

**Town of Otto**

**Zoning Ordinance**

**Revised June 2015**

**ENFORCEMENT – TOWN OF OTTO, NY**

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# **ENFORCEMENT**

## **ARTICLE I -- TITLE, PURPOSE, AUTHORITY**

### **§ 1.1 Authority**

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York, the Town Board of the Town of Otto has ordained and does hereby enact this comprehensive zoning law, which is designed to regulate the use of land in the Town of Otto.

### **§ 1.2 Short Title**

This law shall be known and may be cited as “Zoning Law for the Town of Otto”.

### **§ 1.3 Purpose**

It is the purpose of this law to promote the public health, safety and general welfare. Specifically, the purpose of this law is:

1. To retain the unique community character of the Town of Otto as a rural, agriculturally based community, while at the same time providing opportunities for compatible development.
2. To secure safety for its residents from flood, fire and other dangers, both natural and man made.
3. To provide adequate light and air.
4. To prevent the overcrowding of land and to avoid undue concentration of population.
5. To prevent congestion on the streets and roadways in the Town.
6. To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.
7. To accommodate solar energy systems equipment and access to sunlight necessary therefore.
8. To implement the broad guidelines contained in the document, Vision 2020, which has been adopted by the Town Board of the Town of Otto as a policy for future development of the Town through the year 2020.
9. To accommodate wind energy systems equipment and access to wind necessary therefore.
10. To accommodate Electrical Vehicle Supply Equipment (EVSE).

## **ARTICLE 2: INTERPRETATION AND DEFINITIONS**

### **§ 2.1 Interpretation**

#### **§2.1.1 Rules to Interpreting Text of this Law**

1. Words used in the present tense shall include the future.
2. Words used in the singular shall include the plural, and words used in the plural shall include the singular.
3. Words used in the masculine form shall include the feminine.
4. The word “shall” is mandatory. The word “may” is permissive
5. The word “lot” shall include the words “plot,” “piece,” and “parcel”.
6. The word “person” shall include an individual, firm or corporation.
7. The phrase “used for” shall include the phrases “arranged for,” “designed for,” “intended for,” “maintained for,” and “occupied for”.
8. The phrases “to erect,” “to construct” and “to build” a building have the same meaning and include the excavation for a building foundation and the relocation of a building from one location to another.

### §2.1.2 Relationship with other laws

Whenever the requirements of this law are at variance with the requirements of other adopted ordinances, laws, rules or regulations, the regulations which are more restrictive or which impose higher standards or requirements shall govern.

### §2.1.3 Effect on Existing Agreements

This law is not intended to abrogate any easement, covenant or other private agreement. Where the regulations of this law are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this law shall govern. Such private agreements shall not allow what this law prohibits.

## § 2.2 Definitions

The following words and terms, wherever they occur in this law, shall be interpreted as herein defined:

ABANDONMENT - To cease or discontinue a use

ACCESSORY APARTMENT – A second dwelling unit either in or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the main dwelling, for use as a complete, independent living facility with provision within the accessory apartment for cooking, eating, sanitation, and sleeping. Such a dwelling is an accessory use to the main dwelling.

ACCESSORY BUILDING – A structure located on the same lot as a principal building and used for purposes customarily incidental to and subordinate to the principal structure.

ADULT USES – Whenever used in this section, the words adult use or adult uses apply to the following types of establishments:

1. Adult Bookstore – An establishment which has as a substantial or significant portion of its stock in trade, books, pamphlets, magazines and other periodicals, sculptures, photographs, pictures, slides, videotapes, films or sound recordings and which establishment excludes any minor by reason of age.
2. Adult Entertainment Cabaret – A public or private nightclub, bar, restaurant or similar establishment which presents topless or bottomless dancers, go-go dancers, strippers, male or female impersonators, exotic dancers or other similar entertainment, and which establishment excludes any minor by reason of age.
3. Adult Video Store – An establishment having as a substantial or significant portion of its stock in trade, videotapes or films for sale or viewing on premises by use of motion picture devises, video equipment or other coin operated means and which establishment excludes any minor by reason of age.
4. Peep Show – A theater which presents material in the form of live shows, films or videotapes viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.
5. Massage Establishment – Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home, medical clinic or the office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist or duly licensed massage therapist, or barber shops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs that have facilities for physical exercise such as tennis courts, racquetball courts or exercise rooms and which do not receive their primary source of revenue through the administration of massages.
6. Adult Motel – A motel which excludes minors by reason of age or which make available to its patrons in their rooms films, slide shows or videotapes which if presented in a public movie theater would exclude any minor by reason of age.

7. Adult Theater – A theater that customarily presents motion pictures, films videotapes or slide shows and which excludes minors by reason of age.
8. Body Painting Studio – An establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body and which excludes minors by reason of age.
9. Adult Model Studio – Any establishment where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by persons other than the proprietor, paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual firm, association, partnership, corporation or institution which meets the requirements established in the NYS Education Law for the issuance of conferring of and is in fact authorized to issue or confer a diploma.

AGRICULTURE - Farming, production of field crops, dairying, pasturage, horticulture, floriculture, viticulture, production of maple sap, tree farms, and animal and poultry husbandry. The term “agriculture” shall also include necessary accessory uses for packing, treating or storing the products, provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.

AIRSTRIPE, PRIVATE – Any land used for the purpose of landing, taxiing, taking off or storing of private aircraft, pursuant to the regulations of the appropriate authority.

ALTERATION – As applied to a building or structure, any change, other than incidental repairs, that would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams and girders. “Alteration” also includes any enlargement of a building or structure, whether by extending on a side or by increasing in height, or moving it from one location or position to another.

ANTENNA – A system of electrical conductors that transmits or receives radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, and microwave communication. The frequency of these waves generally ranges from 10 hertz to 300,000 megahertz.

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 uncovered porches, terraces and steps. All dimensions shall be measured from exterior wall to exterior wall.

AREA, LOT – The total area within the boundary lines of a lot.

AREA VARIANCE – See Variance Area.

ART AND CRAFTS STUDIO – An accessory use conducted either within a single family dwelling or in a building accessory to a single family dwelling by one or more of its residents. An artist and crafts studio shall house occupations such as painting, sculpting, ceramic-making, weaving, and woodworking.

AUTOMOBILE BODY SHOP – A building used for the repairing or painting of the exterior and/or the undercarriage of motor vehicle bodies, in conjunction with which there may be towing service and motor vehicle rentals for customers while the motor vehicle is under repair.

AUTOMOBILE GASOLINE STATION – A retail establishment where motor vehicle fuels and lubricants are sold to individuals.

AUTOMOBILE REPAIR SHOP – An establishment where motor vehicle fuels and lubricants are sold and where repairs, servicing, greasing, and adjusting of automobiles and other motor vehicles may be performed. All sales and storage of accessories and repairing and servicing shall be conducted within a

wholly enclosed building. No vehicles will be left on the premises for more than two weeks. Repair work does not include body work or painting.

**AUTOMOBILE SALES LOT** – A lot, building or structure where new or used automobiles, trucks, or motorcycles are available for sale.

**BANK** – An institution where money is deposited, kept, lent, or exchanged.

**BAR** – A business establishment licensed by the State of New York to serve alcoholic beverages and which is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

**BARBER SHOP** – See Hairdressing Establishment.

**BARN** – A building used to house animals and feed for those animals.

**BASEMENT** – A portion of a building which is partly underground, but in which more than one-half of its height, measured from floor to ceiling, is above the average finished grade at the point where the grade meets the exterior walls of the building. (See also Cellar).

**BEAUTY SHOP** – See Hairdressing Establishment.

**BED AND BREAKFAST ESTABLISHMENT** – A single family dwelling in which the residents thereof provide overnight accommodation and meals to travelers. A bed and breakfast establishment shall have a maximum of four (4) rooms available for overnight guests.

**BOAT RENTAL** – A facility in which non-motorized boats, such as canoes, rowboats and rafts, are rented for use by the hour or by the day.

**BUILDING** – Any structure which has one or more floors and a roof, which is wholly or partially enclosed by walls, which is permanently affixed to the land, and which is intended for the shelter or enclosure of persons, animals or chattel.

**BUILDING, ACCESSORY** – See Accessory Building.

**BULDING AREA** – See Area, Building.

**BUILDING PERMIT** – Written approval from the Code Enforcement Officer to develop, construct or alter a structure or building.

**CABIN OR COTTAGE** – Summer or winter cabins, cottages or camps and similar structures designed for non-permanent residence. Any utilities installed must meet all applicable codes. No certificate of occupancy will be issued unless the structure meets all codes required for a dwelling. Special Use Permit must be renewed annually or upon transfer of deed, after inspection and approval by Code Enforcement Officer. There will be no charge for these renewals.

**CAMPGROUND** – An area used for a range of overnight camping experiences, from tenting to serviced trailer sites, including accessory facilities which support the use, such as administration offices and laundry facilities, but not including the use of mobile homes on a year round basis.

**CARPOR** – A building or structure, or part thereof, which is not wholly enclosed and is used for the parking of private passenger vehicles.

CELLAR – A portion of a building which is wholly or partly underground and in which more than one-half of its height, measured from floor to ceiling, is below the average finished grade at the point where the grade meets the exterior walls of the building. (See also Basement)

CEMETERY – Land that is set apart or used as a place for the interment of the dead.

CERTIFICATE OF COMPLIANCE – A certificate issued by the Code Enforcement Officer that certifies that conditions specified in this zoning law have been met, that the parcel is properly zoned for the use that is proposed, and that the intended use is allowable. Said certificate shall acknowledge any adjustments to the requirements of this law granted by the Zoning Board of Appeals. Certificates of compliance will be issued after all necessary construction has been completed and prior to occupancy of the structure.

CERTIFICATE OF OCCUPANCY – A permit issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building.

CHURCH – A building in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship.

CLUB - An association catering exclusively to members and their guests. “Club” shall also mean, where the context requires, premises owned or occupied by members of such association, within which the activities of the club are conducted. Such activities shall not be conducted primarily for gain, except as required generally for the purposes of such club.

CODE ENFORCEMENT OFFICER – The official, appointed by the Otto Town Board, responsible for the administration and enforcement of this zoning law.

COVERAGE, LOT – See Lot coverage.

DAY CARE FACILITY – An establishment where five or more children under age six, excluding members of the family occupying the premises, are cared for.

DEVELOPMENT – any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

DRUG STORE – A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices and supplies and non-prescription medicines, but where non-medical products are sold as well.

DWELLING UNIT – A building or portion thereof that provides complete housekeeping facilities for one family. Each dwelling unit shall have its own sleeping, cooking, and toilet facilities. A dwelling unit is designed for permanent occupancy and shall not be construed to include a hotel, motel or other such use of a transient nature.

DWELLING, SINGLE FAMILY – A building that contains one dwelling unit.

DWELLING, TWO FAMILY – A building that contains two dwelling units. The units may be side-by-side, sharing a common wall, or the units may be on separate floors, one above the other.

DWELLING, MULTIPLE FAMILY – A building that contains three or more separate dwelling units.

ELECTRONIC VEHICLE CHARGING STATION - An electric vehicle charging station, also called EV charging station, electric recharging point, charging point and EVSE, is an element in an infrastructure that

supplies electric energy for the recharging of plug-in electric vehicles, including all-electric cars, neighborhood electric vehicles. All such stations will include designated and exclusive parking for vehicles charging.

**ESSENTIAL SERVICES** – The erection, construction, alteration, or maintenance by public utilities or governmental agencies of collection, communication, transmission, distribution or disposal systems necessary for the furnishing of adequate public service for public health, safety or general welfare, but not including buildings. These include telecommunications towers.

**FARM STAND** – An establishment in which are sold agricultural products, at least fifty (50) percent of which are produced in the Township of Otto.

**FINANCIAL INSTITUTION** – The premises of a bank, savings and loan company, trust company, finance company, mortgage company, or investment company.

**FLOOD or FLOODING** – a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland or tidal waters (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD, BASE** – The flood having a one (1) percent chance of being equaled or exceeded in any given year.

**FLOODWAY** - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in the Town of Otto's Flood Damage Prevention Law.

**FINISHED GRADE** – The elevation at which the finished surface of the surrounding lot meets the walls or supports of a building or structure. If the finished grade is not reasonably horizontal, the average elevation of all sides of the structure shall be used for purposes of computing the height of the building or structure.

**FOOD PREPARATION, WHOLESALE** – A commercial establishment in which food is processed or otherwise prepared for human consumption, but which is not consumed on the premises.

**FORESTRY** – The use of land for the purpose of conservation and/or the growing and cutting of trees for the purpose of producing commercial or non-commercial wood products such as furniture and firewood, but shall not include the manufacturing or processing of such products.

**FRONTAGE** – The minimum straight line distance between the intersection of the side lot lines and the front lot line.

**GARAGE** – an accessory building or part of the principal building, which is designed and used primarily for the storage of motor vehicles that belong to the occupants of the dwelling unit with which it is associated.

**GARAGE SALE** – See Yard Sale.

**GAS WELL** – The installation and use of fixtures and equipment which are necessary for the exploration, development or extraction of natural gas.

**GOLF COURSE** – A public or private area operated for the purpose of playing golf, and which may include a club house and accessory driving ranges.

**GROCERY STORE** – A retail establishment primarily selling food.

**GROSS FLOOR AREA** – For the purpose of determining requirements for off-street parking and off-street loading, the gross floor area shall mean the sum of the gross horizontal areas of the several floors of the building, or portion thereof, devoted to such use, including accessory storage areas located within selling or working space such as counters, racks or closets and any basement floor are devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

**HAIRDRESSING ESTABLISHMENT** – A commercial establishment providing a personal service to men, women or children by shampooing, cutting, styling, tinting or treatment of hair, by giving manicures, pedicures or facial treatments or by the use of cosmetic products, and, without limiting the generality of the foregoing, includes a barber shop and beauty salon.

**HAMLET OF OTTO** – The portion of the Town of Otto that is shown on tax map 36.009, dated December 22, 1975.

**HEIGHT** – The vertical distance between the finished grade and the highest point of the roof. Accessory roof construction such as a chimney, steeple or antenna shall not be included.

**HIGH-VOLUME HYDRAULIC FRACTURING** – a technique used to stimulate production of oil and gas after a well has been drilled. It consists of injecting a large volume of a mixture of water, sand and chemical additives through a well drilled into an oil- or gas-bearing rock formation under high but controlled pressure in order to create fractures in the rock.

**HOME OCCUPATION** – An accessory use, in which an occupation is conducted for gain in a dwelling unit by the resident or residents.

**HOME OCCUPATION, MINOR** – A home occupation in which no persons other than members of the family residing on the premises are engaged in the occupation, which has no visible exterior evidence of the conduct of the occupation, which does not create a need for off-street parking beyond normal dwelling needs, which does not generate additional traffic, and in which no equipment is used other than that normally used in household, domestic, or general office use.

**HOME OCCUPATION, MAJOR** – A home occupation in which not more than one person other than members of the family residing on the premises is employed on the premises, which has not more than one illuminated sign not exceeding one square foot in area as visible exterior evidence of conduct of the occupation, and which accommodates both dwelling and home occupation parking needs off the street.

**HOTEL** – A building or group of buildings where sleeping accommodations are provided to the public for transient occupancy. A hotel may or may not include group dining facilities.

**INN** – See Hotel.

**JUNK** – (Reference junk definitions in NYS Dept. of State Controlling Junk revision 210) Any of the following shall constitute junk:

1. One or more junk motor vehicles
2. One or more junk mobile homes
3. One or more unusable pieces of construction equipment
4. One or more abandoned or inoperable household appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.
5. One or more abandoned or irreparably damaged pieces of indoor furniture including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chest of drawers.

6. Disassembled automobile parts or other disassembled machinery or appliances
7. Scrap metal, paper, lumber or rags, including plastic toys

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

**JUNK MOTOR VEHICLE** – An unregistered, old, or secondhand motor vehicle, no longer in condition for legal use on the public highways; or, used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicles. A vehicle is considered junked when it meets all of the following conditions:

1. It is unlicensed
2. It is either, stored, abandoned, wrecked, discarded, dismantled, or partly dismantled
3. It is not in any condition for legal use upon the public highways
4. It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time

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

**KENNEL** – An establishment for the boarding, keeping, breeding and raising of domesticated animals, excluding livestock, for profit. The term “kennel” shall not include the keeping of animals in a veterinary hospital for the purpose of observation and/or recovery necessary to veterinary treatment.

**LIBRARY** – A building containing printed and pictorial material for public use for purposes of study, reference and recreation.

**LOGGING** – The removal or cutting of logs from harvestable timber for commercial purposes.

**LOT** – A parcel of land with frontage on a street or road, whether or not occupied by a building or structure, which is in one ownership.

**LOT AREA** – See Area, Lot.

**LOT, CORNER** – A lot located at the intersection of, and abutting upon, two or more streets. A corner lot is not a through lot.

**LOT, COVERAGE** – The percentage of the lot area covered by buildings and structures, including accessory buildings and structures, but excluding parking areas, driveways and walkways.

**LOT WIDTH** – The average horizontal distance between the side lot lines.

**MANUFACTURED HOME** – A transportable, factory-built home designed to be used as a year-round residential dwelling that is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (24 CFR 3280 HUD Code). The term “manufactured home” does not include a trailer.

**MOBILE HOME** – A single family dwelling that is built in an off-site manufacturing facility for installation or assembly at a building site, designed to be a permanent residence, and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974. The term “mobile home” does not include a trailer.



**MOTEL** – A hotel primarily for transients traveling by automobile, with a parking space on the lot for each lodging unit, and with access to each such unit directly from the outside. A motel may or may not include group dining facilities.

**MUSEUM** – A building, owned by a not-for-profit organization, which contains a collection of artifacts of historical interest and in which the artifacts are conserved, studied, interpreted, and exhibited to the public for its enjoyment and instruction.

**NURSERY SCHOOL** – A privately-owned school for two or more children ages two to five, which provides instruction as well as child care.

**OFFICE, GENERAL BUSINESS** – Any building, or part of a building, in which one or more persons are employed in the management, direction or conducting of an agency, business or brokerage, labor or fraternal organization, and shall exclude such uses a retail sale, manufacture, assembly or storage of goods, or storage of goods, or places of assembly and amusement. Typical general business offices include, but are not limited to, insurance agencies, travel agents, computer programming and telephone answering services.

**OFFICE, PROFESSIONAL** – A building, or part of a building, in which one or more persons are employed in the management, direction or conducting of a business or where professionally qualified persons and their staff serve clients or patients who seek advice, consultation or treatment, and may include the administrative offices of a non-profit or charitable organization. Typical professional offices include, but are not limited to: doctors, dentists, and attorneys.

**PARKING LOT** – An open area of land, other than a street, used for the temporary parking of two or more motor vehicles and available for public use whether free, for compensation, or as an accommodation for clients or customers or residents, but does not include the storing of impounded or wrecked vehicles.

**PARKING SPACE** – An area exclusive of driveways, ramps, or columns, in which one vehicle can be parked.

**PARK** – An area permanently devoted to recreational uses and generally characterized by its natural, historic, or landscaped features, and used for both passive and active forms of recreation.

**PERSONAL SERVICE ESTABLISHMENT** – A business where professional or personal services are provided for gain and where the retail sale of goods, wares, merchandise, articles or things are only necessary to the provision of such services, including but not limited to the following: tailor shops, laundry or dry-cleaning shops, and shoe repair shops.

**PHOTOGRAPHIC STUDIO** – Premises used for portrait and commercial photography, including developing and processing of film, sale of film and photographic equipment, and repair or maintenance of photographic equipment.

**PLACE OF WORSHIP** – A building, such as a church, chapel, temple, synagogue, or mosque, in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship. The building may include such accessory uses as a nursery school, a school of religious education, or parish hall.

**PUBLIC UTILITY** – Any person, firm, corporation or municipal department duly authorized under public regulation to furnish to the public electricity, gas, steam, telephone, fiber-optics, transportation, water or sewer.

REPAIR SHOP, GENERAL – An establishment in which small items such as household appliances, vacuum cleaners, television sets, and computers are repaired.

REPAIR SHOP, PERSONAL SERVICE – An establishment in which personal items such as clothing, shoes, and jewelry are repaired.

RESTAURANT – An establishment which is primarily engaged in serving food and beverages which are consumed on its premises by customers seated at tables and/or counters either inside or outside the building, and, as an accessory use, may be engaged in providing customers with take-out service of food and beverages for off-site consumption.

RESTAURANT, TAKE-OUT – An establishment in which the design of the physical facilities and the serving or packaging procedures permit or encourage the purchase of prepared, ready-to-eat foods intended to be consumed off the premises.

RETAIL STORE – A building in which merchandise is offered for sale at retail, including storage of limited quantities of such merchandise, sufficient only to supply such store.

RIDING STABLES – An establishment in which horses are boarded and may also be available for hire. A riding stable may also provide lessons in riding, handling, training, and care of horses.

SATELLITE DISH ANTENNA – A structure designed and used for the reception of television signals relayed back to earth from a communications satellite.

SETBACK, BUILDING – The least horizontal distance permitted between a lot line of a lot and nearest portion of any building on such lot.

SIGN – Any letter, word, symbol, drawing, picture, design, device, article or object that advertises, calls attention to or indicates any premises, persons, products, businesses or activities, whatever the nature of the material and the manner of composition or construction.

SIGN, FREESTANDING – Any sign supported by structures or supports that are placed on, or anchored in; the ground and that are independent from any building or other structure.

SIGN, ROOF – Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.

SIGN WALL – Any sign attached parallel to, but within six inches of a wall, painted on the wall surface of, erected and confined within the limits of an outside wall or any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SITE PLAN – A scale drawing showing the relationship between the lot lines and building or structures, existing or proposed on a lot, including such details as parking areas, access points, landscaped areas, building areas, setbacks from lot lines, building heights, and densities. See also Article 8 of this law.

SOLAR ENERGY - Energy emitted by the sun in the form of solar radiation

STABLE – A detached accessory building on a residential lot used for the keeping of horses, mules, donkeys or ponies owned by the occupants of the premises and not kept for remuneration or hire.

STORY – That part of a building between the surface of one floor and the ceiling, or roof, above. A basement shall be considered a story; however, a cellar shall not be considered a story.

STORY, HALF – The portion of a building located wholly or in part within a sloping roof and in which there is sufficient space to provide a height between finished floor and finished ceiling of at least seven feet, six inches over a floor area equal to at least fifty (50) percent of its floor area.

STRUCTURE – Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

SUBSTANTIAL DAMAGE – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the Code Enforcement Officer and which are the minimum necessary to assure safe living conditions; or (2) any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places, provided that the alteration will not preclude the structure's continued designation as a historic structure.

TELECOMMUNICATOINS TOWER - A structure on which transmitting and/or receiving antenna(e) is located.

TRAILER – A vehicle so constructed as to be suitable for attachment to a motor vehicle for the purpose of being drawn or propelled by the motor vehicle, and capable of being used for the temporary living, sleeping or eating accommodation of persons, notwithstanding that such vehicle is jacked up. A trailer is not a mobile home or a manufactured home.

USE – The purpose for which land or a building thereon is designed, arranged or intended, or for which it is occupied, maintained, let or leased.

USE, ACCESSORY – A use subordinate and naturally, customarily and normally incidental to a principal use of land or building and located on the same lot.

USE, PRINCIPAL – The primary purpose for which a lot is used.

USE, SPECIAL PERMITTED – A use permitted by the Planning Board subject to the provisions of Article 7 of this law.

USE VARIANCE – See Variance, Use.

VARIANCE, AREA – 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.

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.

VETERINARY HOSPITAL – A building or part thereof used by veterinarians primarily for the purposes of consultation, diagnosis and office treatment of household pets or livestock, but shall not include long-term boarding facilities for animals.

WELDING SHOP – An establishment where pieces of metal are welded.

WHOLESALE FOOD PREPARATION – See Food Preparation, Wholesale.

WIND FARM - A wind farm or wind park is a group of wind turbines in the same location used to produce energy. A large wind farm may consist of several hundred individual wind turbines and cover an extended area of hundreds of square miles, but the land between the turbines may be used for agricultural or other purposes.

YARD – An open area of land on the same lot with a principal building or structure and located between the main wall of the principal building and one of the lot lines.

YARD, FRONT – The open area of a lot which extends across the full width of a lot between the front lot line and the nearest wall or supporting member of a building or structure. Where the front wall of an enclosed porch or verandah extends in front of such building or structure, the front wall shall be deemed to be the front wall of said porch or verandah.

YARD, REAR – That open area of a lot which extends across the full width of a lot between the rear lot line and nearest wall or supporting member of a principal building or structure.

YARD, SALE – The sale of personal property belonging to the occupants of the dwelling unit on which premises the sale is conducted. No more than three yard sales may be conducted on the same parcel in any one calendar year.

ZONING PERMIT – A permit issued by the Code Enforcement Officer, prior to the issuance of a building permit, which certifies that a proposed structure or use meets all the regulations of this zoning law.

## **ARTICLE 3: ESTABLISHMENT OF DISTRICTS**

### **§ 3.1 Application of Regulations**

No building or land shall hereafter be used or occupied, and no building 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.

### **§ 3.2 General Regulations**

1. Any uses not specifically permitted shall be deemed to be prohibited.
2. No building 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 is specified herein for the district in which the building is located.
3. No part of a yard or other open space about any building required for the purpose of complying with the provisions of this law shall be included as part of a yard or other open space similarly required for another building.
4. No lot, yard, setback, parking area or other space shall be so reduced in area, dimension or capacity as to make said area, dimension or capacity less than the minimum required under this law. If a lot, yard, setback, parking area, or other required space is less than the minimum required under this law at the time of its adoption, said area, dimension or capacity shall not be further reduced.
5. The provisions of this law shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

6. The final responsibility for the conforming of buildings and use to the requirements of this law shall rest with the owner or owners of such building or use and the property on which it is located.

### § 3.3 Zoning Districts

In order to fulfill the purpose and intent of this law, the Town of Otto establishes the following zoning districts:

1. Agriculture-Rural Residential District (AR)
2. Hamlet Residential District (HR)
3. Hamlet Commercial District (HC)
4. Floodplain Overlay District (FO)

### § 3.4 Zoning Map

The locations and boundaries of the aforesaid zoning districts are hereby established on a scaled map, entitled “Zoning Map of the Town of Otto,” which is kept on file by the Town Clerk. This map is hereby made a part of this law.

### § 3.5 Parcels in the HR and HC Districts

#### §3.5.1 Parcels in the HC Hamlet Commercial District

The following tax map parcels, listed on the Hamlet of Otto tax map, 36.009, dated December 22, 1975, are included in the Hamlet Commercial District:

36.009-1-23	36.009-2-39
36.009-1-24	36.009-2-40
36.009-1-25	36.009-2-41
36.009-1-26	36.009-2-42
36.009-1-27	36.009-2-43.1
36.009-1-28	36.009-2-43.2
36.009-1-29	36.009-2-44
36.009-1-30	36.009-2-45
36.009-1-31	36.009-2-46
	36.009-2-47
36.009-2-15	36.009-2-49
36.009-2-16	36.009-2-50
36.009-2-17	36.009-2-51
36.009-2-18	36.009-2-52
36.009-2-19	36.009-2-53
36.009-2-20	
36.009-2-21	
36.009-2-22	
36.009-2-23	
36.009-2-24	
36.009-2-25	
36.009-2-26	
36.009-2-36	
36.009-2-37	
36.009-2-38	

### §3.5.2 Parcels in the HR Hamlet Residential District

All parcels shown on the Hamlet of Otto Tax Map dated December 22, 1975, other than those designated as being in the Hamlet Commercial District, shall be deemed to be in the HR Hamlet Residential District.

### § 3.6 Interpretation of District Boundaries

In the event uncertainty exists regarding the boundaries of any of the aforesaid zoning districts shown on the zoning map, the following rules shall apply.

1. 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.
2. Where district boundaries are indicated as approximately following the Town of Otto boundary line, lot lines, or the projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.
3. Where district boundaries are indicated as approximately parallel to the Town of Otto boundary line, right-of-way lines, or projections thereof, said boundaries shall be construed to be parallel thereto.
4. If a lot is divided by a district boundary line, the regulations that govern the part of the lot containing more than fifty percent of the total area shall apply.
5. When a district boundary is questionable, it shall be referred to the Zoning Board of Appeals and it shall, to the best of its ability, establish the exact boundary, using the above criteria. This determination shall be considered final and conclusive, and may only be altered by amendment to the zoning map by the Town Board, following the procedures established in Article 13 of this law. A copy of the zoning map showing the determination of the Zoning Board of Appeals shall be kept on file by the Town Clerk.

## ARTICLE 4: DISTRICT USE REGULATIONS

### § 4.1 Agricultural-Rural Residential District (AR)

#### §4.1.1 Purpose

The purpose of the Agricultural-Rural Residential District is to protect, preserve and promote agriculture and farming activities, while at the same time allowing rural single family residential development. Recreation and tourist-oriented uses that are compatible with agricultural and residential uses are also appropriate and it is the intent of this section to encourage such uses.

#### §4.1.2 Permitted Uses

##### §4.1.2.a Principal Permitted Uses

1. Agriculture
2. Cemeteries
3. Churches and other Places of Worship
4. Farm Stands

5. Forestry
6. Logging
7. Parks
8. Riding Stables
9. Single Family Dwellings
10. Veterinary Hospitals

#### §4.1.2.b Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to any of the permitted principal uses listed in § 4.1.2.a, and that are located on the same lot as the permitted principal use, shall be allowed. Such uses include, but are not limited to, the following:

1. Barns
2. Garages
3. Silos
4. Storage Buildings

#### §4.1.2.c Special Permitted Uses

The following uses may be permitted in the AR Agricultural-Rural Residential District, provided that a Special Use Permit is approved by the Planning Board in conformance with the provisions of Article 7 of this law.

1. Accessory Apartments
2. Adult Uses
3. Airstrips, Private
4. Apiary
5. Art and Craft Studios
6. Bed and Breakfast Establishments
7. Boat Rentals
8. Campgrounds
9. Essential Services
10. Gas Wells
11. Golf Courses
12. Major Home Occupations

#### §4.1.3 Yard, Area, and Other Dimensional Regulations

All principal permitted uses, permitted accessory uses, and special permitted uses must conform to the yard, area and other dimensional regulations that are specified in Article 5 of this law.

### **§ 4.2 Hamlet Residential District (HR)**

#### §4.2.1 Purpose

The purpose of the HR Hamlet Residential District is to protect and promote single family residential uses on a scale appropriate to the hamlet and to protect agriculture uses that currently exist within the hamlet. An additional purpose of this district is to encourage recreational uses that are compatible with single family and agricultural uses.

## §4.2.2 Permitted Uses

### §4.2.2.a Permitted Principal Uses

1. Cemeteries
2. Churches and other places of worship
3. Parks
4. Single family dwellings

### §4.2.2.b Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to any of the permitted principal uses listed in §4.2.2.a, and that are located on the same lot as the permitted principal use, shall be allowed. Such uses include, but are not limited to, the following:

1. Barns
2. Garages
3. Silos
4. Storage Buildings

### §4.2.2.c Special Permitted Uses

The following uses may be permitted in the HR Hamlet Residential District, provided that a Special Use Permit is approved by the Planning Board in conformance with the provisions of Article 7 of this law.

1. Accessory Apartments
2. Agriculture
3. Art and Craft Studios
4. Bed and Breakfast Establishments
5. Campgrounds
6. Farm Stands
7. Essential Services
8. Golf Courses
9. Major Home Occupations
10. Multiple Family Dwellings
11. Two-family Dwellings

## §4.2.3 Yard, Area, and Other Dimensional Regulations

All permitted principal uses, permitted accessory uses, and special permitted uses must conform to the yard, area and other dimensional regulations that are specified in Article 5 of this law.

## § 4.3 Hamlet Commercial District (HC)

### §4.3.1 Purpose



The purpose of the HC Hamlet Commercial District is to allow retail, service and other commercial uses that serve the needs of the residents of Otto and of visitors to the Town. An additional purpose is to allow higher density residential development.

#### §4.3.2 Permitted Uses

##### §4.3.2.a Principal Permitted Uses

1. Banks and Financial Institutions
2. Bed and Breakfast Establishments
3. Churches
4. Clubs
5. Day Care Facilities
6. Drug Stores
7. Dwellings Units above first floor retail uses
8. General Business Offices
9. Grocery Stores
10. Hairdressing Establishments
11. Hotels and Motels
12. Libraries
13. Nursery Schools
14. Personal Service Establishments
15. Photographic Studios
16. Professional Offices
17. Public and Private Schools
18. Repair shops, general
19. Repair shops, personal service
20. Restaurants
21. Retail Stores
22. Single Family Dwellings
23. Take-out Restaurants
24. Two Family Dwellings
25. Wholesale Food Preparation

##### §4.3.2b Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to any of the permitted principal uses listed in §4.3.2a, and that are located on the same lot as the permitted principal use, shall be allowed.

##### §4.3.2c Special Permitted Uses

The following uses may be permitted in the HC Hamlet Commercial District, provided that a Special Use Permit is approved by the Planning Board in conformance with the provisions in Article 7 of this law.

1. Accessory Apartments
2. Automobile Body Shop
3. Automobile Gasoline Stations
4. Automobile Repair Shops
5. Automobile Sales Lots
6. Bars

7. Essential Services
8. Major Home Occupations
9. Multiple Family Dwellings
10. Welding Shops

#### §4.3.3 Yard, Area, and Other Dimensional Regulations

All permitted principal uses, permitted accessory uses, and special permitted uses must conform to the yard, area and other dimensional regulations that are specified in Article 5 of this law.

### § 4.4 Floodplain Overlay District (FO)

#### §4.4.1 Purpose

The purpose of the Floodplain Overlay District (FO) is to protect the future health, safety, and welfare of the inhabitants of the Town of Otto from hazards due to periodic or intermittent flooding. This shall include the protection of persons and property, the preservation of water quality and the minimizing of expenditures for relief, insurance and flood control projects. This does not imply that areas outside of the floodplain area or uses permitted within the floodplain area will be free from flooding or flood damage.

#### §4.4.2 Applicability

The Floodplain Overlay (FO) District shall apply to all areas designated as Zone A by the Federal Emergency Management Agency on the Flood Insurance Rate Map, Number 360090B, dated April 20, 1984, for the Town of Otto. This map is an integral part of this zoning law and is hereby made a part of this law.

#### §4.4.3 Permitted Uses

Principal permitted uses, accessory uses and special permitted uses shall be those designated in the underlying zoning district. Such uses, however, shall be subject to the restrictions contained in “Town of Otto Land Use Control Ordinance”, revised February, 1988.

#### §4.4.4 Yard, Area, and Other Dimensional Regulations

All principal permitted uses, permitted accessory uses, and special permitted uses must conform to the yard, area and other dimensional regulations that are specified in Article 5 of this law.

### § 4.5 Table of Permitted Uses

The Table of Permitted Uses, which is located on the following pages, is a compilation of all permitted uses listed for each district defined above. It is an integral part of this zoning law.

## TYPES OF USES USE DISTRICTS

### *Key to Abbreviations Districts*

*P—Permitted AR – Agricultural-Rural Residential*

*SP – Permitted by Special Use Permit HR – Hamlet Residential*

*No Letter – Not Permitted HC—Hamlet Commercial*

AGRICULTRAL USES	AR	HR	HC	
Agriculture		P	SP	
Farm Stands		P	SP	SP
Forestry		P		
Logging		P		
Riding Stables		P		
RESIDENTIAL USES	AR	HR	HC	
Single-Family Dwellings		P	P	P
Two-Family Dwellings		P	SP	P
Multiple Family Dwellings			SP	SP
Accessory Apartments		SP	SP	SP
Dwellings over retail		SP	SP	SP
GENERAL USES	AR	HR	HC	
Airstrips, Private		SP		
Cemeteries		SP	SP	SP
Clubs		SP	SP	SP
Essential Services		SP	SP	SP
Libraries				P
Park		P	P	P
Places of Worship		P	P	P
Public and Private Schools		SP		P
INDUSTRIAL USES	AR	HR	HC	
Wholesale Food Preparation		SP	SP	P
Gas Wells		SP		
Welding Shops		SP	SP	SP
COMMERCIAL USES	AR	HR	HC	
Adult Uses		SP		
Apiary		SP		
Art and Craft Studios		SP	SP	SP
Automobile Body Shop		SP	SP	SP
Automobile Repair Shop		SP	SP	SP
Automobile Gasoline Station		SP	SP	SP
Automobile Sales Lots		SP	SP	SP
Banks				P
Bars		SP	SP	SP
Bed and Breakfast Establishments		SP	SP	SP
Boat Rentals		SP	SP	SP
Campgrounds		SP	SP	

Day Care Facility	P	P	P
Drug Stores			P
General Business Offices	SP	SP	SP
Golf Courses	SP	SP	
Grocery Stores	P	P	P
Hairdressing Establishments	SP	SP	SP
Hotels	SP	SP	P
Motels	SP	SP	P
Nursery Schools	SP	SP	P
Personal Service Establishments	SP	SP	SP
Photographic Studios	P	P	P
Professional Offices	P	P	P
Recycling Facilities	SP	SP	SP
Repair Shops	P	P	P
Restaurants	P	P	P
Retail Stores	P	P	P
Sawmills	SP		
Take-out Restaurants	P	P	P
Veterinary Hospital	P	P	P

## **ARTICLE 5: YARD, AREA AND OTHER DIMENSIONAL REGULATIONS**

### **§ 5.1 Table of Dimensional Regulations**

The Table of Dimensional Regulations, contained on page 21 of this law, shows the minimum lot size, the minimum lot width, minimum yard requirements, and maximum building height for each land use district established in Article 4. This table is hereby declared to be an integral part of this law.

### **§ 5.2 Height Exceptions**

Nothing in this law shall be construed to restrict the height of a barn, a chimney, a church spire or steeple, a flag pole, electric transmission towers, television or radio antennae, a silo, water tower, windmill, telecommunication tower, and solar energy collection devices, provided that such buildings and structures conform to all restrictions of other governmental authorities having jurisdiction.

Roof structures for the housing of necessary mechanical appurtenances for elevators, stairs, tanks, and ventilation equipment may be erected above the height limits herein prescribed, subject to obtaining a special use permit from the Planning Board.

### **§ 5.3 Minimum Frontage Requirement**

All lots shall have a minimum frontage, as shown in the Table of Dimensional Regulations, on a public right-of-way or on a private street that meets the design criteria for a public right-of-way.

### **§ 5.4 Measurement of Required Yards**

The minimum front yard for a parcel shall be determined by measuring at right angles from the street right-of-way line.

The rear and side yards shall be determined by measuring at right angles from the rear and side property line, respectively.

#### **§ 5.5 Projections into Required Yards**

The following encroachments into required yards are permitted.

1. Eaves, cornices, cantilevered roofs, or bay windows may project three feet into any yard.
2. Open and unenclosed porches, verandahs, decks and steps may project six feet into the front and rear yards and three feet into side yards.

#### **§ 5.6 Yards to be Open**

Where yards are required in this law, they shall be construed as permanently maintained open spaces. They shall not be less in depth, or width, or area than the minimum specified, and they shall be, at every point, open and unobstructed from the ground to the sky, except as specifically mentioned in these regulations.

#### **§ 5.7 Corner Lots**

Whenever a side yard is adjacent to a street, both front and side yards shall be considered to be front yards and the standards for front yards shall apply.

#### **§ 5.8 Through Lots**

In the case of a lot running through from one street to another street, the frontage on which the majority of the buildings in the block face shall be considered the primary frontage for the purposes of this law. In cases where there is no clearly defined frontage, the owner, when applying for a building permit, shall specify which lot line is considered the primary frontage. The rear portion of such lot shall, however, be treated as a front for purposes of determining required setbacks and locations of permitted structures and uses.

#### **§ 5.9 One Principal Use Permitted Per Lot**

In all districts where single family dwellings are permitted, a lot held in single ownership may be developed for such use in accordance with the requirements of this article, provided that there shall be no more than one principal dwelling unit on each lot. If two or more single family dwelling units are proposed to be located on the same lot, the lot shall be subdivided and each new lot shall meet all the requirements of this law. Temporary additional dwellings may be allowed with a special use permit.

#### **§ 5.10 Minimum size for single family dwellings**

All single family dwellings shall be a minimum of eight hundred (800) square feet in interior area.

#### **§ 5.11 Accessory Buildings and Structures**

1. No accessory building or structure may be located in a required front yard or a required side yard.
2. No accessory building or structure may be located closer to the rear lot line than the applicable side yard requirements. Where an accessory building is erected in the required rear yard on a corner lot, it shall not be located closer to any street than the required front yard distance.
3. No accessory building may exceed 20 ft. in height to the peak.
4. Notwithstanding any other provision of this law, clothesline poles, flag poles, garden trellises, fences and retaining walls shall be exempt from any setback requirements.

**§ 5.12 Table of Dimensional Regulations**

District	Minimum Lot Size	Minimum Lot Width	Minimum Yd. Requirement (ft)			Maximum Bldg. Height		Minimum Frontage
			Front	Side	Rear	Feet	Stories	
		feet						
		Road frontage						
AR	5 Acres	250	50	50	50	35	2-1/2	250
HR	1 Acre	100	25	20	35	35	2-1/2	100
HC	20,000SF	75	25	10	25	45	3	75
FO	(a)							

NOTES

- (A) The minimum lot size, minimum lot width, minimum yard requirements, maximum building height and minimum frontage in the Floodplain Overlay District shall be the same as those requirements in the underlying district in which the parcel is located
- (B) SF stands for “Square Feet”

**ARTICLE 6: DEVELOPMENT STANDARDS**

**§ 6.1 Accessory Apartments**

1. There shall be no more than one (1) accessory apartment per lot.
2. The applicant must show that the existing sewage disposal system and water supply are adequate to support the accessory apartment, as directed by State and County Regulations.
3. The applicant must show that there is adequate off-street parking for the occupants of the accessory apartment, in addition to the parking required for the primary residence.
4. The minimum floor area for an accessory apartment within a principal dwelling unit shall be three hundred (300) square feet, but in no case shall it exceed twenty-five percent (25%) of the original area of the principle dwelling unit, unless, in the opinion of the Planning Board, a great floor area is warranted by the specific circumstances of the particular building.
5. If an accessory apartment is located in the principal dwelling unit, the entry to such unit and its design shall be such that, to the degree feasible, the appearance of the building will remain that of a single family dwelling.

## §6.2 Adult Uses

### §6.2.1 Intent

The intent and purpose of this section is to establish regulations for Adult Uses. The Town of Otto recognizes there are potential detrimental effects to the town if adult uses were to be established, without regulation, in close proximity to other land uses in the town. At the present time, there are not land uses in the town that would be classified as “adult uses”. Adult uses are essentially enterprises that provide for the sale of sexually oriented goods and services including X-rated theaters and bookstores, X-rated video rental stores, peep shows, topless/bottomless bars and similar adult uses.

The primary purpose of this section is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the town, to deter the spread of blight and other deleterious secondary effects, and to protect minors from objectionable characteristics of these adult uses by restricting their proximity to churches, schools, parks, historic and scenic resources, civic and cultural facilities and residential areas.

### §6.2.2 Location of Adult Use

The following provisions shall apply to the location of adult uses:

1. Adult uses shall be permitted in the Agricultural/Residential District with approval of a special permit.
2. No adult uses shall be permitted within one thousand feet of any residential use – for measurement purpose, the distance between an adult use and any residential use shall be measured in a straight line without regard to intervening structures or objects from the closest structural wall of such adult use to the boundary line of such residential property.
3. No adult use shall be permitted within one thousand feet of the following:
  - a. A school, nursery school
  - b. Religious institution, house of worship
  - c. A public or private park, playground or public recreation facility – this distance shall be three hundred feet for recreational trails
  - d. Historic or scenic resource, civic or cultural facility

For measurement purpose, the distance between an adult use and any such other named uses shall be measured in a straight line without regard to intervening structures or objects from the closest structural wall of such adult use to the boundary line of such school, nursery school, religious institution, house of worship, public park, playground or public recreation facility, historic or scenic resource, civic or cultural facility.

4. Not more than one adult use shall be located in the same building or upon the same lot or parcel of land.

5. No adult use shall be located within a one thousand foot radius of another adult use.
6. No adult use shall be located in any building that is used in whole or in part for residential use.
7. All building openings, including doors and windows, shall be coated, covered or screened in such a manner as to prevent a view into the establishment from any public street, sidewalk or parking area.
8. No loudspeakers or sound equipment shall be used by adult uses that can be heard by the public from outside the establishment.
9. As a condition of approval of any adult use, there shall be a restriction that no person under the age of eighteen (18) years shall be permitted into or on the premises.

### **§ 6.3 Art and Craft Studios**

1. An art and craft studio may be located either within a single family dwelling or in a building accessory to a single family dwelling, but it must be used by one or more residents of the single family dwelling.
2. Retail sales of the work of the artists/crafts persons in residence on the lot shall be allowed.
3. Signs – A single identification sign not to exceed twelve (12) square feet in area or six (6) feet in height may be erected. All signs must meet all State signage requirements

### **§ 6.4 Bed and Breakfast Establishments**

1. The dwelling in which the Bed and Breakfast operates shall be the principal residence of the operator/owner and the operator/owner shall live on the premises.
2. A single identification sign not to exceed twelve (12) square feet in area or six (6) feet in height may be erected on the shell of the building.

### **§6.5 Controlling Junk in Residential and Commercial Zones**

#### **§6.5.1 Debris, Weeds and Junk in Residential and Commercial Zones**

Purpose – the purpose of this section is to protect the health, safety and welfare of residents of the Town of Otto by prohibiting certain types of excessively high vegetation and/or the presence of junk and debris which may:

1. Cause a fire hazard
2. Furnish cover for prowlers
3. Obstruct visibility at street intersections
4. Result in the aggravation of allergies
5. Furnish a potential harborage or breeding place for disease-carrying insects, rodents, reptiles, or other animals and poisonous snakes
6. Impair the enjoyment of the outdoor environment from neighboring properties

#### **§6.5.2 Condition of Premises Regulated: Weeds and Grass**



1. Duty of Owner: The owners of all private property are hereby required to cut, trim or remove brush, fall tree limbs, high grass, and weeds from their premises and keep such premises in a reasonable clean and sanitary condition to prevent the breeding of insects or vermin and to prevent the spread of noxious weeds to adjacent premises, premises situated at Hamlet intersections or streets shall be kept in such condition as to give a clear and unobstructed view of the intersection or curve.
2. Exception: The above provisions set forth above shall not be construed to prevent the raising of garden or cultivated crops or the maintenance of a natural landscaped area, or to unreasonable require the cutting of grass and brush on undeveloped areas except in the immediate vicinity of other properties.

### §6.5.3 Littering

1. Public Places: No person shall throw or place any papers, trash, garbage, debris or junk in any street, or street right-of-way, park, stream or stream bank, or any other public lands, except at the time and manner provided for the collection of garbage.
2. Private Property: No person, either as owner, lessee, agent, tenant or otherwise, of any lot, land, premise or improved property in the municipality, shall throw, cast, deposit or allow to accumulate thereon any decomposable organic matter which might create a nuisance or act as a breeding place for flies or bugs or as food for rats or vermin; or any trash debris, junk or discard materials or thing which is capable of holding water, which might serve as a breeding place for mosquitoes; or any combustible matter or materials which might increase the fire hazard in his or neighboring property; or any junk motor vehicle; or any trash, rubbish, junk, debris or any discarded materials or thing which may serve to harbor vermin and/or which tends to produce an unsightly and disagreeable appearance, objectionable to the neighborhood.
3. Exception: The above provisions shall not be construed to prohibit the proper and temporary accumulation in suitable containers of garbage, ashes, refuse, etc. for regular collection; or the depositing of manure for the intentional cultivation of land in the Hamlet (not in the agricultural district); or the presence of regularly maintained compost piles.

### §6.5.4 Unlicensed Vehicles

A maximum of one, unlicensed vehicle may be stored on a residential lot, provided the following conditions are met:

1. The vehicle is not stored in the front yard
2. The vehicle is for the personal use of the occupant of the premises on where the vehicle is stored

### §6.5.5 Providing for the Removal or Demolition of Dangerous or Unsafe Buildings or Structures

#### §6.5.5.a Intent

The Town Board of the Town of Otto deems it necessary to provide for the removal of buildings and structures that, from any cause, may now be or hereafter become dangerous or unsafe to the public

§6.5.5.b Definitions

Unsafe Building – Any house, cabin, barn, mobile home, shed, trailer or other building, structure or edifice which is structurally unsafe, unsanitary or otherwise dangerous to human life, or which in relation to existing use constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, or which otherwise constitutes an unsafe building or structure under the New York State Fire Prevention and Building Code.

Code Enforcement Officer – The Code Enforcement Officer of the Town of Otto.

§6.5.5.c Unsafe Buildings

All unsafe buildings are hereby declared to be illegal and shall be abated by repair and rehabilitation or by demolition in accordance with procedures set forth in this local law, as the Town Board may deem necessary in the event it determines that the danger posed by the unsafe building requires more immediate attention. If upon application of the person served with such notice and for good cause shown, however, the Town Board may extend the time within which the securing of demolition must commence or be completed, or both

§6.5.5.d Inspection and Report

The code enforcement officer shall upon request of the Town Board or the Town Planning Board make one more inspections of any premises on which it is believed that any unsafe building is located and shall report to the Town Board on the condition thereof.

The code enforcement officer shall make periodic inspections of the Town to assure that all existing buildings and structures are safe. The code enforcement officer shall report all observed violation of this ordinance to the Town Board.

§6.5.5.e Notice Requiring Repair or Removal

- a. If the Town Board confirms a report of the code enforcement officer that a building is unsafe, it shall direct the code enforcement officer to serve notice on the owner or some one of the owner's executors, legal representatives, agents, lessees or any other person having a vested or contingent interest in the premises, either personally or by registered mail, addressed to the last known address, if any, of such owner or some one of the owner's executors, legal representatives, agents, lessees, or other person having a vested or contingent interest in same, as shown by the records of the receiver of taxes and or in the office of the County

Clerk, containing a description of the premises, a statement of the particulars in which the building or structure is unsafe or dangerous and an order requiring that such building or structure be made safe and secure or removed within a reasonable period of time, not exceeding ninety (90) days from the date of such notice. If such service be made by registered mail, a copy thereof shall be posted on the premises.

- b. Such notice shall provide that the Town Board shall hold a hearing in regard to the matter on the date and at the time and place specified therein, nor more than twenty (20) days after the date of service of such notice.
- c. The code enforcement officer shall file a copy of such notice in the office of the County Clerk of Cattaraugus County in the same manner as a notice of pendency if filed pursuant to Article 65 of the Civil Practice Law and Rules, and such filing shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided. A notice so filed shall be effective for a period of one year from the date of filing, provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon the consent of the town attorney. The Clerk of Cattaraugus County shall mark such notice and any record or docket thereof as cancelled of record upon the presentation and filing of such consent of a certified copy of such order.
- d. The person served with such notice shall commence the securing or removal of such building or structure within a reasonable time, the length of which shall be determined by the Town Board and set forth clearly in the aforementioned notice and shall depend upon the severity of the danger to public health and welfare posed by the building which is the subject of such notice. Such securing or removal shall, in all cases, be completed within ninety (90) days from the date of service of the aforementioned notice, or within such shorter time period as the Town Board may deem necessary in the event it determines that the danger posed by the unsafe building requires more immediate attention. If upon application of the person served with such notice and for good cause shown, however, the Town Board may extend the time within which the securing or demolition must commence or be completed, or both.

#### §6.5.5.f Removal by Town

In the event that such owner fails or refuses to repair or remove any such building or structure within the time provided in the aforementioned notice, the Town may remove such building or structure or cause the same to be removed.

#### §6.5.5.g Assessment of Costs

All cost and expenses incurred by the Town in connection with the proceedings to remove or secure, including the cost of actually removing

any such building or structure, shall be assessed against the land on which said buildings or structures are or were located.

### **§ 6.6 Electric Vehicle Supply Equipment (EVSE)**

The permitting process for EVSE will be streamlined by:

1. Providing a single permit for EVSE's
2. Shall have a two day turn around time for permits
3. Shall eliminate reviews that do little to validate the safe and efficient operation of a proposed EVSE system. Only one initial inspection shall be required for this facility.

Parking: There will be designated parking for vehicles charging at the EVSE. Cars that are not charging will be banned from these spaces.

### **§ 6.7 Farm Stands**

1. Farm stands shall be one story, not to exceed fifteen feet in height.
2. Farm stands may be located in the required front yard, but they shall be set back from the right-of-way such that customers have space to park.
3. One sign, not to exceed twelve (12) square feet, shall be allowed.
4. Only agricultural products may be sold at the farm stand, at least fifty (50) percent of the agricultural products sold must have been produced in the Town of Otto.

### **§ 6.8 Gas Wells**

In addition to obtaining a special permit from the Planning Board, the applicant will be required to post a bond to cover potential damage to Town roads, as required by the Town Board.

### **§ 6.9 High-volume Hydraulic Fracturing**

At the present time New York State is not issuing permits for wells that will use high-volume hydraulic fracturing, while New York State Department of Environmental Conservation (NYSDEC) prepares a Supplemental Generic Environmental Impact Statement (SGEIS) to address issues associated with these drilling techniques. According to the revised draft Supplemental Generic Environmental Impact Statement (dSGEIS) these techniques may result in significant adverse environmental impacts, including impacts to water supply, hazards from chemical additives in the hydro-fracking fluid, issues relating to wastewater treatment and disposal, truck traffic, and concerns relating to community character and socioeconomics.

In the dSGEIS NYSDEC commits to notify local governments of all applications for high-volume hydraulic fracturing in that municipality. For projects that require either an EAF Addendum or a site-specific State Environmental Quality Review (SEQR) determination of significance, this will allow the Town to have some input into the NYSDEC SEQR review process.

The Town should be proactive in checking NYSDEC databases for local applications, rather than relying totally upon NYSDEC notification. When there are applications, the Town should review its Comprehensive Plan, Zoning Law and other land use regulations

and policies and should advise NYSDEC if the proposed project is inconsistent with any local land use laws, regulations, plans or policies, rather than relying upon the project sponsor's determination in this regard.

In addition, the Town should be an active participant in any SEQR process. The Town should provide NYSDEC with all relevant information concerning local resources and unique features, which NYSDEC should be aware of when making its SEQR and permitting determinations.

## **§ 6.10 Home Occupations**

### §6.10.1 Major Home Occupations

Major Home Occupations are allowed; provide that a special use permit is granted by the Planning Board in conformance with the requirements in Article 7. Before the Planning Board may grant a special use permit, it shall determine that the proposed home occupation meets the following criteria.

1. A home occupation shall be accessory and incidental to the use of a dwelling unit primarily for residential purposes.
2. No more than one employee, in addition to the resident or residents of the dwelling, may be engaged in a major home occupation.
3. No more than five hundred (500) square feet of the floor area of the dwelling unit may be used in connection with a home occupation or for storage purposes in connection with a home occupation.
4. Only one home occupation per dwelling unit shall be permitted.
5. The Planning Board shall find that the proposed use is compatible with residential uses, does not detract from the residential character of the neighborhood, does not pose a safety hazard, and does not create a traffic problem in the area.
6. No retail sales shall be allowed on the premises, except that incidental retail sales may be made in connection with other permitted home occupations. For example, a beauty parlor may be allowed to sell combs, hair spray and other miscellaneous items to customers. (With Special Use Permit).
7. There shall be no exterior storage of materials to be used in conjunction with a home occupation.
8. A home occupation shall produce no offensive noise, vibration, smoke, electrical interference, dust, odors, or heat.
9. A home occupation shall be completely enclosed in the principal dwelling or an accessory building.
10. All parking necessary for the home occupation shall be provided on-site, not on the street, and shall not be allowed in the required front yard.
11. One illuminated sign, not to exceed six (6) square feet in area, may be permitted.

### §6.10.2 Major Home Occupation Uses

Major Home occupations include, but are not limited to the following uses:

1. Offices for accountants and tax preparers.
2. Hairdressing establishments
3. Dressmaking, sewing and tailoring, provided that the dressmaker does only custom work for specific clients, and does not sell clothes to the general public at the residence.

4. Small appliance repair.
5. Upholstering

#### §6.10.3 Uses Prohibited as Home Occupations.

The following uses, by nature of the scale and intensity of the activity, are more suited to a commercial or business district and shall not be permitted as major home occupations:

1. Automobile body repair work, including painting or automobiles
2. Medical and dental offices
3. Funeral Homes
4. Welding or machine shops
5. Veterinary services, including care, grooming and boarding

#### § 6.11 Keeping of Large Animals in the Hamlet of Otto

Horses, donkeys, ponies, and mules may be kept in the HR Hamlet Residential District and in the HC Hamlet Commercial District on a lot where the principal use is residential, provided that the following conditions are met:

1. The lot must be a minimum of one acre in size to keep one animal. An additional 5,000 square feet of lot area shall be required for each additional animal.
2. Any stable or corral shall be set back a minimum of fifty (50) feet from the front property line and twenty-five (25) feet from the side and rear property lines. In addition, such stable or corral shall be built a minimum of fifty (50) feet from any pre-existing dwelling on an adjacent lot.
3. The animal or animals must be kept in a stable, not in a residential garage.

#### § 6.12 Manufactured Homes and Mobile Homes

A manufactured home or a mobile home may be installed as the principal residence on any lot where a stick-built single family dwelling would otherwise be allowed under the provisions of this law, provided that it meets the following criteria:

1. It has a minimum width of fourteen (14) feet (or new minimum).
2. The pitch of the roof has minimum nominal 3/12 pitch. The roof shall have a type of shingle commonly used in standard residential construction.
3. The exterior siding shall consist of vinyl or aluminum lap siding, wood, Masonite, or other materials similar to the exterior siding commonly used in standard residential construction.
4. All towing devices, wheels, axles, and hitches shall be removed.
5. The home shall 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.
6. Permanent landing and steps with handrails are required at each exterior doorway. The structure shall include steps which lead to the ground level.
7. Skirting or a curtain wall, unpierced except for required ventilation and access door, shall be installed and may consist of brick masonry, vinyl, or similar materials

- designed and manufactured for permanent outdoor installation. The skirting materials shall be compatible in appearance with the materials used for the siding.
8. If the manufactured home or mobile home is fifteen (15) years old or older at the time an application is made for a building permit to install it on a lot in the Town of Otto, the Building Inspector shall inspect the structure to insure that it is suitable for habitation prior to issuing such permit. If the Building Inspector finds that the mobile home or manufactured home is not suitable for habitation, he/she will deny the permit. If the permit is granted, the Building Inspector shall inspect the mobile home or manufactured home every two years after the issuance of the permit to insure that the structure continues to be habitable.

## **§ 6.13 Noise and Vibration**

### §6.13.1 Noise

Noise levels from any use shall not exceed 90 decibels (dB(A)), measured at the boundaries of the lot occupied by the use causing the noise.

### §6.13.2 Vibration

Uses that cause vibrations that are perceptible, without instruments, beyond any lot line of the premises on which the use is located, are prohibited.

## **§ 6.14 Parking, Loading, Driveways, and Drive through-Windows**

### §6.14.1 Off-Street Parking Requirements

#### §6.14.1.a Parking Schedule

The minimum number of parking spaces for all land use activities shall be provided according to the following schedule:

1. Single Family Dwelling Unit: 2 spaces per unit
2. Two-family Dwelling Unit: 2 spaces per unit
3. Multiple Family Dwellings: 1.5 spaces per one-bedroom unit  
2 spaces per two-bedroom unit  
2.5 spaces per three-bedroom unit or greater
4. Bed and Breakfast Establishments: 1 space per guest room
5. Hotel/Motel: 1 space per guest room, plus 1 space for every three employees
6. Retail Stores, Repair Shops, Personal Service Establishment: 1 space per 300 square feet of gross floor area
7. Churches, Places of Worship, Theaters, Places of Assembly: 1 space per every four seats.
8. Restaurants, Bars: 1 space for every 3 seats.
9. Restaurant, take-out: 1 space per 300 square feet of gross floor area.
10. Offices: 1 space per 300 square feet of gross floor area.
11. Clubs: 1 space for each 4 persons allowed under the maximum occupancy load.
12. Nursery School/Day Care Center: 1 space per employee, plus 2 additional
13. Group home – Minimum 10 spaces.

#### §6.14.1.b Calculation of Required Parking Spaces

In the case of combination of uses, the total requirements for off-street parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use would permit joint use of parking areas or other modifications.

Whenever a major fraction of a space is required, a full space shall be provided.

#### §6.14.1.c Location of Required Parking Spaces

On a residential lot, the required parking shall be provided on-site.

On a commercial lot, the required parking shall be provided on-site, or at a location no more than four hundred (400) feet from the facility.

#### §6.14.1.d Waiver of Parking Requirements

The Planning Board may waive the requirements for off-street parking, if the applicant can show that adequate on-street parking exists to serve the facility or if the applicant has entered into a legal agreement with a nearby facility to use the parking lot of that facility, and if, in the opinion of the Planning Board, the existing parking area is adequate to serve both facilities. Joint use of parking areas for facilities that have different hours of operation is encouraged.

#### §6.14.1.e Exemption from Parking Requirements

If, at the time of the effective date of this law, a lawfully existing building or structure has an insufficient parking area, that building or structure may be enlarged without having to provide the number of parking spaces that would otherwise be required by this law. However, the addition may not reduce the number of parking spaces that already exist.

#### §6.14.1.f General Requirements

1. A parking space shall be a minimum of 9 feet by 20 feet, exclusive of parking aisles and driveways, and shall be a visibly designated and marked space.
2. All areas devoted to off-street parking shall be so designed that no automobile is required to back into a street to obtain egress. This provision does not apply to the parking areas serving single-family and two family dwellings.
3. Any area containing one or more parking spaces shall have direct access to a public street or alley.
4. All areas used for parking shall be maintained, and so graded or drained as to ensure that surface water will not escape to neighboring lands.
5. Any lighting that illuminates off-street parking areas and driveways shall be located and arranged so that all direct rays of light fall upon the parking area only and not onto any adjoining properties.
6. If a parking area abuts a residential district, adequate shielding shall be provided to ensure that the adjacent residential uses are protected from glare from lighting and from car headlights. In addition, the parking area shall be set back a



minimum of 6 feet from the residential lot line, and this setback shall be landscaped.

7. Parking shall not be permitted in front yards except following site plan review as provided for in Article 8 of this law.
8. For any parking areas providing spaces for more than five automobiles, a minimum four (4) foot wide landscaped planting strip shall be provided between the adjacent sidewalk or public right-of-way and the parking area.

#### §6.14.2 Off-Street Loading and Unloading

In all districts, whenever a lot or structure is to be occupied by a commercial, business or other similar use that requires the receipt and distribution of materials or merchandise, off-street loading docks shall be provided on said lot.

Loading docks shall be located in such a way as not to unreasonably interfere with the movement of people and vehicles on public rights-of-way.

#### §6.14.3 Drive-through Windows

Whenever an applicant, such as a restaurant or a bank, proposes to install a drive-through window, the drive-through window may be permitted by the Planning Board following site plan review according to the procedures outlined in Article 8 of this law. If, in the opinion of the Planning Board, there is insufficient space on the lot to provide safe operation of a drive-through window, or the location would pose a traffic and safety hazard, the Planning Board may deny the application.

Stacking space for a minimum of three vehicles shall be provided in the case of a bank. Stacking space for a minimum of six vehicles shall be provided for a fast-food restaurant. Such spaces shall be designed so as not to impede pedestrian or vehicular circulation on the site or on any abutting street. Each stacking space shall be a minimum of 20 feet long.

#### §6.14.4 Driveway Regulations for Parking Areas

1. Driveways used for ingress and egress to parking areas shall be clearly visible. Driveways that cross sidewalks shall be constructed at a 90 degree angle to the street in order to protect pedestrian safety.
2. Driveways shall not be located closer than 20 feet to an intersection of two public rights-of-way.
3. The minimum width of a driveway that provides both ingress and egress shall be 20 feet. The maximum width of a driveway shall not exceed 35 feet.
4. No more than two driveways entering on one street from a single commercial establishment shall be permitted.
5. Shared driveways for abutting establishments shall be encouraged.

### § 6.15 Private Swimming Pools

Privately owned swimming pools shall be a permitted accessory use to a residential use in any district. They shall comply with the following:

1. The pool is intended and used for the enjoyment of the occupants of the residence and their guests, without charge and without purpose of profit.
2. An outdoor swimming pool shall be permitted in a required side or rear yard, provided that the pool shall be set back a minimum of (15) feet from the side and rear lot lines.
3. The entire area of an in-ground pool shall be enclosed by a fence that is a minimum of four feet high.
4. Any pool over 24" high and less than 4' requires a 4' fence.
5. All semi-permanent pools require a permit.

### **§ 6.16 Satellite Dish Antennas**

Satellite dish antennas shall be permitted as an accessory use in all districts. All satellite dish antennas shall comply with all the accessory use yard, height, bulk, and setback requirements, specified in Article 5, for the district in which it is located.

### **§ 6.17 Signs**

#### **§6.17.1 Intent**

The intent of these sign regulations is to encourage the effective use of signs as a means of communication in the Town, to maintain and enhance the aesthetic environment, to maintain and enhance the Town's ability to attract sources of economic development and growth, to improve pedestrian and traffic safety, and to minimize the possible adverse effect of signs on nearby public and private property.

#### **§6.17.2 General Standards**

1. Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any sign without first having obtained a Sign Permit issued by the Code Enforcement Officer in conformance with the requirements of this law.
2. A sign, except signs erected by a governmental entity for a public purpose, shall not be attached directly or indirectly to any light standard, traffic control structure, utility pole, or tree.
3. All site plans approved by the Planning Board shall include a coordinated plan for the location and size of all signs for the entire project area.
4. No sign shall be placed in or project into the public right-of-way.
5. No illuminated signs shall be allowed, unless a special use permit is granted by the Planning Board.

#### **§6.17.3 Exempt Signs**

The following signs shall be allowed in all districts without first obtaining a sign permit.

1. Any sign posted by duly constituted public authorities in the performance of their public duties are exempt from regulation under this Section.
2. Temporary "For Sale" or "For Lease" signs relating to the premises on which they are posted. The sign shall contain only the name, address and telephone number of the owner or his authorized agent, or both. The sign shall not exceed 6 square feet in area. Only one such sign shall be permitted for each street frontage and it may not be illuminated.

3. Temporary signs in a commercial district that advertises any special sale. The sign shall not be erected more than seven (7) days prior to the sale and must be removed within three (3) days after the sale. One such sign is allowed per establishment.
4. New business enterprises, which are waiting erection of permanent signs, may install temporary signs, not exceeding 25 square feet in area, for a period not to exceed 30 days.
5. A duly authorized major home occupation may post one sign, not to exceed one square foot in area, on the wall of the building in which the home occupation is carried out.
6. For a residence, one sign indicating the name and address of the occupant of the premises not to exceed one square foot in area. Such sign shall not project above a roof line. It may be mounted on the building wall or pole mounted. An address sign shall not be permitted if the premise contains a sign for a home occupation.
7. For new construction or renovation, one sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies, placed on the site where construction is in progress. Such sign shall not exceed 25 square feet in area and 10 feet in height. The sign shall be removed within 30 days of the completion of the construction, repair or renovation work.
8. Political Signs: Signs advertising a candidate for political office, or signs advertising any other ballot issue, must be removed seven (7) days after the election.
9. "Posted" Signs: In open areas, "posted" signs shall be placed in accordance with state laws.

#### 6.17.4 Signs Requiring Sign Permits

1. In the HC Hamlet Commercial District establishments shall be permitted to erect one wall sign for the purpose of permanent advertising. The area for any single business enterprise shall be limited according to the frontage width of the building occupied by such enterprise. In computing maximum size, each business enterprise may have a permanent sign of an area equivalent to one and one-half square feet of sign area for each lineal foot of frontage width occupied, but in no case shall it exceed a maximum area of 32 square feet.

A freestanding pole sign not over 10 feet in height and not in excess of 32 square feet in sign area may also be permitted for each business providing that:

- a. No part of such sign shall project into or over any public right-of-way.
  - b. The pole support of such sign shall not be less than 40 feet from any lot in any residential district.
  - c. Only one freestanding sign per parcel shall be permitted. If more than one commercial establishment is located on a lot, they shall share the advertising area on one freestanding sign.
2. Commercial uses in a residential or agricultural-residential district may erect one wall sign. In no case shall the sign exceed 32 square feet in area.

A freestanding sign for a commercial use in a residential or agricultural-residential district shall be subject to obtaining a special use permit from the Planning Board. In no case shall such freestanding sign exceed 4 feet in height and 32 square feet in area or be illuminated.

3. Subdivision Sign. One permanent identification sign may be allowed at the entrance to a permitted subdivision, provided that the sign does not exceed 32 square feet in area and 4 feet in height. The sign may indicate only the name of the subdivision.

#### § 6.17.5 Prohibited Signs

The following signs shall be prohibited in all districts:

1. Off-premises signs
2. Signs containing flashing lights, except that signs may contain an area that displays the time and temperature.
3. Roof signs.

In addition to the sign requirements the following provisions shall apply to signs erected or maintained in connection with an adult use:

1. No off site signs shall be permitted.
2. Advertisements, displays or promotional material shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalk or walkways or from other areas public or semipublic, and such displays shall be considered signs.
3. No more than one business wall sign shall be permitted for an adult use and such sign shall be permitted only on the front façade.
4. Sign messages shall be generic in nature, shall not contain material classified as advertising and shall only identify the business that is being conducted.
5. Such sign shall be reviewed by the Planning Board in conjunction with the Special Use application and shall conform to all signage requirements of this section.
6. No sign should be larger than 3' x 4', no lighted signs.

The restrictions set forth in this section are in addition to any other applicable provision of this Ordinance. In the event of any conflict between any such provisions, the more restrictive shall apply.

#### § 6.18 Solar Energy

The permitting process for Solar Energy will be streamlined by:

1. Providing a single permit for Solar Energy installations
2. Shall have a two day turn around time for permits
3. Shall eliminate reviews that do little to validate the safe and efficient operation of a proposed Solar Energy system. Only one initial inspection shall be required for this facility.

#### § 6.19 Stripping of Topsoil

No person, firm or corporation shall strip, excavate or otherwise remove top soil for sale, or for use other than on the premises from which the same shall be taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto.

## § 6.20 Telecommunications Towers

### §6.20.1 Application Materials

All applicants for a Special Use Permit for the construction of a telecommunications tower in the Town of Otto shall submit the following:

1. A report from a professional engineer which shall:
  - a. Describe the tower and the technical, economic and other reasons for the tower design.
  - b. State that the tower is structurally sound.
  - c. Describe how many and what kinds of antenna(e) are proposed.
  - d. Describe how many and what kind of antenna(e) are possible on the tower.
  - e. Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure.
2. A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).
3. A letter of intent committing the tower owner to negotiate in good faith for shared use by third parties in the future. This letter, which shall be filed with the Building Code Inspector prior to the issuance of a building permit (assuming the telecommunications tower is approved), shall commit the tower owner and his or her successors in interest to:
  - a. Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
  - b. Negotiate in good faith for shared use by third parties.
  - c. Allow shared use if an applicant agrees in writing to pay charges.
  - d. Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a sharing user without causing electromagnetic interference.
4. The reports and evaluations required in § 6.20.2, Shared Use and § 6.20.3, Use of Existing Buildings.
5. A Full Environmental Assessment Form (EAF) and the Visual Addendum to the EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual Addendum.
6. A site plan, as defined in Article 2 of this law.
7. Any other material that the Zoning Board deems necessary to evaluate the application.

Any permit granted under this section shall be valid only for the number and type of antennas in the approval. Any increase in number of change in type of antenna(e) on any existing tower must be approved by the Zoning Board.

## §6.20.2 Shared Use

1. At all times, shared use of existing towers shall be preferred to the construction of new towers.
2. An applicant shall be required to present an adequate report inventorying existing towers, and approved, but inbuilt towers, within a reasonable distance of the proposed site. If an appropriate communications tower or towers is available, the applicant shall submit a written evaluation of the feasibility of sharing such tower. The evaluation shall analyze, but is not limited to, the following factors:
  - a. Structural capacity of the tower or towers
  - b. Radio frequency interference
  - c. Geographic service area requirements
  - d. Mechanical or electrical incompatibilities
  - e. Inability or ability to locate equipment on the tower or towers
  - f. Cost, if fees and costs for sharing would exceed the cost of a new communication tower over a 25-year period, and
  - g. Any restriction or limitations of the Federal Communications Commission that would preclude the shared use of the tower.

A telecommunications tower that is determined to be inappropriate for sharing shall be assumed to be inappropriate for sharing the same types of facilities in the future. Such towers will not need to be evaluated in the future regarding sharing with the same type of facility for which it has been determined to be inappropriate. The Town shall maintain a list of such towers, and shall provide such list to all applicants or potential applicants for a Special use Permit for a telecommunications tower.

3. An applicant shall not be required to share use of an existing telecommunications tower if the cost is unreasonable. Those costs include, but are not limited to, structural reinforcement of the existing tower, preventing transmission or receiver interference, additional site screening, and other charges including real property acquisition of a lease required to accommodate shared use. Costs associated with this subsection shall be considered unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a 25 year period.
4. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of an appropriate existing communication tower. Written requests and responses for shared use shall be provided.

## §6.20.3 Use of Existing Buildings

1. The use of suitable existing buildings and structures shall be encouraged over the construction of new towers, wherever feasible.
2. The applicant shall prepare an inventory of buildings and structures in the cell search area to determine if any may be suitable to accommodate the antenna(ae). If suitable structures are located, the applicant shall enter into good faith negotiations with the building owner to secure rights to place one or more antennae on such structures.
3. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of the existing building or structure. Written requests and responses shall be provided.
4. An applicant shall not be required to use an existing building or structure if the cost is unreasonable. Costs associated with this subsection shall be considered to be

unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a 25 year period.

#### §6.20.4 Setbacks

Towers and antenna(e) shall comply with all existing setbacks within the zoning district in which they are sited. Additional setbacks may be required by the Planning Board to contain on-site substantially all ice-fall or debris from tower failure and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts, including guide wire anchors, and to any accessory facilities.

#### §6.20.5 Visibility

1. All towers and accessory facilities shall be suited to have the least practical adverse effect on the environment.
2. Placement of the Antenna(e) or tower on a suitable existing structure, such as a church steeple, water tower, or silo is encouraged, whenever feasible.
3. Towers shall not be artificially lighted, except as required by the Federal Aviation Administration (FAA).
4. Towers shall be a galvanized finish or painted gray or silver above the surrounding tree line and painted gray, green or black or other neutral color below the surrounding tree line, unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
5. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter, measured at a height of four (4) feet off the ground, shall take place prior to approval of the Special Use Permit.
6. No portion of any tower may be used for signs or advertising purposes, including the company name, banners, streamers, etc.
7. The applicant shall demonstrate that proposed height for the tower and antenna(e) is the minimum necessary to function satisfactorily. No tower or antenna(e) that is taller than this minimum height shall be approved.

#### §6.20.6 Screening

1. The Planning Board may require fencing around the tower and any associated building. The fence shall be a minimum of eight feet in height.
2. Landscaping shall be planted on the outside of the fencing. The landscaping may be installed on the inside of the fencing, subject to the approval of the Planning Board, if the survivability or utility of landscaping on the exterior of the fencing is questionable.
3. The Planning Board may require evergreen hedges or other planting strips as necessary to screen portions of the facility. Installation of new plantings will not be required in those places where the presence of existing vegetation or structures is sufficient to screen the tower and accessory buildings or in cases where the proposed landscaping would not be visible.

#### §6.20.7 Removal of Obsolete Facilities

1. All obsolete and unused telecommunication towers shall be removed within 12 months of cessation of use.

2. The owner of the telecommunication tower shall annually file a declaration with the Town Board of the Town of Otto as to the continuing operation of every facility installed subject to this Law.
3. The Planning Board may require, as a condition of approval of the Special Use Permit, that the applicant post a bond with the Town, sufficient to allow the Town to have the unused tower removed, if the owner fails to do so within the prescribed time period.

### **§ 6.21 Trailers**

A trailer, as designed in Article 2, may be used temporarily for living quarters provided that it meets the following conditions:

1. One trailer is allowed on each single-family lot, provided that the lot does not already contain a single-family home.
2. The owner/occupant will obtain a trailer permit from the Code Enforcement officer. The Code Enforcement Officer shall insure that the trailer has adequate water and sewage disposal facilities. The permit must be renewed annually.
3. The trailer may remain on the lot for a total of six months in any one calendar year. Otherwise, the trailer must be taken off the lot.

Individual recreation or travel trailers owned by residents of the Town may be stored on the property of the owner, adjacent to an existing single family home, for an unlimited period, provided that no residence is taken therein or business conducted therewith.

### **§ 6.22 Wind Energy Facilities**

**Refer to Local Law No. One of 2011 – Wind Energy Facilities**

### **§ 6.23 Yard Sales**

Yard sales are permitted provided that the following conditions are met:

1. No items may be offered for sale that have not been owned and used by the occupant of the premises. Multiple family sales are permitted if they are held on the premises of one of the participants.
2. No more than three yard sales shall be conducted on any one lot in any one calendar year. Yard sales shall not be conducted for longer than a 3 consecutive days.
3. Yard sales shall be conducted during daylight hours only.

## **ARTICLE 7 SPECIAL USE PERMITS**

### **§ 7.1 Intent**

The intent of Special Use approval is to allow the proper integration into the community of uses which may be suitable only under certain conditions and at appropriate locations. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, special uses require careful consideration so that they may be property located and conditioned in order to minimize their effect on nearby properties and to meet the objectives of this zoning law.



## **§ 7.2 Authorization to Grant Special Use Permits**

### **§7.2.1 Hearing for Applications for Special Use Permits**

The Planning Board shall hear all applications for Special Use Permits for uses that are so listed in Article 4 and elsewhere in this law. After evaluating the application using the criteria established in § 7.4 and considering the intent and purpose of this law, the Planning Board may approve or deny the application for Special Use Permit.

### **§7.2.2 Reasonable Conditions**

If the application is approved, the Planning Board may impose any reasonable conditions that it feels are necessary to mitigate potential impacts to the neighborhood, to the Town as a whole, or to the environment. These conditions may include, but are not limited to, the following:

- a. Limiting the hours of operation.
- b. Requiring fencing, screening, and landscaping to protect adjacent or nearby property.
- c. Limiting the number, size and location of signs.
- d. Controlling the number and location of driveway entrances.
- e. Requiring that the Special Use Permit be renewed periodically.
- f. Must be reviewed and renewed annually after the 1<sup>st</sup> year - if in compliance.

### **§7.2.3 Satisfaction of Conditions**

If conditions are imposed by the Planning Board, those conditions must be satisfied before the Code Enforcement Officer can issue a Building Permit or a Certificate of Occupancy. The Planning Board shall determine when the condition must be met.

## **§ 7.3 Application Procedure**

1. An applicant for a Special Use Permit shall submit a completed application to the Code Enforcement Official, who shall forward it to the Town Planning Board.
2. The application shall contain the following information and materials.
  - a. An application for a building permit.
  - b. A plot plan, showing the size and location of the lot, the location of all buildings on the lot, driveway entrances, parking areas and any other proposed features.
  - c. Floor plans and elevations.
  - d. All required fees.
  - e. Any other information that the Planning Board determines is necessary to consider the application.

The Planning Board may, at its discretion, waive any application requirement that it deems is not relevant to a particular application.

3. The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the day the completed application is received by the Code Enforcement Officer.

Public notice of the hearing shall be printed in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof.

In addition, the Planning Board shall send notice of such hearing to every owner of a parcel that abuts the parcel that is the subject of the application. Such notices shall be mailed at least ten (10) days prior to the public hearing.

4. The Planning Board shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Planning Board must reach its decision may be extended by mutual consent of the applicant and the board.
5. The Planning Board shall file a copy of its decision on the application with the Town Clerk within five (5) business days of the date of the decision. A copy of the decision shall be mailed to the applicant at the same time.

#### **§ 7.4 Criteria for Granting Special Use Permits**

The Planning Board shall not grant any Special Use Permit unless it finds that the proposed action is in accordance with the following criteria.

1. The proposed project is in harmony with the goals and objectives established in the Town's adopted policy guideline, *Vision 2020*.
2. The proposed project is in harmony with the general purposes and intent of this law.
3. The nature and intensity of the proposed use is in harmony with the character of the adjacent neighborhood.
4. The proposed project will not tend to depreciate the value of adjacent property. A Special Use Permit shall only be granted when the proposed use is of such character, size and location that in general it will be in harmony with the orderly development of the district in which the property is situated, and will not be detrimental to the orderly development of adjacent areas.
5. The proposed use will not alter the essential character of the neighborhood nor be detrimental to the residents thereof. A permit for a special use in a residential area shall only be granted when it is clearly obvious that the special use will not impair the use, enjoyment and value of adjacent residential properties, and that any vehicular traffic generated will not be hazardous to otherwise detrimental to the prevailing residential character of the neighborhood.
6. If located near any parcel being used for an agricultural activity, the proposed use will not unduly adversely affect the pre-existing agricultural use.
7. The proposed project will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
8. Essential public facilities, such as streets, police and fire protection, water and sewer systems, exist to adequately serve the proposed project or will be provided adequately by the applicant on-site.
9. There is adequate on-site parking provided, and the proposed project will not unduly increase traffic in the neighborhood of the site.
10. The proposed project is adequately screened from adjacent properties.
11. The proposed project is compatible in design and materials with the prevailing architectural standards in the general neighborhood.
12. The proposed project will not generate excessive noise, odor, dust, smoke or vibrations.

13. The proposed project will not result in the destruction loss or damage of a natural, scenic or historic feature of major significance.
14. The proposed project conforms to all applicable requirements contained in Article 6, Development Standards, of this law.

#### **§ 7.5 Expiration of Special Use Permit**

A Special Use Permit shall expire if the Special Use shall cease continuously for one (1) year or more, or if construction or other use of the property in accordance with the Special Use Permit has not been commenced within one year of the date of approval. Extension may be granted only by the Planning Board, upon written application by the original applicant.

### **ARTICLE 8: SITE PLAN REVIEW**

#### **§ 8.1 Purpose**

The purpose of this article is to ensure that any new development in the Town of Otto is in harmony with the current rural character of the town and that new development meets the guidelines for development laid out in Vision 2020. An additional purpose is to evaluate site plans in order to minimize conflicts between a proposed development and neighboring existing uses and natural features of the site; this will minimize any potential adverse effects to the health, safety, and general welfare of the Town of Otto.

#### **§ 8.2 Authorization to Review Site Plans**

##### **§8.2.1 Power to Approve Site Plans**

The power to approve, approve with conditions, or disapprove site plans is hereby vested in the Planning Board of the Town of Otto.

##### **§8.2.2 Reasonable Conditions**

When approving a site plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed site plan.

##### **§8.2.3 Building Permit or Certificate of Occupancy**

Where applicable, site plan approval must be obtained, and all conditions of approval must be met by the applicant, prior to the issuance of a Building Permit or Certificate of Occupancy. The Planning Board shall determine when the condition must be met.

##### **§8.2.4 Variances**

Where a variance would normally be required under provisions of this law, the Planning Board shall not have the authority to vary those provisions under site plan review. Application must be made to the Zoning Board of Appeals for a variance and the Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for site plan approval.

### **§ 8.3 Applicability and Exceptions**

All new development and land use activities shall require site plan review and approval prior to the issuance of a building permit, except the following:

1. All agricultural activities, including construction of buildings and structures that are normally necessary to agricultural activities.
2. Construction of new one-family or two-family dwellings, including ordinary accessory structures and related land use activities. Additions of any size, to existing one-family and two-family dwellings are also exempt from site plan review.
3. Signs, except for signs that are included in projects that would otherwise require site plan review.
4. Ordinary repair or maintenance or alterations to existing structures or uses.
5. Interior structural alterations within any existing building.
6. The sale of agricultural produce and temporary structures related to sale of agricultural produce.
7. Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than twenty-five (25) percent.
8. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this law.
9. Logging and timber cutting.
10. Home occupations.

### **§ 8.4 Application Procedure**

1. An applicant for Site Plan approval shall submit a completed application to the Code Enforcement Officer, who shall forward it to the Planning Board.
2. The application shall contain the following information and materials:
  - a. An application for a Building Permit
  - b. An area map showing:
    - 1) The applicant's entire holdings
    - 2) All adjacent properties
    - 3) Adjacent streets and roadways
  - c. A plot plan, drawn to scale and having a north arrow and date, that shows:
    - 1) The location, dimensions, and use of all proposed buildings
    - 2) Means of access and egress
    - 3) All parking facilities and loading areas
    - 4) Location, design, and size of all signs
    - 5) Physical features intended to protect adjacent land uses, including screening, fencing and landscaping
    - 6) Existing natural features, such as wetlands, water bodies, watercourses, floodplain areas, and wooded areas. The plot plan shall also show all trees that would be affected by the proposed project
  - d. Floor plans and elevations showing all architectural features, including materials to be used.
  - e. A description of the sewage disposal and water supply systems to be used. Their location shall be shown on the plot plan.
  - f. Grading plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater and proposed erosion control measures.

- g. If the proposed project is in or near a floodplain, the applicant shall show that the project would not increase the base flood elevation. This proof shall be prepared by a registered professional engineer or architect.
- h. Landscaping plan and planting schedule.
- i. Location and design of outdoor lighting facilities.
- j. Description of the nature and intensity of the proposed operation and its compatibility with surrounding development.
- k. Any additional information the Planning Board deems is necessary for an adequate assessment of a particular application.
- l. All inquired fees.
- m. The Planning Board may, at its discretion, waive any application requirement that it deems is not relevant to a particular application.

### **§ 8.5 Pre-Application Conference**

A sketch plan conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal site plan. The purpose of the pre-application conference is to enable the applicant to inform the Planning Board of the proposal prior to the preparation of a detailed site plan application. The Planning Board shall review the basic site design concept and advise the applicant as to potential problems and concerns and generally determine the information to be required for the site plan application.

In order to accomplish these objectives, the applicant should provide the following at the pre-application conference:

- 1. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, signs, existing and proposed vegetation, and other planned features. In addition, anticipated changes in the existing topography and natural features and, where applicable, measures and features to comply with floodplain regulations, should be shown.
- 2. A sketch or map of the area which clearly shows the location of the site with respect to nearby street rights-of-way, properties, easements and other pertinent features.

### **§ 8.6 Planning Board Action on the Site Plan**

#### **§8.6.1 Action if no public hearing is held**

If no public hearing is held, the Planning Board shall act on the application for site plan approval within sixty-two (62) days of the date that a complete application was received by the Code Enforcement Officer. The time within which the Planning Board must make a decision may be extended by mutual consent of the applicant and the board.

#### **§8.6.2 Optional Public Hearing**

The Planning Board may, at its discretion, hold a public hearing on the application.

If a public hearing is conducted, it shall be held within sixty-two (62) days from the date that the completed application is received by the Code Enforcement Officer.

Public notice of the hearing shall be printed in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof.

The Planning Board shall mail notice of said hearing to the applicant at least ten (10) days before said hearing.

In addition, the Planning Board shall send notice of such hearing to every owner of a parcel that abuts the parcel that is the subject of the application. Such notices shall be mailed at least ten (10) days prior to the public hearing.

The Planning Board shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Planning Board must reach its decision may be extended by mutual consent of the applicant and the board.

§8.6.3 The decision of the Planning Board shall immediately be filed in the office of the Town Clerk, and a copy thereof mailed to the applicant.

### **§8.7 Criteria for Approving Site Plans**

When making a decision to approve, approve with conditions, or disapprove a Site Plan, the Planning Board shall consider the following.

1. The proposed projects are in harmony with the goals and objectives established in the Town's adopted policy guideline, *Vision 2020*.
2. Compatibility of the proposed project with the general purposes and intent of this zoning law.
3. Compatibility of the proposed development with the natural features of the site.
4. Compatibility of the proposed development, including the nature and intensity of use, with the existing uses and character of the neighborhood.
5. Adequacy of non-site parking arrangements, both in terms of number of spaces and their arrangement on the lot.
6. Adequacy of the means of access and egress to and from the site, for both pedestrians and vehicles, and adequacy of the internal circulation of the site.
7. Location, arrangement, appearance and sufficiency of off-street loading facilities.
8. Adequacy, type, and arrangement of trees, shrubs, walls, fencing and other features proposed to provide screening between the site and adjacent land uses.
9. Size, number, placement and arrangement of signs.
10. Adequacy of trees, shrubs, and other landscaping proposed for the site.
11. Location, size, arrangement, and design of the proposed buildings and other structures, including the compatibility of the proposed architectural features, colors and materials with the existing surrounding area.
12. Adequacy, location and design of lighting.
13. Adequacy of storm water and sanitary waste disposal.
14. Adequacy of the water supply system.
15. Compliance with the Americans with Disabilities Act (ADA).
16. When considering an application containing residential units, the adequacy of land for park, playground or other recreational purposes, if appropriate.
17. Protection of solar access on adjacent or neighboring properties.
18. The requirements of Article 6 that apply.
19. Any other elements as may reasonably be related to the health, safety, and general welfare of the community.

## **§ 8.8 Expiration of Site Plan Approval**

Approval of the site plan shall expire one (1) year from the date of approval, if the applicant has not commenced construction on the project within that time. Extension of the approval may be granted only by the Planning Board, upon written application by the original applicant.

# **ARTICLE 9 NONCONFORMING USES, BUILDINGS AND LOTS**

## **§ 9.1 Continuation of Use**

1. Except as otherwise provided herein, any lawfully established use of a building or land existing at the time of the enactment of this law, or any amendments thereto, and may be continued although such use does not conform to the provisions of this law.
2. A nonconforming structure may be continued, provided that, subsequent to the effective date of this law, it does not become more nonconforming
3. Nonconforming lot dimensions may continue to existence, provided that, subsequent to the effective date of this law, they do not become more nonconforming.

## **§ 9.2 Change of Use**

1. The use of a nonconforming building or structure may be changed to a use of a more restricted classification. When the use is changed to a use of a more restricted classification, it shall not thereafter be changed to a use of less restricted classification.
2. Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of this ordinance, such premises shall not thereafter be used or occupied by a nonconforming use.
3. In the event a nonconforming structure is moved for any reason for any distance, it shall thereafter conform to the requirements of the district in which it is located after it is moved.

## **§ 9.3 Repairs and Alterations**

1. Maintenance and repair of a non-conforming structure are permitted. However, no substantial improvements may be made during the life of the structure.
2. In the event that a non-conforming building or structure is destroyed by fire, flood, or other act of God, the building or structure may not be rebuilt unless a variance is first obtained from the Zoning Board of Appeals. Substantial improvements shall be made within six (6) months of the occurrence of the damage, except that this time limit may be extended by the Zoning Board of Appeals in cases of practical difficulty or hardship. Restoration shall not make the structure more non-conforming in size of setbacks.

## **§ 9.4 Abandonment or Discontinuance of Use**

Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued, as evidenced by vacancy, for a period of twelve (12) consecutive months, or whenever there is evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being discontinued or abandoned be re-

established, and the use of the premises thereafter shall be in conformance with the regulations of this law.

Where no enclosed building is involved, voluntary discontinuance of a non-conforming use for a period of one (1) year shall constitute abandonment, and the structure or lot shall not thereafter be used in a non-conforming manner.

## **ARTICLE 10 ZONING BOARD OF APPEALS**

### **§ 10.1 Appointment**

1. The Town Board shall appoint a Zoning Board of Appeals consisting of five members. The terms of office shall be five years, excepting that the five members first appointed shall serve for terms of one, two, three, four and five years. All terms will expire at the end of the calendar year.
2. If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.
3. The Town Board shall designate the Chairperson of the Zoning Board of Appeals.
4. The Zoning Board of Appeals, subject to the provisions of Town Law, shall determine its own rules of procedure.
5. The members of the Zoning Board of Appeals shall be removable only for cause by the Town Board upon written charges and after public hearing.
6. No member of the Zoning Board of Appeals shall hold elective or other appointive office in the Town government.

### **§ 10.2 Powers and Duties**

With due consideration for the purpose and intent of this Zoning Law, the Zoning Board of Appeals shall:

1. Hear and determine appeals from any order, requirement, decision, interpretation or determination made by the Code Enforcement Officer charged with the enforcement of this law. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as, in its opinion, ought to have been made in the matter.
2. Decide any question involving the interpretation of any provision of this law, including determination of the exact location of any district boundary, if there is uncertainty with respect thereto.
3. Have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, to grant area variances and use variances, as defined in Article 2 of this law.

### **§ 10.3 Procedures**

#### **§ 10.3.1 Appeals**

Any party aggrieved by a decision of the Code Enforcement Officer shall have sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer to file an appeal with the Zoning Board of Appeals. Such notice of appeal shall specify the grounds for the appeal and the relief sought. The Code



Enforcement Officer shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record of the appealed action.

The Zoning Board of Appeals shall fix a reasonable time for the hearing of any appeal.

#### § 10.3.2 Meetings Open To The Public

Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law.

#### § 10.3.3 Minutes and Records

The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

#### § 10.3.4 Filing of Decisions And Notice To The Applicant

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

In addition, a copy of the decision shall be mailed to the applicant within five (5) business days of the decision.

#### § 10.3.5 Public Hearings

Before acting on any matter appealed to it, the Zoning Board of Appeals shall hold a public hearing.

The Zoning Board of shall give notice of such hearing by publication in a paper of general circulation in the Town at least five days prior to the date thereof.

A least 10 days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties involved.

In addition, the Zoning Board of Appeals shall send notice of such hearing to every owner of a parcel that abuts the parcel for which a variance or other determination has been requested. Such notices shall be mailed at least ten (10) days prior to the public hearing.

In the event the parcel that is the subject of a request for a variance or other determination is within five hundred (500) feet of any state park or parkway, the Zoning Board of Appeals shall also mail a notice of the hearing to the regional state park commissioner having jurisdiction.

If necessary, the application will be referred to the Cattaraugus County Planning Board, following the regulations in Article 11 of this law.

All notices shall contain a full statement of the matter under consideration.

The cost of sending or publishing any notices relating to any request for a variance or other determination, or a reasonable fee relating thereto, shall be borne by the applicant, and shall be paid prior to the hearing.

At the public hearing, any party may appear in person, or may be represented by an agent to an attorney.

The concurring vote of a majority of the 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 area variance.

#### § 10.3.6 Timing of Decision

The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days of the public hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.

#### §10.3.7 Rehearing

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

#### §10.3.8 Referral to the Planning Board

The Zoning Board of Appeals shall refer to the Planning Board such matters as required by this law, and any other pertinent matters, for review and recommendation, and shall defer any decision thereon for a period of not more than thirty (30) days pending a report from the Planning Board. The Planning Board shall transmit a copy of said application or appeal and shall request a determination at least thirty (30) days before the date the Planning Board's decision is required by law.

### § 10.4 Use Variances

In order for the Zoning Board of Appeals to grant a use variance, the applicant must show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence; and
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood, and

3. That the requested use variance, if granted, will not alter the essential character of the neighborhood, and
4. That the alleged hardship has not been self-created.

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

### **§ 10.5 Area Variances**

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

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; and
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; and
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that is 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.

### **§ 10.6 Use and Area Variances in the Floodplain Overlay District**

In addition to the above criteria, when considering an application for a use or area variance in the FO Floodplain Overlay District, the Zoning Board of Appeals shall consider the requirements contained in the Town of Otto “Land Use Control Ordinance,” revised February 1988. In particular the Zoning board of Appeals shall consider the Variance Procedure contained in § 9.3 (D) of that Law and the special criteria that must be met in order to grant an application for a variance.

### **§ 10.7 Imposition of Conditions**

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this zoning law and shall be imposed for

the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

### **§ 10.8 Expiration of Grant of Variance**

The grant of a use variance or an area variance shall expire one (1) year from the date of approval, if the applicant has not commenced construction or commenced operation of the use, if construction is not necessary, within that time. Extension of the time period for commencement of the variance may be granted only by the Zoning Board of Appeals, upon written application by the original applicant. Such application for extension must be received by the Zoning Board of Appeals prior to the expiration of the original grant of variance.

### **§ 10.9 Compliance with State Environmental Quality Review Act**

The Zoning Board of Appeals shall comply with the provisions of the state Environmental Quality Review Act. (SEQRA).

## **ARTICLE 11 MANDATORY REFERRAL**

### **§ 11.1 Proposed Actions Subject to Referral**

The following proposed actions by the Town Board, the Planning Board or the Zoning Board of Appeals shall be referred to the Cattaraugus County Planning Board for its review and recommendation before final action is taken by the local board, if they meet the geographic requirements in §11.2.

1. Adoption or amendment of a zoning ordinance or local law.
2. Issuance of special use permits.
3. Approval of site plans.
4. Granting of use or area variances.
5. Other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

### **§ 11.2 Geographic Criteria**

The proposed actions set forth in § 11.1 shall be subject to the referral requirements of this article if they apply to a parcel within five hundred (500) feet of any of the following:

1. The boundary of any city, village or town.
2. The boundary of any existing or proposed county or state park or any other recreation area.
3. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
4. The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
5. The existing or proposed boundary of any county or state owned land on which a public building or institution is situated.
6. The boundary of a farm operation located in an agricultural district, as defined by Article 25 AA of the agriculture and markets law, except that applications for area variances shall not be referred.

### **§ 11.3 County Planning Board Review**

The Cattaraugus County Planning Board shall have thirty (30) days after receipt of a full statement of the proposed action, or such longer period as may have been agreed upon by the County Planning Board and the local board, to report its recommendations to the local board. The County Planning Board's report shall include a statement of the reasons for its recommendation.

The County Planning Board shall review any referred action for inter-community or county-wide considerations. The County Planning Board shall recommend approval, modification or disapproval of the proposed action.

If the County Planning board recommends modification or disapproval of a proposed action, the local board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

### **§ 11.4 Report of Final Action**

Within thirty (30) days after final action on the proposal, the local board shall file a report of the action it has taken with the County Planning Board. If the local board acted contrary to a recommendation of modification or disapproval, the report shall set forth the reasons for that decision.

## **ARTICLE 12 ADMINISTRATION AND ENFORCEMENT**

### **§ 12.1 Code Enforcement Officer**

1. This law shall be administered and enforced by the Code Enforcement Officer, who shall be appointed by the Town Board.
2. The duties of the Code Enforcement Officer include the following:
  - a. Issue Zoning Permits and Certificates of Compliance, when all provisions of this law have been complied with.
  - b. Upon request by the subject board, review applications and make recommendations to the Planning Board and Zoning Board of Appeals. When requested by the Chair of the respective boards, attend meetings of the Planning Board, Zoning Board of Appeals, and the Town Board.

### **§ 12.2 Zoning Permits**

1. No building or structure shall be erected, added to or structurally altered until a Zoning Permit therefore has been issued by the Code Enforcement Officer. Except upon a written order of the Zoning Board of Appeals, no such Zoning Permit or Certificate of Compliance shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any of the provisions of this law.
2. There shall be submitted with all applications for Zoning Permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this law.

3. One copy of such layout or plot plan shall be returned when approved by the Code Enforcement Officer together with the Zoning Permit to the applicant. The second copy of each application with the accompanying plot plan shall become a public record.
4. All water supply and sewage disposal installations shall conform to the New York state Department of Health and the Cattaraugus County health Department regulations. No plot plan shall be approved by the Code Enforcement Officer in any area unless such conformity is certified on the plan. Drainage affecting adjacent properties shall be considered by the Code Enforcement Officer before issuing a permit, including possible runoff to said adjacent properties.
5. When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this law, he/she shall refuse to issue a Zoning Permit. The applicant may appeal to the Zoning Board to Appeals for a reversal of the Code Enforcement Officer's decision.
6. A Zoning Permit shall expire one year after the date of issuance, if the applicant fails to implement it.

### **§ 12.3 Certificate of Compliance**

1. No land shall be occupied or used and no structure hereafter erected, altered or extended and no change in use shall occur until a Certificate of Compliance shall have been issued by the Code Enforcement Officer. The Certificate of Compliance shall state that the structure or proposed use thereof complies with the provisions of this law.
2. Certificates of Compliance shall be applied for along with the application for a Zoning Permit. Said Certificate of Compliance shall be issued within thirty (30) days after the erection or alteration shall have been approved as complying with the provisions of this law.
3. The Code Enforcement Officer shall maintain a record of all Certificates of Compliance. Copies of said certificates shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

### **§ 12.4 Violations**

1. Whenever a violation of this law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer. The Code Enforcement Officer shall record each complaint and shall immediately investigate and report thereon to the Town Board.
2. Procedure of Abatement of Violations:
  - a. In case any building or structure is erected, altered or converted, or any building, structure or land is used in violation of this law, notification of the violation will be issued in writing by the Code Enforcement Officer. Compliance with the law must be met within the specified period of time.
  - b. After the specified number of days, the Town Board may commence an action to enforce this law. The Town Board may designate the Code Enforcement Officer or any other proper person, authority or official to commence the action.
3. The provisions of this Article shall not limit the available procedures for enforcement and remedies provided for under the Town Law of the State of New York or any other law.

## **§ 12.5 Penalties**

A violation of this law is an offense, punishable for a fine not exceeding \$350.00 for conviction of a first offense.

Conviction of a second offense, both of which were committed within a period of five (5) years, is punishable by a fine not less than \$350.00 nor more than \$700.00 or imprisonment for a period not to exceed six (6) months, or both.

Upon conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, punishable by a fine not less than \$700.00 nor more than \$1,000.00, or imprisonment for a period not to exceed six (6) months, or both.

Each week's continued violation shall constitute a separate additional violation.

## **§ 12.6 Court Review**

Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals, 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 Seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the Town Clerk.

## **§ 12.7 Fees**

A schedule of fees for all permits and applications required by this law shall be established by the Town Board. The fee schedule may be changed from time to time at the pleasure of the Town Board.

# **ARTICLE 13 AMENDMENTS**

## **§ 13.1 Town Board May Amend**

The Town Board may, from time to time, on its own motion, or on petition or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this law after public notice and hearings as provided by Town Law.

## **§ 13.2 Review By Planning Board**

Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for its report thereon. Referral to the Planning Board shall be made thirty (30) days before the public hearing hereinafter provided for. If the Planning Board shall fail to submit such report, it shall be deemed that the Planning Board has approved the proposed amendment or change.

## **§ 13.3 Public Notice**

The Town Board, by resolution adopted at a meeting, shall fix the time and place of a public hearing on the proposed amendments and shall cause notice to be given as follows:

1. By publishing a notice at least ten (10) days in advance of such hearing in a newspaper of general circulation in the Town. Such notice shall state the general

nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.

2. A written notice of any proposed change or amendment affecting property within five hundred (500) feet of the boundary of any state park shall be given to the regional state park commission having jurisdiction over such state facility at least ten (10) days prior to the date of such public hearing.
3. A written notice of any proposed change or amendment affecting property within five hundred (500) feet of the boundary of any village, town or county shall be given to the clerk of such municipality at least ten (10) days prior to the date of such hearing.
4. A written notice shall be posted in two (2) places of business in the Town of Otto.

#### **§ 13.4 Public Hearing**

The public hearing shall be held at the stated time and place by the Town Board and shall include the following within in proceedings.

1. A statement of the proposed change, amendment or supplement, either in complete or summary form.
2. An opportunity for all interested persons to be heard in a manner prescribed by the Town Board.

#### **§ 13.5 Adoption**

1. Prior to a vote on the proposed amendment, it shall be referred to the Cattaraugus County Planning Board following the provisions of Article 11 of this law.
2. Any such amendments may be approved by a simple majority vote of the Town Board, except that any such amendment shall require the approval of at least three-fourths of the members of the Town Board in the event such amendment is the subject of a written protest, presented to the Town Board and signed by:
  - a. The owners of twenty (20) percent or more of the area of land included in such proposed change; or
  - b. The owners of twenty (20) percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred (100) feet therefrom; or
  - c. The owners of twenty (20) percent or more of the area of land directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land.

#### **§ 13.6 Effective date of Amendments**

1. Amendments made to this law, excluding any map incorporated therein, shall be entered in the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with the amendment.
2. A copy of summary of the amendment, excluding any map incorporated therein, shall be published once in a newspaper having general circulation in the Town. Affidavits of the publication thereof shall be filed with the Town Clerk.
3. Such amendment shall take effect upon filing in the office of the Town Clerk.
4. The Town Clerk shall maintain every map adopted in connection with this Zoning Law and every amendment thereto.



## **ARTICLE 14 SEPARABILITY**

If any part or provision of this law 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 decision.