

Town of Barre, NY
Wednesday, January 25, 2017

Chapter 144. CONSTRUCTION CODES, UNIFORM

[HISTORY: Adopted by the Town Board of the Town of Barre as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Numbering of buildings — See Ch. **125**.
Unsafe buildings; property nuisances — See Ch. **130**.
Flood damage prevention — See Ch. **175**.
Outdoor heating devices — See Ch. **232**.
Zoning — See Ch. **350**.

Article I. Administration and Enforcement

[Adopted 12-23-1985 by L.L. No. 2-1985; amended in its entirety at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

§ 144-1. Purpose.

This article provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in the Town of Barre. This article is adopted pursuant to § 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this article, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this article.

§ 144-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BUILDING PERMIT

A permit issued pursuant to § **144-4** of this article. The term “building permit” shall also include a building permit which is renewed, amended or extended pursuant to any provision of this article.

CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLIANCE

A certificate issued pursuant to § **144-7B** of this article.

CODE ENFORCEMENT OFFICER

The Code Enforcement Officer appointed pursuant to § **144-3B** of this article.

CODE ENFORCEMENT PERSONNEL

The Code Enforcement Officer and all inspectors.

COMPLIANCE ORDER

An order issued by the Code Enforcement Officer pursuant to § **144-15A** of this article.

ENERGY CODE

The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from

time to time.

INSPECTOR

An inspector appointed pursuant to § **144-3D** of this article.

OPERATING PERMIT

A permit issued pursuant to § **144-10** of this article. The term "operating permit" shall also include an operating permit which is renewed, amended or extended pursuant to any provision of this article.

PERMIT HOLDER

The person to whom a building permit has been issued.

PERSON

An individual, corporation, limited-liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

STOP-WORK ORDER

An order issued pursuant to § **144-6** of this article.

TEMPORARY CERTIFICATE

A certificate issued pursuant to § **144-7D** of this article.

TOWN

The Town of Barre.

UNIFORM CODE

The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

§ 144-3. Code Enforcement Officer; inspectors.

- A. The office of Code Enforcement Officer is hereby created. The Code Enforcement Officer shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this article. The Code Enforcement Officer shall have the following powers and duties:
- (1) To receive, review, and approve or disapprove applications for building permits, certificates of occupancy/certificates of compliance, temporary certificates and operating permits, and the plans, specifications and construction documents submitted with such applications;
 - (2) Upon approval of such applications, to issue building permits, certificates of occupancy/certificates of compliance, temporary certificates and operating permits, and to include in building permits, certificates of occupancy/certificates of compliance, temporary certificates and operating permits such terms and conditions as the Code Enforcement Officer may determine to be appropriate;
 - (3) To conduct construction inspections, inspections to be made prior to the issuance of certificates of occupancy/certificates of compliance, temporary certificates and operating permits, firesafety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this article;
 - (4) To issue stop-work orders;
 - (5) To review and investigate complaints;
 - (6) To issue orders pursuant to § **144-15A**, Compliance orders, of this article;
 - (7) To maintain records;
 - (8) To collect fees as set by the Town Board of the Town of Barre;

- (9) To pursue administrative enforcement actions and proceedings;
 - (10) In consultation with this Town's attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this article, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this article; and
 - (11) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer by this article.
- B. The Code Enforcement Officer shall be appointed by the Town Board. The Code Enforcement Officer shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- C. In the event that the Code Enforcement Officer is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer. The Acting Code Enforcement Officer shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer by this article.
- D. One or more inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer and to assist the Code Enforcement Officer in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer by this article. Each inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- E. The compensation for the Code Enforcement Officer and inspectors shall be fixed from time to time by the Town Board of the Town of Barre.

§ 144-4. Building permits.

- A. Building permits required. Except as otherwise provided in Subsection **B** of this section, a building permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney or flue in any dwelling unit. No person shall commence any work for which a building permit is required without first having obtained a building permit from the Code Enforcement Officer.
- B. Exemptions. No building permit shall be required for work in any of the following categories:
- (1) Construction or installation of one-story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area is less than 144 square feet (13.38 square meters);
 - (2) Installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (3) Installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
 - (4) Installation of fences which are not part of an enclosure surrounding a swimming pool;

- (5) Construction of retaining walls, unless such walls support a surcharge or impound Class I, II or IIIA liquids;
 - (6) Construction of temporary motion-picture, television and theater stage sets and scenery;
 - (7) Installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);
 - (8) Installation of partitions or movable cases less than five feet nine inches in height;
 - (9) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (10) Installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - (11) Replacement of any equipment, provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
 - (12) Repairs, provided that such repairs do not involve:
 - (a) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;
 - (b) The removal or change of any required means of egress; or the rearrangement of parts of a structure in a manner which affects egress;
 - (c) The enlargement, alteration, replacement or relocation of any building system; or
 - (d) The removal from service of all or part of a fire protection system for any period of time.
- C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection **B** of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.
- D. Applications for building permits. Applications for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. The application shall be signed by the owner of the property where the work is to be performed or by an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:
- (1) A description of the proposed work;
 - (2) The Tax Map number and the street address of the premises where the work is to be performed;
 - (3) The occupancy classification of any affected building or structure;
 - (4) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
 - (5) At least two sets of construction documents (drawings and/or specifications) which:
 - (a) Define the scope of the proposed work;
 - (b) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
 - (c) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
 - (d) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and

- (e) Where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.
- E. Construction documents. Construction documents will not be accepted as part of an application for a building permit unless they satisfy the requirements set forth in Subsection **D(5)** of this section. Construction documents which are accepted as part of the application for a building permit shall be marked as accepted by the Code Enforcement Officer in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a building permit will be issued. Work shall not be commenced until and unless a building permit is issued.
- F. Issuance of building permits. An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- G. Building permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- H. Work to be performed in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the building permit. The building permit shall contain such a directive. The permit holder shall immediately notify the Code Enforcement Officer of any change occurring during the course of the work. The building permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended building permit, such change shall not be made until and unless a new or amended building permit reflecting such change is issued.
- I. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.
- J. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer shall revoke the building permit or suspend the building permit until such time as the permit holder demonstrates that all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.
- K. Fee. The fee specified in or determined in accordance with the provisions set forth in § **144-16**, Fees, of this article must be paid at the time of submission of an application for a building permit, for an amended building permit, or for renewal of a building permit.

§ 144-5. Construction inspections.

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer or by an inspector authorized by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection **B** of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected,

where applicable:

- (1) Work site prior to the issuance of a building permit;
 - (2) Footing and foundation;
 - (3) Preparation for concrete slab;
 - (4) Framing;
 - (5) Building systems, including underground and rough-in;
 - (6) Fire-resistant construction;
 - (7) Fire-resistant penetrations;
 - (8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
 - (9) Energy Code compliance; and
 - (10) A final inspection after all work authorized by the building permit has been completed.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § **144-16**, Fees, of this article must be paid prior to or at the time of each inspection performed pursuant to this section.

§ 144-6. Stop-work orders.

- A. Authority to issue. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
- (1) Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (2) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
 - (3) Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. Content of stop-work orders. Stop-work orders shall be in writing, be dated and signed by the Code Enforcement Officer, state the reason or reasons for issuance, and, if applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. Service of stop-work orders. The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the permit holder, on the permit holder) personally or by certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by certified mail; provided, however, that

failure to serve any person mentioned in this sentence shall not affect the efficacy of the stop-work order.

- D. Effect of stop-work order. Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order.
- E. Remedy not exclusive. The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection **A** of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under § **144-15**, Enforcement; penalties for offenses, of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

§ 144-7. Certificates of occupancy/certificates of compliance.

- A. Certificates of occupancy/certificates of compliance required. A certificate of occupancy/certificate of compliance shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy/certificate of compliance.
- B. Issuance of certificates of occupancy/certificates of compliance. The Code Enforcement Officer shall issue a certificate of occupancy/certificate of compliance if the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy/certificate of compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy/certificate of compliance, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy/certificate of compliance:
 - (1) A written statement of structural observations and/or a final report of special inspections; and
 - (2) Flood hazard certifications.
- C. Contents of certificates of occupancy/certificates of compliance. A certificate of occupancy/certificate of compliance shall contain the following information:
 - (1) The building permit number, if any;
 - (2) The date of issuance of the building permit, if any;
 - (3) The name, address and Tax Map number of the property;
 - (4) If the certificate of occupancy/certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy/certificate of compliance is issued;
 - (5) The use and occupancy classification of the structure;
 - (6) The type of construction of the structure;
 - (7) The assembly occupant load of the structure, if any;
 - (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;

- (9) Any special conditions imposed in connection with the issuance of the building permit; and
 - (10) The signature of the Code Enforcement Officer issuing the certificate of occupancy/certificate of compliance and the date of issuance.
- D. Temporary certificate. The Code Enforcement Officer shall be permitted to issue a temporary certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit. However, in no event shall the Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines that the building or structure, or the portion thereof covered by the temporary certificate, may be occupied safely, that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and that all required means of egress from the building or structure have been provided. The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy/certificate of compliance or a temporary certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 144-16, Fees, of this article must be paid at the time of submission of an application for a certificate of occupancy/certificate of compliance or for a temporary certificate.

§ 144-8. Notification regarding fire or explosion.

The chief of any fire department providing fire-fighting services for a property within the Town of Barre shall promptly notify the Code Enforcement Officer of any fire or explosion involving any structural damage, electrical fire or damage, fuel-burning appliance, chimney or gas vent.

§ 144-9. Unsafe buildings and structures.

Unsafe structures and equipment in the Town of Barre shall be identified and addressed in accordance with the procedures established by Chapter 130, Buildings, Unsafe; Property Nuisances, as now in effect or as hereafter amended from time to time.

§ 144-10. Operating permits.

- A. Operating permits required.
- (1) Operating permits shall be required for conducting the activities or using the categories of buildings listed below:
 - (a) Manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Table 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR 1225.1;
 - (b) Hazardous processes and activities, including but not limited to commercial and industrial operations which produce combustible dust as a by-product, fruit and crop ripening, and waste handling;

- (c) Use of pyrotechnic devices in assembly occupancies;
 - (d) Buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
 - (e) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of the Town of Barre.
- (2) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection **A** shall be required to obtain an operating permit prior to commencing such activity or operation.
- B. Applications for operating permits. An application for an operating permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer. Such application shall include such information as the Code Enforcement Officer deems sufficient to permit a determination by the Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant.
- C. Inspections. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the subject premises prior to the issuance of an operating permit.
- D. Multiple activities. In any circumstance in which more than one activity listed in Subsection **A** of this section is to be conducted at a location, the Code Enforcement Officer may require a separate operating permit for each such activity, or the Code Enforcement Officer may, in his or her discretion, issue a single operating permit to apply to all such activities.
- E. Duration of operating permits. Operating permits shall be issued for such period of time, not to exceed one year in the case of any operating permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer to be consistent with local conditions. The effective period of each operating permit shall be specified in the operating permit. An operating permit may be reissued or renewed upon application to the Code Enforcement Officer, payment of the applicable fee, and approval of such application by the Code Enforcement Officer.
- F. Revocation or suspension of operating permits. If the Code Enforcement Officer determines that any activity or building for which an operating permit was issued does not comply with any applicable provision of the Uniform Code, such operating permit shall be revoked or suspended.
- G. Fee. The fee specified in or determined in accordance with the provisions set forth in § **144-16**, Fees, of this article must be paid at the time of submission of an application for an operating permit, for an amended operating permit, or for reissue or renewal of an operating permit.

§ 144-11. Firesafety and property maintenance inspections.

- A. Inspections required. Firesafety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at the following intervals:
 - (1) Firesafety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every 12 months.
 - (2) Firesafety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
 - (3) Firesafety and property maintenance inspections of all multiple dwellings not included in Subsection **A(1)** or **(2)**, and all nonresidential buildings, structures, uses and occupancies not included in Subsection **A(1)** or **(2)** shall be performed at least once every 36 months.

- B. Inspections permitted. In addition to the inspections required by Subsection **A** of this section, a firesafety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Code Enforcement Officer or an inspector designated by the Code Enforcement Officer at any time upon: the request of the owner of the property to be inspected or an authorized agent of such owner; receipt by the Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or receipt by the Code Enforcement Officer of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this subsection shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.
- C. OFPC inspections. Nothing in this section or in any other provision of this article shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator under Executive Law § 156-e and Education Law § 807-b.
- D. Fee. The fee specified in or determined in accordance with the provisions set forth in § **144-16**, Fees, of this article must be paid prior to or at the time each inspection is performed pursuant to this section. This subsection shall not apply to inspections performed by OFPC.

§ 144-12. Complaints.

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this article, or any other local law, ordinance or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

- A. Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- B. If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in § **144-15**, Enforcement; penalties for offenses, of this article;
- C. If appropriate, issuing a stop-work order;
- D. If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

§ 144-13. Recordkeeping.

- A. The Code Enforcement Officer shall keep permanent official records of all transactions and activities conducted by all code enforcement personnel, including records of:
 - (1) All applications received, reviewed and approved or denied;
 - (2) All plans, specifications and construction documents approved;
 - (3) All building permits, certificates of occupancy/certificates of compliance, temporary certificates, stop-work orders, and operating permits issued;
 - (4) All inspections and tests performed;

- (5) All statements and reports issued;
 - (6) All complaints received;
 - (7) All investigations conducted;
 - (8) All other features and activities specified in or contemplated by §§ **144-4** through **144-12**, inclusive, of this article; and
 - (9) All fees charged and collected.
- B. All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by state law and regulation.

§ 144-14. Program review and reporting.

- A. The Code Enforcement Officer shall annually submit to the Town Board of the Town of Barre a written report and summary of all business conducted by the Code Enforcement Officer and the inspectors, including a report and summary of all transactions and activities described in § **144-13**, Recordkeeping, of this article and a report and summary of all appeals or litigation pending or concluded.
- B. The Code Enforcement Officer shall annually submit to the Secretary of State, on behalf of the Town of Barre, on a form prescribed by the Secretary of State, a report of the activities of the Town of Barre relative to administration and enforcement of the Uniform Code.
- C. The Code Enforcement Officer shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials the Town of Barre is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of the Town of Barre in connection with administration and enforcement of the Uniform Code.

§ 144-15. Enforcement; penalties for offenses.

- A. Compliance orders. The Code Enforcement Officer is authorized to order, in writing, the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this article. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a compliance order. The compliance order shall be in writing; be dated and signed by the Code Enforcement Officer; specify the condition or activity that violates the Uniform Code, the Energy Code, or this article; specify the provision or provisions of the Uniform Code, the Energy Code, or this article which is/are violated by the specified condition or activity; specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; direct that compliance be achieved within the specified period of time; and state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement Officer shall cause the compliance order, or a copy thereof, to be served on the owner of the affected property personally or by certified mail. The Code Enforcement Officer shall be permitted, but not required, to cause the compliance order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the compliance order.
- B. Appearance tickets. The Code Enforcement Officer and each inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
- C. Civil penalties. In addition to those penalties prescribed by state law, any person who violates any provision of the Uniform Code, the Energy Code or this article, or any term or condition of any building permit,

certificate of occupancy/certificate of compliance, temporary certificate, stop-work order, operating permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town of Barre.

- D. Injunctive relief. An action or proceeding may be instituted in the name of the Town of Barre, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this article, or any term or condition of any building permit, certificate of occupancy/certificate of compliance, temporary certificate, stop-work order, operating permit, compliance order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this article. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this article, or any stop-work order, compliance order or other order obtained under the Uniform Code, the Energy Code or this article, an action or proceeding may be commenced in the name of the Town of Barre, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subsection shall be commenced without the appropriate authorization from the Town Board of the Town of Barre.
- E. Remedies not exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or penalty available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in § 144-6, Stop-work orders, of this article, in any other section of this article, or in any other applicable law. Any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in § 144-6, Stop-work orders, of this article, in any other section of this article, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of § 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of § 382 of the Executive Law.

§ 144-16. Fees.

A fee schedule shall be established by resolution of the Town Board of the Town of Barre. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of building permits, amended building permits, renewed building permits, certificates of occupancy/certificates of compliance, temporary certificates, operating permits, firesafety and property maintenance inspections, and other actions of the Code Enforcement Officer described in or contemplated by this article.

§ 144-17. Intermunicipal agreements.

The Town Board of the Town of Barre may, by resolution, authorize the Town Supervisor of the Town of Barre to enter into an agreement, in the name of the Town of Barre, with other governments to carry out the terms of this article, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

Chapter 350. ZONING

Article III. Permits and Procedures

§ 350-12. Permits required.

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

§ 350-13. Zoning permit types.

Under the terms of this chapter, the following types of zoning permits may be issued:

- A. Permitted use. A zoning permit for a permitted use may be issued by the Code Enforcement Officer on his own authority. The zoning permit may be issued in conjunction with, and administered using the same form as, a building permit.
- B. Site plan approval. A zoning permit for a permitted use may be issued by the Code Enforcement Officer after site plan approval from the Planning Board, as more fully described in Article **X**. The following permitted uses are not subject to site plan approval: one- or two-family dwellings, farm uses, or accessory uses associated with a one- or two-family dwelling or farm use.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- C. Special permit uses. A zoning permit for a special permit use may be issued by the Code Enforcement Officer after special permit approval and site plan approval from the Planning Board, after a public hearing, as more fully described in Article **IX**.
- D. Zoning permit after a request for variance. A zoning permit for a use or structure which requires a variance may be issued by the Code Enforcement Officer upon order of the Zoning Board of Appeals, after a public hearing, as more fully described in Article **VIII**.

§ 350-14. Application procedure and required information.

- A. Application. Application for a zoning permit shall be made with the Code Enforcement Officer on forms approved by the Town Board. Forms shall be made available at the offices of the Code Enforcement Officer and the Town Clerk.
- B. Information.
 - (1) All information on the application form shall be completed.
 - (2) In addition, two copies of a property map shall be submitted with all applications. The map

shall be either:

- (a) Sketch map. A sketch map is required with all applications for a zoning permit for one- or two-family dwellings, their customary accessory uses, or farm use. The sketch map shall be drawn to scale and show the dimensions and location of the lot, exact size and location of all existing and proposed buildings on the lot, proposed location of water and sewage disposal systems, parking areas and driveway location, natural watercourses, ponds, surface drainage patterns or location of existing or proposed easements; or
 - (b) Site plan. A site plan is required with applications for all other uses. The requirements and procedures for site plan approval are in Article X.
- C. Approval of water and sewage disposal systems. Evidence of approval of the water supply and the sewage disposal system plans by the Orleans County Health Department or its agent, or design plans signed by a licensed engineer, shall be submitted at the time of application. Applications lacking such information shall not be accepted.
 - D. Evidence of property ownership or intent to purchase. Copies of deeds, titles, purchase agreements, or other proof of ownership or intent to purchase shall be attached to an application before it will be accepted.
 - E. Licenses. Any use currently licensed by federal, state, county or Town agencies and already operating within the Town shall present evidence of currently valid licenses before any expansion permits are considered.
 - F. Fee. The appropriate nonrefundable fee established by the Town Board in its fee structure shall be collected at the time of application. This fee structure shall be filed and posted at the office of the Town Clerk.

§ 350-15. Zoning permit granted.

When all requirements of this chapter have been met, the Code Enforcement Officer shall issue a zoning permit and return one approved copy of the map to the applicant no later than 15 days after approval. The Code Enforcement Officer shall file one copy of the approved permit in his office.

§ 350-16. Termination of permit.

- A. Permits issued pursuant to this article shall expire in 12 months unless the project is completed.
- B. An extension for time of completion may be granted for a maximum of six months and upon payment of applicable fees. The Code Enforcement Officer may grant an extension for any zoning permit issued on his own authority. Requests for extensions for zoning permits issued by the Code Enforcement Officer upon order of the Planning Board or Zoning Board of Appeals shall require approval from the Board authorizing the issuance of such zoning permit. Applicants shall justify the need for the proposed extension, and the Board hearing such request may include any conditions or requirements it deems necessary or desirable. Unless such an extension is requested and approved, further work as described in the canceled permit shall not proceed until a new permit has been obtained.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- C. If a project is not initiated within six months of the issuance of the permit, the permit issued shall be considered null and void.

§ 350-17. Certificate of compliance.

- A. It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance shall have been issued therefor by the Code Enforcement Officer stating that the proposed use of the building or land conforms to the requirements of this chapter.
- B. Failure to obtain a certificate of compliance shall be a violation of this chapter and punishable as provided by Article VIII.
- C. Within seven days after the completion of the change in use of a building or parcel of land, the applicant shall so notify the Code Enforcement Officer stating that such action has been completed. Within 15 days of the receipt of this letter, the Code Enforcement Officer shall conduct a final inspection of the premises to determine whether the new use complies with the requirements of this chapter. If the Code Enforcement Officer determines that said building or use complies with the provisions herein, he shall issue a certificate of compliance. If it is determined that the provisions specified herein are not fully complied with, the Code Enforcement Officer shall specify the violations and the terms and conditions for remedying these violations. A certificate of compliance shall not be issued until such violations are corrected.
- D. No nonconforming building or use shall be maintained, renewed, changed or extended without a certificate of compliance having first been issued by the Code Enforcement Officer. The certificate of compliance shall state specifically wherein the nonconforming use differs from the provisions of this chapter.
- E. The certificate of compliance may be issued at the same time and may be administered using the same form as the certificate of occupancy issued pursuant to the New York State Uniform Fire Prevention and Building Code.

Article V. District Regulations

§ 350-22. Agricultural/Residential District (AR).

- A. Purpose. The purpose of the AR Agricultural/Residential District is to protect agricultural lands and uses from incompatible uses and development; to maintain an open rural character of the community; to assure compatible types and densities of development; to provide for low density, rural development on lands where public sewers and water service do not exist and are not envisioned in the near future; and to protect the natural environment.
- B. Permitted uses:
 - (1) Single-family and two-family dwellings, not to exceed one principal structure per lot.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
 - (2) Agriculture (farming) as defined herein.
 - (3) Storage, packing and sale of field, garden, orchard, nursery, and vineyard crops, but not including agricultural product processing facilities or distribution centers.
 - (4) Roadside stands, under the following conditions:
 - (a) The stand shall be set back not less than 30 feet from the edge of the right-of-way

line.

- (b) Sufficient land area shall be provided to accommodate off-street parking for not less than three vehicles on site.
- (c) Such stands (including signs associated with such uses) shall be removed and appropriately stored within 10 days of the end of the harvest season.
- (5) Seasonal dwellings, provided that all applicable provisions of the New York State Uniform Fire Prevention and Building Code are met.

C. Permitted accessory uses:

- (1) One private detached garage or carport with a maximum capacity of 800 square feet for the parking of automobiles or storage of property belonging to residents on the premises. Detached garages shall be located to the rear of the front building line of the principal building and may be located in a side yard with a minimum side yard setback of 15 feet.
- (2) Customary accessory structures serving residential uses, including, but not limited to, private swimming pools, storage buildings, greenhouses, pet shelters and fireplaces. A private detached garage or carport shall not be considered a customary accessory structure.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- (3) Customary farm accessory buildings for the storage or packing of products or equipment, but not including agricultural product processing facilities or distribution centers.
- (4) The keeping, breeding, and raising of farm animals in association with a residential use, subject to the following restrictions:
 - (a) No stable, similar animal housing or confining areas shall be allowed on lots of less than two acres.
 - (b) No structure housing such animals shall be located closer than 50 feet to any street or property line.
 - (c) Not more than one adult or fully grown horse, cow, beef cattle, sheep, goat or other four-legged domestic-type farm animal, or combinations thereof, may be kept per acre of land in the residential parcel.
 - (d) Not more than a total of any combination of 12 adult or fully grown chickens, ducks, geese or other fowl or birds of any type may be kept per acre of land in the residential parcel.
- (5) Yard sales, provided that not more than three such sales shall occur during one calendar year, and that the duration of such sales do not exceed three consecutive days.
- (6) Off-street parking, fencing and signs in accordance with the provisions of this chapter.
- (7) Other accessory uses not specified herein may be approved, provided that the Zoning Board of Appeals renders an interpretation indicating that such uses are clearly accessory to the permitted principal use and consistent with the purpose and intent of the zone district and this chapter.

D. Uses requiring a special permit issued by the Planning Board (subject to special permit regulations, Article VII):

- (1) Home occupation.

- (2) Private or commercial airport or airstrip.
 - (3) Animal hospital.
 - (4) Bed-and-breakfast establishment.
 - (5) Campground.
 - (6) Cluster residential development.
 - (7) Conference/resort complex.
 - (8) Essential services and utilities.
 - (9) Excavation and mining.
 - (10) Farm labor camp.
 - (11) Farm markets.
 - (12) Kennel.
 - (13) Manufactured home park.
 - (14) Public and semipublic use, including day-care center.
 - (15) Stable or riding academy.
 - (16) Telecommunications facility.
 - (17) Any other use which, in the opinion of the Planning Board, is similar in nature and effect to the special use permits prescribed in this section.
- Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

E. Specifications.

- (1) Setback requirements:
 - (a) Front: 75 feet (measured from right-of-way line).
 - (b) Side: 15 feet.
 - (c) Rear: 15 feet.
 - (2) Lot width: 200 feet.
 - (3) Minimum lot size: 40,000 square feet.
 - (4) Maximum building height: 35 feet except agricultural storage facilities and airport structures.
- Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*
- (5) Maximum building coverage: 25%.

§ 350-23. R-1 Residential District.

- A. Purpose. The purpose of the R-1 Residential District is to provide a stable environment for rural

residential development, free from incompatible uses.

B. Permitted uses:

- (1) One-family dwellings.
- (2) Two-family dwellings.
- (3) Agriculture (farming) as defined herein.

C. Permitted accessory uses: All accessory uses permitted in the AR District shall be permitted in the R-1 District.

D. Uses requiring a special permit issued by the Planning Board (subject to special use regulations, Article **VII**):

- (1) Bed-and-breakfast establishment.
- (2) Cluster residential development.
- (3) Essential services and utilities.
- (4) Home occupations.
- (5) Manufactured home park.
- (6) Public and semipublic uses, including day-care centers.
- (7) Any other use which, in the opinion of the Planning Board, is similar in nature and effect to the special use permits prescribed in this section.

Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

E. Specifications.

(1) Setback requirements:

- (a) Front: 75 feet (measured from right-of-way line).
- (b) Side: 15 feet.
- (c) Rear: 15 feet.

(2) Minimum lot width: 150 feet.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(3) Maximum height: 35 feet.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

(4) Minimum lot size: 30,000 square feet.

(5) Maximum building coverage: 30%.

§ 350-27. Flood Hazard Overlay Zone (F).

- A. The Zoning Map indicates approximate boundaries of the Flood Hazard Overlay Zone. The exact legal boundaries of the flood hazard area is depicted on the official FIRM Maps and Flood Boundary Floodway Map prepared by the Federal Emergency Management Agency

(FEMA).

- B. Such areas shall be subject to the provisions of all applicable Town of Barre local laws in addition to the use regulations and other provisions of this chapter.

Editor's Note: See also Chapter 175, Flood Damage Prevention.

Article VI. Regulations Applicable to all Zoning Districts

§ 350-29. Signs.

- A. Purpose. The purpose of these regulations is to provide comprehensive time, place and manner restrictions on signage, including, but not limited to, controls on size, height, quantity, location, spacing, shape, lighting, motion, design and appearance for the purpose of promoting community aesthetics, traffic safety, economic development and the protection of property values.
- B. Sign permit required. A sign permit is required for all outdoor advertising signs, subject to the following standards:
- (1) General advertising signs related to the permitted use of the premises are allowed, including secondary advertisement of products or services.
 - (2) Brand name sponsored signs are permitted, provided that the brand name, logo, trademark (or the combination thereof) shall not exceed 25% of the square footage of the sign.
 - (3) Signs shall be informative, enhance the rural character of the community, and shall be consistent with the Town of Barre Comprehensive Plan. Signs that are manufactured from wood, or wood simulated products, or stone, or stone simulated products (with the appearance of natural wood or stone) are recommended.
- C. Exempt signs. The following types of signs may be erected without a permit in any zoning district:
- (1) Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by government agencies, religious or nonprofit organizations. Such signs shall not exceed six square feet in area.
 - (2) Flags and insignia of any government, except when displayed in connection with commercial promotion.
 - (3) Any sign placed by any governmental agency for public purposes, or any nonadvertising sign identifying underground utility lines.
 - (4) On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits and similar signs, internally illuminated or nonilluminated, not exceeding two square feet per face and six feet in height. Business names and personal names shall be allowed, excluding advertising messages.
 - (5) Nonilluminated warning, private drive, posted or no trespassing signs, not exceeding two square feet per face.
 - (6) Number and name plate identifying residents and/or property addresses, not exceeding two square feet per face.

- (7) Private owner merchandise sale signs for garage sales and auctions, not exceeding four square feet for a period not to exceed seven days.
- (8) Temporary lighted or unlighted signs erected by and for nonprofit organizations, such as churches, American Legion, Boy Scouts, Girl Scouts, political organizations, or military reserve associates, which advertise suppers, banquets, benefits, fund-raising sales, and similar functions, may be erected for a period of 40 days without a permit in any district.
- (9) Temporary nonilluminated "For Sale," "For Rent," real estate signs and signs of similar nature, concerning premises upon which the sign is located. Such sign shall not exceed 24 square feet in area and shall be set back at least 10 feet from all property lines. All such signs shall be removed within three days after the sale, lease or rental of the premises or property.
- (10) Holiday decorations, including lighting, are exempt from the provisions of this chapter and may be displayed in any district without a permit.
- (11) Integral graphics or attached price signs on gasoline pumps at gasoline stations.
- (12) Directional signs for meetings, conventions and other assemblies.
- (13) One sign, not exceeding 16 square feet in area, listing the architect, engineer, contractor and/or owner, on premises where construction, renovation or repair is in progress.
- (14) Noncommercial speech signs, also known as "free speech" signs, which express an opinion or a statement unrelated to a business venture, are subject to the following conditions:
 - (a) The maximum number of noncommercial speech signs per lot shall be two excepting posted or preserve signs erected pursuant to the Environmental Conservation Law of the State of New York.
 - (b) Such signs shall not exceed a total of 20 square feet in area for all signs on a single lot.
 - (c) Freestanding noncommercial speech signs shall not exceed six feet in height above grade level.
 - (d) Noncommercial speech signs shall not be illuminated, except indirectly.
 - (e) Political candidacy signs shall be removed within seven days following the election.

D. General sign standards. All signs, including outdoor advertising signs and exempt signs, shall comply with the following standards:

- (1) No sign shall consist of lights which flash, or move, or appear to move.
- (2) No sign shall be higher than the principal building to which it is accessory.
- (3) No sign shall project into a public right-of-way, be closer than 30 feet from any street line nor closer than five feet to any other property line, create a traffic hazard, be unduly distracting to motorists and pedestrians, or reduce the effectiveness of signs needed to direct the public.
- (4) No sign shall project on a public utility pole or traffic control structure.
- (5) Except for businesses located in the General Business District (B) which are legally operating within the Town of Barre, no advertising sign shall be placed on premises other

than the site of the business advertised. Businesses located in the General Business District (B) and legally operating within the Town of Barre shall be permitted to have one off-premises advertising sign, consistent with all provisions of this § 350-29.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (6) The total number of permitted signs on a single lot shall not exceed two, of which only one may be freestanding.
- (7) The total cumulative area of all signs permitted on a single lot shall not exceed: a) 32 square feet; or b) an amount calculated at the rate of one square foot of sign area per linear foot of building front, plus one square foot of sign area for every four linear feet setback of the principal building on the property, whichever is greater, but in no case shall the total sign area allowed exceed 64 square feet.

E. Construction standards for all signs.

- (1) All signs, including wall-mounted and projecting signs, shall be securely anchored and shall not swing or move in any manner.
- (2) All signs, sign finishes, supports and electrical work shall be kept clean and painted, and free from all hazards, such as but not limited to faulty wiring and loose supports, guys and anchors.
- (3) All projecting, freestanding or wall mounted signs shall employ acceptable, safe materials.
- (4) All signs shall be painted and/or fabricated in accordance with generally accepted standards.
- (5) No freestanding sign shall be more than 20 feet in height above finished grade. Such height shall be measured vertically from the established grade directly below the sign or entry level of the building or structure, whichever is lower, to the highest point of the sign, including supporting structures.

F. Nonconforming signs. All existing signs that are legal at the time of the enactment of this chapter shall be allowed to remain as long as they are properly maintained and their use remains current. Replacement of any existing sign for any cause shall be in accordance with the more restrictive provisions of this chapter.

G. Procedures for obtaining a sign permit.

- (1) Except as otherwise provided, no person shall erect, alter or relocate any sign without first obtaining a permit from the Code Enforcement Officer. Subsequent to this initial application, no permit shall be required for a sign to be repainted, repaired or have its message changed.
- (2) Application procedure. Applications shall be made to the Code Enforcement Officer on the form prescribed and provided by the Town of Barre, accompanied by the required fee, and shall contain the following information:
 - (a) Name, address and telephone number of:
 - [1] Applicant;
 - [2] Owner of the property; and
 - [3] Contractor installing the sign.
 - (b) Location of the building, structure or land upon which the sign now exists or is to be

erected.

- (c) If a new sign is to be erected, elevation and plan drawings to scale shall be included. In addition, a full description of the placement and appearance of the proposed sign shall be included and shall cover the following:

- [1] Location on the premises, specifically, its position in relation to adjacent buildings, structures and property lines;
- [2] The method of illumination, if any, and the position of lighting or other extraneous devices;
- [3] Graphic design including symbols, letters, materials and colors; and,
- [4] The visual message, text, copy or content of the sign.

- (d) Written consent, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is not the owner.

(3) Permit.

- (a) Upon the filing of a completed application for a sign permit and the payment of the required fee, the Code Enforcement Officer shall examine the plans, specifications and other data submitted and the premises on which the sign is to be erected or now exists. If it shall appear that the sign is in compliance with all the requirements of this article, the Code Enforcement Officer shall then, within five days of receiving the application, issue a permit for the erection of the proposed sign, or for alterations of an existing sign. The issuance of the permit shall not excuse the applicant from conforming to the other laws, rules and regulations of the Town of Barre.
- (b) If the erection of the sign authorized under any such permit has not commenced within six months from the date of issuance, the permit shall become null and void, but may be renewed within 30 days prior to the expiration, for good cause shown, for an additional six months, upon payment of 1/2 of the original fee.

- (4) Permit fee. Fees for the sign permits shall be fixed by the Town Board and listed in the fee schedule.

- H. Removal of temporary signs. Temporary signs that are not removed by the owner within the time specified herein shall be removed by the Code Enforcement Officer, after 10 days' written notice to remove such sign and after the failure of the owner to remove such sign. The cost of removal by the Code Enforcement Officer shall be charged to the owner of the premises where the temporary sign was displayed.

§ 350-30. Off-street parking.

In all districts there shall be provided, at the time any building or structure is erected, enlarged, increased in capacity or changed in use, improved and usable off-street parking spaces for motor vehicles in accordance with the requirements of this section. Existing buildings or uses shall not be subject to the requirements of this section, unless said building shall be enlarged or the use of said building or land is changed. In such cases, off-street parking facilities shall be provided as hereinafter specified for the building as enlarged or to accommodate the needs of the new use.

A. Design requirements.

- (1) All uses shall provide adequate off-street parking for all vehicles parked during typical

peak periods. Parking should be designed to eliminate the need to back out or to park on the shoulder of public roads.

- (2) A parking space shall be not less than nine feet by 20 feet, exclusive of accessways and driveways. Single-family residences need not exclude driveway area.
 - (3) Off-street parking areas with a capacity for more than 20 vehicles shall delineate fire lanes and post "no parking" markers.
 - (4) Any off-street parking area with at least 20 off-street parking spaces shall designate a minimum of 5% of those spaces, up to a maximum of 10 spaces, as only for the handicapped and clearly mark them for such use. Parking spaces designated to serve handicapped individuals shall be at least 14 feet in width and 20 feet in depth.
 - (5) All off-street parking spaces shall be deemed to be required space on the lot on which it is situated and shall not be encroached upon or reduced in any manner.
 - (6) All parking areas, passageways and driveways (except where provided in connection with one- and two-family dwellings, or farm residences and buildings) shall be adequately drained and surfaced with a dustless, durable, all-weather surface, subject to approval of the Town Highway Superintendent.
 - (7) Each off-street parking space shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk or alley, and so that any motor vehicle may be parked and unparked without moving or damaging another.
 - (8) The collective provision of off-street parking areas by two or more buildings or uses located on adjacent lots may be approved by the Planning Board during site plan review, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately.
 - (9) No driveway to an off-street parking area shall be located closer than 50 feet to the intersection of any two streets or within 20 feet of any side lot line, provided that sufficient distance will always remain for all required radii for said driveway. The distance from the driveway to the intersection shall be measured by extending the curblane of the intersecting street until it intersects the curblane of the driveway in question, extending such driveway curblane if necessary. In addition, a minimum distance of 20 feet shall be maintained between two driveways located on any one frontage.
 - (10) Except where otherwise specified in this chapter, off-street parking areas may be located in any yard space for nonresidential uses but shall not be located closer than 30 feet to the right-of-way line of all streets and no closer than 10 feet to any other property line.
- B. Location of off-street parking facilities. Off-street parking facilities shall be located as hereinafter specified. Where a distance is specified, such distance shall be walking distance measured from the nearest point of the parking facility to the nearest public entrance of the building that such facility is required to serve.
- (1) For one- and two-family dwellings and for all types of residential structures: on the same lot with the building they are required to serve.
 - (2) For multiple-family dwellings: not more than 200 feet from the building they are required to serve.
 - (3) For other uses: not more than 500 feet from the building they are required to serve.

C. Screening and landscaping.

- (1) Off-street parking areas for more than five vehicles shall be effectively screened on the rear and side yards by a fence of acceptable design, unpierced masonry wall, landscaped berm or compact evergreen hedge. Such fence, wall or hedge shall not be less than six feet in height and shall be maintained in good condition.
- (2) Except where otherwise specified in this chapter, when a parking area for five or more vehicles is within or abuts a residential district, a planted buffer area not less than 10 feet in depth shall be provided in addition to the fence or wall specified in Subsection **C(1)** above. Landscaping utilized to provide this buffer shall not be less than four feet in height at the time of planting and spaced not more than three feet apart.

D. Lighting.

- (1) All off-street parking areas and appurtenant passageways and driveways (excluding areas serving one- and two-family dwellings and farm dwellings) shall be illuminated adequately during the hours between sunset and sunrise when the use is in operation.
- (2) Any lights used to illuminate an off-street parking area shall be so arranged as to direct light away from all adjoining property and public or private roadways.

E. Units of measurement.

- (1) In churches and other places of assembly in which patrons or spectators occupy benches, bleachers, pews or other similar seating facilities, each 20 inches of such seating facilities shall be counted as one seat for the purpose of determining requirements for off-street parking facilities.
- (2) When units of measurement determining the number of required parking spaces result in the requirement of a fractional space, any fraction of 0.25 or more shall require one parking space.

F. Mixed occupancies and uses not specified. In any case of mixed uses, the total requirements for off-street parking facilities shall be the sum of the requirements for the various uses computed separately. In the case of a use not specifically mentioned in this section, the requirements for off-street parking facilities shall be determined by the Town Board. Off-street parking facilities for one use shall not be considered as providing required parking facilities for any other use, except as hereinafter specified for joint use.

G. Joint use. The off-street parking requirements of two or more uses, structures or parcels of land may be satisfied by the same parking or loading space used jointly to the extent that it can be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap in point in time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.

H. Minimum parking standards:

- (1) One parking space is required for every three seats in a public meeting place.
- (2) One parking space is required for each employee on the maximum working shift in an industrial or light industrial establishment and one parking space per 250 square feet of gross floor area in a commercial establishment unless otherwise specified herein.
- (3) One parking space is required for every 200 square feet of gross floor area in business and professional offices.

- (4) One parking space is required for every 100 square feet of gross floor area in supermarkets and self-service food stores.

§ 350-31. Off-street loading.

- A. For every building, structure or part thereof having more than 4,000 square feet of gross building area erected and occupied for commerce and industry as well as other uses requiring the receipt and distribution of materials and merchandise by vehicles, adequate space for loading and unloading services shall be provided and permanently maintained in order to avoid undue interference with the public use of streets, alleys, or parking areas.
- B. Every building, structure or addition thereto having a use which complies with the above definition shall be provided with at least one truck standing, loading and unloading space on the premises not less than 12 feet in width, 55 feet in length, and 14 feet in height. One additional truck space of these dimensions shall be provided for every additional 20,000 square feet, or fraction thereof, of gross area in the building.

§ 350-33. Fences.

- A. Fences may be erected, altered or reconstructed to a maximum height of eight feet for residential uses and 10 feet for nonresidential uses.
- B. Fences may be substituted for lot line landscaping during site plan review, at the discretion of the Planning Board.
- C. No fence shall cause obstruction of vision at street intersections.
- D. Farm fencing 10 feet in height or shorter shall be exempt from these provisions.
- E. Any fence erected along a lot line shall be erected wholly on the property of the owner and neither the fence itself nor any supporting accessory components thereof shall encroach upon the adjoining properties.
- F. A finished side of any fencing shall front the neighboring properties.

Article VII. Special Permit Criteria

§ 350-44. General provisions.

The uses specified in this article are hereby declared to possess unique characteristics requiring that each proposal for any such use shall be considered by the Town Planning Board as an individual case. Upon application, special use permits may be approved by the Town Planning Board and issued by the Code Enforcement Officer in accordance with the administrative procedures set forth in this chapter and only after it has found that each and all of the following standards have been met:

- A. The proposed special use is consistent with the general intent of the Town's Comprehensive Plan and with each of the specific purposes set forth in this chapter.
- B. The location, size and use of the structures involved, nature and intensity of the operations involved and size and layout of the site in relation to the proposed special use are such that it will be compatible with the orderly development of the zoning district.

- C. Operation of the proposed special use is no more objectionable to the uses of nearby properties, by reason of dust or smoke emission, noise, odors, fumes, pollution of air or water, including subsurface waters, unsightliness or similar conditions, than would be the operation of any permitted use.
- D. The proposed special use satisfies each and all standards and conditions specified for such special use by the relevant provisions of this article.
- E. The Planning Board may impose additional conditions or restrictions as it may deem necessary prior to approving any special use permit application in order to protect public health and safety, the quality of the Town's natural resource base and the value of property.
- F. The Code Enforcement Officer shall make an on-site visit to each property authorized as a special use not less than one time each year. The purpose of said site visit is to insure that the use is being operated in accord with the conditions specified by the Planning Board. If the Code Enforcement Officer shall determine that a violation of this chapter or the conditions imposed by the Planning Board exists, the owner and, if applicable, operator of such special use shall be notified, in writing, of the violation. If such violation continues to exist 15 days following such notification, or if three violations occur within a consecutive twelve-month period, the certificate of occupancy and/or certificate of compliance shall be null and void. A new special use permit application shall be required to be submitted and approved prior to the reestablishment of said use.
- G. No site preparation or construction shall commence nor shall existing structures be occupied for any special permit use until final site plan approval has been granted by the Planning Board and permits have been issued by all governmental agencies involved.

§ 350-52. Essential services and utilities.

Essential services and utilities may be allowed as special permit uses in all districts by the Planning Board. The Planning Board shall determine the following prior to approving a special permit:

- A. The proposed installation in a specific location is necessary and convenient for the efficiency of the essential services or the satisfactory and convenient provision of service to the area in which the particular use is located.
- B. The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is to be located.
- C. Adequate landscaping will be provided to create a visual and sound buffer between such facilities and adjacent property.
- D. Adequate and attractive fences and other safety devices will be provided.
- E. Adequate off-street parking shall be provided.
- F. All new and replacement electric distribution, telephone, cable TV and other lines shall be placed underground, if practical, as determined by the Planning Board during site plan review.
- G. All points of necessary access, or transformers, shall be placed in secure structures at ground level.
- H. All major electrical transformer facilities or substations, if above ground, shall be secured by an outer and inner fence, each 10 feet from each other at any point; also no transformer or associated switches shall be closer than 100 feet from any lot line.

Article IX. Special Use Permits and Procedures

§ 350-86. Procedures.

- A. All applications for special use permits shall be made in quadruplicate to the Code Enforcement Officer on forms provided by him.
- B. The Code Enforcement Officer, after determining that an application is in proper form, shall transmit copies of the application and all supporting documents to the Planning Board for approval, in accordance with the procedures specified below.
- C. The Code Enforcement Officer shall transmit a copy of the complete application and supporting documents to the County Planning Board for review when required under Article 12-B, § 239-m, of the General Municipal Law.
- D. Each application for a special use permit shall be accompanied by a proposed site plan showing the information required for site plan approval as described in Article ~~X~~ of this chapter.
- E. Public hearing.
 - (1) Prior to taking action on an application for a special use permit, the Planning Board shall conduct a public hearing on the proposed request. Said hearing shall be conducted within 62 days following the receipt of a complete application and supporting documents from the Code Enforcement Officer.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
 - (2) The Planning Board shall send a notice of the public hearing to the applicant and publish a notice of the public hearing in the official newspaper, one of general circulation in the Town.
 - (3) The notice of the public hearing shall be sent and published at least 10 calendar days prior to the date of the public hearing. Such notice shall include sufficient information so as to identify the property involved and the nature of the proposed action.
 - (4) Effective January 1, 2007, prior written notice to property owners within 500 feet of a property subject to an application/public hearing before the Planning Board or Zoning Board of Appeals shall be received no later than five days before such hearing. General Municipal Law § 239-n, requiring 10 days' notice to the Clerk of any adjoining municipality, shall remain in full force and effect.
Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- F. If the application is required to be transmitted to the County Planning Board under Article 12-B, § 239-m, of the General Municipal Law, the Planning Board shall not act within the first 30 days following the referral of the application to the County Planning Board unless said Board provides a written reply to the Town within the thirty-day period.
- G. The Planning Board shall render its decision, either approving, approving with conditions, or denying the special use permit, within 62 days after the public hearing unless an extension is mutually agreed upon by the Planning Board and the applicant.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- H. In approving an application, the Planning Board may impose any modifications or conditions it deems necessary to conform with the goals and objectives of the Town's Comprehensive Plan and its principles of land use and development, and to protect the health, safety or general welfare of the public.

- I. If an application is approved by the Planning Board, the Code Enforcement Officer shall be furnished with a copy of the approving resolution of the Planning Board, and he shall issue the permit applied for in accordance with the conditions imposed by the Board.
- J. If any application is disapproved by the Planning Board, the reasons for such denial shall be set forth in the Board resolution, and a copy of such resolution shall be transmitted to the Code Enforcement Officer. The Code Enforcement Officer shall deny the application accordingly by providing the applicant with a copy of the Board's reasons for disapproval.
- K. The Code Enforcement Officer shall inspect the premises of a use authorized and approved with a special use permit not less than one time each calendar year. The inspection shall determine that the use is being operated consistent with the terms and conditions established by the Planning Board in approving the permit. If the Code Enforcement Officer shall determine that the conditions are not in compliance with the permit, the Code Enforcement Officer shall nullify the special use permit and set forth the procedures and requirements for reestablishing the use. The use may not be operated until a new application is submitted and approved.

Article X. Site Plan Review

§ 350-87. Purpose.

The intent of this article is to set forth additional general standards applying to certain uses and activities. The nature of these uses and activities require special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the Town to accommodate development consistent with the objectives of this chapter.

§ 350-88. Applications.

All applications for zoning permits, zoning variances, or special use permits, except those for one- and two-family dwellings and their permitted accessory uses, any addition to a single-family dwellings, or general farming uses, shall be accompanied by a site plan. No zoning permit shall be issued until all the requirements of this article and all other applicable provisions of this chapter have been met.

§ 350-89. Procedure.

- A. A preapplication conference may be held between the Planning Board and applicant to review the basic site design concept and to determine the information to be submitted with the site plan.
- B. Each application for a building permit, variance or special use permit for any structure, building or use other than one- or two-family dwelling, their permitted accessory use, any addition to a single-family dwelling or general farming use, shall be referred to the Town Planning Board for site plan review. The application shall be made to the Planning Board by filing it with the Code Enforcement Officer. The Code Enforcement Officer shall present it to the Planning Board at their next regularly scheduled meeting. The applicant may wish to attend the Planning Board meeting to answer questions concerning the application.
- C. Within 62 days of receipt of the application, the Planning Board shall render a decision to approve, approve with conditions, or deny the site plan, and shall forward the decision to the Code Enforcement Officer. Any extension of this sixty-two-day period may be granted upon consent of both the applicant and the Town Planning Board. If the Planning Board fails to act

within the sixty-two-day period or the extension period that has been granted, the site plan shall be considered approved.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. A full written record of the Planning Board minutes and decisions together with all documents pertaining to the case shall be filed in the office of the Town Clerk and shall be mailed to the applicant.

§ 350-90. Application for site plan approval.

An application for site plan approval shall be made in writing to the Code Enforcement Officer and shall be accompanied by information drawn from the following checklist. The Planning Board may require additional information, if necessary, to complete its review.

A. Plan checklist for all site plans:

- (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 plotted to scale.
- (4) Existing watercourses and bodies of water.
- (5) Location of any slopes of 5% or greater.
- (6) Existing and proposed grading and drainage.
- (7) Location, proposed use, and height of all buildings and site improvements, including culverts, drains, retaining walls and fences.
- (8) Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
- (9) Location of outdoor storage, if any.
- (10) Description of the method of sewage disposal and location of the facilities.
- (11) Identification of water source; if well, locate on drawing.
- (12) Location, size and design and construction materials of all proposed signs.
- (13) Location and proposed development of all buffer areas, including existing vegetation cover.
- (14) Location and design of outdoor lighting facilities.
- (15) General landscaping plan.
- (16) Copy of property deed and a listing of all deed restrictions.

B. As necessary, the Planning Board may require the following:

- (1) Provision for pedestrian access, if necessary.
- (2) Location of fire lanes and hydrants.

- (3) Designation of the amount of building area proposed for retail sales or similar commercial activity.
- (4) Other elements integral to the proposed development as considered necessary by the Planning Board.

§ 350-91. Planning Board review of site plan.

The Planning Board's review of the site plan shall include, as appropriate, the following:

A. General considerations:

- (1) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls. This includes the maximum feasible redesign of private roads to conform to existing public access and rights-of-way.
- (2) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (4) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 - (a) No use shall be undertaken which eliminates or substantially reduces a significant view or vista from an existing property due to height, bulk or orientation of structure.
- (5) Adequacy of stormwater and drainage facilities.
- (6) Adequacy of water supply and sewage disposal facilities.
- (7) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
- (8) In the case of an apartment complex or other multiple dwelling, the adequacy of useable open space for play areas and informal recreation.
- (9) Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
- (10) Protection of solar access on adjacent or neighboring properties.
- (11) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (12) Adequacy of on-site refuse storage, including appropriate screening and rodent control measures.
- (13) Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (14) Special attention to the productive use and access with backlot areas, indicating present and future intended uses.
- (15) Consistency with the general intent of the Town's Comprehensive Plan.

- B. Consultant review. The Planning Board may consult with the Town Code Enforcement Officer, Fire Commissioners, highway departments, County Planning Department, and other local county officials, in addition to representatives of federal and state agencies, including, but not limited to, the Soil and Water Conservation District, the State Department of Transportation and the State Department of Environmental Conservation.
- C. Optional public hearing. The Planning Board may conduct a public hearing of the site plan. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within 62 days of the receipt of the complete application and shall be advertised in the official newspaper of the Town at least five days before the public hearing. If a public hearing is held, a decision on the site plan shall be rendered within 62 days after the public hearing.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. Additional public notice. If the Planning Board determines that a public hearing shall be held, all property owners within 500 feet of the subject property shall be notified, in writing, at least five days prior to the public hearing. Additionally, the applicant shall place one sign on the property for which site plan review is requested. Said sign shall be provided by the Code Enforcement Officer. The sign shall be placed in a location which is easily read from a public street. The sign shall specify the date, time and place of the public hearing and a telephone number to call for more specific information. Such sign shall be placed on the site not less than five days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- E. Action on site plan.

- (1) The Planning Board may:

- (a) Grant final approval of the site plan;
- (b) Disapprove the site plan; or
- (c) Conditionally approve the site plan.

- (2) If the Planning Board grants final approval of the site plan, the Planning Board shall direct the Planning Board Chairman to endorse its approval on the original and one copy of the final site plan. Once signed, the Planning Board shall forward the Mylar and site plan to the CEO. The CEO shall issue a zoning permit to the applicant if the project conforms with all other applicable requirements and permits.
- (3) If the Planning Board disapproves the site plan, the Planning Board shall so inform the CEO and the applicant. The Code Enforcement Officer shall deny a zoning permit to the applicant. The Planning Board shall also notify the applicant, in writing, of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.
- (4) If the Planning Board conditionally approves the site plan, the site plan initially submitted shall be considered to be the preliminary site plan, and the applicant may prepare his final detailed site plan and submit it to the Planning Board for approval. If more than six months has elapsed between the time of the Planning Board's report on the preliminary site plan and the submission of the final site plan, and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.

§ 350-92. Application for final detailed site plan approval.

- A. The final detailed site plan shall conform substantially to the preliminary site plan that has received conditional (preliminary) site plan approval. It shall incorporate any revisions or other features that may have been recommended by the Planning Board during the preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.
- B. The following additional information shall accompany an application for final site plan approval:
 - (1) Detailed sizing and final material specification of all required improvements.
 - (2) An estimated project construction schedule.
 - (3) A detailed plan identifying all lands, easements and rights-of-way which shall be commonly owned with the identification of the association responsible for said ownership, the method of managing commonly owned properties and requiring that the officers of said association shall be identified to the CEO in writing on an annual basis.
 - (4) Information specifying the materials to be used and information as to the character of the exterior design.

§ 350-93. Action on detailed final site plan application.

- A. Within 62 days of the receipt of a complete application for final site plan approval, the Planning Board shall render a decision to the applicant and the CEO.
Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- B. Upon approval by all involved agencies, an application for final site plan approval by the Planning Board shall direct the Planning Board Chairman to endorse its approval on the original Mylar and one copy of the final site plan. Once signed, the Planning Board shall forward the Mylar and site plan to the CEO. The CEO shall issue a zoning permit to the applicant if the project conforms with all other applicable requirements and permits.
- C. Upon disapproving an application for a final site plan, the Planning Board shall so inform the CEO and the applicant. The Code Enforcement Officer shall deny a zoning permit to the applicant. The Planning Board shall also notify the applicant, in writing, of its decision and its reasons for disapproval. A copy of the appropriate minutes may suffice for this notice.

§ 350-94. Supplemental regulations pertaining to site plan approval.

- A. Expiration of site plan approval. Such site plan approval shall automatically terminate one year after the same is granted unless significant work has been done on the project.
- B. Reimbursable costs. Reasonable costs incurred by the Town for consultation fees or other extraordinary expenses associated with the review of a proposed site plan shall be charged to the applicant in accordance with the fee schedule.
- C. Performance guarantee.
 - (1) No zoning permit shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee, approved by the Planning Board, has been posted for improvements. The sufficiency of such performance guarantee shall be determined by the Planning Board after consultation with the CEO, Town Engineer, Planning Board and Town Attorney.

- (2) The Planning Board shall have the option of requiring a performance bond or other financial guarantee in an amount sufficient to restore the property to its original condition if the applicant fails to comply with the conditions of the site plan approval.
- D. Inspection of improvements and development. The CEO shall be responsible for the overall inspection of site improvements, including coordination with the Town officials and agencies, as appropriate. No certificate of occupancy shall be granted prior to a final inspection and determination of conformity to the site plan and New York State Building Code.
- E. Integration of site plan approval procedure with other Planning Board approvals. Whenever the particular circumstances of a proposed development require compliance with either the special use permit procedures or other requirements of this chapter, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this article with the procedural and submission requirements for such other compliances. In any case, all state permits and local land use control approvals shall be procured prior to the issuance of a building permit for a development project.
- F. Conflicts. If any conflicts exist between this site plan review procedure and other land use controls of the Town, this article shall apply.

Article XI. Wind Energy Overlay Zone

[Added 8-13-2008 by L.L. No. 2-2008 *Editor's Note: This local law also repealed original Section 609, Alternative Energy Systems, as amended 7-10-2007 by L.L. No. 2-2007.*]

§ 350-95. Intent and purpose.

The purpose of these supplemental requirements and standards is to regulate the development of a wind energy conversion project (wind turbines) and related structures in the Town of Barre. This article is to be consistent with the general purposes stated in the Comprehensive Plan of the Town, to accommodate the necessary infrastructure for the provision of commercial wind powered electricity generation facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the Town of Barre. Furthermore, this article is enacted to address the visual, aesthetic and the land use compatibility aspects of wind energy conversion units, and more specifically to:

- A. Encourage the location of wind energy conversion units in areas where adverse impacts on the community are minimized.
- B. Encourage the configuration of wind energy conversion units in a way that minimizes adverse visual impact of the towers.
- C. Encourage the co-location or shared use of proposed and existing wind energy conversion unit sites.

§ 350-96. Legislative authority.

This article is enacted pursuant to the following authority granted by:

- A. Article **IX** of the New York State Constitution, Section 2(c)(6) and (10).
- B. New York Statute of Local Governments § 10, Subdivisions 1, 6 and 7.
- C. New York Municipal Home Rule Law § 10, Subdivision 1(i) and (ii) and Subdivision 1(a)(6),

(11), (12) and (14).

- D. The supersession authority of New York Municipal Home Rule Law section 10(2)(d)(3).
- E. New York Town Law Article 16 (Land Use).
- F. New York Town Law § 130, Subdivision 1 (Building code), Subdivision 3 (Electrical code), Subdivision 5 (Fire prevention), Subdivision 7 (Use of streets and highways), Subdivision 7-a (Location of driveways), Subdivision 11 (Peace, good order and safety), Subdivision 15 (Promotion of public welfare), Subdivision 15-a (Excavated lands), Subdivision 16 (Unsafe buildings), Subdivision 19 (Trespass), and Subdivision 25 (Building lines).
- G. New York Town Law § 64, Subdivision 17-a (protection of aesthetic interests) and Subdivision 23 (General powers).

§ 350-97. Findings.

The Town Board of the Town of Barre finds and declares that:

- A. Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town, and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the emission of hydrocarbons that result from the use of conventional energy sources.
- B. The generation of electricity from properly sited wind turbines, including private systems, can be cost effective, and in many cases, existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
- C. Regulation of the siting and installation of wind turbines is necessary for the purposes of protecting the environment as well as the health, safety and welfare of neighboring property owners and the general public from any potential impacts, including, but not limited to, those set forth herein.
- D. Wind energy systems represent significant potential aesthetic impacts because of their large size, lighting, shadow flicker effects, and visual impacts associated with collection systems.
- E. If not properly regulated, installation of wind energy conversion systems can create drainage problems through erosion and lack of sediment control for system sites and access roads, and harm farmlands through improper construction methods.
- F. Wind energy conversion systems may present a risk to bird and bat populations if not properly cited.
- G. If not properly sited, wind energy conversion systems may present risks to the property values of adjoining property owners.
- H. Wind energy conversion systems can be a significant source of noise, which if unregulated can negatively impact adjoining properties.
- I. Construction of wind energy conversion systems can create traffic problems and damage local roads.
- J. Wind energy conversion systems can cause electromagnetic interference issues with various types of communications.

- K. Wind energy conversion systems can impact on emergency and response services.
- L. Wind energy conversion systems can have environmental impacts on wetlands, streams and other natural habitats.
- M. Wind energy conversion systems can impact area groundwater, private wells and particularly, as a result of blasting, operations that might be necessary for construction of such systems.

§ 350-98. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACCESSORY FACILITIES OR EQUIPMENT

Any structure, other than a wind energy conversion unit, related to the use and purpose of deriving energy from such towers located at the wind energy conversion system.

APPLICANT

Any person or entity applying to develop, own, locate, construct or operate a wind energy conversion system within the Town. All requirements placed upon an applicant under this article or by way of approval of a permit issued hereunder shall be fully and completely binding upon the owner, his/her/its successors, heirs and assigns of the wind energy conversion system being submitted for review hereunder.

BLADE GLINT

The intermittent reflection of the sun off the surface of the blades of a wind energy conversion unit.

DECOMMISSIONED

Status applied to a wind energy conversion unit when it has been nonproductive for a period of one year, or when the unit or project no longer provides a useful service.

FALL ZONE

A level distance perpendicular to the base equal to the total height of the wind energy conversion unit plus the rotor at a full and upright vertical position.

NACELLE

The portion of the wind energy conversion unit that connects the rotor to the support tower and houses the generator, gearbox, drive train and braking system.

PLANNING BOARD

The Town of Barre Planning Board.

PUBLIC HEARING

A meeting announced and advertised in advance, and open to the public, with the public given an opportunity to talk, participate and express their opinions, support or concerns.

RESIDENTIAL STRUCTURE

Any permanent structure or mobile home for human habitation with electric power and running water.

RIGHT-OF-WAY

A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses.

SETBACK

The area of land measured along the ground out a horizontal distance in any direction from the structure or facility being regulated under this article.

SHADOW FLICKER

The effect from the sun shining through the turning blades on the wind energy conversion unit and casting a shadow over the landscape, most noticeably during sunrise and sunset.

TIP HEIGHT

Tip height is equal to the distance from the ground to the tip of the rotor blade in a full and upright vertical position.

TOWER HEIGHT and/or TOTAL HEIGHT

Tower height is equal to the distance from the ground to the top of the tower not including the nacelle or rotor blades.

WECS or TOWER SITE

Site where one or more wind energy conversion unit or wind turbines will be located, including all accessory facilities or equipment.

WIND ENERGY CONVERSION SYSTEM (WECS)

All structures and facilities utilized or necessary for the normal operation of the project being submitted by an applicant under this article, including, but not limited to, wind energy conversion units, all accessory facilities and equipment thereto, and/or any portion thereof.

WIND ENERGY CONVERSION UNIT/WIND TURBINE

Any tower, pole or other structure, whether attached to a building or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity.

WIND ENERGY CONVERSION UNIT/WIND TURBINE (LARGE PROJECT)

One or more towers, poles or other structures, whether attached to a building or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for the purpose of producing electricity intended to provide wholesale electricity production for delivery on the local transmission network. Any wind energy conversion unit/wind turbine not meeting the definition of a wind energy conversion unit/wind turbine (small project) shall, for the purposes of this article, be considered a wind energy conversion unit/wind turbine (large project).

WIND ENERGY CONVERSION UNIT/WIND TURBINE (SMALL PROJECT)

- A. One or two towers, poles or other structures, whether attached to a building or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as nacelle and generator for the purpose of producing electricity intended to reduce on-site consumption of utility power. Such towers shall be limited in height to 150 feet and to a power generating rating of 250 kw (kilowatts).
- B. Any wind energy conversion unit/wind turbine not meeting this definition shall, for the purposes of this article, be considered a wind energy conversion unit/wind turbine (large project).

WIND ENERGY OVERLAY DISTRICT

A district which encompasses part or parts of one or more underlying districts and that establishes requirements for wind energy conversion systems.

WIND MEASUREMENT TOWER

A tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

§ 350-99. Creation of Wind Energy Overlay Zones.

- A. The Town Board of the Town of Barre hereby adopts the rules and procedures for creating Wind Energy Overlay Zones to allow consideration of the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate or prohibit the placement of such systems so that the public health, safety and welfare will not be jeopardized.
- B. A Wind Energy Overlay District may be created in any zoning districts of the Town of Barre consistent with the rules and procedures established herein.
- C. Initial requests for Wind Energy Overlay Districts shall be submitted with applications for WECS special use permits. No Wind Energy Overlay District may be initially created without specific requests for special use permits for individual WECS.
- D. Once a Wind Energy Overlay District has been created, new WECS or accessory structures or facilities may be added in that district by grant of a special use permit pursuant to the requirements of this article.

§ 350-100. Permits and rezoning required; exemptions; transfer.

- A. The Town Board is hereby authorized to approve, approve with conditions, or disapprove wind energy conversion project applications with the advice and written recommendations of the Town Planning Board.
- B. No wind energy conversion system or any portion thereof shall be located or operated in the Town unless and in accordance with a special use permit duly issued by the Town Board under this article and the other applicable provisions of this chapter.
- C. No wind energy conversion system or any portion thereof shall be constructed, reconstructed, modified, or operated in the Town of Barre, except in a Wind Energy Overlay District, pursuant to an application for rezoning and for a special use permit and building permit approved pursuant to this article.
- D. The Town Board shall determine, on a case-by-case basis, based upon the specific aspects of the application and the complexity of the application, whether an independent professional engineer and/or consultant will be required to assist in the review of an application, including review of SEQRA documentation and outside legal services on behalf of the Town. If so determined that such independent professional or consulting services are required, the applicant shall be responsible for any and all fees associated with such services. The costs of such services shall be limited to the reasonable standard fees for such independent third party as determined upon review of such fees charged by such consultant in the Town and surrounding municipalities to the Town. Upon submission of the application, the Town shall obtain a good faith estimate of the fees to be charged by said independent third-party consultant and advise the applicant of said estimate of fees to which the applicant shall remit an amount to the Town equal to such estimate within 15 days of such demand. These funds shall be held by the Town in trust to reimburse and be drawn upon by the Town when the Town incurs and pays the appropriate voucher for such third-party services. Should the fees for such third-party consultant exceed said estimated amount, the applicant shall immediately deliver and file with the Town an additional sum in an amount equal to the original estimated amount, or such sum as deemed appropriate and necessary to cover the remaining charges anticipated to be incurred by the Town thereafter. Any funds held in trust following completion of said third-

party review shall be returned to the applicant upon presentation of a duly executed voucher seeking the same. If the applicant fails to pay any and all such fees incurred relative to such independent third-party services or the estimated fees to be deposited in trust with the Town prior to the date such fees are demanded to be paid by the Town to the Town, such failure shall constitute a withdrawal of the applicant's application under this article and thereafter such application shall be considered null and void by the Town for all purposes relative thereto.

- E. No wind measurement tower shall be constructed, reconstructed, modified or operated in the Town of Barre except pursuant to a special use permit and building permit issued pursuant to this article.
- F. Notwithstanding any other provisions of this article or other portions of this chapter, special use permits for wind energy conversion systems shall be issued by the Town Board.
- G. Transfer. No transfer of any wind energy conversion system or special use permit will occur without prior approval of the Town, which approval shall be granted upon written acceptance by the transferee of the obligations of the transfer or under this article, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this article unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.
- H. Notwithstanding the other requirements of this article, replacement in kind or modification of a wind energy conversion system may occur without Town Board approval when:
 - (1) There will be no increase in tip height;
 - (2) There will be no change in the location of any wind energy conversion unit or change in color to any such unit; and
 - (3) There will be no increase in noise produced by any such unit.

§ 350-101. Application procedure; waiver.

- A. The applicant for the proposed development of a wind energy conversion project shall submit 15 copies of the application and site plan showing the following information, unless such information requirements are waived by the Town Board for good cause shown. In addition, the Town Board may request, and the applicant shall provide, any and all additional information the Town Board and Town Planning Board might deem necessary for review of such application.
 - (1) Name of the project, an instrument survey map indicating boundary lines of the parcel (or parcels) that the project will include and the proposed site location(s), date, north arrow, scale of the plan, and Tax Map identification number(s). The maps shall include an overall map of the project, as well as individual site maps for each proposed wind energy conversion unit location.
 - (2) Name and address of the owner(s) of record of the parcel(s) where the project is proposed to be sited, name and address of the project sponsor and the seal, including the name and address of the engineer, architect, or surveyor preparing, or assisting in the preparation of, the site plan. If the property owner is not the applicant, the application shall include a letter, or other written permission, signed by the property owner:
 - (a) Confirming that the property owner is familiar with the proposed application(s); and
 - (b) Authorizing the submission of the application(s).

- (3) Name and addresses of all property owners of record, as indicated in the Town Assessor's office, of all adjacent property owners to the project and all property owners of any and all parcels within the property setback requirements as specified in § **350-103A** of this article.
- (4) A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail and scale to clearly describe the following:
 - (a) Property lines and physical dimensions of the site;
 - (b) Location, approximate dimensions and types of major existing structures, including all residences and uses on the site, public roads, and adjoining properties within 1,000 feet of the boundaries of the proposed Wind Energy Overlay Zone.
 - (c) Location and elevation of each proposed wind energy conversion unit.
 - (d) Location of all aboveground utility lines on the site or within one radius of the total (tip) height of the proposed wind energy conversion unit(s), transformers, power lines, interconnection point with transmission lines, microwave and communication towers, and other ancillary facilities or structures.
 - (e) Location of all structures, both residential and commercial, within 1,000 feet of each proposed tower. The distance from the center of the tower to any off-site residence within 1,000 feet shall be noted.
 - (f) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units and fencing.
 - (g) Proposed boundaries of the Wind Energy Overlay Zone.
 - (h) The location, alignment and width of existing and proposed easements and rights-of-way.
- (5) A map showing existing and proposed topography at five-foot intervals.
- (6) Vertical drawing of the wind energy conversion system showing tip height, turbine dimensions, tower and turbine colors, ladders, distance between the ground and the lowest point of any blade, location of climbing pegs and access doors. One drawing may be submitted for each wind energy conversion system of the same type and total height.
- (7) A landscape plan showing all existing natural land features, trees, forest cover and all proposed permanent changes to these features, including size and type of plant material and erosion control measures, to be included in the project upon completion. Also to be included are temporary erosion control methods to be used during the construction of the WECS.
- (8) A fully completed State Environmental Quality Review Act (SEQRA)
Editor's Note: See Environmental Conservation Law § 8-0101 et seq.
environmental assessment form (EAF). If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information, at a minimum, shall be included in the draft environmental impact statement (DEIS) prepared for a wind energy conversion system. Otherwise, the following studies, at a minimum, shall be submitted with the application:
 - (a) A visual impact study assessing the visibility of the project from key viewpoints relative to such project, existing tree lines, and proposed elevations. This study shall be digitally enhanced to simulate the appearance of the as-built project as such completed project would appear from distances specified by the Town Board or

Planning Board within a five-mile radius of the location of such project, or any portion thereof. Additional pictures from specific locations may be required by the Town Board or Planning Board, and all such pictures shall be in color and no smaller than five inches by seven inches.

- (b) The applicant shall provide a shadow flicker and blade glint study for the area within the boundaries of the parcel upon which the project, or any portion thereof, is to be sited and for any additional area located within a radius of one mile beyond the boundaries of each wind turbine. Such information shall include a shadow flicker zone map and documentation of the nonreflective coating for the blades. Accompanying such information shall be the proposed schedule with which the nonreflective coating for the blades shall be reapplied as based on the manufacturers suggested life of the coating product. The study will:
 - [1] Designate and describe the zones within the project where shadow flicker is likely to affect existing residential structures, roadways and other similar areas of public or private use. The study shall represent the most probable scenarios of wind constancy, sunshine constancy, and wind direction and speed;
 - [2] Identify the most likely locations of shadow flicker, estimate the expected duration of such shadow flicker at these locations per day, and calculate the potential total number of hours per year at each location such shadow flickers may occur;
 - [3] Identify potential problem zones where shadow flicker may interfere with existing residences and roadways, and describe proposed measures to mitigate these problems, including, but not limited to, a change in siting of the unit, a change in operation of the unit, or grading or landscaping mitigation measures; and
 - [4] Provide tax identification numbers for all properties within the potential shadow flicker zones.
 - (c) Noise analysis. The applicant shall provide a noise analysis prepared by a competent acoustical consultant documenting the noise level as associated with the proposed wind energy conversion system. The study shall predict noise levels at property lines and at the nearest residence not on the site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall provide preexisting ambient noise levels and include low-frequency noise.
 - (d) Property value analysis. This study shall be prepared by a licensed and certified real estate appraiser, in accordance with industry standards, regarding the potential impact of values of properties adjoining wind energy conversion system sites, including properties across public roads from the site.
 - (e) An assessment of potential electromagnetic interference with microwave, radio, television, personal communications systems and other forms of wireless communication.
- (9) Tower design information sufficient to demonstrate compliance with wind-loading, and other applicable state and federal codes and requirements.
 - (10) An analysis of potential ice-throwing and damage from blade throw impacts.
 - (11) Documentation of the proposed intent and capacity of energy generation to be derived from the completed project. In addition, the applicant shall, prior to the receipt of a building permit, demonstrate that the proposed WECS meets system reliability requirements of the New York independent system operator, or provide proof that it has executed an interconnection agreement with the New York State independent operator and/or the

applicable transmission owner.

(12) Preliminary report prepared by the applicant describing:

- (a) Surrounding topography in relation to the capabilities for generation of electricity by wind and why the project site was selected for development.
- (b) Required improvements for construction activities, including those within the public right-of-way or land controlled by the Town of Barre.
- (c) Proposed mitigation measures for visual impacts of any and all components, structures, and materials related to the wind energy conversion project, including, but not limited to, wind energy conversion units, substation(s), meteorological (MET) towers, support structures and access roads.
- (d) Proposed safety measures to mitigate any potential wind energy conversion unit failure.
- (e) Documentation and justification for any proposed land clearing around structures within the project.

(13) Elevation map showing the wind energy conversion unit's height and design, including a cross-section of the structure and components of the nacelle; statement of compliance documenting the unit's compliance with applicable structural standards; and the wind energy conversion unit's abilities in terms of producing energy.

(14) Lighting plan. This must include location and type of lighting, as well as the expected impact on residential property within a five-mile radius of the project, and must be in compliance with Federal Aviation Administration (FAA) minimum lighting requirements. The application should include a copy of the determination by the FAA to establish required markings and/or lights for the structures. But if such determination is not available, at the time of the application, no special use permit or building permit for any lighted facility may be issued until such determination is submitted.

(15) Decommissioning plan.

(a) The applicant shall submit a decommissioning plan, which shall include at a minimum:

- [1] The anticipated life of the wind energy conversion system;
- [2] The estimated decommissioning costs in current dollars;
- [3] How said estimate was determined;
- [4] The method of insuring that funds will be available for decommissioning and restoration;
- [5] The method, such by annual reestimate by a licensed engineer, that the decommissioning cost will be kept current;
- [6] The manner in which the wind energy conversion system will be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of three feet, or greater where required by other law, regulation or guideline, restoration of vegetation (consistent and compatible with surrounding vegetation) less any fencing or residual minor improvements requested by the landowner.

(b) The plan shall include the decommissioning bond required by this article.

- (c) The decommissioning plan shall be in accordance with New York State Department of Agriculture and Markets regulations and guidelines where applicable.
 - (16) Description of the applicant's twenty-year plan for the project that shall include the estimated market demand and long-term project expansion needs within the Town associated with the project for the duration of the required twenty-year plan.
 - (17) Report showing soil logs and soil profile analysis for any area being disturbed as part of the project. The report shall indicate any anticipated need for blasting and the information relied upon for such anticipated blasting.
 - (18) Plans to prevent the pollution of surface water or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties. The plan shall outline the following:
 - (a) The impact the project will have on surface runoff and erosion, groundwater and wells, including projected impact on existing downstream drainage infrastructure.
 - (b) Steps to mitigate any anticipated issues, including a stormwater pollution prevention plan (SWPPP) in accordance with NYSDEC General Permit requirements.
 - (c) Plans to revisit the project at no less than two-year intervals, for a period of four years, to confirm the impact was as anticipated and take corrective action if necessary
 - (19) The applicant shall, in consultation with the Town of Barre Volunteer Fire Department and Orleans County Hazardous Response Teams, establish an emergency preparedness plan, in the event of an emergency requiring immediate response or attention during the construction and operation of the wind energy conversion project or any portion thereof.
 - (20) The applicant shall present a spill containment response plan, to be implemented in the event of any environmental contamination resulting from, but not limited to, oil or other chemicals. A performance bond or other appropriate mechanism shall be required to deal with this situation.
 - (21) Proof of all required financial surety or other similar financial requirements relative to the project. Such proof may include, but is not limited to, proof of liability insurance, decommissioning funds, development mitigation funds and whatever other financial requirements relative to the application.
 - (22) Complaint resolution. The application will include a complaint resolution process to address complaints from nearby residents both during construction and while any WECS is in place. The process may use an independent mediator or arbitrator and include a reasonable time limit for acting on a complaint.
 - (23) An application shall include information relating to construction/installation of the wind energy conversion system as follows:
 - (a) A construction schedule describing commencement and completion dates;
 - (b) A WECS traffic routes plan addressing the standards set forth in § **350-103G(3)** herein below.
 - (24) A statement, signed under penalty of perjury, that the information contained in the application is true and accurate.
- B. Waivers. In the case of applications for small WECS projects, the Town Board may reduce the required number of copies of the application to be submitted and may waive those application

requirements set forth above that may not be relevant to the project.

§ 350-102. Application review process.

- A. Applicants may request a preapplication meeting with the Town Board or with any consultants retained by the Town Board for application review.
- B. Payment of all application fees shall be made at the time of application submission. If variances are requested, variance application fees shall also be paid at the time of application submission.
- C. Town staff or Town-designated consultants shall, within 60 days of receipt, or such longer time if agreed upon by the applicant, determine if all information required under this article is included in the application.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees application fees shall be required upon submitted of the additional information unless the number of wind energy conversion units proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board and the Town Planning Board. The applicant shall post the completed application and any accepted environmental impact statements on the Internet.
- F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first-class mail to property owners within 1,000 feet of the boundaries of the proposed Wind Energy Overlay District, and published in the Town's official newspaper, no less than 10 nor more than 20 days before any hearing, but where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The Town will prepare the mailing and mail the notice of public hearing prepared by the Town. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any environmental impact statement or requested variances.
- H. Notice of the project shall also be given, when applicable, to:
 - (1) The Orleans County Planning Board, if required by General Municipal Law §§ 239-1 and 239-m, and
 - (2) To adjoining towns under Town Law § 264.
- I. SEQRA review. Applications for wind energy conversion systems are deemed Type I projects under the State Environmental Quality Review Act (SEQRA).
Editor's Note: See Environmental Conservation Law § 8-0101 et seq.
The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of the review by said agencies shall be part of the record of the Town's proceedings. At the completion of the SEQRA review process if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a statement of findings, which statement may also serve as the Town's decision on the application(s).
- J. Upon receipt of the report of the recommendations of the County Planning Board, where applicable, and the report of the recommendation of the Town Planning Board, where

applicable, the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the application(s).

§ 350-103. Standards.

Wind energy conversion systems and all related structures thereto may be permitted to be constructed within the Town only upon receiving prior special use permit approval from the Town Board and issuance of building permits. The application for a special use permit shall only be granted if the application complies with the following requirements and such other reasonable conditions that the Town Board requires as part of any conditional approval issued hereunder:

A. Location. All wind energy conversion systems shall be located, erected and sited in accordance with the following requirements:

- (1) No individual wind energy conversion unit shall be installed in any location along the major axis of existing communications links or telephone transmission lines where the operation is likely to produce interference in said link's operation. If such problem is found to exist, such problem shall be resolved at the applicant's sole and complete expense to the satisfaction of the property owner and/or the Town Code Enforcement Officer.
- (2) No individual wind energy conversion unit shall be installed in any location where such unit's proximity with existing fixed broadcast, or reception antenna (including residential reception antenna or satellite system) for radio, television or wireless phone or other personal communication systems where such unit would produce interference with signal transmission or reception. The applicant shall correct (or document significant progress toward corrective action on) any unforeseen interference to the satisfaction of the Code Enforcement Officer within 30 days of any complaint being given to the applicant by the Code Enforcement officer or affected person. To correct such problem:
 - (a) The applicant shall provide the affected person(s) with service equal to or better than the service that was interrupted, or an acceptable alternative to such service has been agreed to by the Code Enforcement Officer and the affected property owner.
 - (b) If emergency service needs have been affected, such problem shall be remedied by the applicant within 36 hours of notification being given to the applicant by the Code Enforcement Officer or affected person.
- (3) All wind energy conversion units shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.
- (4) No individual wind energy generating unit shall be installed in any location where it may interfere with the normal flight patterns at area airports and private airstrips.
- (5) Wind energy conversion systems and related infrastructure shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- (6) The use of guy wires is prohibited except in the case of a wind energy conversion unit/wind turbine (small project).
- (7) No advertising signs, or television, radio, cellular telephone or other communication antennas are allowed on any part of the wind energy conversion system, including fencing and support structures. Signage to inform persons of ownership and contact information is permitted so long as such signage is erected in accordance with Town Law.
- (8) All wind energy conversion units shall only be located, installed, or constructed on the subject parcel in accordance with the following setbacks:

- (a) A distance not less than 1.5 times the tip height of the wind energy generating unit as measured from any and all public roadways or aboveground power lines in the vicinity of said unit, to the base of such unit.
- (b) A distance not less than 1,000 feet from any existing residential or commercial building. This distance may be reduced for WECS small projects.
- (c) A distance not less than 1.5 times the tip height of the wind energy generating unit as measured from the property lines of the parcel on which said unit is to be sited.

B. Noise.

- (1) The level of noise produced by or from the operation of the wind energy conversion system shall not exceed 45 dBA 10 (which means the 45 dBA may statistically be exceeded only 10% of the time six minutes of every hour) measured at a distance of 1,000 feet from the base of the wind energy conversion unit or that portion of the wind energy conversion system causing the noise level that is in violation of these requirements. During any allowed period of sound level exceedence, as set forth hereinabove, the noise level shall not exceed 51 dBA.
- (2) In the event that the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is not exceeded for more than six minutes per hour (L 90). Ambient noise levels shall be measured at a distance of 1,000 feet from the base of the wind energy conversion unit. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.
- (3) Any noise level falling between two whole decibels shall be the lower of the two.

C. Emergency shutdown/safety operations.

- (1) The applicant shall file emergency contact information, including, but not limited to, a telephone number and unique identification number, for each wind energy conversion unit with the Town Clerk. At least one sign shall be posted at the base of each tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of the fence around each tower or group of towers and any building (or on the tower or building if there is no fence) containing emergency contact information, including a local or toll-free telephone number with twenty-four hour, seven-day-a-week coverage. The Town Board may require additional signs based on safety needs.
- (2) Each wind energy conversion unit shall have an automatic manufacturer certified or engineer certified braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.

D. Lighting.

- (1) No wind energy conversion unit shall be artificially lighted unless such lighting is required by a local, state or federal statute, rule or regulation. The use of nighttime and overcast daytime condition stroboscopic lighting shall be the minimum required by law to satisfy the lighting requirements as issued by the Federal Aviation Administration.

- (2) Light shields, if commercially available, or other devices to mitigate or control light pollution/spilling of light shall be used to minimize the amount of light visible at ground level. The applicant shall submit a study of the potential impact of the proposed aviation, security and operational lighting, as well as any required alterations as determined and required for approval hereunder, on the area surrounding the subject project.
- (3) Prior notification of any changes in the lighting plan for the project must be communicated to the Town Planning Board prior to installation of such new lighting scheme, and such alterations shall only be approved for installation for good cause shown or in order to bring such project into compliance with any and all statutory and regulatory requirements.
- (4) If the minimum lighting requirement, as determined by applicable federal, state or local rules, regulations or statutes, change during the course of operation of the wind energy conversion system, the applicant shall alter the lighting plan and install such lighting in the wind energy conversion system that is at a level equal to such revised minimum requirements.

E. Utility service.

- (1) All power transmission lines servicing the project or any portion thereof shall be underground to a minimum depth of 48 inches or to such depth as required by applicable state and federal regulations and codes, whichever is greater. If this standard is deemed to be technically infeasible, rationale and alternative solutions and designs shall be submitted with the completed application for review and approval by the Town Board. Such approval shall be granted if such alternative is deemed acceptable by the Town Board based upon substantial evidence in the record ensuring such alternative provides the level of protection and safety afforded by the standard set forth hereinabove.
- (2) In the unlikely event of a stray voltage occurrence, the applicant shall be notified, and corrective action shall be taken immediately by the applicant fully remedying such occurrence.

F. Blade sweep and tip height. The minimum height of the lowest part of the blade sweep area shall be 30 feet above the highest existing major structure or tree within a one-hundred-fifty-foot radius of the base of the wind energy conversion unit. The total tip height for each wind energy conversion unit cannot exceed 500 feet as measured from the base of the unit to the tip of the unit's longest blade.

G. Access roads and road mitigation.

- (1) In an effort to minimize curb cuts, existing roadways shall be used for access to the site whenever possible.
- (2) If existing roadways are not practicable to be utilized for such access, any necessary new roadway shall be constructed in a way so that they are level to the surrounding environment. Unless the landowner upon which such new access road is located signs a waiver requesting such property not be gated, new access roads constructed from existing roadways shall be gated and locked near the vicinity of the intersection of the access road and the existing roadway with breakaway gates allowing emergency access to the roadway.
- (3) Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: 1) minimizing traffic impacts from construction and delivery vehicles; 2) minimizing WECS-related traffic during times of school bus activity; 3)

minimizing wear and tear on local roads; and 4) minimizing impacts on local business operations. Special use permit conditions may require documentation of road conditions prior to and following construction from the Town Highway Superintendent, remediation during construction, limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public and all applicable state, county and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips per day and the dates and time periods of expected use of designated traffic routes. The applicant shall obtain any necessary road use agreements with agencies and municipalities over whose roads and rights-of-way will be used in the construction or reconstruction of any WECS, and provide documentation of same to the Town.

- (4) The applicant, or its successor, is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount determined by the Town Board, sufficient to compensate the Town for any damage to local roads.
 - (5) If the applicant or successor uses any seasonal use highway in the off season, it shall be solely responsible for the maintenance of said highway, including, but not limited to, snowplowing. No acts of maintenance on a seasonal use highway by an applicant or successor shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.
- H. Accessory structures/facilities. Transmission facilities and/or buildings shall be located along roadways, below ridgelines or behind vegetation to screen such facilities and/or buildings from visibility. If such a facility or building is to be located in or along the side of an open field, the facility or building shall be landscaped in such a way as to blend such facility or building in with the surrounding environment.
- I. Security. To secure each and every wind energy conversion unit so constructed within the Town, each such unit shall:
- (1) Not have any climbing pegs, tower ladders or other climbing device of any kind attached to the wind energy conversion unit closer than 15 feet from the ground.
 - (2) Have a locked anticlimbing device installed on the unit.
 - (3) If the property owner submits a written request that fencing be required, a minimum six-foot high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.
 - (4) WECS shall be designed to prevent unauthorized external access to electrical and mechanical components, and shall have access doors that are kept securely locked.
 - (5) Accurate maps of the underground facilities shall be filed with the Town and with "Dig Safely New York" (1-800-962-7962) or its successor.
- J. Shadow flicker. The wind energy conversion system shall be designed such that shadow flicker from an individual wind energy conversion unit will not fall on any specific area of a roadway or a portion of a residential structure in excess of 25 hours per year. If an individual residence is being impacted by multiple wind energy conversion units, the cumulative affect of said impact shall not exceed 25 hours per year. If shadow flicker exceeds these conditions, the source wind energy conversion unit shall be shut down until the offending condition is remedied.

- K. Environmental contamination by oil or other chemicals. The applicant of a wind energy conversion system, after such application has been approved and before a special use permit is issued, shall submit the maximum amount letter of credit or other mechanism necessary to ensure the cleanup of any contamination according to DEC requirements. The Town Board and the Attorney for the Town shall judge the letter of credit or other surety as adequate and satisfactory before such a special use permit is granted.
- L. Below-grade foundations. The foundation top of each wind energy conversion unit shall be buried to a depth of four feet below ground, or to the specifications of the New York State Department of Agriculture and Markets guidelines, whichever is greater, to enable use of the land for farming/agriculture during the life of the project.
- M. Construction hours. No construction or reconstruction of any WECS shall begin before 6:00 a.m. nor end after 8:00 p.m. Except in cases of emergencies, all maintenance of WECS shall take place within those same time frames.
- N. Removal of solid waste. The applicant/operator of a WECS shall remove and properly dispose of any solid waste or other unused construction materials in accordance with applicable laws and regulations.
- O. Post installation.
 - (1) On an annual basis a post-installation field report identifying the wind energy conversion system's generation of electricity and impacts upon the environment, including, but not limited to, any adverse drainage patterns then existing, sites of erosion in vicinity of the system, and other potential adverse environmental conditions, shall be submitted by the applicant to the Town Board. The report shall also include any and all work-related calls logged by the applicant, and any other reasonable items that may be requested by the Town Board. This report shall be filed with the Town Clerk annually in the month of June for review at the July Town Board meeting.
 - (2) If it is determined that any wind energy conversion system or portion thereof is operating outside the parameters of the zoning requirements and conditions of approval, the applicant shall be notified, and any and all necessary remedies implemented. If the problem cannot be remedied within an appropriate amount of time, based on its nature and severity, the Code Enforcement Officer may require the wind energy conversion system or portion thereof be shut down until such repairs can be affected. If the applicant and the Code Enforcement Officer are unable to agree on an appropriate time or method for remedying such problem, either party shall ask the Town Board to determine such a reasonable time or method of remedy, which determination shall be final unless successfully appealed to the Orleans County Supreme Court by way of a Civil Practice Law and Rules § 78 proceeding, which said petition must be filed with said Court within 30 days of the issuance of the determination by the Town Board being so appealed.
 - (3) Safety issues deemed to be of an imminent significant threat to the health, safety and/or welfare of any person affected by the wind energy conversion system or any portion thereof, as determined by the Code Enforcement Officer, shall require the immediate shut down of the wind energy conversion system or portion thereof until corrective action is taken and the imminent significant threat fully mitigated.
 - (4) In the event a wind energy conversion system or portion thereof requires attention, whichever entity is notified first, the applicant or the Code Enforcement Officer, such entity shall immediately contact the other party to report the matter being attended to.

§ 350-104. Waivers for noise and setback requirements; easements; variances.

- A. In the event the noise levels resulting from a WECS exceed the criteria established in this article, or a setback requirement is not met, a waiver is hereby granted from such requirement where the property adjacent to that hosting the wind energy conversion unit is also part of the WECS site due to hosting a wind energy conversion unit or other ancillary components.
- B. Written consent from the affected property owners shall be obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this article, and that they wish to be a part of the site as defined herein, and that consent is granted to:
 - (1) Allow noise levels to exceed the maximum limits otherwise allowed; or
 - (2) Allow distance setbacks less than required; and
- C. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the County Clerk's office describing the benefitted and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefitted WECS in accordance with this article, or the acquisition of the burdened parcel by the owner of the benefitted parcel or the WECS.
- D. In any case where written consent is not obtained, and, therefore, a property is not part of the site, a variance from the Zoning Board of Appeals shall be required.

§ 350-105. Decommissioning.

- A. Prior to application approval, the applicant shall be referred to the Town Board for determination of any financial surety required in accordance with § **350-101** of this article.
- B. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the Town for the period of the life of the wind energy conversion system. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant and/or its successor.
- C. The applicant shall notify the Code Enforcement Officer within 30 days of the discontinuance of use of the wind energy conversion system or any portion thereof. Should the applicant fail to notify the Town Code Enforcement Officer as required, the applicant shall be subject to all penalties provided under this article and the following additional penalties: \$200 per day from the time the applicant should have notified the Town Code Enforcement Officer and the date the wind energy conversion system or portion thereof is removed or made operational as set forth under Subsection **E** of this section.
- D. Should the wind energy conversion system or any portion thereof not operate for a total period of 60 days within any ninety-day period, the Town shall notify the applicant that such offending wind energy conversion system or portion thereof shall be removed or made operational as provided in Subsection **E** of this section.
- E. The applicant shall remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portions thereof and restore the site to preconstruction conditions, or make the wind energy conversion system or portion thereof fully operational, within 90 days of delivery or receipt of the notification set forth in Subsection **D** of this section, unless such time limit is extended by the Town Board for good cause shown, but the total period shall not exceed 180 days. Nonfunction or lack of operation may be proven, among other means, by reports to the Public Service Commission, NYSERDA, or by lack of income generation. The applicant or its successor shall make available (subject to a nondisclosure agreement, if requested) to the Town Board all reports to and from the purchaser of energy from individual

wind energy conversion systems, if requested, necessary to prove the system is functioning, which reports may be redacted as necessary to protect proprietary information.

- F. Prior to the expiration of this time, the applicant may apply to the Town Board for a further extension in time for which such wind energy conversion system or portion thereof needs to be removed or made operational, up to an additional time of 180 days. Such extension shall only be granted if the applicant demonstrates good cause that such extension is necessary as a result of uncontrollable events such as weather delays, repair delays or other similar conditions requiring the need for such extension.
- G. Failure to notify and/or remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portion thereof in accordance with this article shall be in violation of this article and subject the applicant to the penalties set forth herein. In addition, the cost of removing the offending wind energy conversion system or portion thereof shall be drawn against the financial surety posted by the applicant for demolition or decommissioning of the project as set forth in this section.
- H. Any costs incurred by the Town that exceeds the amount of such financial surety or not be covered by said surety shall be the complete and sole responsibility of the applicant. If the applicant is insolvent and such costs cannot be practicably collected from said applicant, then such costs shall become a lien upon the property upon which the costs were incurred and said lien shall thereafter be assessed on the next succeeding year's tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.
- I. Upon completion of all such removal activities by the Town, any remaining portion of the posted surety shall be returned to the applicant forthwith.

§ 350-106. Other operating considerations; permit revocation.

- A. Landscaping. Upon completion of installation, the site shall be returned as close as possible to its natural state, and in conformity with applicable state and federal regulations and guidelines, including, but not limited to, restoring the subsoil and topsoil to preconstruction condition and reforestation of at least 40% for any woodlands that have been cleared.
- B. Building and grounds maintenance. Any damaged or unused parts shall be removed from the premises within 30 days or stored in a locked on-site storage building. All maintenance equipment, spare parts, oil or chemicals (cleaning, pesticides, fuels) shall also be stored in said on-site locked storage building.
- C. Testing and inspection fund. A special use permit shall contain a requirement that the applicant, or successor, fund periodic structural inspections and noise testing by a qualified, independent, third-party consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the inspections and noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this article, and shall also include an evaluation of any complaints received by the Town. The applicant or successor shall have 90 days, after written notice from the Town Board, to cure any deficiency. Any extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- D. Operation. A WECS 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 special use permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a special use permit condition, the owner or operator shall remedy the situation within 90 days after written notice

from the Town Board. The applicant, or successor, shall have 90 days, after written notice from the Town Board, to cure any deficiency. Any extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.

- E. Revocation of special use permit. Notwithstanding any other abatement provision under this article, if the WECS is not repaired or made operational, or brought into special use permit compliance after notice and within the time limitations set forth above, the Town may, after a public meeting at which the operator or owner shall be given an opportunity to be heard and present evidence, including a plan to come into compliance : 1) order either remedial action within a particular time frame; or 2) order revocation of the special use permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

§ 350-107. Certifications.

- A. Routine inspection report. An inspection report prepared by an independent professional engineer licensed in the State of New York shall be required at the completion of the installation of the wind energy conversion system. Said inspection report shall certify the wind energy system and any portion thereof complies with all manufacturing specifications and any and all rules, regulations and statutes pertaining thereto. Said inspection report shall be filed with the Code Enforcement Officer and the Town Clerk.
- B. Insurance liability. Prior to the issuance of a building permit regarding an approved wind energy conversion system, the applicant shall file with the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance in a reasonable level as determined by the Town Board in consultation with the Town's insurer, guided by industry standards, to cover damage or injury which might result from the wind energy conversion system or any portion thereof. Such liability insurance shall also name the Town and the current property owner of record as an additional insured, unless said property owner waives such coverage in writing.
- C. National and state standards. In addition to any requirements of this article, the applicant shall show that all applicable manufacturer's, New York State and U.S. standards and guidelines for the construction, operation and maintenance of the proposed wind energy conversion units have been met or are in compliance. Wind energy conversion units shall be built, operated and maintained to applicable industry standards, including, but not limited to, the Institute of Electrical and Electronic Engineers (IEEE), the International Electrotechnical Commission (IEC) and the American National Standards Institute (ANSI).
- D. Continuing obligations. All requirements detailed in this article shall remain in full force and effect for the duration of the granted special use permit.

§ 350-108. Wind measurement towers.

- A. Wind site assessment. The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer ("met") towers, shall be permitted as special use in the Town.
- B. Applications for wind measurement towers. An application for a wind measurement tower shall include:
 - (1) The name, address and telephone number of the applicant.

- (2) The name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter, or other written permission, signed by the property owner:
 - (a) Confirming that the property owner is familiar with the proposed application(s); and
 - (b) Authorizing the submission of the application(s).
 - (3) The address of each proposed tower site, including Tax Map number.
 - (4) Site plan.
 - (5) Decommissioning plan based on the same criteria for WECS, including a security bond or cash for removal.
- C. Standards for wind measurement towers.
- (1) The distance between a wind measurement tower and the property line shall be at least the total height of the tower. Sites can include more than one piece of property, and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
 - (2) Special use permits for wind measurement towers may be issued by the Town Board for a maximum period of up to three years. Special use permits shall be renewed annually if the facility is in compliance with the conditions of the special use permit.

§ 350-109. Penalties for offenses.

- A. Any person who violates or knowingly permits the violation of this article shall be punishable as provided in § **350-8** of this chapter. Further, every day such violation is determined to have existed shall be deemed to constitute a separate and additional offense for which the person may be subject to the penalties set forth herein for each and every day such violation so existed.

Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. In the case of any violation or threatened violation of any of the provisions of this article, including the terms and conditions imposed by any permit issued pursuant to this article, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent the unlawful erection, structural alteration, reconstruction, moving, and/or use and to restrain, correct, or abate such violation to prevent the illegal act.

§ 350-110. Fees.

- A. There shall be nonrefundable application fees for each of the following categories, to be fixed by resolution of the Town Board from time to time:
- (1) Wind Overlay Zone.
 - (2) WECS special use permit.
 - (3) Wind measurement towers.
 - (4) Wind measurement tower special use permit renewals.

- (5) Private wind turbine tower.
- (6) The cost of all legal notices and mailings shall be assessed to the applicant.
- B. Building permits. The Town believes the review of building and electrical permits for WECS requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs which shall be fixed by resolution of the Town Board from time to time but no less than \$100 per permit request, plus the amount charged to the Town by the outside consultants hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans or certifications, or to conduct inspections as agreed by the parties.
- C. Nothing in this section shall be read as limiting the ability of the Town to enter into host community agreements with any applicant. The applicant, or its successors, shall be required to pay the Town a host community fee annually to compensate the Town for expenses or impacts on the community. The amount of the host community fee shall be determined by applying a rate per MW (megawatt), or part thereof, of rated maximum generation capacity per year, prorated for any portion of a year of energy production. The host community fee may be in addition to any payment in lieu of taxes which may be authorized to be collected by the Town pursuant to § 487 of the Real Property Tax Law of the State of New York. The amount of the host community fee will be determined by the Town Board from time to time but not more frequently than annually. All such fees shall be negotiated and determined prior to the approval and issuance of a special use permit for any WECS.
- D. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

§ 350-111. Tax exemption.

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