

future shared usage of the proposed facility is not feasible and an unnecessary burden, based upon:

- (1) The number of Federal Communications Commission (FCC) licenses foreseeably available for the area.
  - (2) The number of existing and potential licenses without Tower spaces/sites.
  - (3) Available spaces on existing and approved Towers.
  - (4) Potential adverse visual impact by a Tower designed for co-location.
- vii. Not more than one (1) communication Tower shall be permitted on any parcel of land. Telecommunications Facilities under the exclusive control or ownership of a municipal corporation are exempt from this subsection.
4. Modifications. Modifications to existing Telecommunications Facilities are permitted and shall require a Special Use Permit upon application to the Planning Board. The Planning Board shall issue such Special Use Permit upon the following criteria:
  - i. That the proposed modification involves the co-location of new transmission equipment, or the removal or replacement of transmission equipment.
  - ii. That the proposed modification does not substantially change the physical dimensions of any Tower or base station, and does not exceed the height restrictions set forth in Subsection 3(iii)(b), herein.
  - iii. An applicant intending to co-locate with an existing Tower shall be required to document permission from an existing Tower owner to co-locate.
  - iv. The Planning Board shall have the authority to impose such reasonable conditions as are directly related to and incidental to the proposed modification.
- e. Additional Requirements and Standards.
  1. The following criteria and additional requirements shall apply to each application for site plan approval for a new telecommunications facility:

- i. Setbacks. All Towers shall be set back from all adjacent property lines a sufficient distance to safeguard the general public and/or adjacent property in order to contain on site substantially all ice fall or debris from Tower failure. A setback of the Tower from any adjacent property line shall be equal to the tower height plus twenty (20) feet. Accessory structures must comply with the minimum setback requirements for such structures as defined in the underlying district.
- ii. Aesthetics.
  - (a) Telecommunications Facilities shall be located and their visual effects minimized through careful design and buffering via vegetative screening to the maximum extent which is practical and feasible to help ensure compatibility with surrounding land uses.

The following provisions shall serve as guidelines or examples for the Planning Board in considering to how to screen Towers:

Native plants and vegetation are recommended. To screen the base of the Tower and accessory structures, a row of deciduous trees capable of forming a continuous hedge at ten (10) feet in height within two (2) years of planting and not more than twenty (20) feet apart and within twenty-five (25) feet of the Tower base and accessory structures, or other landscaping or buffering as the Planning Board shall reasonably require.

Within fifty (50) feet of the boundary, at least one (1) row of evergreen trees, shrubs, or other landscaping or buffering as the Planning Board shall reasonably require, at least four (4) feet high when planted and spaced not more than fifteen (15) feet apart.

All trees, plantings, and landscaping shall be maintained and replaced if needed.

- (b) Existing on-site vegetation shall be preserved to the maximum extent possible.
- (c) The Planning Board may require that the Tower be designed and sited so as to avoid, if possible, application of Federal Aviation Administration (FAA) lighting and

painting requirements, it being generally understood that Towers should not be artificially lighted, except as required by the FAA.

- (d) The Tower shall be of a galvanized finish or painted matte grey unless otherwise required by the FAA, and accessory facilities should maximize use of building materials, colors, and textures designed to blend with the natural surroundings.
- (e) All Towers and accessory facilities shall be sited to have the least adverse visual effect on the environment.

iii. Traffic, Access, and Safety.

- (a) Access may be required to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Construction of pervious roadways (crushed stone, gravel, etc.) is preferred and shall be permitted notwithstanding underlying Zoning District regulations which may provide otherwise. Road construction shall, at all times, minimize ground disturbance and vegetation cutting, and road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- (b) All Towers and guy anchors, if applicable, shall be enclosed by a fence not less than eight (8) feet in height or otherwise sufficiently secured to protect them from trespassing or vandalism.

iv. The Planning Board shall have the authority to require appropriate camouflaging and to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed Telecommunications Tower Special Use Permit and/or Site Plan.

v. Removal of Obsolete/Unused Telecommunications Facilities.

- (a) The applicant shall agree, in writing, to remove all Telecommunications Facilities (including Tower or Antennas) and restore the site to its original condition and shall incur all expenses therefor if the facility becomes obsolete or ceases to be used for its intended purpose for 120 days. Removal of such obsolete and/or unused facilities and restoration of the site to its original condition shall take place within thirty (30) days of receipt of written

notice from the Town Board. Such agreement shall also include a commitment by the applicant to impose a similar obligation to remove any unused and/or obsolete facilities upon any person subsequently securing rights to co-locate on the Tower or Telecommunications Facility.

- (b) As security for the performance of the requirements set forth above, the applicant shall, upon the granting of approval under this section and prior to the installation of any facilities, execute and file with the Town Clerk a bond or other undertaking which shall be approved as to form, manner of execution, and sufficiency for surety by the Town Board and Town Engineer, and shall be with a solvent surety corporation. Such bond or undertaking shall be conditioned upon the faithful performance of the provisions of the subsections above, and, in the event of default, the bond or undertaking shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The bond or undertaking shall remain in full force and effect until the removal of the facilities, Tower, Antennas and/or Accessory Structures, and site restoration. The value of the bond shall be equal to the 125% of the cost of demolition and restoration of the site.
- vi. All essential emergency services will be given access to obtain necessary space or service on the Tower at no cost (other than installation and maintenance).
- vii. Reimbursement for expenses. Each application shall include application fees, engineering review fees, and legal fees, as outlined in the Town fee schedule. The Town may also retain technical consultants as it deems necessary to provide assistance in the review of the site location alternative analysis. The applicant shall bear the reasonable cost associated with such consultation, which cost shall be assessed as an additional application fee. In no case shall the fee be more than 5% of the total project cost as determined for building permit fee assessment purposes.
- e. Annual report. The applicant or its successors or assigns shall file annually with the Town on the 2<sup>nd</sup> day of January following approval of the Telecommunications Facility a written report certifying that the applicant or its successors or assigns are complying with its maintenance and inspection procedures and records system, and that the Telecommunications Facility is not a hazard or a threatened hazard to the health and safety of the public.

f. Exemptions.

1. The following types of Telecommunications Facilities are not subject to the provisions of this Section:
  - i. Antennas and satellite antennas used solely for on-site residential household television and radio reception and involving a structure with a height less than fifteen (15) feet above existing grade or, if attached to a structure, thirty-five (35) feet above existing grade.
  - ii. Satellite antennas measuring two (2) meters or less in diameter and located in commercial districts.
  - iii. Radio antennas for personal use regulated by the FCC for licensed amateur radio operation.
  - iv. Lawful or approved use and existing prior to the effective date of this section; however, no Telecommunications Facility shall be modified unless in conformity with this section.
2. Telecommunications Facilities may be repaired and maintained without restrictions.

**Section 5.13 Dumping**

In accordance with the Dumping Ordinance of the Town of Arcadia, which is on file and available for review at the Office of the Town Clerk of Arcadia, "Dumping," as defined therein, is prohibited, such that no person shall abandon, dump, leave, store, or keep any rubbish or waste materials upon any public street or public place, or upon any privately owned property within the Town of Arcadia, and said property shall at all times be kept clean, free and clear of the same. This Section is provided herein solely as a reference to said Dumping Ordinance – any violations or matters subject to said ordinance shall be addressed according to the provisions of the Dumping Ordinance.

**Section 5.14 Solid Waste Management Facilities**

In accordance with the Local Law #1 of 2006 of the Town of Arcadia, entitled "Solid Waste Management Facilities Law of the Town of Arcadia," solid waste management facilities are prohibited within the Town of Arcadia, as set forth therein. This Section is provided herein solely as a reference to said Solid Waste Management Facilities Law of the Town of Arcadia – any violations or matters subject to said Local Law shall be addressed according to the provisions thereof.

**Section 5.15 [RESERVED]**

**Section 5.16 Building Permits and Certificates of Occupancy**

Building Permits and Certificates of Occupancy shall be issued in accordance with New York State Law and Regulations, including the New York State Fire and Building Code, in addition to Local Law #1 of 2007 of the Town of Arcadia, entitled "A Local Law Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code."

**Section 5.17 Fee Reimbursement**

Reimbursement of Professional Fees Required. In connection with any application to the Town, including, but not limited to, an application for a permit, including a Special Use Permit, Site Plan approval, Subdivision approval, zoning amendment, variance request, rezoning application, or any other application to the Town of Arcadia under this Zoning Law, the Town may employ professional consultants, legal counsel, professional engineers, professional planners, and/or other qualified professionals to provide assistance and advice in the review of any application, including, but not limited to, for example, acquiring legal advice, traffic analysis, landscaping analysis, historical analysis, architectural analysis, on-site investigation, evaluation and inspection; verification of the accuracy of information submitted; evaluation of the adequacy of plans and the sufficiency of submitted reports; study of the impact of proposals upon the resources and environment of the Town (including SEQR), preparation and/or review of environmental impact statements; review of the design and layout of improvements; inspection of installed improvement; and other services or technical assistance as the Town deems necessary for its review of such applications.

- a. Costs to Be Borne by Applicant. All costs in excess of two (2) hours of time, aggregate, incurred for the consulting services described herein shall be borne by the applicant and reimbursed by the applicant to the Town. Said costs must be reasonable. A deposit may be required in advance to cover the estimated cost of these services.
- b. Escrow Requirement and Amount. Whether an escrow deposit will be required in advance, and the amount of money initially deposited, shall be based on the estimated cost to the Town of reviewing the particular type of application. The reviewing board may consider the consultant and professional review expenses incurred by neighboring municipalities in reviewing similar applications. The reviewing board may also consider the Town's past cost in reviewing similar applications. In establishing whether a deposit shall be required, and the amount thereof, the Town may take into consideration the size, type, and number of buildings to be constructed; the number of lots proposed; the topography, soil conditions, and other environmental conditions at such site; the infrastructure proposed in the application; any special conditions the reviewing board may deem relevant; and any other factors the Town may find relevant.

- c. Funding of Escrow. Where an escrow is required, if at any time during the review and processing of an application there shall be insufficient monies on hand to the credit of an applicant to pay incurred costs, or if it shall reasonably appear to the reviewing board that such monies will be insufficient to meet anticipated costs, the Town shall cause the applicant to deposit additional sums as the reviewing board deems necessary or advisable in order to meet such expenses or anticipated expenses.
- d. Additional Fees. The review expenses provided for herein are in addition to application and other fees required pursuant to other applicable provisions of the Town of Arcadia's laws, rules, and regulations.
- e. Limitation on Use of Funds. Monies deposited by the applicant pursuant to this section shall not be used to offset the Town's general expenses for the several boards or its general administrative expenses. Employee costs are not reimbursable. In no event shall the applicant's required responsibility be greater than the actual cost to the Town of such engineering, planning, legal, or other consulting or professional services, which cost shall be reasonable such that it generally is comparable to costs of such services in the open market for similar services and projects.
- f. Administration of Escrow. Where an escrow account is required, the applicant shall deposit the required amount with the Town Clerk in the form of a certified check made payable to the Town of Arcadia. Upon receipt, the Town Clerk shall cause such monies to be placed in a separate non-interest-bearing account in the name of the Town, and shall keep a separate record of all such monies deposited and the name of the applicant and project for which such sums were deposited.
- g. Vouchers and Billings. Upon receipt and approval by the Town Board of itemized invoices from consultants for services rendered on behalf of the Town regarding a particular application, where an escrow is established, the Supervisor shall cause vouchers to be paid out of the monies so deposited. The record of such account shall be debited accordingly. Where there is no escrow requirement, the fees shall thereafter be billed on a monthly basis and paid by the applicant within thirty (30) days. Upon request, the consultant shall make copies of all vouchers available to the applicant at the same time the vouchers are submitted to the Town; copies of the vouchers may be redacted to protect proprietary information and/or legally privileged communications between the Town officials and the consultants.
- h. Incurring of Charges. The Town Board shall review and audit all such vouchers and shall approve payment of only such professional and consultant charges as are reasonable in amount and necessarily incurred by the Town in connection with the review and consideration of the applications. A charge or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the Town for services performed in connection with the review of a

similar application. A charge or part thereof is necessarily incurred if it was charged by the consultant for a service which was rendered in order to protect or promote the health, safety, or other vital interests of the residents of the Town, and/or to protect public or private property from damage.

- i. Payment to Town Only. In no event shall an applicant make direct payment to any Town consultant.
- j. Return of Unused Escrow Funds. After the reviewing board has rendered its decision on an application, or upon the withdrawal of an application by the applicant, the remaining balance of the deposit in excess of actual incurred costs, if any, shall be returned to the applicant without payment of interest within sixty (60) days of the date of the decision or date of the withdrawal. The Town will also provide a statement of the costs paid from the escrow account.
- k. Suspension of Review. In the event the applicant fails to deposit or timely pay the requested professional and consultant review costs with the Town, any application review, approval, permit, or certificates of occupancy shall be withheld or suspended by the reviewing board, officer, or employee of the Town until such monies are deposited or paid in full with the Town Clerk.
- l. Liability of Applicant. The owner(s) of the subject real property, if different from the applicant, shall be jointly and severally responsible to reimburse the Town for costs associated with professional and consultant review pursuant to this Section. In order for an application to be complete, the applicant shall provide the written consent of all owners of the subject real property, authorizing the applicant to file and pursue land development proposals and acknowledging potential landowner responsibility, under this article, for engineering, legal, and other consulting fees incurred by the Town for the review of the application.
- m. Failure to Reimburse. In the event of failure to reimburse the Town for such fees, the following shall apply:
  - 1. The Town may seek recovery of unreimbursed engineering, legal, and other consulting fees by action in court, and the defendants shall be responsible for the reasonable and necessary attorney's fees expended by the Town in prosecuting such action.
  - 2. Alternatively, and at the sole discretion of the Town Board, a default in reimbursement of such engineering, legal, professional, and consulting fees expended by the Town shall be remedied by charging such sums against the real property which is the subject of the land development application, by adding that charge to, and making it a part of, the next annual real property tax assessment roll of the Town. Such charges shall be levied and collected at the same time and in the same manner as Town-



assessed taxes and shall be applied in reimbursing the fund from which the costs for the engineering, legal, professional, and consulting fees were defrayed. Prior to charging such assessments, the owners of the real property shall be provided written notice to their last known address of record, by certified mail, return receipt requested, of an opportunity to be heard and object before the Town Board to the proposed real property assessment, at a date to be designated in the notice, which shall be no less than fifteen (15) days after its mailing.

#### **Section 5.18 Septic Systems**

Septic Systems shall be developed, constructed and operated in accordance with NY State Law and regulations, as well as any regulations and design standards implemented by local or State Depts. Of Health.

Minor "in kind" repairs may be made to existing non-conforming Septic Systems such that the System is repaired to its ordinally designed operating conditions. However, any redesign, reconstruction, significant replacement or major repairs of Septic Systems that are not in compliance with current law and regulations and that were originally constructed prior to applicable law and regulations, shall be designed, reconstructed or replaced in accordance with current law and regulations, unless the Building Inspector determines that a pre-existing condition at the subject property prohibits such compliance.

Further, any changes to the structure associated with the Septic System that results in increased wastewater shall require an evaluation of the Septic System to ensure it can handle the additional wastewater.

#### **Section 5.19 [RESERVED]**

#### **Section 5.20 Complete Applications**

No application for any relief herein, including, but not limited to, Site Plan, Special Use Permit, Area or Use Variance, etc., shall be deemed complete until (1) all requirements set forth on Town application forms and attachments thereto are complied with, and (2) all application requirements specifically set forth in this Zoning Law are satisfied.

#### **Section 5.21 Temporary Storage Container**

- a. Definition. A **TEMPORARY STORAGE CONTAINER** is any moveable or portable container, receptacle, or device designed and/or intended to be used for the temporary storage of personal property and/or other items. The term shall include, but not be limited to, trailers, shipping containers, portable on-demand storage units (i.e., PODS®) and other similar containers.
- b. Application. Every person, firm, corporation, or legal entity who wishes to place a Temporary Storage Container within the Town to remain for greater than three (3)

consecutive days shall be required to obtain a permit therefor from the Code Enforcement Officer. A letter application for such permit shall be made to the Code Enforcement Officer. Each application shall provide:

- i. The required Application fee as set forth on the Town Fee Schedule.
  - ii. The name, address and phone number of the applicant.
  - iii. The location identified by street address within the Town where the applicant wishes to place the temporary storage container(s).
  - iv. A description of each temporary storage container applied for, including each container's height, weight, square footage, length, and width.
  - v. The location of each proposed temporary storage container, including a drawing or map showing the location of nearby buildings, sidewalks, streets, alleys, and other public ways.
  - vi. The period of time each temporary storage container is required by the applicant and shall remain in place.
  - vii. Any other information as may be required by the Code Enforcement Officer to properly and adequately review the application given the requirements set forth herein.
- c. Issuance of Permit for Temporary Storage Container and Requirements. Upon a determination that the Application complies with the following requirements, the Code Enforcement Officer shall issue the requested Permit. The requirements follow:
  - i. That the proposed Storage Container does not interfere with any utilities, such as electric wires, telephone wires or gas lines.
  - ii. That the proposed Storage Container does not interfere with any easements or rights benefitting the Town.
  - iii. That the proposed Storage Container does not materially and negatively affect drainage at the proposed location.
  - iv. That the proposed Storage Container does not materially and negatively affect ingress, egress or access at the proposed location.
  - v. That the proposed Storage Container does not otherwise materially and negatively affect public safety or create a dangerous or hazardous situation at the proposed location.
  - vi. That the proposed Storage Container is in compliance with the Town Zoning Code, ordinances and NY State Building and Fire Codes.
  - vii. That the proposed Storage Container is placed either in a paved area, such as a driveway or parking lot at the furthest accessible area from the street, or in a rear yard, and that it is placed at least 10 feet from any property line.
  - viii. That the proposed Storage Container is of proper materials and maintenance, such that it is structurally sound and secure and significantly free of rust or other material signs of dilapidation.
  - ix. That the proposed Storage Container is kept only for the minimum number of days actually required by the applicant.

- d. Denial of Permit. Should the Code Enforcement Officer deny the permit based upon a failure to meet a requirement above, he shall list his reasons in writing. Said denial may be appealed to the Zoning Board of Appeals.
- e. Term of Permit. The term of a Storage Container Permit shall be for a maximum of 90 days, or less where the applicant indicates that a lesser time is required. In the event that an applicant demonstrates a need for greater than 90 days, he may apply to the Code Enforcement Officer for an extension during the final 30 days of the initial permit for up to an additional 90 days, but in any event, for no total period to exceed 180 days from the date of original issuance. The Code Enforcement Officer shall issue such an extension where the Storage Container requirements are met and where the applicant sets forth a colorable need for such extension.

**ARTICLE 6                      DETAILED ADDITIONAL REQUIREMENTS FOR SPECIFIED USES.**

**Sec. 6.1                      Agricultural Activities in Residential "R" and General Business "GB" Districts**

No outdoor storage of manure or other materials creating dust or odor, and no building in which farm animals are kept, and no greenhouse heating plant shall be less than 100 feet from any lot line, unless such facility is part of accepted agricultural operations or practices as defined by the New York State Department of Agriculture and Markets, and the land involved lies within an established State Agricultural District.

**Sec. 6.2                      Mobile Home in Agricultural "A" District**

Must comply with the provisions of Article 8 of this Local Law (as applicable to individual mobile homes) as well as Section 5.4 herein.

**Sec. 6.3                      Home Occupation in All Districts**

Home occupations shall be limited to those residential lots containing an owner-occupied dwelling. A home occupation shall have no more than one (1) employee who does not reside in the principal building on the lot, shall not produce a demand for parking spaces save for the one employee, shall have no display or storage of goods and materials visible from any street, and shall produce no offensive noise, traffic vibration, smoke, dust, odor, heat, glare, or electronic disturbance that would not normally be acceptable in a residential neighborhood.

**Sec. 6.4                      Roadside Stands in All Districts**

a.                      Definitions.

Roadside Stand. A stall, booth, or other similar structure for business which shall be limited to the sale of certain farm products.

Farm Products. For purposes of Roadside Stands, Farm Products include vegetables, fruits, syrups, jams and jellies, juices, honey, baked goods, and other foodstuffs grown or produced as part of a home occupation; however, in no case shall the sale of goods requiring refrigeration or freezing be permitted.

b.                      Certificate of Compliance Required.

1.                      A Certificate of Compliance granted pursuant to this Section shall be required prior to the use or operation of a Roadside Stand.
2.                      An application for the use and operation of a Roadside Stand shall be made to the Code Enforcement Officer or his designee. Said application

shall be on a Town Application Form and shall include the following information:

- i. The name, address, telephone number(s), and e-mail address of the owner and operator of the Roadside Stand.
  - ii. The address of the proposed location of the Roadside Stand. If the owner/operator of the Roadside Stand is not the owner of said location, then the name, property address, telephone number, e-mail address, and written permission of the owner shall also be provided.
  - iii. A description of the proposed operation of the Roadside Stand, including hours, days, and goods to be sold.
  - iv. An explanation of where the Roadside Stand will be stored during any season when it is not being operated.
  - v. A map of the property on which the Roadside Stand will be located, depicting the location and size of the proposed Roadside Stand and the location of parking.
3. Issuance of Certificate of Compliance. A Certificate of Compliance shall be issued by the Code Enforcement Officer or his/her designee upon application therefore, so long as the proposed Roadside Stand is compliant with the requirements set forth herein. Said Certificate of Compliance shall be posted on the Roadside Stand, and shall be valid so long as the Roadside Stand is operated by the same owner at the same location as indicated in the application.
4. Should a Roadside Stand be found to be in violation, the Code Enforcement Officer shall issue a notice of violation for the correction of any violations with a reasonable time to cure. If the violation is not timely cured, Code Enforcement personnel shall revoke any issued Certificate of Compliance. The Code Enforcement personnel shall issue a written statement setting forth the reasons for any denial or revocation.

c. Roadside Stand Requirements.

1. The maximum size of a Roadside Stand shall be 150 square feet. The maximum height shall be twelve (12) feet.
2. Any structure or ground display shall be located outside the public highway right-of-way, but in all cases shall be located no closer than twenty-five (25) feet from the edge of the pavement of the adjacent public road.

3. Sales shall be limited to vegetables, fruits, syrups, jams and jellies, juices, honey, baked goods, and other foodstuffs grown or produced as part of a home occupation; however, in no case shall the sale of goods requiring refrigeration or freezing be permitted.
4. No Roadside Stand shall be placed in a manner that limits the sight distance available to the motoring public or that in any other way obstructs their vision while driving, and furthermore, adequate space for customers to be able to park outside the outer edge of the road or highway shoulder shall be provided. Said space shall consist of an all-weather surface.
5. Roadside Stand sales shall be permitted between dawn and one-half (½) hour after dusk. During those times or seasons of the year when such farm stand is not operational, it shall be either dismantled or removed from the location to an area or a building upon the lands of the proprietor where such structure would be permitted, or secured in place by shutters or other such means to prevent unauthorized access or vandalism. At all times of the year, however, Roadside Stands visible from the public rights-of-way shall be maintained in a safe and attractive manner.

**Sec. 6.5 In the "A", "R", and "GB" Districts, Outdoor Storage of No More Than One (1) Each of the Following: Boat, Boat Trailer, Cargo Trailer, Camp Trailer, or Similar Equipment**

Such vehicles shall be owned for personal use by a resident residing on the property.

**Sec. 6.6 Light Manufacturing or Processing of Goods in General Business "GB" and Industrial "I" Districts**

The following requirements for such use or activity shall apply:

- a. No offensive or objectionable vibration, noise, odor, or glare shall be noticeable at or beyond the property line.
- b. No activity shall create a physical hazard by reason of fire, explosion, radiating, or other such cause to persons or property in the same or adjacent district.
- c. There shall be no discharge of any liquid or solid waste into any stream or body of water, or any public or private disposal system, or into the ground, or any materials of such nature as may contaminate any water supply, including groundwater supply.
- d. There shall be no storage of any material either indoors or outdoors in such a manner that it facilitates the breeding of vermin or endangers health in any way.

- e. The emission of smoke, fly ash, or dust which can cause damage to the health of persons, animals, or plant life, or to other forms of property shall be prohibited.

**Sec. 6.7 Machine Shop in "GB" and "I" Districts**

The same requirements as set forth for Light Manufacturing shall apply.

**Sec. 6.8 Storage, Baling, or Treatment of Junk, Rags, Bottles, or Scrap Paper in "I" Districts**

All such uses and activities shall be enclosed within a substantial fence at least six (6) feet high and designed and erected to screen out views from adjacent roads and properties. On such lots no such fence shall be constructed closer than forty (40) feet from the intersecting right-of-way lines.

**Sec. 6.9 Storage or Processing of Scrap Metal, Auto Graveyard, Storage of Secondhand Building Material in "I" Districts**

Same conditions as set forth for "storage, baling, or treatment of junk, rags, bottles, or scrap paper", above, and also subject to the provisions of Section 136 of the General Municipal Law.

**Sec. 6.10 Accessory Use in All Districts**

Must comply with the provisions of Sec. 5.3 of this Local Law.

**Sec. 6.11 Public Stable and Riding Academy in "A" Districts**

No outdoor storage of manure and no building in which animals are kept shall be less than 100 feet from any property line, unless such facility is part of accepted agricultural operations or practices as defined by the New York State Department of Agriculture and Markets, and the land involved lies within an established State Agricultural District.

**Sec. 6.12 Ponds**

a. Procedures.

1. Any pond with more than one (1) acre in surface area must meet all requirements of the Wayne County Soil and Water Conservation District as well as applicable New York State Department of Environmental Conservation (DEC) requirements before the Town Board may act. The applicant shall present a plan for pond construction of the pond that bears the approval of the Wayne County Soil and Water Conservation District Office or a qualified engineer.

2. The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation if the pond is in excess of nine and one-half (9½) acres.
  3. Approval for a pond under one (1) acre may be authorized by the Planning Board without the need for approval by the Wayne County Soil and Water Conservation District Office, a qualified engineer, or DEC.
- b. Requirements.
1. All ponds must have a 100-foot setback from all adjoining roads and property lines.
  2. An adequate drainage system shall be provided to convey storm water runoff, originating on or crossing the premises, such that the runoff follows as much as feasible the natural pattern of the runoff prior to the excavation, and such that it does not adversely affect neighboring property owners.

#### **Sec. 6.13 Adult Entertainment Uses**

Adult entertainment uses are permitted only as set forth in Local Law #2 of the year of 2005 of the Town of Arcadia, entitled "Adult Entertainment Uses." This Section is provided solely as a reference to said Adult Entertainment Uses Law of the Town of Arcadia – any violations or matters subject to said Local Law shall be addressed according to the provisions thereof.

#### **Sec. 6.14 Solar Energy Systems**

The following Additional Requirements shall apply to Solar Energy Systems:

- A. Lot Size, Coverage, Height, Yard and Setback Requirements. Solar Energy Systems shall comply with all dimensional requirements of the District they are located within, including minimum lot size, maximum coverage, and maximum height and yard setbacks.
- B. Additional Requirements for Rooftop Residential Solar Energy Systems.
  1. Aesthetics. Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and the highest edge of the System.
- C. Additional Requirements for Non-Rooftop Residential Solar Energy Systems.
  1. All Non-Rooftop Residential Solar Energy Systems shall require a Special Use Permit in accordance with Article 7 herein.
  2. All Non-Rooftop Residential Solar Energy Systems shall require Site Plan review.



3. The following information shall accompany the required Site Plan and Special Use Permit applications:
  - (a) Drawing showing the layout of the Solar Energy System signed by a Professional Engineer or Registered Architect.
  - (b) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.
  - (c) A landscaping/screening plan which specifies how landscaping and/or screening will mitigate any adverse aesthetic effects of the System.
4. Where a Non-Rooftop Residential Solar Energy System is an Accessory Use (it is not the primary use of the subject lot and less than 1,000 SF), it shall be installed in the side or rear yard and shall comply with the Accessory use requirements at Section 5.3 herein (unless a variance is acquired).
5. Solar Energy Systems which are greater than 1,000 Square Feet are not Accessory Uses and are subject to the following additional requirements:
  - (a) If a Lease is proposed, said lease and any other easements or agreement shall be submitted to the Town with the Special Use Permit application.
  - (b) Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
  - (c) Decommissioning Plan. To ensure the proper removal Solar Energy Systems, a Decommissioning Plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special use permit. The Decommissioning Plan must specify that after the Solar Energy System can no longer be used, it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the Decommissioning Plan shall be prepared by a Professional Engineer or Contractor. Cost estimations shall take into account inflation. Removal of Solar Energy Systems must be completed in accordance with the Decommissioning Plan. If the Solar Energy System is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.
    - (i) Solar Energy Systems are considered abandoned after one year without significant electrical energy generation and must be decommissioned.

## **ARTICLE 7. SPECIAL USE PERMITS.**

This Article shall apply to land uses and activities which require a Special Use Permit ("SP").

### **Sec. 7.1 Generally**

Uses and activities requiring an SP are considered to be sufficiently different in terms of their nature, location, and effect on the surrounding environment to warrant special evaluation of each individual application. Where Site Plan review is otherwise required, Site Plan review and approval must be completed by the Planning Board before the Town Board will authorize an SP.

### **Sec. 7.2 Procedure**

- a. In accordance with Town Law, the Town Board will administer the review and granting of SPs. Upon receipt of a complete application, it shall be forwarded first to the Planning Board for its advisory opinion. The application shall include such preliminary plans, drawings, and specifications as may be required by the Town Board or Planning Board for an understanding of the proposed development.
- b. If a variance would be required from the Zoning Board of Appeals in connection with the proposed use of the premises, the Code Enforcement Officer shall refer a copy of the application to the Zoning Board of Appeals. The Code Enforcement Officer shall notify the applicant of the need for such variance.
- c. All applications shall be signed by the legal owner of the premises for which the SP is sought.
- d. Public Hearing.
  - a. The Town Board shall designate a public hearing date within a reasonable period of time, not to exceed sixty-two (62) days from the date the completed application was received by the Town.
  - b. Notice of the public hearing shall be published in the Town's official newspaper at least five (5) days prior to the date of public hearing and shall include sufficient information so as to identify the property involved and the nature of the proposed action.
  - c. At least ten (10) days before such hearing, the Town Board shall mail notice thereof to the applicant.
  - d. At least ten (10) days before such hearing, the Town Board shall mail notice of the hearing and a full statement of the proposed action to the County Planning Board, where required by Section 239-m of the New York State General Municipal Law.

- e. The Town Board shall issue a written decision on the SP, either approving with conditions, or denying, within sixty-two (62) days after the hearing, unless an extension of time is mutually agreed upon.
- f. Where Site Plan approval is required, the SP Application shall be accompanied by either a proposed Site Plan pending approval, or an approved Site Plan.
- g. Agricultural Data Statement.
  - a. Any application for a SP that would occur on property within a County Agricultural District containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an Agricultural District, shall include an Agricultural Data Statement.
  - b. An Agricultural Data Statement shall include the following information: the name and address of the applicant, a description of the proposed project and its location, the name and address of any owner of land within the Agricultural District which contains farm operations and is located within 500 feet of the boundary upon which the project is proposed, and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.
  - c. Upon the receipt of such application by the Board, the clerk of such board shall mail written notice of such application to the owners of land used for farm operations as identified by the applicant in the Agricultural Data Statement. Such notice shall include a description of the proposed project and its location. The cost of mailing said notice shall be borne by the applicant.
  - d. The Board shall evaluate and consider the Agricultural Data Statement in its review of the proposed project upon the functioning of farm operations within such Agricultural District. The information required by an Agricultural Data Statement may be included as part of any other application form required by local law, ordinance, or regulation.
- h. If any SP issued under this Local Law shall remain unexercised (either the use is not commenced, or a structure associated with the use is not constructed) for a period of one (1) year from the date of issuance, such permit shall expire. For good cause shown, the applicant may apply to the Board for an extension of up to one (1) year prior to expiration of the SP. Should a SP expire and the applicant wish to commence such use in the future, a new application must be made to the Board and approved.
- i. If any use permitted by a SP shall be discontinued for a period of one (1) year, such permit shall be deemed revoked and the use shall not be continued until

another new application shall have been made to the Board therefore and approved.

- j. Any such SP may be made conditional upon the provision of adequate safeguards to protect the health, safety, and general welfare of the public, and to minimize possible detrimental effects of the proposed use on adjacent property, including a requirement that a Letter of Credit be deposited with the Town Clerk as security to insure that the proposed development will comply with the provisions of this Article.

### **Sec. 7.3 Special Use Permit Criteria**

SPs shall be issued only upon authorization by the Town Board, provided that such uses shall be found by the Town Board to comply with the following general requirements and any other applicable requirements for certain special uses and activities as set forth in this Section, 7.3 or Article 7.

- a. That the use or activity is so designed, located, and proposed to be operated that the public health, safety, welfare, and convenience will be protected.
- b. That the use or activity will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
- c. That the use or activity will be compatible with adjoining development and the character of the zone district where it is to be located.
- d. That adequate landscaping and screening is provided as may be required herein.
- e. That adequate off-street parking and loading are provided, and ingress and egress are so designed as to cause minimum interference with traffic on abutting streets, with particular reference to vehicular and pedestrian safety, and convenience, traffic flow and control, and access in case of fire or catastrophe.
- f. That the use or activity conforms with all applicable regulations governing the district where located, except as may otherwise be set forth elsewhere in this Zoning Law.
- g. Appropriate utilities, storm drainage, refuse, and service areas are addressed.

### **Sec 7.4 Findings.**

- a. The Town Board may impose additional conditions and requirements in order to ensure that the SP will be consistent with the requirements and intent of this Local Law.

- b. The Town Board is hereby authorized to waive any of the requirements for SPs if it finds that such requirements are not needed to protect public health, safety, or general welfare, or are inappropriate to the particular SP.
- c. In approving an application, the Town Board may impose any modifications or conditions it deems necessary to conform with the goals and objectives of the Town's Comprehensive Plan and its principles of land use and development, and to protect the health, safety, or general welfare of the public.
- d. If an application is approved by the Town Board, the Code Enforcement Officer shall be furnished with a copy of the approving resolution of the Town Board, and he shall issue the permit applied for in accordance with the conditions imposed by the Board. If there are conditions, the applicant must sign an agreement which incorporates those conditions, stating that the applicant understands the conditions and agrees to abide by those conditions. A memorandum of agreement is to be filed by the applicant in the Wayne County Clerk's Office indexed to the property subject to the conditions.
- e. If any application is disapproved by the Town Board, the reasons for such denial shall be set forth in the Board resolution and a copy of such resolution shall be transmitted to the applicant.
- f. The Code Enforcement Officer shall inspect the premises of a use authorized and approved with an SP not less than one time every three (3) years or upon complaint. The inspection shall determine that the use is being operated consistent with the terms and conditions established by the Town Board in approving the permit.
- g. If the Code Enforcement Officer shall determine that the use is not being operated in compliance with the permit, the Code Enforcement Officer shall issue a notice to the owner and operator of the use of violation of the Zoning Local Law. If such violation is not corrected in accordance with the requirements of this Local Law, the Code Enforcement Officer shall initiate enforcement action. If the violation is not corrected within ninety (90) days of issuance of a notice of violation, the Town Board, after a public hearing on notice to the owner, may revoke the SP.

**Sec. 7.5 Additional Special Permit Criteria for Specific Uses**

In addition to the SP criteria set forth in this Article above, additional criteria shall apply as set forth below for the below specified uses:

- a. Communication Towers. Must comply with the provisions of Article 5, Section 5.12 of this Local Law.
- b. Mobile Home Park in an "A" District. Must comply with the provisions of Article 8 of this Local Law.

c. Extractive Use in "A" and "I" Districts.

1. An SP is required for the excavation of more than 1,000 tons of minerals (roughly equivalent to at least 1,000 cubic yards or forty (40) to fifty (50) truckloads) for commercial purposes within twelve (12) consecutive calendar months and for the reclamation of the land affected by the excavation, including any operation accessory to the excavation or reclamation.
2. The Town Board may issue or renew an SP for such a use, provided that the proposed excavation and reclamation have been duly approved by the New York State Department of Environmental Conservation in accordance with the New York State Mined Land Reclamation Law, Title 27 of the New York State Environmental Law.
3. All excavations and reclamation shall be made only in accordance with a mined land use plan, including a mining and reclamation plan, which has been duly approved by the New York State Department of Environmental Conservation. This plan shall meet all applicable environmental protection codes established by federal, state, and county agencies having jurisdiction. All permit application information, including mined land use plans, submitted to the Department of Environmental Conservation, along with all correspondence from the Department regarding the permit application, shall be submitted to the Town.
4. The Code Enforcement Officer shall transmit the application, location map, and restoration plan to the Town Board for consideration of an SP in accordance with Article 7 herein. Upon approval of the application, the Town Board shall authorize the Code Enforcement Officer to issue an SP, subject to annual inspections to confirm that all conditions originally imposed on the permit are being complied with.
5. Expansion of an existing extractive use shall require a further SP approval.

d. Kennels. The Town Board may approve an SP for kennels with outdoor runs in the Agricultural ("A") District, provided that the following standards and provisions are maintained:

1. When applying for an SP for a kennel, the applicant shall indicate the number of dogs that will be boarded on the premises. Ownership of more than four (4) dogs aged six (6) months or older requires a kennel permit. This will include owned as well as boarded dogs.

2. Minimum lot size and frontage:

Number of Dogs	Lot Size	Lot Frontage
4-5 dogs	2 acres	250 feet
6-10 dogs	5 acres	300 feet
11-20 dogs	10 acres	400 feet
21+ dogs	15 acres	400 feet

3. Adequate landscaping or fencing shall be provided to create a visual, sound, and smell buffer between such facilities and adjacent properties. Kennels must have a security fence around the perimeter, unless enclosed in a building. Security fencing must be eight (8) feet high and made of solid material.
4. All buildings, structures, or other accessory uses associated with the kennel shall be at least seventy-five (75) feet from any property line, except that enclosed animal runs and structures that house animals shall be at least 100 feet from any property line.
5. No outdoor area enclosed by fences for the use of animals shall be permitted within a front yard. Fenced areas and other unenclosed facilities shall be set back not less than 300 feet from any side or rear property line.
6. All animals shall be kept within a totally enclosed building between 8:00 p.m. and 6:00 a.m.
7. Lot coverage shall not exceed 25%.
8. Every application for an SP for a dog kennel which requires licensing by the State of New York or federal government shall include a Site Plan showing all criteria which are required or specified by the State of New York or federal government pursuant to which the applicant intends to be licensed, including a certification that the Site Plan adheres to and is in conformance with those applicable regulations. Every SP issued with respect to a dog kennel which requires licensing by the State of New York or the federal government shall contain a provision that the permit is conditional upon the applicant receiving and continually possessing such a New York State or federal dog kennel license, and that the SP shall terminate in the event that the applicable New York State or federal dog kennel license is subsequently suspended, revoked, or for any other reason ceases to be in effect. Any required New York State or federal dog kennel license shall be displayed as required by regulation.

9. The following additional provisions shall apply to dog kennels that are not required to be licensed by the State of New York or the federal government.
  - i. Adequate provisions shall be made for disposing of animal waste. Applicants must indicate on the application for permit the method of waste disposal and dead animal disposal. The proposed method of disposal of waste and/or dead animal carcasses shall be subject to review and approval by the Town Board, pursuant to its Special Permit Review authority, before any such method may be employed by any applicant.
  - ii. Applicant must provide individual enclosures for each dog. Each individual enclosure for dogs must be a minimum of forty (40) square feet with a 4'6" high chain link or similar fencing.
  - iii. Exercise area. There shall be an enclosed exercise area or areas sufficient in size for the dogs housed at the kennel.
- e. Wind Energy Conversion Systems (Commercial and Noncommercial). The Town Board may approve an SP for the use of land and buildings for a non-commercial ("small") wind energy conversion system in any district, or a commercial wind energy conversion system in the Agricultural ("A") or Industrial ("I") Districts, subject to the standards and provisions of this section.
1. Findings. The Town Board of the Town of Arcadia finds and declares that:
  - i. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
  - ii. The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
  - iii. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public. Potential impacts that must be addressed through proper siting and design include:



- (a) Aesthetic impacts due to their large size, lighting, and shadow flicker effects.
  - (b) Drainage problems, erosion, and sedimentation, as well as compromised agricultural land relating to facility sites and access roads due to improper construction methods.
  - (c) Impacts to bird and bat populations if not properly sited.
  - (d) Risks to the property values of adjoining property owners.
  - (e) Noise, which may negatively impact adjoining properties.
  - (f) Traffic problems and damage to local roads.
  - (g) Electromagnetic interference issues with various types of communications.
- 2. Purpose. These regulations are intended to foster the development of the Town's wind power resources while protecting the general public of the Town of Arcadia and properties adjacent to Wind Energy Conversion Systems (WECS) from health, safety, and aesthetic impacts relating to indiscriminate placement or improper design.
- 3. Requirements for Wind Energy Conversion Systems.
  - i. Intent. The requirements in this Section are intended to provide standards for small, non-commercial WECSs designed for on-site home, farm, and small commercial use and that are primarily used to reduce on-site consumption of utility power, as well as for commercial ("utility scale") facilities. The intent of these requirements is to encourage the development of WECSs and to protect the public health, safety, and community welfare.
  - ii. Applications. Applications for WECS SPs shall include:
    - (a) The name, address, and telephone number of the applicant are required. If the applicant will be represented by an agent, the name, address, and telephone number of the agent are required, as well as an original signature of the applicant authorizing the agent to represent the applicant.
    - (b) The name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property

- owner is familiar with the proposed application and authorizing the submission of the application.
- (c) The address of each proposed Tower site, including the tax map section, block, and lot number.
- (d) Evidence that the proposed Tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- (e) A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
- (f) Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
- (g) Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and states so in the application, to connect the system to the electricity grid.

iii. Site Plan Requirements.

- (a) A Site Plan, prepared by a Professional Engineer registered to practice in New York State, is required to be submitted, and drawn in sufficient detail to show the following:
  - (1) Location of the Tower(s) on the site and the Tower height, including blades, rotor diameter, and ground clearance.
  - (2) Utility lines, both above and below ground, within radius equal to the proposed Tower height, including blades.
  - (3) Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the system.
  - (4) Surrounding land use and all structures within 500 feet of the WECS location.

- (5) Dimensional representation of the various structural components of the Tower construction, including the base and footing.
  - (6) Design data indicating the basis of design, including manufacturer's dimensional drawings and installation and operation instructions.
  - (7) Certification by a registered Professional Engineer or manufacturer's certification that the Tower design is sufficient to withstand wind-load requirements for structures as established by the Codes of New York State.
  - (8) For a commercial WECS only, evidence from a qualified individual that the site is feasible for a WECS.
- (b) Applications for a non-commercial ("small") WECS, a short Environmental Assessment Form. For a commercial WECS, a Full Environmental Assessment Form ("EAF") and Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act.
- (c) The following additional information is required in the application for a commercial WECS only:
- (1) Digital elevation model-based project visibility map showing the impact of topography upon visibility of the WECS from nearby strategic vantage points, to a distance radius of three (3) miles from the center of the WECS site. Scale used shall depict the 3-mile radius as no smaller than 2.7 inches, and the base map shall be a published topographic map showing cultural features. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
  - (2) For a commercial WECS only, no fewer than four (4) and no more than the number of proposed individual wind turbines plus three (3) color photos, no smaller than 3" x 5", taken from locations within a 3-mile radius from it and to be selected by the Planning Board, and computer-enhanced to simulate

the appearance of the as-built aboveground facilities as they would appear from these locations.

- iv. Access. Towers shall be constructed to provide one of the following means of access control or other appropriate method of access:
  - (a) Tower-climbing apparatus located no closer than twelve (12) feet from the ground.
  - (b) A locked anti-climb device installed on the Tower.
  - (c) A locked, protective fence at least six (6) feet in height that encloses the Tower.
- v. Noise Requirements for Wind Energy Conversion Systems.
  - (a) Noise. Except during short-term events, including utility outages and severe wind storms, a WECS shall be designed, installed, and operated so that the statistical sound-pressure level generated by a small WECS shall not exceed  $L_{10} - 45$  dBA, measured at the closest exterior wall of the nearest off-site dwelling existing at the time of approval (including structures under construction at said time), nor more than six (6) dBA greater than either the nighttime or daytime pre-application background ambient noise level measured in leaf-off conditions for a period of no less than twenty-four (24) hours, measured at the time of completing the SEQRA review of the application.
  - (b) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (a) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by five (5) dBA for center frequencies of 500 Hz and above, by eight (8) dBA for center frequencies between 160 Hz and 400 Hz, or by fifteen (15) dBA for center frequencies less than or equal to 125 Hz.
  - (c) The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour.

Ambient noise levels shall be measured at the exterior of potentially affected existing residences. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

- (d) Any noise level falling between two (2) whole decibels shall be the lower of the two.

vi. Setbacks for Wind Energy Conversion Systems.

- (a) A non-commercial ("small") WECS shall not be located closer to a property line than one and one-half (1½) times the total height of the facility.
- (b) Each commercial WECS shall be set back from site boundaries, measured from the center of the WECS, a minimum distance of:
  - (1) 600 feet from the nearest site boundary property line, except the setback shall be 500 feet where the boundary is with state, county, town, or village owned property.
  - (2) 600 feet from the nearest public road.
  - (3) 1,200 feet from the nearest off-site residence existing at the time of application, measured from the exterior of such residence.
  - (4) 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses, and other factors that influence the flight patterns of resident birds.
- (c) Each WECS shall be sited so as to avoid shadow flicker affecting neighboring residences.
- (d) Other WECS structures and improvements shall comply with the setback requirements of the applicable zoning district.

vii. Noise and Setback Waivers, Easements, Variances.

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

(1) Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this Section, and that they wish to be part of the site as defined herein, and that consent is granted to (a) allow noise levels to exceed the maximum limits otherwise allowed or (b) allow setbacks less than required; and

(2) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Section, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

(b) In any case where written consent is not obtained, a variance from the Zoning Board of Appeals shall be required.

viii. Electromagnetic Interference. WECS generators and alternators shall be properly filtered and/or shielded in order to avoid electromagnetic interference and shall comply with the rules and regulations of the Federal Communications Commission contained in 47 CFR Parts 15 and 18.

ix. Safety.

- (a) No WECS shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the Tower structure, rotor blades, and turbine components.
  - (b) The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
  - (c) Procedures acceptable to the Town Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one (1) location on the road frontage of each individual unit.
  - (d) Appropriate warning signs shall be posted. The type and placement of signs shall be determined on an individual basis as safety needs dictate.
  - (e) The permittee shall meet all FAA requirements to lighting.
  - (f) All small WECS Tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
  - (h) All WECS shall be equipped with manual and automatic overspeed controls. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.
  - (i) All WECS developments shall make appropriate provisions for access by emergency vehicles and maintenance vehicles.
- x. Transmission Lines. All on-site electrical wires associated with the WECS shall be installed underground, except for tie-ins to a public utility company and public utility company transmission poles, towers, and lines. This standard may be modified by the Town Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- xi. Height.
- (a) Noncommercial WECS shall not exceed a total height of fifty (50) feet unless the parcel on which the WECS is to be located is ten (10) acres or larger, in which case the maximum total height may be 100 feet.

- (b) Commercial WECS shall not exceed a total height of 350 feet.

xi. Other Development Standards.

- (a) The WECS Tower and blades shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates nonreflective surfaces to minimize any visual disruption.
- (b) The WECS shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, and trails).
- (c) Exterior lighting on any structure associated with the WECS shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (d) At least one (1) sign shall be posted on the Tower, at a height of five (5) feet, warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo, or advertising shall be placed or painted on the Tower, rotor, generator, or tail vane where they would be visible from the ground, except that a system or tower manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- (e) Anchor points for any guy wires for a system Tower shall be located within the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six (6) feet high or sheathed in bright orange or yellow covering from three (3) to eight (8) feet above the ground.
- (f) Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be regraded and revegetated to the pre-existing natural condition after completion of installation.
- (g) No chemicals may be used to control road dust during construction.



- (h) All WECS shall be maintained in good condition and in accordance with all requirements of this section.
- xii. Liability Insurance. Prior to the issuance of a Building Permit, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, that liability insurance has been obtained to cover damage or injury which might result from the failure of the Tower and/or the WECS or any part thereof and transmission facility. The Town Board, in consultation with the Town's insurer, may set the level of insurance required at whatever level it deems adequate.
- xiii. Abatement.
  - (a) Any WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property within twenty-four (24) additional months at the expense of the property owner or permittee. Removal of the system shall include removal of the entire structure, including foundations, transmission equipment, and fencing, from the property.
  - (b) Bond/Security. The SP for a commercial WECS shall require a permittee to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content, and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the Tower and the restoration of the site subsequent to its removal. The amount of the bond or security shall be no less than 125% of the cost of the Tower removal and restoration of the site.
  - (c) If removal of Towers and appurtenant facilities is required and the applicant, permit holder, or their successors, fails to remove the Towers and appurtenant facilities from the property within thirty (30) days from the date of notification by the Town Board, the Board may contract for such removal and pay for removal from the bond.
- d. The owner of each commercial WECS shall have it inspected at least every two (2) years for structural and operational integrity by a New York State licensed Professional Engineer, and shall submit a copy of the inspection report to the Town. If such report recommends that repairs or maintenance are to be conducted, the owner shall provide to the Town Board a written schedule for the repairs or maintenance.

- e. A WECS shall not begin its initial operation until inspections required by the Town of Arcadia have been made and all necessary approvals have been given. After initial operations have begun, the Code Enforcement Officer or his/her designated representative shall have the right at any reasonable time to enter the premises on which a WECS has been placed to inspect any or all parts of said installation.
- f. After conducting an inspection, the Code Enforcement Officer may order the owner of a WECS to render said WECS inoperative for reasons related to assuring safety of operations, abating noise, or eliminating electromagnetic interference. The owner of the WECS shall not return the WECS to service until any and all of the reasons which caused the Code Enforcement Officer to issue the order to the owner to make said WECS inoperative have been corrected to the satisfaction of the Code Enforcement Officer.
- g. Prior to allowing a WECS to resume operations, the Code Enforcement Officer may require the owner of the WECS to have an inspection made and a report issued by a professional engineer licensed in the State of New York, certifying that the WECS and/or Tower is safe.

e. Solar Energy Systems

Solar Energy Systems shall additionally comply with those provisions set forth at Article 6 of this Local Law herein.

f. Camping Grounds

Plans for sewage disposal and water supply shall receive approval from the New York State Department of Health and Department of Environmental Conservation. Natural vegetation shall be retained and preserved whenever possible.

**ARTICLE 8. MOBILE HOMES AND MOBILE HOME PARKS.**

**Sec. 8.1 Permitted Location**

- a. Individual Lot. A mobile home on an individual lot of record and not in a mobile home park will be permitted only in an Agricultural District and after the Code Enforcement Officer finds that the provisions below will be complied with. Notwithstanding the above, a Temporary Permit for a mobile home may be obtained in accordance with this Article.
- b. Mobile Home Park. A mobile home park will be permitted only in an Agricultural District and after the Town Board has determined that the provisions of this Article have been complied with, has received a Site Plan review report from the Planning Board, and has authorized the Code Enforcement Officer to issue a renewable Special Use Permit therefor.
- c. Mobile Home for Agricultural Workers. A mobile home to be used as housing for agricultural workers will be permitted only in an Agricultural District and after the Town Board has determined that the provisions of this Article have been complied with and has authorized the Code Enforcement Officer to issue a renewable Special Use Permit therefor.

**Sec. 8.2 Permit Application for a Mobile Home on an Individual Lot of Record in an Agricultural District**

Application for a permit for a mobile home on an individual lot shall be submitted to the Code Enforcement Officer in duplicate and shall show the placement of the mobile home on the lot. To qualify for the said permit, the Code Enforcement Officer must determine that the mobile home:

- a. Will be occupied by the owner of the lot on which it is to be placed.
- b. Will be placed on a lot which complies with applicable area and coverage requirements as set forth in Schedule II of this Local Law.
- c. Will be provided with an adequate supply of potable water and a safe and adequate sewage disposal system in accordance with this Article.
- d. Will be over a full basement or a crawl space, enclosed by a foundation. Such foundation shall be made of laid concrete block or poured concrete and shall be placed on a concrete footer located below the frost line.
- e. Will be placed on, and anchored to, the foundation in a way that will provide for its stability.

- f. Will be provided with a safe installation for the storage and supply of necessary fuel.
- g. Will have provision for the indoor storage of such things as machinery, tools, recreation equipment, and lawn furniture.
- h. Complies with the dimensional requirements applicable to all dwellings as specified in this Zoning Law (Refer to Section 5.4).

**Sec. 8.3 Special Necessity – Temporary Mobile Home Permit**

- a. A Temporary Permit for a mobile home in an Agricultural or Residential District may be authorized by the Town Board, after a public hearing, provided that:
  - 1. Such mobile home will be a use which is accessory to a principal dwelling on the lot.
  - 2. The occupant of the said mobile home is a dependent relative of the resident-owner of the lot on which such mobile home is to be located.
  - 3. Such mobile home is located no more than 100 feet from the principal dwelling on the lot.
  - 4. Such mobile home is placed on a stable and secure foundation or pad and provided with an adequate supply of potable water and a safe and adequate sewage disposal system in accordance with this Article.
  - 5. The need for such mobile home is certified each year by renewal of the Temporary Permit.
  - 6. The owner agrees to remove such mobile home when the Town Board determines that conditions justifying its continued existence are no longer present.
- b. A Temporary Permit for a mobile home to be used as a tenant residence in an Agricultural District may be authorized by the Town Board, after a public hearing, provided that:
  - 1. The owner of a farming operation desires to have a tenant employee reside on such farm and can demonstrate that a major portion of the tenant's income will be earned from work on such farm.
  - 2. Such mobile home is located no less than 150 feet from the nearest property line.

3. Such mobile home is placed on a stable and secure foundation or pad and provided with an adequate supply of potable water and a safe and adequate sewage disposal system in accordance with this Article.
4. Such mobile home is not determined by the Town Board to be part of a Agricultural Worker Camp.
5. The need for such mobile home is certified each year by renewal of the Temporary Permit.
6. The owner agrees to remove such mobile home when the Town Board determines that conditions justifying its continued existence are no longer present.

**Sec. 8.4 Non-Conforming Mobile Homes**

- a. A mobile home that does not meet the criteria of this Section may continue to be used, provided that said mobile home complies with all applicable requirements of the New York State Building Code and federal HUD regulations. .
- b. A mobile home that is removed from a site may not be replaced except with a mobile home that complies with the requirements of this section.

**Sec. 8.5 Permit Application for a Mobile Home Park**

- a. Application. Application for a permit for a mobile home park shall be submitted to the Code Enforcement Officer in triplicate and shall include the following:
  1. Name and address of applicant.
  2. Name and address of the owner of land upon which the park is to be located.
  3. Survey map showing how the park relates to the existing road system.
  4. Preliminary plan of the park showing how the overall design is in accordance with the provisions of this Article 8.
  5. Provisions for water supply and sewage disposal.
  6. Topography and soils of the site, including all areas which are wet or subject to flooding. Topography maps from the County Planning Department shall be adequate.
  7. Proposed cross-section design of park roadways.

8. A statement of all contemplated rules, regulations, restrictions, and covenants applying in the park, including entrance requirements, management and tenant responsibilities, entrance or exit fees, utility connection fees, and security deposits.
  9. Any additional information which the developer feels will help the Planning Board in its review of the proposed park.
- b. Procedure for Mobile Home Park Application.
1. The Code Enforcement Officer shall transmit one (1) copy of the application to the Town Board and one (1) copy to the Planning Board for Site Plan review and retain the third copy. Planning Board comments shall be available at a public hearing on the proposed mobile home park to be held by the Town Board. The Town Board shall conditionally approve or disapprove the application within forty-five (45) days from the public hearing.
  2. Upon conditional approval of the application by the Town Board, the applicant shall proceed with final plans incorporating any conditions attached to said conditional approval.
  3. Final Site Plans for the proposed mobile home park, or a portion of it if construction is to be staged, shall be submitted to the Town Board for approval within one (1) year from the date of conditional approval by the Town Board or such conditional approval may be withdrawn by the Town Board.
  4. Upon final Site Plan approval by the Town Board, a permit for construction shall be issued by the Code Enforcement Officer.
  5. When construction is completed in accordance with the final plan as approved by the Town Board, a Certificate of Occupancy shall be issued by the Code Enforcement Officer.
- c. Renewal of Special Use Permit for Mobile Home Park. Renewal of the mobile home park Special Use Permit shall be applied for every year and is due April 1<sup>st</sup>. Application for renewal shall be filed with the Town Clerk with letters of approval from the Board of Health and the Fire Underwriters inspections, which shall renew the Special Use Permit only if the Code Enforcement Officer has certified in writing that no violations of this Article or the conditions of the Special Use Permit have been found. If such violations or unapproved changes have occurred, the Special Use Permit will not be renewed until said mobile home park has been brought into compliance. In such case, the Code Enforcement Officer shall serve an order upon the holder of the Special Use Permit in accordance with the provisions herein.

d. Environmental Standards for Mobile Home Park.

1. Minimum Area and Minimum Number of Units. The minimum area of a mobile home park shall be ten (10) acres and the minimum number of units provided for shall be ten (10) units.
2. Density and Lot Size. The density of development in a mobile home park shall not exceed five (5) units per gross acre of site to be developed. Mobile home lots shall have a minimum area of 7,000 square feet and a minimum width of fifty-five (55) feet.
3. Separation. Mobile home units may be positioned in a variety of ways within a park, provided that a separation of at least thirty (30) feet is maintained between units.
4. Setback. No mobile home shall be located less than twenty-five (25) feet from the pavement edge of a private street or sixty (60) feet from the right-of-way of any public street within the mobile home park. A minimum of thirty (30) feet shall be maintained between all mobile home units and all park boundary lines, except that at least sixty (60) feet shall be maintained between all units and any park boundary abutting an existing public road or highway.
5. Road Layout and Construction. A drawing of the proposed park layout, showing connections to be made to existing roads shall be included as part of the mobile home park plans. Attempts should be made to provide variety and visual interest in the road layout, avoiding long straight stretches and gridiron systems when possible. All private roads within a mobile home park shall be paved or provided with a dust-free surface, approved by the Town Engineer or Building Inspector with respect to load, and at least twenty (20) feet wide. Any public roads within the park shall have a fifty (50) foot right-of-way and be constructed to Town specifications.
6. Parking. Two (2) off-street parking spaces shall be provided for each mobile home site. Such spaces may be located on the individual lot or grouped to serve two (2) or more mobile home sites. A supplemental parking area for the group storage or temporary parking of travel trailers, campers, boats, snowmobiles, and similar auxiliary vehicles shall be provided in each mobile home park in a location removed from the mobile home living units.
7. Recreation and Open Space. Usable and easily accessible recreation areas shall be provided for park occupants. At least 400 square feet of open

space per mobile home unit shall be included in the plan, with a total minimum requirement of 10,000 square feet.

8. Mobile Home Stand. Each mobile home site shall be provided with a stand of concrete or compacted gravel which will give a firm base and adequate support for the mobile home. Such stand shall have a dimension approximating the width and length of the home and any expansions or extensions thereto. Tie-downs shall be provided at least on each corner of the stand and shall be the equivalent of chain or steel cable anchored to concrete dead-men buried at least three (3) feet below finished grade.
9. Patio. Each mobile home site shall be provided with a concrete patio with a minimum width of ten (10) feet and a total area of at least 120 feet.
10. Walkways. Each mobile home site shall be provided with a walkway from the stand or patio to the street or to a driveway or parking area connecting to the street.
11. Landscaping. Exposed ground surfaces in all parts of a mobile home park, excluding roadways, shall be surfaced with crushed stone or other solid material or protected with grass or plant material to prevent erosion and reduce dust.
12. Mobile Home Installation. At the time of installation, the mobile home unit shall be securely blocked, leveled, tied down, and connected to the required utility systems and support services. The mobile home shall be completely skirted within ninety (90) days of occupancy. Materials used for skirting shall provide a finished exterior appearance and no exposed wallboard, building paper, or similar unfinished material will be permitted.
13. Water Supply. If public water is available within 500 feet, the mobile home park must be hooked to such system. When a public water supply is not available, an approved private supply and system shall be established. The design and construction of all components of such systems shall be subject to the inspection and approval of the New York State Health Department.
14. Sewage Disposal. If public sewerage is available within 500 feet, the mobile home park must be hooked to such system. When public sewage disposal is not available, an approved private system shall be established. The design and construction of all components of such system shall be subject to the inspection and approval of the New York State Health Department.
15. Solid Waste Disposal. Provisions shall be made and approved for the storage, collection, and disposal of solid waste in a manner that will cause



no health hazards, rodent harborage, insect breeding areas, fire hazards, or air pollution. Storage areas for solid waste containers shall be enclosed or otherwise screened from public view.

16. Lighting. Mobile home parks shall be provided with lighting sufficient to illuminate streets, driveways, and walkways.

17. Fuel Systems. Mobile home parks shall be provided with facilities for the safe storage of necessary fuels. Natural gas installations, if used, shall be planned and installed so that components and workmanship comply with the requirements of the utility provider and the current International Fuel Gas Code.

Fuel oil systems shall be designed, constructed, inspected, and maintained in conformance with the provisions of National Fire Protection Association, Standard 30. Liquefied petroleum gas systems shall be selected, installed, and maintained in compliance with the requirements of National Fire Protection Association, Standard 58.

18. Fire Protection. If public water is available, fire hydrants shall be installed in accordance with the requirements of the Town Board and fire department.

19. Mail Service. Mailbox location shall provide safe and easy access for the pickup and delivery of mail. Mailboxes grouped for cluster delivery shall be located so that stopping for pickup and delivery will not occur on the public right-of-way.

20. In reviewing the site plan for a mobile home park, the Town Board may approve changes in the environmental standards of this section if the Board is satisfied that the spirit and intent of this Article are not being violated and that any proposed change is equivalent to, or better than, the standards set forth herein.

e. Park Operation and Maintenance.

1. Occupancy. No space shall be rented in any mobile home park for the placement and use of a mobile home for residential purposes, except for periods in excess of sixty (60) days. No mobile home shall be permitted in a mobile home park unless it bears the seal issued by the State of New York and required by the State Code for Construction and Installation of Mobile Homes, or an equivalent to such seal which certifies that minimum construction and safety standards have been complied with.
2. Responsibilities of Park Operator. The person or entity to which a Special Use Permit for a mobile home park is issued shall be responsible for

operation of the park in compliance with this Article 8 and shall provide adequate supervision to maintain the park, its common grounds, streets, facilities, and equipment in good repair and in a clean and sanitary condition. The park operator shall maintain a register containing the names of all occupants and the make, year, and seal serial number, if any, of each mobile home. Such register shall be available to any authorized person inspecting the park.

3. Responsibility of Park Occupants. Each park occupant shall be responsible for the maintenance of his/her mobile home and any appurtenances thereto, and shall keep all yard space on his/her site in a neat and sanitary condition.

4. A list of owner and occupant responsibilities shall be posted in the park rental office.

f. Inspection and Enforcement.

1. Inspection. It shall be the duty of the Code Enforcement Officer to make the inspections required for renewal of the Special Use Permit every year. Such inspection shall be carried out at reasonable times, after prior notice to the park operator, and in emergencies, whenever necessary to protect the public health, safety, or welfare.

2. Upon determination by the Code Enforcement Officer that there has been a violation of any provisions of this Article 8, he/she shall serve upon the holder of the Special Use Permit for such mobile home park an initial order, in writing, directing that the conditions therein specified be corrected within a time period to be specified by the Code Enforcement Officer, but in no case more than ninety (90) days after the date of delivery of such order. The order shall also contain an outline of remedial action which, if taken, will effect compliance. A copy of such order shall be transmitted to the Town Board.

3. If, after the expiration of such ninety (90) day or other relevant time period, such violations are not corrected, the Code Enforcement Officer, if so authorized by the Town Board, shall serve notice in writing upon such mobile home park operator requiring the holder of the park Special Use Permit to appear before the Town Board, at a time to be specified in such notice, to show cause why the mobile home park Special Use Permit should not be revoked. Such hearing before the Town Board shall occur not less than seventy-two (72) hours, nor more than ten (10) days, after the date of service of said notice by the Code Enforcement Officer.

4. Within thirty (30) days after the hearing at which the testimony of the Code Enforcement Officer and the holder of the mobile home park Special Use Permit shall be heard, the Town Board shall make a determination

sustaining, modifying, or withdrawing the order issued by the Code Enforcement Officer. Failure to abide by any Town Board determination to sustain or modify the initial order, and to take corrective action accordingly, shall be cause for the revocation of the Special Use Permit affected by such order and determination, and closing of the mobile home park.

g. Existing Mobile Home Parks. Any mobile home park existing in the Town of Arcadia at the time of enactment of this Article 8 shall be required to come into reasonable compliance with the "Environmental Standards" set forth above, within three (3) years after enactment of this Local Law, in accordance with the following requirements and procedures:

1. The owner or occupant of any land in the Town of Arcadia already being used as a mobile home park shall apply to the Code Enforcement Officer for a Temporary Special Permit for such mobile home park. Application shall be made within ninety (90) days from the date of enactment of this Article 8.
2. Upon making said application, and within thirty (30) days thereof, the owner of the existing mobile home park shall meet with the Code Enforcement Officer to address compliance with this Article. Thereafter, the owner shall the work with and cooperate with the Code Enforcement Officer in gathering and providing information relative to the park's compliance with the Environmental Standards above. The owner shall provide all information and records requested, including, but not limited to, Site Plans, surveys, prior approvals, maps, etc. All information shall be provided by the owner within sixty (60) days of said meeting. Said information shall be forwarded on to the Town Board, along with a report of the Code Enforcement Officer detailing compliance or noncompliance.
3. The Town Board shall review the information and report and, within thirty (30) days of receipt thereof, shall call a public hearing with the owner, which shall also be attended by the Code Enforcement Officer, to discuss coming into compliance with this Article.
4. The Town Board may request that the owner come in for subsequent meetings with the Town Board, Town Staff, Code Enforcement Officer, etc., in order to develop and plan to come into reasonable compliance with the environmental standards set forth above.
5. Within one (1) year from application for the Temporary Permit, the Town Board shall issue a plan and timetable for bringing the existing mobile home park into reasonable compliance with the Environmental Standards set forth in this Article. At that time, the Code Enforcement Officer shall

issue a Temporary Special Permit, valid for two (2) years, for the mobile home park.

6. If the plan for bringing an existing mobile home park into reasonable compliance with the environmental standards in this Article 8 has not been fully implemented at the expiration of the two (2) year Temporary Special Permit, or any extension thereto granted by the Town Board, the Special Permit shall expire and such mobile home park shall be in violation of this Local Law.
7. After an existing mobile home park has been brought into compliance, in accordance with the agreed upon plan and timetable, the Code Enforcement Officer shall issue a Special Use Permit therefore, and such mobile home park shall continue to be governed by all the provisions of this Article 8.
8. Any additions to an existing mobile home park shall comply with all the provisions of this Article 8 unless an exception thereto has been granted by the Town Board.

**Sec. 8.6 Mobile Home for Agricultural Worker Camps.**

Mobile homes may be used to house farm workers in agricultural worker camps, in the Agricultural District only, under the following conditions:

- a. Such camp shall comply with the provisions of Chapter 1, Part 15, of the State Sanitary Code, with certification of compliance from the Health Department.
- b. The owner of the agricultural camp certifies that occupants of the mobile homes are migratory farm workers employed in farming on the owner's farm.
- c. Such mobile homes are not occupied for more than nine (9) months out of any twelve (12) month period.
- d. No agricultural worker camp shall be located less than 100 feet from any street line or property line. Any vehicular access thereto shall have at least a gravel or crushed stone surface.
- e. Separation of at least thirty (30) feet between mobile home units shall be maintained.
- f. A Special Use Permit for the agricultural worker camp has been authorized by the Town Board, after a public hearing. Such permit shall be renewed annually, on application by the camp owner.

g. When an agricultural worker camp ceases to be used to house agricultural workers, any mobile homes located in such camp shall be removed immediately.

#### **Sec. 8.7      Health Department Approval**

Any provision of this Article 8 to the contrary notwithstanding, no permit for a mobile home park, or a single mobile home not in a mobile home park, or a mobile home in an agricultural worker camp will be issued until the Code Enforcement Officer is provided with proof that an acceptable soil percolation test has been made on the property, the water supply and sewage disposal system have been certified by a qualified professional as meeting the minimum requirements of the New York State Department of Health, and any other approvals from appropriate agencies/departments have been obtained.

## **ARTICLE 9. NONCONFORMING USES**

### **Sec. 9.1 Continuation of Existing Nonconforming Uses**

- a. Any use of land, or a building or structure or part thereof existing at the time that this Local Law or any amendment hereto becomes effective, may be continued, unless such continued use is not prohibited or limited by this Local Law, subject to all the provisions of this Article 9, even though such building, structure, or use does not conform to the provisions of the district in which it is situated.
- b. Except with respect to a dwelling, no such nonconforming use shall be enlarged or expanded, and no such use shall be increased so as to occupy a greater area of land than was occupied at the time that this Local Law or any amendment hereto becomes effective.

Nothing in this section shall be deemed to prevent normal maintenance or repair of any building, structure, or use.

- c. Nonconforming use rights, subject to the provisions of this Article 9, remain with the land when title is transferred.

### **Sec. 9.2 Abandonment or Discontinuance of Use**

When a nonconforming use, building, or structure has been discontinued or abandoned for a period of twelve (12) consecutive months, or for a total of twenty-four (24) months in any three (3) year period, it shall not thereafter be reestablished, and the future use of the land, building, or structure shall be in conformity with the terms of this Local Law for the district in which such use, building, or structure is located. Intent to resume a nonconforming use shall not confer the right to do so.

### **Sec. 9.3 Signs**

Notwithstanding any other provision of this Local Law, any nonconforming sign or advertising device in existence or erected prior to the effective date of this Local Law which does not comply with the provisions of this Local Law may continue to be maintained as long as it remains clean, neatly painted, maintained, and is not unsafe or hazardous.

### **Sec. 9.4 Changes in Nonconforming Use**

No nonconforming use shall be changed to other than a conforming use for the district in which it is situated.

### **Sec. 9.5 Restoration and Repair**

Except with respect to a Single Family or Two Family Dwelling, which may be replaced in whole or in part, if a nonconforming building, structure, or land use activity, or part thereof, has

been partially or totally destroyed or damaged by any cause, it may be rebuilt or restored as a nonconforming building, structure, or land use only if reconstructed or restored with the same or less floor area and cubic content and with the same, or an improved, general site layout as that of the original structure. Town Board approval of reconstruction or restoration plans shall be required, and the Board may impose conditions on such approval if such conditions would protect the health and welfare of the Town and bring the nonconforming use or activity more into conformity with the regulations for the district in which it is located. Application for Town Board approval for reconstruction or restoration shall be made within twelve (12) months from the date of damage or destruction, and work commenced within six (6) months and completed within eighteen (18) months from the date of Town Board approval. Failure to meet these time limits shall terminate the nonconforming use, except that a six (6) month extension to any of the time limits may be granted by the Town Board.

#### **Sec. 9.6      Maintenance**

A nonconforming use is hereby required to be maintained in such condition as will not constitute a danger to the safety, health, or general welfare of the public. Alterations are permitted in order to comply with the provisions of this Section, provided that a permit for the same shall have been issued by the Code Enforcement Officer.

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**ARTICLE 10.            ADMINISTRATION,            ENFORCEMENT,            FINES            AND  
                                 VIOLATIONS**

**Sec. 10.1            Purpose**

This chapter shall be administered by the Code Enforcement Officer, who shall be appointed and may be removed by the Town Board, and who shall serve at the pleasure of the Town Board. It shall be the duty of the Code Enforcement Officer to assure the compliance with and enforcement of this chapter, subject to the rules, regulations, and resolutions of the Town Board, and to issue all permits or certificates required by this chapter.

**Sec. 10.2            Powers and Duties of the Code Enforcement Officer**

It shall be the duty of the Code Enforcement Officer (CEO) to administer this zoning Local Law, and to issue permits and certificates to all applicants who apply pursuant to and fully comply with the provisions of this chapter. Specifically, the CEO shall have the following powers and duties:

- a.      Issuance of Notices and Orders. If the CEO shall find that any of the provisions of this chapter are being violated, he/she shall notify, in writing, the persons responsible for such violation, indicating the specific nature of the violation, and order action to correct it. His/her order may include, but is not necessarily limited to:
  - 1.      Discontinuance of illegal uses of land, buildings, or structures.
  - 2.      Removal and rectifying of illegal buildings, structures, or uses.
  - 3.      Removal and rectifying of illegal additions, alterations, or structural changes.
  - 4.      Discontinuance of any illegal work being done.
- b.      The CEO also shall take any other action authorized by this chapter to ensure compliance with or to prevent violation of its provisions.
- c.      The CEO shall maintain a permanent and current record of all applications for permits and certificates, his/her action upon the same, any conditions relating thereto, and any other matters considered and action taken by him/her.
- d.      The CEO shall provide the Zoning Board of Appeals, in writing, with all facts pertaining to his/her determinations, as well as refusals to issue permits and certificates whenever such information shall be requested by said Board.



- e. Whenever the CEO denies a certificate or permit, he/she shall, in writing, inform the applicant of the specific reasons for denial and instruct the applicant concerning the proper methods and the right to apply for relief.
- f. The CEO is authorized and empowered to issue appearance tickets pursuant to New York State Criminal Procedure Law.
- g. The CEO may issue a certificate of zoning compliance at the request of a property owner.
- h. Where authorized by the Town Board, the CEO may also carry out duties of a Building Inspector (i.e., administering Building Permits and inspections, certificates of occupancy) in accordance with New York State Law.

**Sec. 10.3 Right to Inspect.**

The CEO, or other Town officials designated by the Town Board, shall have the right to enter upon the property and premises of any business, in accordance with law, to inspect for compliance with provisions of this chapter. Further, any applicant, upon being granted any permit and/or Site Plan approval requested under the provisions of this chapter, grants to the Town, its officers or designated representatives, a license to enter upon the property and premises governed by said permit and/or Site Plan approval to determine that the provisions of this chapter are being fulfilled, and to require such work to be done as may be necessary to meet the conditions of said permit and/or Site Plan approval.

**Sec. 10.4 Technical Inspections**

The Town Engineer or other designated Town representative or consultant, shall, as part of any permit or approval granted under this chapter, have a license to enter upon the property and premises governed by said permit to make such technical inspections as the Town in its discretion considers necessary to ensure compliance with the provisions of this chapter.

**Sec. 10.5 Right to Restore**

If the applicant fails to restore any property governed by Site Plan approval, the Town shall have the right, after providing notice of violation and an opportunity to cure, to provide for the restoration of the property.

**Sec. 10.6 Complaints**

Any person having knowledge of any violation of this chapter may file a complaint in writing, with the Town Clerk, and the CEO may thereupon make an investigation and report his/her findings to the Town Board.

**Sec. 10.7      Violations and Penalties**

- a.    Violations. Any violation of any provisions of this Local Law shall be deemed an offense in accordance with the provisions of Section 135 and Section 268 of the Town Law, and, upon conviction, a violator shall be subject to a fine of not more than \$250.00, or imprisonment for a period not to exceed six (6) months, or both. Each and every week that such violation continues shall constitute a separate additional violation.
  
- b.    In addition to other remedies, the Town may institute any appropriate action or proceedings to prevent any unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the occupancy of a building, structure, or land; or to prevent any illegal act, conduct, business, or use. When necessary to protect public health and safety, the Town may take necessary action to remedy the violation and undertake suitable means to recover the cost from the landowner.
  
- c.    Remedy. Nothing in this Local Law shall prevent any property owner or resident of the Town, the Town itself, or any board or agency of the Town, or any person residing on or owning property outside the Town, from availing themselves of any lawful remedy in preventing or abating any violation of any provision of this Local Law.

## ARTICLE 11. ZONING BOARD OF APPEALS

### Sec. 11.1 Organization

- a. Establishment. Pursuant to Section 267 of Article 16 of the Town Law of the State of New York, a Zoning Board of Appeals is hereby established in the Town of Arcadia.
- b. Appointment and Vacancies. The Board shall consist of five (5) members to be appointed by the Town Board who shall also designate its chairman. The term of each member shall be four (4) years, after which the Town Board may reappoint a member or appoint a different successor thereto. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant.
- c. Training. The Town Board may require Zoning Board of Appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board may reimburse the members for appropriate expenses incurred in obtaining training.
- d. Alternates. The Town Board may appoint up to three (3) alternate members to the Zoning Board of Appeals, with terms of four (4) years each. Such alternates may serve where a Zoning Board member is temporarily unable to serve. The Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the Zoning Board of Appeals meeting at which the substitution is made.

### Sec. 11.2 Powers and Duties

- a. General. Consistent with Town Law, the Zoning Board of Appeals (ZBA) shall determine its own rules and procedures and shall have the powers and duties granted to it by law and by this Local Law, so long as said rules and procedures are consistent with any Resolutions regarding the same adopted by the Town Board.
- b. Use Variance.
  1. The ZBA, on appeal from the decision or determination of the CEO, shall have the power to grant use variances pursuant to Town Law.
  2. The ZBA, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time

preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

3. The ZBA shall, in the granting of a use variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and/or the period of time such variance shall be in effect. Such condition shall be consistent with the spirit and intent of the Zoning Local Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

c. Area or Dimensional Variance.

1. The ZBA shall have the power, upon an appeal from a decision or determination of the CEO, to grant area variances pursuant to Town Law.
2. In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant, consistent with the factors prescribed under Town Law.
3. The ZBA, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health safety and welfare of the community.
4. The ZBA shall, in the granting of an area variance, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such condition shall be consistent with the spirit and intent of the Zoning Local Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

- d. Interpretation. The ZBA shall, upon appeal of a decision by the CEO, hear and decide any question involving the interpretation of any provision of this Local Law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

- e. Appeal of Decision of CEO. The ZBA shall hear and decide appeals from any order, requirement, decision, interpretation, or determination made by the CEO.

**Sec. 11.3      Procedure**

- a.    ZBA Action. The ZBA shall hold a properly noticed public hearing on all matters transmitted to it within sixty-two (62) days from the filing of the appeal with the Town Clerk, and shall decide each appeal within sixty-two (62) days after final hearing. The ZBA decision shall be immediately filed in the office of the Town Clerk and be a public record. The ZBA may, in conformity with the provisions of this Local Law, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from, or may make such order, requirement, decision, or determination in accordance with the provisions hereof.
- b.    The ZBA may require the applicant to place a sign on the property for which the variance is requested, indicating a phone number to call for more information.
- c.    Decisions. Every decision of the ZBA shall be by resolution and shall contain a full record of the findings of the ZBA in the particular case.

## **ARTICLE 12. PLANNING BOARD**

### **Sec. 12.1 Creation and Appointment**

- a. Establishment. Pursuant to Section 271 of Article 16 of the Town Law of the State of New York, a Planning Board is hereby established in the Town of Arcadia.
- c. Appointment and Vacancies. The Board shall consist of five (5) members to be appointed by the Town Board which shall also designate its chairman. The term of each member shall be four (4) years, after which the Town Board may reappoint a member or appoint a different successor thereto. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant.
- d. Training. The Town Board may require Board members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board may reimburse the members for appropriate expenses incurred in obtaining training.
- e. Alternates. The Town Board may appoint up to three (3) alternate members to the Planning Board, with terms of four (4) years each. Such alternates may serve where a Planning Board member is temporarily unable to serve. The Chairperson of the Planning Board may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the Planning Board meeting at which the substitution is made.

### **Sec. 12.2. Chairperson and Rules**

- a. The Town Board may select a Chairperson of the Planning Board or, on failure to do so, the Planning Board shall elect a Chairperson from its own members.
- b. The Planning Board may adopt rules or bylaws for its operations, so long as said rules and procedures are consistent with any Resolutions regarding the same adopted by the Town Board.

### **Sec. 12.3. Powers and Authority of the Planning Board**

- a. Comprehensive Plan. To prepare, review, and/or recommend revisions to the comprehensive plan for the development of the Town as provided under Section 272-a of Town Law and/or Town Board Resolution.
- b. Site Plan Review. Conduct Site Plan review as authorized by Town Law 274-A and prescribed in this Local Law.

- c. Subdivision Review. Conduct Subdivision review in accordance with the Town of Arcadia Land Subdivision and Development Regulations.
- d. Advisory Matters. Research and report on any matter referred to it by the Town Board.
- e. Cluster Subdivisions. Authority to approve Cluster Subdivisions in accordance with Town Law Section 278, but only in "A" and "R" Districts.
  - 1. The Planning Board shall have the ability to authorize the construction of dwellings in Agricultural and Residential Districts according to a development plan, without regard to lot size, setback, frontage, yard, and similar requirements, and may approve Cluster Housing Developments in all Agricultural and Residential Districts according to the procedures and requirements specified herein.
  - 2. The purpose of such development is to provide flexibility in the design and development of land in such a way as to promote the most appropriate use of land, to facilitate the adequate and economic provision of streets and utilities, and to preserve the natural and scenic qualities of open lands, without compromising the overall density requirements. Specifically, the Planning Board may review such Cluster Development as a part of Subdivision approval, including implementing conditions, all in accordance with Town's Land Subdivision and Development Regulations and Section 278 of the New York State Town Law.
- f. Town Law. All such powers and duties as are conferred upon Town Planning Boards and subject to the limitations set forth in Sections 272, 272-a, 274, 274-a, 274-b, 276, 277, and 278, of the New York State Town Law, as the same may be amended, modified, or changed from time to time, or any sections subsequently adopted pertaining to Planning Boards.

#### **Sec. 12.4 Site Plan Review**

- a. Purpose. The intent of this section is to authorize the Planning Board, consistent with Town Law Section 274-a, to review and approve Site Plans in relation to the arrangement, layout, and design of the proposed use.
- b. Site Plan Review Required.
  - 1. **New Construction**. The construction of a building or structure shall be subject to Site Plan review, as set forth herein, except for: (a) One and Two Family Dwellings in (1) an approved subdivision, or (2) a lot otherwise in compliance with this Zoning Law; (b) additions thereto; and (c) residential accessory structures of no more than 3,000 square feet and a wall height of no greater than fifteen (20) feet. No building permit may be issued for the construction of any

such building or structure until Site Plan approval is obtained in accordance herewith.

**2. Business Changes in Existing Buildings.**

- a. For an existing non-residential building where a building permit is required for changes thereto, a change of a Business tenant or the operation of a new Business shall require site plan review.
- b. For an existing non-residential building or portion thereof, a change to a different permitted use or specially permitted use shall require site plan review.
- c. The commencement of a business use in an existing non-residential building or portion thereof which, for at least the previous 12 months, has been vacant or within which business activity has been substantially terminated, shall require site plan review.

c. Procedure.

1. Each application for Site Plan review shall be made to the Planning Board.
  - i. The application shall be made to the Planning Board by filing it with the CEO, or any other Town employee or official so designated by the Planning Board ("Designee"), at least eighteen (18) days prior to the regularly scheduled Planning Board meeting.
  - ii. The CEO or other designee shall refer it to the Planning Board for consideration at its next regularly scheduled meeting.
  - iii. The applicant should attend the Planning Board meeting to answer questions concerning the application.
2. Unless the Planning Board determines that a public hearing will be conducted, the Planning Board shall, within sixty-two (62) days of receipt of the completed application, render a decision to approve, approve with conditions, or deny the Site Plan approval and forward its decision to the CEO. Any extension of this sixty-two (62) day period may be granted upon consent of both the applicant and the Planning Board. If the Planning Board fails to act within said sixty-two (62) day period or extension that has been granted, the Site Plan shall be considered denied.
3. Agricultural Data Statement. Any application for a Site Plan that would occur on property within a County Agricultural District containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, shall include an Agricultural Data Statement.



- i. An Agricultural Data Statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm operations and is located within 500 feet of the boundary upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.
  - ii. Upon the receipt of such application by the Planning Board, the clerk of such board shall mail written notice of such application to the owners of land used for farm operations as identified by the applicant in the Agricultural Data Statement. Such notice shall include a description of the proposed project and its location. The cost of mailing said notice shall be borne by the applicant.
  - iii. The Planning Board shall evaluate and consider the Agricultural Data Statement in its review of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an Agricultural Data Statement may be included as part of any other application form required by local law, ordinance, or regulation.
4. The Planning Board is hereby authorized to waive any of the requirements for Site Plan review in this section if it finds that such requirements are not needed to protect public health, safety, or general welfare of the Town.
5. A full written record of the Planning Board minutes and decisions, together with all documents pertaining to the case, shall be filed in the office of the Town Clerk.
6. Site Plan approval shall expire one (1) year from the date of approval, unless (a) a building permit for the project is obtained, and (b) where conditions are imposed upon Site Plan approval, such conditions are satisfied. This limitation period may be extended by the Planning Board on its sole discretion.
- d. Pre-Application Conference. A pre-application conference is encouraged and may be held between the Planning Board and applicant to review the basic site design concept and generally determine the information to be required on the Site Plan.
- e. Application for Site Plan Approval. An application for Site Plan approval shall be made in writing to the Code Enforcement Officer or his designee, and, in order to constitute a completed application ready for Planning Board review, the application shall be accompanied by a Site Plan application fee set forth by the Town Board and identified in the Town Fee Schedule, and shall also be

accompanied by the information on the following checklist. The Planning Board may also require additional information if necessary to complete its review.

1. Plan checklist for all Site Plans:
  - i. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
  - ii. North arrow, scale and date.
  - iii. Boundaries of the property plotted to scale.
  - iv. Existing watercourse and bodies of water.
  - v. Location of any slopes of 15% or greater.
  - vi. Proposed grading and drainage.
  - vii. Location, proposed use, and height of all buildings and site improvements including culverts, drains, retaining walls, and fences.
  - viii. Location, design, and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
  - ix. Location of outdoor storage, if any.
  - x. Description of the method of sewage disposal and location of the facilities.
  - xi. Identification of water source; if well, locate.
  - xii. Location, size and design, and construction materials of all proposed signs.
  - xiii. Location and proposed development of all buffer areas, including existing vegetation cover.
  - xiv. Location and design of outdoor lighting facilities.
  - xv. General landscaping plan.
2. As necessary, the Planning Board may require the following:
  - i. Provision for pedestrian access, if necessary.

- ii. Location of fire lanes and hydrants.
  - iii. Designation of the amount of building area proposed for retail sales or similar commercial activity.
  - iv. Other elements integral to the proposed development as considered necessary by the Planning Board.
- f. Planning Board Review of Site Plan. The Planning Board's review of the Site Plan shall include, as appropriate, the following:
- 1. General Considerations.
    - i. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers, and traffic controls, and including the maximum feasible redesign of private roads to conform to public access and rights of way.
    - ii. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic, and overall pedestrian convenience.
    - iii. Location, arrangement, appearance, and sufficiency of off-street parking and loading.
    - iv. Location, arrangement, size and design, and general site compatibility of buildings, lighting, and signs.
    - v. Adequacy of stormwater and drainage facilities.
    - vi. Adequacy of water supply and sewage disposal facilities.
    - vii. Adequacy, type, and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
    - viii. The adequacy of useable open space for play areas and recreation.
    - ix. Protection of adjacent or neighboring properties against noise, glare, unsightliness, or nuisances.
    - x. Protection of solar access on adjacent or neighboring properties.

- xi. Adequacy of fire lanes and other emergency zones, and the provision of fire hydrants.
- xii. Special attention to the adequacy of structures, roadways, and landscaping in areas with susceptibility to ponding, flooding, and/or erosion.
- xiii. Special attention to the productive use and access with "backlot" areas, indicating present and future intended uses.
- xiv. Consistency with the general intent of the Town's comprehensive Master Planning Process.

2. Consultant Review.

- i. The Planning Board may consult with the Town building inspector, fire commissioners, highway departments, County planning department, and other local County officials, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation, and the State Department of Environmental Conservation.
- ii. If the Planning Board or CEO reasonably determines that professional review of the proposed Site Plan is required, such as by an engineer, traffic consultant, landscaping consultant, attorney, etc., and the total time spent by such professional reviewers exceeds two (2) hours, the applicant shall reimburse the Town for the cost of such review beyond the initial two (2) hours.

3. Public Hearing.

- i. At its discretion, the Planning Board may conduct a public hearing of the Site Plan. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within sixty-two (62) days of the receipt of the application, and shall be advertised in the official newspaper of the Town at least five (5) days before the public hearing. Decisions shall be rendered within sixty-two (62) days of the public hearing.
- ii. If a public hearing is scheduled, the Planning Board may notify adjacent property owners and may require the applicant to place a sign on the property that indicates that the property is subject to review.

- iii. If a public hearing is conducted for a Site Plan review that involves property that is within 500 feet of an adjacent municipality, the Planning Board shall provide notice of the public hearing, by mail or electronic transmission, to the clerk of the adjacent municipality at least ten (10) days prior to any such hearing.

**EFFECTIVE DATE: THIS LOCAL LAW SHALL TAKE EFFECT IMMEDIATELY  
UPON FILING WITH THE SECRETARY OF STATE.**