agree that the variance application and site plan or special use permit application may run concurrently or the variance obtained as a condition of the special use permit and/or site plan approval.

B. SEQRA. Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within thirty (30) days of its acceptance of a completed application, EAF, and other supporting materials. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this local law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.
C. Referral to County Planning Board

1. Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the County Planning Board any application for a Special Use Permit affecting real property within 500 feet of the boundary of the Town of Erwin, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the boundary of any existing or proposed County or State owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, § 239-1, and § 239-m, as amended.

2. No action shall be taken on applications referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the 30-day requirement for the County Planning Board's review.

3. County Disapproval. A majority-plus-one vote of the Planning Board shall be required to grant any Special Permit which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

D. Agricultural Data Statement.

1. Any application for a Special Use Permit or site plan approval that would occur on property within an
agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district, shall include an agricultural data statement as defined in Article 11. The Planning Board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within the agricultural district.

2. If an agricultural data statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Special Use Permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

E. Notice and Hearing.

1. The Planning Board shall hold a public hearing on all complete Special Use Permit and Site Plan applications within 62 days from the determination of the Planning Board that the application is complete. The time in which a public hearing must be held may be lengthened only upon consent of the Applicant and Planning Board.

2. Ten days before said hearing, the Planning Board shall mail notice to the applicant, as well as to the County planning agency, as required by § 239-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision One of §239-m of the general municipal law. The hearing shall be advertised at least five (5) days prior to the scheduled date in a newspaper of general circulation in the Town.

3. A public hearing may be consolidated for both a special use permit and site plan for the same proposal upon request by the applicant to the Planning Board and agreement by the
Planning Board that such consolidated hearing is appropriate under the circumstances.

F. Action.

1. The Planning Board shall grant, deny, or grant subject to conditions the application for a Special Use Permit within 62 days after the date that the hearing is closed. The Planning Board shall approve, approve with modifications and/or conditions, or deny a Site Plan within 62 days after the date that the hearing is closed. Any decision by the Planning Board shall contain written findings explaining the rationale for the decision in light of the standards contained in § 130-50 below.

2. In granting a Special Use Permit or in approving a Site Plan, the Planning Board may impose conditions that it considers necessary to protect the health, safety, and welfare of the Town and to achieve the purposes contained in Article I, § 130-2.1, and § 130-50 of this Article and any specific criteria that applies as set forth in Article X. These conditions may include increasing dimensional or area requirements, specifying location, character, and number of vehicle access points, requiring landscaping, planting, and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities and protect open space, requiring the protection of open space of conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.

3. Design Standards. Specifications for improvements shown on the site plan shall be those set forth in § 130-89 of this Chapter and in other ordinances, rules, and regulations or in construction specifications of the Town of Erwin.
G.Reservation of parkland on site plans containing residential units.

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

2. Land for park, playground, or other recreational purposes may not be required until the Planning 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 Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.

3. In the event the Planning Board makes a finding pursuant to paragraph 2 above 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 Town Board. In making such determination of suitability, the Town 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 authorized 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 Town exclusively for park, playground, or other recreational purposes, including the acquisition of property.
4. Notwithstanding the foregoing provisions of this section, if the land included in a site plan under review is a portion of a subdivision plat which has been properly reviewed and approved, the Town 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.

H. Findings Required.

In granting or denying Special Use Permits, the Planning Board shall take into consideration the type, scale, and intensity of the proposed project, the surrounding area, the possible impact of the proposed project on nearby properties and uses, the requirements and purposes of this law, and the policies and goals of the Town of Erwin Comprehensive Plan and Corridor Management Plan. The Planning Board shall set forth its findings in writing as part of its decision-making process.

I. Notification of decision on site plan.

1. Decision format. The Planning Board’s action shall be in the form of a written statement to the applicant and shall state whether the site plan is approved, approved with conditions, or disapproved. The Planning Board’s statement will contain the reasons for such findings. A copy of the appropriate Planning Board minutes shall be a sufficient statement.

2. Filing the decision. The decision of the Planning Board shall be filed in the Town offices within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant. If the Site Plan is disapproved, the Planning Board shall so inform the Code Enforcement Officer, who shall deny a building permit.
(Added 12-16-03)

A. General Criteria for all Special Uses.

In considering and acting on Special Uses, the Planning Board shall consider the public health, safety, and general welfare. The Board shall also consider potential environmental impacts and the comfort and convenience of the public in general, the residents of the proposed development, and the residents of the immediate surrounding area. The Planning Board shall not grant a Special Use Permit unless the Planning Board determines and finds, except where the criteria is not applicable:

1. Compatibility. That the proposed use is of a character, type, scale, and intensity that, when mitigated, is not incompatible with the surrounding neighborhood, land uses, and general area of where the use is proposed to be located, that the use incorporates a site design which is consistent with the character of and is harmonious with the Town, promotes the purposes, goals, and intent of the Town of Erwin Comprehensive Plan, and safeguards the health, safety, and welfare of the Town and its residents.

2. Neighboring Properties. That the proposed use, operation, and/or structures do not significantly and adversely affect neighboring properties with respect to such things as storm water drainage, glare, noise, vibration, loss of natural light, risk of fire, flood, or erosion, odors, dust, historic structures, the structural integrity of buildings, the value of nearby buildings and properties, and other similar matters.

3. Vehicular Access. That proposed access points are adequate in width, grade, alignment, and visibility; are not excessive in number; are located at appropriate distances from intersections or places of public assembly; that the proposed use will not generate more volume or type of traffic than existing road infrastructure can adequately and safely accommodate; and that they satisfy other similar
safety and traffic flow considerations, including conditions for school buses, cyclists, and pedestrians.

4. Circulation and Parking. That adequate off-road parking and loading spaces are provided to minimize, or, where required, to eliminate the need for parking of vehicles on public highways by any persons connected with or visiting the site of the use; that the interior circulation system is adequate to provide safe accessibility to all required parking spaces; and that adequate separation of pedestrian and vehicular movements is provided.

5. Aesthetic Resources of Local and Statewide Significance. All adverse impacts on visual and aesthetic resources of local and statewide significance and on community character are avoided or minimized to the maximum extent practicable consistent with social, economic, and other essential considerations and utilizing the review process and mitigation strategies set forth in the Aesthetic Resources Overlay District Regulations of this Chapter as such may be amended from time to time.

6. Landscaping and Screening. That all parking, storage, loading, and service areas can be and are reasonably screened at all seasons of the year from the view of nearby residential areas and public spaces and that the general landscaping of the site is in character with the surrounding areas. Such screening shall be maintained as a condition of the Special Use Permit and/or site plan approval and shall be guided by the minimum standards set forth in this Chapter.

7. Natural Features. That the proposed use, together with its sanitary and water service facilities, parking facilities, and other facilities necessary for the operation of the use, are compatible with geologic, hydrologic, topographic, and soil conditions of the site and of adjacent areas; that the proposed use, operation, and structures do not significantly
impact existing natural and scenic features; and that such features are preserved to the maximum extent possible.

8. That once the proposed use ceases to operate for any reason, that the parcel of land on which it is located will be able to be restored and is restored so that said land may be suitable for development and use for one or more of the uses allowed in the zoning district where the property is located other than the use proposed. In Residential Districts, the land must remain suitable for residential development after the special use permit has been terminated. In connection with the construction or operation of any use in a Residential District, any disturbance of an area greater than 40,000 square feet which will substantially and irreversibly alter the natural contours and grade of the site shall be limited to an area or areas that do not exceed a total of 60% of the total area of the site that is developable for residential uses with sufficient non-disturbed areas remaining so that infill of residential development can occur.

9. That the proposed use will not be inconsistent with the recommended Future Land Use Concepts for the area in which the use is proposed as described in the current Town of Erwin Comprehensive Plan.

B. General Criteria for all Site Plans.

The Planning Board’s review of the site plan shall include but is not limited to the following considerations:

1. Adequacy and arrangement of vehicular traffic access and circulation.

2. Location, arrangement, appearance, and sufficiency of off-street parking and loading.

3. Location, arrangement, size, and design of buildings, lighting, and signs.
4. Relationship of the various uses to one another and their scale.

5. Adequacy, type, and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise-deterred buffer between adjacent uses and adjoining lands.

6. Adequacy of landscaping and maintenance of natural vegetation for water quality protection.

7. Adequacy of storm water management, erosion control, and sanitary waste disposal designed to protect surface water and groundwater resources.

8. Adequacy of structures, roadways, and landscaping in areas susceptible to flooding and ponding and/or erosion.

9. Compatibility of development with natural features of the site and with surrounding land uses.

10. Adequacy of flood proofing and prevention measures consistent with Chapter 69, Flood Damage Prevention.

11. Adequacy of methods and locations for disposal of construction demolition debris designed to protect groundwater resources.

12. Adequacy of hazardous material storage facilities designed to protect groundwater resources.

13. Special attention shall be paid to the potential impact on the aquifer. Because residents of the community depend on ground water for their water supply, both public and private ground water resources must be protected. Potential adverse impacts shall be mitigated or avoided.

14. Adequacy of building orientation and site design for energy efficiency. The extent to which the proposed plan
15. Adequacy of open space for play areas, informal recreation, and the retention of natural areas such as wildlife habitats, wetlands, and wooded areas. Where a site is located in an area identified by the Town Recreation, Parks, Trails Plan, Comprehensive Plan, and Corridor Management Plan as potentially important to be part of a network of recreational areas or trails, provision shall be made that the site plan include provision for connecting to such network in some manner so as to promote and provide a continuous network of such recreational facilities. In this regard, any provision made by the property owner to provide land, easements, or rights-of-way for connecting to such network for recreational purposes shall be considered as part or all of the otherwise recreational area or fee that may otherwise be required.

16. Adequacy of pedestrian access, circulation, convenience, and safety.

§ 130-51. Amendments.

The terms and conditions of any Special Use Permit may be amended in the same manner as required to grant a Special Use Permit, following the criteria and procedures in this Section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a Special Use Permit amendment.

§ 130-52. Expiration, Change of Use, Revocation, and Enforcement.

A. A Special Use Permit and/or Site Plan approval shall expire within one year from the date of issuance or approval if the Special Use Permit and/or Site Plan is not exercised within said one-year period, if the use or uses cease for more than 12 consecutive months for any reason, or if the applicant fails to obtain any other governmental permits that may be necessary for the use or its
continuing operation or fails to comply with the conditions of the Special Use Permit or Site Plan approval within 12 months of its issuance, or if its time limit expires without renewal.

B. A Special Use Permit and/or Site Plan shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Special Use Permit and/or Site Plan approval (as determined by the Code Enforcement Officer in issuing a Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Special Use Permit or Site Plan shall require the granting of a new Special Use Permit or Site Plan approval or an amendment to same.

C. A Special Use Permit and/or Site Plan approval may be revoked by the Planning Board if the property owner or operator violates the conditions of the Special Use Permit and/or Site Plan approval or engages in any construction or alteration not authorized by the Special Use Permit and/or Site Plan approval.

D. Any violation of the conditions of a Special Use Permit and/or Site Plan approval shall be deemed a violation of this Chapter, and shall be subject to enforcement action as provided herein.

§ 130-53. Court Review.

Any person aggrieved by a decision of the Planning Board or any officer, department, board, or bureau of the Town may apply to the Supreme Court for review by a proceeding under Article 78 of the civil practice law and rules. Such proceedings shall be instituted within thirty (30) days after the filing of a decision by such board in the Town Offices. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions, which may be presented for determination.
§ 130-54. Costs.

Costs shall not be allowed against the Planning Board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

§ 130-55. Preference.

All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.
§ 130-56.  Introduction to Article; Special Use Permit Criteria and Considerations for Site Plan review;
(Amended 12-16-03, 10-11-05)

A.  This Article sets forth Special Use Permit criteria for certain specific uses that must be met in order for the Planning Board to grant a special use permit, as well as site plan considerations and standards for both specific uses and certain aspects that may pertain to site considerations for all uses requiring site plan approval. The criteria, considerations, and standards are set forth in this Article pursuant to the specific uses for which they apply and are identified as special use permit criteria or site plan standards. The specific uses are arranged below in alphabetical order.

B.  The Planning Board, in reviewing a special use permit application, shall require compliance with such criteria and shall not issue a special use permit unless such criteria are met. The Planning Board, in reviewing a site plan, shall require the applicant to conform to the standards presented in this Article. In the review, it shall take into consideration the prospective character of the development and require improvements be designed to such standards as are consistent with reasonable protection of the public health, safety, or welfare.

C.  For permitted uses, the Code Enforcement Officer shall ensure compliance with this Article and any other applicable ordinances, Articles, or sections.

(Amended 12-29-03)

A.  Accessory buildings.

Note: For the purposes of this Section, Accessory Buildings shall be interpreted to include Accessory Structures.
1. Accessory buildings not attached to principal buildings shall be located in the rear or side yard in accordance with the Density Control Schedule.

2. In no instance shall an accessory building be located closer to the principal building than twelve (12) feet or a distance equal to the height of each accessory building, whichever is greater. On a corner lot, an accessory building shall be set back the required front yard depth from each street.

B. Accessory uses.

1. In a residential district, accessory uses not enclosed in a building, excluding swimming pools, shall be erected only on the same lot as the principal structure, may not be constructed in the front yard of such lot, shall be a distance of not less than twenty (20) feet from any lot line nor less than ten (10) feet from the principal structure, and shall not adversely affect the character of any residential neighborhood by reason of noise, glare, or safety.

2. Residential swimming pools. A swimming pool shall not be located, constructed, or maintained on any lot or land area except in conformity with the following requirements, to the extent applicable:

   a) A private swimming pool shall be located in a rear yard only.

   b) The portion of the premises upon which any swimming pool is located shall be entirely enclosed with a good quality chain link wire, wooden, or other equivalent fence of not less than four (4) feet nor more than six (6) feet in height. All entrance gates thereof shall be self-closing, self-latching, and capable of being locked. The fence shall be separate and physically detached from the swimming pool itself and shall be a minimum distance of four (4) feet from the water’s edge.
c) An above ground pool with no part of its side wall height less than four (4) feet above ground and so constructed by the manufacturer that the vertical sides are smooth, sheer, and do not provide any means for intermediate foot- or handholds may be exempt from the full provisions of the above fence requirement. However, a full-height fence with a self-closing, self-attaching gate capable of being locked shall enclose the ladder area not less than four (4) feet in width and four (4) feet in depth, and the ladder shall remain permanently therein. Aboveground pools provided with foot- or handholds (draw-banded) and aboveground pools with less than four-foot sidewall heights above ground are not exempt from the full fencing requirement.

d) Every gate or other opening in the fence enclosing any swimming pool shall be kept securely closed and locked at all times when such pool is not in use.

e) A swimming pool shall be not less than ten (10) feet from side and rear lot lines and not less than ten (10) feet from any principal building or structure on the premises.

f) The water inlet of every swimming pool shall be above the overflow level of said pool. No drains shall be connected with the sanitary sewer system.

g) Every swimming pool shall be chemically treated in a manner sufficient to maintain the bacteriological standards established by the requirements of the New York State Department of Health.

h) No permit shall be granted for the installation or construction of any swimming pool unless the plans shall meet the minimum construction requirements of the New York State Uniform Prevention and Building Code as approved by the Code Enforcement Officer.
i) No loudspeaking or amplifying device shall be permitted that will project sound beyond the bounds of the property or lot where any pool is located.

j) No lighting or spotlighting shall be permitted that will project light rays beyond the bounds of the property or lot where any pool is located.

k) Swimming pools may be installed in residential districts only as accessory structures for the private uses of the occupants, their families, and guests.

l) Should the owner abandon the pool, he shall arrange to remove the depression and return the surface of the ground to its original grade and approximately in the same condition as before the pool was constructed, and he shall further notify the Code Enforcement Officer of the abandonment so that an inspection of the site may be made and the records of the permit may be marked accordingly.

C. Residential accessory use. Where twenty-five percent (25%) or more of the lots in a block are occupied by buildings, the average yard dimensions, the average of lot coverage of such buildings, and the average side and rear yard setback shall determine the yard setback and coverage requirements for any new accessory building or use within the block; or, where no standard block exists, the word block, as used above, shall be interpreted to mean those residences within two hundred fifty (250) feet of either side of the lot in question on the same side of the street. The average setback shall not be based on fewer than two (2) existing residences.

D. Special designs. In cases where a developer has designed a special grouping of buildings, the Planning Board may approve the siting of accessory buildings such as garages and carports in the front yard, provided that the buildings are in compliance with all required setbacks.
§ 130-58.  Adult Uses – Special Use Permit Criteria.
(Added 12-16-03)
(Amended 10-11-05)

A.  Adult Uses allowed pursuant to this Chapter are to be restricted as to location in the following manner, in addition to any other requirements of this law:

1. Any of the above uses shall not be located within a radius of 500 feet of any residence.

2. Any of the above uses shall not be located within a radius of 500 feet of another such use.

3. Any of the above uses shall not be located within a radius of 500 feet of any school, church, or other place of religious worship, park, playground, or playing field.

4. No more than one (1) of the above uses as defined in Article 11 herein shall be located on any lot.

5. The five-hundred-foot radius herein shall be measured from the property line of the premises or zoning district boundary.

6. Signage shall only include the name of the establishment and shall conform to this Law.

§ 130-59.  Agriculture and Livestock Uses Requiring a SPDES Permit.
(Added 12-16-03)

A.  Agriculture, including farm animals, shall include farms (except farms expressly for the disposal of offal or garbage), truck gardens, greenhouses, nurseries, and arboretums on lots with an area of at least five acres, provided that:

1. Any farm building other than dwellings, buildings accessory thereto, and the heating plant of any greenhouse, shall be at least 75 feet from any property line.
2. Any building or structure devoted to or intended for the housing of rabbits, hares, guinea pigs, ducks, geese, live poultry, or fowl of any kind shall be erected at least 100 feet from any property line.

3. Kennels or buildings devoted to or intended for the housing of livestock (including horses) shall be erected at least 200 feet from any property line.

4. Detention, retention, or any area devoted to the storage of animal waste must be located at a minimum of 750 feet from any property line and must be completely screened from public view.

5. A permit from the DEC for a concentrated animal feedlot operation and/or a SPDES permit must be obtained by the applicant in order for the application to be deemed complete.

§ 130-60 Bed & Breakfast.
(Added 12-16-03)

Special Use Permit Criteria: Bed-and-breakfast establishments are owner-occupied or occupied by an agent who shall live on the premises. The owner shall be the principal operator. Bed-and-breakfast establishments are also subject to the following:

A. They must be limited to 15 guest rooms.

B. A public dining room and bar is expressly prohibited. The proprietor may serve breakfast in a dining area exclusively for guests renting rooms.

C. The Department of Health shall certify that the water supply and sewage disposal system is adequate for maximum occupancy of the proposed facility.

D. Guest occupancy shall not exceed 21 consecutive days.

Site Plan Standards:

A. Parking lots shall not be located closer than 15 feet to any residential property line providing a buffering for adjacent residential properties.
B. Parking requirements shall conform to § 130-78.

C. Location of signs shall be subject to Planning Board approval.

§ 130-61. Buffers, Landscaping, and Barriers Site Plan Standards.

A. General Requirements:

1. All buffers, landscaping, and barriers shall comply with the Clear Vision Zone requirements as defined below:

   a) Where the driveway meets the road, no barrier or hedge shall exceed two-and-one-half (2 ½) feet in height.

   b) On any corner lot, no obstructions higher than two-and-one-half (2 ½) feet above the center line of the street elevation shall be permitted to be planted, placed, erected, or maintained within the triangular area formed by the intersecting pavement lines, or their projections, where corners are rounded, and a straight line joining the pavement lines at points fifty (50) feet distant from their point of intersection.

   c) The minimum clear vision zone distance shall be twenty-five (25) feet from the edge of the pavement at an intersection.

2. All buffers, landscaping, and barriers shall be required by the Planning Board in accordance with the purpose, visual nature, noise impacts, and security needs of the proposal.

3. Buffers, landscaping, or barriers shall be maintained in perpetuity by the applicant. If the applicant fails to maintain such property in reasonable order, the Town Board may cause such property to be maintained in accordance with the procedure set forth in §130-28.
B. Location:

1. Buffers, landscaping, and barriers shall be constructed entirely within the boundaries of a lot.

2. All “fences” and “walls” shall be required to face the finished side toward adjoining lots and/or the street.

3. See § 130-89 Design Standards for Special Districts, for graphic depictions of buffer styles and types in the B-H1, B-H2, T-C, and RS districts.

C. Standards:

Where a lot is proposed to contain a use listed in the use categories set forth in Article IV and abuts a lot containing an existing or approved use, minimum BUFFERS (B), LANDSCAPING, and BARRIERS (LB) shall be provided for the proposed use as follows:

<table>
<thead>
<tr>
<th>Use Category</th>
<th>Existing or Approved Residential Use</th>
<th>Existing or Approved General Use</th>
<th>Existing or Approved Business Use</th>
<th>Commercial Parking Lots</th>
<th>Existing or Approved Industrial Use</th>
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<td>Use Category</td>
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</table>
Landscaping materials shall satisfy the following minimum requirements:

- Large deciduous trees: 2” caliper
- Conifers: 6’ high
- Small flowering trees: 1” caliper
- Large shrubs: 30” height
- Small shrubs: 18” height

Intensity # 1- Designed to separate compatible land uses (minimum standards).

1. **BUFFERS (B)**- Minimum side and rear setbacks prescribed in the density control schedule.

2. **LANDSCAPING & BARRIERS (LB)** – No required landscaping or barriers. Except in a Clear Vision Zone, fences, walls, trees, hedges, or shrubs of choice are permitted. Fences or walls shall not exceed a maximum height of six (6) feet above finished grade.

Intensity # 2 – Designed to separate semi-compatible land uses (medium standards).

2. **BUFFERS (B)** - Minimum side and rear setbacks plus fifteen (15) feet.

2. **LANDSCAPING & BARRIERS (LB)**- Except in a Clear Vision Zone, fences and walls, hedges, shrubs and/or under story trees, that at maturity shall be a minimum of six (6) feet in height and one (1) foot wide. Fences and walls shall not exceed a maximum height of eight (8) feet above finished grade.

Intensity # 3 – Designed to separate incompatible land uses (maximum standards).

3. **BUFFERS (B)** Minimum side and rear setbacks plus twenty-five (25) feet.

3. **LANDSCAPING & BARRIERS (LB)** - Except in a Clear Vision Zone, fences and walls, hedges, shrubs, and/or under story trees
that at maturity shall be a minimum of eight (8) feet in height and
two (2) feet wide. Fences and walls shall not exceed a maximum
height of ten (10) feet above finished grade.

Intensity #4 – Designed to give the Planning Board flexibility in unique
situations.

4. **LANDSCAPING & BARRIERS (LB)** – Landscaping and barriers
shall be decided by the Planning Board in accordance with the
purpose, visual nature, and security needs. This can include limiting
landscaping and barrier heights to limit visual obstruction.

§ 130-62. **Campgrounds/Campsites (Including Travel Trailer Parks).**
(Amended 12-16-03)

Special Use Permit Criteria.

A. A campground or campsite (such terms are used interchangeably herein)
shall be located on a level, forested site with seasonal road access.

B. A campground shall include designated camping sites, common service
areas, and common open space including land used for recreation.

C. The overall density of a campground shall not exceed one camping site per
7,500 square feet of gross area of the campground.

D. Each camping site shall have a total area of not less than 5,000 square feet,
with a minimum dimension of 50 feet. No camping site shall accommodate
more than one self-propelled four-wheeled vehicle. No camping site shall
be located closer than 200 feet from the roadbed of a public highway,
shoreline, or lot line. Each camping site shall have a level, well-drained
cleared area which will provide for the practical placement on and removal
from the site of a standard size passenger automobile and travel trailer or
tent.

E. A campground shall include usable common open space in an amount not
less than 1,000 square feet per camping site. Such usable common open
space may be in one or more location, but the number of locations shall not
exceed one for each ten camping sites. All usable common open space
shall be accessible from all camping sites and shall be of such a character as to be attractive and useful for active and passive recreation. No more than 40 percent of such open space shall be within 100 feet of the roadbed of a public highway. Streets within the campground shall not be counted as usable open space.

F. A campground shall be provided with potable cold water taps at the rate of not less than one tap per ten camping sites, each tap located conveniently to the served sites with provision made to prevent excess water from creating a muddy or similarly undesirable situation.

Site Plan Standards:

A. Campsite design. Design of such transient facilities shall be in accordance with NYSDOH regulations.

B. Separate toilet facilities for males and females should be provided not nearer than 50 feet nor further than 200 feet from any camping site.

C. Waste from all buildings and campsites shall be discharged into a sewage disposal system meeting the standards of the Town Sanitary Code.

D. Sites designed for travel trailers with indoor plumbing shall have appropriate hookups at each site in lieu of complying with Subsections A and B above.

E. Access and Circulation Plan.

1. Each campground shall have a graveled or paved access to a public road.

2. Where a campground has more than 30 camping sites, two public road access points shall be provided, but in no instance shall the number of entry and exit points exceed four. Such access points shall allow for safe and convenient movement into and out of the campground and shall minimize interference with the free movement of traffic on the adjacent public road. All entrances and exits shall be of sufficient width to allow turning movements of vehicles with travel trailers attached.
3. Each campground shall have clearly defined and convenient access to all camping sites and other facilities within the campground. The street system shall be so designed to permit safe and convenient vehicular circulation within the campground. Streets shall be adapted to the topography and shall have suitable alignment and gradient for traffic safety. All streets shall intersect at right angles. All streets shall have the following minimum widths:

   a) One-way traffic movement: 12 feet
   
   b) Two-way traffic movement: 20 feet

F. Landscaping and Screening.

1. Native ground cover, shrubs, and trees shall be provided or retained in those areas not used for camping sites, buildings, walkways, roads, active recreation areas, or parking areas.

2. Landscaping, by preservation of existing vegetation or by planting of native species of vegetation, shall be provided to ameliorate or screen objectionable views of and within the campground at all seasons of the year. Views which shall be screened include sanitary facilities and garbage storage and collection areas. In addition, the campground itself shall be substantially screened with native vegetation at all seasons of the year from any public highway, water body, or water course regularly trafficked by the public or adjacent property zoned for residential use.

G. Length of Occupancy

No individual, tent, or travel trailer shall be occupied for more than 180 days within any calendar year. The campground operator shall keep an accurate register of all occupants, in accordance with State regulations.
§ 130-63. Car Wash.
(Added 12-16-03)

Special Use Permit Criteria:

A. Lot size for automobile washing facilities shall be a minimum of two acres, and such lot shall have street frontage of at least 200 feet.

B. All washing and machine-drying operations shall be conducted within a structure.

C. The building exit for automobiles that have completed the washing and machine-drying process shall be set back a minimum of 50 feet from the nearest point of any right-of-way line.

D. No washing, vacuuming, steam-cleaning, waxing, polishing, nor machine-drying operation, nor building within which such operations are conducted, shall be permitted within 100 feet of a residential building located in a residential district.

E. All lot lines abutting residentially zoned or used property shall be screened by means of a solid masonry wall, opaque fence, or evergreen hedge of a design acceptable to the Planning Board. Such screen shall not be less than six feet nor more than eight feet in height and shall be maintained in good condition throughout the life of the use. Comment:

§ 130-64. Cemeteries and Crematories.
(Amended 12-16-03)

A. Special Use Permit Criteria: No buildings shall be located closer than fifty (50) feet to any residential lot line and shall include therein a barrier at least six (6) feet in height providing complete visual screening from all adjacent residential property. Crematories shall be located only in cemeteries.
§ 130-65. Communications Towers.
(Amended 10-09-18)
(Amended 6-11-19)

GENERAL REFERENCES
Definitions -- See Ch. §130-5.
Fire prevention and building construction — See Code of the Town of Erwin, Ch.65.
Subdivision of land — See Code of the Town of Erwin, Ch.112.
Zoning — See Code of the Town of Erwin, Ch. 130.

Chapter 130-65: Communications Towers

§ 130-65.1 Review procedure.
§ 130-65.2 Permitted districts.
§ 130-65.3 Application materials and supporting documents.
§ 130-65.4 Collocation requirements.
§ 130-65.5 Adherence to local, state and federal standards; proof of compliance.
§ 130-65.6 Inspections and licenses.
§ 130-65.7 Performance standards.
§ 130-65.8 Screening and security of communications towers and accessory structures.
§ 130-65.9 Design of antennas, communications towers, accessory structures and site.
§ 130-65.10 Communications tower setbacks and visibility.
§ 130-65.11 Compliance with other agencies and governments.
§ 130-65.12 Assignment of permit.
§ 130-65.13 Removal of abandoned or unused communications towers.
§ 130-65.14 Exemptions.
§ 130-65.15 Fees.

§ 130-65.1 Review procedure.

A. No antenna or communications tower shall hereafter be used, erected, connected to, modified or replaced except pursuant to the following process:

(1) Town of Erwin Communications tower Committee Review and Recommendation, SEQRA Recommendation.

(a) The application information and support materials described in §§ 130-65.3 and/or 130-65.4 shall first be submitted to the Town of Erwin Communications Tower Committee (the “CTC”) for evaluation prior to the proposed materials’ submission to and consideration by the Planning Board and/or the Zoning Board of Appeals.

(b) The CTC shall evaluate the proposed application materials for their completeness and accuracy. The CTC is authorized to request from the applicant any additional information that the CTC determines, in its absolute discretion, is necessary to further explain or describe the proposed application materials and their compliance with §§ 130-65.3 and/or 130-65.4.

(c) The CTC shall also render a recommendation to the Planning Board and the Zoning Board of Appeals.
as to the appropriate Lead Agency for the proposed PWS (Personal Wireless Services) facility’s review pursuant to SEQRA.

(d) Upon completing its evaluation, the CTC, in its discretion, may refer the proposed PWS facility’s application materials to the Planning Board for its review with a recommendation from the CTC as to the application’s compliance with §§ 130-65.3 and/or 130-65.4.

(2) Planning Board Pre-Application Review.

(a) Upon receiving the CTC referral described in §130-65.1(A)(1)(d), the Planning Board shall conduct a pre-application review as required by §130-46 which may, among other things, evaluate the proposed PWS facility’s application materials for their completeness and accuracy. The Planning Board is authorized to request from applicant any additional information that the Planning Board determines, in its absolute discretion, is necessary to further explain or describe the proposed PWS facility’s application materials and their compliance with §§§ 130-65.4, 130-65.5 and 130-46. Upon concluding the pre-application review to its sole satisfaction, the Planning Board may render a final determination that the proposed PWS facility’s application is complete. The Planning Board shall confirm its final determination in writing to the applicant, which shall include the date upon which the application was deemed to be complete.

(b) To facilitate the application review process:

(i) Applicants are strongly encouraged to engage in voluntary pre-application discussions with the Planning Board prior to filing an application; and

(ii) With respect to applications for a Wireless Telecommunications Facility, Small Cell, applications must be submitted no earlier than seven (7) days before any scheduled Planning Board meeting.

(3) Complete PWS Facility Application Determination Made, SEQRA Review.

(a) All proposed PWS facilities shall be SEQRA Type I Actions.

(b) Planning Board as SEQRA Lead Agency. Where the CTC has recommended and the Planning Board has concurred that the Planning Board is the proper Lead Agency for the proposed PWS facility’s SEQRA review, the Planning Board shall comply with the provisions of Article 8 of the New York Environmental Conservation Law and its implementing regulations as codified in New York Code Rules and Regulations Title 6, Part 617.

(c) Zoning Board of Appeals as SEQRA Lead Agency. Where the CTC has recommended and the Zoning Board of Appeals has concurred that the Zoning Board of Appeals is the proper Lead Agency for the proposed PWS facility’s SEQRA review, the Zoning Board of Appeals shall comply with the provisions of Article 8 of the New York Environmental Conservation Law and its implementing regulations as codified in New York Code Rules and Regulations Title 6, Part 617.

(4) Planning Board Review. All proposed PWS facilities shall be subject to Planning Board review and approval pursuant this chapter and the requirements and procedures of Article IX, Special Use Permit and Site Plan Approval.

(5) Zoning Board of Appeals Review. The Zoning Board of Appeals shall have the authority to review and approve, approve with modifications or deny Special Use Permits pursuant to this chapter and §130-
(6) If a variance is required, the Zoning Board of Appeals shall comply with the provisions of Code of the Town of Erwin, Ch.130.

§ 130-65.2 Permitted districts, special requirements.

A. Communications towers and antennas shall be permitted in those districts identified in Appendix A. Use Regulation Table.

B. Communications towers and antennas proposed in or within 750 feet of prohibited districts shall be subject to § 130-109, Variances. In addition to the information mandated by the foregoing provisions, applicant must demonstrate by or provide in the proposed PWS facility’s application materials, as supported by substantive evidence:

(1) Signal strength measurements showing that the applicant would not be able to provide service to the area without locating in the described area.

(2) That collocation on existing communications towers would compromise the existing towers’ structural integrity and that the tower(s) cannot be modified to support the proposed antenna(s).

(3) That collocation on an existing current structure, utility pole, building or a new communications tower within a permitted district is impossible due to surrounding topography or other land features, whether natural or manmade. The fact that additional cost may be incurred and additional antennas may be required is not conclusive of an inability to so collocate.

C. In the event the applicant meets the criteria of Subsections A and B above, subject to all other requirements of this chapter, a proposed PWS facility located outside a district zoned for towers or within 750 feet of a prohibited district must meet the following additional criteria:

(1) If the communications tower is less than 35 feet in height or the PWS antennas are to be located on a structure of less than 35 feet, the Planning Board in its discretion may require that the communications tower and/or antennas be completely camouflaged to blend with the surroundings, including but not limited to:

   (a) The communications tower being made to look like a tree, silo or other alternative tower masking design selected by the Town in its sole discretion.

   (b) Camouflage by artificial leaves, painting or other suitable method. Deteriorating camouflage or paint will be replaced at the Town’s request, at the tower owner’s expense.

   (c) Enclosed with some modification to the structure or similar screening.

(2) If applicant has proven that a communications tower greater than 35 feet is needed to provide the required coverage, the Planning Board may require that more than one communications tower being 35 feet or less be built in lieu of a single taller communications tower in order to provide the required coverage. In such case, all of the criteria of this chapter must be fulfilled for each such communications tower.

(3) In all events of PWS facilities located in prohibited districts with a Zoning Board variance, the applicant
must provide substantial foliage and landscaping within the vicinity of the communications tower as well as landscaped buffer areas, the adequacy of which shall be determined by the Planning Board pursuant to §130-61, Screening and the provisions of this chapter.

§ 130-65.3 Application materials and supporting documents.

The following information shall be submitted in support of an application for a PWS facility. This information is required in addition to the information and documents mandated by Code of the Town of Erwin, Ch.130, Articles IX and X, pertaining to site plan review, specific use permits or variances. This information is subject to CTC and Planning Board review processes.

A. A full application on a form supplied by the Town and the truthfulness attested to by a licensed professional engineer:

(1) A Long Form Environmental assessment form (EAF), including a site description that identifies and describes:

(a) The proposed PWS facility, including but not limited to:

(i) the type of service and facilities to be provided;

(ii) the size of applicant’s trading area (overall network area) within the Town and five miles beyond as licensed by the FCC;

(iii) the size of the area to be served by the proposed PWS facility;

(iv) the general service improvements to applicant’s customer base that will be achieved if the proposed PWS facility is permitted;

(v) the need for and/or improvements in emergency communications that will be achieved if the proposed PWS facility is permitted;

(vi) any upgrading of necessary infrastructure (if any) for business development within the proposed PWS facility’s service area; and

(vii) the elimination of redundant facilities or equipment to be achieved if the proposed PWS facility is approved;

(b) Man-made topographical features at and within one (1) mile of the selected site;

(c) Environmental resources on or adjacent to the selected site, including but not limited to water bodies and wetlands;

(d) Surrounding vegetation (i.e. tree species) at the selected site;

(e) Fencing around the proposed PWS facility;

(f) Building materials for equipment sheds;
(g) Proposed visual impact mitigation measures and a description of applicant’s efforts to minimize visual impacts. If this objective cannot be accomplished, applicant shall provide an explanation why the minimization of visual impacts is technically impossible, providing substantive evidence to support this claim. Increased costs associated with minimizing visual impacts shall not be considered sufficient support of a claim of impact mitigation infeasibility.

(h) Applicant’s compliance with the National Environmental Policy Act of 1969 and the National Historic Preservation Act; and

(i) All SEQRA Involved Agency permits required, as applicable.

(2) The manufacturer's or applicant's design drawings pertaining to installation, stamped by a licensed professional engineer.

(3) The applicant's maintenance and inspection schedule.

(4) Site access, road alignment, road width, road surface type, proposed curb-cuts, anticipated construction and operation vehicular traffic to and from the site and construction parking and storage areas. Location of the curb cut is subject to DOT regulations or a Town Highway work permit.

(5) Each application for installation of antennas shall include either a preliminary or a certified statement that the installation of the antennas, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and nonresidential properties or with public safety telecommunications. In the event only a preliminary statement is submitted with the application, a final certified statement on noninterference will be provided and approved by the Town prior to the issuance of a permit. A Town-approved professional engineer shall prepare the statement.

(6) A safety analysis and certification by a licensed professional engineer that the proposed PWS facility will be in compliance with all applicable FAA and FCC laws and regulations.

(7) Proof of the site owner's consent, if the applicant is not the owner of the site on which the applicant seeks to locate a commercial PWS facility.

(8) The name of the operator, owner, lessee(s) to the application, with correct direct contact information for the same.

(9) A copy of applicant’s FCC License.

(10) Names and addresses of adjacent property owners, as contained in public records.

(11) An inventory of applicant’s existing sites. Each applicant shall provide a map showing applicant’s FCC-licensed service area (within the municipality and five miles beyond) with a separate map showing applicant’s inventory of its existing communications towers and antenna sites within the Town and within one mile of the Town’s border including, for each such structure, specific information regarding the communications tower and/or antenna height and the location, street address, tax parcel, latitude and longitude and mean sea level height of the communications tower base.

(12) The location of any equipment or other facilities required by each of the three potential collocators or additional users, as provided for in §130-65.4 of this chapter.
(13) A visual impacts study, generated by an appropriately licensed consultant that:

(a) Complies with the NYS Department of State Model Visual Impact Analysis methodology;

(b) Complies with §§ 130-65.9 and 130-65.11;

(c) Describes the natural and manmade character of the area surrounding the proposed PWS facility’s site, including identifying highways and residential and commercial streets and roads, vegetation, land use and visually sensitive sites including but not limited to parks, historic sites and public access facilities (such as trails and boat launches) within a five (5) mile radius of the proposed PWS facility’s site;

(d) Includes a computer-imaged photograph of any proposed communications tower as it would appear on the site, including any proposed attachments, from at least three different angles selected by the Town and during all four seasons of the year;

(e) Includes a list of key viewer groups, including but not limited to residents, hikers, motorists, campers and boaters;

(f) Identifies key viewpoints, such as public roads, recreation areas and residential developments with a determination whether the viewpoints are stationary or moving and the view’s duration;

(g) Describes the width of the field of view and the horizontal viewing angle;

(h) States whether the view is through vegetation or open area;

(h) Identifies the natural and manmade features that will be seen by the view in the foreground (0 to 0.5 mile), middle ground (0.5 to 3.5 miles) and background (3.5 to 5 miles) views;

(i) Includes a visual analysis map, line of sight profiles, and visual simulation photographs keyed to the site map consistent with visual analysis methodology;

(j) Demonstrates applicant’s compliance with the National Environmental Policy Act of 1969 and the National Historic Preservation Act; and

(k) Includes a description of applicant’s efforts to minimize visual impacts. If this objective cannot be accomplished, applicant shall provide an explanation why the minimization of visual impacts is technically impossible, providing substantive evidence to support this claim. The Town may consider these efforts and require additional efforts if there is a reasonable basis, in the Town’s sole discretion, for such requirement.

(14) No fewer than three (3) alternative sites that meet the applicant’s technical requirements and the Town’s zoning/land use requirements. For each alternative, applicant must describe the proposed communications tower, antennas and support facilities as follows:

(a) Size (height above ground level to the top of the communications tower and to top of antennas, dimensions of all components, including base and top dimensions);

(b) Type (e.g. self-supporting monopole, guyed communications tower), materials and color of the
communications tower); 

(c) Configuration and sizes of each alternative communications tower’s foundation and antenna supports; 

(d) FAA-mandated lighting or striping for each alternative communications tower if required; 

(e) The equipment shelter associated with each alternative communications tower; and 

(f) A viewshed map for each alternative site that identifies those locations within five (5) miles of each proposed site where there is a relatively high probability that the proposed alternative PWS facility will be visible. The viewshed map shall be based on the proposed structure height at each location at an elevation of 2 feet above base flood elevation. The viewshed map shall define the maximum area from which the tallest element of the completed PWS facility could potentially be seen within the study area (ignoring the screening effects of existing vegetation), with a delineation of foreground (0 to 0.5 mile), middle ground (0.5 to 3.5 miles) and background (3.5 to 5 miles). 

(15) Applicant shall select a preferred alternative site based on the lowest potential visual impact and the preferred alternative site’s technical and economic feasibility. Applicant shall provide the Town with: 

(a) A signal propagation study for the preferred alternative site; and 

(b) A detailed explanation supporting the preferred alternative site’s selection that includes a demonstrated need for service supported by substantive evidence; environmental, visual and site impacts; initial development and life-cycle costs; and an explanation of why other alternative sites were not preferred. 

(16) Additional submission requirements for communications towers include: 

(a) Identification and description of an anti-climbing device. 

(b) A report from a licensed professional engineer, which describes the communications tower, including its height and design, demonstrates the communications tower's compliance with applicable structural standards (including but not limited to foundation design, wind loading and guy wire plans) and describes the communications tower's capacity, including the number and types of antennas it can accommodate. 

(c) A preliminary or a certified statement that the installation of the communications tower, will not interfere with the PWS services enjoyed by adjacent residential and nonresidential properties or with public safety telecommunications. In the event only a preliminary statement is submitted with the application, a final certified statement on noninterference will be provided and approved by the Town prior to the issuance of a permit. A town-approved professional engineer shall prepare the statement. 

(d) The site plan shall show distances between the proposed communications tower structure and structures on adjoining properties within 750 feet, together with the names and addresses of all property owners within 750 feet of the boundary of the property on which the communications tower is proposed, as contained in the public records. 

(e) Identification and location of any PWS antennas located within one mile of the proposed communications tower, regardless of ownership. 

(f) As-built drawings certified by a professional licensed engineer, within 60 days after completion of the
construction.

(g) A demolition bond or other security acceptable to the Town for the purpose of removing the communications tower if the owner fails to do so upon the communications tower disuse for a period of six months, or has been ordered removed by the Town, because the communications tower is no longer necessary to achieve or facilitate the applicant’s permitted use. Such bond or security shall be automatically renewable on each anniversary until advised by the Town of Erwin in writing that it is no longer needed.

B. Any application to the Planning Board shall include copies of the full application, if one is required, to the Zoning Board of Appeals.

§ 130-65.4 Collocation requirements.

A. All antennas and communications towers erected, constructed or located within the Town shall comply with the following requirements:

(1) A proposal for a communications tower shall not be approved unless the Planning Board finds that the antenna planned for the proposed communications tower cannot be accommodated on an existing or approved communications tower or structure due to one or more of the following reasons:

(a) The antenna would exceed the structural capacity of the existing or approved communications tower or structure, as documented by a qualified professional engineer, and the existing or approved communications tower cannot be reinforced, modified or replaced to accommodate the planned or equivalent antenna. All reasonable costs of such modification or replacement of the communications tower or structure shall be presumed to be borne by the owner of the proposed antenna.

(b) The antenna would cause interference materially impacting the usability of other existing or planned antenna at the communications tower or building as documented by a qualified professional engineer and the interference cannot be prevented at a reasonable cost.

(c) Existing or approved communications towers and structures cannot accommodate the antenna at a height necessary to function reasonably, as documented by a qualified professional engineer, and cannot be modified or replaced as provided for in Subsection A(1)(a) above.

(d) Other unforeseen reasons that make it infeasible to locate the antenna upon an existing or approved communications tower or structure.

(2) Any proposed communications tower shall be designed, in all respects, to accommodate both the applicant's antennas and comparable antennas for three or more additional users. Communications towers must be designed to allow for future rearrangement of antennas upon the communications tower and to accept antennas mounted at varying heights. Additionally, the necessary land to accommodate the equipment of said additional users shall be under the control of the communications tower applicant. This control may be through ownership, lease or contract with a period of time no less than the control the applicant has over the land used for the equipment for subject communications tower application.

(3) The applicant shall submit to the Planning Board a letter of intent committing the applicant, and his/her successors in interest, to negotiate in good faith for shared use of the proposed communications tower or structure by other PWS providers in the future.
(4) Collocation on communications towers, structures or land encumbered by an antenna, structure or communications tower existing prior to July 2018.

Notwithstanding anything to the contrary herein, the collocation requirements of this chapter are intended to be enforceable as to existing antennas, communications towers and structures and/or land encumbered by antennas, structures or communications towers. Accordingly, upon a renewal, extension or exercise of option for a renewal term of an existing lease for land, structure or communications tower, a clause in any such lease, whether entered into prior to or after the enactment of this chapter, which provides for exclusivity as to the land, structure or communications tower in favor of one or more carriers shall not be enforceable against a carrier seeking collocation.

§ 130-65.5 Adherence to local, state and federal standards; proof of compliance.

All PWS facilities must meet or exceed all applicable federal, state and local laws, rules, standards or regulations of the FCC and the FAA. If such standards, rules, laws or regulations are changed or amended, at any time in the future, then the owners of such facilities shall bring those facilities into compliance with such revised regulations if such changes or amendments provide for existing communications towers and/or antennas to be brought into compliance.

§ 130-65.6 Inspections and licenses.

A. Communications towers shall be inspected every five years on behalf of the communications tower owner by a licensed professional engineer for structural integrity and continued compliance with these regulations. A copy of such inspection report, including findings and conclusions, shall be submitted to the Town Manager with the application for a license during the month of December every five years. This requirement shall be considered a condition to any specific use permit, variance or any other permit or license required by this chapter.

B. Operators shall obtain Town licenses for each communications tower and/or antenna operated pursuant to this chapter no later than January 31 of the sixth year from the year in which the communications tower or antenna initially becomes operational, and every five years thereafter. The license fee shall be set from time to time by the Town Board.

C. The operator of any PWS facility sited within the Town of Erwin shall submit certification every five years, signed by a New York State licensed professional engineer, verifying such facility is in compliance with all applicable federal, state and local radio frequency radiation emission standards. Such certification shall be delivered to the Town Manager with the application for a license during the month of December every five years. This requirement shall be considered a condition to any specific use permit, variance or other permit or license required by this chapter.

§ 130-65.7 Performance standards.

A. Antenna safety. Antennas shall be subject to state and federal regulations pertaining to nonionizing radiation and other health hazards related to such facilities. The owner shall submit evidence of compliance with the FCC General Population exposure standard every five years, with the application for a license, as provided for elsewhere in this chapter. If new, more restrictive standards are adopted, the antennas shall be made to comply or the Town may restrict continued operations. The cost of verification of compliance shall be borne by the owner and operator of the communications tower.

B. Random testing. The Town of Erwin, in its sole and reasonable discretion, reserves the right to randomly
test any PWS facility at any time for FCC compliance, at the tower owner’s expense.

C. Powering up. Once erected, the power output of any PWS facility or its antennas may not be increased without the prior express written consent from the Town Planning Board, and existing antennas may only be replaced with similar antennas, but in no event shall the new antennas emit higher levels of radio frequency (RF) radiations than the antennas being replaced.

D. Noncompliance. To the extent any PWS facilities and antennas are not FCC compliant as required by Subsections A and C hereof, the owner of such facilities or antennas shall have thirty (30) days to cure such non-compliance and bring its facilities or antennas to code. In the event such breach has not been corrected within thirty (30) days following written notification of non-compliance from the Town to the applicant, the Zoning Board of Appeals, in its sole discretion, reserves the right to (a) suspend or revoke any permits or approvals that had previously granted for the installation of such facilities or antennas or (b) request an immediate shut down of the respective facilities with no re-activation option unless, and until, a hearing is conducted before the appropriate local zoning authority. In the event of a permanent revocation and shut down, the removal of existing communications towers and attachments thereto shall be conducted at the owner’s expense and in accordance with §130-65.13 hereof.

E. Communications tower lighting. Communications towers shall be designed and sited to avoid the application of FAA lighting and painting requirements. Communications towers shall not be illuminated by artificial means and shall not display strobe lights unless the FAA or other federal or state authority for a particular communications tower specifically requires such lighting.

F. Signs and advertising on communications towers. The use of any portion of a communications tower for signs other than warning or equipment information signs is prohibited. Said signs shall not be larger than two square feet.

§ 130-65.8 Screening and security of communications towers and accessory structures.

A. Existing on-site vegetation shall be preserved to the maximum extent practicable, and applicant shall be required to comply with all applicable landscaping requirements for the district in which the proposed PWS facility is to be located.

B. The base of the communications tower and any accessory structures shall be landscaped and meet the required screening of the district. The equipment shed associated with the communications tower may be separated from the communication tower to maintain vegetation necessary to achieve maximum screening.

C. Communications towers and accessory structures shall be provided with Town-approved security fencing to prevent unauthorized entry.

§ 130-65.9 Design of antennas, communications towers, accessory structures and site.

A. Communications towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the FAA. Communications towers shall be a galvanized finish or painted grey above the surrounding tree line and painted grey, black or green below the surrounding tree lines. For communications towers on structures, every antenna and communications tower shall be of neutral colors that blend with the natural features, buildings and structures surrounding such antenna and structure; provided, however, that directional or panel antenna and omnidirectional or whip
antennas located on the exterior of a building that will also serve as an antenna communications tower shall be of colors that match, and cause the antenna to blend with, the exterior of the building. Accessory structures will be designed to be architecturally compatible with principal structures on the site and adjoining sites. Applicant shall be responsible for the regular maintenance and upkeep of all said design elements.

B. The maximum height of a communications tower is limited to 100 feet above the ground upon which the antenna is placed.

C. The use of guyed communications towers is discouraged unless a demonstrated safety issue requires them. Communications towers should be self-supporting without the use of wires, cables, beams or other means. The preferred design should utilize a monopole configuration, unless the applicant can demonstrate through reports by a licensed professional engineer that an open framework construction is the only feasible method that will allow the provider to provide service to the area to be served and that a monopole will not allow for that service to be provided. In the event guys are allowed, all guy supports shall be sleeved and entirely fenced in to a height of 8 feet above the finished grade. Permanent platforms or structures exclusive of antennas that serve to increase off-site visibility are prohibited.

D. A driveway and an appropriate parking area will be provided to ensure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. As an occasionally used facility, all pavements shall be grass block or porous material, to minimize runoff and preserve natural vegetation. Location of road cut shall be approved by the planning board and will comply with the DOT and Town requirements.

§ 130-65.10 Communications tower setbacks and visibility.

A. A communications tower's setback may be altered in the sole discretion of the Zoning Board of Appeals to allow the integration of a communications tower into an existing or proposed structure such as a church steeple, light pole, power line or similar structure.

B. Communications towers shall not be located closer than 750 feet to the nearest prohibited district. In all other cases, communications towers shall be set back from adjoining properties a distance equal to 150% the communications tower height.

C. In addition to the requirements of §130-65.8 and §130-61:

(1) Communications towers and facilities shall avoid ridge lines where the communications tower will be silhouetted against the sky; and

(2) Communications towers and facilities shall be back-dropped by existing trees and topography.

D. It shall be demonstrated to the satisfaction of the Planning Board that the proposed facility is set back adequately to prevent damage or injury resulting from ice fall or debris resulting from the failure of a wireless telecommunications facility, or any part thereof and to avoid and minimize all other impacts upon adjoining properties, including but not limited to noise, lighting, traffic and storm water runoff.

§ 130-65.11 Compliance with other agencies and governments.

The operator of every PWS antenna shall submit to the Erwin Planning Board office copies of all licenses.
and permits required by other agencies and governments with jurisdiction over the design, construction, location and operation of such antenna and shall maintain such licenses and permits and provide evidence of renewal or extension thereof when granted.

§ 130-65.12 Assignment of permit.

Every permit granting approval of an antenna or communications tower shall state that any assignment or transfer of the permit or any rights thereunder may be made only upon 60 days prior written notice of such transfer or assignment to the Town. In the event of non-compliance, the Town shall in its sole discretion revoke the assignment and such assignment shall become null and void effective immediately.

§ 130-65.13 Removal of abandoned or unused communications towers.

Abandoned or unused communications towers or portions of communications towers shall be removed as follows:

A. The applicant shall remove all abandoned or unused communications towers and associated facilities and subsurface features, within six months of the cessation of operations unless the Zoning Board of Appeals approves a time extension. If the applicant is not a landowner, a copy of the relevant portions of a signed lease which requires the applicant to remove the communications tower and associated facilities and subsurface features upon cessation of operations at the site shall be submitted at the time of application. In the event that a communications tower, associated facilities and subsurface features are not removed within six months of the cessation of operations at a site, the Town will utilize the funds held in the decommissioning bond required pursuant to §130.65-15(B)(6) to remove the communications tower and associated facilities and subsurface features.

B. Unused portions of communications towers above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a communications tower previously removed requires the issuance of a new specific use permit.

§ 130-65.14 Exemptions.

The Town of Erwin shall be exempt from this chapter, as shall any ambulance, emergency services, police or fire protection agencies.

§ 130-65.15 Fees.

An applicant for licenses, permits, site plan approval and specific use permit for a PWS facility shall submit an application fee that is established from time to time by resolution of the Town Board together with technical review fees for the costs of reviewing such applications.

B. The Town may retain technical consultants, at the expense of the applicant, as it deems necessary to provide assistance in the review of the site location alternatives analysis. These additional costs shall be limited to the consultant’s review of the site location alternatives analysis, its report to the Planning Board, Zoning Board of Appeals and license application reviews.

§ 130-66. Contractor’s Yard.

(Added 12-16-03)
(Amended 10-11-05)
A. Special Use Permit Criteria.

1. The site shall have sufficient area to provide a natural vegetation or landscaped screening area around the perimeter of where trucks, equipment, and materials are to be parked, stored, or otherwise located.

2. There shall only be one access point for exiting from the site and one separate access point for entering the site.

3. All equipment shall be completely screened from public thoroughfares using the Intensity #4 screening methods set forth in §130-61 of this Chapter.

4. All repairs and maintenance shall be either conducted in an enclosed structure or an impervious surface with an appropriate storm water drainage and detention plan in place so as to minimize any infiltration of chemicals or petroleum product fluids in the ground.

5. The site shall have primary access onto a state or county highway.
B. Site Plan Standards:

1. A dust control plan shall be incorporated into the site operation where necessary.

2. The site shall be designed so as to allow safe on-site movement of vehicles and provide for safe vehicular and pedestrian traffic movement along adjacent street frontage.

3. Hours of operation shall be established by the Town as part of Special Use Permit conditions.

§ 130-67. Driveways.
(Amended 10-11-05)

Permission to construct. No person, firm, or corporation shall construct or locate any driveway entrance or exit into a highway of the Town of Erwin without having first met the provisions of this section. The standard entrance and exit crossing requirements shall be as follows:

A. The applicant shall furnish all materials and bear all costs of construction within the Town road right-of-way and pay the cost of all work done and materials furnished as required to meet the conditions set by the Town Highway Superintendent.

B. No alteration or addition shall be made to any driveway without first securing permission from the Town Highway Superintendent.

C. No more than two (2) driveways to a single commercial establishment accessing one (1) highway shall be permitted.

D. No more than one driveway to a one unit detached dwelling shall be permitted.

E. Drives shall maintain a minimum of thirty (30) feet between such driveways or curb cuts.
F. Driveways shall create minimal conflict with pedestrian access to the building from the parking lots and sidewalk abutting the property. Where a parking lot access drive crosses the sidewalk, the concrete paving pattern of the sidewalk or striping pattern shall continue uninterrupted. When the building is set back on the site, sidewalk connections shall be provided from the public street sidewalk to the front of the building.

G. The maximum width for a single combined entrance or exit shall be not more than fifty (50) feet for a commercial use and not more than twenty (20) feet for a residential use.

H. All separate commercial entrance/exit drives shall be no less than twenty (20) and no wider than thirty (30) feet in width.

I. The slope of the driveway shall not be greater than ten percent (10%). The slope of the driveway shall not exceed two percent (2%) within twenty-five (25) feet of the intersecting public highway.

J. The driveway shall be constructed with a suitable crown so as to lessen the erosion effect of surface runoff. In addition, as specified by the Town Highway Superintendent, a catch basin at a point near the intersection of the driveway and town highway may be required to prevent surface water and debris from being discharged onto the same.

K. No driveway shall be permitted within twenty-five (25) feet of the intersection of two (2) public rights-of-way.

L. Driveways in the B1, B2, B3, MU, TC, and RS districts shall conform to the design standards set forth in §130-89 Design Standards for Selected Districts.

§ 130-68. Dwellings – Multi-Unit and Townhouse Developments.
(Amended 12-16-03)

All townhouse and multi-unit development, as permitted in the Use Regulation Table and Articles VI and VII of this chapter, shall, in addition to the requirements set forth in said table and Articles, conform to the following standards. These standards shall be regarded as minimum requirements:

A. Townhouse developments shall meet the following standards:
1. There shall be no more than eight (8) townhouse units in any contiguous group.

2. Yard requirements

<table>
<thead>
<tr>
<th>Yard</th>
<th>Minimum Required Feet</th>
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<tbody>
<tr>
<td>Front</td>
<td>30</td>
</tr>
<tr>
<td>Rear</td>
<td>25</td>
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<tr>
<td>Side</td>
<td>10 (at ends of buildings)</td>
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3. Maximum building height shall be thirty-five (35) feet.

4. Maximum site coverage shall be not more than thirty percent (30%) of the lot area, with such percentage to be calculated on the basis of the total project area.

B. Multi-unit developments shall meet the following standards:

1. Yard requirements:
   a). No building shall be nearer than fifty (50) feet to the road line of any dedicated road peripheral to the site.
   
   b). No building shall be nearer than thirty (30) feet to the road line of any interior project road. In the case of non-dedicated streets and roads, this setback shall be measured from the limits of the paved area.

   c). No accessory building, including unattached garages, shall be nearer than ten (10) feet to any lot line in the required rear or side yard, and it shall not be located in any required front yard.

2. The maximum building height shall be thirty-five (35) feet.

3. The maximum site coverage shall be not more than thirty percent (30%) of the lot area, with such percentage to be calculated on the basis of total project area.
4. No building shall contain more than twelve (12) dwelling units.

5. Minimum unit size of apartments:
   a.) Efficiency apartment: five hundred fifty (550) square feet.
   b.) One-bedroom apartment: seven hundred (700) square feet.
   c.) Two-bedroom apartment: eight hundred fifty (850) square feet.
   d.) Three-bedroom apartment: one thousand (1,000) square feet.
   e.) An additional one-hundred twenty (120) square feet for each bedroom shall be added for larger apartment sizes.

§ 130 – 69 Equipment/Large Product Rental or Sales Yard.
(Added 12-16-03)
(Amended 10-11-05)

A. Special Use Permit Criteria:
   1. Outdoor storage and display shall not cover more than 40% of the lot.
   2. Display of sales items must be set back from frontage roads and property lines a minimum of 100 feet.
   3. Only one (1) of each item for sale shall be displayed so as to be visible from a public thoroughfare. The remaining items shall be completely screened from public thoroughfares using the Intensity #4 screening methods set forth in §130-61 of this Chapter.
   4. Servicing facilities must be performed in enclosed structures and, if applicable, must comply with other licensing and permitting requirements of governmental agencies.

B. Site Plan Standards:
1. All outdoor storage or sales areas must be screened from adjacent properties by fences, hedges or other plantings, or other structures so as not to be visible from the adjacent properties, by a minimum of eight-foot-high fencing or walls that are landscaped to the satisfaction of the Planning Board.

2. Exterior lighting proposed for the site shall be planned, erected, and maintained in such a manner that it will not cast direct light or glare upon adjacent properties or upon any public right-of-way. No light source shall be higher than twenty (20) feet.

3. Off-street parking must be provided for outside of sales or service areas.

§ 130 – 70A Mining.
(Amended 12-16-03)
(Amended 10-11-05)

A. Special Use Permit Criteria:

1. Minimum lot area is 20 acres.

2. All lands to be covered by Special Use Permit must be owned, leased, or otherwise under control by applicant for duration of the Special Use Permit.

3. The property on which the mining is proposed must have road frontage on a State or County highway or private road access onto a State or County highway for purposes of ingress and egress.

4. Site must have only one entrance and one exit, each of which must be at least 100 feet from intersections, other driveways, and said exit and entrance must be in conformance with AASHTO- Geometric Design of Highways and Streets – Stopping Sight Distance requirements.

5. The boundaries of the area of the site proposed for mining must be a minimum linear distance of 1000 feet from the closest property line of residences, businesses, schools, and public gathering places.
6. The boundaries of the area of the site proposed for mining must be set back a minimum linear distance of 200 feet from property lines (unless the adjoining use is “Mining” or “Excavation” in which case the setback shall be 100 feet), roads, rights-of-way, wetlands, and watercourses.

7. All structures, parking areas, loading areas, and truck staging areas must be set back a minimum linear distance of 300 feet from property lines (unless the adjoining use is “Mining” or “Excavation” in which case the setback shall be 150 feet), roads, rights-of-way, wetlands, and watercourses.

8. If the Mining uses propose to include blasting or processing of materials, the areas where such activities will take place must be a minimum linear distance of 2,000 feet from property lines and off-site roads.

9. The uses shall not endanger stability of adjacent structures, or adversely affect wetlands, watercourses, residential, commercial, or municipal water supply or sewage disposal systems, and existing drainage flow patterns or systems.

10. The uses shall not adversely affect any environmental, cultural, or historic features of significance to the community.

11. All uses must be able to be screened from public view.

12. No phases of uses shall cause dust or other airborne particles, vibrations, odors, or glare beyond the property lines of the site.

13. The site must be able to sustain appropriate roadside landscaping, berms, and/or fencing.

14. Appropriate truck routes and transportation facilities must be available for the volume and type of truck traffic involved.

15. Noise from any phase of the use shall not interfere with the quiet enjoyment of neighboring properties and shall be in conformance with the noise control regulations of this Chapter.
16. The use shall not adversely alter the prevailing character of the surrounding neighborhood or area or depress the property values in the surrounding area and shall not create traffic hazards or nuisances.

17. Location and terrain shall be reasonably suitable for development of allowed uses in zoning districts where property is located once the operations have terminated.

B. Site Plan Standards and Conditions:

In any district where excavations are permitted, the applicant shall provide a site plan showing the following:

1. The entrance to and exit from the excavation on Town roads.

2. The location, construction, and maintenance of haul roads on the site.

3. Setbacks from property lines and streams.

4. The locations of natural or manmade barriers to restrict access to the site.

5. Dust control measures.

6. Hours of operation.

The Planning Board may set the requirements for the above on a site-by-site basis in order to protect the character of the surrounding land uses and neighborhoods, to control traffic impacts, and to protect the natural environment.

Should the State fail in its duty to enforce reclamation requirements in the DEC mining permit as described in Environmental Conservation Law §23-2703 (2) (b) and (c), the Town of Erwin is authorized to enforce these requirements.
§ 130 – 70B  Excavation.
(Added 10-11-05)

A.  Special Use Permit Criteria:

1.  Minimum lot area is 10 acres.

2.  All lands to be covered by Special Use Permit must be owned, leased, or otherwise under control by applicant for duration of the Special Use Permit.

3.  The property on which the excavation is proposed must have road frontage on a State or County highway or private road access onto a State or County highway for purposes of ingress and egress.

4.  Site must have only one entrance and one exit, each of which must be at least 100 feet from intersections, other driveways, and said exit and entrance must be in conformance with AASHTO- Geometric Design of Highways and Streets – Stopping Sight Distance requirements.

5.  The boundaries of the area of the site proposed for excavation must be a minimum linear distance of 1000 feet from the closest property line of residences, businesses, schools, and public gathering places.

6.  The boundaries of the area of the site proposed for excavation must be set back a minimum linear distance of 200 feet from property lines (unless adjoining use is “Mining” or “Excavation” in which case the setback shall be 100 feet), roads, rights-of-way, wetlands, and watercourses.

7.  All structures, parking areas, loading areas, and truck staging areas must be set back a minimum linear distance of 300 feet from property lines (unless adjoining use is “Mining” or “Excavation” in which case the setback shall be 150 feet), roads, rights–of-way, wetlands, and watercourses.
8. If the excavation uses propose to include blasting or processing of materials, the areas where such activities will take place must be a minimum linear distance of 2,000 feet from property lines and off-site roads.

9. The uses shall not endanger stability of adjacent structures, or adversely affect wetlands, watercourses, residential, commercial, or municipal water supply or sewage disposal systems, and existing drainage flow patterns or systems.

10. The uses shall not adversely affect any environmental, cultural, or historic features of significance to the community.

11. All uses must be able to be screened from public view.

12. No phases of uses shall cause dust or other airborne particles, vibrations, odors, or glare beyond the property lines of the site.

13. The site must be able to sustain appropriate roadside landscaping, berms, and/or fencing.

14. Appropriate truck routes and transportation facilities must be available for the volume and type of truck traffic involved.

15. Noise from any phase of the use shall not interfere with the quiet enjoyment of neighboring properties and shall be in conformance with the noise control regulations of this Chapter.

16. The use shall not adversely alter the prevailing character of the surrounding neighborhood or area or depress the property values in the surrounding area and shall not create traffic hazards or nuisances.

17. Upon completion of the excavation, the disturbed site shall be reasonably suitable for development of allowed uses in zoning districts where property is located once the operations have terminated.
B. Site Plan Standards and Conditions:

In any district where excavations are permitted, the applicant shall provide a site plan showing the following:

1. The entrance to and exit from the excavation on Town roads.

2. The location, construction, and maintenance of haul roads on the site.

3. Setbacks from property lines and streams.

4. The locations of natural or manmade barriers to restrict access to the site.

5. Dust control measures.

6. Hours of operation.

7. A Reclamation Plan that identifies how the site could be suitable for a future productive use once excavation is complete. Such future uses could include but not be limited to: industrial, commercial, and recreation.

The Planning Board may set the requirements for the above on a site-by-site basis in order to protect the character of the surrounding land uses and neighborhoods, to control traffic impacts, to protect the natural environment, and to promote a productive use of the site upon the completion.

§ 130-71. Gasoline Filling Stations, Mini-Marts, Service and Repair Garages, and Automobile Sales Areas.

(Amended 12-16-03, 10-11-05)
A. Special Use Permit Criteria: In any district where permitted, gasoline filling stations, mini-marts, service and repair garages, and automobile sales areas shall conform to the following standards, which shall be regarded as minimum requirements:

1. The lot size shall be at least fifteen thousand (15,000) square feet or minimum lot size, whichever is greater.

2. The lot frontage and width shall be at least one hundred fifty (150) feet or minimum frontage, whichever is greater.

3. Fuel pumps and other above ground service devices shall be located at least thirty-five (35) feet from the right-of-way line and fifty (50) feet from any side and rear lot lines. This distance shall be measured from the outside edge of the fuel island. Underground fuel tanks shall be located far enough away from property boundaries so as to allow access for maintenance and/or replacement.

4. Gas pump canopy height, as measured from the lowest finished or natural grade to the lowest point on the canopy fascia, should not exceed 13 feet 9 inches, or the minimum required by the National Fire Protection Association. The clearance height of canopies should be clearly indicated on the structure or through use of a headache bar. The overall height of canopies should not exceed 17 feet.

5. All automobile parts, including tires and dismantled vehicles, are to be stored within a building. Old tires that are offered for sale may be placed outside during normal business hours but must be stored in a rack. Old tires to be scrapped or sold for junk must be stored either inside a building or behind a six-foot-high barrier.

6. All repair work is to be performed within a building. Automobiles waiting to be serviced or stored on the premises shall not encroach on any required yard area. Wrecked automobiles being held for insurance adjuster inspection may be stored for a period not to exceed thirty (30) days and must be stored in the rear of the premises, out of sight as much as is possible.
7. No vehicles shall be parked, stored, or left standing within thirty-five (35) feet of the street line.

8. All storage and display areas shall be provided with a hard, dust-free surface, shall be adequately drained, and, if lighted, shall produce no glare on adjacent properties.

9. All such uses located adjacent to residential uses shall be screened from such uses according to §130-61.

B. Site Plan Standards.

1. Setback. All service sites shall be so arranged as to restrict all servicing on the premises to not less than fifty (50) feet from any lot line. Insofar as possible, all repair and service work shall be accomplished indoors.

2. Storage of Waste Materials. Until disposed of, all junk wastes, discarded parts, fluids, etc., which result from the servicing of motor vehicles and equipment, shall be stored in an enclosed structure or fenced area so as not to be visible from adjacent residential properties. No such waste materials may be disposed of on the lot.

3. Lighting. Exterior lighting proposed for the site shall be planned, erected, and maintained in such a manner that it will not cast direct light or glare upon adjacent properties or upon any public right-of-way. No light source shall be higher than twenty (20) feet.

4. The storage of vehicles or equipment shall not be permitted within 20 feet of a residential district boundary or in any required yard, landscaped, or buffer area. All automobile parts, dismantled vehicles, and similar articles shall be stored within a building or screened from view.

5. Each vehicle for sale is permitted one sign per vehicle with a maximum area of one square foot; this sign shall be displayed from
inside the vehicle. Such vehicles shall have no other advertising or devices to attract attention.

§ 130-72.  **Home Occupation, On-site Service.**
(Amended 12-16-03)

Special Use Permit Criteria: An on-site service home occupation, as defined in this chapter, may be permitted in a zoning district subject to site plan approval by the Planning Board, provided that such use is not specifically prohibited in the district. (See the Use Regulation Table.) Such use shall conform to the following criteria, which shall be minimum requirements:

A. No more than twenty-five percent (25%) of the total floor area of a dwelling unit or five hundred (500) square feet, whichever is the lesser, may be used for such use.

B. The use shall be carried on wholly within the enclosed wall of the dwelling unit or accessory building.

C. There shall be no external evidence of such use except for one (1) sign not exceeding two (2) square feet in area mounted flush with and on the front facade of the dwelling unit. Stock, merchandise, equipment, or displays of any kind shall not be visible outside the dwelling unit or accessory building.

D. No external structural alterations, which are not customary to a residential building, shall be allowed.

E. Any form of business whose primary function is the wholesale or retail sale of goods or articles from the premises, such as a small grocery store, shall not be deemed a home occupation.

F. The use shall not result in or cause vehicular traffic that will create a nuisance to abutting properties or be detrimental to the residential character of the neighborhood.

G. Such uses shall also be subject to any other conditions the Planning Board deems necessary to meet the intent of these requirements.
§ 130-73  **Kennels.**  
(Added 12-16-03)

Special Use Permit Criteria: In any district where permitted, kennels may be permitted by Special Use Permit, provided that the Planning Board finds that the application meets all the general conditions of Article IX and further meets all the applicable conditions set forth in this section.

A.  Adequate shelter. Each kennel shall be equipped with housing or shelter facilities sufficient to provide adequate cover and shelter for all dogs which may be housed in the kennel.

B.  Adequate runway area. For each dog housed in the premises being over six months of age, there shall be a minimum of 80 square feet of runway area or exercise pen.

C.  Runway enclosure. Runways or exercise pens located within the kennel shall be enclosed by wire fence of a height to be prescribed by the Planning Board, but in no event less than six feet in height.

D.  Kennel facility enclosure. All kennel facilities shall be maintained in enclosed structures, which shall be of soundproof construction and so constructed and maintained as to produce no dust or odors at the property line.

E.  Number of dogs. In issuing the Special Use Permit, the Planning Board may prescribe the maximum number of dogs to be boarded, harbored, kept, or trained. That number shall not exceed the number equivalent to 10,000 square feet per 100 pounds of average adult animal body weight of the species so harbored, provided that in no event shall a kennel harbor more than a total of 50 dogs. As used herein, the square footage of the lot is that area of the lot not including any required yards.
F. Setbacks. The kennel, including structures, buildings, runways, and exercise pens, shall not be constructed or maintained within 150 feet of any property line.

G. Hours of operation. Between the hours of 10:00 p.m. and 6:00 a.m., all dogs shall be confined in a fully enclosed and suitably ventilated building of soundproof construction.

H. Buffers. The kennel, including structures, buildings, runways, and exercise pens, shall be screened from any surrounding uses. The type of screening shall be at the discretion of the Planning Board, based on consideration of protecting surrounding uses, minimizing noise, and minimizing adverse aesthetic impact.

I. Considerations. In considering the application for a Special Use Permit, the Planning Board may consider the number, size, breed, and temperament of the animals to be sheltered and may impose reasonable conditions to protect proximate uses; minimize noise, odors, and adverse aesthetic impacts; protect the animals harbored or sheltered; and ensure the health, safety, and general welfare of the community.

J. Inspection. The kennel shall be open for periodic inspection by the Code Enforcement Officer and/or the Dog Warden.

K. Nuisance. The granting of a Special Use Permit to operate a kennel shall not be deemed to bar the institution of any action to enjoin a nuisance.

§130-74 Individual Lot Manufactured/Mobile Homes.

A. Single-lot manufactured/mobile homes are permitted in a Rural District and in any Residential District.

1. The manufactured home shall be placed on the lot in such a manner that is compatible with and reasonably similar in orientation to the site-built housing in adjacent or nearby locations.

2. The home must be permanently installed in accordance with the Manufacturer’s Installation Manual. In the event that the Manufacturer’s Installation Manual is not provided, the home must
be installed according to ANSI A225.1 (1994), Manufactured Home Minimum Installation Standards. If located in a flood hazard area, the home must also be installed in accordance with the Town of Erwin Flood Damage Protection Law.

3. Permanent landings and steps with handrails are required at each exterior doorway. The structure must include steps which lead to the ground level.

4. Skirting or a curtain wall, unpierced except for required ventilation and an access door must be installed and may consist of brick masonry, vinyl, or similar materials designed and manufactured for permanent outdoor installation.

5. The home(s) must be connected to the water and sewer system or well and septic tank, whichever is applicable, approved by the Town of Erwin Code Enforcement Officer.

B. Manufactured/Mobile home standards. All mobile homes installed in the Town of Erwin shall meet the following minimum requirements:

1. Minimum width of twenty (20) feet.

2. Minimum of nine hundred (900) square feet of enclosed living area.

3. The pitch of the roof has a minimum nominal 3/12 pitch and has a type of shingle commonly used in standard residential construction.

4. The exterior siding consists of vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction.

5. All towing devices, wheels, axles, and hitches must be removed.

C. Use as residence. A manufactured/mobile home, as any other dwelling unit, may be located in the Town of Erwin according to the Density
Control Schedule. Neighborhood character, as determined by dwelling unit size and shape among other factors, is a primary criteria used for determining the location of types of dwelling units in the town.

D. Temporary location. A single manufactured/mobile home may be temporarily located within any zoning district for use as a construction field office, not as a residence. Such mobile home shall be removed from the site within ninety (90) days of the completion of construction.

§ 130-75 Lots.

Site Plan Standards.

A. Lot size and arrangement. The dimensions and arrangements of lots shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in providing access to buildings on such lots or in securing building permits to build. In general, side lot lines shall be at right angles or radial to street lines, unless a variation from this can be shown to result in a better plan.

B. Access. Insofar as possible, lots shall not derive access from a primary street. Access to lots adjacent to a major road shall, in general, be from minor roads within the development. Where a watercourse separates the buildable area of a lot from the street by which it has access, provision shall be made for installation of a culvert or other structure, which shall be subject to the “Town of Erwin Drainage Standards for Land Development.”

§ 130-76 Manufactured/Mobile Home Park.

(Amended 12-16-03)

A. Manufactured/Mobile home parks may be permitted in RD Rural Districts, subject to site plan approval by the Planning Board or by Special Use Permit in R-12.5 or R-10 Residential Districts.

B. Standards governing manufactured/mobile home parks. Any manufactured/mobile home park shall conform to the following standards, which are to be regarded as Special Use Permit criteria in R-12.5 and R-10
Residential districts and as minimum site plan requirements for all other districts:

1. Sites for manufactured/mobile home parks shall be a contiguous parcel with a minimum of ten (10) acres.

2. Conformance with health regulations. All sanitary and health regulations, state and local, shall be met.

3. Each boundary of the park must be at least two hundred (200) feet from any permanent residential building located outside the park, unless separated by a barrier or unless a majority of the property owners residing in the area within said two hundred (200) feet consent, in writing, to the establishment of the park.

4. Site dimensions. Boundaries of manufactured/mobile home sites shall be well-defined and permanently marked. Manufactured/mobile home sites shall meet the following requirements:
   a) The density of development shall not exceed six (6) units per developed acre.
   b) The private area associated with each site shall be a minimum of five thousand (5,000) square feet with a minimum lot width of fifty (50) feet.
   c) In no case shall a manufactured/mobile home occupy more than twenty percent (20%) of the site area.
   d) All manufactured/mobile homes larger than fourteen by seventy (14 x 70) feet shall have sites designed and laid out to conform to all yard and coverage requirements.

5. Parking. One and one-half (1 ½) car parking spaces shall be provided for each manufactured/mobile home site and their guests without interference with normal movement of traffic. At least one (1) parking space shall be situated on a side yard of each site, and
the remainder shall be located in adjacent parking bays along the park streets. Each parking space shall have dimensions of at least ten by twenty (10 x 20) feet.

6. Yard provisions. Manufactured/mobile homes shall be located on park sites in conformance with the following minimum yard requirements:

a) Front yard: fifteen (15) feet (from pavement edge).

b) Rear yard: ten (10) feet.

c) Side yard: ten (10) feet.

d) Thirty (30) feet from any park perimeter.

7. Entrances and streets. Streets shall be provided on the site where necessary to furnish principle traffic convenient access to the manufactured/mobile home stands and other important facilities on the property. Streets shall be privately owned with right-of-way widths of not less than thirty (30) feet. All streets within the manufactured/mobile home park shall be hard-surfaced, not less than twenty-four (24) feet in width, and shall be adequately lighted for safety of pedestrians and vehicular traffic. Individual manufactured/mobile home sites shall only exit onto interior park streets.

8. Service buildings. Each park shall provide community service buildings to house laundry facilities and other sanitary facilities, as required by the New York State Department of Health.

9. Private service building. One (1) accessory building, factory-built, not to exceed one hundred forty-four (144) square feet in dimension, may be located on each lot. This building must be of a material that will be approved by the Code Enforcement Officer and placed on a permanent foundation.
10. Drainage facilities. The manufactured/mobile home park shall be provided with a storm water system per Town of Erwin Drainage Standards for Land Development.

11. Skirts. Each manufactured/mobile home owner shall be required to enclose the bottom portion of the manufactured/mobile home with either a metal, wood or vinyl skirt, properly ventilated, within fifteen (15) days of arrival in the park.

12. Recreation facilities. Recreation areas and facilities, such as playgrounds, swimming pools, and community buildings, shall be provided to meet the anticipated needs of the park residents. Not less than ten percent (10%) of the gross site area shall be devoted to recreation facilities, generally provided in a location or locations convenient to all.

13. Utilities. All electrical, telephone, and television cable conduits shall be installed underground and maintained in accordance with applicable codes and regulations governing such systems.

14. Lighting. The minimum requirements for such shall be a streetlight at the end of each street, at any street intersection, and near recreation areas.

15. Water supply. An adequate supply of water must be available to all occupants of manufactured/mobile homes in the park, and the quality must be satisfactory to the New York State Health Department.

16. Sewage disposal. An adequate and safe sewerage system shall be provided in all manufactured/mobile home parks for conveying and disposing of all sewage. Such systems shall be designed, constructed, and maintained in accordance with local and state health laws.

17. Refuse disposal. The storage, collection, and disposal of refuse in the manufactured/mobile home park shall be conducted so as to create no health hazards, rodent harborage, insect breeding areas, accidental fire hazards, or air pollution. All refuse shall be stored
in fly-tight, water-tight, rodent-proof containers, which shall be located not more than one hundred fifty (150) feet from any manufactured/mobile home site. Containers shall be provided in sufficient number and capacity to properly store refuse.

§ 130-77. Motel.
(Amended 12-16-03)

In any district where permitted, hotels and motels shall comply with the following provisions:

A. Hotels and motels may include accessory restaurant and other facilities for the use of guests not to exceed 25% of total floor area.

B. A hotel or motel may include general office accommodations subject to applicable district regulations.

C. In the Business Districts (B1, B2, B3) and the Multi-Use (MU) District, no sleeping unit shall be closer than 100 feet to any street line or 50 feet to any property line except where it abuts a residential district; then the distance shall be 70 feet.

D. Other activities or uses, whether permanent or temporary, which are customarily incidental to a hotel or motel, are permitted; however, all such uses must be conducted entirely within the building. There shall be no external evidence of such activity or use other than permitted signs.

§ 130-78. Off-Street Parking and Loading.
(Amended 10-11-05)
In all districts, off-street automobile parking spaces and truck-loading areas for the various permitted uses shall be required at the time any of the main buildings or structure of such uses are constructed or altered, as follows:

A. Off-street parking.

1. Required off-street parking spaces. The minimum number of spaces shall be determined by the amount of dwelling units, bedrooms, floor area, members, equipment, employees, and/or seats contained in such new buildings or structures or added by alteration of buildings or structures, and such minimum number of spaces shall be maintained by the owners of such buildings or structures as follows:

   a) Office, business, and commercial uses:

      i. For a retail business or service, bank, or post office, one (1) space for each two hundred fifty (250) square feet of gross floor area.

      ii. For an office, including professional, personal service, or public utility, one (1) space for each three hundred (300) square feet of gross office floor area.

      iii. For a restaurant, bar, or nightclub, one (1) space for each fifty (50) square feet of customer floor area.

      iv. For a funeral home, one (1) space for each five (5) seats of auditorium capacity.

      v. For any commercial use, one (1) space for each company vehicle.

      vi. For a hotel, one (1) space for each bedroom, plus one (1) space for each company vehicle.
vii. For a motel and vacation resort, one (1) space for each bedroom, plus one (1) space for every four (4) employees.

viii. For a bed and breakfast, one (1) space for each bedroom.

b) Industrial uses:

i. One (1) space per employee on the largest shift.

ii. One (1) space per each three hundred (300) square feet of gross office floor area for visitor parking.

iii. One space for each truck, trailer, or tractor-trailer needed for incoming-outgoing freight.

iv. One (1) space for each company vehicle.

c) Public and semi-public uses:

i. For places of public assembly, including churches, one (1) space for each six (6) seats of auditorium or stadium capacity.

ii. For an elementary school or any day nursery, as required by the State Education Department.

iii. For a high school or college, as required by the State Education Department.

iv. For a museum, art gallery, institution, or philanthropic use, one (1) space for each eight hundred (800) square feet of gross floor area.

v. For a hospital, nursing, or convalescent home, one (1) space for each bed.
vi. For a club, one (1) space for each two hundred (200) square feet of gross floor space.

vii. For a day care center, one (1) space per ten (10) children or clients and one (1) space per employee per shift.

d) Recreational uses:

i. For a golf course, bowling alley, or billiard hall, four (4) spaces for each tee, alley, or table.

ii. For skating rinks, one (1) parking space for each two hundred fifty (250) square feet of area available for skating.

e) Residential uses:

i. For single-unit dwellings, one (1) space for each dwelling unit

ii. For multi-unit dwellings, apartments, and townhouses, one-and-one-half (1 ½) spaces for each dwelling unit.

iii. For an on-site service home occupation, one (1) space for each employee.

iv. For a dentist or a doctor or other professional person, two (2) spaces in addition to the above for patients or clients.

f) For uses not listed herein, as established by the Planning Board.

2 Calculation of required spaces. In the case of a combination of uses on the same subdivided parcel, the total requirement for off-street automobile parking spaces shall not be less than the sum of the requirements for the various uses computed separately, unless authorized by the Planning Board pursuant to Site Plan Review.
The maximum reduction shall not exceed ten percent (10%) or to a number less than that required for the use having the largest requirement. Whenever a major fraction of a space is required, a full space shall be provided.

3. Dimensions for off-street automobile parking spaces. Every such space provided shall be at least nine (9) feet wide and eighteen (18) feet long, and every space shall have direct and usable driveway access to a street or alley with minimum maneuver area between spaces as follows:

a) Parallel curb parking: five (5) feet end-to-end with a twelve (12) foot aisle width for one-directional flow and a twenty-four (24) foot aisle width for two-directional flow.

b) Thirty-degree (30°) parking: a thirteen (13) foot aisle width for one-directional flow and a twenty-six (26) foot aisle width for two-directional flow.

c) Forty-five-degree (45°) parking: a sixteen (16) foot aisle width for one-directional flow and a twenty-six (26) foot aisle width for two-directional flow.

d) Sixty-degree (60°) parking: a twenty-one (21) foot aisle width for one-directional flow and twenty-six-foot aisle width for two-directional flow.

e) Perpendicular parking: a twenty-four (24) foot aisle width for one-directional and two-directional flow.

4. Location of required parking spaces.

a) In any residential district, required automobile parking spaces shall be provided on a buildable portion of the same lot. This space shall be graded for parking use and readily accessible from the street.
b) In business districts or industrial districts, such spaces shall be provided on the same lot or not more than four hundred (400) feet therefrom.

c) In any residential district, no open or enclosed parking area shall encroach on any required front yard or required open areas. Open parking areas may encroach on a required side or rear yard to within three (3) feet of a property line. Vehicles and equipment for display or for sale shall not be parked or stored within the front yard requirement.

d) No entrance and exit drives connecting the parking area and the street shall be permitted within twenty-five (25) feet of the intersection of two (2) public rights-of-way.

5. Construction of parking areas. Parking areas, with the exception of single-unit residences, shall be constructed with a suitable all-weather, dust-free surface, including pavement, gravel, permeable pavers, and the like. The individual spaces shall be visibly marked with paint, concrete stops, or other durable material. Parking areas needed for overflow or peak demand shall be constructed with suitable pervious materials. Large parking lots shall be segmented by landscaping to control traffic flow, and to provide shade and visual relief.

6. All off-street parking areas in the B1, B2, B3, MU, TC, and RS districts shall conform to the development standards set forth in §130-89.

§ 130-79. Open Space, Parks, and Playgrounds.

A. In the event that the site plan shows land available for park, recreation, or open space of other municipal purposes directly related to the development, the Planning Board, as a condition of approval, may establish such conditions on the ownership, use, and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes. The Planning Board may require that such conditions shall be approved by the Town Board before the development may be approved.
B. Recreation areas shall have physical characteristics and locations which render them readily usable for appropriate recreation purposes, and their locations shall be selected with a view to minimizing hazards from vehicular traffic for children walking between such facilities and their homes in the neighborhood. No such area may be smaller than two (2) acres, and in general, be located at suitable places on the edge of the development so that additional land may be added at such time as the adjacent land is developed. The site plan shall include a detailed development plan for each neighborhood park or playground. At a minimum, the development plan shall provide for an approximately level area at least one hundred seventy-five (175) feet by one hundred seventy-five (175) feet for children’s field games. The development plan shall determine how the entire area is to be graded, drained, and landscaped to make it a useful and attractive feature of the neighborhood.

§ 130-80. Satellite Dishes.

No person shall erect or modify any satellite dish, except in accordance with the following:

A. General Provisions.

1. For all uses, satellite dishes shall be located and designed to reduce visual impacts on surrounding properties at street level and on public streets.

2. No more than one dish shall be allowed on any residential lot less than 12,501 square feet in size.

B. Height.

<table>
<thead>
<tr>
<th>Satellite Dishes</th>
<th>R-D</th>
<th>R-12.5, R-10, R-7.2</th>
<th>B1, B2, B3, MU, TC, RS</th>
<th>Industrial</th>
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<tr>
<td>Ground Mounted (height)</td>
<td>max. 20 ft.</td>
<td>max. 15 ft.</td>
<td>max. 15 ft.</td>
<td>max. 20 ft.</td>
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<tr>
<td>Roof Mounted (height)</td>
<td>max. 35 ft.</td>
<td>max. 35 ft.</td>
<td>max. 35 ft.</td>
<td>max. 35 ft.</td>
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</table>
C. Size.

1. Satellite dish size shall comply with standards set forth in the use regulations table.

D. Location.

1. In R-12.5, R-10, and R-7.2 residential districts:
   a) Any satellite dish eighteen (18) inches or less in diameter may be structurally, roof-mounted, or ground-mounted.
   b) Any dish greater than eighteen (18) inches but less than thirty-nine (39) inches in diameter may be structurally or roof-mounted on the side or rear of the structure or ground-mounted in the side or rear yards.

2. In non-residential districts, satellite dishes may be ground or roof-mounted in any yard. Dishes over thirty-nine (39) inches in diameter may not be structurally mounted.

§ 130-81. Signs.
(Amended 12-16-03,10-11-05)

No sign or other outdoor device for the purpose of advertising of any kind may be erected or established in the town except in conformance with the standards in this section.

A. Statement of Purpose. The purpose of the following regulation is to create a legal framework for a comprehensive and balanced approach to regulating signage that will preserve the right of free speech and expression; provides easy and pleasant communication between people and their environment; ensures signs are consistent with the scale and the character of its surroundings; and avoids the visual clutter that is potentially harmful to traffic and pedestrian safety, property values, business opportunities, and community appearance. With these purposes
in mind, it is the intent of this regulation to authorize the use of signs that are:

1. Compatible with their surroundings;
2. Appropriate to the activity that displays them;
3. Expressive of the identity of individual activities and the community as a whole; and
4. Legible in the circumstances in which they are seen.

B. General provisions

1. The following signs as defined in §130-5 are prohibited in the Town of Erwin:
   a. Free Standing High Rise Signs (previously referred to as “Pole Signs,” or “Pole mounted Signs in previous amendments;”
      i. Over 12 ft. in height in any district except RS
      ii. Over 16 ft. in height in RS/I-1 and I-2
   b. Translucent canopy (made of plastic or similar material) signs with or without backlighting;
   c. Roof Signs;
   d. Billboards;
   e. Fuel pump advertisement signs;
   f. Temporary advertisement signs;
   g. Portable changeable message signs (see §130-81(F) for a graphic depiction of this sign type);
   h. Any wall sign located higher than, or exceeding fifteen (15) feet; or any wall sign that projects above the first floor of the structure whichever is lower.
   i. Flashing signs and signs with moving parts, except public service sign (such as time and temperature) approved by the Code Enforcement Officer.
   j. Any other sign not specifically listed as allowed in this Chapter.

2. All signs permitted by this ordinance shall comply with applicable regulations of the New York State Uniform Fire Prevention and Building Code.
3. General, Business or Light Industrial Use Signs (as those uses are identified in the Use Regulation Table located in Appendix A of this Chapter), and Other Nonresidential Use Signs Permitted Through Site Plan Review Approval

a. A maximum of two principal site business identification signs (i.e., one freestanding sign with a maximum of two display faces, and one wall sign) may be displayed on the same lot as the business with which they are associated, except for Shopping Malls as described below.

b. Shopping Mall Signs
   i. Two freestanding signs may be permitted in Regional Service and Industrial Districts if the involved parcel has two curb cuts on separate streets and they are separated by a minimum of 100 ft. on each street.
   ii. One (1) freestanding sign permitted displaying one (1) or more businesses operating in a shopping center, without exceeding the permitted sign size of freestanding signs as set forth in this Chapter.
   iii. Each business within a shopping mall shall be permitted one (1) wall sign. Each sign will count towards the overall sign area calculation.

c. The total square footage of all signage (except special sales and window signs) associated with any one business not in a shopping mall, any one parcel, or all business operating in a shopping mall shall not exceed:
   i. 150 square feet in all non-residential districts except Regional Service and Industrial
   ii. An area equal to sixty-five one hundredths (0.65) square foot per linear foot of building frontage or 400 square feet, whichever is less in Regional Service and Industrial Districts.

d. No signs related to an operating General, Business, Light Industrial, or other nonresidential uses shall be erected,
placed, displaced or located in any Zoning District except in accordance with the Schedule of Sign Standards contained in Table 130-81-1 hereof, or other provisions concerning such signs within this Chapter.
<table>
<thead>
<tr>
<th>Sign Type</th>
<th>TC</th>
<th>B1</th>
<th>B2</th>
<th>B3</th>
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<th>RS</th>
<th>I-1 and I-2</th>
<th>RD</th>
<th>R-7.2, R-10, R-12.5</th>
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<td>The total wall signage shall not exceed an area equal to one (1) SF of sign area for each linear foot of building frontage, or three hundred (300) SF, whichever is the lesser. In no instance shall any one sign exceed one hundred fifty five (150) SF</td>
<td>&gt;</td>
<td>Shall not be located higher than, or exceeding ten (10) feet; or any wall sign that projects above the first floor of the structure whichever is lower.</td>
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<td>&gt;</td>
<td>Shall not be located higher than, or exceeding fifteen (15) feet; or any wall sign that projects above the first floor of the structure whichever is lower.</td>
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<td>Any wall sign that projects above the first floor of the structure whichever is lower.</td>
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<td>Freestanding</td>
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<td>Window</td>
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<td>A total number of 2 window signs are permitted.</td>
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<td>Shall not be located higher than, or exceeding ten (10) feet; or any sign that projects above the first floor of the structure whichever is lower.</td>
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<td>Maximum display area shall not exceed thirty percent (30%) of the contiguous window area for each window sign.</td>
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<td>Maximum size: 20 SF</td>
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<td>The aggregate total display area of all window signs does not exceed an area equal to five-tenths (0.5) square foot per linear foot of building frontage.</td>
<td>&gt;</td>
<td>Shall not be located higher than, or exceeding ten (10) feet; or any sign that projects above the first floor of the structure whichever is lower.</td>
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<td>Permanent Changeable Message/Marquee</td>
<td>&gt; Permitted</td>
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<td>Permitted as either a Wall or Freestanding Sign, but not both</td>
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<td>Permitted as either a Wall or Freestanding Sign, but not both</td>
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<td>Freestanding: Max Height: Five feet (5 Ft.). Max Width: Six feet (6 Ft.)</td>
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<td>Wall: Maximum Size: 35 SF</td>
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<td>Wall: The total display area of wall signs for one building shall not exceed an area equal to one (1) square feet of sign area for each linear foot of building frontage, or ten percent (10%) of the total area of the one building façade upon which the sign is located, or one hundred (100) square feet, whichever is the lesser. In no instance shall any one wall sign exceed fifty (50) square feet</td>
<td>&gt;</td>
<td>Freestanding Maximum Sign Size: 35 SF</td>
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<td>Special Sales and Special Event</td>
<td>&gt; Permitted</td>
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<td>Refer to Section 130-81(C)(5) Special Event Signs and 130-81(D)(4) Special Sales Signs for additional requirements</td>
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<td>Max Area: 4 SF</td>
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<td>Permitted: One (1) per business</td>
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<td>Max Height: The top of the sign or sign bracket must not be located higher than fourteen (14) Ft. from the lowest manmade or natural grade.</td>
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<td>Max Area: Six (6) SF per face</td>
<td>&gt;</td>
<td>Vertical Clearance: A minimum of Ten (10) Ft. of vertical clearance shall be provided if the sign is placed over a pedestrian walkway</td>
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<td>Projecting</td>
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<td>Permitted: One (1) per business</td>
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<td>Max Area: Four (4) SF per face</td>
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<td>Max Area: Sixteen</td>
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<td>Distance from road: Ten (10) Ft.</td>
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<td>Distance from road: Ten (10) Ft.</td>
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<td>A-Frame/Sandwich Board</td>
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<td>Max Area: Eight (8) SF per face</td>
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<td>Max Area: Eight (8) SF per face</td>
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<td>Distance from road: Ten (10) Ft.</td>
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<td>Distance from road: Ten (10) Ft.</td>
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Distance from road: Fifteen (15) Ft.
Max Area: Sixteen (16) SF
Distance from road: Thirty (30) Ft.
Distance from road/R OW: Five (5) Ft.
4. All signs permitted by this ordinance shall be maintained in a reasonable manner and shall display a message.

5. Any sign permitted by this ordinance that does not display a message for more than thirty (30) days shall be removed.

6. All signs other than those permitted signs listed in §130-81 B require building permits.

7. No sign except traffic signs placed by public agencies, may be erected, placed, maintained or extended into the right-of-way of any street or highway.

8. No sign shall be erected, placed, or maintained at or near the intersection of any streets in such a manner as to cause a traffic hazard at the intersection; or at any location where, by reason of the position, shape, or color of the sign, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device; or which makes use of the words stop, look, drive-in, left, or any other word, phrase, symbol, or character in such manner as to interfere with, mislead, or confuse traffic.

9. The assembly, placement, and maintenance of all signs along county, state or federal roads shall confirm to the applicable county, state and federal regulations.

10. All signs shall be set back a minimum of ten (10) feet from any lot-line, except where county, state or federal regulations state otherwise, or in instances where the right-of-way line is wider than said lot line, in which case the minimum setback will be determined on a case-by-case basis, unless otherwise specified.

11. Illumination of signs shall not be intermittent/flashing or of varying intensity and may not produce glare beyond the limits of the property lines.

12. No sign shall be permitted over a public driveway or thoroughfare. Signs considered Traffic Control Devices pursuant to 17 NYCRR Transportation Part 200 are exempt from this prohibition.
13. Signs under which a pedestrian walkway or driveway passes must have a ten (10) foot vertical clearance.

14. Sign Orientation
   a. Uses fronting a public road (local arterial): Signs shall be oriented towards and visible from the public road.
   b. Uses within a Shopping Mall: Signs shall be oriented towards and visible from the access road (if any) and/or from the parking lot associated with the plaza.

15. Calculation of Sign Area
   a. Each principal commercial, business, public, or industrial use or an assemblage of uses on one lot involving the use of signs will have a total maximum allowed sign area / square footage as set forth in §130-81.1.
   b. All signs associated with a principal use or an assemblage of uses on one lot are counted towards the maximum allowed sign area.
   c. The total area for all permitted signs, shall be calculated using each face of the sign (unless specifically stated otherwise in this Chapter). Only the area dedicated to the sign shall be calculated towards the permitted sign area and not the support structures, unless said support structures are integrated into the sign message. For signs consisting of individual letters, symbols, objects, etc., the total area shall be measured by calculating the area encompassed within one polygon (having the smallest possible number of vertices) drawn around all of the elements of the sign. Refer to Figures 1 and 2 for a graphic depiction of the correct and incorrect methods for calculating permitted sign area.
d. In no case shall individual letters, symbols, objects, or any other individual component of any permitted sign be calculated separately from the other components of the same sign.

16. Calculation of Sign Height (Refer to Figure 3 Measuring Sign Height and Width for further guidance)

a. The height of a sign shall be measured from the lowest finished or natural grade at the location of the proposed sign to the highest part of the sign including any appurtenances of the sign structure. For the purposes of calculating sign height, finished grade shall be construed to be the lower of (1) existing grade prior to construction, and (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. The elevation at grade at the sign location shall be made part of the topographic data submitted for the site plan consideration.

b. Planters and other landscaping features associated with a sign which results in an increase the overall height of the sign (when measured from the lowest natural or manmade grade below a
pedestal, planter or landscaping feature) will be calculated towards the overall height of the sign.

c. The provisions of this section shall not apply to safety signs, road signs, historical markers, or highway directional signs erected by municipal or public agencies.

17. Calculation of Sign Width (Refer to Figure 3 Measuring Sign Height and Width for further guidance)

a. The width of any sign shall be measured from the widest points on either side of the sign including any appurtenances of the sign structure itself with the exception of planters or pedestals.

b. The provisions of this section shall not apply to safety signs, road signs, historical markers, or highway directional signs erected by municipal or public agencies.

C. The following signs shall be permitted in any district without a building permit unless the use or uses associated with such signs are specifically prohibited from the involved district or such use requires further approval pursuant to this Chapter:

1. On-site real estate signs: maximum eight (8) square feet, and no higher than four (4) feet for residential uses, maximum thirty (30) square feet, and no higher than five (5) feet for business and industrial uses.
2. Signs denoting architect, engineer, contractor, etc., when placed upon the premises where the construction is proposed or underway. Such signs shall be removed within thirty (30) days after construction is completed. These signs shall be no larger than thirty-two (32) square feet in area, and no higher than five (5) feet.

3. Signs associated with the sale of seasonal agricultural crops.

4. Traffic or other municipal signs, legal notices, and such temporary or non-advertising signs for government purposes.

5. Political signs: maximum six (6) square feet, shall not be displayed until 90 days prior to the election, shall be removed within (1) week after the election, shall not be located nearer than five (5) feet to any lot line, and shall not project more than four (4) feet above grade.

6. Special event signs:
   
   a. Special event signs shall include only the following signs as they are defined by this Chapter:
      i. banners;
      ii. A-frames/T-frames;
      iii. curb or sidewalk signs; and
      iv. sandwich boards.

   b. Special event signs may be displayed for the following events without a building permit:
      i. craft shows;
      ii. fairs and carnivals;
      iii. antique car shows;
      iv. other events considered similar in nature and scale by the Code Enforcement Officer.

   c. Special event signs may be displayed for a period not to exceed three weeks, and shall be removed within one week after said event.

   d. Special event shall not exceed twenty (20) square feet in area and shall not be higher than five (5) feet.
7. All signs, certificates, and licenses that are mandated to be on display by any local, county, state, or federal law or authority.

8. Fuel pump price signs no larger than the minimum size required by NYS Law.

9. Nameplate Signs: A dwelling unit in which a home occupation is permitted may display an on-site sign noting such occupation. Such sign shall be mounted at the business entrance of the dwelling and shall be no more than two (2) square feet in area.

10. Temporary subdivision signs. Any person offering lots for sale in an approved subdivision may erect an on-site non-illuminated sign not to exceed twenty (20) square feet in area per sign face, and no higher than five (5) feet. Such signs shall be removed within four years of being installed or once fifty (50) percent of the lots are sold, whichever is sooner.

11. Permanent subdivision identification signs. One on-site identification sign may be erected per subdivision, shall not exceed twenty (20) square feet in area per sign face, and shall be no higher than five (5) feet.

12. Civic, religious, educational, institutional, social, membership clubs, and similar facilities may display one on-site sign. The area of such sign shall not exceed twenty (20) square feet in area per sign face, and shall be no higher than five (5) feet.

D. The following signs subject to Site Plan Review are permitted in any district unless the use or uses associated with such signs are specifically prohibited from the involved district pursuant to this Chapter:

1. An apartment complex or manufactured/mobile home park.

   a. One (1) principal on-site identification sign is permitted with a maximum size of twenty (20) square feet per sign face, and a maximum height of five (5) feet.

   b. A second principal on-site identification will require a special use permit. such signs shall not exceed twenty (20) square feet in area per sign face, and shall not be higher than five (5) feet.
2. A “V”-type sign may be used for Apartment complexes or manufactured/mobile home parks under the following conditions (refer to Figure 4 for additional information):

a. “V”-type signs shall be treated as one sign with twenty (20) square feet permitted for each face, if the sign structures or facings are physically contiguous, or connected by the same structure or cross bracing. However, nothing in this section shall be construed to allow tri or quad-faced signs.

b. The angle between the two outer surfaces of a “V”-type sign shall not exceed 90 degrees. If said angle exceeds 90 degrees, the sign shall be considered two signs.

Figure 4 “V” Shaped Sign

Display Faces

90°
3. Directional signs:
   
a. Two (2) on-site directional signs permanently affixed to the ground and designed to be permanently affixed to the ground, each not exceeding four (4) square feet in area per sign face, indicating or calling attention to traffic entrances and exits, provided that, if illuminated, such illumination shall cease at the close of business hours or 11:30 p.m., whichever is later.

   b. Such signs shall not carry any advertisement, except that a maximum of twenty five (25) percent of the sign may be dedicated to the business logo/insignia and/or name.

   c. Such signs shall not be located nearer than five (5) feet to any lot line, and they shall not project more than four (4) feet above grade.

4. Special sales signs:
   
a. All permitted special sales signs require building permits

   b. Special sales signs will only be allowed for the following events:
      i. daily and/or weekly merchandise, food and restaurant specials;
      ii. grand openings;
      iii. liquidations;
      iv. going out of business; and
      v. fire sales;

   c. The following types of special sales signs permitted by this ordinance shall only include the following:
      i. banners;
      ii. A-frames/T-frames;
      iii. curb or sidewalk signs; and
      iv. sandwich boards.

   d. Non-permitted special sales signs include the following:
      i. figures;
      ii. balloons and other inflatable objects;
      iii. pinwheels;
      iv. spot lights; and
v. other similar items clearly designed to draw attention to a location.

e. No more than two (2) special sale signs shall be allowed for any of the above permitted events per principal business.

f. Each special sales sign shall be no larger than thirty-two (32) square feet as measured on each face of the sign.

g. The sign area of permitted special sales signs shall not be counted towards the maximum sign area permitted for the individual use.

h. Permitted special sales signs:
   i. Shall not be permanently affixed to the ground or sign surface;
   ii. Shall only be displayed for a total of three (3) weeks; and
   iii. Shall be removed within one (1) week following the event.

D. Signage for Theatres and Performing Arts Centers (Freestanding and Wall Signs only (including Permanent Changeable Message Signs and Marquees)
   1. Theaters and performing arts centers shall be allowed to increase their permitted sign area of either a wall or freestanding sign (not both) by an additional three (3) square feet per screen or stage per sign face, only for the purposes of displaying a listing of movies or performances currently featured at the theater or performing arts center.

   2. At no time shall the permitted height of the sign be exceeded.

   3. The increase in sign area permitted above shall not be counted towards the overall maximum allowed sign area.

E. Non-Conforming, Abandoned and Illegal Signs

   1. Bringing Non-Conforming Signs into Compliance

A non-conforming sign is a sign erected prior to the original enactment date of this Zoning Ordinance (May 10, 1983 as L.L. No. 1-1983) and all subsequent amendments thereto which does not conform to the provision contained herein.
2. Removal of Specific Non-Conforming Signs

a. Pursuant to the April 2001 Amendments to this Chapter, High Rise Signs as defined by this Chapter (formerly referred to as Pole Signs or Pole Mounted Signs) are now prohibited in the Town Center, B-1 (formerly BH-1), B-2 (formerly BH-2) and Regional Service Districts, as said Districts existed upon the enactment of the April 2001 Amendments. All such signs should have been removed by April 2004.

b. Pursuant to the December 2003 Amendments to this Chapter, new High Rise Signs as defined by this Chapter (formerly referred to as Pole Signs or Pole Mounted Signs) that were not prohibited under the April 2001 Town Board Amendments are now prohibited in the B-3, Multi-Use, Regional Service, and Industrial Districts, as said Districts existed upon the enactment of the December 2003 Amendments. Any existing High Rise Sign in the B-3, Multi-Use, Industrial –1 and Industrial 2 Districts, along with the Regional Service District that occupies the commercial area north of NYS Route 415 at the I- 86/NYS Rt. 415 Interchange (formerly zoned as Business Highway prior to the December 2003 Amendments) shall be removed by December 16, 2006.

c. Pursuant to the October 2005 Amendments to this Chapter, any of the following signs currently being displayed shall be considered nonconforming and must be removed by October 2008:

   i. Translucent canopy (constructed of plastic or similar material) with or without backlighting.

   ii. Roof Signs

   d. Pursuant to the October 2005 Amendments to this Chapter, any of the following signs currently being displayed shall be considered nonconforming and must be removed by October 2006

   i. Portable changeable message signs
e. Pursuant to the October 2005 Town Board amendments to this Chapter, any of the following signs currently being displayed shall be considered nonconforming and must be removed by December 2005

i. Temporary Advertising Signs

ii. Banners not permitted pursuant to §130-81(B)(9

iii. Signs consisting of one or more of the following components:
  > Balloons and other inflatable objects;
  > Pinwheels;
  > Spot lights; and
  > Other similar items primarily designed to draw attention to a location.

3. Abandoned Signs

Any sign now or hereafter existing which no longer advertises a bonafide business conducted, or a product sold shall be removed by the owner, agent, or person having the beneficial use of the building or structure upon which such sign may be found within sixty (60) days after written notification from the Code Enforcement Officer. Upon failure to comply with such notice within the time specified in such order, the Code Enforcement Officer is hereby authorized to cause removal of such sign. Any expense incident thereto shall be paid by the owner of the building or structure to which such sign is attached.

4. Sign Variances:

a. A use variance will be required for the following:
   i. To allow for the construction, placement or continued use of any sign that is either specifically prohibited, illegal or is not specifically mentioned as being permitted in a particular Zoning District as stated in §130-81 Signs;
   ii. To allow for the construction of a sign in the RS, I-1 and I-2 Districts proposed to be greater than 16 feet in height.
   iii. To allow for the construction of signs in a non-RS, I-1 and I-2 Districts proposed to be greater than 12 feet in height.
b. An area variance will be required for the following:
   i. To allow for the construction of any sign in an RS, I-1, or I-2 District that is proposed to be greater than 12 feet but not greater than 16 feet.
   ii. To allow for the construction of any sign in a non-RS, I-1 or I-2 District that is greater than 8 feet in height but is not greater than 12 feet.
   iii. To allow for the construction, placement or continued use of any sign that exceeds the dimensional requirements as they are set forth in §130-81 Signs with the exception of (b)(i)(ii) above.

SIGNAGE – Example of permitted signs:

**Freestanding / Monument**

**Projecting Signs**

**Portable A-Frames**
SIGNAGE – Example of permitted signs (continued):

Permanent Changeable Message/Marquee

Awning/Canopy Signs
SIGNAGE – Example of prohibited Portable Roadside Changeable Message Sign:
§ 130-82. **Solar Energy Systems and Solar Access.**

To the maximum extent possible, all new development proposals totaling ten (10) or more acres shall be designed so that the maximum number of buildings can receive direct sunlight sufficient for using solar energy systems for space, water, or industrial process heating or cooling. New buildings and vegetation should be sited with respect to each other and the topography of the site so that unobstructed direct sunlight reaches the southern exposure of the greatest possible number of buildings according to the following standards:

A. Solar access shall be protected between the solar azimuths of minus forty-five degrees (-45°) (east of due South) to plus forty-five degrees (+45°) (west of due South).

B. In considering dimensional modifications permitted in Articles VI and VII, the Planning Board shall also consider solar access and design considerations.

C. For purposes of solar access, streets, lots, and building setbacks should be designed so that the buildings are oriented with their long axes running from east to west for single-unit development and north to south for townhouse and multi-unit development.

D. In order to maximize solar access, the highest densities shall, to the maximum extent possible, be placed on the south-facing slopes with lower densities sited on north-facing slopes.

E. Streets should be oriented on an east-west axis to the greatest possible extent.

F. Buildings shall, to the greatest extent possible, be sited as close to the north lot line or lines as possible to increase yard space to the south for better owner control of shading.

G. Tall buildings shall, to the greatest possible extent, be sited to the north of shorter ones and be buffered from adjacent development.

H. Existing vegetation shall be retained and incorporated into the design as practicable.
I. A description of any mechanisms, such as deed restrictions, covenants, etc., that are to be applied shall be provided.

§ 130-83. Steep Slopes.

The Town of Erwin is characterized by numerous steep slope [fifteen percent (15%) or greater] areas. Special design treatment for streets, building sites, and other development is needed to preserve the natural terrain, trees, rock formation, scenic views, etc. Development on steep slopes will be subject to the following guidelines:

A. Development proposals shall be of sufficient detail to show site work (cut and fill), housing site location, erosion and drainage control measures (terraces, sediment basins, diversions, retaining walls, stream channel improvement, etc.), and road location (including cross sections).

B. Padding, which is the creating of level building sites, shall be permitted only when it can be clearly demonstrated by exhibits that the final treatment of the site will not reflect an unfavorable environmental impact and/or an unfavorable visual appearance.

C. Design principles shall include, but will not be limited to the following:

1. Landscaping of areas around structures, making them compatible with the natural terrain.

2. Shaping, grouping, and placement of man-made structures to complement the natural landscape.

3. Arranging buildings so that they complement one another to promote visual interest. Clustering of residential units and multiple dwellings shall be encouraged to house a given population with a minimum spoilage of land. The developer shall first of all determine the qualities of the site and then plan and build to accentuate these qualities rather than destroy them.
4. Shaping of essential grading to complement existing landforms and prohibit any appearance of excessive padding, terracing, or other similar forms for building sites in the hill area.

5. Encouraging the development of off-street parking bays.


7. Using streets with lanes at different grades divided by landscaped medians when consistent with traffic safety, circulation needs, and natural topography.

This guideline allows for a smaller road right-of-way, less cut and fill within a given area and a highway network consistent with the natural terrain. Roads shall be parallel with the hillside wherever possible and have variable-width rights-of-way. This not only provides the most economical routing but also minimizes the amount of grading required.

8. Land that is in excess of twenty-five percent slope shall not be developed as individual residential lots. Land with slopes between fifteen (15) and twenty-five (25) percent shall be avoided. Clustering of dwellings on land with less than a fifteen (15) percent slope shall be considered to avoid these areas.

9. Outstanding natural features such as the highest crest of the hill range, natural rock outcroppings, particularly desirable vegetation, etc. should be retained.

§ 130-84. Storm Water Drainage Systems and Erosion Control.
(Amended 10-11-05)

A. Drainage systems. The following standards are intended to ensure that storm water runoff is safely conveyed through a development site, to minimize streambank erosion, and to reduce flooding related to land development and urbanization. The standards for storm water drainage systems are as follows:

1. The release of storm water runoff from a developed area should not exceed pre-development conditions. To accomplish this, storm water
runoff should be controlled so that during and after development, no greater peak flow will be discharged from the project site than was discharged prior to the development. The “Town of Erwin Drainage Standards for Land Development” shall apply.

2. Any new or modified drainage channel or storm water facility shall have sufficient capacity to accommodate the potential future runoff based upon the probable land use and ultimate development of the total watershed area upland of the development.

3. Priority should be given to maintaining natural drainage systems, including perennial and intermittent streams, swales, and drainage ditches.

4. The use of fountains in basins and ponds that will accumulate stagnant water shall be required to provide adequate aeration.

5. Any existing storm water management system including a swale, ditch, basin, pond, drywell, catch basin, stream, or other system component shall be maintained in such a manner as to be functional.

6. No building or structure shall be erected, altered, or moved within any drainage course, including a swale, ditch, or stream.

7. All structures shall have a minimum setback of fifty (50) feet from the stream bank.

8. If storm water management facilities are to be maintained by an owner or homeowner’s association, a maintenance plan containing a maintenance schedule shall be prepared and approved by the Town.

9. The Town shall inspect drainage systems and drainage structures before, during and after construction to assure that all Town specifications and requirements are met. Any portion of the work, which does not comply, shall be promptly corrected by the applicant.

10. Utilizing the drainage guidelines outlined above, the Planning Board may require the developer to submit the following:
a) Drainage conditions, plans, design data, calculations, and other information specified in the “Drainage Standards for Land Development.”

b) A description of the arrangements that will be made for ensuring long-term maintenance of storm water management facilities. Those responsible for performing maintenance should be identified.

c) Storm water management facilities maintained by an owner or homeowner’s association shall have adequate easements to permit the Town to inspect and, if necessary, to take corrective action should the owner fail to properly maintain the system.

B. Erosion and sediment control. The goals for erosion and sediment control are:

1. To minimize the opportunity for the soil to be moved by wind, precipitation and runoff.

2. To contain sediment that does move as close as possible to its place of origin and, prevent it from reaching a water body or damaging other lands.

In order to ensure that the land will be developed with a minimum amount of soil erosion and to protect the natural character of on-site and off-site water bodies, the Planning Board shall require the developer to prepare and implement an erosion control plan that is consistent with provisions in the “Drainage Standards for Land Development.” The erosion and sediment control standards are as follows:

1. Existing vegetation on a project site should be retained and protected as much as possible to minimize soil loss from the project site. (This will also minimize erosion control costs.)

2. The off-site impacts of erosion and sedimentation from the development site should not be any greater during and following land disturbance activities than under pre-development conditions.
3. Water in streams on-site and downstream of construction areas should not have substantial visible contrast relative to color, taste, odor, turbidity, and sediment deposition from upstream of the construction area.

4. Sediment laden runoff should not be allowed to enter any water body in such quantity that would result in deposition on the bottom of the water body, degrade its natural biological functions, or be harmful to the classified usage of the water.

5. Erosion and sediment control measures should be constructed prior to beginning any land disturbances. All runoff from disturbed areas should be directed to the sediment control devices. These devices should not be removed until the disturbed land areas are stabilized.

6. The Town shall inspect erosion and sediment control practices during and after construction to assure that all Town specifications and requirements are met. Any portion of the work, which does not comply, shall be promptly corrected by the applicant.

C. Off-site drainage and sediment control facilities. The Town may allow storm water runoff or sediment leaving the site to exceed the Town’s performance standards if the runoff is discharged into storm water management facilities off the site and all of the following conditions are met:

1. It is not practicable to completely manage runoff on-site in a manner that meets the Town’s performance standards.

2. The off-site drainage facilities and channels leading to them are designed, constructed and maintained in accordance with the requirements of this Law and the “Drainage Standards for Land Development.”

3. Adverse environmental impacts on the site of development will be minimized.
4. A request to use off-site storm water management facilities and relevant information about to the proposed off-site facilities shall be submitted to the Planning Board.

D. Flood hazard prevention. In order to prevent inundation by floodwaters and excessive ground water seepage, the following precautions shall be implemented:

1. When a land development project is within or adjacent to a Special Flood Hazard Area (as defined on the most recent updated version of the Town’s Flood Insurance Rate Map), all development (including filling, paving, and storage of equipment and materials) shall be in compliance with provisions set forth in Chapter 69, Flood Damage Prevention.

2. When a land development project is within or adjacent to any area with known flooding problems or known high ground water, the elevations of buildings shall be above the observed, anticipated or computed water levels. The effect of such development on upstream and downstream reaches of the watercourse and adjacent properties shall be considered and adequate protective measures shall be implemented.

3. Any development that is located within 100 feet of a protected wetland, as delineated on the NY State Freshwater Wetlands Map, shall be in compliance with all New York State regulations and permit requirements.

4. Any development that results in the loss of 1/3 acre or more of waters or wetlands (including areas of hydric soils as indicated on the Soil Survey of Steuben County), shall be in compliance with all U.S. Army Corps of Engineers regulations and permit requirements.
§ 130-85. Streets.

A. Street Arrangement.

1. Street systems shall be designed with due regard to the needs for convenient traffic access and circulation; traffic control and safety; access for fire fighting, snow-removal and street-maintenance equipment; and storm water drainage and sewage disposal. Streets shall be designed to accommodate the prospective traffic and so arranged as to separate through traffic from neighborhood traffic insofar as it is practicable.

2. Special consideration must be given to the traffic generated by each proposed use in an Industrial District, and no undue traffic volumes shall be permitted on residential streets. Such data is to be submitted with the site plan. No access drive for an Industrial District shall be within three hundred (300) feet of and on the same side of the street as an existing school, public library, theater, church or other public gathering place, park, playground, or fire station unless a street fifty (50) feet or more wide lies between such access drive and such building or use.

3. The streets in contiguous developments shall be coordinated so as to compose a convenient system. Where a development adjoins undeveloped land, its streets shall be laid out so as to provide suitable future street connections with the adjoining land when the latter shall be developed. A street thus temporarily dead-ended shall be constructed to the property line and shall be provided with a temporary turnaround of the same dimensions as for permanent dead-end streets if in excess of two hundred (200) feet, with a notation on the Site Plan providing for temporary easements for the turnaround until such time as the street is extended.

4. Streets shall be logically related to the topography, and all streets shall be arranged so as to access as many as possible of the building sites at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography. A combination of steep grades and sharp curves shall be avoided.
5. Where a development abuts on or contains an existing or proposed major road, the Planning Board may require marginal access streets, reverse frontage with screen planting contained in a non-access reservation along the rear property line, deep lots with or without rear service alleys, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

6. Where a development borders or contains an existing or proposed railroad right-of-way or controlled access highway right-of-way, the Planning Board may require a street approximately parallel to and on each side of such right-of-way, at a distance suitable for the appropriate use of the intervening land, as for park purposes in residential districts or for business, commercial or industrial purposes in appropriate districts. Such distances shall also be determined with due regard for the requirements of approach grades and future grade separations.

B. Standards for street design. All streets shall be designed and constructed to conform to New York State and town specifications, which are found in the “Standard Specifications for Highway Construction, Water Distribution, and Wastewater Collection Systems Construction, Town of Erwin.” The Town Highway Superintendent shall approve all street design and construction.

C. Sidewalks and walkways. Concrete sidewalks at least four (4) feet wide may be required on one or both sides of minor streets. They may also be required within pedestrian easements through blocks to provide a system of pedestrian walkways to schools, parks and other community facilities. Sidewalks should be two (2) feet from the property line inside the right-of-way, unless the adjacent street is a state or county highway, in which case the sidewalk shall be placed adjacent to and outside of the right-of-way. Sidewalks within pedestrian easements shall be generally centered within the easement.

Sidewalks and walkways in the B1, B2, B3, MU, TC, and RS Districts shall conform to the design standards set forth in § 130-89 Development Standards.
As an alternative to sidewalks, minor streets may also be widened to allow the designation, by signage or pavement striping, of a walkway for pedestrian or bicycle use. See “Standard Specifications for Highway Construction, Water Distribution, and Wastewater Collection Systems Construction, Town of Erwin” for widths and construction details.

D. Street names and signs. All streets shall be named, and such names shall be subject to the approval of the Town Board. A street, which is a continuation of an existing street, shall bear the same name. Relating street names to features of local historical, topographical or other natural interest is encouraged. Street signs shall be provided by the developer at all intersections and shall be of a type approved by the Town Superintendent of Highways.

E. Street improvements, general. In addition to the required improvements specifically referred to elsewhere in this chapter, site plans shall provide for all other customary elements of street construction and utility service, which may be appropriate in each locality as determined by the town. Such elements may include, but shall not be limited to street pavement, gutters, storm water inlets, manholes, curbs, sidewalks, street lighting standards, water mains, fire hydrants, fire alarm signal devices, and sanitary sewers. Underground utilities within the street right-of-way shall be located as required by the town, and underground service connections to the property line of each lot shall be installed before the street is paved. All street improvements and other construction features of the development shall conform to the “Standard Specifications for Highway Construction, Water Distribution, and Wastewater Collection Systems Construction, Town of Erwin” and shall be subject to approval by the Highway Superintendent.

F. Widening of existing street right-of-way. Where a development adjoins an existing street which does not conform to the right-of-way standards set by town specifications, the developer shall dedicate whatever additional right-of-way width is necessary to provide, on the development side of the normal street center line, a width which is equal to at least one-half (½) of the minimum standard width for the respective type of street.

G. Typical road section. The typical section approved by the Town Highway Superintendent shall be used for all roads. Pavement and right-of-way
widths shall vary with the type of use. See the “Standard Specifications for Highway Construction, Water Distribution, and Wastewater Collection Systems Construction, Town of Erwin” for standards.

H. Designation of streets. Every street shown on a site plan that is hereafter filed in the office of the County Clerk shall be deemed to be a private street until such time as it is formally accepted as a public street by resolution of the Town Board or alternatively condemned by the municipality for use as a public street.

§ 130-86. **Timber Harvesting.**

(Amended 12-16-03)

A. Purpose.

The Town of Erwin recognizes that the timber resource in the Town is a renewable resource of significant value and will be harvested over the course of time. The Town also recognizes that if timber-harvesting practices are poorly conducted, they can result in significant damage to adjacent lands, to water quality, and to public roads. Thus, the purpose of this law is to regulate those harvesting activities that hold the greatest potential for causing damage to neighboring lands, water quality, and public roads.

B. Notification Application

1. Required Application. It is hereby required that any landowner desiring to conduct timber harvesting shall notify the Code Enforcement Officer, in a manner prescribed by the Town, of such intent not less than ten (10) days prior to the commencement of such harvesting operations. Landowners and loggers not following the Town’s application process shall be liable for fines and court costs.

2. Application Forms. This notification must be made by the landowner or his designated representative on forms prescribed by the Town. The landowner is encouraged to enlist the services of a professional forester; to practice sound forest management; to utilize a written contract for the sale of forest products; and to
follow the *Timber Harvesting Guidelines for New York*, and in particular, the following guidelines:

a) Use temporary culverts, bridges, or runways where stream bottoms or banks might be damaged; remove them after use.

b) Avoid cutting trees and destroying under-story within ten (10) feet of the stream bank. This keeps the banks in place and shades the water.

c) Do not skid up and down the channel of an intermittent or year-round stream.

d) Fell trees so the tops land away from the stream. Keep debris out of the water and skidders farther away from the banks.

e) Remove logging debris from the water, so stream flow is not affected.

3. Information Provided by the Town. At the time of notification, the Town shall provide each applicant with the following information:

a) Sources of professional forestry assistance including NYSDEC.

b) Harvesting and marketing information.


d) Excerpts from State and Town Highway Law currently in force.

4. Erosion/Sediment Control Plans. At the request of the landowner, the Steuben County Soil and Water Conservation District may prepare Erosion and Sedimentation Control Recommendations which shall include estimated costs of deploying such plan and alternative measures, at a cost as charged by the S&WCD, if any.
5. **Town Signature.** The Code Enforcement Officer shall sign the Notification application, provide a copy to the applicant and retain a copy and issue a permit to be displayed at the site and a permit to be displayed in each log truck. The Notification shall expire one year from its date of issuance.

6. **Security Deposit Required.** **BEFORE ANY COMMENCEMENT OF TIMBER REMOVAL,** a security deposit as determined by the Town Highway Superintendent is payable to the Town of Erwin, unless the applicant provides evidence he/she has hired a Professional Forester. Upon completion of the logging operation, the logged area must be restored to a reasonable condition within fifty (50) feet of any public road. Upon restoration of the logging site to the satisfactory inspection of the Code Enforcement Officer and the Town Highway Superintendent, the security deposit will be refunded.

7. **Clear cutting.**
   a.) On property larger than five (5) acres, up to thirty-three percent (33%) of the land may be clear-cut in the initial clear-cut operation.

   b.) After five (5) years has elapsed, up to an additional thirty-three percent (33%) of the land may be clear cut and, on the remaining strips of land in the same tract, trees harvested must be at least sixteen (16) inches in diameter.

   c.) In addition, for clear-cutting tracts of land larger than five (5) acres, applicant must provide evidence he/she has hired a Professional Forester.

   d.) On property five acres or smaller, clear cutting is permitted.

C. **Notification Information**

1. Name, address, and telephone number(s) of the landowner(s).
2. Name, address, and telephone number(s) of landowner’s designated representative, if applicable.

3. Name, address, and telephone number(s) of harvesting contractor. If not known at the time of notification, it must be provided to the Code Enforcement Officer prior to the commencement of any harvesting activities.

4. A description or sketch map of the location of the property; the area to be harvested; and the location of the product loading area(s) (landings).

5. The name(s) of the road(s) from which logging trucks will be entering the property and onto which logging trucks will be exiting the property.

6. The dates between which harvesting is to take place.

7. Evidence of New York State Department of Environmental Conservation (NYSDEC) Article 15 Stream Disturbance Permit, if applicable.

8. Evidence of NYSDEC State Pollutant Discharge Elimination System (SPDES) permit, if applicable.

9. Evidence of liability and compensation insurance in effect before logging commences.

D. Other Applicable

Other Applicable Laws. All logging operations and associated transportation of equipment and/or forest products shall be subject to all applicable federal, state, and local laws relating but not limited to timber harvesting, erosion and sedimentation, water quality, and damage to private and/or public property.

E. Roads
1. **Applicable Laws.** All timber harvesting operations shall comply with all applicable clauses of the Highway Law, Vehicle and Traffic Law, and other existing statutes.

2. **Prohibitions.** In addition, for purposes of public safety and protection of public property, the loading of logs, firewood, pulpwood, or other forest products within the public road right-of-way is prohibited.

§ 130-88. **Utilities.**

A. **Water supply and sewage disposal.** Provisions for water supply and sewage disposal shall comply with the “Standard Specifications for Highway Construction, Water Distribution, and Wastewater Collection Systems Construction, Town of Erwin,” the New York State Health Department, and/or the New York State Department of Environmental Conservation.

B. **Underground installation.**

   1. Underground installation shall be required where site conditions allow.

   2. All underground installations of utilities shall be placed at a great enough distance from each other and water, sewer, and storm drainage installations as to make them safely accessible for maintenance and repair work.

C. **Drainage systems.** Adequate and comprehensive drainage systems shall be provided to convey the storm water runoff in accordance with §130-83 Storm Water Drainage Systems and Erosion Control.
§ 130-89. Design Standards for Selected Districts.
(Amended 12-16-03, 10-11-05)

A. Overall Intent. The Town Board declares its intent to adopt design standards that apply to the Town Center (TC), Business 1 (B1), Business 2 (B2), Business 3 (B3), Multi-Use (MU), Regional Service (RS) and Industrial Districts (I-1 and I-2) in the community. The Board’s purpose is to encourage a mix of uses within the designated districts with an emphasis on improved site design, greater economic activity, and more dynamic social interaction. Within the designated districts, regulation will be largely based on form and impact of development as well as use.

1. The standards provide design criteria and suggest development approaches, which will help both the Town, and applicants consider issues of site organization, site design, public spaces and architecture. The purposes are to:

   a) Continue to attract appropriate development in order to expand the economic and fiscal base of the community in a manner that maintains the unique character of the town with a high quality of life;

   b) Encourage the highest quality of architectural and site design that is compatible with their surroundings;

   c) Encourage buildings that provide an appropriate transition between the commercial area of the Town and the surrounding neighborhoods;

   d) Encourage buildings that are protective of important open space resources and that avoid or minimize adverse impacts;

   e) Establish a clear and consistent method for reviewing plans for new buildings and renovation or alteration of existing buildings and sites;
f) Reduce delays and confusion that developers, property owners, or business operators may encounter during the design phase of the proposed projects; and


g) Minimize land use conflicts.

B. Permitted Uses. All permitted uses are listed in Article IV § 130-11 and are subject to Site Plan Review pursuant to Article IX of this ordinance.

C. Non-Conforming Uses. Any use, which was a non-conforming use at the time of enactment of this amendment, shall be considered a pre-existing, non-conforming use and may continue to exist under such status. Any use that was not in lawful existence at the date of this enactment shall continue to be unlawful.

D. Organization of this Section. The tables on the following pages list the detailed design requirements by district. Graphic examples of selected design elements can be found following the table.
### A. SITE ORGANIZATION

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<tbody>
<tr>
<td>1. Building Front Yard Setback and Orientation</td>
<td>SEE GRAPHIC A. (i)</td>
<td>Front Yard Setback</td>
<td>Front Yard Setback</td>
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<td>Front Yard Setback</td>
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<td>1. Zero (0) feet from right-of-way/property line</td>
<td>Same as Town Center</td>
<td>Building may be perpendicular to sidewalk to allow parking at the side (see off-street parking below)</td>
<td>Same as B-1</td>
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<td>SEE GRAPHIC</td>
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<tr>
<td>- 20' Planting Strip</td>
<td>- 24' Internal Access Road</td>
<td>- Sidewalks Required on North Side Within Building Setback</td>
<td>- Sidewalks Required on North Side Within Building Setback</td>
<td>- Sidewalks Required on North Side Within Building Setback</td>
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<tr>
<td>- 6' Sidewalk in Front of Building</td>
<td>- Connections to Town-Wide Trail System Required</td>
<td>- Provide for Internal Parking Lot Connections and Coordinated Curb Cuts</td>
<td>- Provide for Internal Parking Lot Connections and Coordinated Curb Cuts</td>
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<tr>
<td>- No Front Parking</td>
<td>- No Displays</td>
<td>- No Display Areas</td>
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<td>- No Parking In Front</td>
<td>- Provide For Shared Internal Access Roads and Curb Cuts</td>
<td>( \text{Max. 90'} \text{ Setback from right-of-way/property line:} )</td>
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<td>- Front Displays Allowed Beyond 50' of right-of-way/property boundary</td>
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<td>TWIN VALLEY:</td>
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<td>- No Front Parking or Front Displays Within Setbacks</td>
<td>( \text{Min. 50'} \text{ from right-of-way/property line to allow for sidewalk and planting strip.} )</td>
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<td>( \text{Min. 50'} \text{ from right-of-way/property line facing Rt. 415 to allow for sidewalk and planting strip.} )</td>
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<td>( \text{New Construction Greater Than 30,000 S.F. = Min. 30'} \text{ Setback from right-of-way property line facing Rt. 415 to allow for sidewalk and planting strip.} )</td>
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<td>ERWIN HOLLOW ROAD</td>
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<td>( \text{Min. 18'} \text{ Setback from right-of-way/property line facing Erwin Hollow Road, or any internal access road.} )</td>
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<td>CANADA RD/HAMILTON ST. AREA</td>
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<tr>
<th>Building (continued)</th>
<th>Town Center</th>
<th>B1 S. Hamilton St. Community Service</th>
<th>B2 Office/Commercial Canada Rd.</th>
<th>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</th>
<th>MU Multi-Use Victory Highway</th>
<th>Regional Service</th>
<th>Industrial – 1 &amp; 2</th>
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<tbody>
<tr>
<td>Orientation</td>
<td>Buildings must present their main facade towards the main ingress and egress road or be consistent with the orientation of surrounding buildings. The Planning Board shall have full discretion with respect to building orientation.</td>
<td>Orientation</td>
<td>Same as Town Center</td>
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<td>Same as Town Center</td>
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<td>Alternative for buildings fronting more than one adjacent arterial and major road and collector street from which the buildings would be both accessible and visible:</td>
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<td>Orientation</td>
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<td></td>
<td>Such buildings must present their main building façade towards the closest arterial, road,</td>
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<td>Highway:</td>
<td>- 5' Planting Strip</td>
<td>Use Permits and must be placed on pervious surfaces.</td>
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<td>➢ On-Street Parking Allowed</td>
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### Building (continued)

The closest arterial, road, or street. The remaining facades facing additional arterials, roads, or streets must be enhanced pursuant to the recommendations of the Planning Board to avoid blank/stark building appearances (including windows and service entrances).

### ii. Street Organization and On-Street Parking

**SEE GRAPHIC A. (ii)**

#### Primary Street Dimensions (Maximum Distances in Order)

- Two 12’ travel lanes = 24’
- Two 10’ parking lanes = 20’
- Two 5’ planting strips (*) = 10’
- Two 10’ sidewalks (*) = 20’
- Total right of way requirements = 74’ (37’ from the center line to back edge of sidewalk)

#### Secondary Street Dimensions (Maximum Dimensions in Order)

- Two 10’ travel lanes = 20’
- Two 5’ planting strips (*) = 10’
- Two 5’ sidewalks (*)
### Town Center
- **B1 S. Hamilton St. Community Service**
- **B2 Office/Commercial Canada Rd.**
- **B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.**
- **MU Multi-Use Victory Highway**
- **Regional Service**
- **Industrial – 1 & 2**

**next page Street Organization and On-Street Parking (continued)**

- Location: Rear of building
  - Total right of way requirements = 40’ (20’ from the center line to back edge of sidewalk)
- (*) Refer to Site Design – Public Spaces for more information on sidewalk requirements.

### Off-Street Parking

**SEE GRAPHIC A. (iii) and A (iv)**

- ** iii. Off-Street Parking**
  - Location: Rear of building
    - Side of building if overflow parking required
  - If at side of building: Minimum five foot (5’) landscape buffer between parking area and back edge of the sidewalk.
  - Dimensions: ten feet (10’) by eighteen feet (18’) max. All other dimensional requirements, as set forth in §130-7.8, must be complied with.
  - Alternative parking stall dimensions and designs are encouraged and shall require approval by the Planning Board.
  - Consider requiring spillover areas for larger parking lots and promote use of alternative paving materials in these areas. Pervious materials, such as permeable pavement, grass pavers, grass, and gravel, are usually less durable than traditional

**Regional Service**

- **rt. 415 District:**
  - **All New Construction:**
    - 30,000 square feet or less = parking required in rear or side
    - Greater than 30,000 square feet = parking allowed in front.
  - **Canada Rd.:**
    - 30,000 square feet or less = parking required in rear or side
    - Greater than 30,000 square feet = parking allowed in front.

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<td>paving materials, and are appropriate for less traveled spillover parking areas. Pervious paving materials can infiltrate storm water runoff while simultaneously providing a stable travel pathway.</td>
<td><strong>Landscape materials:</strong> trees, hedges, shrubs, or low walls of brick, wood, wrought iron, or an acceptable substitute.</td>
<td><strong>Shared access points to reduce curb cuts developed where appropriate.</strong></td>
<td><strong>Interior connections between adjacent parking lots.</strong></td>
<td><strong>In no case shall parking be allowed on access roads.</strong></td>
<td><strong>Interior Landscaping</strong></td>
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<td><strong>Interior Landscaping</strong></td>
<td><strong>Landscape island equal to one parking space for every ten spaces. Landscape island must equal two spaces if adjacent to two perpendicular spaces.</strong></td>
<td><strong>No parking space shall be more than 75’ from a large deciduous tree or conifer.</strong></td>
<td><strong>Landscape island should have planted medians where possible.</strong></td>
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<td><strong>Interior Landscaping</strong></td>
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<td><strong>Landscape requirements</strong></td>
<td><strong>Large deciduous trees: 2” caliper.</strong></td>
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<td><strong>Interior Landscaping</strong></td>
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<td><strong>Travel ways must be curbed and include trees. A minimum of seven percent (7%) of the interior of the main parking lot shall be landscaped with the intent of creating landscaped main driving aisles and entranceways. Raised landscaped islands are required for every three bays.</strong></td>
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<td>- Small flowering trees: 1” caliper</td>
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<td>- Large shrubs: 30” height</td>
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<th>iv. Interior Parking Lot Access Roads</th>
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<td>Two-Way: 24’ Min.</td>
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<td>A. One-Way: 12’ Min</td>
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<td>Orientation and Layout</td>
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<td>Shared internal access roads required where applicable</td>
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### B. SITE DESIGN

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<td><strong>i. Screening and Buffers</strong></td>
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<td>The requirements of Article X Supplemental Regulations §130-61 must be fully complied with.</td>
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<td>The perimeters of all parking areas shall include a 2-3 foot high berm vegetated with closely spaced shrubs and with trees planted every 25-30 feet on center or a 4 foot wide planting strip with 3 foot tall hedges, to sufficiently screen parked vehicles from all adjacent property, public thoroughfares, and sidewalks adjacent to public roads.</td>
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<td>Fixtures will be full cut-off fixtures designed to shield adjacent streets, properties, and the sky from glare.</td>
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<td>Light source (i.e., bulb) shall not be visible from any angle.</td>
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<td>No exposed light pole foundations will be permitted in pedestrian areas.</td>
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<td>Pre-existing non-conforming lights must become compliant with the new regulations at the time said lights need to be replaced (including</td>
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<th>Site Lighting (continued)</th>
<th>Town Center</th>
<th>B1 S. Hamilton St. Community Service</th>
<th>B2 Office/Commercial Canada Rd.</th>
<th>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</th>
<th>MU Multi-Use Victory Highway</th>
<th>Regional Service</th>
<th>Industrial – 1 &amp; 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixtures and/or support structures.</td>
<td>1. Cobra Head fixtures are prohibited</td>
<td>2. Decorative poles are required.</td>
<td>Height</td>
<td>Pedestrian Lighting = 10-12’ (maximum)</td>
<td>Area Lighting = 18’ or building height whichever is less</td>
<td></td>
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<tr>
<td>Color Rendition</td>
<td>Preferred in following order: metal halide, high-pressure sodium, low-pressure sodium. Mixtures should be avoided.</td>
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</table>
| Footcandles | Light Trespass | No lights shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of:  
- two-tenths (0.2) footcandle when adjoining a residential district,  
- five-tenths (0.5) footcandles when adjoining property is within the same district and at the pavement edge of adjoining public roads.  
- Flashing or intrinsically bright sources of illumination shall be prohibited. | | | | |
| Footcandles | Footcandles: 0.9 – 1.0 | Uniformity – Avg: Min = 4:1 | No lights shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of two-tenths (0.2) footcandle.  
Flashing or intrinsically bright sources of illumination shall be prohibited. | The Planning Board will have the authority to require a specific footcandle within the specified range | | |
| Footcandles for parking areas | Maintained Footcandles: 0.2 – 0.4. | Uniformity – Avg: Min = 4:1 | No lights shall produce glare so as to cause illumination beyond the boundaries of the property on which it is located in excess of two-tenths (0.2) footcandle.  
Flashing or intrinsically bright sources of illumination shall be prohibited. | The Planning Board will have the authority to require a specific footcandle within the specified range | | |

Continued on next page
### Site Lighting (continued)

- Intensities and uniformity ratios pursuant to Illuminating Engineering Society of North American (IESNA) for Parking Areas:
  
  **High Activity**
  - (shopping centers/fast food facilities, major athletic/civic/cultural events):
    - Maintained Footcandles: 0.9 min.
    - Uniformity – Avg: Min = 4:1
  
  **Medium Activity**
  - (community shopping centers, office parks, hospitals, commuter lots, cultural/civic/recreational events):
    - Maintained Footcandles: 0.6 min.
    - Uniformity – Avg: Min = 4:1
  
  **Low Activity**
  - (neighborhood shopping, industrial parking, schools, church parking):
    - Maintained Footcandles: 0.2 min.
    - Uniformity – Avg: Min = 4:1

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<tbody>
<tr>
<td>Site Lighting</td>
<td>prohibited.</td>
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### iii. Public Spaces

**SEE GRAPHIC**

#### B. (iii)

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<tr>
<td><strong>iii. Public Spaces</strong></td>
<td>Sidewalk Material</td>
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<td>Sidewalk Material</td>
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<tr>
<td>SEE GRAPHIC</td>
<td>Constructed of concrete or brick pavers</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
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<tr>
<td><strong>B. (iii)</strong></td>
<td>Sidewalk Width and Location</td>
<td>Sidewalk Width and Location</td>
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<td>Within district = minimum 10’ wide (a minimum of 4’ per ADA requirements)</td>
<td>Minimum 8’ wide</td>
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<td></td>
<td>Where sidewalk crosses a parking lot access drive, the concrete paving pattern shall continue uninterrupted.</td>
<td>New sidewalks must connect to adjacent properties.</td>
<td>Required along all adjacent public roads.</td>
<td>Required on all interior access roads.</td>
<td>Required along all adjacent public roads.</td>
<td>Required on all interior access roads.</td>
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<tr>
<td></td>
<td>New sidewalks must connect to adjacent properties.</td>
<td>Required on all interior access roads.</td>
<td>Must provide connections between adjacent buildings with pavers or sidewalks.</td>
<td>Must provide connections between sidewalks along public roads and/or interior access roads and building entrances via pavers or sidewalks.</td>
<td>Must provide connections between adjacent buildings with pavers or sidewalks.</td>
<td>Must provide connections between sidewalks along public roads and/or interior access roads and building entrances via pavers or sidewalks.</td>
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<td>All Sidewalks:</td>
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<td>Required on all interior access roads.</td>
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**Continued on next page**

- Landscape Buffer between sidewalk and curb = minimum 5’ wide
- One large deciduous tree

- Landscape Buffer between sidewalk and curb of public and interior access roads = One large deciduous tree (2-2.5 caliper minimum) for each 35’ of linear road

- Landscape Buffer between sidewalk and curb of main public road = minimum 10’ wide

- Landscape Buffer between sidewalk and curb of main public road = minimum 10’ wide

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<tr>
<th>Public Spaces (continued)</th>
<th>Town Center</th>
<th>B1 S. Hamilton St. Community Service</th>
<th>B2 Office/Commercial Canada Rd.</th>
<th>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</th>
<th>MU Multi-Use Victory Highway</th>
<th>Regional Service</th>
<th>Industrial – 1 &amp; 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2-2.5 caliper minimum) for each 25’ of linear road frontage</td>
<td>minimum 5’ wide</td>
<td>One large deciduous tree (2-2.5 caliper minimum) for each 35’ of linear road frontage</td>
<td>Landscape buffer between sidewalk and curb of interior access road = minimum 5’ wide</td>
<td>One large deciduous tree (2-2.5 caliper minimum) for each 25’ of linear road frontage</td>
<td>for each 35’ of linear road frontage</td>
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<tr>
<td>iv. Sidewalk Retail</td>
<td>Sidewalk retail strongly encouraged</td>
<td>Merchandise shall be removed at the close of business</td>
<td>No retail activity shall extend beyond five feet (5’) into the required 10’ sidewalk</td>
<td>Not Allowed</td>
<td>Not Allowed</td>
<td>Not Allowed</td>
<td>Not Allowed</td>
</tr>
<tr>
<td>v. Temporary Outdoor Display Areas (other than sidewalk display)</td>
<td>Not Permitted</td>
<td>Not Permitted</td>
<td>Requires Special Use Permit approval</td>
<td>Display areas shall be limited to ten (10) percent of the total gross floor area of the related retail business and shall not exceed one thousand (1000) square feet.</td>
<td>Shall not occupy off-street parking spaces required for the associated use pursuant to §130-78 of this Chapter</td>
<td>Shall be separated from motor vehicle routes by a physical barrier visible to drivers and pedestrians, and by a minimum of ten (10) feet.</td>
<td>The materials, colors, and designs of physical barrier shall conform to those used as predominant materials and colors of the building.</td>
</tr>
<tr>
<td><strong>Temporary Outdoor Display Areas cont.</strong></td>
<td><strong>B1</strong> S. Hamilton St. Community Service</td>
<td><strong>B2</strong> Office/Commercial Canada Rd.</td>
<td><strong>B3</strong> Neighborhood Services Victory Highway, Rt. 417, W. Water St.</td>
<td><strong>MU</strong> Multi-Use Victory Highway</td>
<td><strong>Regional Service</strong></td>
<td><strong>Industrial – 1 &amp; 2</strong></td>
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<tr>
<td><strong>vi. Public Connections</strong></td>
<td>Display areas on building aprons must maintain a minimum walkway width of ten (10) feet between the display items and any vehicle drive.</td>
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<td><strong>SEE GRAPHIC B. (vi)</strong></td>
<td>Required between residential and commercial areas</td>
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<td>If connection is a sidewalk = minimum five feet (5') width with a five foot (5') planted buffer between sidewalk and curb</td>
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<td>If connection is a trail = minimum eight feet (8') in width with a minimum five foot (5') vegetation clearance on each side</td>
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<td></td>
<td>If trail is near a wetland = minimum eight feet (8') wide constructed at the edge.</td>
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<td></td>
<td>- Materials shall be constructed of woodgrained plastic lumber made from recycled materials.</td>
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<td></td>
<td>All trail connections shall be properly lighted to encourage a safe and highly visible environment.</td>
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<tr>
<td><strong>vii. Public Plazas and Outdoor Cafes (Outdoor Dining Areas)</strong></td>
<td>Plazas</td>
<td>Plazas</td>
<td>Plazas</td>
<td>Plazas</td>
<td>Plazas</td>
<td>Not Allowed</td>
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</tr>
<tr>
<td><strong>SEE GRAPHIC B. (vii)</strong></td>
<td>Strongly encouraged</td>
<td>Same as Town Center</td>
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<td>Same as Town Center</td>
<td>Same as Town Center</td>
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<td></td>
<td>Area shall be landscaped with trees, perennials, annuals, herbaceous shrubbery, and benches</td>
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<td>Area should be constructed on side of building that receives the most sunlight.</td>
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<tr>
<td>Public Plazas and Outdoor Cafes (Outdoor Dining Areas cont.)</td>
<td>Town Center</td>
<td>B1 S. Hamilton St. Community Service</td>
<td>B2 Office/Commercial Service Canada Rd.</td>
<td>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</td>
<td>MU Multi-Use Victory Highway</td>
<td>Regional Service</td>
<td>Industrial – 1 &amp; 2</td>
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<tr>
<td>Cafes (Outdoor Dining Areas)</td>
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<td>Cafes</td>
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<td>Cafes</td>
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<td>◼ Strongly encouraged</td>
<td>◼ Must be adjacent to occupied space with windows.</td>
<td>◼ Same as B1</td>
<td>◼ Same as B1</td>
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<td>◼ Same as B1</td>
<td>◼ Same as B1</td>
<td>◼ Same as B1</td>
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<td>◼ Building shall be permitted to be set back from the required build-to line no more than 50% of the required building frontage. However, in no case shall the building be allowed to be set back more than a maximum of 10’.</td>
<td>◼ Shall be considered towards overall required landscape coverage.</td>
<td>◼ Remainder same as Town Center.</td>
<td>◼ Remainder same as Town Center.</td>
<td>◼ Remainder same as Town Center.</td>
<td>◼ Remainder same as Town Center.</td>
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<td>◼ Remainder same as Town Center.</td>
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<tr>
<td>◼ Sidewalk cafes shall be temporary structures and dismantled during winter months.</td>
<td>◼ Structures shall be consistent with existing state regulations for safety.</td>
<td>◼ Cafes shall not extend more than five feet (5’) beyond the established property/build-to line and into the sidewalk.</td>
<td>◼ If at side of building, an edge matching the line of the building façade shall be created. The edge shall be made of transparent fence made of wood or wrought iron at a maximum height of 4’.</td>
<td>◼ In no case shall the fence/ railing combination prohibit views from the sidewalk into the café area.</td>
<td>◼ ◼ Cafes shall not extend more than five feet (5’) beyond the established property/build-to line and into the sidewalk.</td>
<td>◼ Cafes shall not extend more than five feet (5’) beyond the established property/build-to line and into the sidewalk.</td>
<td>◼ Cafes shall not extend more than five feet (5’) beyond the established property/build-to line and into the sidewalk.</td>
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<tr>
<td>vii. Utilities  ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground. ◼ All utilities shall be placed underground.</td>
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### C. ARCHITECTURAL DESIGN

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<tr>
<th></th>
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<th>B2 Office/Commercial Canada Rd.</th>
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<th>Regional Service</th>
<th>Industrial 1 and 2</th>
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</thead>
<tbody>
<tr>
<td><strong>i. Proportion</strong></td>
<td></td>
<td>Minimum two stories; maximum three</td>
<td>Minimum two functional stories; maximum five functional stories.</td>
<td>Maximum two stories or equivalent (1-1/2 story structures prohibited)</td>
<td>Maximum 30,000 GSF</td>
<td>Maximum two stories</td>
<td>Maximum two stories</td>
</tr>
<tr>
<td><strong>SEE GRAPHIC C. (i)</strong></td>
<td></td>
<td>“Second story is not required. If constructed, it is not required to be a functional floor but the building shall appear as if it is a building with two functional floors.” If 50% of the buildings have two functional stories then the remainder of the buildings shall not be required to contain a second story. Single story buildings shall utilize roofs having slopes consistent with that used in residential construction. Single story buildings shall be located within the interior of the development and not along the major arterial. Maximum building footprint shall be 20,000 SF but with maximum two businesses per building/structure.</td>
<td>Second story is not required to be a functional floor but the building shall appear to meet the minimum requirements</td>
<td>Max height = 35’ Limit 30,000 GSF; 10,000 GSF building footprint</td>
<td>Max height = 35’ Limit 30,000 GSF; 10,000 GSF building footprint</td>
<td>First story height shall be a maximum of 12’ measured floor to floor</td>
<td>Max height = 35’ (or 48’ if two stories are built)</td>
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<td></td>
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<td>Properties Fronting S. Hamilton Street</td>
<td>First story height shall be a maximum 12’ measured floor to floor</td>
<td>Properties Fronting Canada Road</td>
<td>Maximum 150,000 GSF</td>
<td>First story height shall be a maximum of 15’ measured floor to floor</td>
<td>150,000 GSF max.</td>
</tr>
<tr>
<td><strong>ii. Roof</strong></td>
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<td>Same as Town Center</td>
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<tr>
<td><strong>SEE GRAPHIC C. (ii)</strong></td>
<td></td>
<td>Flat Roofs</td>
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<td>Pitched and flat roofs permitted</td>
<td>Shall incorporate a parapet with</td>
<td>Shall incorporate a parapet with</td>
<td>Shall incorporate a parapet with</td>
<td>Shall incorporate a parapet with</td>
<td>Shall incorporate a parapet with</td>
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<td>Gambrel or Mansard roofs not permitted</td>
<td>Roof top equipment shall be</td>
<td>Roof top equipment shall be screened with the use of parapets.</td>
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**B. Parapets concealing**

- Maximum two stories
- Max. height = 35’ at build-to-line
- Maximum of 60 feet within plane of vision from adjoining public highway.
- Max GSF to vary with type of use (Lab, light industry, manufacturing, etc.)

**Parapets Allowed**

- Maximum two stories
- Max. height = 35’ at build-to-line
- Maximum of 60 feet within plane of vision from adjoining public highway.
- Max GSF to vary with type of use (Lab, light industry, manufacturing, etc.)
<table>
<thead>
<tr>
<th>Roof (continued)</th>
<th>Town Center</th>
<th>B1 S. Hamilton St. Community Service</th>
<th>B2 Office/Commercial Canada Rd.</th>
<th>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</th>
<th>MU Multi-Use Victory Highway</th>
<th>Regional Service</th>
<th>Industrial 1 and 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>three dimensional cornice treatment along facades facing public streets.</td>
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<td>flat roofs and rooftop equipment from public view. The average height of such parapets shall not exceed 15% of the height of the supporting wall and such parapets shall not at any point exceed one-third the height of the supporting wall.</td>
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<td></td>
<td>The average height of parapets shall not exceed 13% of the height of the supporting wall and such parapets shall not at any point exceed one-third the height of the supporting wall.</td>
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<td>Such features shall feature three dimensional cornice treatments.</td>
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<td></td>
<td>Plain parapets not allowed</td>
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<td>− Overhanging eves are encouraged, but shall not extend greater than three (3) feet past the supporting wall.</td>
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<tr>
<td>Pitched Roofs</td>
<td>Shall complement overall style of the building</td>
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<td>− Sloping roofs that do not extend the average height of the supporting walls, with an average slope greater than or equal to one (1) foot of vertical rise for every one (1) foot of horizontal run.</td>
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<td></td>
<td>Materials shall not be reflective</td>
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<td>− Three or more roof slope planes.</td>
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<td></td>
<td>Colors shall complement the overall character of the building</td>
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<td>The remaining requirements same as Town Center</td>
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<td></td>
<td>Shall incorporate measures to prevent snow and ice falling onto the sidewalk.</td>
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<td>Town Center</td>
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<td>Industrial 1 and 2</td>
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<td>iii. Fenestration</td>
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<tr>
<td>SEE GRAPHIC C. (iii)</td>
<td>Overall façade composition shall break the building down into smaller distinct portions to provide a small-scale impression.</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
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<td>Same as Town Center</td>
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<td>Offices, visitor areas, and cafeterias should be oriented towards public thoroughfares that are not screened and shall include glass percentages as required in the Town Center District.</td>
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<td>Other sections of building must have trees planted every 25’ on center to diffuse view of structure from adjoining properties or public thoroughfares, and must be fully screened when adjacent to a differing use.</td>
</tr>
</tbody>
</table>
Fenestration (continued)

Continued on next page

include a repeating pattern that shall include no less than three of the following elements: color change; texture change; material module change; and expression of architectural or structural bay through a change in plane no less than 24” in width, such as an offset, reveal, or projecting rib. All elements shall repeat at intervals of no more than 30’ either horizontally or vertically.

Entranceways
Entranceway design elements and variations should give orientation and aesthetically pleasing character to the building. Large-scale buildings should feature multiple entrances. Multiple entrances reduce walking distances from cars and provide greater access from public sidewalks.

Each principal building on a site shall have clearly defined, visible customer entrances featuring no less than three of the following:
- Overhangs, canopies, or porticos.
- Recesses/projections.
- Arcades.
- Raised, corniced parapets over the door.
- Peaked roof forms.
- Arches.
- Outdoor patios.
- Display windows.
- Architectural details such as tile work and moldings.
<table>
<thead>
<tr>
<th>Town Center</th>
<th>B1 S. Hamilton St. Community Service</th>
<th>B2 Office/Commercial Canada Rd.</th>
<th>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</th>
<th>MU Multi-Use Victory Highway</th>
<th>Regional Service</th>
<th>Industrial 1 and 2</th>
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<tbody>
<tr>
<td><strong>Fenestration (continued)</strong></td>
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<tr>
<td><strong>iv. Awnings and Canopies</strong></td>
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<tr>
<td>SEE GRAPHIC C. (iii)</td>
<td>Strongly encouraged on building façades that face public streets. One awning sign shall be permitted for each window or door of the façade covered by the awning. Any sign (logo and/or lettering) on an awning shall not exceed 25% of the exterior surface of the awning, or 100 square feet per building façade, whichever is less. Awnings to which signs may be attached must be fastened to the façade of the building and not supported from the ground; shall not extend more than seven feet (7') from the façade; and no portion of the awning shall be nearer than seven feet (7') from the ground. All awning signs shall only identify the business establishment occupied by the façade on which the awning is located.</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Not Required</td>
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<td>Awnings and Canopies (continued)</td>
<td>Town Center</td>
<td>B1 S. Hamilton St. Community Service</td>
<td>B2 Office/Commercial Canada Rd.</td>
<td>B3 Neighborhood Services Victory Highway, Rt. 417, W. Water St.</td>
<td>MU Multi-Use Victory Highway</td>
<td>Regional Service</td>
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<tr>
<td>Awning Materials</td>
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<td>Shall be constructed of canvas</td>
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<tr>
<td>Plastic and metal awnings are not permitted.</td>
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<td>Internal lighting or backlighting is not permitted.</td>
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<td>Color schemes shall be consistent with the colors outlined under materials and colors below.</td>
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<td>Retractable awnings are permitted.</td>
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<tr>
<td>v. Specialty Equipment SEE GRAPHIC C. (v) Rooftop Mechanical Equipment, Satellite Dishes, Antennas, etc. Shall be screened from public view with the use of architecturally compatible materials (see materials below) Ground level equipment such as dumpsters and loading docks Shall be screened from public view with landscaping materials, natural material walls and opaque fencing, or other design treatments compatible with the finishes of the principle structure (see materials below)</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
</tr>
<tr>
<td>vi. Materials and Color Facade Materials Common red brick Special Masonry Units (colored, textured, painted) Natural Stone Wood Vinyl siding of high quality simulating a natural material. Unacceptable Materials Plain (bare) masonry units Plain vinyl siding Non-corrugated metal siding Imitation Stone</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
<td>Same as Town Center</td>
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<tr>
<td>Town Center</td>
<td>B1</td>
<td>B2</td>
<td>B3</td>
<td>MU</td>
<td>Regional Service</td>
<td>Industrial 1 and 2</td>
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</tbody>
</table>

**next page**

**Materials and Color (continued)**

- **Trim Materials**
  - Finished-grade painted or stained wood.
  - No bare, lumber-grade wood allowed.
  - Windows shall have anodized aluminum or wood frame, not bare aluminum frame.
  - The Planning Board shall have the authority to determine if a new type of building material, which may not be listed above as acceptable, meets the intent of the regulations. If the Planning Board decides a proposed new building material is acceptable, it may be added to the list of acceptable materials at the Board’s discretion.

- **Building Colors**
  - Colors shall be of earth tone colors chosen from a commercial paint distributor’s historic color pallet. Fluorescent colors are prohibited.
DESIGN STANDARD GRAPHICS

The following are graphic depictions of the standards described above. For each graphic, the district in which it applies is listed.
A. SITE ORGANIZATION

A. (i) - BUILDING PLACEMENT:
- Town Center
- B1
- B2
A. (ii) - ON STREET PARKING AND BULBING OUT OF SIDEWALKS:
  - Town Center
A. (iii) – OFF STREET PARKING (Rear or Side Parking):

- All Districts
A. (iv) – OFF STREET PARKING:
Regional Service (new construction greater than 30,000 S.F.), Multi-Use (only with 130 ft. max building setback), and Industrial
SITE DESIGN

B. (i) - EXAMPLES OF BUFFER TYPES:
- All Districts
B. (ii) - SITE LIGHTING:

- All Districts

Area Lighting = CBD, GCD maximum 18’ or roof height whichever is less
B. (iii) - PUBLIC SPACES – SIDEWALKS:
  All Districts

See A. (ii) for graphic of sidewalk example
B. (vi) – PUBLIC CONNECTIONS:
- All Districts

Sidewalk Connection

Hike/Bike Trail Connection
PUBLIC CONNECTIONS (Continued)

Off Road Hike/Bike Trail Connection

Wetland Trail Connection
B. (vii) – CAFES:
- All Districts
B. (vii) – CAFES – Example of café at side of building:

- All Districts
ARCHITECTURAL DESIGN

C. (i) - BUILDING PROPORTION

- Town Center
- B1
- B2

[Diagram showing permitted height variations, new building envelope, and first story height]
C. (ii) – ROOF TYPES
- All Districts

- Flat Roof with Parapet

- Pitched Roof
C. (iii) – FENESTRATION
- Town Center
- B1
- B2
- B3
- MU

Character of 2nd Floor Windows Shall Relate to the 1st
Small Distinct Building Portions
First Story Height
Building Transparency at Street Level
Recessed Door & Window Entries
C. (v) - SPECIALTY EQUIPMENT
- All Districts

Mechanical Equipment Screened by Parapet

Mechanical Equipment (Wireless Cellular Unit)

Mechanical Equipment Screened by Shrub Mass

Specialty Equipment Screening
§ 130-90. Noise Control.
(Added 12-16-03)
(Amended 12-29-03, 10-11-05)

A. Purpose

1. Excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life, and a substantial body of science and technology exists by which excessive sound may be substantially abated. Therefore, the Erwin Town Board believes the citizens of the Town of Erwin have a right to, and should be ensured an environment free from excessive sound. It is the policy of the Town of Erwin to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life.

2. This ordinance shall apply to the control of sound originating from stationary sources as well as vehicles and equipment associated with a business or light industrial use routinely operating on private property within the limits of the Town of Erwin.

B. Powers and Duties of the Code Enforcement Officer.

1. The provisions of this ordinance shall be enforced by the Town of Erwin Code Enforcement Officer.

2. The Code Enforcement Officer (CEO) shall have the power to:

   a) Coordinate the noise control activities of all municipal departments and cooperate with all other public bodies and agencies to the extent practicable;

   b) Review the actions of other municipal departments and advise such departments to the effect, if any, on such actions on noise control;

   c) Review public and private projects, subject to mandatory review or approval by other departments or boards, for compliance with this ordinance; and
d) Grant permits for variances according to the provisions of subsection I “Variance Conditions” of this Section.

3. Noise measurements taken by a CEO shall be taken in accordance with the procedures specified in subsection E “Sound Measurement Procedures” of this Section.

C. Duties and Responsibilities of Other Departments.

1. All departments and agencies of the Town of Erwin shall carry out their programs according to law and shall cooperate with the CEO in the implementation and enforcement of this ordinance.

2. All departments charged with new projects or changes to existing projects that may result in the production of noise shall consult with the CEO prior to the approval of such projects to ensure that such activities comply with the provisions of this ordinance.

D. Sound Measurement Procedures.

1. Insofar as practicable, sound will be measured while the source under investigation is operating at normal, routine conditions and, as necessary, at other conditions, including but not limited to, design, maximum, and fluctuating rates.

2. All tests shall be conducted in accordance with the following procedures:

   a) The CEO shall, to the extent practicable, identify all sources contributing sound to the point of measurement.

   b) Measurements shall be taken at or within the property line of the affected person.

   c) The measuring instrument must be calibrated using a calibrator recommended by the measuring instrument manufacturer before and after each series of readings.
d) The measuring instrument must be recertified and the calibrator must be recalibrated at least once each year by the manufacturer or a person that has been approved by the manufacturer. A copy of written documentation of such recertification and recalibration shall be kept with the equipment to which it refers.

e) No outdoor measurement shall be taken:

   i. During periods when wind speeds (including gusts) exceed 15 mph;

   ii. Without a windscreen, recommended by the measuring instrument manufacturer, properly attached to the measuring instrument;

   iii. Under any condition that allows the measuring instrument to become wet (e.g., rain, snow, or condensation); or

   iv. When the ambient temperature is out of the range of the tolerance of the measuring instrument.

3. The report for each measurement session shall include:

   a) The date, day of the week, and times at which measurements are taken;

   b) The times of calibration;

   c) The weather conditions;

   d) The identification of all monitoring equipment by manufacturer, model number, and serial number;

   e) The normal operating cycle of the sources in question with a description of the sources;
f) The ambient sound level, in dBA, with the sources in question operating;

g) The background sound level, in dBA, without the sources in question operating; and

h) A sketch of the measurement site, including measurement locations and relevant distances, containing sufficient information for another investigator to repeat the measurements under similar conditions.

4. Prior to taking noise measurements the investigator shall explore the vicinity of the sources in question to identify any other sound sources that could affect measurements, to establish approximate location and character of the principal sound source, and to select suitable locations from which to measure the sound from the source in question.

5. When measuring continuous sound, or sound that is sustained for more than 1 second at a time, the measuring instrument shall be set for A-weighting, slow response, and the range (if the measuring instrument is designed to read levels over different ranges) shall be set to that range in which the meter reads closest to the middle of the scale. The minimum and maximum readings shall be recorded to indicate the range of monitored values along with the central tendency average most often displayed.

6. The measuring instrument shall be places at a minimum height of 3 feet above the ground of from any reflective surface. When handheld, the microphone shall be held at arm’s length and pointed at the source at the angle recommended by the measuring instrument’s manufacturer.

7. When measuring background noise levels, if extraneous sound sources, such as aircraft flyovers or barking dogs, that are unrelated to the measurements increase the monitored sound levels, the measurements should be postponed until these extraneous sounds have become of such a level as not to increase the monitored sound levels of interest.
8. The monitoring session should last for a period of time sufficient to ensure that the sound levels measured are typical of the source in question.

9. The background sound levels shall be subtracted from the measured sound levels of the source of interest by using Table 1 to determine the sound levels from the source of interest alone. If the ambient sound level is less than 3 dBA higher than the background sound level, the source level cannot be derived and a violation of the ordinance cannot be substantiated.

**Table 1 Correction for Background Levels**

<table>
<thead>
<tr>
<th>Difference Between Ambient and Background Sound Levels</th>
<th>Correction Factor to Be Subtracted from Ambient Level for Source Level</th>
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<tr>
<td>3</td>
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<td>4-5</td>
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<td>6-9</td>
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<td>10 or more</td>
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</table>

* In dBA

E. Sound Level Limitations.

1. No person shall cause, suffer, allow, or permit the operation of any sound source on a particular zoning district of property or any public space or right-of-way into another use district having a lower noise-level limit shall not exceed the limits of the district into which it is projected. Such noise-levels shall not exceed the background sound level by at least 5 dBA during daytime (7:00 a.m. to 10:00 p.m.) hours and by at least 3 dBA during nighttime (10:00 p.m. to 7:00 a.m.) hours when measured at or within the real property line of the receiving property. Such a sound source would constitute a noise disturbance.

   a) If the background sound level cannot be determined, the absolute sound level limits set forth in Table 2 shall be used.

   b) If the sound source in question is a pure tone, the limits of Table 2 shall be reduced by 5 dBA.
Table 2 Maximum Permissible Sound Levels*  

<table>
<thead>
<tr>
<th>Source Property</th>
<th>Residential 7:00 a.m. - 10:00 p.m.</th>
<th>10:00 p.m. - 7:00 a.m.</th>
<th>(All times)</th>
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<tbody>
<tr>
<td>Residential</td>
<td>55</td>
<td>50</td>
<td>65</td>
</tr>
<tr>
<td>Commercial</td>
<td>65</td>
<td>50</td>
<td>65</td>
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<tr>
<td>Industrial</td>
<td>65</td>
<td>50</td>
<td>65</td>
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</tbody>
</table>

* In dBA. These levels would be appropriate for typical suburban environments. The specific limitations should be based on the environment and tastes of the municipality. Ambient noise levels will typically vary across the Town. As such, the maximum permissible sound levels found in Table 2 may be raised or lowered as deemed reasonable by the Town Board after a Public Hearing, as such a change would constitute an zoning amendment.

c) Nonrepetitive impulsive sound sources shall not exceed 75 dBA during day-time hours and 70 dBA during evening hours at or within a residential real property line using the fast meter response speed.

d) In multi-dwelling unit buildings if the background sound level cannot be determined the daytime limit is 45 dBA and the nighttime limit is 35 dBA for sounds originating in another dwelling within the same building.

2. The following are exempt for the sound level limits of subsection E “Sound Level Limitations” of this Section:

a) Noise from emergency signaling devices;

b) Noise from an exterior burglar alarm of any building provided such burglar alarm shall terminate its operation within 5 min of its activation;

c) Noise from domestic power tools, lawn mowers, and agricultural equipment when operated between 7:00 a.m. and 8:00 p.m. on weekdays and 8:00 a.m. and 8:00 p.m. on weekends and legal holidays, provided they generate less than 85 dBA at or within any real property line of a residential property;
d) Sound from church bells and chimes when a part of a religious observance or service;

e) Noise from snow blowers, snow throwers, and snow plows when operated with a muffler for the purpose of snow removal.

3. When the source being analyzed is a stereo system with low frequency signals as part of its output, the stereo shall not cause a “C” weighted level of 10dBA or greater above the “C” weighted ambient level at a distance of 10 feet from the source, or the complainant’s property line, whichever is greater.

F. Specific Prohibited Acts.

1. No person shall cause, suffer, allow, or permit to be made verbally or mechanically any noise disturbance, as defined below in subsection E “Sound Level Limitations” of this section.

2. No person shall cause, suffer, allow, or permit the following acts:

   a) Operating, playing, or permitting the operation or playing of any radio, television, phonograph, or similar device that reproduces or amplifies sound in such a manner as to create a noise disturbance (as defined in subsection E “Sound Level Limitations” of this section) for any person other than the operator of the device;

   b) Using or operating any loudspeaker, public address system, or similar device between 10:00 p.m. and 8:00 a.m. the following day, such that the sound therefrom creates a noise disturbance (as defined in subsection E “Sound Level Limitations” of this section) across a residential real property line;

   c) Owning, possessing, or harboring any animal or bird that, frequently or for continued duration, generates sounds that create a noise disturbance (as defined in subsection E “Sound Level Limitations” of this section) across a residential real property line;
d) Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, liquids, garbage cans, refuse or similar objects, or the pneumatic or pumped loading or unloading of bulk materials in liquid, gaseous, powder, or pellet form, or the compacting of refuse by persons engaged in the business of scavenging or garbage collection, whether private or municipal, between 9:00 p.m. and 7:00 a.m. the following day on a weekday and between 9:00 p.m. and 9:00 a.m. the following day on a weekend day or legal holiday except by permit, when the sound therefrom creates a noise disturbance (as defined in subsection E “Sound Level Limitations” of this section) across a residential property line;

e) Operating or permitting the operation of any motor vehicle whose manufacturer’s gross weight rating is in excess of 10,000 lbs, or any auxiliary equipment attached to such a vehicle, for a period of longer than 5 min in any hour while the vehicle is stationary, for reasons other than traffic congestion or emergency work, on a public right-of-way or public space within 150 ft of a residential area between 8:00 p.m. and 8:00 a.m. the following day; and

f) Operating or permitting the operation of any tools or equipment used in construction, drilling, earth moving, excavating, or demolition work between 6:00 p.m. and 7:00 a.m. the following day on a weekday or at any time on a weekend day or legal holiday, except for emergency work, by variance issued pursuant to subsection H “Variance Conditions” of this Section, or when the sound level does not exceed any applicable relative or absolute limit specified in subsection F “Sound Level Limitations” of this section.
G. Exemptions.

1. The provisions of this ordinance shall not apply to:

   a) The generation of sound for the purpose of alerting persons to the existence of an emergency except as provided in subsection E(2) “Sound Level Limitations” of this §6.2(b);

   b) The generation of sound in the performance of emergency work; or

2. Noise generated from municipally sponsored or approved celebrations or events shall be exempt from the provisions of this ordinance.

H. Variance Conditions.

1. Any person who owns or operates any stationary noise source may apply to the Zoning Board of Appeals for a temporary (not to exceed 6 months) variance from one or more of the provisions of this ordinance. Applications for a permit of variance shall supply information including, but not limited to:

   a) The nature and location of the noise source for which such application is made;

   b) The reason for which the permit for variance is requested, including the hardship that will result to the applicant, his/her client, or the public if the permit of variance is not granted;

   c) The level of noise that will occur during the period of the variance;

   d) The section or sections of this ordinance for which the permit of variance will apply;

   e) A description of interim noise control measures to be taken for the applicant to minimize noise and the impacts occurring there from; and

   f) A specific schedule of the noise control measures that shall be taken to bring the source into compliance with this ordinance within a reasonable time.
i. Failure to supply the information required by the CEO shall be cause for rejection of the application.

ii. A copy of the permit of variance must be kept on file by the municipal clerk for public inspection.

2. The ZBA may, at their discretion, limit the duration of the or variance, which shall be no longer than 6 months year. Any person holding a permit of variance and requesting an extension of time shall apply for a new permit of variance under the provisions of this section.

3. No variance shall be approved unless the applicant presents adequate proof that:

   a) Noise levels occurring during the period of the variance will not constitute a danger to public health;

   b) Compliance with the ordinance would impose an unreasonable hardship on the applicant without equal or greater benefits to the public; and

   c) That the unreasonable hardship is not self created.

4. In making the determination of granting a variance, the ZBA shall consider:

   a) The character and degree of injury to, or interference with, the health and welfare of the reasonable use of property that is caused or threatened to be caused;

   b) The social and economic value of the activity for which the variance is sought; and

   c) The ability of the applicant to apply the best practical noise control measures.
5. The variance may be revoked by the CEO if the terms of the variance are violated.

6. A variance may be revoked by the CEO if there is:

   a) Violation of one or more condition of the variance;

   b) Material misrepresentation of fact in the variance application; or

   c) Material change in any of the circumstances relied on by the CEO in granting the variance.

I. Enforcement Procedures.

1. Violation of any provision of this ordinance shall be cause for a summons to be issued by the CEO according to procedures set forth in Article XIV “Administration and Enforcement” of this Chapter.

2. In lieu of issuing a summons as provided in subsection I “Enforcement Procedures: of this Section, the CEO may issue an order requiring abatement of any sound source alleged to be in violation of this ordinance within a reasonable time period and according to guidelines that the CEO may prescribe.

3. Any person who violates any provision of this ordinance shall be subject to a fine for each offense in accordance with the provisions of Article XIV “Administration and Enforcement” of this Chapter.

   a) If the violation is of a continuing nature, each day during which it occur shall constitute an additional, separate, and distinct offense.

4. No provision of this ordinance shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this ordinance or from other law.
J. Severability.

1. If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

K. Effective Date.

1. Section 130-90 “Noise” shall take effect immediately upon its filing with the Secretary of State.

§ 130-91. Property Maintenance Law.
(Added 12-16-03)
(Amended 12-29-03, 10-11-05)

A. Legislative Findings and Purpose.

The Town Board of the Town of Erwin hereby finds that the outdoor storage, accumulation, deposit or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed, or unregistered motor vehicles, rubbish, debris, solid waste, or garbage upon private property, and the overall neglect of property conditions, and partially constructed and unfinished residential and nonresidential buildings threatens the health, safety, and welfare, of Town residents, and results in adverse impacts on the character of the neighborhood and the community. Outdoor storage, accumulation, deposit or placement of such items, neglect of property conditions; and partially constructed and/or unfinished residential and nonresidential buildings creates a significant fire hazard, endangers the environment and ground water, leads to infestation by insects, vermin, or rodents, depreciates property values, and has a deteriorating and blighting effect upon the neighborhood and community.

The Town Board hereby determines that the outdoor storage, accumulation, deposit, or placement of abandoned, junked, discarded, wholly or partially dismantled, or unlicensed or unregistered motor vehicles, rubbish, debris, solid waste, or garbage upon private property, unmaintained properties, and partially constructed and/or unfinished residential and nonresidential buildings constitutes a public nuisance.
B. General Requirements.

1. Outdoor deposit or storage:

No person, as owner, occupant, lessee, or agent, or in any capacity shall store, deposit, place, maintain, or cause or permit to be stored, deposited, placed, or maintained outdoors any abandoned, junked, discarded, wholly or partially dismantled, unlicensed, or unregistered motor vehicle or any solid waste, rubbish, debris, or garbage upon any private property within the Town.

a) This section shall not apply to any solid waste, rubbish, debris, or garbage temporarily (no more than two (2) weeks) stored or placed in a container for collection or disposal.

b) This section shall replace Chapter 120 - Unlicensed/Abandoned Vehicles. Notwithstanding the foregoing, a motor vehicle may be stored outside of a completely enclosed building with a written permit from the Code Enforcement Officer, a motor vehicle which is not both licensed and inspected as provided in the foregoing subsection may, for a period of not more than sixty (60) thirty (30) consecutive days, be displayed in public view for sale. The owner of such motor vehicle must be an owner or occupant of the lot on which such motor vehicle is so offered for sale. The permit provided for herein shall not be renewable, and the effective dates of any permit shall be such that at no time is more than one motor vehicle offered for sale on any lot in accordance with this subsection and no more than two motor vehicles shall be so offered for sale on any lot during any twelve-calendar- month period. The fee for such permit shall be as from time to time established by resolution of the Town Board. One unlicensed vehicle shall be allowed on a property located within the Agricultural zoned area only.
It shall also be unlawful for any person, firm, or corporation either as owner, occupant, tenant, lessee, or agent to allow farm machinery or parts thereof to be stored or accumulate on any inactive farm in the Town of Erwin, as described in the definitions section above.

c) Anything to the contrary herein contained notwithstanding, a motor vehicle defined as a “house coach” in the Vehicle and Traffic Law of the State of New York may be stored outside of a completely enclosed building, provided that at all times during such storage it has been licensed and inspected to be operated on public streets at some time within the preceding twelve (12) months and further provided that the owner of such house coach is the owner or occupant of the lot on which such house coach is so stored and that at no time is more than one house coach stored on any lot in accordance with this section.

2. Exterior Property Areas.

   a) Sanitation. All exterior property and premises shall be maintained in a clean, safe, and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.

   b) Grading and drainage. All premise shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

**Exception:** Approved retention areas and reservoirs.

   c) Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.
d) Weeds. All premises and immediate exterior property shall be maintained free from weeds or plant growth in excess of 10 inches (254 mm). All noxious weeds shall be prohibited. Weeds shall be defined as grasses, annual plants, and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with § 106.1. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property, or shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by law.

Properties used for agricultural purposes including, but not limited to hay fields, wheat fields, pasture lands, etc., and properties located in the Rural District are exempt from the above requirements. However, areas located within the Rural District that are not used for agricultural purposes and are clearly intended to be lawn must be maintained according to the above requirements.

e) Rodent harborage. All structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly exterminated by approved processes which will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

f) Exhaust vents. Pipes, ducts, conductors, fans, or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors, or other gaseous or particulate wastes
directly upon abutting or adjacent public or private property or that of another tenant.

g) Accessory structures. All accessory structures, including detached garages, fences, and walls, shall be maintained structurally and in good repair.

i. Gates. Gates which are required to be self-closing and self-latching in accordance with the Building Code of New York State shall be maintained such that the gate will positively close and latch when released from a still position of 6 inches (152 mm) from the gatepost.

ii. Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

iii. Enclosures. An approved enclosure, at least 4 feet (1219 mm) in height, shall be provided around outdoor swimming pools, so that such pools are inaccessible to children. The enclosure may surround either the pool area or the property.


No residential and/or nonresidential structure shall be left in a partially constructed and/or unfinished condition for more than 1 construction season if that condition is both apparent as viewed from the exterior of the structure and/or which may pose a threat to public health, safety or welfare. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to public health, safety or welfare.

a) For new structures, “partially constructed” or “unfinished condition” shall mean the structure has yet to receive a certificate of occupancy from the Town of Erwin and/or is visibly incomplete including but not limited to the following: missing windows or doors, an unfinished roof or
siding, unpainted, or partially painted, or any other visible component of the structure that appears unfinished.

b) For structures already possessing a certificate of occupancy, “partially constructed” or “unfinished condition” shall mean that a proposed improvement is visibly incomplete, including but not limited to the following: missing windows or doors, an unfinished roof or siding, unpainted, or partially painted, or any other visible component of the structure that appears unfinished.

c) Protective Treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, or chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

d) Premises identification. Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 4 inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm).

**Exception:** Building identified under an addressing scheme as part of a county-wide 911 numbering system.
e) Structural members. All structural members shall be maintained free from deterioration, and shall be capable of safely supporting the imposed dead and live loads.

f) Foundation walls. All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

g) Exterior walls. All exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface-coated where required to prevent deterioration.

h) Roofs and drainage. The roof and flashing shall be sound, tight, and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portions of the structure. Roof drains, gutters, and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

i) Decorative features. All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

j) Overhang extensions. All overhang extensions including, but not limited to canopies, marquees, signs, metal awnings, fire escapes, standpipes, and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
k) Stairways, decks, porches, and balconies. Every exterior stairway, deck, porch, and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

l) Chimneys and towers. All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

m) Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

n) Window, skylight, and door frames. Every window, skylight, door, and frame shall be kept in sound condition, good repair, and weather tight.

i. Glazing. All glazing materials shall be maintained free from cracks and holes.

ii. Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

o) Reserved.

p) Doors. All exterior doors, door assemblies, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units, rooming units, and guestrooms shall tightly secure the door. Locks on means-of-egress doors shall be in accordance with § 702.3.
q) Basement hatchways. Every basement hatchway shall be maintained to prevent the entrance of rodents, rain, and surface drainage water.

r) Guards for basement windows. Every basement window that is openable shall be supplied with rodent shields, storm windows, or other approved protection against the entry of rodents.

4. Interior Structure.

a) General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound, and in a sanitary condition. Every occupant shall keep that part of the structure which such occupant occupies or controls in a clean and sanitary condition. Every owner of a structure containing a rooming house, housekeeping units, a hotel, a dormitory, two or more dwelling units, or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and exterior property.

b) Structural members. All structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

c) Interior surfaces. All interior surfaces, including windows and doors, shall be maintained in good, clean, and sanitary condition. Peeling, chipping, flaking, or abraded paint shall be repaired, removed, or covered. Cracked or loose plaster, decayed wood, and other defective surface conditions shall be corrected.

d) Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck, or other walking surface shall be maintained in sound condition and good repair.
e) Handrails and guards. Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

f) Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers, or tracks as intended by the manufacturer of the attachment hardware.

5. Rubbish and Garbage.

a) Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.

i. Dry vegetation, combustible waste, and refuse. Combustible waste, refuse, and large quantities of dry vegetation, which by reason of their proximity to buildings or structures would constitute a fire hazard or contribute to the spread of fire, shall be removed.

b) Disposal of rubbish. Every occupant of a structure shall dispose of all rubbish in a clean and sanitary manner by placing such rubbish in approved containers.

i. Rubbish storage facilities. The owner of every occupied premises shall supply approved covered containers for rubbish, and the owner of the premises shall be responsible for the removal of rubbish.

ii. Refrigerators. Refrigerators and similar equipment shall not be discarded, abandoned, or stored on premises accessible to children without first removing the doors.
c) Disposal of garbage. Every occupant of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an approved garbage disposal facility or approved garbage containers.

i. Garbage facilities. The owner of every dwelling shall supply one of the following: an approved mechanical food waste grinder in each dwelling unit; an approved incinerator unit in the structure available to the occupants in each dwelling unit; or an approved leakproof, covered, outside garbage container.

ii. Containers. The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.


a. Infestation. All structures shall be kept free from insect and rodent infestation. All structures in which insects and rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

b. Owner. The owner of any structure shall be responsible for extermination within the structure prior to renting or leasing the structure.

c. Single occupant. The occupant of a one-family dwelling or a single-tenant nonresidential structure shall be responsible for extermination on the premises.

d. Multiple occupancy. The owner of a structure containing two or more dwelling units, a multiple occupancy, a
rooming house, or a nonresidential structure shall be responsible for extermination in the public or shared areas of the structure and exterior property. If infestation is cause by failure of an occupant to prevent such infestation in the area occupied, the occupant shall be responsible for extermination.

e. Occupant. The occupant of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the infestations are cause by defects in the structure, the owner shall be responsible for extermination.

C. Inspections.

Whenever there is reasonable cause to believe that the provisions of this chapter are violated, the Building Inspector or any such other officer or employee authorized to have jurisdiction thereof, shall make an inspection of the property involved and shall prepare a written report of the conditions found, which report shall be filed with the Town Board.

D. Notice of Violation.

1. If conditions existing on the inspected property violate the provisions of this chapter, the Building Inspector or other designated officer or employee shall serve or cause to be served a written notice of such violation, either personally or by certified mail, upon the owner or owner’s agent, as well as upon the lessee or occupant of said premises.

2. Said notice shall contain substantially the following: the name of the owner and, if applicable to the violation, the lessee or occupant of the premises; the address or location of the premises; the identification of the premises as the same appears on the current assessment roll; a statement of the conditions on the property deemed upon inspection to be in violation of this chapter; demand that the motor vehicle, solid waste, rubbish, debris, or garbage...
determined to be in violation of this chapter be removed from the
property on or before 10 days after the service or mailing of such
notice; a statement that a failure or refusal to comply with the
provisions of this chapter and the notice given pursuant thereto
within the time specified may result in a duly authorized officer,
agent, or employee of the Town entering upon the property and
removing such motor vehicle, solid waste, rubbish, debris, or
garbage and causing the same to be disposed of or otherwise
destroyed; and that the cost and expense of such removal and
disposal or destruction shall be assessed against the described
property and shall constitute a lien thereon to be collected as
provided by law.

3. Said notice shall also contain the date, time, and location at which
the Town Board will conduct its next scheduled meeting that is not
less than 10 days after the notice of violation to determine whether
the conditions upon the subject property constitute a public
nuisance. Said notice shall state that the property owner, his/her
agent, lessee, or occupant is entitled to be heard at such meeting and
present evidence or testimony. The date of such meeting must be at
least 10 days after service or mailing of the Notice of Violation. The
meeting shall follow the procedures for notification of any Town
Board meeting and be published in a paper of general circulation in
the Town at least ten (10) days prior to the date of the meeting.

4. Nothing contained herein shall require notice as a prerequisite to the
issuance of a summons or appearance ticket for a violation of this
chapter.

E. Second Inspection Report.

On or before the date of the public hearing and prior to commencement
of the public hearing, the Building Inspector, other duly authorized officer, or
employee shall conduct a second inspection of the property and file a
written report of the conditions deemed in violation of this chapter found
thereon with the Town Board. Such inspection shall be conducted as close
to the date of the public hearing as practicable.
F. Declaration of Public Nuisance and Remediation.

At the close of the public hearing, the Town Board may determine that the conditions upon the subject property, which violate this chapter, constitute a public nuisance. Upon a determination by the Town Board that conditions upon the property constitute a public nuisance, the Town Board is empowered to authorize officers, agent, or employees of the Town to enter onto the property to remove any vehicle, sold waste, rubbish, debris, or garbage stored, deposited, placed, or maintained in violation of this chapter and dispose of or otherwise destroy same. Any costs and expenses incurred by the Town when acting pursuant to this chapter to abate a public nuisance shall be assessed against the property involved and shall constitute a lien thereon to be collected as provided by law.

G. Emergency Actions.

Nothing in this chapter shall prohibit a municipality from entering onto private property to remove any solid waste, motor vehicle, appliance, rubbish, debris, or garbage whenever there exists an imminent threat to the life or safety of persons. Municipal authority pursuant to this section may only be exercised where there is a dire necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crisis condition and must be limited to those actions necessary to eliminate the emergency situation.

A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property’s tax bill.

H. Judicial Relief.

Nothing contained in this chapter shall prevent the Town from seeking judicial or equitable relief to abate violations of this chapter.

I. Junkyards.

This chapter shall not apply to any junkyard as defined in the Town Code.
J. Severability.

If any clause, sentence, subdivision, paragraph, section, or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

K. Effective Date.

This local law shall be effective upon the filing with the Secretary of State.

L. Amendment of the Code of the Town of Erwin § 165-44.1.

The provisions of § 165-44.1 of the Code of the Town of Erwin, entitled Outdoor storage of unlicensed or uninspected motor vehicles, L.L. No1-1999, are hereby repealed upon the effective date of this Local Law.

(Added 12-16-03)

A. Purpose

The Town Board of the Town of Erwin hereby finds that certain development which may be within the viewshed of an Aesthetic Resources of Local and Statewide Significance (as defined below) shall require additional review by the Planning Board to ensure any adverse visual impact is mitigated to the maximum extent practicable consistent with social, economic and other essential considerations.

When reviewing potential visual and aesthetic impacts of a project that may be within the viewshed of an Aesthetic Resource of Local and Statewide Significance, the Planning Board shall utilized the following procedures:
B. Procedure

The Planning Board must assure that the full scope of visual and aesthetic concerns are addressed. This includes impacts from all project components and their operation on all inventoried resources. In addition, an equitable level of expectations between the potential significance of the impact, the degree of sophistication of the analysis required of applicant and appropriate level of mitigation strategies must be established. The goal of visual assessment is to reveal impacts and effective mitigation strategies. Small scale, low budget projects should not be burdened with the costs of sophisticated visual analyses. In these instances, it is generally more effective to reserve applicant investments for mitigation rather than complex visual assessments. Simple line-of-sight profiles may suffice for revealing impacts and potential mitigation strategies (see appendix C for an illustration of their use).

The Planning Board must take certain basic steps to assure that visual concerns have been fully addressed in each application. Those steps are:

1. Verify the applicant’s inventory of aesthetic resources.

2. Verify the applicant’s visual assessment, using either graphic viewshed and line-of-sight profile analysis as illustrated in Appendix C, or more sophisticated visual simulations and digital viewshed analysis, as needed.

3. Determine or verify the applicant’s assessment of the potential significance of the impact.

4. Confirm that applicant’s mitigation strategies are reasonable and are likely to be effective, or assure mitigation by requiring the applicant to submit a design that includes the required mitigation, or, impose permit conditions consistent with those mitigation requirements.

C. Inventory of Aesthetic Resources.

Many places have been recognized for their beauty and designated through Federal or State democratic political process, reinforcing the notion that
environmental aesthetic values are shared. Recognition of aesthetic resources also occurs at local levels through zoning, planning or other public means. That these special places are formally recognized is a matter of public record.

The Town Board of the Town of Erwin shall from time to time undertake a public process of identifying areas, places, or structures that are deserving of special protection under the requirements of this regulation. This process shall include a visual preference survey or similar public process that allows the public to become actively involved in identifying areas, places or structures that shall be placed on the Town of Erwin’s official list of Aesthetic Resources of Local Significance.

D. Town of Erwin Aesthetic Resources of Local Significance

1. All areas visible as viewed from U.S. Route 15 and NYS Route 417 and located at or above an elevation of 1,000 ft above mean sea level to the ridgelines and hilltops and down the opposite side 200 ft in elevation as depicted as the Viewshed Protection Overlay District on the Town of Erwin Environmental Resources Overlay Map.

Source: These areas were identified by the public as deserving additional protection during the Comprehensive Plan 2010 Update process.

E. Aesthetic Resources of Statewide Significance

It is important to note that all significant scenic and aesthetic resources may not have yet been designated in New York State. However, for the purposes of this Law all aesthetic resources of statewide significance may be derived from one or more of the following categories:

1. A property on or eligible for inclusion in the National or State Register of Historic Places [16 U.S.C. § 470a et seq., Parks, Recreation and Historic Preservation Law Section 14.07];

2. State Parks [Parks, Recreation and Historic Preservation Law Section 3.09];
3. Urban Cultural Parks [Parks, Recreation and Historic Preservation Law Section 35.15];

4. The State Forest Preserve [NYS Constitution Article XIV];


7. The National Park System, Recreation Areas, Seashores, Forests [16 U.S.C. 1c];

8. Rivers designated as National or State Wild, Scenic or Recreational [16 U.S.C. Chapter 28, ECL 15-2701 et seq.];

9. A site, area, lake, reservoir or highway designated or eligible for designation as scenic [ECL Article 49 or DOT equivalent and APA. Designated State Highway Roadside;]

10. Scenic Areas of Statewide Significance [of Article 42 of Executive Law;]

11. A State or federally designated trail, or one proposed for designation [16 U.S.C. Chapter 27 or equivalent];

12. State Nature and Historic Preserve Areas; [Section 4 of Article XIV of the State Constitution];

13. Bond Act Properties purchased under Exceptional Scenic Beauty or Open Space category.

F. Visual Assessments.

In all visual assessments, significant resources must be identified along with any potential adverse effects on those resources from the proposed project. If, in The Planning Boards judgment, a place designated in any of the above categories may lie in the viewshed of the proposed project then
a visual assessment should be required to confirm or refute this potential. At a minimum a line-of-sight-profile, or, depending upon the scope and potential significance of the activity, a digital viewshed may be used to determine if a significant property is within the potential viewshed of the proposed project (see the Appendix C for a Copy of the DEC Visual Policy which contains guidance on how to construct and use a line-of-sight profile). The Planning Board must then review the applicant’s visual assessment for adequacy, accuracy and thoroughness. The control points (see Appendix C for definition) must be established by The Planning Board and should include a worst-case scenario. Worst case here means establishing the control points that reveal any project visibility at an aesthetically significant place. Most of the time, though not always, high points reveal worst case. For example, the tallest facility component (e.g. combustion exhaust stack), may be the control point at the project end of the profile, while a high point of ground upon which the observer stands within a State Park may be the control point at the resource end of the profile.

With respect to determining the radius of the impact area to be analyzed, there has been a general guideline for large actions that it is usually “safe” to use 5 miles. The 5 mile distance probably owes its origins to the U.S. Forest Service “distance zones” set forth in their landscape management journal written in 1973 (5 miles is still largely considered “background,” i.e. distances at which most activities are not a point of interest to the casual observer). However, for very large activities, such as power plants (particularly those that generate wet cooling tower plumes), and large landscape alterations, greater distances have been shown to be important in some landscape settings, and must be considered. In those instances, applicants must document to the satisfaction of the Planning Board that impacts beyond five miles to listed resources have been considered. They must also provide a clear demonstration that impact to any resource of statewide concern is insignificant. Such demonstrations may be convincing if resource inventories beyond 5 miles are coupled with line-of-sight profiles (see Appendix C for a complete discussion of these graphic tools) or other accepted visual criteria, such as computer simulations, analogous comparative studies or worst-case presentations.

G. Significance.

Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. Significant aesthetic impacts are those that may cause a diminishment of the public enjoyment and appreciation of an inventoried resource, or one that impairs the character or quality of such a place. Proposed large facilities by themselves should not be a trigger for a declaration of significance. Instead, a project by virtue of its siting in visual proximity to an inventoried resource may lead the Planning Board to conclude that there may be a significant impact. For example, a cooling tower plume may drift between viewers standing on an overlook at a State Park thereby blocking the view of the panorama. The Planning Board must verify the potential significance of the impact using the qualities of the resource and the juxtaposition (using viewseshd and or line-of-sight profiles) of the proposal as the guide for the determination.

H. Mitigation.

Mitigation may reduce or eliminate the visibility of the project or alter the project’s effect on the scenic or aesthetic resource in some way. It is usually easier to deal with the visibility of the project than its composition to achieve mitigation. Altering the composition of a project lies within the realm of professional designers. When given the opportunity, however, the Planning Board should encourage applicants to design aesthetically compatible projects that incorporate environmentally friendly design principles and components, as may be employed from the mitigation menu below.

Mitigation strategies can be categorized into three general groups as outlined below.

I. Professional Design and Siting.

1. Screening
2. Relocation
3. Camouflage/Disguise
4. Low Profile
5. Downsizing
6. Alternate Technologies
7. Non-specular materials
8. Lighting

J. Maintenance

2. Decommissioning

K. Offsets

A discussion of each follows:

1. Professional Design and Siting. A properly sited and designed project is the best way to mitigate potential impacts. Under optimum circumstances a project can be sited in a location, which precludes the possibility of having an aesthetic resource within its viewshed. Also, through sensitive design treatment, elements of particular concern may be sited or dimensioned in a way that reduces or eliminates impacts on significant resources. Sometimes circumstances prevent the realization of optimal siting and sometimes engineering, economic or other constraints preclude optimum dimensioning or other appropriate design treatments. Under those circumstances, other mitigation strategies should be considered.

The Planning Board should assure effective mitigation is thoroughly explored by requiring project sponsors to consider the following tools to mitigate impacts:

a) Screening. Screens are objects that conceal other objects from view. They may be constructed of soil, rocks, bricks, or almost anything opaque. Vegetation can, despite its
visual porosity, function as a screen when a sufficient mass is employed. Screens may be natural, e.g. vegetation, or artificial, e.g. fences and walls. If used, screens shall appear natural e.g. wood, stone.

Screens constructed from soil are called berms. When used, berms shall appear natural e.g. blend with nearby topography, and not appear artificial e.g. geometrical or symmetrical shape.

Properly sized and placed screens may completely conceal an object, while improperly sized and placed screens may fail to conceal. Screens may block desirable views when improperly placed (see Appendix A of the DEC Visual Policy located in Appendix C of this Chapter to see how screen placement is important).

Screens are not necessarily buffers and buffers are not necessarily screens. A buffer may attenuate noise, soften a landscape or provide other functions that may or may not include screening.

Screens possess line, form, texture, planes and color, and therefore, have their own aesthetic qualities. At times, they may be more impacting than the object to be concealed. Screens may draw attention to the object to be concealed. Screens may physically connect two similar or dissimilar areas.

2. Relocation. A facility component may be relocated to another place within the site to take advantage of the mitigating effects of topography and vegetation.

3. Camouflage/Disguise. Colors and patterns of color may conceal an object or its identity. Disguise may take many forms, and is limited only by the imagination of the project designers. As an example, communication towers can be disguised as trees, flagpoles, barn silos, church steeples, or any other “in-character” structure depending upon circumstances.
4. Low Profile. Reducing the height of an object reduces its viewshed area.

5. Downsizing. Reducing the number, area or density of objects may reduce impacts.

6. Alternate Technologies. Substituting one technology for another may reduce impacts (e.g. dry cooling tower technology versus wet cooling tower technology).


8. Lighting. With respect to regional issues, such as a tall combustion exhaust stack or radio tower, the Federal Aviation Administration (FAA) requires certain lighting for public transportation safety. These impacts may be considered unavoidable unless lower profiles can be achieved. Applicants should also document that they have consulted with and met all applicable lighting standards under local jurisdiction. Consideration should be given to off-site light migration, glare and “sky glow” light pollution. Lighting requirements, through best engineering practices, should not exceed the functional requirements of the project.

9. Maintenance. How a landscape and structures in the landscape are maintained has aesthetic implications. “Eyesores” result from neglect. This should be part of any mitigation strategy.

   a) Decommissioning. Removing an object from the landscape after its useful life is over, reduces the duration of a visual impact (see page 9 for further discussion).

10. Offsets. Correction of an existing aesthetic problem identified within the viewshed of a proposed project may qualify as an offset or compensation for project impacts. A decline in the landscape quality associated with a proposed project can, at least partially, be "offset" by the correction. In some circumstances a net
improvement may be realized (see the following page for further discussion on offsets).

An applicant may assert that all economic and effective mitigation strategies have been incorporated into the proposed design and, when properly designed, such self-imposed mitigation should effectively mitigate any negative effects on a listed resource. However, if the Planning Board concludes that significant impacts remain then the Planning Board must still ensure that impacts are minimized. In this regard, the Planning Board should first investigate visibility mitigation strategies. Manipulating design elements to achieve adequate mitigation usually lies within the purview of professional designers.

The Planning Board should not try to judge the quality of a design nor its effect on the aesthetics of the listed resource unless they are qualified to do so. Such qualifications normally include academic or other accepted credentials in architecture; landscape architecture or a planner trained in aesthetic review and mitigation techniques. Nevertheless, it is the burden of the applicant to provide clear and convincing evidence that the proposed design does not diminish the public enjoyment and appreciation of the qualities of the listed aesthetic resource. The Planning Board can and should review the strength or merit of such proof. An applicant’s mere assertion that the design is in harmony with or does not diminish the values of the listed resource is insufficient for the purposes of reaching findings. Instead, an applicant must demonstrate through evidence provided by others e.g. recognized architectural review boards, comparative studies that are clearly analogous, or other similar techniques, that the public’s enjoyment and appreciation of the qualities of the aesthetic resource are not compromised.

The Planning Board must be assured that consistent with social, economic and other essential considerations, the action is one that avoids or minimizes adverse impacts to the maximum extent practicable. This can be accomplished by asking and responding affirmatively to the following questions.

a) Was the full mitigation menu considered?
b) Will those mitigation strategies selected be effective?
c) Were the costs of mitigation for impacts to other media considered and were those mitigation investments prioritized accordingly?
d) Are the estimated costs of all mitigation insignificant (for example, are the costs of visual mitigation taken together with all other mitigation less than 10% of the total project cost?)
e) Were the mitigation strategies employed consistent with previous similar applications? If not, was the reasoning for any changes reasonable and justified?
g) Was the mitigation cost effective? For example, if fully mature vegetation with an immediate screening effect costs 10 times the amount that less mature vegetation would cost, is it appropriate to require the less costly option if its full screening effect can be realized in just, say, 3 years? (See Appendix C for details concerning this subject).
h) Were offsets and decommissioning considered?

It is important to bring the project sponsor into the discussion of mitigation strategies. If more than one mitigation strategy meets all environmental protection needs, the applicant’s needs and preferences should be considered.

It is preferred that all mitigation options selected be specified in the applicant’s plans for Planning Board review. The plans should sufficiently depict readily understandable and enforceable details. Adherence to such plans should then become a permit condition. During and after facility construction, members of the Planning Board should visit the site and ensure that all mitigation strategies detailed in the plans and specifications have been adequately incorporated into the facility design.

If all mitigation options available from the menu are considered, applied where appropriate, and those applied are cost effective, then one can assert that impacts have been minimized to the maximum extent practicable. However, the residual impact after all such strategies have been employed may still be significant. Offsets should then be considered to help achieve the balancing
required of SEQR. Finally, decommissioning options may be considered that reduce the duration of impacts for projects with severe residual impacts. A discussion of each follows:

i. Offsets.

Offsets should be employed in sensitive locations where significant impacts from the proposal are unavoidable, or mitigation of other types would be uneconomic and mitigation to be used is only partially effective. Offsets should be employed when significant improvement can be expected at reasonable cost. An example of an offset might be the removal of an existing abandoned structure that is in disrepair (i.e. an “eyesore”) to offset impacts from a proposal within visual proximity to the same sensitive resource.

ii. Decommissioning.

Decommissioning may take many forms. However, from the perspective of aesthetics, three are of most significance: 1) the total removal from the site of all facility components and restoration to an acceptable condition, usually with attendant revegetation; 2) partial removal of facility components, such as elimination of visually impacting structures; and 3) conditions designed to maintain an abandoned facility and site in an acceptable condition that precludes “eyesores” or site and structural deterioration. Applicants should provide such plans when deemed necessary.
Glossary

**Aesthetic impact**: Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. Mere visibility, even startling visibility of a project proposal, should not be a threshold for decision making. Instead a project, by virtue of its visibility, must clearly interfere with or reduce the public's enjoyment and/or appreciation of the appearance of an inventoried resource (e.g. cooling tower plume blocks a view from a State Park overlook).

**Aesthetically significant place**: A formally designated place visited by recreationists and others for the express purpose of enjoying its beauty. For example, millions of people visit Niagara Falls on an annual basis. They come from around the country and even from around the world. By these measurements, one can make the case that Niagara Falls (a designated State Park) is an aesthetic resource of national significance. Similarly, a resource that is visited by large numbers who come from across the state probably has statewide significance. A place visited primarily by people whose place of origin is local generally is generally of local significance. Unvisited places either have no significance or are "no trespass" places.

**Aesthetic Quality**: There is a difference between the quality of a resource and its significance level. The quality of the resource has to do with its component parts and their arrangement. The arrangement of the component parts is referred to as composition. The quality of the resource and the significance level are generally, though not always, correlated.

**Atmospheric perspective**: Even on the clearest of days, the sky is not entirely transparent because of the presence of atmospheric particulate matter. The light scattering effect of these particles causes atmospheric or aerial perspective, the second important form of perspective. In this form of perspective there is a reduction in the intensity of colors and the contrast between light and dark as the distance of objects from the observer increases. Contrast depends upon the position of the sun and the reflectance of the object, among other items. The net effect is that objects appear "washed out" over great distances.

**Control Points**: The two end points of a line-of-sight. One end is always the elevation of an observer’s eyes at a place of interest (e.g. a high point in a State Park) and the other end is always an elevation of a project component of interest (e.g. top of a stack of a combustion facility or the finished grade of a landfill).

**Line-of-sight profile**: A profile is a graphic depiction of the depressions and elevations one would encounter walking along a straight path between two selected locations. A straight line depicting the path of light received by the eye of an imaginary viewer standing on the path and looking towards a predetermined spot along that path constitutes a line-of-sight. The locations
along the path where the viewer stands and looks are the control points of the line-of-sight profile.

**Scientific Perspective:** Scientific, linear, or size perspective is the reduction in the apparent size of objects as the distance from the observer increases. An object appears smaller and smaller as an observer moves further and further from it. At some distance, depending upon the size and degree of contrast between the object and its surroundings, the object may not be a point of interest for most people. At this hypothetical distance it can be argued that the object has little impact on the composition of the landscape of which it is a tiny part. Eventually, at even greater distances, the human eye is incapable of seeing the object at all.

**Viewshed:** A map that shows the geographic area from which a proposed action may be seen is a viewshed.

**Visual Assessments:** Analytical techniques that employ viewsheds, and/or line-of-sight profiles, and descriptions of aesthetic resources, to determine the impact of development upon aesthetic resources; and potential mitigation strategies to avoid, eliminate or reduce impacts on those resources.

**Visual impact:** Visual impact occurs when the mitigating effects of perspective do not reduce the visibility of an object to insignificant levels. Beauty plays no role in this concept. A visual impact may also be considered in the context of contrast. For instance, all other things being equal, a blue object seen against an orange background has greater visual impact than a blue object seen against the same colored blue background. Again, beauty plays no role in this concept.

§ 130-93. Reserved.
§ 130-94.  Continuation of Nonconformance.
(Amended 12-16-03, 10-11-05)

Any lawful building, structure, or use of premises existing at the time of enactment of this Zoning Law or any subsequent amendment thereof applying to such building, structure, or use of premises may be continued although such building, structure or use of premises does not conform to the provisions thereof, except as follows:

A. Any used car lot, trailer sales or commercial venture of a similar nature which becomes nonconforming upon the date of enactment of this chapter shall not be allowed to expand any part of its operation including but not limited to: outdoor display area and buildings associated with the use. Upon the sale of the operation, the grandfathered status shall cease and the property must then come into compliance with the current regulations.

B. Any undeveloped lot in a subdivision which was not properly approved by the Planning Board and/or not filed in the office of the County Clerk and whose area and/or depth are less than the specified minimum lot requirements and average density requirements of this Zoning Law shall be considered a violation of this Zoning Law.

C. Any existing lighting shall conform to this Zoning Law at the time said lights require replacement (including fixtures and/or support structures).

D. Nonconforming Accessory structures shall be brought into compliance with this Zoning Law and all amendments thereto pursuant to the requirements of Section 130-95 and 130-96 below.
§130-95. Discontinuance of Nonconforming Use.

A. Any building or land used for or occupied by a nonconforming use, which is changed or replaced, by a conforming use shall not thereafter be used for or occupied by a nonconforming use.

B. When a nonconforming use has been discontinued for a period of one (1) year, it shall not thereafter be reestablished, and the future use shall be in conformity with the provisions of this chapter.

§ 130-96. Maintenance and Repair.

(Amended 12-16-03)

A. A nonconforming use is hereby required to be restored to and maintained in such a condition as will not constitute a danger to the health, safety or general welfare of the public.Alterations and extensions of the nonconforming use in order to comply with the provision of this section are permitted provided that such alterations or extensions do not violate any provisions of this Chapter regarding yards, floor area, lot area, or lot coverage for the district in which it is situated or to increase any existing violation of such provisions.

B. If a nonconforming structure or a structure containing a nonconforming use is destroyed by any cause to the extent of seventy-five percent (75%) or greater of its square footage, the repairs to said structure or any future structure or use shall conform to this chapter.

C. A nonconforming structure or a nonconforming use that is destroyed by any cause to the extent of less than seventy-five percent (75%) of its square footage, may be restored, repaired or reconstructed only by the owner and, in the case of a nonconforming structure, then only to the same nonconforming use. The restored area shall be of substantially the same size, and the nonconforming use may not be enlarged or expanded. Any building or structure containing a nonconforming use or any structure constituting a nonconforming use, which is damaged by any cause, may be repaired or reconstructed in conformity with this chapter only if such reconstruction is completed within twelve months (12) of the damage.
§ 130-97.   Change in Nonconforming Use.
(Amended 12-16-03, 10-11-05)

A nonconforming use of a building, structure or land may not be replaced by the same, similar, or different nonconforming use.

§ 130-98.   Construction Initiated Prior to Regulations.
(Amended 12-16-03)

No building or structure designed for or intended to be utilized for a nonconforming use shall be constructed, reconstructed, or altered unless a building permit has been issued and the construction, reconstruction, or alteration is already underway at the time of the enactment or subsequent amendment of this chapter and is being diligently prosecuted so that such building or structure will be completed within 12 months from the date of the enactment or subsequent amendments of this chapter. All outstanding building permits for construction, reconstruction, or alteration, which do not meet these requirements, shall be rendered null and void by the enactment or subsequent amendment of this Chapter.

§ 130-99.   Existing Undersized Lots.

A.      Any lot held in single and separate ownership prior to the adoption of this Zoning Law and whose area and/or width and/or depth are less than the specified minimum lot requirements of this Zoning Law for the district may be considered as complying with such minimum lot requirements, and no variance shall be required, provided that:

1.      Such lot does not adjoin any other lot or also held by the same owner whose aggregate area is equal to or greater than the minimum lot area required for that district.

2.      Such lot has an area of at least five thousand (5,000) square feet and a minimum width of at least fifty (50) feet at the required setback line if it is to be used for residential purposes.
3. The following minimum dimensions are maintained:

<table>
<thead>
<tr>
<th>Yard</th>
<th>Minimum Required Feet</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front</td>
<td>25</td>
</tr>
<tr>
<td>Rear</td>
<td>25</td>
</tr>
<tr>
<td>Side</td>
<td>8</td>
</tr>
</tbody>
</table>

All other bulk requirements for that district are complied with.

B. In any district where residences are permitted, such undersized nonconforming lots may be used for not more than one (1) single-family dwelling.

C. A lot of nonconforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owners or owners property or properties.

§ 130-100. Reduction in Lot Area.

No lot shall be reduced in area so that it creates a nonconforming bulk or use in violation of any regulations contained in this chapter.

§ 130-101. Exempted Lots.

A. In accordance with Town Law § 265-a, any lot proposed for residential use in a subdivision whose plat delineates one (1) or more new streets, roads, or highways and which said subdivision plat has been properly approved by the Planning Board and filed in the office of the County Clerk prior to the passage of this Zoning Law and whose area and/or width and/or depth are less than the specified minimum lot requirements for that zoning district shall be considered as complying with such minimum lot requirements for two (2) years after the filing of the subdivision plat.

B. If, at the time of the filing of the subdivision plat referred to above, there was no Planning Board vested with authority to approve subdivision plats, then the exemption provided for in such subdivision shall apply for a
period of one (1) year after the filing of said subdivision plat in the office of the County Clerk.

§ 130-102. Expansion or Alterations
(Amended 12-16-03, 10-11-05)

A. A nonconforming building or a nonconforming use, except signs may be expanded once, provided said expansion does not exceed twenty-five percent (25) of the square footage of the current nonconforming building or nonconforming use. The expansion will require a special use permit and must have site plan review for the proposed expansion pursuant to the criteria in Article IX of this Chapter. However, if the cost of said expansion exceeds twenty-five percent (25%) of the fair market value of the nonconforming use or structure as determined by averaging three separate appraisals to be paid for by the Applicant the requirements of § 130-101(B) below shall then apply. A nonconforming structure proposed to be expanded more than once or by greater than twenty-five percent (25%) of the square footage used for the present use, must be brought into full compliance with all the requirements of this Chapter.

B. A nonconforming structure or a nonconforming use may not be reconstructed, expanded or structurally altered (internally or externally) to an extent exceeding in cost twenty-five percent (25%) of the fair market value as determined by averaging three separate appraisals to be paid for by the Applicant, and in no event shall more than one (1) alteration under this Chapter as heretofore existing be permitted unless said nonconforming structure and/or nonconforming use is/are brought into full compliance with all requirements of this Chapter.
ARTICLE XII

Zoning Board of Appeals.

§ 130-103. Establishment; Composition; Terms; Staff.

A. Establishment of duties. Pursuant to Town Law, the Town Board shall appoint a Zoning Board of Appeals consisting of five (5) members, shall designate its Chairperson, and shall also provide for compensation to be paid to said members and provide for such other expenses as may be necessary and proper. In the absence of the chairperson the Zoning Board of Appeals may designate a member to serve as acting chairperson.

B. Town Board members ineligible. A member of the Zoning Board of Appeals shall not at the same time be a member of the Town Board.

C. Removal of members. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing.

D. Term of appointment.

1. Of the members of the Zoning Board of Appeals first appointed, one (1) shall hold office for the term of one (1) year, one (1) for the term of two (2) years, one (1) for the term of three (3) years, one (1) for the term of four (4) years and one (1) for the term of five (5) years from and after his/her appointment. The appointment of the Chairman shall be for a term of one (1) year.

2. Their successors shall be appointed for terms of five (5) years from and after the expiration of the terms of their predecessors in office.

E. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the duration of the un-expired term.

F. Alternate Members. In the event that conflicts of interest or other causes result in the absence, disqualification, or recusal of any regularly appointed member of the Zoning Board of Appeals, the Town Board shall
appoint an ad hoc member or members in such number as shall be sufficient to constitute a full board of five members for the purpose of hearing and determining a specific appeal or application pending before the Zoning Board of Appeals from which the regularly appointed members have been absent, disqualified, or recused. The term of any such ad hoc appointment shall expire concurrently with the making of a final determination by the Zoning Board of Appeals with respect to the appeal or application for which the ad hoc appointment was made. Once designated to serve on a particular matter pending before the Zoning Board of Appeals, the ad hoc member or members shall have the same powers and duties as regular members of the Zoning Board of Appeals until the matter is concluded.

G. Staff. The Zoning Board of Appeals may employ experts, clerks, and other staff assistance as may be necessary and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.


The Zoning Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, bylaws, and forms as they may deem necessary for the proper execution of their duties and to secure the intent of this Zoning Law. Such rules, bylaws, and forms shall not be in conflict with nor have the effect of waiving any provisions of this Zoning Law or any other zoning law or ordinance of the Town of Erwin.

§ 130-105. Meetings; Minutes.

(Amended 10-11-05)

A. Meetings. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine. The Chairman or, in his absence, the acting Chairman may administer oaths and compel the attendance of witnesses. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in article seven of the New York State Public Officer’s Law.

B. Minutes of Meetings. 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 this fact, and shall also keep records of its examinations and other official actions.

C. Filing requirements. Every rule and regulation, every amendment or repeal thereof and every order, requiring decision or determination of the Zoning Board of Appeals shall be filed within the Office of the Code Enforcement Officer within five (5) business days and shall be a public record.

D. Assistance to Zoning Board of Appeals. The board shall have the authority to call upon any department, agency or employee of the town or upon the Town Planning Board for assistance as necessary and as authorized by the Town Board. The department, agency, employee or Planning Board may be reimbursed for any expenses incurred as a result of this assistance.

E. Hearing appeals. The concurring vote of a majority of all members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to grant a use variance or an area variance. An appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.

§ 130-106. Submission of Report.

When requested by the Zoning Board of Appeals, the Planning Board shall submit to the Zoning Board of Appeals its advisory opinion on said appeal or application. The Planning Board shall submit a report of the advisory opinion prior to the date of the public hearing. The failure of the Planning Board to submit a report shall be interpreted as a favorable opinion for the appeal or application.


Public notice of any required hearing by the Zoning Board of Appeals shall be given in accordance with the Town Law as follows:

A. By publishing a notice of any appeal or application and the time and place of the public hearing in the official newspaper of the Town of Erwin at least five (5) days prior to the date of such hearing.
B. By giving written notice of hearing to any appellant or applicant and any other notice to property owners in an affected area as may be required by the Zoning Board of Appeals and to the Planning Board at least five (5) days prior to such hearing.

C. Notice to County planning agency. At least five (5) days before the hearing, the Zoning Board of Appeals shall mail notices thereof to the parties; to the county planning agency, as required by § 239-m of the general municipal law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in subdivision one of § 239-m of the general municipal law.

§ 130-108. Appeals.
(Amended 10-11-05)

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer under this Zoning Law in accordance with the procedure set forth herewith:

A. Time of Appeal. Notice of appeal shall be filed with the Code Enforcement Officer and the Secretary to the Zoning Board of Appeals, in writing, on a form required by such Board, within sixty (60) days after the filing in the Erwin Town Hall of any order, requirement, decision, interpretation, or determination of the Code Enforcement Officer, specifying the grounds thereof and the relief sought.

B. Transmittal by Code Enforcement Officer. Upon filing of a notice of appeal and payment of a filing fee, as set by Town Board resolution, by the appellant or applicant, the Code Enforcement Officer shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken which include as appropriate a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot.

C. Hearing on Appeals. The Zoning Board of Appeals shall set a reasonable date for the hearing of each appeal, of which hearing date the appellant shall be given notice and at which hearing he/she shall appear in person, or by agent or attorney. The Zoning Board of Appeals shall decide on the
appeal within sixty (60) days after the hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the board.

D. Stay Upon Appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after notice of appeal shall have been filed with him/her, that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property. In this case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Zoning Board of Appeals or by a court of record upon application, on notice to the Code Enforcement Officer and on due cause shown.

E. Action by the Zoning Board of Appeals. Following public notice and hearing, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Code Enforcement Officer, and to that end shall have all the power of the Code Enforcement Officer.

F. 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 member of the board. A unanimous vote of all members of the board present is required for such rehearing to occur. A rehearing is subject to the same notice provisions as the original hearing. Upon such rehearing, the Zoning Board of Appeals 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.

G. Compliance with State Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under article eight of the environmental conservation law (NYCRR Title 6 Part 617) and its implementing regulations as codified in the title six, part six hundred seventeen of the New York codes, rules and regulations.
H. **Filing of Decision and Notice.** The decision of the Zoning Board of Appeals on the appeal shall be filed with the Code Enforcement Officer within five (5) business days after the day the decision is rendered, and a copy thereof presented to the applicant.

§ 130-109. **Variances.**

(Amended 10-11-05)

A. Where an applicant can demonstrate that carrying out the strict letter of this Zoning Law causes unnecessary hardship to the applicant, a variance may be granted if it outweighs any possible detriment to the health, safety and welfare of the neighborhood or community by such grant. The Zoning Board of Appeals shall have the power, after public notice and hearing, to vary or modify through a variance, the application of any of the regulations or provisions of the Zoning Law. The Zoning Board of Appeals, in granting 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.

B. The Zoning Board of Appeals, on appeal from the decision of the Code Enforcement Officer, shall have the power to grant two (2) types of variances; use variances and area variances as defined herein.

1. **Area Variances**

   In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the community or neighborhood by such a 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 granting 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 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;

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

The granting of an area variance can only result in a restriction or modification, which permits the applicant to use his land for one (1) of the uses permitted in the district.

2. Use Variance.

No use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations 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 permitted use 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) 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) the requested use variance, if granted, will not alter the essential character of the neighborhood; or
d) that the alleged hardship is not self-created.

C. Every use variance shall be referred to the Planning Board by the Code Enforcement Officer, prior to any action by the Zoning Board of Appeals, for an advisory opinion as to the appropriateness of said variance. The Planning Board’s recommendation shall make reference to the effect of the variance on the intent of the Zoning Law and its relation to the Comprehensive Plan. If the Planning Board fails to present a recommendation to the Zoning Board of Appeals within forty-five (45) days of the date of a referral, the Zoning Board of Appeals may act without such recommendation. The Zoning Board of Appeals shall not act contrary to the Planning Board’s recommendation, except by adoption of a resolution, which fully states the reasons for such action.

D. Imposition of Conditions. Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of property. These conditions shall be consistent with the spirit and intent of the zoning law, and shall be imposed for the purpose of minimizing any adverse impact that the variance may have on the neighborhood or community.

E. Expiration of a Variance. Any variance, which is not exercised within one (1) year from the date of issuance, is thereby declared to be expired without further hearing by the Zoning Board of Appeals.
ARTICLE XIII
Amendments

§ 130-111. Procedure.

The Town Board may, from time to time, on its own motion or on petition of one (1) or more property owners or their agents or on recommendation of the Planning Board, amend by local law the regulations and districts established under this Zoning Law after public notice and hearing in each case. Such amendments shall be passed by a simple majority vote of the Town Board unless a protest is filed in accordance with § 130-106.

All proposed amendments of the regulations or districts herein established shall be accompanied by a filing fee to be set by Town Board resolution to help defray the cost of advertising the hearing on said proposed amendments and incidental disbursements. Amendments made to the Zoning Law adopted pursuant to this section shall be entered into the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with such change. A copy, summary or abstract of the amendments (exclusive of related maps) shall be published once in a newspaper as designated by the Town Board. An affidavit of the publication shall be filed with the Town Clerk. The Town Clerk shall maintain every map adopted in connection with the Town of Erwin Zoning Law or amendment.

§ 130-112. Planning Board Recommendations.

Every proposed amendment, unless initiated by the Planning Board, shall be referred to the Planning Board. The Planning Board shall report its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Planning Board fails to report within a period of forty-five (45) days from the date of receipt of the notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Planning Board disapproves the proposed amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by the adoption of a resolution fully setting forth the reasons for such contrary action.

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given as follows:

A. By publishing a notice of the proposed amendment and the time and place of the public hearing in a newspaper of general circulation in the town not less than ten (10) days prior to the date of public hearing.

B. By giving written notice at least ten (10) days prior to the date of the public hearing to any required municipal, county, regional, metropolitan, state or federal agency including housing authorities, municipalities and state parks within 500 feet of the property affected by the zoning amendment in the manner prescribed by law.

C. This notice is in addition to SEQR notification requirements and referrals as required by § 239I and § 239M – change to § 239-i and § 239-m of the General Municipal Law.

D. The public, including those served notice, shall have an opportunity to be heard at the public hearing.

§ 130-114. Protest.

If a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of twenty percent (20%) or more of the area of land included in such proposed change or the owners of twenty percent (20%) or more of the area of land immediately adjacent extending one hundred (100) feet therefrom or by the owners of twenty percent (20%) or more of the area of land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not passed except by the favorable vote of at least three-fourths (3/4) of the members of the Town Board.

§ 130-115. Decision of Town Board.

The Town Board shall set the public hearing as required and shall render its decision within sixty (60) days of the receipt of the Planning Board’s report. The decision shall specify the effective date of the amendment.

The Town Board shall notify the applicant for an amendment of its decision and the effective date within five (5) days after the decision has been rendered.

§ 130-117. Filing with Secretary of State and Effective Date.

Every amendment to this chapter shall be filed with the Secretary of State of New York State upon appropriate forms and become effective as specified in the decision by the Town Board but no sooner than the proper filing with the Department of State.
ARTICLE XIV
Administration and Enforcement

§ 130-118. Enforcement.

Enforcement by Code Enforcement Officer. This Zoning Law shall be enforced by the Code Enforcement Officer, who shall be appointed by the Town Board. Such appointment shall be made in the same manner and with the same powers as now or hereafter practiced or provided under the New York State Uniform Fire Prevention and Building Code.

§ 130-119. Building Permit.

A. Permit Required. No building or structure shall be erected, added to, or structurally altered until a permit has been issued by the Code Enforcement Officer in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code. Except on written order of the Zoning Board of Appeals, no building permit shall be issued for any building where said construction, addition, alteration or use thereof would be in violation of any provision of this chapter.

B. Natural Limitations to Development. No building or occupancy permit shall be issued unless the Code Enforcement Officer is satisfied that the land or parcel in question has no natural characteristics, which would endanger the health, safety, or welfare of the resident or others. Such natural features may include inadequate percolation, flooding, excessive slope, or other characteristics affecting on-site sewage disposal and the general use of the property.

C. Conflict with other Regulations. The Code Enforcement Officer shall, prior to issuing a building permit, be satisfied that the issuance of such permit is not in violation of Chapter 12 Land Subdivision Rules and Regulations of the Planning Board or any other ordinances, laws or regulations of record.

§ 130-120. Certificate of Occupancy.

A. Requirements. No land shall be used or occupied and no building or structure hereafter erected, altered or extended shall be used or changed in
use until a certificate of occupancy shall have been issued by the Code Enforcement Officer in accordance with the provisions of the New York State Uniform Fire Prevention and Building Code.

B. Issuance. All certificates of occupancy for new or altered buildings or structures shall be applied for coincident with the application for a building permit therefore. Such certificate of occupancy shall be issued within ten (10) days after the erection or alteration shall have been approved as complying with the provisions of this Zoning Law.

§ 130-121. Penalties for Offenses.

A. Fines and Imprisonment. Any person, firm, company, or corporation owning, controlling, or managing any building, structure, or premises wherein or whereon there shall be placed or there exists anything in violation of any of the provisions of this chapter and any person, firm, company, or corporation who shall assist in the commission of any violation of this chapter or any conditions imposed by the Planning Board or the Zoning Board of Appeals or who shall build contrary to the plans or specifications submitted to the Code Enforcement Officer and by him certified as complying with this chapter shall be guilty of an offense and subject to a fine not exceeding three hundred fifty dollars ($350) or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five (5) years, punishable by a fine of not less than three hundred fifty dollars ($350) nor more than seven hundred dollars ($700), or imprisonment for a period not to exceed six (6) months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, punishable by a fine of not less than seven hundred dollars ($700) nor more than one thousand dollars ($1,000) or imprisonment for a period not to exceed six (6) months, or both. Each week’s continued violation shall constitute a separate additional violation.

B. Additional Remedies. In case of any violation or threatened violation of any of the provisions of this chapter or conditions imposed by the Planning Board, Code Enforcement Officer, or Zoning Board of Appeals, in addition to other remedies herein provided, the Town Board may institute any appropriate action or proceeding to prevent such unlawful
erection, structural alteration, reconstruction, moving and/or use; to restrain, correct or abate such violation; to prevent the occupancy of such building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about such premises.

§ 130-122. Appeals.
(Amended 10-11-05)

A. Application to Supreme Court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals, Planning Board, Town Board or any other officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision of the board in the office of the Code Enforcement Officer.

B. Costs of appeal. Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

§ 130-123. Separability.

If any part or provision of this article or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this article or the application thereof to other persons or circumstances and the legislature hereby declares that it would have enacted this article or the remainder thereof had the invalidity of such provision or application thereof been apparent.
ARTICLE XV
Fees

§ 130-124. Fee Schedule.

A schedule of fees for all building permits and approval applications as required in this chapter shall be set by Town Board resolution from time to time. The schedule of fees is on file in the Town Offices. As specified in this chapter, fees shall be required for the following:

A. Site plan application.

B. Excavation of earth materials permit.

C. Variance application.

D. Appeals application.

E. Timber harvesting

F. Other fees as determined by the Town Board for the administration of this law.
APPENDIX A

USE REGULATION TABLE
**Key to Abbreviations**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>RD</td>
<td>Rural District</td>
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<tr>
<td>R-12.5</td>
<td>Low Density Residence</td>
</tr>
<tr>
<td>R-10</td>
<td>Medium Density Residence</td>
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<tr>
<td>R-7.2</td>
<td>High Density Residence</td>
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<tr>
<td>B1</td>
<td>Business 1-Community Service</td>
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<tr>
<td>B2</td>
<td>Business 2-Office/Commercial</td>
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<tr>
<td>B3</td>
<td>Business 3-Neighborhood Services</td>
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<td>Multi-Use</td>
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<td>T-C</td>
<td>Town Center</td>
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<tr>
<td>R-S</td>
<td>Regional Service</td>
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<tr>
<td>I-1</td>
<td>Industry – 1</td>
</tr>
<tr>
<td>I-2</td>
<td>Industry – 2</td>
</tr>
<tr>
<td>P</td>
<td>Permitted outright.</td>
</tr>
<tr>
<td>S</td>
<td>Requires site plan approval by Planning Board.</td>
</tr>
<tr>
<td>X</td>
<td>Requires special use permit in addition to site plan approval by Planning Board.</td>
</tr>
</tbody>
</table>

Where no symbol appears, the use is not permitted in the district.

* Indicates a use newly defined in the proposed regulations thus it does not appear in the existing use table.
(Amended 12-16-03, 12-29-03, 10-11-05)

Key: X=Special Use Permit
S=Site Plan Approval
P=Permitted Outright

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<thead>
<tr>
<th>DISTRICT</th>
<th>TC</th>
<th>B1</th>
<th>B2</th>
<th>B3</th>
<th>MU</th>
<th>R-S</th>
<th>I-1</th>
<th>I-2</th>
<th>RD</th>
<th>R-7.2</th>
<th>R-10</th>
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<tr>
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<td>Cultural facilities (library, art gallery, museum, etc.)</td>
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<td>Golf course or country club</td>
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<td>Nursing or convalescent home</td>
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**ACCESSORY USES**

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<td>B1</td>
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<td>RD</td>
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<td>Equipment/large product rental or sales establishment</td>
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<td>TC</td>
<td>B1</td>
<td>B2</td>
<td>B3</td>
<td>MU</td>
<td>R-S</td>
<td>I-1</td>
<td>I-2</td>
<td>RD</td>
<td>R-7.2</td>
<td>R-10</td>
<td>R-12.5</td>
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<td>Manufacture, fabrication, processing, assembly, and other handling of material and excluding prohibited uses listed in §130-11(K)</td>
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<td>Veterinarian office, animal hospital</td>
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</tbody>
</table>

1 Under 5,000 S.F. "Neighborhood Scale"
2 Strict Design Standards must be complied with
3 Both principal and secondary uses must be Allowable Uses within the District
4 Cottage Industries with compatible types of products "Cottage Scale Retail" Below 5,000 S.F.
5 Under strict design standards and less than 10,000 S.F.
6 Strict design standards and square footage limitations to be employed
7 Cannot contain a drive-thru
8 Under 2,000 S.F and cannot contain a drive-thru
APPENDIX B

DENSITY CONTROL SCHEDULE
### Town of Erwin Density Control Schedule
*(Area and Bulk Requirements) - See Notes on page B-3*

*(Amended 12-16-03, 10-11-05)*

<table>
<thead>
<tr>
<th>District</th>
<th>Residential</th>
<th>Non-residential</th>
<th>Minimum Yard Dimensions (feet)</th>
<th>Maximum Lot Coverage (percent)</th>
<th>Maximum Height (feet)</th>
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<tbody>
<tr>
<td></td>
<td>Minimum Buildable Lot Size Per Dwelling Unit - (A)</td>
<td>Width at Building Line (feet)</td>
<td>Minimum Buildable Lot Size Per Principle Use - (B)</td>
<td>Minimum Width at Building Line (feet)</td>
<td>Front</td>
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<tr>
<td>RD</td>
<td>2 acres</td>
<td>200 (C) 500 (D)</td>
<td>4 acres</td>
<td>500 (min.)</td>
<td>75</td>
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<tr>
<td>R-12.5</td>
<td>12,500 SF 10,000 SF (E)</td>
<td>100</td>
<td>25,000 SF</td>
<td>200 (max)</td>
<td>35/30 (P) 20/10 (P) 50/25 (P)</td>
</tr>
<tr>
<td>R-10</td>
<td>10,000 SF 7,200 SF (F)</td>
<td>75</td>
<td>25,000 SF</td>
<td>200 (max)</td>
<td>30</td>
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<tr>
<td>R-7.2</td>
<td>7,200 SF</td>
<td>60</td>
<td>25,000 SF</td>
<td>200 (max)</td>
<td>30</td>
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<td>N/A</td>
<td>N/A</td>
<td>12,500 SF</td>
<td>100 (max)</td>
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<tr>
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<td>N/A</td>
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<td>50 (max)</td>
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<td>B3</td>
<td>N/A</td>
<td>N/A</td>
<td>10,000 SF</td>
<td>50 (max)</td>
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<td>MU</td>
<td>7.2</td>
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<td>1 acre</td>
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<td>T-C</td>
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<td>N/A</td>
<td>12,500 SF</td>
<td>40 (min)</td>
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<tr>
<td>I</td>
<td>N/A</td>
<td>N/A</td>
<td>15,000 SF</td>
<td>100 (max)</td>
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</table>
NOTES:

* - The dimensional requirements set forth in §130-87 Design Standards shall supersede the requirements of the Density Control Schedule where applicable.

(A) - See §130-15 to calculate net acreage of buildable land. See Article VI Residential Cluster Development and Article VII Planned Residential District.

(B) - Same as A.

(C) - Abutting minor roads.

(D) – Average frontage over the length of the parcel abutting collector or major roads. May be reduced to 200-foot frontage if entrance is shared with adjoining parcel.

(E) - Minimum lot size if part of a cluster residential development. See Article VI Residential Cluster Development.

(F) - Same as E.

(G) - Supporting computations: 2 Acres minimum lot size or 43,560 X 2 = 87120 SF. 10% - 8710 SF. ADEQUATE for buildings and drives.

(H) - Supporting computations: 12,500 SF X 10% - 1250 SF + Drive (18 X 35= 625 Approx.) = 1875 SF or 15%.

(I) - Supporting computations: 10,000 SF X 20% - 2000 SF + Drive (18 X 30 = 540) = 2500 SF (approx.) or 25%.

(J) - Supporting computations: 7200 SF X 25% = 1800 SF + Drive (18 X 30 = 540) = 2400 SF (approx.) or 33%.

(K) - Supporting computations: 12,500 SF X 35% - 2750 SF + parking @ 1/250 SF = 15 X (10 X 20) - 3000 SF + 3750 = 6740 or 55%. Add for aisles/other or 60%.

(L) - Supporting computations: 3 acres X 43,560 - 130,680 SF X 35% - 45738 + 1/250 SF = 183 X (10 X 20) = 36,600 SF + 45,738 = 82,338 or 63%. Add for aisles/other or 75%. Need minimum 25% for drainage/landscaping/open space.
(M) - To be determined by the Planning Board.

(N) - Refer to §130-87 Design Standards for dimensional requirements.

(O) - For Residential Uses refer to the dimensional requirements for R-7.2 above, for Non-residential Uses refer to the dimensional requirements for B3 above.

(P) - The yard requirements for the R-12.5 areas in Long Acres (bounded by Rt. 415 to the north, the railroad bed to the south, the Lynn Morse Dr. Bridge to the east and Meads Creek to the west), and Coopers Plains (roughly bounded by the railroad bed to the south, Mill Street to the east, the Cohocton River to the west, and Meads Creek to the north) shall be required to adhere to the yard requirements of the R-10 District.

Note: These yard requirements only apply to the areas mentioned above and all other R-12.5 areas in the Town shall be guided by the remaining standards and requirements of R-12.5 areas.

Note: These yard requirements do not negate the remaining requirements of the Density Control Schedule for the identified areas. A maximum of 15% of each lot within the R-12.5 District are allowed to be utilized for development. When applying these revised yard requirements, the 15% maximum lot coverage requirements will still apply and will supersede the yard allowances.
APPENDIX C

DEC PROGRAM POLICY DEP-00-2
ASSESSING AND MITIGATING VISUAL IMPACTS
Abstract: Facilities regulated by the Department of Environmental Conservation located in visual proximity to sensitive land uses can produce significant visual impacts. This policy and guidance defines what visual and aesthetic impacts are, describes when a visual assessment is necessary and how to review a visual impact assessment, differentiates State and local concerns, and defines avoidance, mitigation and offset measures that eliminate, reduce, or compensate for negative visual effects. A glossary of terms is provided for reference.

I. Purpose

This memorandum provides direction to Department staff for evaluating visual and aesthetic impacts generated from proposed facilities. This guidance defines State regulatory concerns and separates them from local concerns. There is nothing in this program policy that eliminates or reduces the responsibility of an applicant to local agencies to address local visual or aesthetic concerns. In addition, this program policy does not relieve applicants from requirements of other State agencies, such as Department of State Coastal Zone Program or Department of Public Service. This guidance will also define important technical concepts and provide a mechanism for complying with the balancing provisions of the State Environmental Quality Review Act (SEQR) with respect to environmental aesthetics.

II. Background

An ever expanding body of research has demonstrated that environmental aesthetic values are shared among the general population. This research finds that such values are not idiosyncratic, random, or arbitrary. For example, millions of people visit Niagara Falls for our shared appreciation of its beauty.

Many places have been recognized for their beauty and designated through Federal or State democratic political processes, reinforcing the notion that environmental aesthetic values are shared. Recognition of aesthetic resources also occurs at local levels through zoning, planning or other public means. That these special places are formally recognized is a matter of public record. This guidance contains a
generic listing of all aesthetic resources of statewide significance and serves as the template from which aesthetic issues of State concern can be distinguished from local issues. Generally, it is staff’s responsibility to identify and mitigate impacts to Federal and State designated aesthetic resources. With respect to local resources, Department staff should defer to local decision makers, who are likely to be more familiar with and best suited to address them.

III. Policy

In the review of an application for a permit, Department staff must evaluate the potential for adverse visual and aesthetic impacts on receptors outside of the facility or property. When a facility is potentially within the viewshed of a designated aesthetic resource, the Department will require a visual assessment, and in the case where significant impacts are identified, require the applicant to employ reasonable and necessary measures to either eliminate, mitigate or compensate for adverse aesthetic effects.

IV. Responsibility

The environmental analyst, acting as project manager, for review of a new application must assure that visual and aesthetic impacts are properly evaluated by the applicant. For new permits or significantly modified permits, staff must determine the potential significance of the action pursuant to SEQR.

In the review of an application for a permit, staff must evaluate the potential for adverse aesthetic impacts to sensitive places. Sensitive places of statewide concern are listed in this guidance (see V. Procedure). From the State’s perspective there may be a significant impact if one or more of the listed places lies within the viewshed of a proposed project. From a local perspective there may be a significant impact if a local resource lies within the project’s viewshed. This simple concept may help staff and decision makers distinguish local concerns from State concerns, and public concerns from individual expressions of concern.

With respect to aesthetics, an individual citizen’s expression of concern is usually based on the belief that a property or particular "neighborhood" lies within the viewshed of a proposed project. This is different from the concerns of the public at large which has a stake in aesthetic resources recognized as having designated value under the public domain.

Significant impacts are identified and confirmed by staff during the review of an application. SEQR obligates the Department to mitigate such impacts to the maximum extent practicable [6NYCRR Part 617.11(d)(5)]. Local involved agencies must do the same with respect to local resources and likewise comply with Article 8 of the ECL and 6NYCCR Part 617. Impacts to aesthetic resources of statewide concern may require more substantial mitigation strategies to achieve project approval. Mitigation costs and practicality of the mitigative measures must be weighed in the balancing required by the State Environmental Quality Review Act.

Local resources are frequently designated through local zoning and planning processes. Accordingly, local jurisdictions may require additional and somewhat different information than the Department. The legislature has recently recognized and addressed this jurisdictional difference. In 1999, the Legislature, revised Article X of the Public Service Law to eliminate a DEC requirement to testify on behalf of local
jurisdictions concerning the impacts of power plant siting. In doing so, they explicitly eliminated the requirement that DEC staff testify with regard to local jurisdictional needs.

V. Procedure

Staff must assure that the full scope of visual and aesthetic concerns are addressed. This includes impacts from all project components and their operation on all inventoried resources. In addition, an equitable level of expectations between the potential significance of the impact, the degree of sophistication of the analysis required of applicant and appropriate level of mitigation strategies must be established. The goal of visual assessment is to reveal impacts and effective mitigation strategies. Small scale, low budget projects should not be burdened with the costs of sophisticated visual analyses. In these instances, it is generally more effective to reserve applicant investments for mitigation rather than complex visual assessments. Simple line-of-sight profiles may suffice for revealing impacts and potential mitigation strategies (see appendix A for an illustration of their use).

Staff must take certain basic steps to assure that visual concerns have been fully addressed in each application. Those steps are:

A. Verify the applicant’s inventory of aesthetic resources.

B. Verify the applicant’s visual assessment, using either graphic viewshed and line-of-sight profile analysis as illustrated in Appendix A, or more sophisticated visual simulations and digital viewshed analysis, as needed.

C. Determine or verify the applicant’s assessment of the potential significance of the impact.

D. Confirm that applicant’s mitigation strategies are reasonable and are likely to be effective, or assure mitigation by requiring the applicant to submit a design that includes the required mitigation, or, impose permit conditions consistent with those mitigation requirements.

A discussion of each follows:

A. Inventory of Aesthetic Resources.

It is important to note that all significant scenic and aesthetic resources may not have yet been designated in New York State. However, for the purposes of this policy all aesthetic resources of statewide significance may be derived from one or more of the following categories:

1) A property on or eligible for inclusion in the National or State Register of Historic Places [16 U.S.C. § 470a et seq., Parks, Recreation and Historic Preservation Law Section 14.07]; e.g. Trinity Church in Manhattan, Schuyler Mansion in Albany;

2) State Parks [Parks, Recreation and Historic Preservation Law Section 3.09]; e.g. Grafton Lakes State Park, Rensselaer County;

3) Urban Cultural Parks [Parks, Recreation and Historic Preservation Law Section 35.15];
4) The State Forest Preserve [NYS Constitution Article XIV]; Adirondack and Catskill Parks;

5) National Wildlife Refuges [16 U.S.C. 668dd], State Game Refuges and State Wildlife Management Areas [ECL 11-2105]; e.g. Montezuma National Wildlife refuge; Perch River Wildlife Management Area, Jefferson County;

6) National Natural Landmarks [36 CFR Part 62]; e.g. Iona Island Marsh, Hudson River, Rockland County;

7) The National Park System, Recreation Areas, Seashores, Forests [16 U.S.C. 1c]; e.g. Gateway National Recreation Area, Staten Island; Finger Lakes National Forest, Schuyler County;

8) Rivers designated as National or State Wild, Scenic or Recreational [16 U.S.C. Chapter 28, ECL 15-2701 et seq.]; e.g. Cedar River (Wild), Ampersand Brook (Scenic); West Branch of the Ausable River (Recreational);

9) A site, area, lake, reservoir or highway designated or eligible for designation as scenic [ECL Article 49 or DOT equivalent and APA. Designated State Highway Roadside; e.g. Storm King Highway (Article 49 Scenic Road), Rockland county;

10) Scenic Areas of Statewide Significance [of Article 42 of Executive Law]; e.g. Catskill-Olana SASS;

11) A State or federally designated trail, or one proposed for designation [16 U.S.C. Chapter 27 or equivalent]; e.g. Appalachian Trail;

12) Adirondack Park Scenic Vistas; [Adirondack Park Land Use and Development Map]

13) State Nature and Historic Preserve Areas; [Section 4 of Article XIV of the State Constitution];

14) Palisades Park; [Palisades Interstate Park Commission]; e.g. Harriman State Park;

15) Bond Act Properties purchased under Exceptional Scenic Beauty or Open Space category; e.g. Star Hill, Oneida County.

Note: The Hudson River has recently been designated an “American Heritage River” by a Presidential Order under [PL 91-190]. The details and criteria of the program as they may relate to this policy are currently under review.

B. Visual Assessments.

1 State Coastal Policies number 24 and 25 derived in part from Section 912 of Article 42 of the Executive Law define the criteria that, when properly employed, assure project consistency with coastal zone management objectives. Such policies are consistent with the review mechanisms contained in this DEC policy. Also for reference is the July 1993 DOS SASS publication for Columbia-Greene, Catskill-Olana, Estates District, Ulster North, Esopus-Lloyd, and the Hudson Highlands.
In all visual assessments, significant resources must be identified along with any potential adverse effects on those resources from the proposed project. If, in staff’s judgement, a place designated in any of the above categories may lie in the viewshed of the proposed project then a visual assessment should be required to confirm or refute this potential. At a minimum a line-of-sight-profile, or, depending upon the scope and potential significance of the activity, a digital viewshed may be used to determine if a significant property is within the potential viewshed of the proposed project (see the Appendix A attached for guidance on how to construct and use a line-of-sight profile). Staff must then review the applicant’s visual assessment for adequacy, accuracy and thoroughness. The control points (see glossary for definition) must be established by staff and should include a worst case scenario. Worst case here means establishing the control points that reveal any project visibility at an aesthetically significant place. Most of the time, though not always, high points reveal worst case. For example, the tallest facility component (e.g. combustion exhaust stack), may be the control point at the project end of the profile, while a high point of ground upon which the observer stands within a State Park may be the control point at the resource end of the profile.

With respect to determining the radius of the impact area to be analyzed, there has been a general guideline for large actions that it is usually “safe” to use 5 miles. The 5 mile distance probably owes its origins to the U.S. Forest Service “distance zones” set forth in their landscape management journal written in 1973\(^2\) (5 miles is still largely considered “background,” i.e. distances at which most activities are not a point of interest to the casual observer). However, for very large activities, such as power plants (particularly those that generate wet cooling tower plumes), and large landscape alterations, greater distances have been shown to be important in some landscape settings, and must be considered. In those instances, applicants must document to the satisfaction of staff that impacts beyond five miles to listed resources have been considered. They must also provide a clear demonstration that impact to any resource of statewide concern is insignificant. Such demonstrations may be convincing if resource inventories beyond 5 miles are coupled with line-of-sight profiles (see Appendix A for a complete discussion of these graphic tools) or other accepted visual criteria, such as computer simulations, analogous comparative studies or worst case presentations.

C. Significance.

Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. Significant aesthetic impacts are those that may cause a diminishment of the public enjoyment and appreciation of an inventoried resource, or one that impairs the character or quality of such a place. Proposed large facilities by themselves should not be a trigger for a declaration of significance. Instead, a project by virtue of its siting in visual proximity to an inventoried resource may lead staff to conclude that there may be a significant impact. For example, a cooling tower plume may drift between viewers standing on an overlook at a State Park thereby blocking the view of the panorama. Staff must verify the potential significance of the impact using the qualities of the resource and the juxtaposition (using viewshed and or line-of-sight profiles) of the proposal as the guide for the determination.

D. Mitigation.

Mitigation may reduce or eliminate the visibility of the project or alter the project’s effect on the scenic or aesthetic resource in some way. It is usually easier to deal with the visibility of the project than its composition to achieve mitigation. Altering the composition of a project lies within the realm of professional designers. When given the opportunity, however, staff should encourage applicants to design aesthetically compatible projects that incorporate environmentally friendly design principles and components, as may be employed from the mitigation menu below.

Mitigation strategies can be categorized into three general groups as outlined below.

1) Professional Design and Siting.
   a) Screening
   b) Relocation
   c) Camouflage/Disguise
   d) Low Profile
   e) Downsizing
   f) Alternate Technologies
   g) Non-specular materials
   f) Lighting

2) Maintenance
   a) Decommissioning

3) Offsets

A discussion of each follows:

1. Professional Design and Siting. A properly sited and designed project is the best way to mitigate potential impacts. Under optimum circumstances a project can be sited in a location which precludes the possibility of having an aesthetic resource within its viewshed. Also, through sensitive design treatment, elements of particular concern may be sited or dimensioned in a way that reduces or eliminates impacts on significant resources. Sometimes circumstances prevent the realization of optimal siting and sometimes engineering, economic or other constraints preclude optimum dimensioning or other appropriate design treatments. Under those circumstances, other mitigation strategies should be considered.

Staff should assure effective mitigation is thoroughly explored by requiring project sponsors to consider the following tools to mitigate impacts:

   a. Screening. Screens are objects that conceal other objects from view. They may be constructed of soil, rocks, bricks, or almost anything opaque. Vegetation can, despite its visual porosity, function as a screen when a sufficient mass is employed. Screens may be natural, e.g. vegetation, or artificial, e.g. fences and walls. Screens may appear natural e.g. wood, stone, or may appear artificial, e.g. plastic, metal. In natural settings it is generally better to employ natural materials, while in urban places designers may employ a broader range of materials.

   Screens constructed from soil are called berms. Berms may appear natural e.g. blend with nearby topography, or appear artificial e.g. geometrical or symmetrical shape. Each
may be employed depending upon the overall design intent. Berms may be vegetated or not vegetated depending upon their particular function, e.g. spill containment and/or screening.

Properly sized and placed screens may completely conceal an object, while improperly sized and placed screens may fail to conceal. Screens may block desirable views when improperly placed (see Appendix A to see how screen placement is important).

Screens are not necessarily buffers and buffers are not necessarily screens. A buffer may attenuate noise, soften a landscape or provide other functions that may or may not include screening.

Screens possess line, form, texture, planes and color, and therefore, have their own aesthetic qualities. At times, they may be more impacting than the object to be concealed. Screens may draw attention to the object to be concealed. Screens may physically connect two similar or dissimilar areas.

b. Relocation. A facility component may be relocated to another place within the site to take advantage of the mitigating effects of topography and vegetation.

c. Camouflage/Disguise. Colors and patterns of color may conceal an object or its identity. Disguise may take many forms, and is limited only by the imagination of the project designers. As an example, communication towers can be disguised as trees, flagpoles, barn silos, church steeples, or any other “in-character” structure depending upon circumstances.

d. Low Profile. Reducing the height of an object reduces its viewshed area.

e. Downsizing. Reducing the number, area or density of objects may reduce impacts.

f. Alternate Technologies. Substituting one technology for another may reduce impacts (e.g. dry cooling tower technology versus wet cooling tower technology).

g. Non-Specular Materials. Using building materials that do not shine may reduce visual impacts.

h. Lighting. With respect to regional issues, such as a tall combustion exhaust stack or radio tower, the Federal Aviation Administration (FAA) requires certain lighting for public transportation safety. These impacts may be considered unavoidable unless lower profiles can be achieved. Applicants should also document that they have consulted with and met all applicable lighting standards under local jurisdiction. Consideration should be given to off-site light migration, glare and “sky glow” light pollution. Lighting requirements, through best engineering practices, should not exceed the functional requirements of the project.

2. Maintenance. How a landscape and structures in the landscape are maintained has aesthetic implications. “Eyesores” result from neglect. This should be part of any mitigation strategy.

   a. Decommissioning. Removing an object from the landscape after its useful life is over, reduces the duration of a visual impact (see page 9 for further discussion).
3. Offsets. Correction of an existing aesthetic problem identified within the viewshed of a proposed project may qualify as an offset or compensation for project impacts. A decline in the landscape quality associated with a proposed project can, at least partially, be "offset" by the correction. In some circumstances a net improvement may be realized (see page 9 for further discussion).

An applicant may assert that all economic and effective mitigation strategies have been incorporated into the proposed design and, when properly designed, such self-imposed mitigation should effectively mitigate any negative effects on a listed resource. However, if staff concludes that significant impacts remain then staff must still ensure that impacts are minimized. In this regard, staff should first investigate visibility mitigation strategies. Manipulating design elements to achieve adequate mitigation usually lies within the purview of professional designers.

Staff should not try to judge the quality of a design nor its effect on the aesthetics of the listed resource unless they are qualified to do so. Such qualifications normally include academic or other accepted credentials in architecture or landscape architecture. Nevertheless, it is the burden of the applicant to provide clear and convincing evidence that the proposed design does not diminish the public enjoyment and appreciation of the qualities of the listed aesthetic resource. Staff can and should review the strength or merit of such proof. An applicant’s mere assertion that the design is in harmony with or does not diminish the values of the listed resource is insufficient for the purposes of reaching findings. Instead, an applicant must demonstrate through evidence provided by others e.g. recognized architectural review boards, comparative studies that are clearly analogous, or other similar techniques, that the public’s enjoyment and appreciation of the qualities of the aesthetic resource are not compromised.

Staff must be assured that consistent with social, economic and other essential considerations, the action is one that avoids or minimizes adverse impacts to the maximum extent practicable. This can be accomplished by asking and responding affirmatively to the following questions.

1) Was the full mitigation menu considered?

2) Will those mitigation strategies selected be effective?

3) Were the costs of mitigation for impacts to other media considered and were those mitigation investments prioritized accordingly?

4) Are the estimated costs of all mitigation insignificant (for example, are the costs of visual mitigation taken together with all other mitigation less than 10% of the total project cost?)

5) Were the mitigation strategies employed consistent with previous similar applications? If not, was the reasoning for any changes reasonable and justified?

6) Was the mitigation cost effective? For example, if fully mature vegetation with an immediate screening effect costs 10 times the amount that less mature vegetation would cost, is it appropriate to require the less costly option if its full screening effect can be realized in just, say, 3 years? (See Appendix A for details concerning this subject).

7) Were offsets and decommissioning considered?
It is important to bring the project sponsor into the discussion of mitigation strategies. If more than one mitigation strategy meets all environmental protection needs, the applicant’s needs and preferences should be considered.

It is preferred that all mitigation options selected be specified in the applicant’s plans for Department review. The plans should sufficiently depict readily understandable and enforceable details. Adherence to such plans should then become a permit condition. During and after facility construction, staff should visit the site and ensure that all mitigation strategies detailed in the plans and specifications have been adequately incorporated into the facility design.

If all mitigation options available from the menu are considered, applied where appropriate, and those applied are cost effective, then one can assert that impacts have been minimized to the maximum extent practicable. However, the residual impact after all such strategies have been employed may still be significant. Offsets should then be considered to help achieve the balancing required of SEQR. Finally, decommissioning options may be considered that reduce the duration of impacts for projects with severe residual impacts. A discussion of each follows:

1. Offsets.

Offsets should be employed in sensitive locations where significant impacts from the proposal are unavoidable, or mitigation of other types would be uneconomic and mitigation to be used is only partially effective. Offsets should be employed when significant improvement can be expected at reasonable cost. An example of an offset might be the removal of an existing abandoned structure that is in disrepair (i.e. an “eyesore”) to offset impacts from a proposal within visual proximity to the same sensitive resource.

2. Decommissioning.

Decommissioning may take many forms, and other disciplines in Department program areas may have an interest in decommissioning. However, from the perspective of aesthetics, three are of most significance: 1) the total removal from the site of all facility components and restoration to an acceptable condition, usually with attendant revegetation; 2) partial removal of facility components, such as elimination of visually impacting structures; and 3) conditions designed to maintain an abandoned facility and site in an acceptable condition that precludes “eyesores” or site and structural deterioration. Applicants should provide such plans when deemed necessary.

**Glossary**

**Aesthetic impact:** Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. Mere visibility, even startling visibility of a project proposal, should not be a threshold for decision making. Instead a project, by virtue of its visibility, must clearly interfere with or reduce the public’s enjoyment and/or appreciation of the appearance of an inventoried resource (e.g. cooling tower plume blocks a view from a State Park overlook).

**Aesthetically significant place:** A formally designated place visited by recreationists and others for the express purpose of enjoying its beauty. For example, millions of people visit Niagara Falls on an annual basis. They come from around the country and even from around the world. By these measurements,
one can make the case that Niagara Falls (a designated State Park) is an aesthetic resource of national significance. Similarly, a resource that is visited by large numbers who come from across the state probably has statewide significance. A place visited primarily by people whose place of origin is local generally is generally of local significance. Unvisited places either have no significance or are "no trespass" places.

Aesthetic Quality: There is a difference between the quality of a resource and its significance level. The quality of the resource has to do with its component parts and their arrangement. The arrangement of the component parts is referred to as composition. The quality of the resource and the significance level are generally, though not always, correlated.

Atmospheric perspective: Even on the clearest of days, the sky is not entirely transparent because of the presence of atmospheric particulate matter. The light scattering effect of these particles causes atmospheric or aerial perspective, the second important form of perspective. In this form of perspective there is a reduction in the intensity of colors and the contrast between light and dark as the distance of objects from the observer increases. Contrast depends upon the position of the sun and the reflectance of the object, among other items. The net effect is that objects appear "washed out" over great distances.

Control Points: The two end points of a line-of-sight. One end is always the elevation of an observer’s eyes at a place of interest (e.g. a high point in a State Park) and the other end is always an elevation of a project component of interest (e.g. top of a stack of a combustion facility or the finished grade of a landfill).

Line-of-sight profile: A profile is a graphic depiction of the depressions and elevations one would encounter walking along a straight path between two selected locations. A straight line depicting the path of light received by the eye of an imaginary viewer standing on the path and looking towards a predetermined spot along that path constitutes a line-of-sight. The locations along the path where the viewer stands and looks are the control points of the line-of-sight profile.

Scientific Perspective: Scientific, linear, or size perspective is the reduction in the apparent size of objects as the distance from the observer increases. An object appears smaller and smaller as an observer moves further and further from it. At some distance, depending upon the size and degree of contrast between the object and its surroundings, the object may not be a point of interest for most people. At this hypothetical distance it can be argued that the object has little impact on the composition of the landscape of which it is a tiny part. Eventually, at even greater distances, the human eye is incapable of seeing the object at all.

Viewshed: A map that shows the geographic area from which a proposed action may be seen is a viewshed.

Visual Assessments: Analytical techniques that employ viewsheds, and/or line-of-sight profiles, and descriptions of aesthetic resources, to determine the impact of development upon aesthetic resources; and potential mitigation strategies to avoid, eliminate or reduce impacts on those resources.

Visual impact: Visual impact occurs when the mitigating effects of perspective do not reduce the visibility of an object to insignificant levels. Beauty plays no role in this concept. A visual impact may also be considered in the context of contrast. For instance, all other things being equal, a blue object
seen against an orange background has greater visual impact than a blue object seen against the same colored blue background. Again, beauty plays no role in this concept.
SCREENS

THE RELATIONSHIP BETWEEN SCIENTIFIC PERSPECTIVE AND A LINE OF SIGHT PROFILE.

Scientific or linear perspective is a geometric procedure that projects space onto a plane. This technique provides the analyst with a simplified way to verify the effectiveness of applicants mitigation proposal.

Q: At what height should a screen be constructed to completely conceal a 23 foot object from an observer standing 80 feet from the object? Constraint: Screen must be located 10 feet inside property line.

A: About 17 feet.

Q: What is the maximum height of an object to be concealed behind a 10 foot screen that is located 80 feet from an observer? Constraint: The observer is standing about 18½ feet behind the screen.

A: About 23 feet.

Q: In approximately how many years would a vegetative screen 6 feet in height planted on a berm 4 feet in height completely conceal a 23 foot object? Constraints: Berm must be located 10 feet inside property line; object is 80 feet from observer; expected vegetation growth rate of approximately 1 foot per year.

A: Approximately 7 years.
VIEWSHEDS

For illustrative purposes only, a "partial" viewshed has been constructed below. A partial viewshed is distinguished from a full viewshed in that it only shows a selected area from which an object may be seen. A full viewshed shows all such areas.

The shaded area in the northwest corner of the lake is the only area within the lake that a hypothetical object 100 feet in height and situated at A (where the profile radii converge) may be seen.

The defined viewing area has been constructed by connecting each point along each profile where a viewer just begins to see the hypothetical object. To add realism to the viewshed, 40' vegetation has been factored into the lines of sight. The vegetation alters the viewing angle and hence the initial viewpoint indicated by the large black dots at the intersection of the shaded area with each profile radii.
PROFILES

To construct a profile, first position the graph paper parallel and contiguous to the horizontal alignment of the desired profile (indicated by line A-B). Proceed by extending vertical lines (indicated by dashed lines) to the correct height according to any selected convenient vertical scale (in this case 1" = 100'). This must be done from each spot where the horizontal alignment crosses a contour line. It is the elevation of the intersected contour that determines the height of each vertical line. Then, simply connect the top of each vertical line to form the profile (indicated by line C-D). The profile C-D depicts the depressions and elevations one would encounter walking a straight path from Point A to B on the plan map. To add realism add vegetation at the proper locations at the proper height (in this case 40').

Sample Questions and Answers

According to the profile:

Q. Can an observer at location "Z" see the east shore of the lake?
A. No

Q. At what point will the observer no longer be able to see object "X"?
A. At point "Y".

Q. What is the visible portion of object "X" to an observer at location "Z"?
A. About 20 feet.