

# ZONING LAW

## TOWN OF WALTON DELAWARE COUNTY, NEW YORK

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# ZONING ORDINANCE

Town of Walton, New York

## ARTICLE I PROVISIONS

### **Section 101 Title**

This document shall be known and may be cited as the “Town of Walton, New York, Zoning Ordinance” and shall include this text, Schedule I and the Zoning Map.

### **Section 102 Enacting Clause**

Pursuant to the authority conferred by Article 16, Section 261 of the Town Law of the State of New York, the Town Board of the Town of Walton hereby adopts and enacts as follows.

### **Section 103 Purpose of Zoning Ordinance**

The purpose of this Zoning Ordinance, its regulations and its zoning districts as outlined on the zoning map is to:

- A) Protect and promote the public health, safety and general welfare of the town consistent with the objectives of Town Law 263,
- B) Guide the future growth and development in accordance with a comprehensive plan,
- C) Protect the character and the social and economic stability of all parts of the town, and to encourage the orderly and beneficial development of all parts of the town,
- D) Protect and conserve the economic and aesthetic value of land and buildings appropriate to the various districts established by this ordinance,
- E) Minimize conflicts among the uses of land and buildings,
- F) Provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings,
- G) Prevent the pollution of air, streams and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and sound management of the town’s natural resources in order to preserve the integrity, stability and beauty of the community and the value of the land,

- H) Preserve the natural beauty of the topography of the town and to insure appropriate development with regard to these natural features,
- I) Encourage and make suitable provisions for the accommodation of solar energy systems and equipment and access to sunlight necessary therefore.

**Section 104 Conflicts with Other Laws**

Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing higher standards shall govern.

**Section 105 Interpretation**

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

**Section 106 Validity and Separability**

Should any clause, sentence, subdivision, paragraph, section or part of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the clause, sentence, subdivision, paragraph, section or part so decided to be unconstitutional or invalid.

**Section 107 Effective Date**

This ordinance shall take effect ten (10) days after publication in a newspaper having general circulation in the town; but said ordinance shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the Town Clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes.

\_\_\_\_\_  
Town Clerk, Town of Walton

\_\_\_\_\_  
Effective Date

## ARTICLE II. DEFINITIONS

### Section 201 General

For the purpose of this Ordinance, the following terms and words shall be interpreted as follows:

- 1) The word “person” includes a firm, association, organization, partnership, trust, company, agency, society or corporation as well as an individual.
- 2) The word “he” shall be considered a generic term and can also be construed as “she”.
- 3) Words used in the present tense include the future tense.
- 4) The singular includes the plural and the plural includes the singular.
- 5) The words “shall” and “must” are mandatory.
- 6) The words “used” or “occupied” include the words intended, designed, or arranged to be used or occupied
- 7) The word “lot” includes the words plot or parcel.

### Section 202 Definition of Key Terms

Accessory Building - Any building which is subordinate to and which used is incidental to the use of the principal building located on the same lot. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Accessory Use - Use which is customarily accessory and clearly incidental and subordinate to the principal use of building and located on the same lot with such principal use or buildings.

Acre - For the purpose of calculating lot area under this Ordinance, an acre shall be considered to consist of 43,560 contiguous square feet.

Agriculture - The use of a parcel of land for agricultural purposes, including tilling of the soil, dairying, pasture, apicultures, arboriculture, horticultures, floriculture, aquatic farming, harvesting of trees and animal husbandry. It includes the necessary accessory



uses and structures for packing, treating and storing of products, produce and equipment, provided that the operation of any such accessory use shall be secondary to that of normal agricultural activities.

Alteration - A change or rearrangement in the structural parts of a building or an enlargement, whether by extending to a side or by increasing the height or moving from one location to another.

Alternative Energy Systems - Structures, equipment, devices, or construction techniques used for the production of heat, light, cooling, electricity, or other forms of energy, from solar, wind, water, and other sources.

Animal Hospital - A business that treats animals and regularly houses them on the premises overnight and for extended periods of treatment.

Animal Husbandry - The care and breeding of domestic animals including, but not limited to, cattle, hogs, horses, poultry and sheep. For purposes of this Ordinance operation of a kennel shall not be considered animal husbandry. Animals for educational or cultural projects exempted.

Applicant - Any individual, corporation, estate, trust, partnership, joint stock company association of two or more persons, Limited Liability Company, or entity that submits an application for any building or zoning use.

Application – The form, together with all necessary and appropriate documentation, required of the applicant to receive any building or zoning use permit.

Bed and Breakfast - An establishment in a private dwelling that supplies temporary accommodations to overnight guests for a fee. Meals may or may not be provided. Tourist homes, boarding houses, and inns are included here; however, rest homes or homes for the aged are not.

Bluestone Quarrying - The extraction of our native Catskill region stone commonly referred to as bluestone.

Buildable Site - A site able to support a habitable structure with required separation distances for a well and septic system that will not adversely affect neighboring sites and water supplies. The site must also be accessible to emergency vehicles as required by law.

Building - A structure wholly or partially enclosed with exterior walls and a roof, affording shelter to persons, animals or property.

Bulk Storage - The storage of chemicals, petroleum products and other materials in above-ground containers for subsequent resale to distributors or retail dealers or outlets. In addition, the definition includes all storage of more than 1100 gallons, if the product is to be used on site and is not for resale.

Business and Professional Offices - Offices in which an occupation or vocation requiring advanced study in a specified field is practiced. Examples are: medical, law, engineering, surveying, insurance and real estate offices.

Camouflaging - The construction of facilities to house or support telecommunications towers or antennas so that they blend readily with the landscape, neighborhood, and adjacent architectural features. Examples of camouflaging include, but are not limited to, silos, barns, windmills, and simulated trees.

Campground - A parcel of land used or intended to be used, in whole or in part, by a private, or commercial institution to place two or more travel trailer, tents and/or other temporary or movable sleeping accommodations.

Car Wash - A structure designed or intended primarily for the washing of automobiles, including conveyor, drive-through and self-service.

Cemetery - Property used for the interring of the dead.

Certificate of Compliance - A form of protection afforded the owner or occupant of a structure by serving as proof of compliance with the regulations in effect at the time of construction or alteration.

Club - Any organization catering exclusively to members and their guests, or premises and buildings, for recreational or athletic purposes and not open to the general public, which are not conducted primarily for gain, provided there are no vending stands, merchandising or commercial activities, except as required for the membership and purposes of such club. Clubs shall include lodges, and fish clubs, mutual benefit societies, and other like organizations.

Cluster Subdivision - A form of development for single-family residential subdivision that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under conventional subdivision and the resultant land area is devoted to open space.

Code Enforcement Officer (CEO) - An individual appointed by the Town Board and given the responsibility to oversee and enforce all codes set forth in the town relating to the maintenance of the general public welfare.

Co-Location - The mounting of antenna(s) or other telecommunications equipment used by two or more providers, persons, firms or corporations on the same antenna support structure, monopole, or antenna tower.

Commercial Gardening - Land and/or building used to raise flowers, plants, shrubs, trees or produce for sale.

Commercial Recreation - A parcel of land which may include facilities for recreation purposes, utilized by the public for a fee. Activities include, but are not limited to, bowling alleys, ski slopes, tennis courts and golf courses, swimming pools, movie houses, drive-in theaters and health clubs.

Commercial Storage - A structure or set of structures containing separate storage spaces of varying sizes leased or rented on an individual basis.

Condominium - A building or group of buildings, in which units are owned individually; and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

Cul-de-Sac - The turnaround at the end of a dead-end street.

Cultural Recreation - Indoor or outdoor establishments promoting social and intellectual advancement, such as libraries, museums, art galleries, concert halls and theaters, but excluding movie houses and drive-ins.

Development Limitations - An assessment of existing natural and man-made elements relating to land, water, air, plant, animal, people, and community character in Walton and indication of the suitability of particular areas for development.

Dish Antenna - Any concave, circular or dish-shaped device designed for receiving communication or television signals from space, but does not include conventional television, radio and amateur radio antennas.

Drive In Use - An establishment, which by design, physical facilities, service, or by packaging procedure, encourages or permits customer to receive service, obtain goods, or be entertained while remaining in their motor vehicles.

Dwelling - A building designed or used as the living quarters for one or more families. The term dwelling shall include seasonal homes, modular homes, and mobile homes, provided that they meet all of the requirements of this Ordinance, the Town of Walton Building Code, and all other regulations or ordinances applicable to dwellings.

Dwelling Unit - A building, or entirely self-contained portion thereof containing housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrances or other hallways or porches) and no cooking or sanitary facilities in common with any other "Dwelling unit". A boarding house, dormitory, hotel, inn, nursing home or similar structure shall not be deemed to constitute a dwelling unit.

Dwelling, Farm Labor - A building containing only one dwelling unit and occupied by one family, members of which are employed on the farm.

Dwelling, Multiple-Family - A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, One Family - A building containing only one dwelling unit and occupied by one family.

Dwelling, Townhouse - A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside; no unit is located over another unit; and each unit is separated from any other unit by one or more common fire resistant walls.

Dwelling, Two-Family - A detached building designed for year-round occupancy by two families living independently of each other, other than a mobile home, recreational vehicle, camp, or rooming house.

Eating and/or Drinking Establishment - A parcel of land which includes facilities primarily used for the sale of prepared food or beverages for public consumption.

Educational Institution - An institution, either public or private, providing full-time day instruction and a course of study which meets the requirements of the New York State Education Law or a nursery, day care or kindergarten which meets all pertinent requirements set by the New York State Education Law and/or the New York State Health Code.

Factory Showroom - A facility utilized to display merchandise for wholesale and retail purchase, which is operated in conjunction with a manufacturing operation maintained in the Town of Walton, which facility is not simply used for Retail Trade, as defined in Section 202.

Fall Zone - The area in which any portion of a telecommunications or other such tower could or would fall, collapse or plunge to earth. The fall zone shall be no less than the lateral equivalent of the height of the structure plus 50% of the height of the structure.

Family - One or more persons occupying a single dwelling unit and living as a single, nonprofit housekeeping unit.

Farm - Not less than 10 acres of land, used in the preceding two years for the production for sale of crops, livestock and livestock products with an average gross sales value of ten thousand (\$10,000) or more. Includes land which otherwise satisfies the requirements for eligibility for agricultural value assessment.

Farm, Hobby - An agricultural operation where the keeping of animals is primarily for the enjoyment and/or consumption of food for the household and where any income generated is not more than ½ of the household's total income.

Financial Guarantee - A financial security in an amount sufficient to guarantee the installation of basic public improvements. Such improvements may include, but are not limited to, public water supply, sewage disposal systems, storm drains and sewers, roads, pavement markings, traffic signs and signals and sidewalks. Acceptable financial securities must be approved by the Town Attorney and the Town Board and may be in one of several forms, including, but not limited to, a performance bond executed by a surety company, a certified check, or an irrevocable letter of credit drawn in favor of the Town.

Flag Lot - A lot not meeting the required frontage along a public or private road and where access to this road is by a narrow strip of land.

Flea Market - An occasional or periodic market held in an open area or structure where individuals or groups of individual sellers offer goods for sale to the public.

Flood Plain - An area of land susceptible to being inundated by water as defined and mapped in the Flood Damage Prevention Local Law No 1 of 1987, revised with Local Law No 1 of 2012 as amended, adopted by the Town of Walton pursuant to the National Flood Insurance Program.

Floor Area - For residential units, floor area is all heated and ventilated and thereby habitable areas within the dwelling unit, including basement and habitable attic space.

Forest Management - Management of natural vegetation for timber harvesting, firewood, wildlife habitat improvement, and water quality.

Garage, Private - An accessory building or part of a principal building used for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein. A carport or similarly covered area for the storage or housing of one or more automobiles, with or without walls, but not fully enclosed, is part of this definition.

Garage, Public - Any garage, other than private garage, operated for gain or available on a rental basis for the storage of motor vehicles.

Habitable Floor Area - The total number of square feet of floor space within a building, which is enclosed and usable for human occupancy or the conduct of business. Unheated basements and attached garages are excluded.

Health Care Facility - A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home and home health care agency.

Height - The vertical distance measured from the elevation of the finished grade to the high point of a structure.

Home Occupation - An occupation or other subordinate use of a nonresidential nature which is conducted within a dwelling unit, or building accessory thereto, which is clearly incidental and accessory or secondary to the use of the property for residential purposes (See Section 528).

Hotel - A facility offering transient lodging accommodations to the general public and providing additional service such as restaurants, meeting rooms, and recreation facilities.

Junkyard - Any area, lot, land, parcel, building, or structures, or part thereof, used for the storage, collection, processing, purchase or sale, disassembly, packing, sorting, salvage, buying, selling or exchange of waste paper, rags, scrap metal or other discarded or scrap goods, materials machinery; or two or more unregistered, inoperable motor vehicles. Automobile junkyards, as defined in the General Municipal Law, Section 136, shall be included within this definition.

Kennel - A place for the care of four or more non-owned dogs and/or breeding of four or more dogs.

Lot - A designated parcel, track or area of land established by plat, subdivision, or other legal means, to be used, developed or built upon as a unit.

Lot Area - The total area included within lot lines and shall be as determined by the most recent official records or recordings on the Walton Tax Maps or by survey calculation.

Lot Corner -A lot or parcels of land abutting upon two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.

Lot Coverage - The percentage of the lot area that is covered by the buildings or paved areas on the lot.

Lot Depth - The minimum distance from the road right-of-way line of a lot to the rear lot line of such lot.

Lot Line - Any boundary of a lot. Any lot line not a rear line, nor a front line shall be deemed a side line.

Lot Line, Front - The front of a lot shall be construed to be the portion adjacent to or nearest the road. On corner lots and through lots, all sides adjacent to roads shall be considered front yards.

Lot Line, Rear - The lot line generally opposite the street line.

Lot Width - The distance between side lot lines at the front building line as prescribed by the front setback regulations.

Lot, Through - A lot which fronts upon two parallel streets, or which fronts upon two streets which do not intersect at the boundaries of the lot.

Manufacturing - Any process whereby the nature, size or shapes of articles or raw materials are changed, or where articles are assembled.

Mineral Extraction - Operations extracting gravel, rock, stone, sand, fill, topsoil or minerals excluding bluestone quarrying from the surface or below the ground in the amount of 1,000 tons or more during any successive 12 months, or any size operation within 25 feet of a State, County or Town highway, property line, or habitable building, for sale as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building.

Mixed Use Building - A building or structure with two or more different uses, such as, but not limited to, residential, office, manufacturing, retail, public, or entertainment.

Mobile Home - A factory-built one-family dwelling constructed on a chassis to facilitate its transportation to the site. Such structure shall be self-contained single units (excludes modular homes), and shall meet the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban Development and the applicable codes of the New York State Uniform Fire and Building Code. A mobile home shall not be construed to be a travel trailer or recreational vehicle.

Mobile Home Park - A parcel of land under single ownership which has been specifically planned and improved for the long term placement (over 30 days) of three or more mobile homes for non-transient use.

Motel - A building or group of buildings providing individual sleeping accommodations complete with bathrooms for travelers. Each lodging unit has direct access to the outside and a parking spot.

Motor Vehicle Repair Shop - A building or portion of a building arranged intended or designed to be used for making repairs to motor vehicles and operated for gain.

Non-Conforming Building, Use, or Lot - A building, structure, use of land or lot, lawfully existing at the time of enactment of this Ordinance, which does not conform to the regulations of the district or districts in which it is located.

Nursery or Greenhouse - See Commercial Gardening to raise flowers, shrubs, trees, and plants.

Open Space - An area between buildings, or between a building and a boundary line of the parcel, that is situated for recreation, gardening, or other outdoor activities conducive to the principal lot use and size. Such space must be free of automobile traffic, parking and undue hazards as well as being readily accessible to all those by whom it shall be used by.

Outdoor Recreation - Any recreational use particularly oriented to and utilizing the outdoor character of a parcel, including, but not limited to, snowmobile, trail bike, jeep and all-terrain vehicle trails; bicycle trail, horse trail, playground, picnic area or similar use in which no major physical alteration to the land occurs.

Parking Space - An off-street paved or un-surfaced space which, is accessible and available for the parking of one motor vehicle.



Performance Standards - A criterion established to control nuisances including, but not limited to, noise, odor, smoke, toxic or hazardous matter, vibration, fire and explosive hazards, and glare or heat generated by, or inherent to, uses of land or buildings.

Permitted Principal Use - For the purpose of this Ordinance, any use which is allowed by right in a zoned district without review by the Planning Board.

Planning Board - The Town of Walton Planning Board.

Provider – One who generates cellular telephone service, personal communication services (PCS), paging services, radio and television broadcast services and similar broadcast services and have acquired wireless operating licenses through the FCC auction process.

Public Facilities and Utilities - All village, town, city, county, state and Federal government owned buildings and land including, but not limited to, town halls and highway department garages. In addition are telephone, electric and cable television lines, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer pipes, valves or structures; pump stations; telephone exchanges and repeater stations; and all other facilities, equipment and structures necessary for conducting a service by a government or a public utility.

Public Parks and Recreational Facilities - Land in public ownership set aside for public use which may or may not have developed recreational facilities, such as playgrounds, tennis courts, horse and bike trails, baseball fields, picnic areas, swimming pool, and /or lavatories.

Recreational Vehicles and Equipment - Includes boats and boat trailers, pick-up campers or coaches (designed to be mounted on automotive or truck vehicles), motorized dwellings, travel trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

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

Resort - A facility for transient guests where the primary attraction is generally recreational facilities or activities.

Retail Trade - An enclosed store engaged in selling goods or merchandise to the general public, for personal or household consumption, and rendering services incidental to the sale of such goods.

Road - A public or private way which affords the principal means of access to abutting properties.

Road Right-of-Way - The right-of-way line of a road as indicated by usage, dedication, or by deed of record.

Roadside Stand - A permanent or temporary structure used for the display, support, and protection of products with the intent to sell to buyers.

Sanitary Landfill - Publicly operated solid waste disposal in which the waste is spread in thin layers, compacted, and covered with soil at the end of each day.

Service Establishment - Establishments providing services or entertainment, as opposed to products, to the general public, including personal, business, repair, educational, and other personal convenience services, including but not limited to, coin-operated laundry, cleaning and garment services, photographic studios, beauty shops, barber shops, shoe repair, funeral services, clothing rental, reducing salons and tanning parlors.

Service Station - An establishment available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, fueling, or equipping of automobiles or other motor vehicles.

Setback, Front - The required open space extending across the entire width of the lot between the road center line and the front of the main building.

Setback, Rear - The required open space extending across the entire width of the lot between the rear lot line and the back of the main building.

Setback, Side - The required open space extending from the rear setback line and the front setback line between the side lot line and the side of the main building.

Shopping Center - Two or more commercial establishments planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

Sign - Any material, object, device, display, or structures, or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, announcement, direction, advertisement or any other similar message either free standing or printed on a building or structure.

Sign Area - The entire face of a sign, including the advertising surface and any framing, trim or molding, but not including the supporting structure, unless the support is used to form an integral background for the display. The structure supporting the sign shall be excluded unless the structure is designed in such a way to form an integral background for the display.

Sign Face - The area or display surface used for the message.

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

Site Plan Review A review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in this Ordinance and as authorized by Town Law.

Site Rings – A coverage ring is the total contiguous land area that is intended to be served by a cell site base station facility. A site search ring is the area inside a coverage ring within which a suitable ‘friendly’ structure or land-lease parcel must be acquired for use as a base station facility.

Special Permit Use - A use which, because of its unique characteristics, requires individual consideration through a review procedure established by the Planning Board, and may require certain conditions and safeguards before being permitted.

Speculation Tower – A non-FCC licensed purveyor seeking to erect a tower with or without a contract with a FCC licensed company.

Stable, Private - See Farm, Hobby.

Structure - Anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground.

Subdivision - The division of a lot, tract, or parcel of land into two or more lots, tracts, parcels or divisions of land for any purpose.

Substantial Improvement - Any extension, repair, reconstruction, or other improvement of a structure, the cost of which equals or exceeds 50 per cent of the fair market value of the structure, either before the improvement is started or, if the property has been damaged and is being restored, before the damage occurred. The term does not include any project for improvement of a structure to comply with existing State or local

health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

Telecommunication Antenna - A system of electrical conductors that transmit or receive radio frequency waves.

Telecommunications Facility - Any or all of the physical elements of the central cell facility that contains all the receivers, transmitters and other apparatus needed for wireless communications operation (also known as the base transceiver station – BTS).

Telecommunications/Communications Tower - A structure on which one or more antenna will be located, that is intended for transmitting and/or receiving radio, television, telephone, wireless or microwave communications for an FCC licensed carrier, but excluding those used exclusively for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands amateur radio and other similar private residential communications.

Truck Terminal - An area and the building where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation. A truck Terminal may include the storage or parking of trucks as well as facilities for servicing and repairing trucks.

Use - The specific purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

Variance - Permission to depart from the literal requirements of this Ordinance.

Variance, Area or Bulk - A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district, or a departure from any provision of this Ordinance except use.

Variance, Use - A variance granted for a use or structure that is not permitted in the zoning district.

Warehousing - Storage facilities operated for a specific commercial establishment or group of establishments in a particular industrial or economic field.

Watershed Area - That area in which all of the surface runoff is concentrated into a particular stream.

Wholesaling - Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business

users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Wildlife Management - Management of natural wildlife and associated habitats with the intent to enhancing such.

Yard - An open space that lies between the principal or accessory building or buildings and the nearest lot line.

Yard Front - An open, unoccupied space on the same lot with a building, between the front setback line and the front lot line, and extending the full width of the lot.

Yard Rear - An open space, unoccupied except for accessory buildings, on the same lot with a building, between the rear setback line and rear lot line and extending the full width of the lot.

Yard, Side - An open space, unoccupied except for accessory buildings, on the same lot with a building, situated between the building and the side lot line, and extending from the front yard to the rear yard.

Zero Lot Line - The location of a building on a lot in such a manner that one or more of the building's sides rest directly on a lot line.

Zoning Board of Appeals - The Town of Walton Board of Appeals.

Zoning District - An area within the Town of Walton for which the regulations and requirements governing land use and structures upon it are uniform.

## ARTICLE III DISTRICTS AND DISTRICT MAPS

### **SECTION 301 Establishment of Zoning Districts**

For the purpose of promoting public health, safety, morals, and general welfare of the Town of Walton, the town is hereby divided into the following zoning districts:

- A) Rural II (R-2)
- B) Rural V (R-5)
- C) Industrial (I-1)
- D) Development Limitations Overlays (DL)

### **Section 302 Zoning District Map**

The boundaries of each of the zoning districts listed in Section 301 are hereby established as shown on the duly adopted Zoning Map which accompanies this Ordinance and which, with all explanatory matter thereon and amendments thereto, is hereby declared a part of this Ordinance. The development limitation overlay maps are also declared to be a part of this Ordinance.

A copy of the zoning district map and overlays, including the latest amendments thereto, shall be kept up to date and filed in the Town Clerk's Office for use and benefit of the public.

### **Section 303 Designation of Zoning District Boundaries**

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

- A) Where district boundaries are indicated as approximately following the center lines of streets, highway, streams or railroads, such center lines shall be construed to be such boundaries.
- B) Where district boundary lines are indicated as following or approximately following plotted lot lines or other property lines as shown on the Town of Walton Tax Map, such lot lines shall be construed boundaries.
- C) Where district boundary lines are shown separated from and parallel or approximately parallel to any of the features listed in paragraphs A and B above,

such boundary lines shall be construed to be parallel to such features and at such distance there from as shown on the map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Zoning Map.

- D) Where a district boundary line divides a lot of record at the effective date of this Ordinance or any subsequent amendments thereto, the regulations for the less restricted part shall extend not more than 50 feet into the more restricted part, provided the lot has frontage on a street in the less restricted district.

### **Section 304 Determination of Zoning District Boundaries**

In case of uncertainty as to the true location of a zoning district boundary line in a particular instance, the Code Enforcement Officer shall request the Zoning Board of Appeals to render a determination.

### **Section 305 Determination of Development Limitation Overlay Boundaries**

Where uncertainty exists with respect to the boundaries of the Development Limitation Overlay District, the Walton Town Planning Board shall determine the extent of the development limitation in question. Such determinations shall be appealable to the Zoning Board of Appeals.

The Planning Board may consider detailed slope, elevation and watershed boundary information as submitted by a professional surveyor in making this determination. Any applicant aggrieved by a decision of the Planning Board under this Section shall appeal to the Zoning Board of Appeals pursuant to Section 905 B)1).

## ARTICLE IV DISTRICT REGULATIONS

### **Section 401 Application of Regulations**

Except as hereinafter provided no building, structure or land shall be used or occupied unless for a use expressly permitted by, and in conformity with, the general and supplementary regulations specified in the Ordinance for the zoning district in which it is located.

No building shall be erected, nor existing building be moved, altered, enlarged, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot area and building location regulations herein after designated for the district in which such building or open space is located

### **Section 402 Intent**

The legislative intent of Article IV is to set forth land uses or activities which are permitted in the Town of Walton, to specify and designate the zoning districts in which each use or activity will be permitted, with or without special conditions, or after a special permit has been granted, and establish appropriate density, area, and other bulk regulations which will be applicable within each district..

### **Section 403 Schedule of Regulations**

Regulations for land uses or activities permitted in the various land use districts, or land uses or activities requiring special permits or conditions attached to them are set forth in Schedule I. (Schedule I is hereby adopted and made part of this Ordinance.) Regulations for lot size, yards, building height and similar density, area and other bulk requirements are set forth in the following text.

### **Section 404 Rural II District (R-2)**

- A) Description - This zoning district encompasses all land within 1000 feet of the center line of a state, or county road and with direct frontage and direct access to such road, and all land within 500 feet of the centerline of a town road and with direct frontage and access to such road. For the purposes of this Section, state, county and town roads are those roads publicly maintained as of the date this Ordinance is adopted. State, county and town roads are identified on the Zoning District Map.



B) Purpose - The purpose of this corridor district is to allow for a variety of mixed uses that, when and if developed, would still maintain the rural character of the area.

C) Permitted Principal Uses

- 1) One, one-family, or two-family dwelling per lot
- 2) One mobile home per lot
- 3) Agriculture
- 4) Forest Management Practices
- 5) Wildlife Management Practices

D) Permitted Accessory Uses – Located on the same lot with the permitted principal use. Some accessory uses (\*) are subject to additional conditions as set forth in Article 500, Supplementary Regulations.

- 1) Private Garage
- 2) Parking (\*)
- 3) Farm Labor dwelling (\*)
- 4) Home occupation, home professional office (\*)
- 5) Private swimming pool (\*)
- 6) Garden house, tool shed, storage shed
- 7) Nursery/greenhouse, non-commercial
- 8) Roadside stand
- 9) Recreational vehicles and equipment (\*)
- 10) Signs (\*)
- 11) Dish antennas (\*)
- 12) Alternative energy systems, private
- 13) Exterior spot lighting (\*)
- 14) Private stable, hobby farm, non-commercial agriculture
- 15) Other uses and buildings that are customarily accessory, provided such uses are clearly incidental to the principal use and does not include any activity commonly conducted as a business.

E) Special Permit Uses - See Schedule I

Special Permit Use requires an application for approval to the Walton Planning Board.

F) Density, Height, Area and Yard Requirements

- 1) Minimum lot size: 2 acres

- 2) Minimum frontage: 200' continuous road frontage; 75' on cul-de-sac
- 3) Maximum height: 35'
- 4) Front Setback: 75' from centerline of road or 50' from edge of road right-of-way if said right-of-way is greater than 50 feet wide
- 5) Side and rear setback: 25'
- 6) Maximum lot coverage: 25%
- 7) Maximum lot depth to width ratio: 8:1
- 8) Portions of land zoned R-V may be included in lots hereafter subdivided and located in the R-II District is at least two acres in size and the minimum lot depth to width ratio for the R-II District is not exceeded by the lot as a whole.

## **Section 405 Rural – V District (R-5)**

- A) Description - This district includes all lands not described as Rural 2 or Industrial. In general, the district includes most of the land in the town of Walton.
- B) Purpose - The purpose of this district is to permit only low density, residential development and limited commercial development.
- C) Permitted Principal Uses - Same as R-2
- D) Permitted Accessory Uses – Same as R-2

Located on the same lot with the permitted principal use. Some accessory uses (\*) are subject to additional conditions as set forth in Article 500, Supplementary Regulations.

- E) Special Permit Uses – See Schedule I

Special Permit Uses require an application for approval to the Walton Town Planning Board.

- F) Density, Height, Area and Yard Requirements

- 1) Minimum lot size: 5 acres
- 2) Minimum frontage: 300' continuous road frontage; 100' on cul-de-sac
- 3) Maximum height: 35'
- 4) Front setback: 75' from the centerline of road or 50' from edge of right-of-way if said right-of-way is greater than 50' wide
- 5) Side and rear setback: 25'
- 6) Maximum lot coverage: 20%

## **Section 406 Industrial District (I)**

- A) Description - This district consists of the parcel of land located south of the village of Walton on South River Road and owned by the Delaware County Industrial Development Agency.
- B) Purpose - The purpose of this district is to provide for the establishment of industrial uses essential to the development of a balanced economic base and to regulate its development so it will not be detrimental or hazardous to the surrounding community.
- C) Permitted Principal Uses
- 1) Manufacture of machinery, such as: carburetor and small machine parts, cash registers, sewing machines and typewriters, calculators and other office machine.
  - 2) Fabrication of metal products, such as: baby carriages, bicycles, metal, foil, tin, aluminum, gold, etc; metal furniture, musical instruments, sheet metal products and toys.
  - 3) Fabrication of paper products, such as: bags, book binding, boxes and packaging material; office supplies and toys.
  - 4) Fabrication of wood products, such as: boats, boxes, cabinets, and woodworking, furniture and toys.
  - 5) Food and associated industries, such as: bakeries, bottling, of food and beverages, food and cereal mixing and milling, food processing, food sundry manufacturing, ice cream manufacturing and manufacturing of spirituous liquor.
  - 6) The manufacturing and processing of pharmaceutical and cosmetic products.
  - 7) Office buildings for executive, engineering and administrative purposes.
  - 8) Scientific or research laboratories devoted to research, design and/or experimentation and processing and fabrication incidental thereto.
  - 9) Other uses of a light industrial or agricultural nature which involves only the processing, assembly, fabrication or packaging of previously prepared or refined materials.
  - 10) Warehousing
  - 11) Wholesaling
  - 12) Bulk Storage
  - 13) Agriculture/forest and wildlife management.

D) Permitted Accessory Uses - Located on the same lot with the permitted use. Some accessory uses (\*) are subject to additional conditions as set forth in Article 500. Supplementary Regulations.

- 1) Public garage and storage buildings, which are necessary to store any vehicles, equipment, or materials on the premises
- 2) Signs (\*)
- 3) Dish Antennas (\*)
- 4) Solar equipment
- 5) Exterior spot light (\*)
- 6) Off-street parking (\*)
- 7) Open space and picnic area for employees
- 8) Alternative energy system

E) Special Permit Uses - See Schedule I

Special Permit Uses require an application for approval to the Walton Town Planning Board.

F) Other Provisions and Requirements

- 1) Residential uses shall be prohibited.
- 2) No use shall result in or cause at any time dust, smoke, smog, observable gas, fumes or odors, or other atmospheric pollution, objectionable noise, glare, or vibration to be discernible beyond the property lines of the industry.
- 3) No use shall result in or cause a hazard of fire or explosion or other physical hazard to any adjacent building or to any plant growth or any land adjacent to the site of the use.
- 4) All industrial processes shall take place within an enclosed building. Industrial storage out of doors is permitted provided that such materials are shielded from view from public roads and adjacent nonindustrial district by fencing, landscaping or other appropriate measures.
- 5) All uses shall set aside not less than 15% of the lot to be devoted to seeding, planting, retention of the tree cover, or other landscaping. This area shall be used for no other purpose.
- 6) Each use in this district shall provide truck loading and unloading areas in an amount sufficient to permit the transfer of goods and products in other than a public road, off-street parking area or front yard.
- 7) Signs shall be permitted for advertising industrial activities on the premises which shall not exceed, in aggregate, 15 per cent of the area of

the front façade of the building. Such sign(s) may be illuminated but shall not be of the flashing type.

- 8) Industrial structures shall be located so as to be a minimum of 100' from any nonindustrial district. This 100' buffer strip shall be perpetually maintained so as to provide visual screening and separation between the industrial and nonindustrial uses.
- 9) Parking areas may be located in any of the required yard areas provided they are not less than 50' from a right-of-way line or 20' from a property line.

G) Density, Height, Area and Yard Requirements

- 1) Minimum lot size: None
- 2) Minimum frontage: None
- 3) Maximum height: 50'
- 4) Maximum lot coverage: 85%
- 5) Front setback: 75' from centerline of road
- 6) Side and rear setback: 30'
- 7) Maximum lot depth to width ratio: None

**Section 407 Development Limitations Overlay (DL)**

A) Description - This is an overlay and includes all lands shown on the Development Limitations Overlay Map(s) on file in the Town Clerk's office and are hereby declared to be part of this Ordinance. The development limitations shown on the map(s) include:

- 1) Flood hazard areas are those areas identified by the Federal Insurance Administration on its Flood Hazard Boundary Map No. 306215D dated June 19, 2012, and as may be amended.
- 2) Freshwater wetlands as defined and protected by the New York State Freshwater Wetland Act.
- 3) Steep Slope areas of 25% or more.

B) Purpose - The purpose of this overlay zone is to protect the town from overdevelopment in and around natural areas and environmentally sensitive areas important to the people of the town of Walton.

C) Determination of Applicability

- 1) Zoning Permits - The Code Enforcement Office shall review all zoning permit applications to determine if construction is proposed in the

Flood Hazard Area or within one-hundred feet (100') of a New York State freshwater wetland. No zoning permit for any construction in the Flood Hazard Area shall be issued until the Planning Board has issued a Special Use Permit for such construction. No zoning permit shall be issued for any construction within one-hundred feet (100') of New York State wetland until the applicant has obtained all applicable approvals from the New York State Department of Environmental Conservation.

2) Special Use Permits and Site Plans - The Planning Board shall require that plans comply with the New York State Wetland Act, the Federal Flood Insurance Regulation guidelines and Local Law No.1 of 2012, Flood Damage Prevention, prior to the issuance of special use permits or approval of site plans,

3) Subdivisions - As part of the subdivision review process, the Planning Board shall determine the applicability of the development limitations requirements. Such decisions shall be appealable to the Zoning Board of Appeals in accord with Section 805 (B) (1). The Planning Board may accept detailed information on slope, elevation, or watershed areas certified and submitted by a licensed surveyor in determining the extent of the Development Limitations Overlay District.

D) Permitted Principal Uses - Same as underlying district

E) Permitted Accessory Uses - Same as underlying district

F) Special Permit Uses - Same as underlying district

G) Other Provisions and Requirements

1) All new construction may be permitted within the area designated as a Flood Hazard Area by Special Permit only. It shall be the responsibility of the applicant to prove to the Planning Board's satisfaction that all construction complies with Federal Flood Insurance Regulation guidelines and Local Law No. 1 of 2012, Flood Damage Prevention.

2) Activities proposed within a designated wetland or within 100' of the wetland shall be subject to the guidelines and regulations of the New York State Freshwater Wetlands Act which, together with subsequent amendments, are hereby adopted.

## H) Density, Height, Area and Yard Requirements

### 1) Maximum Number of Subdivision Lots

Percentage of Original Parcel With One or More Development Limitation(s)	Number of Lots Allowed Per Acre of Original Parcel	
	<u>R-2</u>	<u>R-5</u>
Under 25%	0.36	0.15
25-50%	0.36	0.14
50.1-75%	0.26	0.10
Over 75%	0.22	0.09

- 2) Minimum Frontage: 50' more than underlying district; only 10' more than underlying district on cul-de-sac
- 3) Maximum Height: 35'
- 4) Front setback: Same as underlying district
- 5) Side and rear setback: Same as underlying district
- 6) Maximum lot coverage: Same as underlying district
- 7) Maximum lot depth to width ratio: Same as underlying district
- 8) Minimum Lot Size: Same as underlying district

## **Section 408 Equivalent Uses**

Any use of land or buildings not specifically listed in Schedule I for the applicable zoning district is not permitted. In the case of any dispute over the meaning of a word, phrase, sentence, definition, or of Schedule I, the Code Enforcement Officer is hereby authorized to make a definitive determination thereof, being guided in such determination by the purposes and intent of this Ordinance as set forth in Article I. Any determination made by the Code Enforcement Officer may be appealed to the Zoning Board of Appeals in the manner prescribed in Article IX.

- A) When a use is not specified in Schedule I, a landowner may request in writing the Planning Board to initiate an amendment to this Ordinance to provide for the use. The Planning Board shall act upon said request within 90 days, and may pass a resolution to provide the use if it finds that:

- 1) There is no clear intent to exclude such use; and,
- 2) The proposed use is appropriate within the zoning district and would have no more adverse effects on other uses within the zoning district, or on uses in adjoining districts, than would uses of the same general character permitted in the zoning district,

- 3) The proposed use is compatible with the Comprehensive Plan.
- B) Upon the passage of such a resolution by the Planning Board, the Planning Board and Town Board shall proceed to act upon the proposed amendment as set forth in Section 910.

### **Section 409 Other Regulations and Exceptions**

Additional regulations and appropriate exceptions to the regulations of this Ordinance are set forth in Article V, Supplemental Regulations; Article VI, Special Permits; Article VII, Site Plan Review; and Article VIII, Non-Conforming Uses.



## ARTICLE V. SUPPLEMENTARY REGULATIONS

### **GENERAL**

#### **Section 501 Applicability**

Land uses and activities in the Town of Walton which are regulated by this Ordinance shall be subject to additional requirements and to limitations and exceptions as set forth in this Article V.

### **LOT CHARACTER**

#### **Section 502 Required Open Space or Yard**

A) No area necessary under this Ordinance to satisfy area, yard, or other open space requirements in relation to any lot, building, or use shall be counted as part of required open space in relation to any other lot, building or use.

B) Every part of a required open space or yard shall be open and unobstructed, except for ordinary building projections of sills, chimneys, eaves, and unroofed steps, provided that no such projections extend more than 3 feet into the required yard. Fences, stonewalls, trees, and shrubbery are also accepted.

#### **Section 503 Vision Clearance at Intersections**

No obstruction to vision, such as shrubbery, brush, trees, earth, or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center lines and a line drawn between points along such lines 30 feet distant from their point of intersection.

#### **Section 504 Landscaping Requirements**

A) Where any permitted non-residential land use, multiple-family development or mobile park abuts an existing residential parcel or a vacant parcel where residential development could occur, a strip of land at least 20 feet wide shall be maintained as a landscaped area in front, side and/or rear yard

B) Required landscaping shall be installed and maintained in a healthy growing condition and shall take the form of any or all of the following: shade trees, deciduous shrubs, evergreens, well kept grassed areas or ground cover.

## **Section 505 Calculation of Lot Coverage**

In determining percentage of building coverage of a lot or size of yard, all principal buildings, roofed porches, garages, carports, other accessory building and paved parking and driveway areas shall be included.

## **Section 506 Zero Lot Line**

When multiple-family dwelling construction takes the form of townhouse units, where each unit has one or both side walls in common with an adjacent unit, the side yard requirements shall double and shall apply only to the end unit in the row.

## **Section 507 Corner and Through Lots**

Front yard setbacks and minimum road frontages are required on both road fronts. The two remaining yards shall be designated by the applicant as to which will be the rear yard and which will be the side yard.

## **Section 508 Flag Lots**

Flag lots may be permitted by the Planning Board during the subdivision review process, where appropriate, to allow for economical development of back land areas and only under the follow conditions.

- A) The access strip of land shall be a minimum of 60 feet wide and shall not exceed a grade of 10 percent.
- B) The minimum lot area, lot width and lot depth requirements shall be met exclusive of the land contained in the access strip.
- C) Minimum front, side and rear setback requirements shall be met, excluding the narrow access strip.
- D) No more than one flag lot shall be served by a single access strip.
- E) Access strips shall be a minimum distance apart of at least the minimum lot width in the zoning district.
- F) Access strips shall not be a right-of-way, but shall be owned in fee title by the owner of the flag parcel.

- G) No more than 10 percent of the lots, in a residential subdivision shall be flag lots.

### **Section 509 Lot Size Averaging On a Single Parcel**

Any parcel that exists legally on the day of the effective date of this Ordinance in the R-2 or R-5 Districts of the Town of Walton, which is not subject to restrictions or covenants to the contrary, may be divided without a variance under the following conditions, all of which must be met by such divisions:

- A) The average size of all lots created by such division shall not be less than two acres in the R-2 District and five acres in the R-5 District.
- B) No lot shall be created with an area less than one acre; and, in any case, no more than 20 percent of the total number of parcels permitted shall be undersized.
- C) Minimum road frontages and building setbacks shall be in accordance with the respective district regulations.
- D) All lots created that are less than the minimum lot area normally required shall be required to prove suitability for on-site sewage disposal and water supply systems in accordance with Section 515 of the Ordinance
- E) All divisions occurring under this Section shall be classified and reviewed as either a minor or major subdivision under the Town of Walton Subdivision Regulations.
- F) No further division of any lot created by such division shall be allowable if such further division would result in an average size of less than two acres or five acres, respectively, for all lots created from the original parcel on record.

### **USES GENERAL**

#### **Section 510 Principal Building Per Lot**

- A) There shall be only one principal building per lot, except that, where a sufficiently large parcel exists, additional principal buildings may be established; provided each such structure has an identifiable land area which satisfies the lot area, frontage, and setback requirements of the regulations of the district in which it is located.

In the cases of one and two-family dwellings, building permit application shall not be issued until it has been referred to the Planning Board, and said Board finds the application meets the requirements of this paragraph.

- B) No part of any yard or area required for one building or use shall be included as part of the yard or area similarly required for any other building or use.
- C) Application for a building permit shall show the outline of land associated with second or subsequent principal buildings, with the proposed location of such buildings.
- D) The identified land area associated with each principal building shall be sufficient to provide for an independent water supply and sewage system in accordance with the requirements of Section 515.

### **Section 511 Height Exceptions**

The height limitations of these regulations shall not apply for barns and silos, private home antennae, spires, belfries, cupolas, water tanks, ventilators, chimneys, solar equipment, windmills, transmission tower, flag poles, skylights, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

### **Section 512 Structures to Have Access**

Every building hereafter erected or moved shall be on a lot adjacent to a public street or with access to a street shown on an approved subdivision plat, and all structures shall be as located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

### **Section 513 Off-Street Parking Requirements**

For every building hereafter erected, altered or changed in use, there shall be provided off-street parking spaces as set forth in the following:

<u>USE</u>	<u>REQUIRED PARKING SPACES</u>
Dwelling Unit (One and Two Family)	Two parking spaces per dwelling unit on the same lot with the main building.
Dwelling Unit	One and one-half parking spaces

(Multi-Family)	per dwelling unit in the building(s) rounded off to the next highest whole number.
Business and Professional Office Home Occupation	Two parking spaces, plus one space for every 300 square feet of office area
Retail and Service Establishment	One parking space for every ninety square feet of floor area devoted to sales plus one space for each employee.
Eating and Drinking Establishment	One parking space for every three seats plus one space for each employee.
Industrial, Wholesales, Warehouse Storage Freight and Trucking Uses	One parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.
House of Worship, and Other Places Of Public Assembly	One Parking space for every four seats
Hotels/Motels	One parking space per room, plus one space for every employee.
Unspecified Uses	As required by the Planning Board based on use intensity, turnover, customers, employees and vehicles used.

Except for one-family and two-family dwellings, all off-street parking spaces are to be arranged so that backing movements take place entirely within the parking area.

A) Dimensional Requirements

Each parking space shall have a minimum width of nine feet and a minimum length of eighteen feet (18') and shall be served by suitable aisles to permit access and automobile maneuverability into all parking spaces. Total parking

area must provide a minimum of 240 square feet per parking space, including access, egress and circulation.

B) Location of Facility

All off-street parking facilities required under this Ordinance shall be constructed on or adjacent to the site of main use or on a lot adjoining the main use or directly across the road.

C) Off-street Loading Requirements

All commercial and industrial structures, erected after the adoption of this Ordinance, shall provide adequate off-street loading facilities. Such facilities shall be sufficient in size to eliminate the projection of vehicles into a road right-of-way.

### **Section 514 Performance Standards**

In all districts uses are not permitted which exceed the following standards measured at the individual property line. The Planning Board under its powers of site plan review and approval shall decide whether uses meet the standards. Uses shall meet State air and water pollution standards and shall not:

- A) Emit noxious gases which endanger health, comfort, safety, or welfare of any person, or have a tendency to cause injury or damage to property, business or vegetation
- B) Create vibration detectable to normal senses on adjoining properties.
- C) Create glare by lighting or signs which could impair a driver's vision.
- D) Cause harmful or toxic waste to be discharged into sewer, streams, or bodies of water, or to be stored on said property.

### **Section 515 Sewage Disposal And Water Supply**

Unless connection to a municipal waste water treatment system is available and utilized, construction of one and two-family residences is allowed only on lots adequate to on-site sewage disposal and water supply systems conforming to the requirements of the New York State Department of Health publication "Water Treatment Handbook, Individual System", as amended. This requirement must be met independently of the minimum lot size allowed in any district and may require an increase in lot size for conformance.

- A) Subsurface sewage disposal systems of the septic tank/absorption field or seepage pit types are strongly preferred. Alternative designs usually involve increased risk of ground water contamination and will be allowable only when constructed in accordance with a design prepared by a licensed professional engineer or registered architect and approved by the State Health Department prior to the issuance of any building permit.
- B) Absorption fields, seepage pits or alternate means for sewage disposal shall be sited to provide the specified minimum distances to existing wells on adjacent properties and to probable future well locations on adjacent properties.
- C) Residences for three or more families, commercial, industrial, and institutional structures, and mobile home parks containing five or more units shall conform to the applicable sections of the New York State Building Code.

### **Section 516 Permit for Temporary Uses and Structures**

The Planning Board may authorize the issuance of a temporary permit by the Code Enforcement Officer incidental and non-conforming uses as follows:

- A) Temporary uses incidental to a construction project. Such uses and structures may include the storage of building material and equipment.
- B) Temporary real estate sales office for the sale of property on the premises
- C) Other Similar Temporary Incidental Uses

Permit shall be conditioned upon agreement by owner to remove use on expiration of permit. Such permit shall be authorized for a period of one year and may be extended for two similar periods when the Code Enforcement Officer finds such work has been diligently pursued.

### **Section 517 Abandonment of Construction and Excavation**

- A) Within three months following a construction project or the demolition or abandonment of a building or structure, all construction materials shall be removed from the site and excavation filled to normal grade by owner.
- B) Unfenced excavation shall not be permitted for a period in excess of 60 days.

- C) If the owner fails to cover over or fill such excavation after 30 days notice by the Building Inspector, the Town Board may order said excavation to be covered or filled and shall charge the owner of said property any costs connected therewith.

### **Section 518 Minimum Habitable Floor Area**

- A) One-family and two-family dwellings shall have a habitable floor area of at least 500 square feet per dwelling unit.
- B) No habitable rooms are permitted in basements of multiple-family dwellings unless a separate outside entranceway is provided to all habitable areas.

### **Section 519 Environmental Quality Review**

The State Environmental Quality Review Act requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations are hereby adopted by reference.

### **Section 520 Uses Not Permitted**

Any use not specifically permitted as a principal, accessory or special permit use shall be deemed to be prohibited

### **USES, SPECIFIC**

### **Section 521 Accessory Buildings**

A permitted accessory building or structure, except for farm purposes may be located in any required side or rear yard, provided:

- A) Such building shall be set back 25 feet from any line lot and at least 10 feet from the main building. No accessory building for structures shall project nearer to the front lot line than the principal building.
- B) No zoning permit is required for any accessory uses less than 144 square feet.



## **Section 522 Accommodations**

The following dimensional requirements are based upon the number of bedrooms (units) for a particular accommodation type facility, including those uses denoted in Schedule I of this Ordinance.

Number of Units (Bedrooms)	R-2 District			R-5 District		
	MINIMUM LOT SIZE	MINIMUM FRONTAGE	SIDE/REAR SETBACK	MINIMUM LOT SIZE	MINIMUM FRONTAGE	SIDE/REAR SETBACK
0-5 UNITS	2 ACRES	200'	25'	2 ACRES	250'	25'
6-10 UNITS	3 ACRES	200'	50'	5 ACRES	250'	50'
11-25 UNITS	5 ACRES	250'	75'	5 ACRES	250'	75'
26-50 UNITS	10 ACRES	300'	100'	10 ACRES	300'	100'
OVER 50 UNITS	15 ACRES	300'	100'	15 ACRES	300'	100'

## **Section 523 Bulk Storage**

Petroleum bulk storage tanks with a capacity of greater than 1100 gallons shall comply with the Petroleum Bulk Storage Regulations adopted by the New York State Department of Environmental Conservation, and as may be amended.

## **Section 524 Campgrounds**

- A) Before a special permit for a campground can be issued, there must be evidence that all State Health Department regulations for campgrounds shall be met.
- B) A minimum of 10 acres of land will be used for campground.

## **Section 525 Dish Antennae**

- A) All dish antennae shall be located in either the side or rear yards unless the owner can prove his/her only "window of reception" is the front yard. In the event that no "window of receptions" is available on the ground, such antenna may be place on the roof of the dwelling.
- B) The location and design of the dish antenna shall minimize the visual impact on adjacent property as determined by the Code Enforcement Officer, appealable to the Zoning Board of Appeals

## **Section 526 Exterior Lighting**

In no case shall any exterior lighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots.

## **Section 527 Farm Labor Dwelling**

On any parcel meeting the definition of "farm", one farm labor dwelling may be permitted for each 50 acres.

## **Section 528 Home Occupations**

Must meet the following conditions:

- A) The occupation or activity shall be carried on wholly within the principal building or other structure accessory thereto. An area equivalent to no more than 25 per cent of the floor area of the dwelling shall be used for the occupation. Such area shall be within the dwelling or another structure accessory thereto. No outdoor storage is permitted.
- B) The occupation shall be carried on by the occupant of the dwelling, and not more than three persons outside the residence household shall be employed in the occupation or as assistants.
- C) There shall be no exterior display or sign except as permitted under this Ordinance, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the lot or of the surrounding neighborhood.
- D) The occupation shall not produce any offensive odor, noise, vibration, smoke, dust, heat, electrical interference or glare detectable to normal sensory perception outside the structure.
- E) Any need for parking generated by the occupation shall be met off the street and in accordance with the regulations of this Ordinance.
- F) No more than one home occupation shall be permitted in association with a dwelling.

## **Section 529 Junkyards**

All junk yards, wrecking yards, or places for the collection of waste materials or inoperable equipment shall conform to the following requirements.

- A) All such yards, enclosures or areas used for such collection or storage shall be enclosed by an opaque fence, designed to obstruct view from outside, which is at least eight feet in height and entirely surrounds such yard or area.
- B) Materials shall not be collected or stored on a hillside of greater than 10 per cent slope, on a flood plain or within 100 feet of any stream bed.
- C) Materials stored or collected shall not be stacked or piled to a height greater than the closest eight-foot opaque fence.
- D) Operation of a junkyard is conditional upon the granting of any annual operating license from the Town Board in accordance with Section 136 of the General Municipal Law and this Section of this Ordinance.
- E) The outdoor storage of two or more unregistered motor vehicles no longer intended or in condition for legal use, or major portions of such vehicles and/or a comparable quantity of inoperable machines, implements, or appliances, or two or more unregistered travel trailers vehicles or camping vehicles shall require licensing as junkyard. The outdoor storage of one or more uninhabitable mobile homes shall require licensing as a junkyard unless structures are in use for permitted nonresidential or accessory auxiliary uses.
- F) Inoperable agricultural equipment or machinery stored on an operating farm for future restoration or for use as a source of spare parts for other equipment in use on the farm shall not be subject to the above provisions of this Section.
- G) Dumps, where paper, garbage, rubbish, trash, toxic chemicals and substances, and other waste materials are disposed, shall meet the requirements of Town of Walton Local Law No. 1 of 1988.

## **Section 530 Mineral Extraction**

In any district, the removal of more than 1000 tons per year of soil, sand, gravel or quarried stone for sale, except when incidental to, or connected with, construction of a building on the same premises, requires a New York State Department of Environmental Conservation (D.E.C) permit. A special permit from the Town of Walton is required for the aforementioned excavating and mineral extraction activities involving

more than 1,000 tons per year of material, excluding bluestone quarrying. A special permit from Town of Walton is contingent upon an approved permit from D.E.C.

### **Section 531 Mobile Home**

Individual mobile homes shall be subject to all the regulations pertaining to detached, one-family dwellings, in addition to the following standards:

- A) The mobile home shall be provided with anchors or tie-downs, at least at the corners, attached to concrete footings installed below the frost line or embedded in concrete runners or concrete slab which may be provided as the mobile home stand.
- B) The mobile home will be provided with skirts to screen the space between the mobile home and the stands. Such skirts shall be made of concrete block of a permanent material similar to that used in the mobile home and providing a finished exterior appearance, and shall be installed within four months from date of issuance of permit for the mobile home.
- C) Any construction or storage space, additional rooms, or enclosed patios or carports shall have a finished exterior appearance. No exposed building paper, wallboard or other impermanent and unfinished material will be permitted.
- D) The mobile home bears the seal required by the State of New York or an equivalent acceptable to the State of New York.
- E) No additions shall be made to a mobile home except a canopy and/or porch open on three sides, or an addition made by the mobile home manufacturer and/or built in conformance with New York State Uniform Fire Prevention and Building Code Regulations.

### **Section 532 Mobile Home Park**

#### A) Mobile Home Permit

- 1) No person shall construct or operate a mobile home park without first obtaining site plan approval and a permit.
- 2) Application for a Mobile Home Park permit shall be made to the Planning Board, and shall be accompanied by a site plan in accordance with procedures outlined in the Ordinance
- 3) The Planning Board may accept, accept with recommended changes, or reject plans.

## B) Mobile Home Park Standards

- 1) The minimum lot area for a mobile home park shall be at least ten acres and contain at least 8,000 square feet per mobile home site.
- 2) Sewage disposal and water supply systems shall have the approval of the New York State Department of Health and New York City Department of Environmental Protection, Bureau of Water Supply, and conform to the requirements of any ordinance or local law of the Town governing such systems, whichever is more restrictive.
- 3) The area shall be well drained and shall have such grades and soil as to make it suitable for mobile homes.
- 4) No mobile home shall be less than 30 feet from any other mobile home. Porches, carports, decks and additions shall not intrude into this 30 feet.
- 5) Each mobile home site shall provide an approved water supply system and underground electrical service approved by New York State Electric and Gas and New York State Board of Fire Underwriters.
- 6) Garbage and refuse shall be collected and removed from the premises at least once a week. All refuse shall be stored in fly-tight, watertight, rodent-proof containers, which shall be located not more than 15 feet from any mobile home
- 7) A public telephone shall be provided for each mobile home park, and fire extinguishers, approved by the local fire district officers, shall be furnished so that no mobile home shall be more distant than 15 feet from such extinguisher.
- 8) The outside burning of garbage, trash, or rubbish is prohibited.
- 9) All mobile homes and other structures shall be set back at least 50 feet from the right-of-way line of any public road or property line and 25 feet from any internal access street.
- 10) All access roads within a mobile home park must be at least 30 feet wide and built to subdivision regulation road standard.
- 11) Off-street parking spaces shall be provided containing at least 180 square feet per space. Two such spaces shall be furnished for each mobile home and finished to an all weather surface, such as gravel.
- 12) All entrances and exits, internal access streets and public spaces shall be adequately illuminated.

- 13) A strip of land at least 20 feet wide shall be maintained as a landscaped area abutting mobile home park property lines, inclusive of that portion of said property fronting a public road.
- 14) The operator of a mobile home park shall keep a register in which there shall be noted the name and permanent address of every mobile home situated in the park, the registration number of same, the date it was admitted, and the date of its removal. Such register shall be signed by the owner of the mobile home or the person bringing the same into the park.
- 15) The Planning Board may require the reservation of a recreational area for exclusive use of the residents therein. The allowance of recreational land shall not exceed 200 square foot of recreational land per mobile home unit.
- 16) Sale of mobile homes shall be permitted at any properly licensed mobile home park.
- 17) Each mobile home shall have a sign on the lot, not exceeding one square foot, identifying the mobile home owner and lot number.
- 18) All mobile homes in mobile home parks shall be installed according to the standards in Section 531, Mobile Homes.

### **Section 533 Model Homes**

The Planning Board may authorize the Code Enforcement Officer to issue permits for model homes, either in the singular or on several parcels of land later offered for sale. Homes shall meet setback requirements. Model homes on display for the public to visit and inspect, and not intended to be sold as is, shall be required to meet all setback requirements and shall provide for adequate off-street parking spaces as prescribed by the Ordinance.

### **Section 534 Public Utility Facilities**

Public utility substations and similar structures, shall comply with the following:

- A) Facility shall be surrounded by a fence set back from property lines in conformance with district regulations for front, side and rear yards.
- B) Landscaped area at least 20 feet wide shall be maintained in front, side and rear yards.
- C) There shall be no equipment visible from surrounding properties.

D) Utility poles and attendant lines will be allowed, as necessary, in all districts.

### **Section 535 Parking, Storage or Use of Recreational Equipment**

A) Recreational vehicles or other equipment may be parked or stored on any parcel of land provided it complies with front, side and rear setback requirements.

B) No such equipment shall be used for living sleeping, or housekeeping in excess of 14 days per month when parked or stored on an individual parcel or in any location, except an approved campground, without building permit.

### **Section 536 Parking and Storage of Certain Vehicles**

No more than one automotive vehicle or trailer of any kind or type without current license plates shall be parked or stored on any lot other than in completely enclosed buildings. Farm equipment shall be exempt if located on an operating farm.

### **Section 537 Signs**

A) Definitions

For the purpose of this Article, certain terms and words pertaining to signs are hereby defined.

Accessory Sign - A sign relating only to uses on the premises on which the sign is located, or products sold on the premises on which sign is located or indicating the name or address of a building or the occupants or management of a building on the premises where the sign is located.

Detached Signs or Ground Sign – A sign not attached to or painted on a building, but which is affixed to the ground. A sign attached to a flat surface such as a fence or wall not a part of a building shall be considered a “detached sign”.

Double-Faced Sign – A sign with two (2) parallel, or nearly parallel, faces, back to back, and located not more than twenty-four inches (24”) from each other.

Flashing Sign – An illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any sign which revolves or moves, whether illuminated or not, shall be considered a “flashing sign”.

Flat Sign or Wall Sign – Any sign attached to, and erected parallel to the face of, or erected or painted on the outside wall of, a building and supported throughout its length by such wall or building and not extending more than eighteen inches (18') from the building wall.

General Advertising Sign – Any sign which is not an accessory sign or which is not specifically limited to a special purpose by these regulations. A billboard is a large “general advertising sign”.

Illuminated Sign – Any sign designed to give forth artificial light or designed to reflect light from one (1) or more sources of artificial light erected for the purpose of providing light for the sign.

Indirectly Illuminated Sign – A sign which does not produce artificial light from within itself but which is opaque and back-lighted or illuminated by spotlights or flood lights not a part of or attached to the sign itself, or a sign of translucent nontransparent material illuminated from within but with no exposed or exterior bulbs, tubes or other light source.

Marquee Sign – Any sign attached to or hung from a marquee. For the purpose of this Section, a marquee is a covered structure projecting from and supported by the building with independent roof and drainage provisions and which is erected over a doorway or doorways as protection against the weather.

Sign – An identification, description, illustration, or device which is affixed to or represented directly or indirectly upon a building, structure, trailer, motor vehicle, wagon, or land and which directs attention to a product, place, activity, person institution or business.

Sign Area – That area within a line including the outer extremities of all letters, figures, characters and delineations, or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it be columns, a pylon or a building, or part thereof, shall not be included in the sign area. Only one (1) side of a doubled-faced sign shall be included in a computation of “sign area”. The area of a cylindrical sign shall be computed by multiplying one-half (1/2) of the circumference by the height of the sign.

Sign, Height Of – The vertical distance from the road grade or the average lot grade at the front setback line, whichever is greater, to the highest point of the sign.



## B) General Provisions

The following regulations apply generally to all signs and are in addition to the regulations contained elsewhere in the Zoning Ordinance:

- 1) No sign, unless herein accepted, shall be erected, constructed, posted, painted, altered or relocated, except as provided in this Section and in these regulations, until permit has been issued by the Code Enforcement Officer (CEO). Before any permit is issued, an application especially provided by the CEO shall be filed, together with a sketch or drawing and/or specification as may be necessary to fully advise and acquaint the CEO with the location, construction, materials, manner of illuminating and/or securing or fastening, and number of signs applied for.
- 2) Structural and safety features and electrical systems shall be in accordance with requirements of the applicable codes and ordinances.
- 3) The following signs are exempted from the provisions of these regulations and may be erected or constructed without a permit but in accordance with the structural and safety requirements of the Building Code.
  - a) Official traffic signs or sign structure and provisional warning signs or sign structures, when erected or required to be erected by a governmental agency, and temporary signs indicating danger.
  - b) Changing of the copy on a bulletin board, poster board, display encasement or marquee.
  - c) Temporary non-illuminated signs not more than thirty-two (32) square feet in area, advertising real estate for sale or lease or announcing contemplated improvements of real estate, and located on the premises, one (1) such sign for each road frontage.
  - d) Temporary non-illuminated signs not more than thirty-two (32) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress. One such sign for each road frontage
  - e) Non-illuminated signs, not exceeding ten (10) square feet in area, with letters not exceeding one (1) foot in height, painted, stamped, perforated or stitched on the surface area of an awning, canopy, roller curtain or umbrella.
  - f) Non-illuminated signs warning trespassers or announcing property as posted.

- g) Signs advertising a special civic or cultural event such as a fair or exposition, play, concert or meeting, or fund-raising campaign, sponsored by a governmental or charitable organization.
  - h) Special decorative displays used for holidays, public demonstrations or promotion for nonpartisan civic purposes.
  - i) Special sales promotion displays, in a district where such sales are permitted, incidental to the opening of a new business, provided that such displays last no longer than two (2) weeks.
- 4) Pennants, banners, streamers, and all other fluttering, spinning or similar type signs and advertising devices are allowed providing they are maintained and kept in good repair.
- 5) No flashing signs or exposed gas filled or illuminated tubing, such as neon, shall be permitted in any district.
- 6) No sign which is not an integral part of the building design shall be placed on the roof of a building, and no projecting sign shall extend over or above the roofline parapet wall of a building.
- 7) No sign shall be constructed, erected, used, operated or maintained which:
  - a) Display intermittent lights resembling or seeming to resemble the flashing lights customarily associated with danger or such as are customarily used by police, fire, or ambulance vehicles or for navigation purposes.
  - b) Is located and so illuminated as to provide a background of colored lights blending with traffic signal lights to the extent of confusing a motorist when viewed from normal approaching position of a vehicle at a distance of twenty-five (25) to three hundred feet(300').
- 8) Except as otherwise specifically provided in these regulations, all signs shall be subject to the provisions of Article VIII. Governing nonconforming uses.
- 9) Except as otherwise provided, these regulations shall be interpreted to permit one (1) sign of each permitted type, in accordance with applicable regulations, for each road frontage, for each permitted use on the premises. For the purpose of this regulation, sign types are flat (or wall), detached (or ground), projecting and marquee signs, or special purpose signs specifically listed in the district regulations.

- 10) Except as otherwise provided, any sign may be flat detached or projecting signs; and, except as otherwise provided, no detached sign shall exceed a height of twenty (20) feet.
- 11) Sign of permitted types and sign area may be placed on walls of buildings other than the front, except on side or rear walls facing, and within one hundred (100) feet of a residential district.
- 12) Unless otherwise specified in these regulations, all signs shall comply with the yard requirements of the district in which they are located, provided that one (1) accessory sign may occupy required yards in a district where such sign is permitted by these regulations, if such sign is not more than thirty-two (32) square feet in area, and other requirements of these regulations are complied with.
- 13) No sign, portable or otherwise is to be placed or located or conflict with the vision clearance or other requirements of applicable traffic ordinances.
- 14) No sign shall be attached to trees, utility poles or any other unapproved supporting structure.
- 15) The owner and/or tenant of the premises and the owner and /or erector of the sign shall be held responsible for any violation of these regulations.
- 16) All signs shall be maintained in good condition and appearance. After due notice has been given as provided below, the Code Enforcement Officer (CEO) may cause to be removed any sign which shows gross neglect or becomes dilapidated.
- 17) The CEO shall remove or cause to be removed any sign erected or maintained in conflict with these regulations if the owner or lessee of either the site or the sign fails to correct the violation within thirty (30) days after receiving written notice of violation from the CEO. Removal of a sign by the CEO shall not affect any proceedings instituted prior to removal of such sign.

## **Section 538 Swimming Pools**

### A) Accessory to Single-Family Dwelling

Swimming pools, whether permanent or portable, having a depth of at least two (2) feet, shall meet the front setback requirement.

## B) Accessory to Residential Developments

Swimming pools accessory to residential developments, whether clustered single-family dwellings, seasonal dwellings, bungalow colonies, camps or multi-family dwellings, shall be of permanent construction and shall be located not closer than 50 feet to any lot line and not closer than 50 feet to any dwelling unit and shall meet the front setback requirement.

## C) Non-Residential

Swimming pools that are part of non-residential uses, whether commercial or noncommercial, such as hotels, motels, clubs, campgrounds, day-use recreational facilities or institution, shall be of permanent construction and shall be located not closer than the setback requirement for the district in which it is located.

## D) Fencing

Fencing of swimming pools shall comply with the New York State Uniform Fire Prevention and Building Construction Code requirement.

## **Section 539 Establishments Selling Beverages**

No establishment selling alcoholic beverages for on-site or off-site consumption shall be located within 1000 feet of a building used as a school, church, synagogue, or place of worship.

## **Section 540 Wind Energy Facilities**

- A. Purpose. The purpose of this section is to provide for the construction and operation of wind energy facilities in Town of Walton, subject to reasonable conditions that will protect the public health, safety and welfare.
- B. Applicability. The requirements of this section shall, in the event of any State or Federal requirements to allow for the placement of wind energy facilities in the Town, apply to all wind energy facilities proposed, operated, modified, or constructed within the Town, including modification of existing wind energy facilities and wind measurement towers erected for the purposing of testing the feasibility of wind energy generation.
- C. Permits. No wind energy facility shall be constructed, reconstructed, modified, or operated in the Town of Walton except by first obtaining a Wind Energy Facility Permit as provided under this law. No permit or other approval shall be required under this law for mechanical, non-electrical wind turbine utilized for applicants'

onsite agricultural activities. Replacement in-kind or modification of a wind energy facility may occur without Planning Board approval when (1) there shall be no increase in total height; (2) no change in the location of the wind turbine; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the wind turbine. No transfer of any wind energy facility or Wind Energy Facility Permit, or sale of the entity owning such facility shall eliminate the liability of an applicant nor of any other party under this law.

D. Application Requirements. A complete application for a Wind Energy Facility Permit shall include:

- 1) A copy of an executed interconnection agreement with NYISO and the applicable transmission owner (if available at the time of the application)
- 2) A completed application for a Wind Energy Facility Permit.
- 3) A site plan prepared by a licensed professional engineer, including:
  - a) Property lines and physical dimensions of the site;
  - b) Location, approximate dimensions and types of major existing structures and uses on the site, public roads, and adjoining properties within 500 feet of the boundaries of any proposed wind turbines, or 1½ times the total height of such wind turbines, whichever shall be greater.
  - c) Location and elevation of each proposed wind turbine.
  - d) Location of all above and below ground utility lines on the site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
  - e) Locations of buffers as required by this law.
  - f) Location of the nearest residential structure(s) on the site and located off the site, and the distance from the nearest proposed wind turbine.
  - g) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
- 4) A vertical drawing of the wind turbine showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each wind turbine of the same type and total height. The make, model, picture and manufacturer's specifications, including noise decibels data, and Material Safety Data Sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed wind turbine.

- 5) A lighting plan showing any FAA-required lighting and other proposed lighting.
- 6) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable; to New York City Environmental Protection standards, if applicable; and to any standards as may be established by the Town of Walton Planning Board on the recommendation of its Town Engineer or consultants ( at the time of the application, the plans may be submitted as conceptual plans which identify the design parameters).
- 7) A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- 8) An operations and maintenance plan providing for regular periodic maintenance schedules, staffing, chemical usage, property maintenance, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
- 9) A decommissioning plan that addresses the anticipated life of the wind turbine, the estimated decommissioning costs, the method of ensuring funds shall be available for decommissioning and restoration, the method by which decommissioning cost shall be kept current, and the manner in which the wind turbine shall be decommissioned and the site restored, less any fencing or residual minor improvements requested by the landowner.
- 10) List of property owners, with their mailing address, within 500 feet of the outer boundaries of the proposed site.
- 11) A complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint. The Walton Planning Board in conjunction with the Walton Code Enforcement Officer will be charged with mediating any complaints and their resolution after structures are in place. The applicant will make themselves available to this process for the life of the structures.
- 12) A Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA) shall be prepared for the wind energy facility. This Full Environmental Assessment shall, at a minimum, include:
  - a) A study of potential shadow flicker, including a graphic to identify locations where shadow flicker may be caused by the wind turbines and expected durations of the flicker at these locations. The study

shall identify areas where shadow flicker may interfere with residences and describe measures to be taken to eliminate or mitigate problems.

- b) A visual impact study of the proposed wind turbines as installed, which may include a computerized photographic simulation and digital elevation models demonstrating visual impacts from strategic vantage points. Color photographs of the site accurately depicting existing conditions shall be included. The visual analysis shall also indicate color treatment of system components and any visual screening to be incorporated into the project to lessen the system's visual prominence.
- c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site, as well as Delaware County Emergency Services.
- d) A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed wind turbine, existing noise levels at site property lines and at the nearest residence not on the site. The noise analysis shall include low frequency noise. The applicant shall also submit plans for post-development noise monitoring.
- e) Evidence of potential impacts on neighboring property values compiled by a licensed appraiser based on experience at other locations, extrapolating that evidence to analyze potential impacts on property values near the site.
- f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
- g) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species.

E. Wind Energy Facility Development Standards. The following standards shall apply to wind energy facilities in the Town of Walton, unless specifically waived by the Planning Board.

- 1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
- 2) No television, radio or other communication antennas may be affixed or otherwise made part of any wind turbine, except with approval by the Town of Walton Planning Board. Applications may be jointly submitted for wind turbine and telecommunications facilities.

- 3) No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
- 4) No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the wind energy facility development plan.
- 5) All applicants shall use measures to reduce the visual impact of wind turbines to the extent possible. Wind turbines shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Wind turbines within a multiple wind turbine project shall be generally uniform in size geometry, and rotational speeds. The rotation of turbine blades should all be of one direction, either clockwise or counter-clockwise. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- 6) Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Planning Board in the form of a waiver.
- 7) Wind turbines shall be located in a manner that minimizes electromagnetic interference with signal transmission or reception for radio, television, or wireless phone or other communication systems. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference and/or take such other measures to ensure the affected parties have adequate reception. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Facility Permit for the specific wind turbine or wind turbines causing the interference.
- 8) All construction and ongoing debris shall be removed from the site or otherwise disposed of in a manner acceptable to the Planning Board and Code Enforcement Officer.
- 9) Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Wind power Projects published by the State Department of Agriculture and Markets, to the maximum extent practicable.
- 10) Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.
- 11) Wind turbines shall be located in a manner that minimizes shadow flicker on any off-site residences.



#### F. Required Site Safety Measures.

- 1) All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure, rotor blades and turbine components.
- 2) Wind energy facilities shall be gated or fenced to prevent unrestricted public access to the facilities and reduce any attractive nuisance aspects or otherwise secured in a manner acceptable to the Planning Board.
- 3) Warning signs shall be posted at the entrances to the wind energy facility and at base of each tower warning of electrical shock or high voltage and containing emergency contact information.
- 4) No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- 5) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- 6) Wind turbines shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

#### G. Traffic Routes and Road Maintenance.

- 1) Construction and delivery vehicles for wind turbines and/or associated facilities shall propose, and the Planning Board shall approve or modify, designated traffic routes to minimize traffic impacts from construction and delivery vehicles, wear and tear on local roads and impacts on local business operations.
- 2) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a wind turbine. A public improvement bond may be required prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town for any damage to Town or County roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent and/or the Delaware County Department of Public Works to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Planning Board.
- 3) The applicant shall provide pre-development and post-development photographic evidence of the condition of any Town or County roads along the proposed route.

#### H. Setbacks.

- 1) Each wind turbine shall be set back a distance of 500 feet or 1½ times the total height of the wind turbine, whichever shall be greater, from any public road, any

residences, permanent lodging facility, public building, church and other institution. No wind turbine shall be located within its own total height of a site boundary line.

- 2) The statistical sound pressure level generated by a wind turbine shall not exceed  $L_{90} - 45$  dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. A 10-minute time interval shall be used as the standard time period over which to measure the sound pressure. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before construction demonstrating compliance with this requirement.
- 3) In the event audible noise due to wind energy facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (B) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
- 4) Should the ambient noise level (exclusive of the development in question) exceed the applicable standard given above, the applicable standard shall be ambient dBA plus 5 dBA. 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 six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public buildings. Ambient noise level measurements shall be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation.

#### I. Noise and Setback Easements.

- 1) An applicant may, with approval from the Planning Board, meet noise and setback standards by obtaining written consents from affected property owners stating they are aware of the wind energy facility and the noise and/or setback limitations imposed by this law, and that consent is granted to allow noise levels to exceed the maximum limits provided herein or reduce setbacks to less than required.
- 2) Such consents shall be in the form required for easements and be recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the decommissioning of the benefited wind turbine in

accordance with this law, or the acquisition of the burdened parcel by the owner of a benefited parcel or the wind turbine company.

J. Issuance of Wind Energy Facility Permits.

- 1) The Planning Board shall, within 120 days of determining the application is complete and completion of SEQRA;, and upon consideration of the standards in this law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended with consent of the applicant. Should the applicant not consent to such an extension and the time period elapse without a decision, the application shall be considered approved without conditions.
- 2) If approved, the Planning Board shall direct the Town Code Enforcement Officer to issue a Wind Energy Facility Permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code, if applicable.
- 3) The decision of the Planning Board shall be filed within 15 days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- 4) If any approved wind energy facility is not substantially commenced within four years of issuance of the Wind Energy Facility Permit, the Wind Energy Facility Permit shall expire, unless the Planning Board shall have granted an extension.

K. Abatement.

- 1) If any wind turbine remains non-functional or inoperative for a continuous period of twenty-four (24) months, the applicant shall remove said system at its own expense following the requirements of the decommissioning plan. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the demonstrates to the Town that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- 2) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual wind turbines, if requested and necessary to prove the wind turbine is functioning, which reports may be redacted as necessary to protect proprietary information.
- 3) The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution or an interest bearing escrow

account. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully described in the decommissioning plan. After application and construction of turbines the applicant or successors shall work with the Planning Board and Code Enforcement Officer to update the fund/bond so that it is consistent with D, 9 of this regulation. This should be done at a minimum of every 10 years after construction is complete.

L. Limitations on Approvals. Nothing in this law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the wind energy facility. Nothing in this law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any wind energy facility. It shall be the sole responsibility of the facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

M. Permit Revocation.

- 1) The applicant shall fund periodic noise testing and overall inspections by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Code Enforcement Officer in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Facility Permit and this law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90 day period may be considered by the Code Enforcement Officer, but the total period may not exceed 180 days.
- 2) A wind turbine shall be maintained in structurally operating condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a wind turbine become inoperable, or should any part of the wind turbine be damaged, or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90-day period may be considered by the Code Enforcement Officer, but the total period may not exceed 180 days.
- 3) Should a wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Town Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular timeframe, or order revocation of the Wind Energy Facility Permit for the wind turbine and require its removal within 90 days. If the wind turbine is not removed, the Town Board shall have the right to use the security posted as part of the decommissioning plan to remove the wind turbine.

N. Wind Measurement Towers. Installation of wind measurement towers, also known as anemometer towers, shall be permitted, upon the issuance of a Wind Energy Facility Permit, to determine the wind speeds and the feasibility of using particular sites. The distance between a wind measurement tower and the property line shall be at least 1½ times the total height of the tower. Wind Energy Facility Permits for wind measurement towers shall be issued for a period of two years and shall be renewable upon application to the Planning Board. An application for a wind measurement tower shall include:

- 1) Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.
- 2) Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.
- 3) Proposed development plan.
- 4) Decommissioning plan, including a security bond for removal, should the tower not be converted to permanent use for wind energy generation.

Other development standards as set forth above for wind energy facilities shall be applied to the maximum extent practicable, as determined by the Planning Board, recognizing the temporary nature of wind measurement towers. The Planning Board's approval of the wind measurement tower application is considered a Type 2 action under SEQRA.

O. Small Wind Turbines. The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind turbine applications designed for residential, farm, institutional and business use on the same parcel. Such applications shall be processed in the same manner as those prescribed above for all wind energy facilities, but may be appropriately modified by the Planning Board to reflect the scale of the proposed facility. All small wind turbines shall comply with the following standards and, to the maximum extent practicable, with all other requirements of this law not in conflict herewith:

- 1) A system shall be located on a lot a minimum of one acre in size; however, this requirement can be met by multiple owners submitting a joint application.
- 2) Only one small wind turbine per acre shall be allowed,
- 3) Small wind turbine shall be used primarily to reduce the on-site consumption of electricity.
- 4) Total heights shall be a maximum of 150 feet.
- 5) Tower-climbing apparatus shall be located no closer than 12 feet from the ground, a locked anti-climb device shall be installed on the tower or a locked, protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access.

- 6) Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

P. Fees

- 1) Permit Fee for Commercial WECS Permit: \$100 per megawatt of rated maximum capacity.
- 2) Retention of Expert Assistance and Reimbursement by Applicant
  - A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to site inspections, the construction and modification of the sites, once permitted, and any requests for recertification.
  - B. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the

Town in connection with the review of the application.

- I. The initial deposit shall be \$8,500.00 and shall be placed with the Town preceding the pre-application meeting.
- II. The Town shall maintain a separate escrow account for all such funds. The Towns consultants/experts shall invoice the Town for their services in reviewing the application, including the modification of the site, once permitted.
- III, If, at any time during the process, this account has a balance of less than \$2,500.00, the application shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.
- IV. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

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

## **Section 541 Communication Tower and/or Facilities**

**A) Application Requirements** - Applicants for a permit to place, construct, or modify Communication Tower and/or Facilities within the Town of Walton shall submit the following information to the Town Planning Board:

1) State Environmental Quality Review Act (SEQRA) Environmental Assessment Form and Visual Environmental Assessment Form (Visual EAF), landscaping plan and visual assessment report including appropriate modeling and photography assessing the visibility from key viewpoints identified in the Visual EAF, existing tree lines, potential bird mortality from migratory bird corridors, surrounding wetlands, known nesting and breeding areas, and proposed elevations. Construction of a facility shall be considered a Type 1 action under SEQRA.

2) Preliminary report prepared by a licensed professional engineer describing:

- a. Feasibility of co-location on existing structures and telecommunications facilities.
- b. Applicant's full map and grid coverage and/or signal strengths in the Town.
- c. Surrounding topography in relation to line of sight transmission.
- d. Available road access, electric power and land-based telephone lines and/or microwave link capability.
- e. Required improvements for construction activities, including those within the public's right of way or land or controlled by the Town of Walton.
- f. Identity of location, ownership and usage of currently existing telecommunications facilities within the Town.
- g. Plans for construction of telecommunications accessory equipment building or structures and landscaping.
- h. Proposed mitigation measures for visual impacts.
- i. Proposed safety measures.

3) In the case of an application for a telecommunications tower, additional information describing: the telecommunications tower's height and design including a cross-section of the structure; the telecommunications tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications antennas it can accommodate and the basis of calculation of capacity.

4) In the case of a telecommunications antenna mounted on an existing structure, additional information shall be provided indicating: the existing

structure's suitability to accept the telecommunications antenna; the proposed method of affixing the telecommunications antenna to the structure; and complete details of all fixtures and couplings including their precise point of attachment shall be indicated.

5) Demonstration of a need for proposed telecommunications facility and, when applicable, explanation describing the impracticality of upgrading or expanding an existing site.

6) Demonstration that the proposed site is the most appropriate site within the immediate area for the location of the telecommunications facility.

7) Inventory of existing telecommunications facilities within the Town outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility.

8) Description of the applicant's long range plans which project market demand and long range facility expansion needs within the Town.

9) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.

10) A map showing the location of the premises for which the permit is sought and sketch plan showing all features of the facility necessary for providing road access, electrical service, land-based telephone line connection and/or microwave link capability within the boundaries of the proposed location.

11) Certification by a New York State Licensed Professional Engineer (P.E.) that the facility will comply with Federal Communications Commission (FCC) regulations for radio frequency ("RF") emissions.

12) Such other information as may be required by the Town Planning Board or its engineer or consultant.

13) When available, a copy of the FCC License for the facility.

14) In the event that the Town Planning Board determines that the use of a professional(s) qualified to review the required plans, reports, and other technical information submitted in support of an application for a



Communication Tower and Facilities is necessary, the applicant shall establish an escrow account to reimburse the Town for the costs incurred.

15) Where feasible and practical, plans for the tower shall include sections which can be removed as the need for height decreases.

16) Where a tower is over 199 feet in height, plans shall be made to mitigate migratory bird paths affected by the tower and its lighting to minimize bird kills. This part shall include a continuing obligation to modify said tower with light patterns, ultrasound, bird diverters, predator calls, noise makers, streamers, sleeves, balls, paint, and other methods of reducing bird kills as they become generally accepted for that purpose in the industry and financially feasible.

**B. Standards** - The development of communication towers, facilities and related structures shall be permitted by approval by the Town Planning Board. Communication Towers and Facilities shall be subject to the following requirements.

1) Specific Provisions

a. Co-location preferred - Whenever possible, new telecommunications facilities shall be sited on existing telecommunications facilities or in areas already in use for telecommunications and/or utility distribution lines in order to preserve the aesthetic and scenic value of the Town. Except in cases where mechanical, structural or regulatory factors prevent co-location, applicants cannot be denied or denied space on a telecommunications tower provided that the applicant pays a reasonable fee to the owner of the telecommunications tower.

b. Location - Applicants for telecommunications towers shall locate, erect and site towers in accordance with the following priorities with (i) being the highest priority and (v) being the lowest priority.

- i. On existing towers or structures.
- ii. Co-location on a site with existing towers or structures.
- iii. On other properties in the Town of Walton.
- iv. On Town of Walton properties.
- v. Other developed municipal properties.
  - a. Delaware County properties.
  - b. New York State properties.

Upon filing an application for a permit for a telecommunications tower, the applicant shall submit a report to the Town Planning Board demonstrating the

technological reason the site selection was selected. If the site selected is not the highest priority as listed above, a detailed explanation as to why sites of a higher priority were not selected shall be included in the application.

Notwithstanding the above, the Town Planning Board may approve a site location within the list of priority areas if the alternative site provides reasonable services and meets the minimum needs of the service provider and the Board, in writing, finds it is in the best interest of the health, safety, and general welfare of the Town.

2) Approval for Personal Wireless Telecommunications Service Facilities shall be subject to the following general conditions.

a. Separation Distance - Telecommunications facilities shall be separated by a distance of no less than 500 feet from a property line or road and no less than 1000 feet from public buildings, day-care centers, schools, libraries, senior citizen's centers, churches, and recreational facilities.

b. Setbacks - All telecommunications facilities shall be set back a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer plus an additional 50% of its fall zone. Additional set-backs may be required by the Town Planning Board in order to provide for the public safety, health and welfare.

c. Minimal Visual Impacts - All telecommunications towers and telecommunications antennas shall be sited to have the least possible visual effect on the environment. No tower shall be located so that the total length of the tower rises above the ridge tree canopy.

d. Lighting - Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.

e. Material and Paint - Telecommunications towers and telecommunications antennas shall be of a galvanized finish or painted gray above the surrounding tree lines, and gray or green below the tree lines; the mountings of telecommunications antennas should be non-reflective and of the appropriate color to blend with their background.

f. Signs - No portion of any telecommunications tower and facilities shall be used for advertising purposes.

g. Screening

h. Vegetative Screening

i. Where a personal wireless telecommunications facility abuts residential or public property, the following vegetative screening shall be provided: Native evergreen shrubs or trees capable of forming a continuous hedge at least five (5) feet in height within two (2) years of planting to effectively screen a telecommunications tower base and accessory facilities.

ii. Additional screening may be required by the Town Planning Board to screen portions of the telecommunications tower from nearby residential property or important views.

i. Architectural Screening - Creative design measures to camouflage facilities by integrating them with existing buildings and among other existing uses is preferred.

j. Height - The height of telecommunications towers should be limited to the minimum required to provide the proposed telecommunications services.

k. Access Road - Existing roadways shall be used for access to the site whenever possible.

l. Telecommunications Accessory Structures - Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures shall be screened, placed underground, depressed, earth bermed or sited below the ridge line to the greatest extent feasible particularly in areas of high visibility.

m. Telecommunications Antennas - Due to their high visibility, dish and parabolic telecommunications antennas shall be located at as low an elevation as possible without compromising the function of the device, preferably on the sides of buildings or ground mounted on slopes below the ridge line wherever possible, rather than elevated on telecommunications towers. Microwave and satellite dishes should be of mesh construction wherever possible.

n. Utility Service - Electrical and land-based telephone and/or microwave utilities extended to serve telecommunications sites shall be underground if determined appropriate by the Planning Board.

o. Security Provisions - Each site shall have a security program including physical features such as fencing, anti-climbing devices or elevating ladders on telecommunications towers and/or monitoring either by staff or electronic devices, to prevent unauthorized access and vandalism.

p. Safe Zone - Telecommunications towers shall be designed so that in the event of failure, they will fall within the set back area of the site and/or away from adjacent development.

q. Noise - Noise producing equipment shall be sited and/or insulated to minimize noise impacts on adjacent properties.

r. Annual Inspection and Report - Telecommunications towers over 100 feet in height shall be inspected annually by a licensed professional engineer, and a copy of the inspection report submitted to the Town Building Inspector and Town Board.

s. Removal - All telecommunications facilities, including, but not limited to antennas, towers and accessory structures shall be dismantled and removed from the site when they have been inoperative or abandoned for two (2) years. Applicants may be required to post a bond or other suitable undertaking and shall provide a written contract with the Town agreeing to be fully responsible for removal and indemnifying the Town for the costs of removal as a condition of the Site Plan approval in order to guaranty removal of abandoned structures. Such bond or cash value undertaking shall be no less that 150% of the current cost of removal and shall be renewed every five (5) years and adjusted by the Town Planning Board. Removal shall include reclamation of the tower site.

t. A Post-Installation - Field Report Identifying the facilities coverage area, the telecommunications tower's maximum capacity, committed capacity and unused capacity, if any, and co-located users of the telecommunications tower shall be submitted to the Town within 90 days of completion.

u. When available, a copy of the FCC License. No building permit will be issued except to a provider producing proof of an agreement for

attachment with a FCC licensed provider or a letter of intent from a provider with an FCC license.

v. Prior to the issuance of a building permit, a policy of liability insurance in the amount of \$1,000,000.00 naming the Town of Walton as an additional insured, will be provided by applicant covering the Town of Walton for damage for injury to person or property which may result from the failure of a tower or any part of it, including but not limited to costs of a legal defense or negotiation, to be continued until the facility is completely dismantled.

w. All towers shall provide at no cost, upon request up to two (2) antenna spaces for Town and County governments on the top third of a tower. These spaces shall not be leased or rented by the municipality to third parties. The Town Board may waive requirements for these spaces, with or without fees. The placement of public equipment shall be by separate lease with the provider as landlord.

x. Maintenance/upkeep of the parcel grounds vegetation screening and access road will be the sole responsibility of the Communication Tower and Facilities owner and/or the parcel owner if the Communication Tower and Facilities owner leases the property.

3) The Town Planning Board may grant the Permit, deny the Permit or grant the Permit with Written Stated Conditions.

Denial of the application shall be by written decision based upon substantial evidence submitted to the Board.

All decisions shall address the projected impact of the facility on the area, alternate sites (including existing facilities) and whether or not they are viable options, if there are existing gaps in coverage, capacity and coverage weaknesses projected for the facility, and whether or not existing facilities provide adequate service.

4) Application fees and other costs to the applicant shall be set by the Town Council by resolution.

**C. Appeals** - Any person, firm or corporation aggrieved by any decision of the Planning Board relative to a cell tower site plan may have such decision reviewed by a special term of the Supreme Court in the manner provided by Article 78 of the Civil Practice Law and Rules.

**D. Waivers** - Where the Planning Board finds that extraordinary hardship may result from strict compliance with this ordinance, the Planning Board shall have the authority to vary or modify the application of any of the requirements herein provided that any such waiver will not have the effect of nullifying the spirit and intent of this ordinance.

**E. Penalties** - Any person, firm, or corporation who violates any provision of this Local Law shall be guilty of an offense against said Local Law and subject to a fine of not more than \$500 or imprisonment for a period of not more than six (6) months, or both such fine and imprisonment for a first offense; for conviction of a second offense both of which were committed within a period of five (5) years, punishable by a fine not less than \$500 nor more than \$1000 or imprisonment for a period of not more than six (6) months, or both, and, upon conviction for a third or subsequent offense all which were committed within a period of five (5) years, punishable by a fine not less than \$1000 nor more than \$2000 or imprisonment for a period of not more than six (6) months, or both. The imposition of penalties for any violation of this Local Law shall not excuse the violation or permit it to continue. The application of the above penalty or penalties or the prosecution of the violation of the provisions of this Local Law shall not be held to prevent the enforced removal of conditions prohibited by this Local Law. Each week thereof shall constitute a separate and distinct violation.

**F. Fees** - The application fee shall be \$500.

## ARTICLE VI. SPECIAL PERMITS

### **Section 601 Purpose**

It is the intent of this section to use Special Permits to control the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location.

### **Section 602 Administration**

The Town planning Board will administer the review and granting of Special Permits. Any addition or alteration to uses and buildings authorized by Special Permit requires approval of the Planning Board.

### **Section 603 Procedure**

- A) The applicant shall submit a completed application to the Planning Board a minimum of 5 business days prior to the regular monthly meeting. A completed Environmental Assessment Form shall be submitted at this time in accordance with the State Environmental Quality Review Act.
- B) The application for a Special Permit may be made by the owner of the property or other person with written approval of the owner. Such application shall include a site plan in accordance with Section VII, Site Plan Review.
- C) At the regular or special meeting, when the completed application is reviewed, the Planning Board shall determine whether a public hearing is necessary. A public hearing must be held within 62 days after the completed application is submitted to the Planning Board and with ten (10) days prior public notice in the official newspaper. In addition, the applicant shall give notice in writing by Certified Mail to all property owners of the land immediately adjacent to, extending five-hundred (500') feet there from and directly opposite thereto, extending five-hundred (500') feet from the street frontage of the land in said application. If in an agricultural district, such notice shall be given to all property owners within five-hundred feet (500') of the lot boundary. The applicant shall mail these notices at least ten (10) ten days in advance of the hearing and furnish the Planning Board with Post Office receipts as proof of notification.
- D) The Planning Board shall render a decision, at a regular or special meeting, either approving, approving with conditions, or denying a Special Permit

application within 45 days of the public hearing or, if no hearing is held, within 45 days of receipt of the completed application.

- E) A Special Permit shall be construed to be authorization for only one particular special use and shall expire if the special use cease for more than six months for any reason. Special uses inherently of a seasonal nature, including, but not limited to, nature centers, campgrounds, recreation areas, and roadside stands, shall have a period extended to 12 months prior to expiration of special permits.

## **Section 604 Standards Applicable to All Special Permit Uses**

Before granting a Special Permit, the Planning Board shall be satisfied that all of the following conditions have been met. The Planning Board is authorized to condition Special Permits to ensure compliance with these conditions. (See Section 605, Conditions).

- A) The purposed development is compatible with nearby properties and will not discourage the appropriate development and use of adjacent properties.
- B) Traffic generated by the proposed development can be adequately and safely served by the existing and proposed roads.
- C) The proposed development will not adversely affect community appearance.
- D) The proposed development can be served by necessary community facilities and will not overtax such community facilities. This includes providing adequate access for emergency vehicles as required by Town Law Section 280-A.
- E) Operation of any special use shall not be more objectionable to nearby properties by reason of dust, odor, noise, fumes, vibration, excessive lighting, or water pollution than would the operation of any permitted use.
- F) Special uses shall not conflict with the Comprehensive Plan.
- G) Solar access of adjacent properties is not obstructed by said use.
- H) All State Environmental Quality Review requirements have been met.
- I) No Special Permit shall be issued for an existing use on a property where there is an existing violation of this Ordinance or other town law or regulation.
- J) All agricultural district review requirements have been met.



## **Section 605 Conditions**

The Planning Board, in granting Special Permits, may impose such conditions, safeguards and restrictions upon the proposed development as may be deemed necessary in the public interest to secure compliance with the provisions of this Ordinance.

Conditions may include, but are not limited to the following:

- A) The hours of operation
- B) Access to the subject property
- C) Protection of surface and groundwater
- D) Lighting of the site, to include intensity and shielding, so as not to adversely affect adjacent or nearby property owners
- E) Adequate sewer and water supplies
- F) Sound limitations as needed to ensure peaceful enjoyment of neighbors
- G) The location, size, height, design of building, walls, fences, landscaping and buffer yards
- H) Covenants, and/or homeowners' association for maintenance of applicable restrictions
- I) Timing or phasing of development
- J) Utilities underground
- K) Control of smoke, dust and odor
- L) Bonding as required to ensure standards are met and plans are implemented.

No Special Permit shall be issued for a use on a property where there is an existing violation of this Ordinance or other town law or regulation.

## **ARTICLE VII SITE PLAN REVIEW**

### **Section 701 Purpose**

This Article of the Walton Zoning Ordinance is enacted under the authority of Section 274-a of the Town Law of the State of New York to protect the health, safety, convenience and general welfare of the inhabitants of the Town. This Section regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires modification of development proposals to eliminate or minimize potential problems and nuisances.

The principal areas of concern are:

- A) The balancing of landowners' rights to use their land with the corresponding rights of abutting and neighboring landowners to live without undue disturbances
- B) The convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent areas or roads
- C) The adequacy of waste disposal methods and protection from pollution of surface or groundwater
- D) The protection of historic and natural environmental features on the site under review and in adjacent areas.

### **Section 702 Developments Requiring Site Plan Review**

Those development projects requiring Site Plan Review are listed on Schedule I. Unless specifically exempted from Site Plan Review, no permit for the construction, exterior alteration, relocation, occupancy, or change in use of any building shall be issued; no existing use shall be established or expanded in floor area except in conformity with a site plan approved by the Planning Board. The introduction of new materials or processes not previously associated with and existing use is also subject to site plan review.

### **Section 703 Exemptions from Site Plan Review**

Notwithstanding Schedule I, Site Plan Review shall not be required for:

- A) The construction or enlargement of any single-family or two-family dwelling, or building accessory to such dwelling

- B) The construction or alteration of any building used exclusively for agriculture, horticulture, or floriculture
- C) Construction or alteration providing for not more than two hundred (200) square feet total floor area after construction
- D) Home occupations are defined in Article II, Definitions
- E) Ordinary repair or maintenance of existing structures or uses
- F) Temporary structures related to the sale of agricultural products.

### **Section 704 Procedure**

- A) Prior to the submission of a formal site plan, a pre-submission conference may be held wherein the applicant shall meet in person with the Code Enforcement to discuss the proposed site plan so that the necessary subsequent steps may be undertaken with a clear understanding of the Town's requirements in matters relating to the development of this site.
- B) Within six (6) months following the pre-submission conference, five (5) copies of the site plan and any related information shall be submitted to the Code Enforcement Officer, accompanied by a fee in accordance with the schedule of fees of the Town of Walton, payable to the Town Clerk. If the application is not submitted within this six-month period, another pre-submission conference may be required. An Environmental Assessment Form, as required by the State Environmental Quality Review Act, shall also be submitted with the application.
- C) The Code Enforcement Officer shall certify on each site plan or amendment whether or not the application is complete in accordance with Section 706, Submission Requirements, and whether the plan meets the requirements of all Zoning Ordinance provisions other than those of this Article, such as setbacks, number of parking spaces, etc. The Code Enforcement Officer shall act to certify the application or return it to the applicant for completion or revision within ten (10) days of submission by the applicant.
- D) Following certification of a complete application, the Code Enforcement Officer shall forward the application to the Planning Board no later than ten (10) days prior to their next meeting.
- E) The Planning Board may, at its discretion, hold a public hearing on the application. Said hearing shall be held within sixty-two (62) days of submission

to the Planning Board of said application. The Planning Board shall give notice of the hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing. In addition, the applicant shall give notice in writing by Certified Mail to all property owners of the land immediately adjacent to, extending five-hundred feet (500') there from, and directly opposite thereto, extending five hundred feet (500') from the street frontage of land in said application. If in an agricultural district, such notice shall be given to all property owners within five-hundred (500') feet of the lot boundary. The applicant shall mail these notices at least ten (10) days in advance of the hearing and furnish the Planning Board with Post Office receipts as proof of notification.

- F) The Planning Board shall make a determination of significance of the proposed site plan according to SEQR. The time limitations of paragraph H) of this Section shall not apply until the conclusion of the SEQR process
- G) Whenever any Site Plan involves real property in an area described in Section 239-m of the General Municipal Law, said Special Use Permit shall be referred to the County Planning Board, which Board shall report its recommendations to the Town Planning Board. Failure of the County Planning Board to report within thirty (30) days may be construed to be approval.

The concurring vote of a majority plus one of the Town Planning Board shall be necessary to override County Planning recommendations of approval with modifications or disapproval.

In the event that the County Planning Board recommends modifications or disapproval of a referred matter and the Town Planning Board acts to the contrary, the Town Planning Board shall file a report of its final action with the County Planning Board within seven (7) days after final action

- H) The Planning Board shall, within 45 days of the public hearing, if one is held, or within 45 days of the date of the meeting at which the site plan was submitted , either:
  - 1) Approve the site plan if the Board finds that the plan meets the requirement of this Ordinance and any other applicable rules and regulations; or
  - 2) Condition approval of the site plan upon the applicant making certain changes or modifications to the plan, said conditions to be set forth in writing by the Board; or
  - 3) Disapprove the site plan, the reasons for such action to be set forth in writing by the Board.

Failure to act within the required time shall be deemed approval. Should the Planning Board need an additional thirty (30) days to consider the application, then they may do so with consent of the applicant. Said agreement shall be recorded in the minutes.

- I) Review of amendments to an approved site plan shall be acted upon in the same manner as the review of the original site plan.

## **Section 705 Enforcement**

- A) The Planning Board may require the posting of a bond or other similar performance guarantee to ensure compliance with the plan and stated conditions of approval. The Code Enforcement Officer may suspend any permit or license when work is not performed as required.
- B) Any Special Permit issued under this Article shall lapse within one year if a substantial use thereof has not commenced, except for good cause. The time required to pursue and await determination of a judicial appeal pursuant to Chapter 274- of the Town Law shall be included within the one-year time limit.
- C) The Planning Board may adopt additional detailed design guidelines and performance standards, as it deems necessary by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such standards and guidelines shall not become effective until approved by the Town Board.

## **Section 706 Submission Requirements**

- A) The site plan shall include the following data, details, and supporting plans. The number of pages submitted will depend on the proposal's size and complexity. All of the requirements must be met in each plan, except in accordance with B) of the Section.
- B) The Code Enforcement Officer may waive any of the requirements of Section 706, C) and D), or part thereof, prior to the submission of a formal site plan, when such requirements are not material to the project under review. The Planning Board may overrule any waivers so granted and require compliance with these requirements before accepting a site plan submission.
- C) Site plans shall be prepared to scale by a surveyor, registered professional engineer, architect, or landscape architect.

D) Items required for submission include:

- 1) Name of the project, boundaries, location maps showing site's location in the town, date, north arrow and scale of the plan.
- 2) Name and address of the owner of record, developer, and seal of the engineer, architect or landscape architect.
- 3) Name and addresses of all owners of record of abutting parcels and those within three hundred feet (300') of the property line.
- 4) All existing lot lines, easements, and right-of-way. Include area in acres or square feet, abutting land uses, and the location and use of structures within five hundred feet (500') of the site.
- 5) The location and use of all existing and proposed buildings and structures within the development. Include all dimensions of height and floor area, and show all exterior entrances, and all anticipated future additions and alterations.
- 6) The location of all present and proposed public and private ways, parking area, driveways, sidewalks, ramps, curbs, fences, paths, landscaping, and walls. Location, type, and screening details for all waste disposal containers shall also be shown.
- 7) The location, height, intensity, and bulb type (e.g., fluorescent, sodium incandescent) of all external lighting fixtures. The direction of illumination and methods to eliminate glare onto adjoining properties must also be shown.
- 8) The location, height, size, materials, and design of all proposed signage.
- 9) The location of all present and proposed utility systems including
  - a) sewage or septic system
  - b) water supply system
  - c) telephone, cable and electrical systems
  - d) storm drainage system including existing and proposed drain lines, culverts, catch basins, headwalls, end-walls, hydrants, manholes, and drainage swales.

The Planning Board may also request soil logs, soil profile analysis (deep test pits), percolation tests and storm water run-off calculations

for large developments or developments in environmentally-sensitive areas.

- 10) Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, excessive raising or lowering of the water table, and flooding of other properties, as applicable
- 11) Existing and proposed topography at a five foot (5') contour interval. All elevations shall refer to the nearest United States Coastal and Geodetic Bench Mark. If any portion of the parcel is within the 100-year flood plain, the area will be shown, and base flood elevations given. Indicate areas within the site where ground removal or filling is required, and give its approximate volume in cubic yards.
- 12) A landscape plan showing all existing natural land features, trees, forest cover and water sources, and all proposed changes to these features, including size and type of plant material, and erosion control measures. Water sources will include ponds, lakes, brooks, streams, wetlands, floodplains, and drainage retention areas.
- 13) Zoning district boundaries within one hundred feet (100') of the site's perimeter shall be drawn and identified on the plan.
- 14) Traffic flow patterns within the site, entrances and exits, loading and unloading area, curb cuts on the site and within one hundred feet (100') of the site.

The Planning Board may require a detailed traffic study for large developments or for those in heavy traffic areas to include:

- a) The projected number of motor vehicle trips to enter or leave the site, estimated for daily and peak hour's traffic level
- b) The projected traffic flow pattern including vehicular movement at all major intersections likely to be affected by the proposed use of the site.
- c) The impact of this traffic upon existing abutting public and private ways in relation to existing road capacities. Existing and proposed daily and peak hour traffic levels as well as road capacity levels shall also be given.

- 15) For new constructions or alterations to any existing building, a table containing the following information must be included:
- a) Area of building to be used for a particular use such as a retail operation, office, storage, etc.
  - b) Maximum number of employees
  - c) Maximum seating capacity, where applicable
  - d) Number of parking spaces existing and required for the intended use.
- 16) Elevation plans at a scale of 1/4"=1' for all exterior facades of the proposed structure(s) and/or existing facades, plus addition(s) showing design features and indicating the type and color of materials to be used.
- E) An Environmental Assessment Form (either a short or long form, depending upon the nature of the proposal) shall be submitted with the site plan to insure compliance with the New York State Environmental Quality Review Act (6NYCCR 617), to identify the potential environmental, social, and economic impacts of the project.
- F) A completed agricultural data statement must be submitted to the Planning Board if the land is within an agricultural district or within 500 feet of land included in an agricultural district.

## **Section 707 Standards for Review**

The Planning Board shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below. Pursuant to Section 705, paragraph C) detailed design guidelines and performance standards may be adopted by the Planning Board to guide decisions with respect to these objectives, and to help ensure consistency in the review of all applications.

A) Legal

Conformance with the provisions of the Local Laws and Ordinances of the Town, the Town Law of New York State, and all applicable rules and regulations of State and Federal agencies.

B) Traffic

Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.



C) Parking

Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate parking, adequate lighting, and internal traffic.

D) Public Services

Reasonable demands placed on public services and infrastructure

E) Pollution Control

Adequacy of methods for sewage and refuse disposal and the protection from pollution of both surface waters and groundwater. This includes minimizing soil erosion both during and after construction

F) Nuisances

Protection of abutting properties and town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, storm water runoff, etc.

G) Existing Vegetation

Minimizing the area over which existing vegetation is to be removed. Where tree removal is required, special attention shall be given to planting of replacement trees.

H) Amenities

The applicant's efforts to integrate the proposed development into existing landscape through design features, such as vegetative buffers, roadside plantings, and the retention of open space agricultural land.

I) Town Character

The building setbacks, area and location of parking, architectural compatibility, signage, and landscaping of the development, and how these features harmonize with the surrounding landscape and the natural landscape.

## **ARTICLE VIII NONCONFORMING USES, STRUCTURES AND LOTS**

### **Section 801 Intent**

It is the intent of this Article to permit nonconforming lots, structures, and uses to continue until they are removed, but not to encourage their survival. Therefore, lots, structures and uses of land and/or structures which lawfully existed at the time of enactment of these regulations and which would be prohibited or restricted under the terms of this Ordinance may continue subject to the following provisions.

### **Section 802 Nonconformance**

A) Nonconforming lot

Any lot which legally existed at the time this Ordinance was enacted and which is deficient in depth, width, frontage, area or other dimensional requirements when compared to the present requirements of zoning district (see Sections 803 and 804).

B) Nonconforming Structure

Any structure, building or sign which legally existed at the time of enactment of this Ordinance and which is used for a permitted use, but does not conform to the present requirements of zoning district for size, dimensions or setbacks (See Sections 803 and 805).

C) Nonconforming Use

Any use of land, premises, building or structure, legally existing at the time of enactment of this Ordinance, which is not a permitted use, permitted accessory use or special use as specified in the regulations applicable to the zoning district in which such use is located (See Sections 803 and 806),

### **Section 803 General Provisions**

A) Construction Approved Prior to Enactment of This Ordinance

Nothing contained in the Ordinance shall require any change in plans, construction or designation of use of a building for which a building permit has

been heretofore issued and the construction of which shall have been diligently prosecuted within three (3) months of the date of such permit.

B) Transference

Rights granted to nonconforming lots, structures and uses pursuant to this article shall remain with the land when title is transferred.

C) No unlawful use of property existing at the time of enactment of this Ordinance shall be deemed a nonconforming use; no unlawful structure existing at the time of enactment of this Ordinance shall be deemed a nonconforming structure; no unlawful lot existing at the time of enactment of this Ordinance shall be deemed a nonconforming lot.

D) District Changes, Ordinance Amendments

Whenever the boundaries of a zoning district are changed so as to transfer an area from one district to another district of a different classification, or whenever the text of this Ordinance is changed, the provisions of this Article shall also apply to any use, structure or lot made nonconforming by district change or Ordinance amendment.

E) Existing Special Uses Deemed Conforming

Any use lawfully existing at the time of enactment of this Ordinance, in the zoning district in which such use is classified herein as a special use, shall, without further action, be deemed a conforming use; provided any extensions of or addition to such use shall require a special use permit and if applicable, site plan review.

**Section 804 Nonconforming Lots**

A) On any lot nonconforming because of insufficient width, side yard requirements shall be reduced in accordance with the following standards:

<b>Width of Lot At Front Yard Setback Line (Feet)</b>	<b>Minimum Side Yard Width</b>
Less than 55	5
55 but less than 65	8
65 but less than 75	10
75 but less than 85	12
85 but less than 100	15
More than 100	20

B) Depth or Area

On any lot nonconforming because of insufficient depth or area (acreage) front setback requirements shall not apply for additions to existing buildings located on such lots; provided such additions shall not exceed the present front line of the main structure if such main structure is located closer to the front property line than would be permitted by this Ordinance.

C) Subdivision

A nonconforming lot may be subdivided if every part of such lot is purchased by the owners of adjoining properties to increase the dimensions of such adjoining properties. Otherwise, the dimensions of a nonconforming lot may not be reduced.

### **Section 805 Nonconforming Structures**

A) Nonconforming structures may be enlarged or altered provided construction will not result in the increase of any nonconformity in height, setback, lot coverage or other dimensional requirement; all new construction shall conform to height, setback, size, lot coverage and other applicable dimensional requirements.

B) Nothing in this Article shall prevent normal maintenance and repair of any nonconforming building or structure.

C) No nonconforming structure shall be moved to another location where such building or structure would also be nonconforming.

D) Any nonconforming structure may be restored or reconstructed after being destroyed or damaged by fire, accident or other act of God provided that the restoration or reconstruction is started within twelve (12) months and completed within eighteen (18) months after such damage is incurred.

### **Section 806 Nonconforming Uses**

A) Nonconforming Use of Land

Where no building is involved, the nonconforming use of land may be continued, provided however:

1) That no such nonconforming use shall be enlarged or increased, nor shall it be extended to occupy a greater area of land than that lawfully occupied

by such use at the time of the enactment of this Ordinance, unless specifically allowed by other provisions hereof.

- 2) That no such nonconforming use be moved in whole or in part to any other portion of the lot or parcel of land lawfully occupied by such nonconforming use at the time of enactment of this Ordinance.
- 3) That, if such nonconforming use of land or any portion thereof ceases for any reason for any continuous period of more than one year, or is changed to a conforming use, any future use of the land shall be in conformity with the provisions of the Ordinance.
- 4) That no nonconforming use of land shall be changed to another nonconforming use.

B) Nonconforming Use of Structures

No building or structure used for a nonconforming use shall be enlarged, extended or moved nor additional structures allowed; however, the Zoning Board of Appeals may grant a special use permit allowing a building or structure containing the nonconforming use to be enlarged or an additional structure to be constructed to an extent not exceeding 25 per cent of the gross floor area of the existing building or buildings devoted to a nonconforming use at the time of enactment of this Ordinance. The Board shall apply the standards of paragraph (D) below.

- C) Once changed to a conforming use, the use of any structure shall not be permitted to revert to a nonconforming use; however, the Zoning Board of Appeals may grant a special use permit allowing nonconforming use of a structure to be changed to another nonconforming use. The Board shall apply the standard of paragraph D) below.

- D) In granting special use permits for changes permitted in paragraphs B) and C), the Zoning Board of Appeals shall find the following:

- 1) The procedural requirements of Article VI, Section 603, and if applicable, Article VII, Site Plan Review, have been met. (Note: The Zoning Board of Appeals shall act as the administrative agent responsible for holding hearings and carrying out the procedural requirements for these special use permits.)

- 2) The applicant has shown that the proposed change will be no more objectionable in external effects than the existing nonconforming use with respect to:
  - a) Traffic generation and congestion, including truck, passenger car and pedestrian traffic
  - b) Noise, smoke, dust, noxious matter, heat, glare, vibration
  - c) Storage and waste disposal
  - d) Appearance
- E) Maintenance and repair work as is required to keep a structure housing a nonconforming use in sound condition shall be permitted.
- F) Any nonconforming use may be extended throughout any parts of the building which were manifestly arranged or designed for such use at the time of enactment of the Ordinance.
- G) Whenever a nonconforming use of a structure has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be conforming to the provisions of this Ordinance. Discontinuance necessary pending action by probate court shall not be counted as part of the one-year period.
- H) If a building or structure or part thereof containing a nonconforming use has been damaged or partially destroyed by any cause, it may not be reconstructed or restored unless reconstruction or restoration plans are submitted to the Zoning Board of Appeals for approval within twelve (12) months of said destruction damage. Such nonconforming use shall be reconstructed or restored with the same or less floor area and cubic content, and with the same or improved site layout as that of the original structure. This paragraph shall only apply if the damage exceeds (33) per cent of the value of the structure at the time of damage.

## **Section 807 Mobile Homes**

Existing mobile homes that, for whatever reason, are to be replaced on the same lot and/or on the same site, shall only be replaced with a mobile home meeting the requirements of this Ordinance and the construction standards of the New York State Uniform Fire and Building Code.

## **ARTICLE IX ADMINISTRATION**

### **Section 901 Enforcement**

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

### **Section 902 Duties and Procedures of the Code Enforcement Officer**

A) Administer the Zoning Ordinance

The Code Enforcement Officer shall review all applications for building permits and, if the minimum requirements of this Code are met, he shall issue a Zoning Permit.

If the applicant's plans do not meet the zoning requirements, he must deny the Zoning Permit. The Code Enforcement Officer may not use discretionary judgment. He must enforce the "Letter of the Law".

B) Referral to the Zoning Board of Appeals

An applicant, after he has been denied a Zoning Permit, may appeal the Code Enforcement Officer's findings to the Zoning Board of Appeals (ZBA) for an interpretation or a variance. Should an appeal be requested, the Code Enforcement Officer shall notify the Secretary of the Zoning Board Appeals of the request and forward all necessary supporting information.

C) Referral to Town Planning Board

Any Application for a Special Permit, change of zoning district or use that requires a Site Plan Review shall be forwarded by the Code Enforcement Officer to the Secretary of the Town Planning Board along with all supporting information.

D) Cite Zoning Violations

For any plans, construction, building, use of premise found in violation of this Ordinance, the Code Enforcement Officer shall order the responsible party, in

writing, to remedy the conditions. He shall have the authority to issue a stop order to constrain the continuance of violation.

E) Report to Town Board

A monthly report to the Town Board describing and enumerating actions taken and Zoning Permits issued shall be given.

F) Public Record

The Code Enforcement Officer shall file all permit actions with the Town Clerk.

**Section 903 Permits Required**

The Building Inspector shall not issue a Building Permit unless and until the Code Enforcement Officer has issued a Zoning Permit or determined that a Zoning Permit is not required.

No use or structure shall be established, erected nor land developed until a Zoning Permit has been issued by the Code Enforcement Officer who shall issue such permits in accordance with regulations in this code.

A) Pre-application Conference with Planning Board

Pre-application conferences with the Town's Planning Board are encouraged for all applicants seeking permits for nonresidential uses or nonfarm uses.

B) Application

All applications for Zoning Permits shall be in writing, signed by the owner, on forms furnished by the Code Enforcement Officer and shall be filed with the officer and briefly state:

- 1) Nature and definite purpose of the building or use sought.
- 2) Description of the property and buildings to be placed thereon.
- 3) Statement of any restrictions by deed or other instrument of record.
- 4) An agreement to comply with this Ordinance and all other laws, ordinances and regulations that may be applicable.



- 5) Such other information as the Town Board, the Board of Appeals or Code Enforcement Officer may require.
- 6) Evidence that application for Sewage Disposal Permit from the New York City Department of Environmental Protection, Bureau of Water Supply, has been made.

C) Action

The Code Enforcement Officer shall act upon all applications for Zoning Permits within 20 working days from the day of application. Such official shall issue or refuse to issue such permits.

D) Refusal

Where the proposed construction, alteration or use of the building or lot is in violation of any of the provisions of this Ordinance or when a Special Permit or site plan approval is needed, the permit shall not be issued. Such refusal shall be in writing, a copy of which shall be sent to the applicant. Such refusal will enable the applicant to submit an appeal to the Zoning Board of Appeals, or the Town Board or Planning Board, as specified elsewhere in the Ordinance, for relief from the Code Enforcement Officer's decision.

E) Term

A Zoning Permit shall become void 12 months from the date of issuance unless substantial progress has been made since that date on the project described therein; provided, however, that the permit shall be renewed by the Code Enforcement Officer for an additional 12 months upon application therefore. Additional extensions shall be subject to approval by the Zoning Board of Appeals.

F) Exceptions

1) Farm Structures

No Zoning Permit shall be required for any farm building or use as defined in Article II of this Ordinance.

2) Maintenance and Repair

No Zoning Permit shall be required for normal maintenance and repair work, for painting, interior decoration, landscaping and the construction of a structure, such as a utility shed or animal shelter, where the total floor area is 144 square feet or less.

G) Environmental Assessment

Until authorized by appropriate lead agency, no building permit shall be issue for any proposed building or land use which would require environmental assessment in accordance with the State Environmental Quality review Act of 1975 and any County or Town rules and regulations enacted pursuant thereto. Such application shall be referred to the appropriate lead agency for a determination as to whether an environmental impact assessment will be required.

H) Fees

All fees shall be paid at the office of the Town Clerk upon filing an application. Fees shall be in accordance with the Town of Walton standard fee schedule.

**Section 904 Certificate of Compliance**

A) Applicability

- 1) No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Compliance shall have been issued by the Code Enforcement Officer stating that the building or proposed use thereof complies with the provisions of this Ordinance.
- 2) No nonconforming use shall be maintained, renewed, changed or extended without a Certificate of Compliance and/or Certificate of Existing Use having first been issued by the Code Enforcement Officer.
- 3) All Certificates of Compliance shall be applied for coincident with the Application for a Zoning Permit. Said Certificate shall be issued within 10 days after the erection or alteration shall have been approved as complying with the provisions of this Ordinance.
- 4) The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.

- 5) No permit for excavation for, or the erection or alteration of, or repair to any building shall be issued until an application has been made for a Certificate of Compliance.
- 6) The Building Inspector shall not issue a Certificate of Occupancy unless and until the Code Enforcement Officer has issued the Certificate of Compliance.

B) Refusal

If the Code Enforcement Officer, after such final inspection, refuses to issue a Certificate of Compliance, he shall state such refusal in writing with the cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated on the application.

C) Temporary Certificate of Compliance

If use or occupancy of land, a building, or part thereof, is desired prior to completion of all details proposed in the application for which a Zoning Permit was issued, the Planning Board, upon request, may authorize the Code Enforcement Officer to issue a temporary Certificate of Compliance. A letter of credit, or equal security, of sufficient amount to complete all unfinished improvements, may be required by the Planning Board before a Temporary Certificate is authorized.

## **Section 905 Board of Appeals**

A) Creation, Appointment and Organization

A Board of Appeals shall consist of five members appointed in accordance with Section 267 of the Town Law. The Town Board shall designate a chairman, and from its membership the Board of Appeals shall appoint a secretary and shall prescribe rules for the conduct of its affairs. No person who is a member of the Town Board shall be eligible for membership on such Board Appeals.

B) Power and Duties

The Board of Appeals shall have all the powers and duties prescribed by statute and by this Ordinance, which are more particularly specified as follows:

1) Interpretation

Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of the Ordinance, including determination of the exact location of a district boundary if there is uncertainty with respect thereto.

2) Appeals for Variances

Upon denial of a building permit by the Code Enforcement Office, the Zoning Board of Appeals shall hear requests for variances.

3) Area Variance

a) Area variances may be granted where setback, frontage, lot size, density or yard requirements of this Ordinance cannot be reasonably met. The Zoning Board of Appeals, in its findings, must find that "Practical Difficulty" was present.

b) In determining "Practical Difficulty", the Zoning Board of Appeals shall respond in its findings to each of the following questions:

i) How substantial the variance is in relation to the zoning requirement.

ii) Whether a substantial change will be produced in the character of the neighborhood, or whether a substantial detriment to adjoining properties will be created.

iii) Whether the difficulty can be eliminated by some method other than a variance which is feasible for the applicant to pursue. In the case of side yard variances in particular, it is frequently feasible, proper and possible for the applicant to alter the plot plan to locate a proposed structure or addition in a new location which does not require a variance.

iv) Whether, in view of the manner in which the difficulty arose and in consideration of the above factors, the interests of justice will be served by allowing the variance.

v) Proof of significant economic injury or inability to improve access to solar radiation for energy uses, may be grounds for granting area variance. In granting any area variance the

Board of Appeals may/shall prescribe any conditions that it deems necessary or desirable.

- c) The following shall not be considered in determining “Practical Difficulty”.
  - i) The owner is merely inconvenienced.
  - ii) The owner is prevented from building a second or subsequent structure.
  - iii) The owner is prevented from building a structure as large as he/she would like, provided he/she can build one of reasonable size.
  - iv) A larger building will merely improve the efficiency of a business or yield more profit.

4) Use Variance

- a) A use variance may be granted by the Zoning Board of Appeals only after the findings of the Zoning Board of Appeals establish that “Unnecessary Hardship” exists.
- b) In determining whether “Unnecessary Hardship” exists, the Zoning Board of Appeal’s findings must establish each of the following criteria:
  - i) The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone. A promise of greater yield by allowing a prohibited use is not to be considered.
  - ii) The use to be authorized by the variance will not alter the essential character of the neighborhood and is compatible with the area.
  - iii) The use to be authorized by the variance will not be contradictory or detrimental to the spirit or intent of the Zoning District or Zoning Law itself.
  - iv) That the hardship claimed is not self-created.

- v) That unique circumstances of the property concerned or the intended use of the property exist and are not general or reoccurring on other properties as to make amendment of this Ordinance a more reasonable solution.

C) Procedure

- 1) All applications for variances shall be in writing on forms established by the Zoning Board of Appeals. They are available from the Code Enforcement Officer.
- 2) Every application shall refer to the specific provision of the law involved and establish the details of why the variance should be granted.
- 3) Upon receipt of the completed application, the Zoning Board of Appeals shall:
  - a) Schedule a public hearing within 62 days.
  - b) Arrange publication of notice of public hearing in the Town's official newspaper.
  - c) Authorize applicant to notify in writing all landowners within 500 feet of the applicant's parcel by Return Receipt Mail; the applicant shall furnish receipts to the Zoning Board of Appeals at the start of the public hearing.
  - d) All use variances submitted to the Board of Appeals shall be referred to the Planning Board for review as to the conformance with the objectives of the Comprehensive Plan. No decision shall be made by the Board of Appeals until such Planning Board review has been completed and a report issued. If the Planning Board fails to issue its report within 30 days, the Board of Appeals shall assume that a favorable report has been issued.
  - e) Refer application to the County Planning Board as required by General Municipal Law, Section 239, if required.
  - f) Determine whether a Draft Environmental Impact Statement should be required.

- 4) Within 60 days of the public hearing, Zoning Board of Appeals shall render a decision. If matter was referred to the County Planning Board, a copy of the Zoning Board of Appeals' findings and decision must be sent to the County Planning Board.

## **Section 906 Planning Board**

### A) General

In all cases where this Ordinance requires authorization and approval of plans by the Planning Board, no Zoning Permit shall be issued by the Code Enforcement Officer except upon authorization of and in conformity with the plans approved by the Planning Board

### B) Site Plan

The Town of Walton hereby authorizes the Planning Board to review and approve, to approve with modification, or to disapprove site plans.

### C) Special Permits

The Planning Board is further authorized to issue Special Permits upon determination that the public health, safety and welfare shall be served and neighboring properties will not be injured.

### D) Referrals and Reports

The Town Planning Board will receive referrals from the Zoning Board of Appeals on certain actions and will prepare and submit reports to the Zoning Board of Appeals.

## **Section 907 County Planning Board**

The Zoning Enabling Laws require that any of the following local zoning actions be referred to the County Planning prior to action by the local board. Any proposal for a special permit, variance site plan approval, change in the zoning law text or map (rezoning, amending and zoning law) which would affect the real property lying within a distance of 500 feet from the boundary of:

- A) Any county,
- B) Any town,
- C) Any village,

- D) Any existing or proposed county or state park,
- E) Any right-of-way of any county or state road or parkway,
- F) Any stream or canal owned by the county,
- G) Any existing or proposed county or state owned land on which a public building or institution is situated,
- H) Any farm operation within an agricultural district must be referred to the County Planning Board who shall have 30 days from date of County receipt to take action on the matter.

## **Section 908 Violations**

Any one or combination of the following three procedures may be used in response to violations of this Ordinance:

### A) Complaint of Violations

#### 1) Filing of Complaint

A complaint of violation of this Ordinance may be made by any resident, landowner or town official, including the Code Enforcement Officer. All such complaints must be in writing, signed and shall be filed with the Code Enforcement Officer who shall properly record such complaint and immediately investigate to determine the presence of a violation.

#### 2) Notice of Violation

Whenever, in the opinion of the Code Enforcement Officer, after examination and inspection, there appears to exist a violation of any provision of this Ordinance, or of any rule or regulation adopted pursuant thereto, the officer shall serve a written notice of violation, either personally or by Registered Mail to the owner or occupant of the subject property. Such notice shall inform the recipient of:

- a) The nature and details of such violation including a reference to the provisions of Ordinance allegedly being violated
- b) Recommended remedial action which, if taken, will effect compliance with the provisions of this Ordinance and rules and regulations adopted pursuant thereto



- c) The date by which the violation must be remedied or removed, which shall be no less than ten (10) days from the date the notice is issued.

3) Non compliance

In case of noncompliance with the notice of violation within the allotted time, the Code Enforcement Officer shall seek the penalties permitted in this Ordinance through Town Justice Court.

B) Stop Work Order

Whenever the Code Enforcement Officer has reasonable grounds to believe that work on any building or structure is being prosecuted in violation of this Ordinance, or not in conformity with a zoning permit, the Officer shall notify the property owner, the owner's agent or the person performing the work, to suspend all work. Any person shall forthwith stop such work and suspend all construction activities until the stop work order has been rescinded. Stop work order shall be made in writing, stating the nature of the violation, citing the sections of this Ordinance allegedly being violated and stating the conditions under which the work may be resumed. The order may be served upon a person to whom it is directed either by delivering personally to such person or by posting the order upon a conspicuous portion of the construction site and sending a copy of the order by Registered Mail.

- C) In addition to other remedies, any action or proceeding may be instituted in a court of competent jurisdiction to prevent construction, conversion, alteration, use maintenance, or occupancy of property in violation of or compel compliance with the Ordinance. Such action may be commenced by the Code Enforcement Officer, the Town Attorney, or by resolution of the Town Board. Nothing in this Section shall be deemed to preclude the right of resident taxpayers to institute such proceedings in accordance with the Town Law, Section 268.

**Section 909 Penalties**

A) Penalty for Offense

A violation of this Ordinance is hereby declared an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed fifteen (15) days, or both. Each week's continued violation shall constitute a separate additional violation.

B) Jurisdiction

For the purposes of conferring jurisdiction upon court and judicial officers generally, violation of this Ordinance shall be misdemeanors, and for such purposes only, all provisions of law relating to misdemeanors shall apply to such violations.

C) Justice Court

The Justice Court of the Town of Walton shall have original and trial jurisdiction over the summons and information filed charging a violation of this Ordinance. Trials shall be before the court without jury.

D) Limits of Powers

The Justice Court of the Town of Walton is not empowered to compel compliance with or restrain by injunction the violation of this Ordinance.

E) Civil Penalties

Any person violating this Ordinance shall be subject to a civil penalty enforceable and collectable by the Town in the amount of \$350 for each offense. Such penalty shall be collected by and in the name of the Town for each week that such violation shall continue. The civil penalty is in addition to the criminal penalties for an offense.

**Section 910 Amendments**

A) Official notice must be given and a public hearing held by the Town Board as required by law prior to approval of amendments or other such modifications as mentioned herein.

B) Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, filed in triplicate, and accompanied by the required fee and a completed Environmental Assessment Form as required by the State Environmental Quality Review Act.

C) Every such proposed amendment shall be referred to the County Planning Board, when applicable (see Section 907).

- D) Every such proposed amendment shall be referred to the Walton Town Planning Board for a report and recommendation prior to the public hearing. The Planning Board shall have 63 days to review the proposed amendment and may hold a public hearing after giving notice in the manner required of the Town Board. The Town Board may not hold a public hearing until the Planning Board has reported or until the 63 days has lapsed.
- E) In case, however, of a protest against such change, signed by the owners' of 20 per cent or more of the area of land included in such proposed change, or of that immediately adjacent extending 100 feet there from, or of that directly opposite thereto and extending 100 feet from street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least four members of the Town Board as set forth by Section 265 of the Town Law of the State of New York.
- F) Before adopting any proposed amendment to this Ordinance, the Town Board shall assess the environmental impact of such amendment in accordance with the State Environmental Quality Review Act and may determine that an environmental impact statement on such amendment be prepared.
- G) In approving subdivision plats which involve modifications of the zoning regulations, the Planning Board may make such zoning changes only after these have been disclosed at the public hearing required by the Subdivision Ordinance for the Town. Changes made pursuant to this section are at the discretion of the Planning Board and must be made in accordance with the provisions of Section 281 of Article 16 of Town Law of the State of New York and Section 107 B) of the Town of Walton Subdivision Regulations.

**TOWN OF WALTON ZONING ORDINANCE  
SCHEDULE I: TYPES OF USES AND DISTRICTS**

P- Permitted  
 SP – Special Permit  
 X – Not Permitted

<b><u>RESIDENTIAL USES</u></b>	R-2	R-5	I	SITE PLAN REQUIRED
One-Family Dwelling	P	P	X	
Two-Family Dwelling	P	P	X	
Multi-Family Dwelling*	SP	SP	X	X
Mobile Home	P	P	X	
Mobile Home Park*	SP	SP	X	X
Cluster Subdivision*	SP	SP	X	
Condominiums*	SP	SP	X	X
Townhouse Dwellings	SP	SP	X	X
<b><u>AGRICULTURE, NATURAL RESOURCE</u></b>				
Commercial Agriculture	P	P	P	
Farm	P	P	P	
Hobby Farm	P	P	P	
Commercial Gardening	P	P	P	
Forest Management	P	P	P	
Wildlife Management	P	P	P	
Bluestone Quarrying****	P	P	P	
<b><u>PUBLIC USE</u></b>				
Cultural Recreation	SP	SP	X	X
Educational Institution	SP	SP	X	X
Health Care Facility	SP	SP	X	X
Public Facilities/Utilities	SP	SP	SP	X
Sanitary Landfill	SP	SP	SP	X
Public Parks/Recreation Facilities	SP	SP	SP	X
Religious Institution	SP	SP	X	X
Airport/Heliport	SP	SP	X	X
Cemetery	SP	SP	X	X
<b><u>COMMERCIAL USES</u></b>				
Animal Hospital**	SP	X	X	X
Bed and Breakfast*	SP	SP	X	X
Building and Farm Supply**	SP	X	X	X
Business/Professional Office	SP	X	SP***	X
Campground/Summer Camp*	SP	SP	X	X
Car Wash**	SP	X	X	X

<b>COMMERCIAL USES (CONTINUED)</b>	R-2	R-5	I	SITE PLAN REQUIRED
Club**	SP	SP	X	X
Commercial Recreation**	SP	SP	X	X
Commercial storage, Enclosed**	SP	X	X	X
Drive-In Use**	SP	X	X	X
Eating and Drinking Establish	SP	X	X	X
Flea Market **	SP	X	X	X
Hotel*	SP	SP	X	X
Junkyard**	SP	SP	X	X
Kennel**	SP	SP	X	X
Mixed Use Buildings**	SP	SP	X	X
Model Home	SP	SP	X	X
Motel*	SP	SP	X	X
Motor Vehicle/Boat Trailer Sales	SP	X	X	X
Motor Vehicle/Repair Shop**	SP	X	X	X
Outdoor Recreation	SP	SP	SP	X
Public Garage**	SP	X	X	X
Retail Trade**	SP	X	X	X
Resort*	SP	SP	X	X
Seasonal Business**	SP	SP	X	X
Service Establishment**	SP	X	X	X
Service Station**	SP	X	X	X
Shopping Center**	SP	X	X	X
Trucking Terminal***	SP	X	P	X
<b><u>INDUSTRIAL USES –(**) BELOW</u></b>				
Alternative Energy Sys., Comm.	SP	SP	P	X
Bulk Storage	SP	SP	P	X
Enclosed Manufacturing	SP	X	P	X
Light Industry	SP	X	P	X
Mineral Extraction	SP	SP	SP	X
Oil and natural Gas Extraction	SP	SP	P	X
Research Testing Laboratory	SP	X	SP	X
Sawmill, Lumberyard	SP	SP	SP	X
Warehousing and Storage	SP	X	P	X
Wholesaling	SP	X	P	X
Gas and Fuel Distributor	SP	X	SP	X
Recycling Depository	SP	X	P	X
<b><u>MISCELLANEOUS</u></b>				
Construction in Flood Hazard Area	SP	SP	SP	X
Nonconforming Use	SP	SP	SP	X

\*See Section 522, Accommodations, for additional Dimensional requirements.

\*\*See Section 406G), Commercial and Industrial Uses.

\*\*\* Added in 1999 amendment to Zoning Law