

# TOWN OF HALCOTT

## Land Use Code

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# **ARTICLE I TITLE, ENACTING CLAUSE, SCOPE AND PURPOSES**

## **Section 1.1 Enacting Clause**

The Town Board of the Town of Halcott in Greene County, New York, acting under the authority of the Municipal Home Rule Law and Article 16 of the Town Law of the State of New York hereby adopts and enacts this Law as the Land Use Code of the Town of Halcott.

## **Section 1.2 Title and Scope**

This Local Law shall be known as the “Land Use Code of the Town of Halcott, Greene County, New York” and is a law regulating the density of development, design, and use of structures and land in the Town of Halcott pursuant to Section 261 of New York State Town law.

## **Section 1.3 Purposes**

This Land Use Code is created in accordance with, and as a means to implement the adopted Town of Halcott Comprehensive Plan to protect and promote public health, safety, and general welfare of the Town. Specifically, this law is intended to carry out the following goals:

- a. To preserve the rural character of the Town and its sensitive natural environment, including rural views and open spaces;
- b. To promote the use of land in accord with its capacity to accommodate development, and to restrict development where it would degrade the natural resources of the Town;
- c. To promote and protect the character and stability of established uses while allowing the flexibility and mixture of uses traditional in a rural community;
- d. To promote appropriate scale and design of land and buildings.
- e. To protect agriculture and aquaculture uses and encourage their future growth.
- f. To prevent excessive dense development.
- g. To facilitate the proper administration and appropriate and effective enforcement of this Law.

## **Section 1.4 Severability**

If any section or specific part or provision or standard of this code or the application thereof to any person or circumstance shall be determined to be invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this chapter or the

application thereof to other persons or circumstances. If any land use district boundary that may exist in the future is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

## **ARTICLE II ZONING MAP AND DISTRICTS**

### **Section 2.1 Official Zoning Map**

One district is shown and defined on the map accompanying this code, entitled “Town of Halcott Land Use Map,” and filed in the office of the Town Clerk. The Town of Halcott Land Use Map and all explanatory matter thereon are by this reference incorporated into this law.

### **Section 2.2 Purpose of Zoning District**

The Town of Halcott Land Use Law establishes one district. In addition to the general purpose of promoting the health, safety and general welfare of the residents of the Town, the purpose of this district is to protect and maintain its rural character, including the agriculture, open space and scenic resources of Halcott. Further purposes of this district are to maintain existing low density residential development patterns, to provide for the protection of the Town’s natural resources, to encourage the maintenance of native vegetation, to foster safe traffic circulation consistent with the rural character, and to encourage land uses that are compatible with agricultural uses, to promote active agricultural land uses, to maintain the Town’s farmland, to promote agriculture as a component of the local economy, and to maintain a critical mass of farmland so as to prevent further fragmentation of the Town’s existing farm resources.

## **ARTICLE III LAND USE AND LOT DIMENSION STANDARDS**

### **Section 3.1 Permitted Land Uses**

The following table contains a list of all land uses that are permitted in the Town of Halcott. This table is hereby incorporated into and made part of these regulations and shall be referred to as the “Land Use Schedule”. All land uses not included in this table shall be considered prohibited uses in the Town of Halcott.

Land uses are permitted in one of three ways as follows:

Permitted By Right: A use in this category which complies with the standards of this Code requires no further review or approval. However, issuance of a building permit or other local, regional, county, or state permits may be required.

Permitted By Right With Site Plan Review: A use in this category which complies with the standards of this Code but requires the issuance of site plan approval by the Planning Board in accord with Article VI.

Subject to Special use permit: A use in this category is permitted only upon the issuance of a special use permit by the Planning Board in accord with Article VIII. Such a use existing on the date of enactment of this Land Use Law shall be considered as if it were permitted by right and no further approvals shall be required. All uses requiring a special use permit must also receive site plan approval as per Article VI.

Some uses have additional requirements that shall be met. See also Article IV - Supplementary Standards.

Table 3.1: Land Use Schedule. All uses not included in this table shall be considered prohibited.

<b><u>Use (see also definitions)</u></b>	<b><u>Permitted by Right</u></b> (See Article VI to Determine if Site Plan Review is required.)	<b><u>Subject to Special Permit</u></b> (See Note 1)
<b><u>RESIDENTIAL</u></b>		
One and two family dwellings	X	
Mobile and Tiny Homes	X	
Home Occupations in Accessory or Secondary Structures	X	
Home Occupations in Principal Dwelling on Premises	X	
Commercial Campgrounds/ R.V. Parks		X
Conversion of Existing Structure into Multiple Dwelling		X
Bed and Breakfast	X	
Boarding House	X	
Accessory Apartment	X	
Residential Accessory (Secondary) Uses	X	
Residential Accessory (Secondary) Structure	X	
Solar Panels, roof or ground mounted for residential use (see Section 4.18)	X	
Wind Towers		X
Garage	X	
Baby Barn	X	
Garden Shed	X	

<b><u>Use (see also definitions)</u></b>	<b>Permitted by Right</b> (See Article VI to Determine if Site Plan Review is required.)	<b>Subject to Special Permit</b> (See Note 1)
<b><u>COMMERCIAL AGRICULTURE, FORESTRY AND MINING</u></b>		
Farm-stands and Nurseries	X	
Agriculture and Aquaculture	X	
Veterinary and Animal Services	X	
Forestry	X	
Sawmills (Define Scale in “definitions” section)		X
Mining & Quarrying		X
Logging	X	
Horse Stable or Riding Academy	X	
Animal Processing Facility		X
Agricultural Accessory Uses	X	
Solar Panels, roof or ground mounted for agricultural use (see Section 4.18)	X	
Agricultural Accessory Structure	X	
<b><u>MANUFACTURING AND CONSTRUCTION</u></b>		
General Contractors and Builders		X
Manufacturing and Assembling		X
Accessory Structures for Manuf/Construction Uses	X	
<b><u>WHOLESALE AND RETAIL TRADE</u></b>		
Wholesale Trade		X
Retail Stores and Shops		X
Motor Vehicle and Equipment Repair		X
Restaurants		X
Accessory Structures for Wholesale and Retail Trade	X	
<b><u>SERVICES AND OFFICE USES</u></b>		
Personal, Business and Financial Services		X
General and Professional Offices		X
Country Inns		X
Nursery School or Preschool		X
Membership Club		
Sports and Recreation Club, indoors or outdoors		X
Outdoor hunting, fishing & shooting club or preserve	X	
Public and Private Schools		X
Cultural Facilities		X
Churches and Places of Worship	X	
Government Offices and Facilities	X	
Health and Social Services Clinic or Office		X
Skilled Nursing Home		X
Cemeteries		X



<b>Use (see also definitions)</b>	<b>Permitted by Right</b> (See Article VI to Determine if Site Plan Review is required.)	<b>Subject to Special Permit</b> (See Note 1)
Utility Sub-Stations		X
Self-storage Facility		X
Signs 32 square feet or less, non-illuminated	X	
Signs greater than 32 square feet, or illuminated		X
Signs, Off-Premise no more than 3 square feet and non-illuminated		X
Travel Trailer or Recreational Vehicle	X	
Accessory Uses for Service and Office Uses	X	
<b>OTHER USES</b>		
Signs as per Section 4.5		X
Solar Panels, Utility as per Section 4.18		X
Solar Panels, Business Uses as per Section 4.18		X
Note 1: All uses subject to a special use permit shall also require site plan approval.		

## Section 3.2 Lot Area, Setbacks and Other Dimensions

3.2.1. Dimension Table. The following table establishes the lot size, setbacks and other dimensional requirements for all lots and buildings in the Town of Halcott. These minimum requirements may be increased or decreased by other provisions of this Code.

Table 3.2. Lot Area  
Dimensions

<b>Characteristic</b>	<b>Minimum</b>	<b>Notes</b>
Minimum Lot Area	5 acres minimum lot size	This can be reduced with a conservation subdivision layout pursuant to Article V of this Code.
Minimum Lot Width	200 feet	This can be reduced with a conservation subdivision layout pursuant to Article V of this Code.
Minimum Building Setback		See definitions for measuring setbacks. These may be reduced with a conservation subdivision layout pursuant to Article V of this Code.
Front	60 feet	All structures, accessory structures and accessory uses shall meet these setbacks except for parcels less than 5 acres in size, where the minimum side setback may be reduced to 25 feet.
Side	50 feet	
Rear	50 feet	
Maximum Building Height	35 feet	See 3.2.2 for height exceptions

### 3.2.2. Height Exceptions

The height limitations of this Law, as shown on Table 3.2 (Lot Requirements) shall not apply to the following structures, subject to paragraphs a and b of this Section:

- a. Church spires, silos, belfries, cupolas and domes not used for human occupancy; residential chimneys, ventilators, skylights, water tanks, bulkheads and other necessary mechanical appurtenances usually carried above the roof level; parapet walls or cornices non-commercial radio or television receiving antennas, public utility transmission towers or cable.
- b. No such structures shall, in their aggregate coverage, occupy more than 10 percent of the roof area on which it is located, or 5 percent of the lot area, if free standing.

### 3.2.3 Encroachments in Required Setbacks

No structures shall be placed within the required setback area except as follows:

- a. A building housing horses, farm animals or fowl may be constructed within 50 feet of a property line the adjacent property is owned or leased by the farm operation.
- b. Unenclosed storage of fertilizer, manure or pesticides shall take place no closer than 100 feet from a dwelling or on-site water supply, or that setback as may be required by Chapter 18 of the Rules of the City of New York: Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources.

### 3.2.4 Calculating and Monitoring Density of Development

- a. The maximum potential number of homes allowed on any given parcel shall be calculated based upon net acreage after exclusion of the following lands:
  1. Steep slopes, greater than 20%;
  2. Open Water including ponds, lakes, and streams;
  3. Wetlands, including New York State designated wetlands, and the required minimum 100-foot buffer, and wetlands regulated by the U.S. Army Corps of Engineers or any successor agency.
- b. The number of lots created shall be rounded up to the nearest whole number if the density calculation results in a fraction greater than 0.5.
- c. Monitoring Lot Splits. The adjusted density calculated pursuant to Section 3.2.4(a) above, is the total and maximum development potential for a particular parcel. Once this full development potential has been reached through subdivisions, no further density or subdivision activity shall be allowed. The following procedures have been established to help ensure proper monitoring and recording of subdivision activity.
  1. An official parcel map indicating existing lots, parcel numbers, and land

ownership shall be established by the Planning Board along with an official register containing this information. At the time of subdivision, the Planning Board shall record on this map and register the number of lots and dwelling units possible under this law for each parcel under review. The official map and register shall be maintained by the

Planning Board Secretary upon final approval of each subdivision and copies made available for inspection by the public.

2. A note on the final, approved plat shall be required that specifies the total number of dwelling units and which lot or lots shall carry with them the right to place any unused allocation of dwelling units the parcel may have in the future.
3. As allotments are used up, the official parcel map and register shall be updated to reflect these changes.

## **ARTICLE IV SUPPLEMENTARY STANDARDS**

### **Section 4.1 Principal Residential Buildings per Lot**

Only one principal single family residence may be placed on any one parcel or lot.

### **Section 4.2 Agricultural Uses and Riding Stables**

Nothing in this Law shall prevent the keeping of domestic or farm animals by a resident, nor shall it prevent the keeping of domestic or farm animals for profit.

### **Section 4.3 Home Occupations**

Any person may conduct a business, trade or profession from his residence, as an accessory use, in accord with the following standards:

- 4.3.1 A home occupation may be conducted within the principal building on the lot or in a permitted accessory structure. Site Plan approval may be required for home businesses conducted in new construction of an accessory structure for this purpose.
- 4.3.2 The floor area designed for and allotted to the home occupation shall not exceed 1,000 square feet of total floor area.
- 4.3.3 No more than four (4) persons who are not residents of the dwelling unit shall be employed in the home occupation.
- 4.3.4 No parking shall obstruct public roads.

4.3.5 The home occupation shall not result in traffic, noise, vibration, odor, smoke, glare or electrical interference beyond that normally generated by other permitted uses.

4.3.6 Business operation hours and lighting shall not adversely affect adjacent uses.

## **Section 4.4 Additional Standards for Specific Uses**

The following uses shall satisfy the criteria set forth below in addition to the standards set forth in Section 8.2:

### **4.4.1 Campgrounds/R.V. Parks**

Campgrounds, permanent are permitted by special use permit provided:

- a. The campground is intended for seasonal occupancy or use for tents or recreational vehicles.
- b. The overall density of the campground shall not exceed five (5) camping sites per acre or a maximum of 25 sites for the entire campground.
- c. On any single site only one travel trailer, camping trailer, or truck camper shall be permitted.
- d. Parking space for two (2) vehicles shall be provided on each camping or RV site.
- e. Any swimming pool shall comply with New York State law

### **4.4.2 Country Inns.**

- a. Country Inns may be owner – operated or professionally managed.
- b. The Country Inn may be an accessory use of an owner occupied residence.
- c. Exterior alterations may be made to existing buildings or structures. The Town promotes adaptive reuse of buildings, and encourages the preservation of any historical structures.
- d. No more than 14 guest rooms rated for double occupancy are permitted in a structure.
- e. The lot shall be of adequate size and shape to provide one parking spot for each guest room, employee and property owner, located to the rear of the residence where possible.
- f. The Planning Board may require fencing, earth berms, evergreen vegetation or other buffers to reduce visual conflicts with neighbors.
- g. No guest, employee or owner parking shall be located on the street.
- h. Country Inns shall be permitted no more than one suitable free standing sign to identify the property, in compliance with Section 4.5 of this code.
- i. Meals offered to the general public shall be allowed as an accessory use. When meals are offered to the general public all parking shall be in accordance with Section 4.9 of these regulations.

#### 4.4.3 Travel Trailers or Recreational Vehicles.

All travel trailers or recreational vehicles which remain parked on a property for more than ten days, except those identified in subsection (a), below shall seek site plan approval through the Planning Board as per this Code, per Chapter 18 of the Rules of the City of New York: Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources, and shall meet the following requirements:

- a. Exceptions:
  - 1. Travel trailers or recreational vehicles occupied by a landowner for a period of less than a year, who is constructing a new home or remodeling his present home.
  - 2. Unoccupied travel trailers or recreational vehicles stored on private property and which may occasionally be used as an extra bedroom for house guests.
  - 3. Travel trailers or recreational vehicles which remain on property for 10 days or less.
- b. All such vehicles shall be parked, located or stored within the boundaries of the property lines but shall not be used for residential or commercial purposes, except for overnight guests of the owner of the property for a period not to exceed 30 days.
- c. Parking of travel trailers or recreational vehicles shall not be within the road right-of-way.
- d. The Planning Board may require approval conditions including, but not limited to placement of the travel trailer or recreational vehicle away from steep slopes, wetlands, floodplains, and other critical environmental features, establishment of setbacks, or provision of buffers.

#### 4.4.4 Accessory Apartments

- a. Accessory residential structures and accessory apartments. One accessory apartment may be located in an accessory structure or a principal building per lot provided that the following conditions are met.
  - 1. Any lot may contain one accessory apartment by right, if it has at least the minimum acreage required. An accessory apartment may be located in the principal dwelling. An accessory apartment shall be no larger than 50% of the total square footage of the principal structure, not including an unfinished basement.
  - 2. All dwelling units and the structures in which they are situated shall meet all standards and requirements of the New York State Uniform Fire Prevention and Building Code as well as meet all requirements for septic and potable water from New York State and New York City.

#### 4.4.5 Mining

This local law regulates mines only subject to obtaining a mining permit from DEC. As such:

- a. Any conditions imposed by the Planning Board shall be subject to the provisions of Environmental Conservation Law Section 23-2711.
- b. Upon receipt by the Town of notification of an application to DEC for a permit for mining, the application shall be referred to the Planning Board and the Planning Board shall conduct a preliminary review under Section 23-2711 of the Environmental Conservation Law or its successor and shall issue its findings to the Department of Environmental Conservation within 30 days of the date of such referral was made.
- c. The applicant shall submit to the Planning Board copies of all correspondence and documentation between the applicant and DEC, specifically including but not limited to the mining application, mining plan, reclamation plan, reclamation bond(s), any Environmental Assessment from, any Environmental Impact Statement, any other documents required pursuant to SEQR Regulations, engineering reports and renewal application(s).
- d. At all times the applicant shall maintain a valid, in-force DEC mining permit which shall be available for inspection by the Town Code Enforcement Officer.
- e. The Planning Board, in granting such special use permit shall consider the health, safety and welfare of the community and shall address the following issues:
  1. Appropriate setbacks from property boundaries, public roads and/or rights of way. In this regard, no mining may take place within 75 feet of any property boundary.
  2. The existence or creation of manmade or natural barriers designed to provide adequate screening and the type, length, height, and location of same.
  3. The control of dust; so that dust does not migrate off the site.
  4. The hours of operation which shall not exceed 12 hours in any one day nor commence before 7:00 a.m. on any day nor extend beyond 7:00 p.m. on any day.
  5. The Planning Board may require suitable fencing for enclosing the property if it deems that this is appropriate.
  6. The applicant must demonstrate that the proposed access to and from the property will not create safety or traffic hazards on Town roads.
  7. Loading and hauling. Trucks and vehicles shall be loaded and operated so as not to spill gravel, rocks, sand or other earth materials upon the roads and highways utilized to and from the site, or otherwise impair or damage to the Town roads or Town highways.
  8. In considering whether to grant a special use permit, the Planning Board shall also determine that the project meets all of the requirements set forth in Article VIII of this code (Special use permits).

## **Section 4.5            Signs**

No sign shall be placed in a manner that will impede sight distances on or along the road. Off-premise signs shall be no more than three square feet in size permitted with a special use permit. Signs that are 32 square feet in size or less, and non-illuminated are permitted by right as per Table 3.1. Signs greater than 32 square feet or those that are illuminated shall require a special permit from the Planning Board. Off-premise signs also require a special permit from the Planning Board and shall be no larger than 3 square feet and non-illuminated.

## **Section 4.6            Accessory Buildings and Structures**

4.6.1 Accessory buildings shall comply with all setback requirements except as set forth in this Code. Where parcels are less than 5 acres in size, side setbacks may be reduced to a minimum of 25 feet. Accessory buildings and garages physically attached to a principal building are deemed to be part of such building in applying bulk regulations. Accessory structures shall also comply with all height requirements.

## **Section 4.7            Maintenance of Yards and Open Space**

4.7.1 No yard created in connection with any required building setback as per Table 3.2.2 shall be considered as providing a required open space for any other building on the same or any other lot unless specifically allowed as part of a conservation subdivision pursuant to Article V.

## **Section 4.8            Mobile Home Standards**

4.8.1 General Regulations: All Mobile Homes must meet the requirements of the New York State Uniform Fire Prevention and Building Code.

4.8.2 Construction Standards

- a. Foundation - All mobile homes shall have the wheels or skids removed and shall be set upon a permanent foundation or monolithic slab within sixty (60) days of placement.
- b. Anchoring - Must meet the requirements of the New York State building code.
- c. Perimeter skirting- The open area, if any, between the bottom of the mobile home and the top of the foundation shall be enclosed by a skirt extending around the full perimeter of the mobile home. Such skirt shall be constructed of weather and fire-resistant wood, masonry or metal, securely fastened to the mobile home and its foundation and shall extend from the side wall of the mobile home to the adjacent ground at all points.

## **Section 4.9            Off-Street Parking and Loading Standards**

Off-street parking and loading spaces shall be provided at the time a new use is established through construction of a new building or alteration or conversion of an existing building, in accord with the following standards and regulations:

4.9.1    Required Off-Street Parking spaces: Off-street parking spaces shall be determined by the Planning Board prior to site plan approval and shall be of sufficient size to prevent obstruction of roads, and accommodate parking needs without building lots too large. Use of gravel or other permeable surface for parking lot treatment is preferred.

### **4.9.2    Off-Street Loading Areas**

- a. Required Loading Facilities: All proposed off-street loading facilities for non-residential uses shall be provided so that service vehicles do not obstruct adjacent streets or driveways.
- b. Location of Loading Docks

(1) Open off-street loading areas shall not encroach on any required front or side yard, off-street parking area or access way.

(2) No loading dock shall be located within 50 feet of a property line.

## **Section 4.10           Lighting**

All outdoor lighting shall use fixtures to prevent glare and light pollution. Full cut-off fixtures are preferred.

## **Section 4.11           Steep Slopes and Ridgelines**

- a. All residential buildings shall be sited to place the structure so that the roofline does not protrude above the treeline on the ridge. Existing vegetation within ridgeline areas shall be preserved to the maximum extent practical. To minimize visual impacts, use existing wooded vegetation, as it may exist, as a backdrop to reduce the prominence of the structure. Structures should blend in with natural surroundings. All outdoor light sources whether residential or non-residential located on a ridgeline or steep slope shall use fully shielded light fixtures.
- b. Cut and fills shall be minimized on slopes greater than 15% as per DEC regulations.
- c. The Planning Board shall require that a stormwater pollution prevention plan be prepared and included in any subdivision, site plan or special use application for construction that disturbs one or more acres of soil on slopes greater than 25%.



## **Section 4.12      Development Standards for Commercial Structures**

In addition to the requirements of Article VI (Site Plan Review), the following standards shall be met:

- a. No non-agricultural, commercial structure or an aggregate of structures shall be larger than 15,000 square feet.
- b. Existing vegetation and topography, where it exists, should be used to buffer and screen new buildings. Clearing of vegetation at the edge of the road shall be minimized, clearing only as much as is necessary to create a driveway entrance with adequate sight distance.
- c. All mechanical equipment, such as furnaces, air conditioners, elevators, transformers, and utility equipment, whether roof- or ground-mounted, should be completely screened from contiguous properties in a manner that is compatible with the architectural treatment of the principal structure.

## **Section 4.13      Development in Designated Flood Hazard Areas**

All requirements, procedures, and standards of Local Law No. 1 of 2008 or subsequent amendment (Flood Management Local Law) shall be met for all areas identified by the Federal Emergency Management Agency on Flood Insurance Rate Maps.

## **Section 4.14      Stormwater Pollution Prevention**

- a. Stormwater runoff rates after development shall conform to all applicable federal, state & local laws and regulations.
- b. Erosion control management practices shall be designed and constructed in accordance with the New York Standards and Specifications for Erosion and Sediment Control, latest edition.

All non-residential land disturbances of 1 acre or larger, or residential land disturbances of 2 acres shall conform to the substantive requirements of the Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources, Chapter 18 and the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities (GP-02-01), or as amended or revised.

## **Section 4.15      Junkyards**

Junkyards in existence prior to the effective date of this code shall be considered a nonconforming use. If an existing junkyard is operating without the required license or certificate of approval pursuant to New York State General Municipal Law 136, or the junkyard is not in compliance with the license or certificate of approval pursuant to GML 136,

the Code Enforcement Officer has the authority to seek enforcement under General Municipal Law §136. All other junkyards are prohibited.

## **Section 4.16          Community Character and Scenic Views**

All site plan and special use applications in the Town of Halcott should be designed to preserve the scenic and rural quality of the town as defined and articulated in the Town of Halcott Comprehensive Plan. The Planning Board is authorized to evaluate the impact of a proposed land use on the visual character of the Town and may impose conditions to minimize any potential negative impacts.

## **Section 4.17          Wind Towers**

### **4.17.1 Applicability**

All wind towers including Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers proposed, operated, modified, or constructed within the municipal boundaries of the Town of Halcott, Greene County shall be allowed throughout all areas of the Town subject to the requirements of this law. No Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Halcott except by first obtaining site plan and special use permit approvals by the Town of Halcott Planning Board.

### **4.17.2. Definitions Applicable to this Section**

**Setback Agreement** – Any agreement, contract, easement, covenant or right in land which burdens land for the benefit of an applicant or permittee, such that the burdened land is similar in character to land on which any Wind Energy Facility is sited. A Setback Agreement must expressly release any right which the owner(s) of such burdened land may have in the enforcement of this Law, and acknowledge the applicable requirements of this Law. All Setback Agreements shall run with the land and be recorded to apprise any potential purchasers of such land of the same at least for as long as any Permit issued under this Law shall remain in effect. In the event a Setback Agreement lapses prior to full decommissioning of the Wind Energy Facility, Small Wind Energy Facility or Wind Measurement Tower, the previously burdened land shall be considered off-Site and the applicant, permittee or owner of the same shall be required to bring the project into conformance with the requirements of this Law.

**Small Wind Energy Facility** -A wind energy conversion system consisting of a Wind Turbine, a tower, and associated control or conversion electronics and electrical collection and distribution equipment, and Accessory Facilities or Equipment, which has a nameplate capacity of not more than 100 kilowatts.

**Total Height** -The highest point above ground level of any improvement related to a Wind

Energy Facility, Small Wind Energy Facility or Wind Measurement Tower. Total Height as applied to Wind Turbines shall include the highest point of any wind turbine blade above the tower.

**Wind Energy Facility** -Any Wind Turbine or array of Wind Turbines designed to deliver electricity to the power grid for sale with a combined production capacity of more than 100 kilowatts of energy, including all related infrastructure, electrical collection and distribution lines and substations, access roads and accessory structures, including Accessory Facilities or Equipment,.

**Wind Measurement Tower** -A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

#### 4.17.3. Application Requirements

- a. In addition to all submittals, procedures, and standards as required as per Article VI (Site Plan Review), a site plan prepared by a licensed professional engineer shall also include:
  1. Location, approximate dimensions and types of existing structures and uses on the site, public roads, and adjoining properties within 500 feet of the boundaries of any proposed Wind Turbines, or within lands 1½ times the total height of such Wind Turbines, whichever shall be greater;
  2. Location of each proposed Wind Turbine, Wind Measurement Tower and Accessory Facilities or Equipment;
  3. 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, including Accessory Facilities or Equipment;
  4. Locations of setback distances as required by this law; and
  5. All other proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
- b. The applicant shall submit the proposed make, model, picture and manufacturer's specifications of the proposed Wind Turbine and tower model(s), including noise decibel data, and material safety data sheet documentation for all materials used in the operation of the equipment for each proposed Wind Turbine.
- c. A proposed lighting plan to be submitted to and reviewed by the Federal Aviation Administration for any structure equal to or more than 200 feet above ground, or as may otherwise be required by the Federal Aviation.
- d. For Wind Energy Facilities only:
  1. A decommissioning plan that provides for an estimation of decommissioning costs, the method of ensuring that funds shall be available for decommissioning and restoration of the Site and any off-site areas disturbed by or utilized during decommissioning, the method by which the decommissioning cost estimate shall

be kept current, and the manner in which the Wind Energy Facility shall be decommissioned.

2. A complaint resolution process to address complaints from nearby residents.
3. A fire protection and emergency response plan to address emergency response and coordinate with local emergency response providers during any construction or operation phase emergency, hazard or other event.
4. Predicted Wind Turbine Only Sound Analysis:
  - (a) A sound level analysis shall be prepared to determine predicted sound at off-Site property lines and residences from operation of Wind Turbines. Wind Turbine sound shall be predicted based upon appropriate ambient sound levels obtained from field or laboratory measurements of the Wind Turbine proposed to be installed, as well as appropriate background sound levels of the site and nearby off-site areas.
5. A post construction noise monitoring plan which shall, at a minimum, require annual certification by the permittee that the Wind Energy Facility remains in conformance with the requirements of this Law.

#### 4.17.4. Environmental Review

- a. Compliance with the State Environmental Quality Review Act (“SEQRA”) shall be required. The Planning Board may require, as part of this review, the following:
  1. Visual Impact Analysis, including:
    - (a) Mapping of scenic resources of statewide significance, as defined by the NYS Department of Environmental Conservation Visual Policy (Policy DEP-00-2.), and of local significance, as officially listed in the Town of Halcott Comprehensive Plan.
    - (b) Viewshed mapping and/or cross section analysis to identify areas (including the significant resources identified above) with potential views of the project.
    - (c) Description of the character and quality of the affected landscape.
    - (d) Photographic simulations of what the proposed project will look like from a reasonable number of representative viewpoints within the 5 -mile radius study area to be selected in consultation with the Planning Board.
    - (e) Evaluation of the project's visual impact based on the viewshed mapping and photographic simulations described above.

- (f) Recommended visual mitigation measures (in accordance with DEC Policy DEP-00-2), if warranted, based on the results of the impact evaluation described above.
- 2. Avian Impact Study: Appropriate bird and bat migration, nesting and habitat studies. The Applicant shall solicit input from the New York State Department of Environmental Conservation on such studies and shall follow any required protocols established, adopted or promulgated by the Department.
- 3. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, 911 and other wireless communication.
- 4. An assessment of potential shadow flicker at off-site Residences.

#### 4.17.5. Application Review Process

- a. All procedural requirements of Article VI (Site Plan Review) and Article VIII (Special Permits) of this local law shall be met.

#### 4.17.5. Wind Energy Facility Development Standards

The following standards shall apply to Wind Energy Facilities only.

- a. All power transmission lines from the tower to any building, substation, or other structure shall be located underground in accordance with National Electrical Code Standards, unless an environmental constraint requires such transmission lines to be located above ground.
- b. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- c. 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.
- d. 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.
- e. The Wind Energy Facility 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 Windpower Projects published by the New York State Department of Agriculture and Markets.

- f. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations and such standards as shall be applied by the Planning Board on the advice of the Town consultants.
- g. Wind Turbines shall be located in a manner that minimizes shadow flicker on Residences.
- h. Except as provided herein, each Wind Turbine associated with a Wind Energy Facility shall be set back as follows:
  - 1. A distance no less than 1,500 feet from Residences.
  - 2. A distance no less than the greater of one and a half (1.5) times the total height of the Wind Turbine or 500 feet from off-Site property boundaries.
  - 3. A distance no less than the greater of one and a half (1.5) times the total height of the Wind Turbine or 500 feet from Public Roads.
- i. Wind Energy Facility Wind Turbines shall not exceed 500 feet in Total Height. Small Wind Energy Facility Wind Turbines and Wind Measurement Towers shall not exceed 200 feet in Total Height.
- j. Except as otherwise provided herein, Wind Turbines shall be located so that predicted Wind Turbine Only Sound at off-Site property lines shall not exceed 50 dB(A), and Wind Turbine only noise at Residences shall not exceed 45 dB(A).

The following shall apply to Small Wind Energy Facilities and Wind Measurement Towers:

- a. There shall be a setback from off-site property boundaries and residences at least one and half (1.5) times the structure height.
- b. The sound pressure level generated by a Small Wind Energy Facility shall not exceed 50 dB(A) at off-site property boundaries.
- c. The setback and noise requirements set forth at subsections A and B of this sub section 4.16.5 shall not apply in the event that a proper Setback Agreement is obtained by the permittee or applicant.

#### **4.17.6. Abatement and Permit Revocation**

- a. If any Wind Tower stops converting wind energy into electrical energy for a continuous period of twelve (12) months, the permittee shall remove said system at its own expense following, if applicable, the requirements of the decommissioning plan required under this Law or any Permit.

- b. All Wind Energy Facilities, Small Wind Energy Facilities and Wind Measurement Towers shall be maintained in operational 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 or Wind Measurement Tower become inoperable, or any part of a Wind Energy Facility or Small Wind Energy Facility be damaged, or should a violation of a permit condition occur, the permittee, owner or operator shall remedy the failure within 90 days. Upon a failure to perfect a timely remedy, project operation shall cease.

## **Section 4.18                      Solar Panels**

### **4.18.1 Solar Panels for Residential and Business Uses.**

- a. The installation of a solar collector or panel, whether attached to the main structure, an accessory structure, or as a detached, free standing or ground mounted solar collector are permitted as an accessory structure, shall meet all setback requirements of this local law, and shall require a building permit.
- b. Solar panels are subject to the minimum setbacks pursuant to Table 3.2, and other dimensions except for ground mounted installations on parcels less than 5 acres in size where a minimum side setback of 25 feet shall be required.
- c. All solar collectors and related equipment shall be surfaced, designed, and sited so as not to reflect glare onto adjacent properties and roadways.
- d. Height limits for solar collectors mounted on buildings shall be five feet above the level of the permitted building height. Ground mounted or freestanding solar collector height shall not exceed 20 feet when oriented at maximum tilt.
- e. All solar collectors and their associated support elements shall, at the time of installation, be designed according to generally accepted engineering practice to withstand snow weight, and wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation, to minimize the development of sight obstructions for adjacent structures or land parcels, and to meet all New York State building codes.
- f. Photovoltaic systems that are integrated directly into building materials such as roof shingles, and that are a permanent and integral part of and not mounted on the building or structure are exempt from the requirements of this article. However, all applicable building codes shall be met and necessary permits obtained.
- g. In order to ensure firefighter and other emergency responder safety, except in the case when solar panels are installed on an accessory structure less than 1,000 square feet in

area, there shall be a minimum perimeter area around the edge of the roof and pathways to provide space on the roof for walking around all solar collectors and panels.

#### 4.18.2 Utility Scale Solar Panels.

##### a. Applicability

- (1) This sub-section shall not apply to solar panels as described in 4.18.1 of this local law.
- (2) A special use permit and site plan review by the Planning Board shall be required for all commercial solar panels.

##### b. All applications for utility scale solar panels shall include the following:

- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading activities are subject to review by the Planning Board and shall not commence until the issuance of a special use permit.
- (2) An electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices identified.
- (3) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
- (4) Plan for clearing and/or grading of the site.
- (5) A stormwater pollution prevention plan as per NYS DEC requirements to detail stormwater runoff management and erosion control plans for the site.
- (6) Documentation of utility notification, including an electric service order number.
- (7) Decommissioning plan and description of financial surety that satisfies the Town that all required improvements shall be made for utility-scale systems only. For all utility-scale solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value.



- (8) The Town shall require any applicant to pay all associated costs for any application review, including but not limited to engineering, legal, environmental, planning, and the review required under SEQRA to the Town Clerk. When the Planning Board determines that a review will require engineering, legal, environmental, or planning costs, they shall provide an estimate to the applicant. Subsequently, such payment shall be made prior to commencement of any further Planning Board review.
  - (9) Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specs and photos of the proposed solar energy system, solar collectors, and all other components.
  - (10) Part I of the Full Environmental Assessment Form filled out.
  - (11) Details of the proposed noise that may be generated by inverter fans. The Planning Board may require a noise analysis to determine potential adverse noise impacts.
- c. General Provisions. All applications for utility-scale solar panels shall be in accordance with the following:
- (1) Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Halcott or other federal or state regulatory agencies.
  - (2) There shall be a minimum 100-foot buffer between any component of the utility-scale solar panel system and the parcel boundary line. The Planning Board is authorized to increase the width of this buffer after analysis of site conditions and adjacent land uses.
  - (3) Any site containing a utility-scale solar energy system shall be enclosed by perimeter fencing to restrict unauthorized access.
  - (4) Native grasses and vegetation shall be maintained below the arrays.
  - (5) The solar panels, including any proposed off-site infrastructure, shall be located and screened in such a way as to avoid or minimize visual impacts as viewed from:
    - (a) Public roads;
    - (b) Existing residential dwellings located on contiguous parcels.
  - (6) The Planning Board may require one or more of the following to minimize impacts:
    - (a) All structures and devices used to support solar collectors to be non-reflective

and/or painted a subtle or earth-tone color to aid in blending the facility into the existing environment.

- (b) All transmission lines and wiring associated with a utility scale solar facility to be buried and include necessary encasements in accordance with the National Electric Code and Town requirements.
  - (c) Artificial lighting of solar energy systems to be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
  - (d) Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- (7) Following construction of utility-scale solar panels, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
  - (8) Special use permits granted for utility-scale solar panels shall be assignable or transferable to future landowners of that system on the approved parcel so long as they are in full compliance with this local law and all conditions that the Planning Board had placed on the original approval, and the Code Enforcement Officer is notified of the property transfer at least 15 days prior.
  - (9) Any post-construction changes or alterations to the solar energy system shall be done by amendment to the special use permit only and subject to the requirements of Section 4.18 of this local law.
  - (10) After completion of a utility-scale solar panel system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans. The applicant shall further provide certification from the utility that the facility has been inspected and connected.

d. Abandonment or Decommissioning Of Utility-Scale Systems

- (1) Utility-scale solar energy systems which have not been in active and continuous service for a period of 1 year shall be removed at the owner's or operator's expense. Decommissioning shall include removal of all energy facilities, structures and equipment including any subsurface wires and footings from the parcel. Any access roads created for building or maintaining the system shall also be removed and re-planted with vegetation. The Planning Board may require a bond, placed in an escrow account and in an amount, satisfactory to the Town, to ensure the removal of any

utility-scale solar facility (See subsection (3), below). If the facility is not removed within one year and the site restored as required, the Town, after notice and hearing, may cause the same to be removed and the site restored using the funds in such escrow account.

- (2) All safety hazards created by the installation and operation of the system shall be eliminated and the site restored to its preexisting condition within six months of the removal of the solar energy system.
- (3) The amount of bond shall be equal to 110% of the cost to complete the improvements including inspection fees and a 10 percent contingency. The applicant must present a cost estimate prepared and certified by a professional, licensed engineer. The estimate must be reviewed and approved by the Planning Board. The Planning Board may retain the services of an engineer to assist them in reviewing the decommissioning plan and bond establishment. All costs related to the retaining of a consulting engineer to assist the Town shall be covered by the applicant.

# **ARTICLE V CLUSTERING & CONSERVATION SUBDIVISIONS**

## **Section 5.1            Applicability**

- 5.1.1 Clustered or conservation subdivision development pursuant to the Town of Halcott Subdivision Law, Article IV, Section 8, may be voluntarily applied to any parcel of land anywhere in the Town of Halcott. When voluntarily applied, a density bonus pursuant to Section 5.2 of this local law may be granted. The Planning Board is hereby authorized to require a clustered or conservation subdivision layout at their discretion when the parcel contains, in whole or in part, one or more of the following:
- Floodplain or flood hazard area as mapped by the Federal Emergency Management Agency
  - Steep slope >20% that occupies 25% or more of the site Wetlands, State or Federal that occupy 25% or more of the site Active Agricultural Lands
  - A residential development proposing ten or more dwelling units
- 5.1.2 All procedures and requirements for establishment of a clustered or conservation subdivision shall be pursuant to the Town of Halcott Subdivision Law.
- 5.1.3 The Planning Board is further authorized to vary or modify lot size, setbacks, and layout requirements in order to meet the objectives of this Section and of the Town of Halcott Subdivision Law, Section 8. When a clustered or conservation subdivision is proposed, the Planning Board's authority to vary or modify lot size, setback, and layout requirements may be used to impose conditions for the approval of any plat in order to ensure that the plat is consistent with Section 8 of the Town of Halcott Subdivision Law.

## **Section 5.2            Density Incentives**

- 5.2.1 In order to encourage the preservation of open space and agricultural lands, the Town may provide a density incentive as per this sub-section to applicants seeking approval of a clustered or conservation subdivision.
- a. Purpose. Pursuant to §261-b of the New York State Town Law, the Town of Halcott hereby establishes a program to encourage the preservation of open space and agricultural lands by providing a density incentive to applicants seeking approval of a clustered or conservation subdivision plat. The Town may grant density incentives that are in compliance with the Town of Halcott Comprehensive Plan and with the provisions of this section. As set forth below, the Town has established standards for the proper application of incentives and the specific findings that shall be made prior to approving an adjustment to the density requirements of this Code.

b. Applicability.

1. The incentive may be applicable to all land for which an application for approval of a subdivision pursuant to Town of Halcott Subdivision Law Article IV, Section 8. A density incentive may be granted only for provision of the permanent protection of at least 50% of a parcel where unique natural features, open space, or agricultural lands are preserved.
2. The incentive shall be granted only when the community benefits would not otherwise be required or likely to result from the applicable planning process before the Planning Board. Such benefits shall be in addition to any items that are or would be required under other provisions of this Code or State law, including any mitigation measures required pursuant to the State Environmental Quality Review Act.

c. Incentives. A bonus may be granted only for the permanent preservation of at least 50% of the parcels open space or agricultural lands. In no case shall the total approved density incentives exceed a 20% aggregate increase to the maximum density for the proposed project. Protection may be accomplished by use of permanent easements, enforceable deed restrictions, or fee simple donations of land.

d. Procedures and Criteria for Approval of Incentives.

1. Authorization of density incentives by the Town Board must be made prior to the grant of a preliminary subdivision plat by the Planning Board.
2. Applications for density incentives shall be submitted to the Planning Board. In addition to the application requirements of the Town of Halcott Subdivision Law, the following information shall be given by the applicant specific to the density incentive request in the form of a narrative and a simple sketch plan showing the proposed design and layout of the subdivision:
  - (a) The requested density incentive.
  - (b) A description of the land to be preserved.
  - (c) A narrative which describes the benefits to be provided to the community by the proposed amenity.
  - (d) A narrative which describes the method and adequacy of sewer, water, transportation, waste disposal and emergency service protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive may place on these facilities.
  - (e) A narrative that explains how the preserved land will help implement the physical, social or cultural policies of the Town of Halcott Comprehensive Plan.
  - (f) An Environmental Assessment Form, Part 1.
3. The Planning Board shall evaluate the density incentive application as follows. The Planning Board may engage a consultant to assist in the review

of the application, with all costs to be borne by the applicant.

- (a) An evaluation of how the incentive benefits the site and how the increased density relates to adjacent uses and structures. In addition, the Planning Board shall evaluate if such benefit(s) would not otherwise result as provided in the Town of Halcott Subdivision Law or this local Code. This is not intended to serve as a site or subdivision review, which would only occur after a decision by the Town Board on the incentive zoning request.
  - (b) A SEQRA determination as to whether the subdivision proposal will have a significant impact on the environment.
  - (c) An assessment that there are adequate resources, sewer, water, transportation, waste disposal and emergency service facilities to serve the proposed incentive development and that such development will not substantially and deleteriously impact upon the development prerogatives of neighboring lands pursuant to this local law.
- 4. The Planning Board shall, within 62 days of receipt of a complete application for a clustered/conservation subdivision, forward the density request application to the Town Board for public hearing and approval.
  - 5. The Town Board shall schedule a public hearing within 45 days and give at least five days' notice (14 days if a draft environmental impact statement or supplemental environmental impact statement was required) of the time and place of the hearing. Such notice shall be published in an official newspaper of the Town.
  - 6. Compliance with SEQRA. All applicable requirements of the State Environmental Quality Review Act shall be complied with as part of the review and hearing process for the density incentive request.
    - (a) Every decision will fully comply with the provisions of SEQRA.
    - (b) The applicant will pay a proportionate share of the cost of preparing a generic environmental impact statement.
  - 7. The Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to other boards and officials in the Town for review and comment.
  - 8. Within 45 days of the close of the public hearing and upon completion of the SEQRA process, the Town Board will approve, approve with modifications or conditions, or deny the proposed density incentive application. A written statement of the findings will be prepared by the Town Board documenting the basis of its decision. The findings will include, but not be limited, to the following:
    - (a) That the proposed adjustments would not have a significant adverse impact on the property, or to adjoining property, or to the neighborhood in which the property is situated.
    - (b) That proper easements, surety or performance guarantees, if necessary, between the applicant and the Town is or will be in existence as of the date the final plat

map is signed by the Chairman of the Planning Board.

- (c) That the necessary water and septic requirements can be met with the proposed density adjustments.
  - (d) That the proposed amenity provides sufficient public benefit to provide the requested incentive.
  - (e) That the proposed project, including the incentive, can be adequately supported by the public facilities available or provided including but not limited to transportation, waste disposal and fire protection.
  - (f) Comprehensive Plan. That the use of an incentive for the particular project is consistent with the Comprehensive Plan.
9. In no circumstances shall the Town Board be compelled to approve any amenity/incentive proposal and it may deny any such proposal in its sole discretion.
10. Upon approval, the Planning Board is authorized to act on the application for preliminary and final subdivision approval pursuant to the Subdivision Regulations of the Town of Halcott.

## **ARTICLE VI SITE PLAN REVIEW**

### **Section 6.1 Title and Purpose**

#### **6.1.1 Enacting Clause**

This Section, providing for Site Plan Review is enacted pursuant to Section 274-a of the Town Law and Section 10 of the Municipal Home Rule Law.

#### **6.1.2 Intent and Purpose**

1. Through site plan review, it is the intent of this section to promote the health, safety and general welfare of the Town. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the town and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the town and the general welfare of its inhabitants.
2. It is further the intent of this section to ensure the optimum overall conservation, protection, preservation, development and use of the natural and man-made resources of the town, by regulating land use activity within the town through review and approval of site plans and by ensuring consistency with the adopted Town of Halcott Comprehensive Plan. Land shall be developed with due regard to topography, natural features, viewsheds and agricultural activities so that the Town's open spaces, rural character, and farmlands are protected and enhanced according to the Town's adopted comprehensive plan. Site Plan Review provides an opportunity for the consideration of the following:

- a. The present condition of the site.
  - b. How the proposed development will affect the site, neighboring properties and the Town as a whole.
  - c. Aspects of the proposed development that can be modified to minimize problems and maximize benefits to the community and to be consistent with the adopted plan.
3. This section establishes a review process and development standards to ensure that the following general conditions have been met:
- a. That the site plan, to the extent practicable, is compatible with the goals, policies and standards set forth in the Town of Halcott Comprehensive Plan;
  - b. Significant natural, cultural, and historical features on a site are preserved as much as possible (i.e. hills, water bodies, wetlands, trees, tree groves, wooded areas, rock outcrops, native plants, wildlife habitats, scenic locations, historical locations, and other areas of aesthetic and ecological interest.
  - c. Adequate facilities for off street parking and loading, drainage, snow removal, fire protection and methods of solid waste disposal are provided on site.
  - d. Roads, pedestrian ways, access driveways, loading areas and parking facilities are properly designed and operated for public convenience, universal accessibility, public safety, and for consistency with rural road standards and desired aesthetic character.
  - e. Pollution of air, streams, ponds, and groundwater supplies is minimized.
  - f. Development will be compatible with its surroundings and in keeping with the character of the Town of Halcott.

#### 6.1.3 Application of Regulations

- 1. The following activities shall require site plan approval:
  - a. New one, two or multi-family dwellings
  - b. Exterior alterations, or additions greater than 50% of an existing commercial structure.
  - c. New construction of a principal or accessory commercial or residential structure. The Planning Board has the authority to waive site plan review for accessory structures. This waiver shall be based upon the unique circumstances of an individual property, and shall be determined by a vote of the Planning Board at a regular meeting of the Board. All decisions to waive site plan review for accessory structures shall be by resolution, in writing, and filed with the Planning Board clerk.
  - d. Enlargement or alteration of a principal or accessory commercial structure which will require a modification of the structure, access or egress, parking or loading facilities, drainage, utilities, landscaping or screening, outdoor lighting, or signage.
  - e. Any change of use from a one or two family residence to a multiple dwelling, or a one or two family residence changed to a commercial use.



- f. Site plan approval may be required for home businesses conducted in new construction of an accessory structure for this purpose pursuant to Section 4.3
- 2. Exempt uses. Site plan approval shall not be required for the following:
  - a. Exterior alterations of residential or agricultural structures.
  - b. A new dwelling that replaces an existing dwelling without changing the square footage.
  - c. Ordinary repair or maintenance of existing principal and accessory uses or structures.
  - d. Agricultural structures as defined under the NY State Building & Fire Code Regulations as agricultural operations.
  - e. Landscaping or grading incidental to an existing use.
  - f. Interior alterations to existing buildings.
  - g. Any change in use which does not require the issuance of a certificate of occupancy pursuant to the NY State Building & Fire Code.
  - h. This law does not apply to uses and structures which are lawfully in existence as of the date of this local law or its amendments becomes effective.
- 3. Also excluded from site plan review are chimneys, open or unenclosed decks, windows, repairs, replacements, and agricultural structures.
- 4. Prior to the issuance of any building permit for a use requiring site plan review issued in the Town of Halcott, the accompanying site plan shall be reviewed by the Planning Board. The Code Enforcement Officer shall refer any site plan application to the Planning Board for its review and approval, if necessary in accordance with the standards and procedures set forth in this Section.

## **Section 6.2            Sketch Plan**

A sketch plan conference shall be held between the Planning Board and applicant to review the basic site design concept and generally determine the information to be required on the site plan. At the sketch plan conference, the applicant should provide 5 copies of the information discussed below in addition to a statement or rough sketch describing what is proposed, along with any fee established pursuant to the Town of Halcott Fee Schedule.

The intent of the sketch plan conference is to enable the applicant to inform the planning board of the proposal prior to the preparation of a detailed site plan; and for the planning board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. At the sketch plan conference the Planning Board will review and determine if the proposal is in conformity with the Comprehensive Plan of the Town of Halcott. The Planning Board shall also review with the applicant submission requirements to determine what specific information is to be presented with the site plan application. The Sketch Plan submitted at the Sketch Plan Conference shall include:

### 6.2.1 Area Map

Five copies of an area map, which can be copied from tax maps, showing the name and address of applicant and person responsible for sketch plan, the parcel under consideration for site plan review, proposed structures and/or improvements drawn to scale, location of parking, signs, principal and accessory structures, existing watercourses and wetlands, existing and proposed vegetation, anticipated changes in the existing topography and natural features, floodplains, north arrow, scale and date, and all properties, subdivisions, streets, and easements within two hundred (200) feet of the boundaries thereof.

### 6.2.2 Topographic Map

If the Planning Board determines that the proposed project will have problems related to the topography of the site, five copies of a map showing the site topography at no more than twenty (20) foot contour intervals.

## **Section 6.3 Application for Site Plan Approval**

6.3.1 After a sketch plan is reviewed with the Planning Board, an application for site plan approval shall be made in writing to the Planning Board and shall be accompanied by information drawn from the following checklist as determined necessary by the Planning Board at the sketch plan conference.

6.3.2 The Town Board further empowers the Planning Board to waive any application requirements below for the site plans submitted for approval when reasonable. Any such waiver, which shall be subject to appropriate conditions as determined by the Planning Board, may be exercised in the event any such requirements are found not to be requisite in the interest of public health, safety or general welfare, or inappropriate to a particular site plan. In no case shall a waiver be more than a minimum easing of requirements and in no instance shall it result in any conflict with the adopted Town of Halcott Comprehensive Plan and shall not nullify the intent and purposes of this site plan review law. Any request for a waiver of applicant requirements must be made in writing to the Planning Board, must demonstrate that compliance would cause undue hardship, and shall be determined at the time of the sketch plan.

6.3.3 Items that may be Included on Site Plan as Determined by the Planning Board during the Sketch Plan Meeting

1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
2. North arrow, scale and date.
3. Boundaries of the property.

4. Existing and proposed structures and improvements with all dimensions included and showing any required setbacks.
5. Existing watercourses and any associated floodplain areas.
6. Location, design and general construction materials of all existing or proposed site improvements and a grading and drainage plan showing existing and proposed contours and including drains, culverts, catch basins, head walls, end walls, hydrants, detention ponds, drainage swales, retaining walls and fences. Where appropriate, the Planning Board may request soil logs, percolation test results and storm runoff calculations.
7. Location, proposed use and height of all buildings.
8. Location, design and construction materials of all parking and truck loading areas showing access and egress.
9. Location of any outdoor storage, and type and screening for all waste disposal containers, if any.
10. Location of all present and proposed public and private roads and pedestrian access. The Planning Board may require a traffic study when the average daily traffic is proposed to increase by greater than 100 cars per day.
11. Description of the method of sewage disposal and location, design and construction materials of such facilities.
12. Description of the method of securing water and location, design and construction materials of such facilities.
13. Location, design and construction materials of all energy distribution facilities, including electrical, gas, wind and solar energy.
14. Location, size and design and construction materials of all proposed signs that require a permit.
15. For a commercial structure, a general landscaping plan and planting schedule. The landscape plan should show existing natural features that may influence the design of the proposed use such as rock outcrops, large trees, forest cover and water features such as wells, ponds, lakes, wetlands, watercourses, aquifers, floodplains and drainage retention ponds.
16. Location and design of outdoor lighting facilities.

17. Designation of the amount of building area proposed for retail sales or similar commercial activity not to exceed 10,000 square feet.
18. If the proposed project is located within a floodplain, all site plans for development shall be in conformance with the provisions of Town of Halcott Local Law No. 1 of 2008.
19. An Agricultural Data Statement as defined in this local law (See Article XIII, "Terminology").
20. Part I of an Environmental Assessment Form pursuant to SEQRA.
21. A description of property and its relation to the identified important view sheds of the Town of Halcott, as identified in the Town Comprehensive Plan.
22. Any pertinent natural features that may affect the proposed use such as water courses, swamps, wetlands, wooded areas, areas subject to flooding, steep slopes (more than 20%), areas of frequent outcrops, etc.
23. The Planning Board may require a visual impact assessment.
24. Identification of, record of application for, and status of any state, federal, or county permits required for the projects execution.
25. Location of fire and emergency access ways.
26. Copy of any easement or deed restriction that is or may be placed on the property.
27. The site plan application and associated maps shall include proposed phases of development. Site plan approval shall be based on the total planned project in order to facilitate the assessment of all potential development impacts. The Planning Board shall consider applications incomplete where there is reason to believe the application applies to only a segment of the total planned development. In such situations, the Planning Board shall return such application to the applicant together with a letter stating the basis for its determination.
28. Other elements integral to the proposed development as specified by the Town Board.

## **Section 6.4            Planning Board Review of Site Plan**

The Planning Board's review shall include, as appropriate, but is not limited to the following:

### **6.4.1 General Considerations.**

1. Adequacy, arrangement, and grade of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls. Consistency with the Town of Halcott Road Specifications, and adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls. All site plans proposing new driveways or roads shall be reviewed and approved prior to a final decision by the Planning Board and by the Town of Halcott Highway Department.
2. Location of off-street parking and loading.
3. Location, arrangement, size, and general site compatibility of buildings, lighting, and signs.
4. Adequacy of stormwater and drainage facilities.
5. Adequacy of water supply and sewage disposal facilities.
6. Adequacy, type, arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the reasonable retention of existing vegetation. To the extent practical, existing trees and other vegetation shall be conserved and integrated into the landscape plan. Methods for reducing noise, where necessary, shall include, but not be limited to fencing, walls, natural buffers, berms, landscape plantings, structure location, and insulation.
7. Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features. Exterior lights shall use fully shielded fixtures to prevent glare.
8. Adequacy of fire lanes and other emergency zones. If the Planning Board deems it necessary, it shall refer the application to the applicable emergency services providers for comment on the proposed access arrangements.
9. Adequacy of structures, roadways, and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
10. Adequacy and impact of structures, roadways and landscaping in areas of steep slope and along ridgelines.

11. Location of and adequacy of measures proposed to protect environmentally sensitive areas. The Planning Board may request an advisory opinion on these matters from the Greene County Soil and Water Conservation District or other qualified agency prior to final decision. The proposed use shall be designed and shall be carried out in a manner that protects natural environmental features on the site and in adjacent areas.
12. Compatibility with adjacent uses.
13. Compatibility with neighborhood character and the overall rural character of Halcott.
14. Compatibility with active agricultural activities and protection of farms, prime soils, etc.

#### 6.4.2 Standards

1. In addition to the design and development standards as required by this Code the following shall be met:
  - a. All new roads shall be constructed to the adopted road standards of the Town of Halcott, (Local Law No. 3 of 2003).
  - b. New uses proposed to be adjacent to existing agricultural uses shall provide buffering between the new structure and the farm use.
  - c. Placement of structures should be done in a manner which optimizes preservation of open space and use of agricultural fields.
  - d. Landscaping shall buffer commercial uses and residences. A new commercial use shall buffer itself from any adjacent residential use.
  - e. Streams and their associated corridors shall be protected. Best management practices as outlined in the East Branch Delaware River Stream Corridor Management Plan and DEC Stream Corridor Management: A Basic Reference Manual is recommended as a resource to accomplish this.

#### 6.4.3 Consultant Review

The Planning Board may consult with the building inspector, fire commissioners, conservation council, highway superintendent, other local and county officials, and its designated private consultants, in addition to representatives of federal and state agencies including, but not limited to, the Natural Resources Conservation Service, the State Department of Transportation, the State Department of Health, and the State Department of Environmental Conservation. The Planning Board may hire a consultant, if needed, to review plans with the approval of the Town Board, according to Section 8.4, and at the applicant's expense.

## **Section 6.5            Planning Board Action on Site Plans**

### **6.5.1 Acceptance of Site Plan Application.**

The Planning Board shall, within forty-five (45) days of a site plan application being filed, determine whether to accept the application as complete and begin the review process, or to reject the application as incomplete. Incomplete applications shall be returned to the applicant, without prejudice, with a letter stating the application deficiencies. No application shall be considered complete until a negative declaration under SEQRA Part 617, if required, has been issued or until a draft Environmental Impact Statement has been accepted by the lead agency as satisfactory with respect to scope, content, and adequacy.

### **6.5.2 Public Hearing.**

The Planning Board may conduct a public hearing on the site plan. If a hearing is to be held, such hearing shall be held within sixty-two (62) days of the Planning Board's acceptance of the preliminary site plan application as complete and shall be advertised in the town's official newspaper at least five (5) days before the hearing. The Planning Board shall give the applicant at least ten (10) days' notice by mail of the Public Hearing. The applicant shall send notice of the Public Hearing to abutting property owners by certified mail, return receipt requested at least seven (7) days prior to the public hearing. The Planning Board shall also send notice of the Public Hearing to any adjacent municipality located within 500 feet of the proposed development.

### **6.5.3 Referrals.**

At least ten days before such hearing, a copy of the application and any accompanying documents shall also be sent to the Greene County Planning Board for its review pursuant to Section 12.3 of this Code. The Planning Board shall determine if a referral for one and two-family dwellings are required. As per an agreement between the Town of Halcott and the Greene County Planning Board, site plan reviews for one and two-family dwellings may be exempt from such referral. The Planning Board may also be required to refer the application to the New York City Department of Environmental Protection.

### **6.5.4 SEQRA.**

The provisions and requirements of Article 8 of the Environmental Conservation Law, (SEQR) regulations shall be complied with prior to a decision being made by the Planning Board.

### **6.5.5 Decision.**

Within 62 days of the public hearing, if one was held, or within 62 days of the Planning

Board determining that the application was complete, the Planning Board shall render a decision on the site plan. The Planning Board's action shall be in the form of a written statement to the applicant stating whether the site plan is recommended for approval, disapproval or approval with modifications. If the Planning Board approves the site plan with modifications, the Planning Board's statement shall include recommendations of desirable modifications to be incorporated in the final site plan, of which conformance with said modifications shall be considered a condition for approval. If the site plan is recommended for disapproval, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned. The Planning Board's decision must be filed with the Town Clerk within five business days after such decision is rendered and a copy mailed to the applicant.

1. Approval. Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the town, the Planning Board shall endorse its approval on a copy of the site plan and shall, within five (5) business days of its decision, file with the site plan and a written statement of approval with the Town Clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
2. Approval with Modifications. The Planning Board may approve the site plan and require that specific modifications or conditions be made. A copy of a written statement of approval containing the modifications required by the Planning Board shall be mailed to the applicant by certified mail, return receipt requested. The applicant shall submit a modified final site plan in reproducible form. Upon approval and after payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board shall endorse its approval on a copy of the site plan and shall, within five (5) business days, file the site plan and a written statement of approval with the Town Clerk.
3. Disapproval. Upon disapproval of the site plan, the decision of the Planning Board shall, within five (5) business days, file the same with the Town Clerk and mail a copy thereof to the applicant by certified mail, along with a letter stating the Planning Board's reasons for disapproval.

## **Section 6.6            Miscellaneous Site Plan Provisions**

### **6.6.1 Integration of Procedures**

Whenever the particular circumstances of a proposed development require compliance with the requirements of the Town of Halcott Subdivision Regulations or Special Use Permits, the Planning Board shall attempt to integrate, as appropriate, the procedural and submission requirements for such other compliance.

### **6.6.2 Performance Bond and Guarantee of Site Improvements**



1. General. Subsequent to the granting of site plan approval, no certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been provided by the applicant for improvements not yet completed.
2. Performance Guarantee Options. In order that the town has the assurance that the construction and installation of such improvements as storm sewers, water supply, sewage disposal, sidewalks, landscaping, parking, and access roads will be constructed in accordance with the site plan approval, the Planning Board may require that the applicant enter into one of the following agreements with the town.
  - a. Furnish bond executed by a surety bond company equal to the cost of construction of such improvements as shown on the plans. Such bond shall be 1) based on an estimate furnished by the applicant; 2) confirmed by the Code Enforcement Officer; and 3) approved by the Planning Board.
  - b. Deposit certified check in sufficient amount up to the total cost of construction of such improvements as shown on the site plan.
3. Conditions
  - a. The performance guarantee shall be to the town and shall provide that the applicant, his/her heirs, successors, assigns, or his/her agent will comply with all applicable terms, conditions, provisions, and requirements of this law and will faithfully perform and complete the work of constructing and installing such facilities or improvements in accordance with the approved site plan.
  - b. Any such bond shall require the approval of the Town Board in consultation with the Town Attorney as to form, sufficiency, manner of execution and surety.
  - c. Certified checks shall be made payable to "the Town of Halcott" and will be placed in an escrow account established by the Town for this purpose.

#### 6.6.3 Expiration of Site Plan Approval

Site plan approval shall automatically terminate one (1) year after the same is granted unless a building permit has been issued and there is physical evidence to demonstrate that the project is in progress. The applicant may request that the Planning Board grant an extension of time to complete such improvements, provided the applicant can show reasonable cause for inability to perform said improvements within the required time. The extension shall not exceed six (6) months, at the end of which time the town may use as much of the bond or certified check deposit to construct the improvements as necessary.

## **ARTICLE VII SITE PLAN REVIEW OF CELL TOWERS**

### **Section 7.1 Findings, Intent and Purposes**

The Town Board of the Town of Halcott finds a growing need for personal wireless service facilities and commercial mobile radio service facilities, as defined in the Telecommunications Act of 1996, (47 U.S.C. §§153, et. seq.) based on an increase in demand to locate these facilities in the Town. Prior to the adoption of this Local Law, no specific procedures existed to address recurrent issues related to siting personal wireless service facilities and commercial mobile radio service facilities.

The purpose of this Article is to promote the health, safety and general welfare of the residents of the Town through the establishment of minimum standards to reduce the adverse visual effects of personal wireless service facility and commercial mobile radio service facilities transmission towers and antennae through careful design, siting and screening; to protect property values; to protect the physical appearance of the community and to preserve its scenic and natural beauty; to avoid potential damage to adjacent properties from tower failure through proper engineering and careful siting of wireless services and commercial mobile radio service facilities technology; to protect a citizen's ability to receive communication signals without interference from other communication providers while preserving competition among communications providers; and to maximize the use of existing towers or antenna host sites within prescribed districts so as to minimize the number and visual impact of towers needed to serve the Town.

### **Section 7.2 Applicability**

Except as specifically set forth in the Site Plan Review Law, all new Telecommunications Towers in the Town of Halcott shall be subject to these and all other applicable regulations.

### **Section 7.3 Applicability of Standards and Procedures**

- a. No Telecommunications tower as defined in this law shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these standards and procedures. No existing structure shall be modified to serve as a telecommunications tower unless in conformity with these standards and procedures.
- b. The standards and procedures shall apply to all property within the Town of Halcott.

### **Section 7.4 Shared Use of Existing Tall Structures**

At all times, shared use of existing tall structures (for example, municipal water towers, multistory buildings, etc.) and existing or approved towers shall be preferred to the

construction of new towers.

- a. An applicant proposing to share use of an existing tall structure shall be required to submit to the Planning Board:
  - (i) a completed application;
  - (ii) documentation of intent from the owner of the existing facility to all shared use;
  - (iii) a site plan showing all existing and proposed structures and improvements including antennae, roads, buildings, guy wires and anchors, parking and landscaping, including grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.
  - (iv) an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, and explaining what modifications, if any, will be required in order to certify the above;
  - (v) a completed short Environmental Assessment Form (EAF) and a completed visual EAF addendum.
  - (vi) a copy of its Federal Communications Commission (FCC) license.
- b. If an applicant proposing to share use of an existing tall structure submits a complete and satisfactory documentation in accordance with Section (7.4) (a) above, and if modifications indicated according to Section (7.4) (a) are deemed insignificant by the Planning Board, and after the Planning Board conducts a public hearing and complies with all SEQRA provisions, the Planning Board shall grant a permit without further review under this section. If the Planning Board determines that any modifications indicated according to Section (7.4) (a) are significant, it may require further review according to Sections (7.10) through (7.21) below.

## **Section 7.5            Shared Usage of an Existing Tower Site**

Where shared use of existing tall structures, and existing or approved towers, is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Section (7.4) above. Any proposals for a new telecommunications tower on an existing tower site shall also be subject to the requirements of Sections (7.9) through (7.21) below.

## **Section 7.6            New Tower at a New Location**

The Planning Board may consider a new telecommunications tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance of the proposed site. This distance shall be determined by the Planning Board in consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an

alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical, technical and or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided. No permit shall be granted for a tower to be built on speculation.

Any proposal for a new telecommunication towers shall also be subject to the requirements of Sections (7.9) through (7.21) below.

## **Section 7.7            New Towers: Future Shared Use**

The applicant shall design a proposed new telecommunications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the Planning Board a letter of intent committing the owner of the proposed new tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Code Enforcement Officer prior to issuance of a building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the permit. The letter shall commit the new tower owner and his/her successors in interest to:

- a. Respond within 90 days to a request for information from a potential shared-use applicant.
- b. Negotiate in good faith concerning future requests for shared use of a new tower by other telecommunications providers.
- c. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include, but is not limited to, appropriate share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

## **Section 7.8            Site Plan Review: Submission Requirements**

- a. An applicant shall be required to submit a site plan in accordance with Article VI of this local law. The site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.
- b. Supporting Documentation: The applicant shall submit along with his exact legal name, address of principal place of business and phone number, a complete Part I of a short EAF, a complete Visual Environmental Assessment Form (visual EAF addendum), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower and justification for any clearing required. The

applicant shall also submit a copy of its Federal Communications Commission (FCC) license.

## **Section 7.9            Lot Size and Setbacks**

All proposed telecommunication towers and accessory structures shall be setback from abutting parcels, established hiking trails, recorded rights of way, and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining residential properties.

- a. Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements.
- b. Telecommunications Towers shall comply with all existing setback requirements of site plan review (if applicable) or shall be located with a minimum setback from any property line equal to one and one-half (1 1/2) of the height of the tower, whichever is greater.

## **Section 7.10          Visual Impact Assessment**

The Planning Board may require the applicant to undertake a visual impact assessment which may include:

- a. At times set by the Planning Board, and to be announced in the local paper, a three-foot or larger diameter, brightly colored balloon floated at the maximum height and location of proposed tower, at least twice, once during the week and once during the weekend.
- b. A “Zone of Visibility Map” in order to determine locations where the tower may be seen.
- c. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the town including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The board shall determine the appropriate key sites at a pre-submission conference with the applicant.
- c Assessment of alternative tower designs and color schemes, as described in Section (15) below.
- d. Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

## **Section 7.11          New Tower Design**

Alternative designs shall be considered for new towers, including lattice and single pole structures. The design of a proposed new tower shall comply with the following:

- a. Any new tower shall be designed to accommodate future shared use by other telecommunications providers.

- b. Unless specifically required by other regulations, a tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.
- c. The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and or federal law and or regulation. The Planning Board at its discretion may modify this requirement if the applicant can justify the need to exceed this height limitation. Artificial lighting may be required by the Federal Aviation Administration depending on the tower's height and location.
- d. The Planning Board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new tower. Engineering fees are to be paid by the applicant.
- e. Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
- f. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company name, phone numbers, banners, and streamers.

## **Section 7.12      Existing Vegetation**

Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter (measured to a height of four [4] feet off the ground), shall take place after the initial application, unless approved as part of the final site plan.

## **Section 7.13      Screening**

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.

## **Section 7.14      Access**

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

## **Section 7.15      Parking**

Parking shall be provided to assure adequate emergency and service access. The Planning Board shall determine the number of required spaces based upon a recommendation from the applicant. No parking spaces shall be located in any required yard.

## **Section 7.16      Fencing**

The tower and any accessory structures shall be adequately enclosed by a fence, design of which shall be approved by the Planning Board. This requirement may be waived by the Planning Board if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

## **Section 7.17      Monitoring and Evaluation of Compliance**

The Planning Board may require any of the following conditions:

- a. Ongoing periodic monitoring of microwave emissions by an independent agency.
- b. Ongoing structural inspections.
- c. Liability insurance covering the applicant who shall provide annually to the Town Clerk a certificate of such insurance.
- d. An initial cash bond posted in a reasonable amount determined and approved by the Planning Board. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the site, and to cover the cost of the removal of the Tower from the site and remediation of the landscape should the tower cease to operate.

## **Section 7.18      Removal**

The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his or her successors in interest, to notify the building inspector within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the building inspector prior to issuance of a building permit (assuming the telecommunications tower is approved according to this section). Obsolete or unused towers and accessory structures shall be removed from any site within four (4) months of such notification. The Town may require the applicant to post a bond for future removal. All towers and accessory structures unused for a period of one year shall be deemed abandoned and the Town may remove the tower and place the cost of removal as a lien on the tax rolls if unpaid.

## **Section 7.19      Inter-municipal Notification for New Towers**

In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing tall structure or existing telecommunications tower in a neighboring municipality be considered for shared use, and to assist in the continued development of County 911 Services, the Planning Board shall require that:

- a. An applicant who proposes a new telecommunications tower shall notify in writing the legislative body of each municipality that borders Halcott, the Greene County Planning Board, and the Director of Greene County Emergency Services. Notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.
- b. Documentation of this notification shall be submitted to the Planning Board at the time of the application.

## **Section 7.20          Notification of Nearby Landowners**

The applicant shall be required to mail notice of the public hearing directly to all landowners whose property located within five hundred (500) feet of the property line of the parcel on which a new tower is proposed. Notice shall also be mailed to the administrator of any state or federal parklands from which the proposed tower would be visible if constructed. Notification, in all cases, shall be made by Certified Mail. Documentation of this notification shall be submitted to the Planning Board prior to the public hearing.

# **Article VIII Special Use Permits**

## **Section 8.1          Process**

The Planning Board is hereby authorized to issue a special use permit only for a use specifically listed as requiring such permit, when an application has been made directly to it or through the Code Enforcement Officer, subject to the following regulations and procedures:

- a. Application: Five copies of each application for a special use permit shall be submitted on a form prescribed by the Planning Board, accompanied by a fee in accord with a schedule adopted by the Town Board, and shall include the following data. The Planning Board, at the request of the applicant, may waive such application information as it deems not relevant to its review. All uses requiring a special use permit also require site plan review. The Planning Board shall integrate all application materials and procedures.
- b. Application Data
  1. The names of all owners of, record of the property in question and of all adjacent property and the lot, block and section number of such properties as shown on the Town Tax Assessment Maps.



2. All data as required in Article VI (Site Plan Review).
  3. Part 1 of the full environmental assessment form (SEQRA), with all questions to be answered
- c. Public Notice and Hearing
1. Public Hearing Schedule: The Planning Board shall schedule a public hearing to be held within 62 days of receipt of a complete application for a special use permit.
  2. Hearing Notice: Notice of the public hearing shall be published in the official newspaper of the Town at least fifteen (15) days prior to the date of such hearing. In addition, the Planning Board shall cause a notice of such hearing to be mailed to the owners of all property within 400 feet of the subject property at least fifteen (15) days prior to the public hearing. Such notices shall be sent to the owner's last known address as shown on the most recent Town Tax Assessment records.
  3. Referral to County Planning Board: At least ten days before any public hearing, any application for a special use permit involving real property lying within 500 feet of any of the criteria listed under 239-m (3) (b) shall be referred to the Greene County Planning Board prior to final action in accordance with Sections 239 I. m and n of the General Municipal Law. The Planning Board shall not make a decision until it has received comment from the Greene County Planning Board or until 30 days have elapsed.
  4. SEQRA: All requirements of Article 8 of the Environmental Conservation Law (SEQR) and its implementing legislation shall be complied with.

## **Section 8.2            Criteria, Decision and Findings**

- a. Criteria for Decisions: The Planning Board shall only approve the issuance of a special use permit if it finds that the following criteria have been met:
1. That any specific standards set forth for the proposed use in Section 4.4 have been satisfied.
  2. That all proposed structures, equipment, or material shall be readily accessible for fire and police protection and shall be adequately served by waste treatment and water facilities and recreation facilities.
  3. That the proposed use is of such location, size, and character that, in general, it will be in harmony with the appropriate and orderly development of the area in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties.
  4. That, in addition to the above, the proposal shall have an approved site plan.
- b. Findings and Conclusions
1. Within 62 days after the public hearing, unless the time has been extended by

mutual consent of the applicant and the Planning Board, the Planning Board shall render its decision on the special use permit and shall make a written report setting forth its findings and conclusions and the basis for its decision.

2. The decision of the Board shall be filed with the Town Clerk within five days and a copy thereof mailed to the applicant.

c. Additional Conditions

When issuing a special use permit, the Planning Board may attach such conditions and safeguards as it deems necessary to further the intent of these regulations and to protect the public interest. Such conditions may include a requirement that the special use permit be periodically renewed. Such renewal shall only be withheld, following due public notice and hearings, *upon* a determination that the applicant has not complied with the provisions of the original application or with any conditions prescribed by the Board in conjunction with approval of such application. In such case, the applicant shall be granted a period of 60 days within which to achieve full compliance with all conditions prior to revocation of the special use permit.

## **Section 8.3            Review by Courts.**

Any person aggrieved by a decision of the Planning Board in relation to special use approvals or denials may apply to the supreme court for review by a proceeding under Article 78 of the civil practice law and rules pursuant to 274-b of the New York State Town law. Such proceedings shall be instituted within 30 days after the filing of a decision by the Planning Board in the office of the Town Clerk.

## **Section 8.4            Reimbursable Costs**

Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan or special use permit shall be charged to the applicant. The deposit of funds and payment of fees shall be as follows:

1. At the discretion of the Planning Board, simultaneously with the filing of an application for site plan approval or special use permit approval the applicant shall deposit with the Town Supervisor a sum of money as defined in paragraph 4 below, to be used to pay the costs incurred by the Town for consultation fees or other extraordinary expenses related to the review of this project.
2. Upon receipt of such sums, the Town Supervisor shall cause such monies to be placed in a separate non-interest bearing account in the name of the Town and shall keep a separate record of all such monies so deposited and the name of the applicant or developer and project for which such sums were deposited.
3. Upon receipt and approval by the Planning Board of itemized vouchers from an engineer, attorney or other consultant for services rendered on behalf of the Town

or for direct expenses incurred, the Town Supervisor shall cause such vouchers to be paid out of the monies so deposited, and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town.

4. The Planning Board shall review and audit all such vouchers and shall approve payment of only such consultation fees as are reasonable in amount and necessarily incurred by the Town. A fee or part thereof is reasonable in amount if it bears a reasonable relationship to the average charge by those consultants and professionals to the Town for services performed in connection with the approval or construction of a similar development.
5. Notwithstanding anything to the contrary contained in this local law, an applicant or developer shall not be required to reimburse the Town for any part of a consultants fee incurred by the Town for services performed in connection with matters, including but not limited to those resulting from complaints by third parties, as to which the Town Board determines the applicant or developer had no responsibility or was beyond the reasonable control of the applicant or developer.

## **ARTICLE IX ENFORCEMENT AND ADMINISTRATION**

### **Section 9.1            Enforcement**

This Code and any conditions on a permit imposed by the Planning Board shall be enforced by the Code Enforcement Officer. No building permit or certificate of occupancy shall be issued by the Code Enforcement Officer for any purpose except in compliance with the provisions of this Law.

### **Section 9.2            Permit to build**

- 9.2.1 No person, firm, corporation, association or other organization shall commence the erection, construction, enlargement, alteration, improvement, repair, removal, or demolition of any building or structure nor undertake any other work which must conform to New York State's Uniform Fire Prevention and Building Code, without having applied for and obtained a building permit from a Code Enforcement Officer pursuant to Local Law # 1 of 2008. Notwithstanding the foregoing, no building permit shall be required under those circumstances specified in Local Law # 1 of 2007, Section 4(b) for which no building permit is required. Where the proposed construction, alteration or use would be in violation of any provision of this Code, no permit to build shall be issued except pursuant to written order of the Zoning Board of Appeals. No further permits, certificates of occupancy or other approvals shall be granted by the Code Enforcement Officer or any other board of the Town for until such violation is remedied.

- 9.2.2 The Code Enforcement Officer shall not issue a building permit for any use requiring issuance of a special use permit and approval of a site plan by the Planning Board unless and until such approval has been transmitted in writing by the Planning Board to the Code Enforcement Officer and any conditions attached thereto have been satisfied.

### **Section 9.3 Certificate of occupancy**

A certificate of occupancy shall be required for all work and other circumstances specified in Local Law #1 of 2007 (Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code).

### **Section 9.4 Violations, Remedies and Penalties**

#### **9.4.1 Entry and inspection.**

The Code Enforcement Officer shall have the right to enter upon, examine and inspect, or cause to be entered, examined and inspected, any building or property, for the purpose of carrying out the provisions of this Code after reasonable written notice of intent to examine or inspect has been provided to a property owner, and permission of the owner has been granted. If the landowner, tenant, or occupant does not provide such consent and the Code Enforcement Officer has probable cause to believe that a violation of this law is occurring, he is authorized to obtain an administrative search warrant to have such entry, inspection, or examination conducted.

#### **9.4.2 Procedure for Investigation of Violations**

- a. The Code Enforcement Officer shall record all suspected violations on a form prescribed by the Town.
- b. Within a reasonable time of determining whether a violation exists, the Code Enforcement Officer shall serve the landowner and any other responsible party, or both, with a "Notice of and Demand to Remedy Violation." The Notice shall be served on the landowner and any other responsible party. The Notice shall set forth the alleged violation in reasonable detail and cite the applicable part of the Land Use Code. The Notice shall also state the corrective action sought and the time by which the corrective action must happen. A reasonable period shall be provided to correct a violation, which period shall be determined by the circumstances of the violation and the degree to which the violation constitutes a danger to public health, safety and welfare.
- c. If the alleged violator(s) fails to correct the violation within the reasonable time of the period provided for correction of the violation, the Code Enforcement Officer with the permission of the Town Board may commence an action in a court of competent jurisdiction to prevent, restrain, correct, or abate a violation hereunder. As part of such an action, the Town Board or Code Enforcement Officer may seek fines and civil penalties as provided for in accordance with Section 268 of New York State Town Law.

- d. The Code Enforcement Officer shall commence the proceeding by causing an appearance ticket to be served on the alleged violator(s) in accordance with the requirements of State law for issuance of appearance tickets. The Code Enforcement Officer shall also prepare a supporting deposition or affidavit setting forth the details of the violation. The Code Enforcement Officer may also, where an appearance ticket fails to secure the court attendance of the alleged violator(s), request that the Justice Court issue a criminal summons for service on the alleged violator(s). The Attorney for the Town shall represent the Code Enforcement Officer in the Justice Court. Notwithstanding the foregoing, the Code Enforcement Officer may refer the alleged violation to the Attorney for the Town for an injunction and the collection of civil fines as provided for in Section 268 of New York State Town Law.

#### 9.4.3 Private Actions to Enforce the Law

Upon the failure or refusal of the Town Board or Code Enforcement Officer to enforce this Land Use Code and institute any such appropriate action or proceeding to prevent unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure, or land for a period of ten days after written request by a resident taxpayer of the Town so to proceed, any three taxpayers of the Town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as the Code Enforcement Officer or the Town Board is authorized to do.

#### 9.4.4 Fines

Pursuant to § 268 of the Town Law any person, firm, corporation or other entity violating any provision of this chapter shall be deemed guilty of an offense and upon conviction thereof shall be subject to a fine or to imprisonment as provided in §268. Each week's continued violation may constitute a separate offense.

### **Section 9.5 Non-Conforming Uses and Bulk**

The provisions of this section shall apply to all non-conforming uses or dimensions existing on the effective date of this Code, and to a land use, building or dimension that becomes nonconforming by reason of any future amendment to this Code. Any appeals from this provision shall be dealt with in accord with the procedures provided in Article X.

#### 9.5.1 Continuance

Any nonconforming use or building may be continued indefinitely except as hereinafter provided in this Section.

#### 9.5.2 Cessation of Use

Any nonconforming use which is discontinued for a period of more than three years shall thereafter be replaced only by a permitted use.

#### 9.5.3 Change to Conforming Use

A nonconforming use may be changed to a conforming use at any time, but shall not thereafter be changed back to a nonconforming use.

#### 9.5.4 Change to another Nonconforming Use

A nonconforming use may not be changed to another nonconforming use.

#### 9.5.5 Maintenance and Repairs

Customary maintenance of a building or other structure containing a nonconforming use is permitted, including necessary structural repairs and minor alterations, subject to the provisions of 9.5.6, below.

9.5.6 Buildings and structures which are only non-conforming in dimension may be altered, moved, reconstructed, or enlarged provided that such change does not extend beyond that part of the existing structure which causes the nonconformity or increase the degree of, or create any new, nonconforming bulk in such building, and does not violate any other provisions of this Code.

#### 9.5.7 Reduction in Lot Area

No lot shall be reduced in area so that it creates a non-conforming bulk or use in violation of any regulations contained in this Law.

#### 9.5.8 Damage of Nonconforming Use or Bulk

A building housing a nonconforming use or which is nonconforming in terms of dimension or set back, which sustains damage or destruction by any cause, may be repaired or reconstructed, so long as the nonconformity is not increased or expanded, subject to the provisions of 6.4.2.

### **Section 9.6 Existing Undersized Lots**

#### 9.6.1. Separate Lots

Any lot held in single and separate ownership, prior to the adoption of this Law, whose area and/or width and/or depth are less than the specified minimum lot requirements of this Law, may be considered as complying with such minimum lot requirements, and no variance shall be required, provided that:

- a. Such lot does not adjoin other lands held by the same owner which lands may be aggregated to create a conforming lot
- b. All other bulk and yard requirements are complied with.

#### 9.6.2 Approved Subdivisions

Any lot in a subdivision whose plat has been-approved by the Planning Board and properly filed prior to the passage of this Code and whose area and/or width and/or depth are less than the specified minimum lot requirements of this Code shall be considered as complying with such minimum lot requirements.

## **ARTICLE X ZONING BOARD OF APPEALS**

### **Section 10.1 Zoning Board of Appeals, Membership and Duties**

#### a. Membership.

1. A Zoning Board of Appeals is hereby established in accordance with Section 267 (a-c) of the Town Law. It shall consist of five members and one alternate, each to serve for a term of five years. The term of office of the members of the Board of Appeals and the manner of their appointment shall be in accordance with the provisions of 267 (4) of the Town Law. A member of the Board of Appeals shall not at the same time be a member of the Town Board.
2. If a vacancy shall occur, the Town Board shall appoint the new member for the remainder of the term.
3. The Town Board shall designate its chairperson and shall provide for such expenses as may be necessary and proper. In the absence of a chairperson, the Zoning Board of Appeals may designate a member to serve as acting chairperson.
4. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing.

#### b. Powers

1. The Zoning Board of Appeals shall have the duties, rights, powers and functions conferred upon it by 267b of the Town Law and any other provisions of law or ordinance applicable in connection with appeals to review any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer.

2. Hearing appeals. The jurisdiction of the Board of Appeals shall be appellate and shall include hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- c. Conduct of Business
1. The Zoning Board of Appeals may employ such clerical or other staff as may be necessary, provided that it shall not incur expenses beyond the amount of appropriations made available by the Town Board for such purposes.
  2. Meetings, minutes, records. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the New York State Public Officers Law. Such Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
  3. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the Office of the Town Clerk within five business days and shall be a public record.
  4. Assistance to Board of Appeals. Such board shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance. Further, the Zoning Board of Appeals shall have the authority to call upon any professional to assist in its review of applications. Expense for such professional shall be borne by the applicant.
  5. The Zoning Board of Appeals shall have the power to promulgate written rules of procedure, by-laws, and forms in order to fulfill its responsibilities under this local law.
  6. All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Board may determine.
  7. Time of appeal. An appeal shall be made within sixty days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer. All notice of appeals shall be filed with such officer and with the Board of Appeals and shall specify the grounds for and the relief sought on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this Local Law involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision or determination of an administrative official. The Code Enforcement Officer shall transmit to the Zoning Board of Appeals all the papers constituting the record upon



which the action appealed from was taken.

8. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
9. Hearing on appeal. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it after receipt of a complete application. The Zoning Board of Appeals shall give public notice of such hearing by publication in a paper of general circulation in the Town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney. In addition to the public notice of a hearing, notice shall be given in writing to all property owners of the land included in such proposed change, and the land immediately adjacent extending one hundred (100) feet from, and the land directly opposite extending one hundred (100) feet from the street or highway frontage of such opposite land. Any party may appear in person or by agent or by attorney. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal is taken.
10. Notice to County Planning Board. At least five days before such hearing, the Board of Appeals shall mail notices to the County Planning Board as required by section two hundred thirty-nine-m of the general municipal law. This notice shall be accompanied by a full statement of the proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the 30-day requirements for the County Planning Board's review. A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval or a recommendation of modification from the County Planning Board if the referring body chooses to act contrary.
11. Time of decision on appeal. The Board of Appeals shall decide upon the appeal within sixty-two days after the close of the hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant

and the board.

12. Voting requirements.

- a. Decision of the Board. Every motion or resolution of a Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.
- b. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Code Enforcement Officer within the time allowed, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of New York State Law 267-a.

13. Filing of decision and notice. The decision of the Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

14. Compliance with state environmental quality review act (SEQRA). The Board of Appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

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

d. Permitted action by Board of Appeals.

1. Orders, requirements, decisions, interpretations, determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order,

requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. Use variances.

- a. The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.
- b. No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unreasonable hardship. In order to prove such unreasonable hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
  - (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent and unbiased financial evidence;
  - (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - (4) that the alleged hardship has not been self-created.
- c. The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unreasonable hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. Area variances.

- a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.
- b. In making its determination, the Zoning Board of Appeals shall take into

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

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

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

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

e. Court Review of Board Decisions

1. Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and. Such proceeding shall be instituted within thirty days after the filing of a decision of the Board in the Town Clerk's office.
2. Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within 12 months of the date of such

decision.

3. Grant of Variance. The grant of a variance shall serve as authorization for the Code Enforcement Officer to issue a project permit, provided that the project complies with all applicable provisions of this local law and other applicable regulations.

## **ARTICLE XI PLANNING BOARD.**

### **Section 11.1 Powers and Duties**

In addition to those other powers and duties assigned to it by law, the Planning Board is hereby empowered to perform the following functions:

- a. Issue special use permits for those uses specifically listed as requiring such a permit in the Use Schedule in accord with the provisions of Article VIII including approval of the Site Development Plan.
- b. Review and submit advisory opinions concerning applications for variances and amendments to the zoning regulations, as required by this Code. All resolutions or official actions of the Planning Board shall require the concurring vote of a majority of the entire Board.
- c. Advisory Opinion of the Planning Board. The Planning Board shall review all applications for variances submitted to the Board of Appeals and all proposed amendments to this Land Use Code being considered by the Town Board. The Planning Board shall have 30 days prior to the public hearing in which to prepare and submit its advisory opinion. Failure to submit an opinion within 30 days shall not prevent determination and action on the proposed variance or amendment by the appropriate Board.

### **Section 11.2 Membership, Reporting, and Voting**

All Planning Board membership, reporting requirements, and voting requirements shall be pursuant to New York State Town Law 271.

## **ARTICLE XII AMENDMENTS**

### **Section 12.1 Authorities to Amend**

- a. The Town Board may from time to time amend, supplement or repeal, in whole or in part, this Code, subject to the provisions of this Article and Town Law. Such amendment shall be adopted by majority vote of the Town Board and may be initiated in the following ways:

1. By the Town Board on its own motion;
  2. On the recommendation of the Planning Board or the Zoning Board of Appeals;
  3. By the filing of a petition by Town taxpayers or residents, on a form prescribed by the Town Clerk, describing such proposed amendment.
  4. If not sooner, this Code should be re-visited every 3 years to assure its continuing relevance and effectiveness.
- b. If a duly signed and acknowledged protest against a proposed amendment to this Law is submitted to the Town Board, by any one of the following, it shall not become effective except by a favorable vote of three-fourths of the members of the Board.
1. The owners of twenty percent or more of the area of the land included in such proposed change, or
  2. The owners of twenty percent or more of the land immediately adjacent to such proposed change extending one hundred feet there from, or
  3. The owners of twenty percent or more of the land directly opposite such proposed change extending one hundred feet from the street frontage of such opposite land.

## **Section 12.2      Procedures**

- a. Public Hearing: No amendment to this Law shall become effective until a public hearing is held in relation thereto at which the general public shall have an opportunity to be heard.
- b. Newspaper Notice of Hearing: At least fifteen (15) days prior to the date of such public hearing, a notice of the time and place shall appear in the official newspaper of the Town. Such notice shall describe the area, boundaries, regulations, or requirements that such proposed change involves.
- c. Referrals: All proposed changes to these zoning regulations or map shall be referred to the appropriate body as set forth in Section 12.3.
- d. Publication And Posting: Every amendment to this Land Use Law, including any map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board, and a copy or summaries thereof, exclusive of any map incorporated therein, shall be published once in a newspaper of general circulation in the Town. In addition, a copy of such Law or amendment, together with a copy of any map incorporated therein, shall be posted conspicuously at or near the office of the Town Clerk in accordance with Town Law. Affidavits of the publication and posting thereof shall be filed with the Town Clerk.
- e. Effective Date: An amendment or change in this Law shall take effect immediately upon filing of the local law with the Secretary of State in accord with Article 3 of the Municipal Home Rule Law.

## **Section 12.3      Referrals**

- a. Referral to the Planning Board

1. Procedure. All proposed amendments originated by petition or by motion of the Town Board shall be referred to the Town of Halcott Planning Board 30 days prior to the required public hearing for a report and recommendations thereon. If the Planning Board shall not have made its final report thereon within 30 days of reference thereto, the Town Board may proceed to final action.
  2. Planning Board Report. In preparing a report on a proposed amendment, the Planning Board shall consider the following:
    - (i) Whether such change is consistent with the objectives and purposes of the Land Use Code.
    - (ii) Whether uses permitted by the proposed change will be appropriate in the affected area.
- b. Referral to the County Planning Board
1. Matters to be Referred. Any change in the district classification of, or the regulations applying to, real property lying within a distance of 500 feet of the following shall be referred to the Greene County Planning Board prior to final action in accord with Sections 239 I. m and n of the General Municipal Law. No final action shall be taken within 30 days of such referral unless a response is received sooner.
    - (i) The boundary of any other municipality.
    - (ii) The boundary of any existing or proposed county or state park or other recreation area or state forest preserve lands.
    - (iii) The right-of-way of any existing or proposed county or state road, parkway, or other controlled access highway.
    - (iv) The existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines.
    - (v) The existing or proposed boundary of any county or state owned land on which a public building or institution is located.
  2. County Planning Board Recommendations. If the Greene County Planning Board fails to report its recommendations within 30 days after receipt of a full statement of such referred material, the Town Board may act without such a report.
  3. Affect of Negative Report. If the Greene County Planning Board disapproves the proposed amendment, or recommends modification thereof, the proposed amendment shall not become effective except by a vote of a majority plus one of all members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such action.

- c. Referral To Adjacent Municipalities: At least 10 days prior to the date of the public hearing, written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any adjacent Town or Village shall be transmitted to the Town or Village Clerk of that Town or Village. The Town or Village shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment.

## **ARTICLE XIII TERMINOLOGY**

### **Section 13.1 Use and Interpretation of Words**

Except where specifically defined herein, all words used in this Law shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number shall include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

The word "shall" is always mandatory. The word "may" is permissive. "Building" or "structure" includes any part thereof. A "building" includes all other structures of every description except fences and walls, regardless of dissimilarity to conventional building forms. The word "lot" includes the word "plot" or "parcel". The word "person" includes a corporation as well as an individual. The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for" and "occupied from".

### **Section 13.2 Definitions**

**Accessory Apartment** – A dwelling unit that has been added onto, or created within, a single- family house or in an accessory and secondary structure on the parcel.

**Accessory Building or Structure** - A structure detached or partially detached from the principal building on the same lot and customarily incidental and subordinate to the principal building or use. Structures that are connected by an open, covered, or enclosed walkway shall be considered accessory buildings.

**Accessory Use** - A use of land, or of a building or portion thereof, customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

**Agricultural Accessory Use or Structure** - A use of land, or of a building or portion thereof, supportive of but customarily incidental and subordinate to a principal active agricultural land use on the same lot including but not limited to barns, storage sheds, silos, manure storage facilities, and commodity storage facilities.

**Residential Accessory Use or Structure** – A use of land, or of a building or portion thereof, customarily incidental and subordinate to a principal residential use including, but not limited to garden shed, pool, pool house, tennis court, workshed, barn or car garage or storage garage,

**Active Agricultural Land**- land under agricultural management.

**Agricultural Data Statement** - a written identification of farm operations within an agricultural district located within 500 feet of the boundary of property upon which a site



plan review, special use permit, use variance, a subdivision is proposed as provided in Section 305-a of the Agricultural and Markets Law of the State of New York.

**Agricultural Use** - The use of a parcel of land for agricultural purposes including tilling the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, aquatic farming, harvesting of tree products and animal husbandry; also included are 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. Agricultural use includes on-site processing of meat from animals grown on-site, but does not include slaughter houses or meat processing from animals farmed off-site or kennels.

**Alteration (Structural)** - Any change in either the supporting members of a building, such as bearing walls, columns, beams and girders, or in the dimensions or configurations of the roof or exterior walls.

**Animal Processing Facility** - Synonymous with Abattoir: A structure for the slaughter and processing of animals and fowl for food as per NYS Agriculture and Markets Law 5-A. An animal processing facility shall not be considered a facility used by (a) any bona fide farmer who butchers his own domestic animals or fowl on his farm exclusively for use by him and members of his household and his non-paying guests and employees, or (b) any custom slaughterer, (as used in this local law, "custom slaughterer" means a person, firm, corporation or association who or which operates a place or establishment where animals are delivered by the owner thereof for slaughter exclusively for use, in the household of such owner, by him, and members of his household and his non-paying guests and employees, provided, that such custom slaughterer does not engage in the business of buying or selling any carcasses, parts of carcasses, meat or meat products of any animal), or (c) any person who slaughters not more than two hundred fifty turkeys or an equivalent number of birds of all other species raised by him on his own farm during the calendar year for which an exemption is sought (four birds of other species shall be deemed the equivalent of one turkey), provided that such person does not engage in buying or selling poultry products other than those produced from poultry raised on his own farm, or (d) any person who donates, and any charitable or not-for-profit organization that possesses, prepares or serves game or wild game pursuant to section 11-0917 of the environmental conservation law (and any person who processes game or wild game on behalf of such donor).

**Baby Barn** - A small accessory structure no greater than 120 square feet in size for the storage of common household items such as garden equipment, bicycles, and similar.

**Bed and Breakfast** - An owner-occupied establishment providing no more than five rooms of transient housing accommodation, which provides breakfast only to persons occupying the transient quarters.

**Boarding House** - A private dwelling in which at least three but not more than six rooms are offered for rent, and table board is furnished only to roomers, and in which no transients are accommodated. A rooming house or a furnished room house shall be deemed a boardinghouse. ["Transients" Not Defined].

**Buffer** - An undeveloped part of a property or an entire property specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility,

glare, etc) on adjacent properties.

**Building** - Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing, or enclosure of persons, animals, or equipment or goods.

**Building (Accessory)** - See "Accessory Building".

**Building Area** - The total square footage of interior floor areas measured on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

**Building (Completely Enclosed)** - A building separated on all sides from adjacent open space or other buildings by fixed interior walls or party walls, pierced only by windows and doors, and covered by a permanent roof.

**Building Detached)** - A building entirely surrounded by open space on the same lot.

**Building, Principal** - A building in which is conducted the principal use of the lot on which said building is located.

**Building Line** - A line parallel to the street line and set back there from a distance equal to the required front yard in the zoning district in which a lot is located.

**Bulk** - A term used to describe the size, volume, area, and shape of buildings and structures and the physical relationship of their exterior walls or their location to lot lines, other buildings and structures or other walls of the same *building*, and all open spaces required in connection with a building, other structure, or tract of land.

**Cease to operate -** Discontinuance of use, not performing the normal functions associated with its equipment on a continuous and ongoing basis for over one year.

**Change of Use.** The change of use or occupancy of land, buildings, structures, or other improvements on land from either residential to commercial or from one use listed on the Use Table to another. A change of use also includes a change in the nature, substance or intensity of the same use including, but not limited to, changes in use which require the issuance of a Certification of Occupancy pursuant to the New York State Uniform Building and Fire Code.

**Character** - the image of a community as defined by such factors as its built environment, natural features and open space elements, type of housing, architectural style, infrastructure, and the type and quality of public services. Refer to the Town of Halcott Comprehensive Plan Goal #3 (Community Character).

**Commercial Campground and Recreational Vehicle Parks** - A plot of ground on which two to a maximum of 25 campsites are located, established or maintained for occupancy by camping units of the general public as temporary living quarters for recreation, education or vacation purposes; operated as a business and open to the public for a fee.

**Commercial Use** - any activity involving the sale of goods or services carried out for profit.

**Comprehensive Plan** – Town of Halcott Comprehensive Plan, Adopted by the Town Board, December 10, 2003.

**Conservation Easement** - An easement, covenant, restriction or other interest in real property, created under Article 49 of the Environmental Conservation Law of the State of New York, which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose stated in Section 49-

0301 of the Environmental Conservation Law of the State of New York.

**Cultural Facility** – Establishments oriented towards social, religious, intellectual and artistic uses that include but are limited to museums, gardens, zoos, art galleries.

**Drainage** - a system of swales, ditches, and culverts, catch-basins, and piping to convey storm- water runoff to retention areas and stabilized discharge points.

**Dwelling** - A building designed or used principally as the living quarters for one or more families, anywhere in the Town.

**Dwelling (One family)** - A building containing only one dwelling unit.

**Dwelling (two family)** - A building containing two dwelling units.

**Dwelling [Multiple]** - A building containing three dwelling units including units attached with party walls. No more than three dwelling units shall be allowed.

**Dwelling Unit** - A building or entirely self-contained portion thereof designed for occupancy by only one family (including any domestic staff employed on the premises) and having complete cooking and sanitary facilities for the exclusive use of the occupants of the "dwelling unit". A boarding house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging or rooming house, nursing, or other similar home, or other similar structure shall not be deemed to constitute a dwelling unit.

**Easement**- the right to use the land of another, obtained through the purchase or other acquisition of use rights from a landowner.

**Equipment Yard or Contractor's Yard** - A use of property for the storage of construction equipment including, but not limited to bulldozers, backhoes, excavators, dump trucks, etc and construction supplies including but not limited to lumber.

**Family** - A "family" consists of one or more persons who live together and maintain a common household.

**Finished Grade** - The final elevation of the ground level after development.

**Flood, 100-Year** - the highest level of flood that, on the average, is likely to occur once every

100 years (i.e., that has a 1% chance of occurring each year).

**Floodplain** – The channel and the relatively flat area adjoining the channel of a natural stream or river that has been or may be covered by floodwater.

**Flood Hazard** - land within a community subject to a one percent (1% or greater chance of flooding in any given year as shown on the Flood Insurance Rate Maps developed by the Federal Emergency Management Agency. Also commonly referred to as base floodplain or 100 year floodplain.

**Forestry** - The operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation services and the gathering of gums, barks, balsam needles, maple sap, , and other forest products.

**Garage** – An accessory structure to a residential or commercial use, or part thereof, used or intended to be used for the parking and storage of vehicles owned and operated by the residents, employees, or customers thereof, and is not a separate commercial enterprise available to the general public.

**Garden Shed** – An accessory structure or building used primarily for storage purposes. and that is 100 square feet in size or less. See also Baby Barn.\_

**Grading** - the leveling of land for site development purposes including construction of roads, building construction, drainage areas and parking.

**Health and Social Service Clinic/Office** - Offices and related spaces for use as professional services related to medical and social services as provided by medical practitioners and similar professions.

**Height of Building** - The midpoint between the ridge and eave or for a flat roof, the top of the parapet.

**Home Occupation** - An activity carried out for gain by a resident in his or her principal dwelling or in a permitted accessory or secondary structure located on the parcel and which is clearly incidental and secondary to the primary use of the dwelling for residential purposes.

**Horse Stable, Commercial** - A use of property on which horses are quartered, for remuneration.

**Horse Stable, Private**: A use of property on which horses are quartered, without remuneration.

**Inns, Country** - an owner occupied or managed building or any part thereof, which contains temporary living and sleeping accommodations for no more than 14 rooms without separate kitchen facilities in rooms. Such establishments may also have full-service dining for both guests and the public.

**Junkyard** - any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles. Motor vehicles are all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

**Loading Dock, Loading Facility** - An off-street space or berth used for loading or unloading of cargo, products, or materials from vehicles.

**Logging** - The removal of timber from a property. Nothing in this law shall prevent cutting of trees by a property owner on his own land for his own personal use and enjoyment.

**Lot** - A defined portion or parcel of land considered as a unit, devoted to a specific use or occupied by a building or a group of buildings that are united by a common interest, use, or ownership, and the customary accessories and open spaces belonging to the same.

**Lot Area** - The total horizontal area included within the lot lines.

**Lot (Flag)** - A lot fronting on a public or private road or street which does not meet the lot width requirements of the district in which the lot is located at the rear of the required front yard but widens or extends to a point where the distance between the side lot lines is equal to or greater than the required lot width.

**Lot Frontage** - A lot line which is coincident with a street line.

**Lot Line** - The lines bounding a lot as defined herein.

**Lot Width** - The width of a lot measured parallel to the lot frontage at the rear of the required front yard.

**Lot of Record** - A lot which is recorded in the office of the Greene County Clerk.

**Manufacturing and Assembly** - The mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of

products, and the blending of materials.

**Membership Club** – An organization with pre-established formal membership requirements, bylaws, and with the objective of promoting the interests of its members.

**Mine** - any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use equal to or greater than 1000 tons or 750 cubic yards, whichever is less within a period of twelve (12) consecutive months, produced for sale or exchange or for commercial, industrial, or municipal use or for use other than on the property from which the material is extracted; all haulageways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine review by the Department of Environmental Conservation. Mining means the extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities. Mining shall also include all activities related to drilling for natural gas, and oil.

**Mobile Home** – A portable, factory-made dwelling unit, built on its own chassis, designed to be transported on its own wheels or those of another vehicle, and intended, when connected to all required utility systems, to be suitable for year-round occupancy. The term mobile home shall not be construed to include a modular home or a recreational vehicle. However, a 'tiny home' shall be considered a mobile home.

**Modular Home** - A dwelling unit consisting of two or more major segments constructed off-site, which complies with the New York State Uniform Fire Prevention and Building Code, and designed to be transported to a site for permanent assembly and anchoring to a permanent foundation and to become a fixed part of the real estate.

**Motor Vehicle and Equipment Repair** - General repair, equipment repair, rebuilding or reconditioning of engines, motor vehicles, or trailers, such as collision service, body repair and frame straightening, painting and upholstering; vehicle steam cleaning; and undercoating.

**New Single or Two-Family Dwelling** – A new structure built to be used as a residence for a single family or built as a two-family residence, or an existing structure such as a barn or garage that is converted to be used as a residence for a single or two-family. Note that on a parcel that currently has both a residential structure and an accessory (secondary) structure, conversion of such accessory (secondary) structure for residential use shall be considered an accessory apartment, not a new single or two family dwelling.

**Non-conforming Bulk** - That part of a building, other structure, or tract of land which does not conform to One or more of the applicable bulk regulations of this Law, either following its effective date or as a result of subsequent amendments thereto. [See, suggested new language, enclosed with cover letter.]

**Non-conforming Use** - Any use of a building, other structure, or tract of land, otherwise

lawfully established, which does not conform to the use regulations herein, either at the effective date of this Law or as a result of subsequent amendments thereto.

**Nursery** - An establishment where woody or herbaceous plants are grown for sale, including a structure for the sale of such merchandise.

**Nursery School or Preschool** - A place providing or designed to provide daytime care or instruction by an individual, association, corporation, institution, or agency, whether or not for compensation or reward, for seven or more children from the age of two to five years inclusive, away from their homes for more than two and one half but less than 10 hours per day. Daytime care facilities for six or fewer children shall not be considered a preschool or nursery school and may be conducted as a home occupation permitted as right.

**Open Space** - One or more parcels of land normally not developed with structures or buildings, and that is the preserved portion of lands on a parcel. Required open space in conservation subdivisions may be included within individual lots only if such lot is 5 acres or larger. No open space shall be designated within 50 feet of the principal structure or dwelling.

**Outdoor Hunting, Fishing, Shooting Club or Preserve** - A parcel of land, preserved to maintain wildlife habitats and undeveloped open spaces on which hunting and/or shooting is permitted as the primary use of the parcel during certain months of the year only by paying users, or members. Private land where the landowner invites or allows hunting on their property shall not be construed to be a shooting preserve.

**Parcel** - a tract of land either un-subdivided or consisting of two or more contiguous lots recorded in a plat or one deed under one ownership.

**Performance Bond** - a bond as may be required by Section 277 of the Town Law to assure the full and satisfactory completion of all required subdivision improvements as specified in the Planning Board Resolution.

**Premises** - A lot together with all the buildings and uses thereon.

**Permitted Use or Structure** - any land use or structure allowed as per Table 3.1. Permitted uses or structures may not require site plan review and approval by the Planning Board but may have additional standards and requirements pursuant to this local law.

**Principal Structure** - a structure or building in which is conducted the principal use of the lot on which it is located.

**Principal Use** - The primary or predominant use of any lot or parcel.

**Public and Private Schools** - Schools formally accredited by the New York State Department of Education and schools which instruct more than twenty students per year, even though not formally accredited by the New York State Department of Education. The latter category would encompass nursery schools, environmental education centers, trade schools and elder hostels.

**Recreational Vehicle** - A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and is primarily designed as temporary living accommodation for recreational camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

**Recycling Centers, Commercial** - A lot or parcel of land, with or without buildings, upon which used materials are separated and processed for shipment for eventual reuse in new products.

**Residence** - [covered by definition of "Dwelling"]

**Restaurant-** An establishment no larger than 3,000 square feet, where food and beverages are prepared, served and intended to be consumed primarily within the principal building and where such food and beverages are not primarily packaged for removal by the customer.

**Retail Sales –** Establishments, no larger than 3,000 square feet, 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. Retail sales establishments are usually a place of business, attracts the general public to buy, and buys and receives as well as sells merchandise. Some retail sales establishments may process or manufacture some of the products, but such activity usually is incidental or subordinate to the selling activities. Retail sales also include any building, land area, or other premises used or intended to be used for the retail dispensing or sale of automobile fuels, which activity may be accompanied by accessory uses such as sales of lubricants, tires, accessories or supplies.

**Ridgetop or Ridgeline -** the highest elevation of a mountain chain or line of hills and the long, narrow crest or horizontal line of hills.

**Riding Academy** - Any establishment where horses are kept for riding, riding lessons, driving or stabling for compensation.

**Right-of-Way** - A strip of land acquired by reservation, dedication, purchase, prescription or condemnation used or intended to be used to afford legal access to abutting property. See also street.

**Right-of-Way Line** - The dividing line between a lot and the adjacent right-of-way.

**Roadside Farm Stand** - An establishment, usually a booth or stall, which is accessory to a farm, primarily engaged in the retail sale of produce and farm products to the general public and which is open no more than eight months in any calendar year.

**Rooming House** - See "Boarding House."

**Sawmill** - a facility where logs are cut into lumber of varying sizes and with a capacity of no more than 6,000 feet/day.

**Secondary Structure –**an accessory structure on a parcel. See Accessory structure.

**Secondary Structure as a home businesses –**an accessory structure used as a home business. See Accessory Structure and Accessory Use.

**Self-Storage Facility –** A building consisting of individual, small, self-contained units that are leased or owned for the storage of business or household goods.

**Setback** - The minimum distance in feet from the lot line or centerline of the road to the principal building on a lot.

**Solar Panels, Residential, Business or Agricultural Use** - Any solar energy system used for residential, business, or agricultural purposes that is an accessory structure, designed and intended to generate energy up to ten kilowatts (kW) per hour primarily for a principal use located on site. Solar panels located on a farm operation (as per AML §301(11) definition of that term) and located in a New York State Agricultural District can produce up to 110% of the farm's needs as per the Department of Agriculture and Markets guidance document.

**Solar Panels, Utility Scale** – An energy generation facility that is ground-mounted and used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, designed and intended to supply energy solely into a utility grid for the purpose of offsite sale or consumption.

**Sign-** Any letter, word, model, banner, flag, pennant, insignia, device, or representation

designed or used as, or which is in the nature of, an announcement, direction or advertisement. The word "sign" does not include the flag, pennant or insignia of any nation, state, city or other political entity, or signs devoted to prohibiting trespassing. A sign shall have no more than two faces.

**Sign, Off-Premise** – A sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

**Site Plan** - A plan that indicates the proposed development and uses of land or structures.

**Sketch Plan** - a concept or informal map of a proposed site of sufficient detail to be used for the purpose of discussion and classification.

**Skilled Nursing Home or Convalescent Home** - A facility operated for the purpose of providing lodging, board, and nursing care to sick, invalid, infirm, disabled, or convalescent persons for remuneration limited to 25 beds, as defined by NY State Law.

**Slope of Site** - the vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of stormwater runoff. Should the site be sufficiently large in the judgment of the Planning Board and heterogeneous in character (difference of one or more slope factors), the site should be divided into different measurement units, with a gradient defined for each.

**Special Use Permit** - An allowed use, subject to standards to ensure compatibility with the neighborhood and harmony with the zoning regulations.

**Sports or Recreation Club, Indoor** - A place no more than 3,000 square feet designed and equipped for the conduct of sports and leisure time activities for profit and undertaken entirely within a building, including team or individual sports and related health and exercise facilities. Video parlors, computer gaming facilities, movie theaters and bars do not constitute indoor recreation businesses. However, an indoor recreation business use may be accompanied by customary accessory uses, which may include food service facilities, meeting room or banquet facilities, serving of alcoholic beverages, video or computer game facilities, video theater facilities, sales or sport or exercise-related equipment or clothing and other customary accessory uses. An indoor recreational business includes a spa.

**Sports or Recreation Club, Outdoor** – A place designed and equipped for the conduct of sports and leisure time activities for profit and undertaken entirely outside of a building and includes but is not limited to golf, skiing, ball playing on ball fields, swimming, bike trails, hiking and similar outdoor activities on a commercial or fee basis.

**Steep Slope** - All ground areas having a topographical gradient equal to or greater than twenty percent (20%) measured by utilizing two (2) foot contours.

**Stream** - a natural and not man-made waterway depicted on the maps included in the Comprehensive Plan of the Town of Halcott on file with the Town Clerk. A stream shall not include swales or drainage ditches. A stream classified as protected under Article 15 of the New York State Environmental Conservation Law shall be considered a “protected stream”.

**Stream Corridor** - the stream channel (the bed and banks of a stream which confine and conduct continuously or intermittently flowing water), the area within the one hundred



year flood line and a minimum of 100 feet from the one hundred year flood line, extending outward from the stream channel, on both sides of the stream. If there is no one hundred year flood line delineated, the distance shall be measured outward from the bank of the stream channel. If a slope greater than 20% abuts the outer boundary of the stream corridor, the area of such slopes shall also be included as the stream corridor.

**Street** - An existing public way which affords principal means of access to abutting properties and is suitably improved; or a proposed way shown on a plat approved by the Town Planning Board and/or recorded in the office of the County Clerk.

**Street Line** - The dividing line between a lot and a street, which forms the front lot line of a lot abutting a street, and is defined by the right-of-way or parcel containing a street.

**Street Width** - The width of the right-of-way or the distance between property, street parcel or takings lines on opposite sides of a street,

**Structure** - Anything constructed or built, any edifice, or building of any kind that is permanently affixed to the ground.

**Swimming Pool** - An outdoor water pool which is intended to be used for swimming or bathing. An outdoor water pool shall, for the purposes of this law, be construed to mean any swimming pool, tank, depression, or excavation in any material, dike, or berm constructed, erected, excavated, or maintained, which will cause the retention of water to a greater depth than 18 inches or having a plane surface area of water greater than 100 square feet, and includes in ground as well as above ground swimming pools.

**Telecommunications Tower** - Any structure greater than thirty-five (35) feet in height which is capable of receiving and or transmitting signals for the purpose of communications, excluding C.B. and mobile radios but not commercial radio stations.

**Tiny Home** - a single family dwelling that is 600 square feet in size or less either on wheels or a foundation.

**Travel Trailer or Recreational Vehicle** - Any portable vehicle which requires a license from the Department of Motor Vehicles and is designed to be transported on its own wheels or is mounted on another vehicle; which is designed and intended to be used for temporary living quarters for travel, recreation or vacation purposes. Travel trailers subject to this Code are those which remain on the property for longer than 10 days.

**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 vertical common fire-resistant walls.

**Use** - This term is employed in referring to:

- (a) The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained, or occupied; or
- (b) Any occupation, business activity, or operation conducted (or intended to be conducted) in a building or other structure, or on land.

**Wetland, Designated** - A wetland designated in accord with Article 24 of the New York State Environmental Conservation Law.

**Wholesale Trade** - Establishments or places of business, not exceeding 3,000 square feet, primarily engaged in selling merchandise to retailers; to industrial, commercial,

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

**Windtower** - A wind energy conversion system that generates electrical power consisting of a tower, nacelle and associated control or conversion electronics and equipment contained within or atop the tower. Wind towers include Wind Energy Facilities, Small Wind Facilities, and Wind Measurement Towers.

**Yard. (Required)** - That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line, for a depth or width as specified by the bulk regulations. No part of such yard shall be included as part of a yard or other open space similarly required for buildings on another lot.

**Yard, Front** - An open, unoccupied space extending across the full width of the lot, 'between the front lot line and a line drawn parallel thereto at the closest building.

**Yard, Rear** - An open, unoccupied space extending across the full width of the lot between the rear lot line and a line drawn parallel thereto at the closest building.

**Yard, Side** - An open, unoccupied space between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a street line shall be deemed a side line.

## **ARTICLE XIV EFFECTIVE DATE**

This Law shall take effect immediately upon adoption by the Town Board of the Town of Halcott, New York, and proper publication, posting and filing with the New York State Department of State.