

Chapter 145

ZONING

GENERAL REFERENCES

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| Fees, licenses and permits – See Ch. 20. | Property maintenance – See Ch. 105. |
| Planning Board – See Ch. 31. | Sewers – See Ch. 114. |
| Building Code administration – See Ch. 60. | Site plan review – See Ch. 115. |
| Dumping and landfills – See Ch. 77. | Subdivision of land – See Ch. 123. |
| Farming – See Ch. 82. | Water – See Ch. 138. |
| Flood damage prevention – See Ch. 85. | Wind energy facilities – See Ch. 140. |
| Exterior lighting – See Ch. 92. | Wireless service facilities – See Ch. 142. |
| Landscaping review standards – See Ch. 93. | Fees – See Ch. A157. |

ARTICLE I
General Provisions

§ 145-1. Short title.

This chapter shall be known and may be cited as the "Town of Phelps Zoning Ordinance."

§ 145-2. Intent.

The intent of this chapter is to establish comprehensive controls for the development of land in the Town of Phelps, based on the Master Plan for the Town and enacted in order to promote and protect health, safety, comfort, convenience and the general welfare of the people.

§ 145-3. Purpose.

Such regulations shall be made in accordance with the Master Plan and designed to lessen congestion in the streets; to secure safety from fires, flood, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of the public; and to facilitate the provisions of transportation, water, sewage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the characteristics of the district and its peculiarities for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

ARTICLE II
Terminology

§ 145-4. Word usage; definitions.

- A. Unless the context otherwise requires, the following definitions shall be used in the interpretation and construction of this chapter. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "structure" shall include the word "building"; the word "used" shall include "arranged," "designed," "constructed," "altered," "converted," "rented," "leased" or "intended to be used"; and the word "shall" is mandatory and not optional.
- B. As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING OR USE — A use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal building. Manufactured homes, trailers, truck trailers or bodies or similar movable objects which are not designed for permanent attachment to a realty shall not be deemed an "accessory structure."**[Amended 10-3-1994 by L.L. No. 2-1994]**

ALTERATIONS — As applied to a building or structure, a change or rearrangement outside in the structural parts or in the exit facilities or an enlargement, whether by extending on a side or by increasing in height, or moving from one location or position to another.

ALTERATIONS, STRUCTURAL — Any outside change in the supporting members of a building such as bearing walls, columns, beams or girders.

APPROVED MINED LAND-USE PLAN — An approved mined land-use plan as described in § 23-2713 of the Environmental Conservation Law, including both a mining plan and a reclamation plan.**[Added 7-9-2012 by L.L. No. 3-2012]**

AUTOMOBILE OR TRAILER SALES AREA — An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.

AUTOMOBILE SERVICE STATION — A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor repair service is rendered.

BEDROCK — Consolidated rock underlying the surface.**[Added 3-14-2016 by L.L. No. 2-2016]**

BOARD OF APPEALS — The Board of Appeals of the Town of Phelps.**[Amended 10-3-1994 by L.L. No. 2-1994]**

BOAT REPAIR SERVICE — A building or place of business where gasoline, oil, greases, batteries, tires and boat accessories are supplied and dispensed direct to the boating industry at retail, and where major and/or minor repairs services are rendered.**[Added 8-5-1991 by L.L. No. 1-1991]**

BOAT YARDS, SALES OR BUILDING FACILITIES — A building or open area, other than a street, used for the display, sale or rental of new or used boats and accessories used by boaters.**[Added 8-5-1991 by L.L. No. 1-1991]**

BUILDING — A structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

BUILDING HEIGHT — The vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest point of the roof, but not including chimneys, spires, silos, towers, tanks and similar projections.

BUILDING, PRINCIPAL — A structure in which is conducted the principal use of the site on which it is situated. In any residential district, any dwelling shall be deemed to be a "principal building" on the district lot on which the same is located.

CAMP — Any area of land or land and water, including any buildings, tents, shelters or other accommodations suitable for temporary or seasonal living purposes.

CODE ENFORCEMENT OFFICER — The administrative officer charged with the duty of enforcing the provisions of this chapter.**[Amended 10-3-1994 by L.L. No. 2-1994]**

COVERAGE — That percentage of the plot or land area covered by the building area.

CUSTOMARY HOME OCCUPATION — Any use customarily conducted entirely within the principal structure and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the principal structure and does not change the character thereof.

DEC — The New York State Department of Environmental Conservation.**[Added 7-9-2012 by L.L. No. 3-2012]**

DUMP — A lot or land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste material of any kind.

DWELLING — Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons intended for nontransient use. Manufactured and modular homes are included. Recreational vehicles and travel trailers are not included.**[Amended 5-16-1988 by L.L. No. 2-1988; 10-3-1994 by L.L. No. 2-1994]**

DWELLING, MULTIPLE-FAMILY — A building or portion thereof used or designed as a residence for three or more apartment or dwelling units.**[Amended 10-3-1994 by L.L. No. 2-1994]**

DWELLING, SINGLE-FAMILY — A detached building, designated for or occupied exclusively by one family and containing not more than one dwelling unit.

DWELLING, TWO-FAMILY — A detached or semidetached building where not more than two individual family or dwelling units are entirely separated by vertical walls or horizontal floors, unpierced except for access to the outside or to a common cellar.

DWELLING UNIT — One or more rooms, including cooking facilities, and sanitary facilities in a dwelling structure, designed as a unit for occupancy by not more than one family for living and sleeping purposes. Each unit shall be in conformance with the applicable regulations of the New York State Uniform Fire Prevention and Building Code.**[Amended 10-3-1994 by L.L. No. 2-1994]**

ELUVIATION — The transportation of dissolved or suspended materials within the soil by the movement of water when rainfall exceeds evaporation.**[Added 3-14-2016 by L.L. No. 2-2016]**

ENVIRONMENTAL CONSERVATION LAW — The New York State Environmental Conservation Law.**[Added 7-9-2012 by L.L. No. 3-2012]**

ESSENTIAL SERVICES — The erection, construction, alteration or maintenance by public utilities or the Town or other governmental agencies of underground or overhead gas, electrical or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or the Town or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

FACTORY-BUILT HOME — Any structure that is wholly or in substantial part made, fabricated, formed or assembled in manufacturing facilities for installation on a building lot and is designed for long-term residential use. For the purposes of these regulations, "factory-built homes" will consist of two types, known and described as follows:**[Added 5-16-1988 by L.L. No. 2-1988]**

(1) MANUFACTURED HOME OR HOUSING — A factory-built structure that is manufactured or constructed under the authority of 42 U.S.C. § 5401, for transit to and installation or assembly on a residential lot and bearing a label certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Act.

(2) (Reserved)¹

(3) MODULAR HOME OR HOUSING — All other factory built housing certified as meeting the New York State Uniform Fire Prevention and Building Code, and shall include housing commonly known as "modular," "panelized," "precut" and "prefabricated" as opposed to conventional stick built housing. For purposes of this chapter, "modular homes" shall be subject to the same standards as conventional stick built housing.

FAMILY — One or more persons occupying the premises and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house, club, fraternity or hotel.

FARM — A parcel of land of 10 or more acres used principally in the raising or production of agricultural products and the necessary or usual dwellings, farm structures, storage and equipment.

FLOOR AREA — The sum of the gross horizontal area of the several floors of a building and its accessory buildings (excluding those used for off-street parking). "Floor area" shall not include cellar space, stairways and any floor space with floor to ceiling height less than seven feet.

GARAGE, PRIVATE — A detached or attached accessory building used only for the storage of private passenger vehicles.

HAULAGEWAY — All roads utilized for mining purposes, together with that area of land over which material is transported, that are located within the permitted area. **[Added 7-9-2012 by L.L. No. 3-2012]**

ILLUVIATION — The accumulation of dissolved or suspended soil materials in one area or horizon as a result of eluviation from another. **[Added 3-14-2016 by L.L. No. 2-2016]**

JUNK — Scrap metals and their alloys, bones, used materials and products (such as rags and cloth, rubber, rope, tinfoil, bottles, old tools and machinery, automobiles, fixtures and appliances, lumber, boxes or crates, pipe and pipe fittings) and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled for sale or parts.

JUNKYARD — An area of land, with or without buildings, primarily used for the storage outside of a completely enclosed building of used and discarded materials, including but not limited to wastepaper, rags, metal, building materials, house furnishing, machinery, vehicles or parts thereof, including junk, as defined in this chapter, with or without dismantling, processing, salvage, sale or other use or disposition of the same. The deposit or storage of two or more wrecked or broken motor vehicles or the major parts of two or more vehicles, with the exception of agriculture-related vehicles, for a period of two months or longer shall be deemed to make the lot a "junkyard."

1. Editor's Note: The former definition of "mobile home or housing," which pertained to factory-built structures built prior to June 15, 1976, and did not bear a label certifying that they were built in compliance with the Federal Manufactured Housing Construction and Safety Standards Act, was deleted pursuant to L.L. No. 7-1998, adopted 12-8-1998, that replaced the term "mobile home" with "manufactured home."

KENNEL — Any premises on which four or more dogs six months old or older are kept, bred and/or boarded. **[Added 7-2-1990 by L.L. No. 2-1990]**

LARGE-SCALE BUSINESS DEVELOPMENT — A tract of land not less than five acres for nonresidential development, and which is planned for development as units under single ownership and control and which includes two or more nonresidential principal buildings.

LARGE-SCALE INDUSTRIAL DEVELOPMENT — A tract of land not less than 10 acres for nonresidential development, and which is planned for development as units under single ownership and control and which includes two or more nonresidential principal buildings.

LAYERS — Soil generally consists of visually and texturally distinct layers (also referred to as "horizon"). The Town of Phelps will use the general and fairly universal sequence of O-A-B-C-R to designate these layers/soil profiles (see attached Exhibit A).² Not all of these layers are present in every location. **[Added 3-14-2016 by L.L. No. 2-2016]**

LOT — A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as required by this chapter, and having frontage on a public street.

LOT AREA — The computed area contained within the lot lines.

LOT, CORNER — A lot abutting upon two or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than 135°. The point of intersection of the street lot lines is the "corner."

LOT DEPTH — The mean horizontal distance between the front and rear lot lines.

LOT LINES — The property lines bounding the lot.

- (1) **LOT LINE, FRONT** — The line separating the lot from the street.
- (2) **LOT LINE, REAR** — The lot line opposite and most distant from the front lot line.
- (3) **LOT LINE, SIDE** — Any lot line other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line.
- (4) **LOT LINE, STREET** — A lot line separating the lot from a street.

LOT, NONCONFORMING — Any district lot which does not conform to the minimum width, depth and area dimensions specified for the district in which said lot is located and the owner(s) of which does not

2. **Editor's Note: Exhibit A is included as an attachment to this chapter.**

own any adjacent property the subdivision of which would create one or more conforming lots. **[Amended 10-3-1994 by L.L. No. 2-1994]**

LOT WIDTH — The distance between the two side lot lines measured at the required setback line.

MANUFACTURED HOME PARK OR COURT — A parcel of land under single ownership which has been planned and/or improved for the placement of two or more manufactured homes intended for nontransient use. **[Amended 5-16-1988 by L.L. No. 2-1988]**

MANUFACTURED HOME PARK UNIT OR STAND — That part of a manufactured home lot which has been reserved for the placement of a manufactured home, appurtenant structure or additions, including driveway apron and patio. The manufactured home stand area is derived from the area of the lot which remains after all setbacks are met. **[Amended 5-16-1988 by L.L. No. 2-1988]**

MINE — Any excavation from which a mineral is to be produced for sale or exchange, or for commercial, industrial or municipal use; all haulageways and all equipment above, on or below the surface of the ground used in connection with such excavation, and all lands included in the life of the mine review by the DEC. **[Added 7-9-2012 by L.L. No. 3-2012]**

MINERAL — Any naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of § 145-8.2 of the Zoning Law, peat and topsoil shall be considered minerals. **[Added 7-9-2012 by L.L. No. 3-2012]**

MINING — The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include reclamation of a mine or the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities. **[Added 7-9-2012 by L.L. No. 3-2012]**

MOBILE HOME **[Repealed 5-16-1988 by L.L. No. 2-1988]** —

MOBILE HOME LOT **[Repealed 5-16-1988 by L.L. No. 2-1988]** —

MOTELS, MOTOR COURTS AND MOTOR HOTELS — A series of attached or semidetached dwelling structures, where each unit has convenient access to parking space for the use of the unit's occupants. The units, with the exception of the manager's or caretaker's, are

designed to provide sleeping accommodations for automobile transients or overnight guests.

OVERBURDEN — All of the earth, vegetation and other materials which lie above or alongside a mineral deposit.**[Added 7-9-2012 by L.L. No. 3-2012]**

PERSON — Any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.**[Added 7-9-2012 by L.L. No. 3-2012]**

PLANNED DEVELOPMENT GROUPS — A structure or a group of structures designed to be maintained and operated as a unit in single ownership or control by an individual, partnership, corporation or cooperative group, and which has certain facilities in common, such as yards and open spaces, recreation areas, garages and parking areas.

PLANNING BOARD — The Planning Board of the Town of Phelps, Ontario County, New York.**[Added 10-3-1994 by L.L. No. 2-1994]**

RECLAMATION — The conditioning of the affected land to make it suitable for any uses or purposes consistent with the provisions of the Environmental Conservation Law.**[Added 7-9-2012 by L.L. No. 3-2012]**

RECREATION —

- (1) RECREATION, COMMERCIAL — Recreation facilities operated as a business and open to the general public for a fee, including golf courses, golf driving ranges, ice-skating rinks, swimming pools, picnic and clambake groves, amusement parks and fairgrounds.
- (2) RECREATION, PRIVATE NONCOMMERCIAL — Clubs or recreation facilities operated by a nonprofit organization and open only to bona fide members of such nonprofit organization.
- (3) RECREATION, PUBLIC — Recreation facilities operated as a nonprofit enterprise by the Town of Phelps, any other governmental entity or any nonprofit organization and open to the general public.

REGOLITH — The layer of loose, unconsolidated rock and dust that sits atop a layer of bedrock.**[Added 3-14-2016 by L.L. No. 2-2016]**

RELIGIOUS USE — A church, temple, synagogue, mosque or other similar place of worship.

REPAIR — The replacement or renewal, excluding additions, of any part of a building, structure, device or equipment, with like or similar materials or parts, for the purpose of maintenance of such building, structure, device or equipment.

ROOMING HOUSE — A building containing a single dwelling unit and containing rooms for the rooming and/or boarding of at least three

persons, but not more than 10 persons, by prearrangement for definite periods of not less than one week.

SEASONAL DWELLING — A detached dwelling not used for permanent residence and not occupied for more than six months in each year.

SIGN — A name, identification, description, display or illustration or any other visual display which is affixed to or painted or represented directly or indirectly upon a building, structure or piece of land and which directs attention to an object, product, place, activity, person, institution, organization or business. However, a "sign" shall not include any display of official court or public office notices nor any official traffic control device nor shall it include the flag, emblem or insignia of a nation, state, county, municipality, school or religious group. A "sign" shall not include a sign located completely within an enclosed building except for illuminated or animated signs within show windows. Each display surface of a sign shall be considered to be a "sign."

SIGN, ADVERTISING — A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises where the sign is located.

SOIL HORIZON — A layer generally parallel to the soil surface, whose physical characteristics differ from the layers above and beneath. A soil horizon commonly is differentiated from the horizons adjacent to it by characteristics that can be seen or measured in the field, such as color, structure and texture. Horizons are defined by obvious physical features, chiefly color and texture. The following are the main soil horizons generally found within the Town of Phelps: **[Added 3-14-2016 by L.L. No. 2-2016]**

- (1) O HORIZON — O stands for organic matter; surface organic deposit with litter layer of plant residues in relatively nondecomposed form; mostly made up of leaf litter and humus (decomposed organic matter) and/or grass.
- (2) A HORIZON — Topsoil; this is the surface soil comprised of organics with mineral matter; it has the most organic matter accumulation. This is the zone in which the most biological activity occurs. Soil organisms such as earthworms, pot worms, arthropods, nematodes, fungi and many species of bacteria and archaea are concentrated here, often in close association with plant roots.
- (3) B HORIZON — Subsoil; subsurface layer reflecting chemical or physical alteration of parent material. This layer accumulates iron, clay, aluminum and organic compounds, a process referred to as illuviation.
- (4) C HORIZON — Parent rock; the parent material in sedimentary deposits. It consists of slightly broken-up bedrock. It is the unconsolidated material below the A and B horizons. This layer is also called the "regolith."

(5) R HORIZON — The layer of unweathered bedrock at the base of the soil profile, and is composed largely of consolidated masses of hard rock that cannot be excavated by hand. This is the unweathered rock (bedrock) layer that is beneath all the other layers.

SOIL PROFILE — A vertical section exposing a set of horizons (layers) from the ground surface to the parent rock/bedrock.**[Added 3-14-2016 by L.L. No. 2-2016]**

SPECIAL USE — A use which because of its unique characteristics requires individual consideration in each case by the Board of Appeals and the Planning Board before it may be permitted in the district enumerated in this chapter.

STATE MINING PERMIT — A permit issued by the DEC under Article 23 of the Environmental Conservation Law.**[Added 7-9-2012 by L.L. No. 3-2012]**

STRUCTURE — Anything constructed, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground, including stationary and portable carports.

STRUCTURE, NONCONFORMING — A structure or sign, the design or size of which does not conform to the regulations of this chapter for the district in which it is located.

TAILINGS — Material of inferior quality or value resulting from the removal, preparation or processing of minerals.**[Added 7-9-2012 by L.L. No. 3-2012]**

TOPSOIL — Of the five master soil horizons, this is the horizon designated as the "A horizon."**[Added 3-14-2016 by L.L. No. 2-2016]**

TOURIST HOME — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

TOWN BOARD — The governing body of the Town of Phelps.³

TRAVEL TRAILER — A vehicle less than 32 feet in length and used for temporary living or sleeping purposes and standing on wheels.

TRAVEL TRAILER CAMP — Any site, lot, field or tract of ground on which two or more manufactured homes or travel trailers may be placed, and shall include any building, structure, tent, vehicle or enclosure used or intended to be used as a part of the equipment of such camp and intended for transient use.

USE, NONCONFORMING — A building, structure or premises legally existing and/or used at the time of the adoption of this chapter, or any amendment thereto, and which does not conform with the use regulations of the district in which located.

3. Editor's Note: The definition of "trailer," which immediately followed this definition, was deleted 10-3-1994 by L.L. No. 2-1994.

VARIANCE — The Board of Appeals authorized departure from the terms of this chapter in accordance with the procedures set forth therefor in this chapter:

- (1) USE VARIANCE — The authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by this chapter. **[Added 10-3-1994 by L.L. No. 2-1994]**
- (2) AREA VARIANCE — The authorization by the Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the chapter. **[Added 10-3-1994 by L.L. No. 2-1994]**

YARD — An open space which lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed, except for permitted accessory uses and trees and other shrubs, from the ground upward except as herein permitted:**[Amended 10-3-1994 by L.L. No. 2-1994]**

- (1) YARD, FRONT — An open space extending the full width of the lot between a principal building and the front lot line, unoccupied and unobstructed from the ground upward.
- (2) YARD, REAR — An open space extending the full width of the lot between a principal building and the rear lot line, unoccupied and unobstructed from the ground upward.
- (3) YARD, SIDE — An open space extending from the front yard to the rear yard between a principal building and the nearest side lot line, unoccupied and unobstructed from the ground upward.

ZONING BOARD OF APPEALS — The Board of Appeals of the Town of Phelps.

ZONING MAP — The Official Zoning Map of the Town of Phelps of 1974, together with all amendments subsequently adopted.

ARTICLE III
Districts

§ 145-5. Establishment of districts. [Amended 2-2-2004 by L.L. No. 2-2004; 7-9-2012 by L.L. No. 3-2012; 7-13-2015 by L.L. No. 2-2015]

For the purposes of promoting the public health, safety, morals and general welfare of the Town of Phelps, the Town is hereby divided into the following types of districts:

R-AG	Agricultural-Residential District
R-1	Residential District
C-1	Commercial District
C-2	Neighborhood Commercial District
M-1	Industrial District
MOD	Mining Overlay District
MTOD	Major Thoroughfare Overlay District

§ 145-6. Zoning Map.⁴ [Amended 7-9-2012 by L.L. No. 3-2012]

Said districts are bounded as shown on the map entitled "Official Zoning Map of the Town of Phelps of 1974, together with all amendments subsequently adopted" which accompanies and which, with all explanatory matter thereon, is hereby made a part of this chapter.

§ 145-7. Interpretation of boundaries.

- A. Designation of district boundaries. The district boundary lines are intended generally to follow the boundary lines of streets, the center lines of railroad rights-of-way, existing lot lines, the mean water level of streams and other waterways or Town boundary lines, all as shown on the Zoning Map; but where a district boundary line does not follow such a line, its position is shown on said Zoning Map by a specific dimension expressing its distance in feet from a street line or other boundary line as indicated.
- B. Determination of locations of boundaries. In case of uncertainty as to the true location of a district boundary line in a particular instance, the Code Enforcement Officer shall request the Board of Appeals to render its determination with respect thereto.
- C. Unsubdivided property. In unsubdivided property or where a district boundary divides a lot, the location of any such boundary, unless the same is indicated by dimensions shown on the Zoning Map, shall be determined by the use of the map scale shown thereon.

4. Editor's Note: The Zoning Map is included as an attachment to this chapter.

- D. District boundary following water body. Where the boundary of a district follows a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the Town of Phelps unless otherwise indicated.

ARTICLE IV
District Regulations

§ 145-8. Schedule of Regulations.

The restrictions and controls intended to regulate development in each district are set forth in the attached schedule⁵ which is supplemented by other sections in this chapter.

§ 145-8.1. Neighborhood Commercial District. [Added 2-2-2004 by L.L. No. 2-2004]

- A. Intent The intent in creating a Neighborhood Commercial District is to provide locations where groups of small establishments may be appropriately located to serve frequent commercial and personal service needs of residents within convenient traveling distance. It is not intended to permit major commercial or service establishments in such districts.
- B. The following shall be permitted principal uses in said district:
- (1) Bakery, confectionery, delicatessen and the like, provided that products prepared or processed on the premises shall be sold only at retail and only on the premises;
 - (2) Drugstore, newsstand and tobacco shop;
 - (3) Barbershops, beauty shops, hair salons and other personal service shops or uses;
 - (4) Restaurants, except fast food, drive-in and those serving liquor;
 - (5) Boutiques and specialty retail shops, including but not limited to, bookstores, florists, card or gift shops, candy stores, secondhand clothing stores, stationery stores and arts and crafts stores;
 - (6) Gasoline and fueling stations;
 - (7) Grocery, meat market, fish market, specialty food stores and convenience-type food stores;
 - (8) Laundry and dry-cleaning establishments, including self-service;
 - (9) Custom dressmaking, millinery, hemstitching, pleating, weaving or mending services, shoe repair and tailor shops;
 - (10) Banks and lending institutions;
 - (11) Similar uses to those listed above may be permitted subject to special use permit approval by the Town Planning Board and finding by the Board that such use is of the same general character as those permitted in this district and that such use, if permitted,

5. **Editor's Note: The Schedule of Regulations is included as an attachment to this chapter.**

will not cause adverse impacts or be detrimental to other uses within the zone or to adjoining land use; and

(12) Detached single-family dwellings.

C. The following shall be permitted accessory uses in said district:

(1) Off-street parking and loading area, subject to regulations;

(2) Signs, subject to Town requirements;

(3) Residential uses within a structure in combination with other permitted uses provided that such residential uses are accessory to the business conducted and are located elsewhere than on the street frontage of the ground floor and have a minimum area required by regulation; and

(4) Fences, subject to Town requirements.

D. The following uses shall be allowed only upon obtaining a special use permit from the Town Planning Board upon a finding by the Board that such use is of the same general character as those permitted in this district and that such use, if permitted, would not cause adverse impacts or be detrimental to other uses within the zone or to adjoining land uses:

(1) Public building and grounds;

(2) Uses for the treatment and care of human beings, including but not limited to medical and dental offices and clinics for physicians, osteopaths, dentists, chiropractors, chiropodists, podiatrists, opticians, optometrists and ophthalmologists, all excluding overnight occupancy or overnight care;

(3) Essential services and structures, excluding power plants, maintenance yards, storage yards and personal wireless telecommunications facilities;

(4) Business, professional and executive offices, including but not limited to offices for attorneys, architects, engineers, surveyors and accountants, real estate and insurance agents and salespersons;

(5) Private nursery school or day-care center or similar uses.

§ 145-8.2. Mining Overlay District. [Added 7-9-2012 by L.L. No. 3-2012]

A. Permitted uses. No person shall do, conduct, perform, or engage in any mining, or operate a mine, within the Town of Phelps except within a Mining Overlay District as hereinafter defined and except in compliance with the provisions of this § 145-8.2 of the Zoning Law. Mining shall be a special use in a Mining Overlay District and shall be

allowed only with a special use permit as hereinafter provided in this section.

B. Issuance of special use permits for mining.

- (1) The Town Board hereby authorizes the Zoning Board of Appeals to issue special use permits to engage in mining in accordance with the provisions set forth below and §§ 145-10 and 145-11 of the Zoning Law. No person shall do, conduct, perform, or engage in mining, or operate a mine within the Town, except within a Mining Overlay District and except pursuant to a mining special use permit issued by the Zoning Board of Appeals in accordance with the procedures and criteria set forth in this subsection.
- (2) Applicants for a special use permit to engage in mining shall submit to the Zoning Board of Appeals an original and 11 copies of an application for special use permit for mining (which application shall be developed by the Town Board). The applicant will include with the application for special use permit for mining the items set forth in § 145-8.2B(3) below. To the extent the applicant's application to the DEC for a state mining permit for the mine contains information required herein, the application to the DEC may be substituted therefor. The foregoing, however, shall not relieve the applicant from submitting any information required herein that is not contained in an application to the DEC for a state mining permit. The application for special use permit shall be accompanied by a fee as set forth in Chapter A157 of the Zoning Law. The applicant shall pay to the Town such additional amounts as are necessary to reimburse the Town for the expenses paid by the Town to any engineers or other consultants retained in connection with a review of the application.
- (3) The application for special use permit for mining shall include the following:
 - (a) The name, address and telephone number of the applicant, together with the name of the person to contact for further information, if the applicant is not an individual.
 - (b) A map, prepared by a licensed engineer or surveyor, showing the boundaries of the proposed mine, as well as a key map showing its approximate location in the Town of Phelps. The scale of the map shall be no less than one inch equals 100 feet, unless the Zoning Board of Appeals, by resolution, allows a smaller scale.
 - (c) A description of the proposed mining operation, including the type of material to be mined, equipment to be used, approximate tonnage for each year of the next five-year period, and the anticipated useful life of the mine. For the purposes of complying with this § 145-8.2B(3)(c), a mining plan prepared pursuant to Title 27, Article 23, of the Environmental

Conservation Law and regulations promulgated thereunder shall be sufficient, provided that the Zoning Board of Appeals is satisfied that all relevant requirements thereof have been met; provided, further, that the applicant shall meet all applicable requirements of this section in submitting said mining plan.

- (d) A reclamation plan, including both a graphic and a narrative description of the proposed objective to be achieved in the final stage of reclamation, the proposed method of reclaiming the affected land, and a schedule for reclaiming the affected land. For purposes of complying with this § 145-8.2B(3)(d), a reclamation plan prepared pursuant to Title 27, Article 23, of the Environmental Conservation Law and regulations promulgated thereunder shall be sufficient, provided that the Zoning Board of Appeals is satisfied that all relevant requirements thereof have been met; provided, further, that the applicant shall meet all applicable requirements of this section in submitting said reclamation plan.
 - (e) All documents submitted by the applicant to the DEC and the applicable state mining permit, if one has been issued, along with all documents referenced in the state mining permit.
 - (f) A completed environmental assessment form as required by the New York State Environmental Quality Review Act so that the Zoning Board of Appeals may perform any obligations required by such act unless all requirements under the New York State Environmental Quality Review Act have previously been satisfied.
- (4) The Zoning Board of Appeals shall consider the application for a special use permit pursuant to the requirements of § 274-b of the New York State Town Law. The Zoning Board of Appeals shall require the applicant to provide notices of the application for special use permit to surrounding property owners within 500 feet of the proposed mine by First Class United States Mail, and any other recipients they deem appropriate. The cost of preparing, publishing and mailing any required notices shall be borne by the applicant. The Zoning Board of Appeals may cancel a public hearing if the applicant fails to submit all of the required information.
- (5) When the applicant has submitted a complete application for a special use permit, the Zoning Board of Appeals may grant and approve a special use permit for a mine which meets the following criteria:
- (a) The provisions of §§ 145-10B and 145-11 (except those provisions relating to screening) of the Zoning Law have been satisfied.

- (b) The proposed use will not adversely affect the character of the neighborhood or surrounding area, including taking into account the surrounding land uses and the underlying zoning classification.
- (6) Conditions. Except for proposed mines that are not required to be permitted by the State of New York, conditions placed on a special use permit to engage in mining by the Zoning Board of Appeals may include the following:
- (a) Ingress and egress to public thoroughfares controlled by the Town;
 - (b) Routing of mineral transport vehicles on roads controlled by the Town;
 - (c) Requirements and conditions as specified in the applicable state mining permit concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to § 23-2711, Subdivision 3, of the Environmental Conservation Law;
 - (d) Enforcement of reclamation requirements contained in the applicable state mining permit.
- (7) Nothing herein shall prohibit the Town, as part of the DEC's permitting process, from making a determination in regard to the following, and notifying the DEC of the determination pursuant to Environmental Conservation Law § 23-2711:
- (a) Appropriate setbacks from property boundaries or public thoroughfare rights-of-way;
 - (b) Man-made or natural barriers designed to restrict access if needed, and, if affirmative, the type, length, height and location thereof;
 - (c) The control of dust;
 - (d) Hours of operation; and
 - (e) Whether mining is prohibited at the proposed location.
- (8) Notwithstanding the provisions of § 145-8.2B(6) above, to the extent allowed by law, special use permits for mines that are not required to be permitted by the State of New York, as defined by Environmental Conservation Law § 23-2711 as may be amended from time to time, may contain one or more of the following conditions or regulations:

- (a) A requirement that the mining is to be designed, located and operated so as to protect the public health, safety and welfare.
- (b) A requirement that the mining will encourage and promote a suitable and safe environment for the surrounding neighborhood and will not cause substantial injury to the value of other property in the neighborhood.
- (c) A requirement that the mining will be compatible with existing adjoining development and will not adversely change the established character or appearance of the neighborhood.
- (d) A requirement that effective landscaping and buffering is provided.
- (e) A requirement that adequate off-street parking and loading are provided in accordance with the Zoning Law, and ingress and egress to parking and loading areas are so designed as to minimize the number of curbcuts and not unduly interfere with traffic or abutting streets.
- (f) A requirement that site development shall be such as to minimize erosion and shall not produce increased surface water runoff onto abutting properties.
- (g) A requirement that existing public streets and utilities servicing the mining are determined to be adequate.
- (h) A requirement that significant existing trees and vegetation shall be preserved to the extent practicable.
- (i) A requirement that adequate lighting of the site and parking areas is provided and that exterior lighting sources are designed and located so as to produce minimal glare on adjacent streets and properties.
- (j) A requirement that the proposed mining be in harmony with the Zoning Law and not adversely affect the neighborhood.
- (k) A requirement that noise from mining activities and related operations shall not be such as to unreasonably interfere with the quiet enjoyment of neighboring properties. Sources of sound emanating from the mining site shall not exceed a sound level limit of 75 dBA for any adjacent property receiving such sound, when measured at or within the property boundary of the adjacent property receiving such sound.
- (l) A requirement that disturbed areas shall be kept to a minimum to reduce sources of dust.
- (m) A requirement that impact vibrations and steady-state vibrations shall be limited or reduced so as to minimize their effect on adjoining properties.

- (n) A requirement that radioactive materials, toxic gases or vapors shall not be emitted on or from the mining site.
- (o) A requirement that no surface water drainage or ground water shall be polluted in any manner that renders it less usable (in quality or quantity for irrigation, swimming, drinking, visual attractiveness or whatever lawful uses are made of water resources to persons downstream) than such water's usefulness as it enters the area of mining operation.
- (p) Installation by applicant of a berm to reduce the noise level to the neighboring residents; specification of the height of the berm; seeding of the berm to prevent erosion and to improve the look of the berm; a fixed completion date for the berm; and the slope of the berm.
- (q) Arrangement of stockpiles to help muffle the sound from crushing and screening operations; height limits for the piles.
- (r) Location or relocation of the exit road to reduce traffic next to the residents across from the mine pit.
- (s) A timetable for completion of restoration phases.
- (t) Installation and maintenance of rubber belting on chutes and similar equipment used in mining operations to help reduce noise levels.
- (u) Widening, oiling and stoning by the applicant of any Town access roads, in consultation with the Town Highway Superintendent.
- (v) For additional soil and erosion control, requiring applicant to:
 - [1] Prevent runoff from leaving the site.
 - [2] Raise/depress entrance/exit to prevent drainage from going onto road.
 - [3] Maintain the entrance/exit with clean gravel and keep the same washed (dust and mud free) at all times.
- (w) Requiring the applicant to install signage as requested by the Town Highway Superintendent, and consult with the Town Highway Superintendent regarding recommendations for warning/safety devices.
- (x) Requiring the applicant to keep the roads dust and mud free by periodic washing and sweeping, as needed to control dust and flying particles.
- (y) Requiring the applicant to provide a truck staging area within the mine; and requiring that trucks awaiting the daily opening

of the mine must be staged off public highways on the applicant's site being used for the mining operation.

- (z) Requiring that the applicant shall confine fugitive dust and flying particles to the area of the mine; and:
 - [1] In the case of any houses within 500 feet of an active mine area, requiring that applicant shall annually reimburse the owners thereof for the costs incurred by such owners for washing the outside of such houses once per year. Such annual reimbursement may be subject to a maximum reimbursement amount and shall not be paid without prior notice to the applicant and proof of payment of the washing costs;
 - [2] In the case of any houses within 500 feet of an active mine area, requiring that the applicant shall purchase for each house a home air purifier (which may be subject to a maximum cost) if requested by the homeowner thereof who furnishes a doctor's statement showing that there is a need therefor and that the need was caused by dust from the applicant's mining operation; and
 - [3] Requiring that the applicant shall periodically spray water on stock piles/hoppers, as needed, to control dust and flying particles.
- (aa) To attenuate noise, requiring that the applicant shall:
 - [1] Lower equipment/raise piles.
 - [2] Annually review efforts to reduce noise levels in July for additional adjustments.
 - [3] Annually review noise effects in July; and
 - [4] Use the applicant's best efforts not to use any crusher or screen before 8:00 a.m. on Saturdays.
- (ab) Requiring that the applicant shall participate in an annual review (with the Zoning Board of Appeals, the applicant and other Town officials) within 30 days after the report required by § 145-8.2F(2) hereof has been filed, with special attention to noise, dust and dirt being confined to the mine area.
- (ac) Requiring that the applicant shall, to the extent practicable, not cut certain trees or vegetation on the applicant's property.
- (ad) Requiring that the applicant shall plant trees (a double row of seedlings on eight-foot centers, staggered) along certain roads by a certain date; provided, however, that the trees shall not be less than four feet in height if there are any residences in the immediate area. The applicant shall guarantee that all such

seedlings (or trees, as the case may be) shall live for a period of at least one year, and in the event any such seedlings (or trees) shall die prior to the expiration of one year, the applicant (at its expense) shall replace said seedlings (or trees).

- (ae) Requiring that no topsoil shall be removed from the site, that overburden shall not be considered topsoil, and that all restoration shall include a minimum of four inches of topsoil.
- (af) Requiring that the applicant shall protect the fair market value of any residences then located within 500 feet of an active mining area from loss of value caused by mining during the term of the special use permit approval; defining the term "active mining area" as including any area used for mining, hauling, or processing, or any area on the site which is unreclaimed; designating those residences within the designated five-hundred-foot area, providing that any such residence owner claiming loss of property value shall be responsible for demonstrating such loss by a professional appraisal, or any other methods which are mutually agreed upon by the residence owner and the applicant; providing that such protection from loss of value caused by mining shall take the form of reimbursement to be made by the applicant to the affected residence owners in an amount equal to the difference between: a) the fair market value of the residence prior to the date the Zoning Board of Appeals approves and grants the special use permit, and b) the fair market value of the residence as of the date of the professional appraisal thereof; and providing that any dispute regarding a loss of fair market value caused by mining shall be resolved by arbitration, in accordance with the rules of the American Arbitration Association, and that judgment upon the award may be enforced in any court having jurisdiction thereof.
- (ag) Providing that the Town Highway Superintendent, Town Supervisor, or Code Enforcement Officer shall have the authority to issue a written notice of violation where he or she determines that the mining special use permit conditions are being violated; upon such written notice, the applicant shall have a reasonable amount of time, at least two weeks, to cure such violations; if the violations persist and are found to be significant, the Zoning Board of Appeals shall have the authority to revoke the mining special use permit for good cause; the applicant shall have the right to a hearing prior to any such mining special use permit enforcement action.
- (ah) Providing that the applicant shall grant the Highway Superintendent, Town Supervisor, Code Enforcement Officer, an engineer or other consultant designated by the Town, and members of the Zoning Board of Appeals a license to enter upon the site with reasonable prior notice to the applicant to

determine that these conditions are being fulfilled and complied with notwithstanding any signs or other notices purporting to limit access to the site.

- (ai) Specifying, in the case of vehicles going to or from the site, the haul routes to be followed.
- (aj) Specifying that the applicant shall refrain from doing any washing of minerals on the site.
- (ak) Requiring if the existing wells of certain neighboring property owners go dry, and if those neighboring property owners can prove by a preponderance of the evidence that such condition was caused by any water usage on the site by the applicant during the term of the mining special use permit approval, the applicant shall reimburse those neighboring property owners for the costs incurred by said neighboring property owners in drilling a new well on their properties; and providing that any dispute regarding the dry condition of the wells shall be resolved by arbitration in accordance with the rules of the American Arbitration Association, and that judgment upon the award may be enforced in any court having jurisdiction thereof.
- (al) Requiring that the applicant shall comply with applicable fuel storage and permit requirements of DEC; the applicant shall provide and maintain on site an on-site secondary container large enough to contain the full volume of the fuel tank on site; and the fuel tank shall at all times be placed within said secondary container; the applicant shall maintain equipment and supplies on site to contain, remediate, and clean up potential spillage, and immediately use same to clean up any actual spillage; vehicle maintenance shall be conducted to minimize and prevent lubricant and fuel spills; all spills of chemicals, gasoline, motor oil, or hydraulic fluid in excess of one gallon at any one time must be reported within one hour to DEC and Town Supervisor.
- (am) Providing that not more than 15 acres (exclusive of the berms and the roadway) on the entire site shall be unreclaimed at any one given time.
- (an) Requiring that operations shall be conducted in such a manner as to prevent excessive dust and noise.
- (ao) Requiring that operations shall generally be restricted to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 8:00 a.m. and 12:00 noon on Saturday; provided, however, that the Zoning Board of Appeals may, at its discretion, modify these hours depending on prevailing conditions.

- (ap) Requiring that the mine operator shall maintain private and public roads and driveways in a dust-free condition and provide such surfacing or other treatment as may be required by the Zoning Board of Appeals at the time of approval of the mining special use permit.
- (aq) Requiring that open excavations extending below the level of an adjacent highway shall not be closer to the highway right-of-way than 100 feet. Operations shall be carried on no closer than 25 feet from an adjacent property.
- (ar) Requiring that finished slopes in any open mining pit shall not be steeper than allowed by the DEC, and that finished slopes shall be graded and each site shall be fertilized, mulched and seeded to establish a firm cover of grass or other vegetation sufficient to reduce erosion, and that stone walls of a quarry need not be reduced in slope or reseeded.
- (as) Requiring that all surface drainage shall be controlled through the use of dikes, barriers and drainage structures to prevent silt, erosion, debris or other loose materials from being deposited on any public or private highway or on other property; and that all provisions for control of drainage water shall be subject to periodic review by the Zoning Board of Appeals.
- (at) Requiring that fencing shall be provided along property lines for whatever distance the Zoning Board of Appeals shall determine to be necessary for protection of adjoining property and the public.
- (au) Requiring that screening may be required to reduce the visual impact of the project on the surrounding properties before mining commences and throughout the duration of the project.
- (av) Requiring and providing that whenever the Zoning Board of Appeals determines that the excavation of materials is creating a nuisance, or the mining operator has violated the terms of the mining special use permit or of this section, the Zoning Board of Appeals may revoke the mining special use permit therefor upon five days' written notice after a hearing before the Zoning Board of Appeals.
- (aw) Requiring that no smoke from any source whatever shall be emitted, as measured at the individual property line, of a density greater than, or equal to the density described as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mines; provided, however, that the emission of smoke shall not be permitted if it is unreasonably offensive in terms of odor or noxious gases despite its apparent lack of density when measured by the Ringelmann Chart.

- (9) Site plan review. A special use permit may be issued only after final site plan approval of the mine by the Planning Board.
- C. Term of the mining special use permit. The term of the mining special use permit shall be coincident with the term of any applicable state mining permit. Otherwise, the term shall be two years.
- D. Bond. Each mining special use permit shall include a requirement that the applicant submit a bond (if DEC does not require one), with such surety and in such amounts as the Zoning Board of Appeals shall prescribe, in favor of the Town, conditioned upon the satisfactory reclamation of the mining site upon the completion of mining operations thereon.
- E. Renewals. The applicant shall, upon the expiration of each mining special use permit period, obtain a renewal for a like term by filing an application therefor with the Zoning Board of Appeals on a form prescribed by the Town Board. In entertaining said renewal application, the Zoning Board of Appeals shall require and consider, to the extent appropriate and applicable, the same information and factors considered by the Zoning Board of Appeals for an initial application, together with the performance of the renewal applicant under previous permits. To the extent the applicant's application to the DEC for a renewed state mining permit for the mine contains information required herein, the application to the DEC may be substituted therefor. The foregoing, however, shall not relieve the applicant from submitting any information required herein that is not contained in an application to the DEC for a renewed state mining permit. The application for a renewal of the special use permit shall be accompanied by a fee as set forth in Chapter A157 of the Zoning Law. The applicant shall pay to the Town such additional amounts as are necessary to reimburse the Town for the expenses paid by the Town to any engineers or other consultants retained in connection with a review of the renewal application.
- F. Inspections and reports.
- (1) The Code Enforcement Officer, and any engineer or other consultant retained by the Town, may conduct such periodic inspections, on reasonable notice to the mine operator, as they shall deem necessary to ensure compliance with the terms of the mining special use permit and this section.
- (2) At least 30 days prior to the yearly anniversary of the granting of a mining special use permit, each mining operator shall submit 10 copies of a report, certified by the applicant, showing graphically and by narrative the extent of the operations carried on over the previous year, including any variance from the mined land-use plan. If the Code Enforcement Officer finds the report or applicant's compliance with the mining special use permit to be defective or deficient in any way, the expenses of discovering or remedying any

such defect may be considered in establishing the fee upon the next occurring renewal of the mining special use permit.

- G. Violations. For a violation of § 145-8.2 of the Zoning Law or a violation of any provision, term or condition of a mining special use permit issued pursuant to § 145-8.2 hereof, the provisions of Article X of the Zoning Law shall be applicable. Nothing herein shall prevent the Town from pursuing and enforcing remedies and sanctions pursuant to any other provision of the Code of the Town of Phelps or other applicable state or federal law.
- H. Nonconforming mines.
- (1) A mine within the Town of Phelps that exists and is in operation, with a valid state mining permit if required, and in compliance with all applicable laws, ordinances, and regulations of the Town of Phelps, County of Ontario, and State of New York on the date of adoption of this § 145-8.2 may be continued as a legal nonconforming mine, subject to the conditions below and provided that the requirements set forth in § 145-8.2H(4) are satisfied.
 - (2) After enactment of this § 145-8.2, a nonconforming mine shall not be enlarged or expanded beyond the area, size, or scope as specifically set forth in the applicable state mining permit in effect at the time this § 145-8.2 is enacted, nor shall the use of such mine be changed (a change in the use of the mine shall include, but not be limited to, a change in the type of material extracted, the method of processing of materials, and/or the products produced) after this § 145-8.2 is enacted. A mine that is not required to have a state mining permit shall not be enlarged or expanded, nor shall the use of such mine be changed after this § 145-8.2 is enacted. In no event, however, shall mining operations (regardless of whether required to have a state mining permit) be enlarged or extended beyond the boundaries of the parcel of property on which such mine exists at the time this § 145-8.2 is enacted. Any expansion or enlargement of a mine not specifically allowed under this § 145-8.2H(2) must comply with all applicable provisions of § 145-8.2, including but not limited to § 145-8.2A and B.
 - (3) If the mining within a nonconforming mine ceases for a period of one year, all future uses of the parcel on which the nonconforming mine existed shall conform to the Zoning Law.
 - (4) Certificate of nonconforming mine. In order to continue as a legal nonconforming mine, the owner or operator of the nonconforming mine shall within six months after enactment of this § 145-8.2 obtain a certificate of nonconforming mine pursuant to the procedures set forth herein.
 - (a) The owner of the nonconforming mine shall apply to the Code Enforcement Officer for a certificate of nonconforming mine.

- (b) Upon a finding by the Code Enforcement Officer that the mine legally existed, in compliance with all applicable laws, ordinances, and regulations, of the Town of Phelps, County of Ontario, and State of New York, including the DEC, at the time this § 145-8.2 was enacted, the Code Enforcement Officer shall issue to such owner a certificate of nonconforming mine.
- (c) The certificate of nonconforming mine shall include the following information:
 - [1] The basis for the Code Enforcement Officer's finding that the mine qualifies as a legal nonconforming mine.
 - [2] A description of the type of mining activity being conducted at the nonconforming mine.
 - [3] The specific area where mining activity is being conducted, including, if appropriate, maps or other depictions of the parcel where the nonconforming mine is located.
 - [4] A description of all structures at the nonconforming mine, including a description of the use of such structures, and again including, if appropriate, maps or other depictions of the parcel.
 - [5] A description of the type of material extracted and products produced at the mine.
- (d) The Code Enforcement Officer may require the owner of the nonconforming mine to provide such documentation as is necessary for the Code Enforcement Officer to issue a certificate of nonconforming mine. Such information may include, but is not limited to, an application in a form approved by the Code Enforcement Officer or the Town Board, copies of the applicable state mining permit, any applications for such state mining permit, and the approved mined land-use plan for the nonconforming mine.
- (e) At least annually the Code Enforcement Officer shall conduct a review of each previously issued certificates of nonconforming mine to determine whether each mine that has a certificate of nonconforming mine is still in operation and whether such operation is as described in the certificate of nonconforming mine. The Code Enforcement Officer shall record any changes in the mining operation and shall take such other action consistent with this § 145-8.2 as is warranted by such changes.
- (f) Notwithstanding any other provisions of this § 145-8.2H, a mine that fails to obtain a certificate of nonconforming use within the time frame set forth herein shall not be considered a legal nonconforming mine and shall be subject to all applicable

provisions of this § 145-8.2, including but not limited to § 145-8.2A and B.

- (5) The provisions of this § 145-8.2H shall apply notwithstanding the provisions of any other section of the Zoning Law or any other local law or ordinance of the Town of Phelps.
- I. Amendment of Mining Overlay District. It is the intention of this § 145-8.2 of the Zoning Law to potentially allow for the amendment of the Mining Overlay District as deemed appropriate by the Town Board; provided, however, that the Town Board shall consider the factors specified in § 145-8.2J of the Zoning Law in determining whether to amend the boundaries of the Mining Overlay District.
- J. Standards for the amendment of boundaries of the Mining Overlay District. In considering an amendment to the boundaries of the Mining Overlay District, the Town Board shall consider all relevant factors, including the following:
- (1) The consistency of the proposed amendment of the Mining Overlay District with the Town of Phelps Comprehensive Plan and the Zoning Law.
 - (2) If land is proposed to be added to the Mining Overlay District as part of any amendment, the ability to balance such addition of land with a removal of land from the Mining Overlay District as part of the amendment.
 - (3) The character of the neighborhood which would be affected by an amendment of the Mining Overlay District.
 - (4) The general zoning classification of the area which would be affected by the amendment of the Mining Overlay District.
 - (5) The proximity of the amended Mining Overlay District to existing Mining Overlay District or mining operations.
 - (6) The inclusion within the amended Mining Overlay District of other parcels of land which, in the future, might be the subject of mining.
 - (7) Impact of the mining on the immediate area and any haulageways.
 - (8) Any other factors the Town Board considers relevant.

§ 145-8.3. Major Thoroughfare Overlay District. [Added 7-13-2015 by L.L. No. 2-2015]

- A. Intent.
- (1) It is intended by the provisions of these regulations to accomplish the following:
 - (a) To retain the rural character of our Town by taking steps to keep the state roads within our Town as two-lane highways.

- (b) To restrict or control site access along portions of State Route 14, State Route 96 and State Route 318 in the Town of Phelps in order to prevent the creation of strip commercial development as well as potentially significant traffic congestion problems and vehicular and pedestrian conflict areas within the major thoroughfare corridor. The Major Thoroughfare Overlay District is designed to permit appropriate commercial, residential and business uses along the corridor and to ensure consistency with the Town's Master Plan.
 - (2) The regulations contained within this Major Thoroughfare Overlay District are not intended to be substituted for other general zoning district provisions but will be superimposed over such district provisions and shall be considered as additional requirements to be met by the applicant or developer prior to final project approval. This Major Thoroughfare Overlay District is intended to provide the Town of Phelps with an additional level of review and regulation that will control how the land development permitted by the Town's primary zoning districts will take access to and will impact the major transportation routes within the Town.
- B. Delineation of Major Thoroughfare Overlay District (MTOD) boundaries. The MTOD is hereby established as a mapped overlay zone and shall be delineated upon the Official Zoning Map of the Town of Phelps. The mapped MTOD area is based upon the "Official Major Thoroughfare District Overlay Mapping," Town of Phelps, Ontario County, New York, which is further identified as all property and parcels of land within and/or accessing State Route 14 within 500 feet of the center line on State Route 14 from the Town of Geneva/Town of Phelps boundary north to the New York State Thruway; then north of the New York State Thruway to the end of Parcel 37.00-1-28.000 which corresponds to the end of the current C-1 Zone District, to include all property and parcels of land within 500 feet of the center line on State Route 14 on the eastern side of State Route 14; and all property and parcels of land within 500 feet of the center line of State Route 318; and all property and parcels of land within and/or accessing State Route 96 within 500 feet of the center line of State Route 96 from the Seneca County-Town of Phelps boundary for a distance of 7,899 feet, as measured from the center line of State Route 96 (to the end at the existing C-1 District and the start of the M-1 Zone District). Any property or parcel of land which contains frontage along State Route 14, Route 96 and Route 318 lying within the boundary of the MTOD and/or accessing State Route 14, Route 96 and Route 318 shall be subject to the provisions and restrictions of the underlying zoning district and the provisions set forth in this section of the Town Code.
- C. Permitted principal uses. Permitted principal uses within the Major Thoroughfare Overlay District shall be those allowed within the underlying or base zoning district within which the property lies and

shall be considered subject to the appropriate principal use provisions and restrictions of that district.

- D. Permitted accessory uses. Permitted accessory uses within the Major Thoroughfare Overlay District shall be those allowed within the underlying or base zoning district within which the property lies and shall be subject to the appropriate accessory use provisions and restrictions of that district.
- E. Special permit uses. Uses within the Major Thoroughfare Overlay District which are permitted subject to special permit review and approval by the Town Zoning Board of Appeals, after review by the Planning Board, shall be those subject to such permit within the underlying or base zoning district within which the property lies.
- F. Dimensional requirements. Dimensional requirements for development within the Major Thoroughfare Overlay District shall be those setbacks, lot size and lot coverage provisions of the underlying or base zoning district within which the subject property lies, as outlined elsewhere in this Chapter 145 of the Code of the Town of Phelps (Zoning), unless otherwise provided by this section.
- G. Setbacks.
 - (1) Buildings located within the Major Thoroughfare Overlay District shall be governed by the following setbacks:
 - (a) Setback from Town road: 100 feet.
 - (b) Setback from State Route 14: 100 feet.
 - (c) Setback from State Route 96: 100 feet.
 - (d) Setback from State Route 318: 100 feet.
 - (2) Measurement of the setback shall be from the existing Town and/or state right-of-way.
- H. Parking. For all properties adjacent to State Route 14, State Route 96 and State Route 318, other than single- or two-family dwellings, it is the Town's preferred goal that parking be to the side and/or rear of buildings located on the property. The applicant will provide a written statement as part of their application justifying any modification from the preferred goal.
- I. General access management requirements.
 - (1) Regulations applicable to all zoning districts within the MTOD Overlay District.
 - (a) The location and design of driveways and other site layout, parking and access management conditions shall conform to all state and local requirements, including, and not limited to, those established in this section.

- (b) The site layout, location and design of driveways, parking and other access management conditions shall be based on the full development of a lot.
- (c) Driveways shall be limited to one per lot. More than one driveway may be permitted if:
 - [1] The additional driveway(s) do not degrade traffic operations and safety of the public roadway system; and
 - [2] The additional driveway(s) will improve the safe and efficient movement of traffic between the lot and the abutting public road.
- (d) Driveways to properties with frontage on two or more roads shall be provided to the road with the lowest functional classification serving the proposed development.
- (e) Driveways may be required to be located so as to provide shared driveways and/or cross-access driveways with an abutting lot or lots.
 - [1] Shared driveways and/or cross-access driveways shall be of sufficient width (minimum 24 feet) to accommodate two-way travel for automobiles and emergency service and loading vehicles. Wider driveways may be required to serve traffic to major developments or large vehicles.
 - [2] Shared driveways, cross-access driveways, interconnected parking and private roads constructed to provide access to properties internal to a subdivision shall be recorded as an easement and shall constitute a covenant running with the land. Operating and maintenance agreements for these facilities should be recorded with the deed.

J. Driveway standards.

- (1) Spacing standards. Regulations relate to the required separation, location and standards for driveways providing access to and from roads listed in the MTOD Overlay District. Each driveway constructed within the MTOD shall comply with the following:
 - (a) Driveways shall be located so as to meet or exceed the driveway spacing standards shown in Table 1.

Table 1		
Minimum Driveway Spacing Standards		
Type of Development/ Type of Road	Single-Family (feet)	Commercial (feet)
State Route 318	150	500
State Route 14	150	500
State Route 96	150	500

- (b) Driveway spacing standards shall apply to driveways located on the same side of the road.
- (c) Driveway spacing is to be measured along the road from the inside edge of the driveway to the inside edge of the adjacent driveway (see Exhibit A).⁶
- (2) Corner clearance.
- (a) Corner clearance is to be measured along the road from the center line of the driveway to the closest edge of the road determined by the State Department of Transportation, unless otherwise specified elsewhere in this chapter.
- (b) Driveways for corner properties shall meet or exceed the minimum corner clearance requirements as follows: 220 feet as measured from the center of the intersection.
- (3) Driveway location.
- (a) Driveway location will be based on a site plan which has been approved by the Town Planning Board in consultation with the New York State Department of Transportation or the Town Engineer/Town Highway Superintendent.
- (b) Driveways shall be located so as to meet or exceed the minimum driveway spacing standards and the minimum corner clearance standards.
- (c) The Town Planning Board may allow the location of driveways at less than the minimum driveway spacing and corner clearance standards if:
- [1] A dual-driveway system, cross-access driveway system or shared driveway is proposed and this improves the safe and efficient movement of traffic between the lot and the road; or

6. Editor's Note: Exhibit A is on file in the Town offices.

- [2] A driveway or driveways could be located so as to meet the minimum driveway spacing standards and corner clearance standards, but the characteristics of the lot or the physical or operational characteristics of the road are such that a change of location will improve the safe and efficient movement of traffic between the lot and the road; or
 - [3] Conformance with the driveway spacing standards or corner clearance standards imposes undue hardship on the lot owner.
- (d) For properties unable to meet the minimum driveway spacing standards or corner clearance standards, a temporary driveway may be granted. The granting of a temporary driveway will be conditioned on obtaining a shared driveway, cross-access driveway or unified parking and circulation with an abutting lot, and closure of the temporary driveway, in the future.
 - (e) For properties unable to meet the minimum corner clearance requirements, driveways shall be located as far as practicable from the intersection. In such cases, driveway movements may be restricted and only one driveway will be permitted along the road frontage not meeting the minimum corner clearance requirement.
- (4) Driveway design.
 - (a) Driveways shall be designed so as to provide for the safe and efficient movement of traffic between the public road and the lot and to eliminate the potential for the queuing of vehicles along the public road due to congestion in or at the driveway.
 - (b) Vehicle circulation systems on the lot shall be designed so as to provide for the safe and efficient movement of traffic between the driveway and the parking area.
 - (c) Driveway width, radii, flare, throat length, internal circulation systems and other design elements for driveways to developments generating more than 150 peak-hour trips (peak-hour trips will be determined through application of the Institute of Transportation Engineers' trip generation methods and statistics) shall be based upon traffic, engineering and design data provided by a traffic engineer/consultant who is recognized and accepted by the Town Planning Board. In the event that a traffic engineer/consultant is not provided, the Town shall have the right to retain such traffic engineer/consultant at the cost of the applicant.
 - (5) Driveway movements.

- (a) Driveway movements (cross, left turn in, left turn out, right turn in and right turn out) may be restricted so as to provide for the safe and efficient movement of traffic between the road and the lot.
 - (b) Driveways shall be designed and constructed to provide only allowable movements.
- (6) Changes in access.
- (a) The Town Planning Board may establish provisions for and require future alteration of the lot layout, the location and design of driveways, parking and other access features based on phased development, additional development or a change in use of the lot, or development of or a change in use at an abutting lot.
 - (b) For any change in use of a lot which requires Town permit or approval and may increase traffic, the Town Planning Board may:
 - [1] Require closure or relocation or consolidation of driveways so as to meet the minimum driveway spacing standard for the new level of traffic that may be generated.
 - [2] Require shared driveways and cross-access driveways with abutting lots.
 - [3] Require alteration of the lot layout and parking, which allows for the circulation of traffic between abutting properties.
- K. Land subdivision criteria. All proposed development of land located within the MTOD, which involves the subdivision of a parcel of land not in effect as of the effective date of the adoption of these regulations, shall be subject to the following criteria in addition to that set forth in Chapter 123, Subdivision of Land, of the Code of the Town of Phelps:
- (1) Planned access shall be provided for lots which are the result of subdivisions occurring after the effective date of this section.
 - (2) Planned access shall address the provisions of this section and the following:
 - (a) Lots which are the result of a subdivision do not have the right of individual access to public roads. The number of driveways or connections shall be the minimum number necessary to provide reasonable access to these lots, not the maximum available for frontage.
 - (b) Driveways shall be provided to the road with the lowest functional classification serving the proposed land use.

- (c) Access should be internalized. Access to lots within a subdivision should be obtained from an access road or interior road.
 - (d) The access system for the proposed subdivision should be coordinated with existing, proposed and planned streets outside the subdivision.
- L. Variance standards for development within the MTOD Overlay District.
- (1) In addition to the standards and criteria for development set forth elsewhere in the Town of Phelps Code, the Town Board hereby enacts the following additional standards for granting of variances associated with development within the MTOD Overlay District:
 - (a) The granting of an area variance shall be in harmony with the purpose and intent of this section and shall not be considered until every reasonable option for meeting the provisions of this section is explored.
 - (b) Applicants for an area variance must demonstrate unique or special conditions that make strict application of the provisions of this section impractical. This shall include a showing that:
 - [1] Indirect or restricted access cannot be obtained.
 - [2] No reasonable engineering or construction solutions can be applied to mitigate the condition; and
 - [3] No reasonable alternative is available from a road with a lower functional classification than the primary road.
 - (c) Under no circumstances shall an area variance be granted unless not granting the variance would deny all reasonable access, endanger public health, welfare or safety or cause an exceptional and undue hardship on the applicant. No area variance shall be granted where such hardship is self-created.

§ 145-9. Signs.

- A. Business and advertising signs. One or more business or advertising signs in the commercial and industrial districts are permitted, provided that such signs shall not have a combined gross surface area in square feet exceeding two times the frontage of the lot on which they are located, and in no case shall any single sign exceed 200 square feet. In residential districts, existing business or advertising signs shall not be enlarged or altered, but may be maintained.
- B. Residential signs. Nonadvertising signs accessory to nonresidential uses located in residential districts are permitted, provided that they do not exceed 10 square feet in size. The number of signs shall be restricted to one to each property or dwelling unit, entrance, exit or

building to which it pertains, except that properties located on corner lots may have one sign facing each street.

- C. Location of signs. All signs may be located in any required yard, shall conform to the height limitations of the district in which they are located and shall not project into or over any public right-of-way.
- D. Illumination of signs. No illuminated or flashing sign shall create excessive glare or brightness which will adversely affect abutting properties or create a nuisance or hazardous condition as determined by the Board of Appeals.

ARTICLE V
Special Uses

§ 145-10. General provisions.

- A. Special uses, as enumerated in the Schedule of Regulations⁷, shall be permitted only upon authorization by the Board of Appeals pursuant to the review by the Planning Board, provided that such uses shall be found by the Board of Appeals to comply with the following requirements or other applicable requirements as set forth in this chapter.
- B. A special use shall not cause substantial injury to the value of other property where it is to be located; shall be compatible with adjoining development; shall provide adequate landscaping and screening; shall provide off-street parking and loading so as to minimize interference with traffic on the local streets; and shall not jeopardize the public health, safety, welfare and convenience.
- C. The regulations in this Article shall apply to special uses which are authorized by the Board of Appeals.

§ 145-11. Guiding principles and standards.

- A. The use should be one specifically enumerated as a special use in the district within which such particular site is located.
- B. For every special use, the Board of Appeals shall make a specific finding, supported by evidence produced at a public hearing in a manner provided by law, that such use will not be prejudicial to the character of the area.
- C. For every such special use, the Board of Appeals shall determine that there is appropriate provision for access facilities adequate for the estimated traffic from public streets and pedestrian walkways so as to ensure public safety and to avoid traffic congestion.
- D. For every special use, the Board of Appeals shall determine that there are fully adequate parking areas and off-street loading spaces, in conformity with the proposed parking requirements of this chapter and all other related ordinances.
- E. For every such special use, the Board of Appeals shall require suitable planting or screening.
- F. Such special uses include planned commercial and industrial development groups which would permit two or more principal structures on the same district lot so as to permit diversification in the location of buildings and to improve circulation facilities and other site

7. **Editor's Note: The Schedule of Regulations is included at the end of this chapter.**

qualities while maintaining adequate standards for public health, safety, welfare and convenience.

§ 145-12. Violations of special use permits. [Added 5-16-1988 by L.L. No. 2-1988]

In the event that the Board of Appeals finds that there are any violation(s) of the general intent for which the special use permit was issued or any violation(s) of the requirements of this chapter or other applicable provisions of law, the Board of Appeals may, in addition to any other penalty provided by law, revoke the special use permit at any time; provided, however, that the following conditions are met:

- A. The Board of Appeals has provided a written notice to the permit holder of the specific nature of the violation(s) and a specific time limit, of not less than 30 days, during which time the permit holder may cure or remedy the violation(s).
- B. The Board of Appeals has provided the permit holder with an opportunity to meet with and address the Board of Appeals within 15 days of the date of the above-cited written notice.

§ 145-13. Individual manufactured homes. [Amended 5-16-1988 by L.L. No. 2-1988; 2-2-2004 by L.L. No. 1-2004]

- A. Title. This section shall be known as the "Individual Manufactured Home Regulations of The Town of Phelps."
- B. Purpose. To ensure that individual manufactured homes within the Town of Phelps are occupied in a manner that is consistent with conventional built homes in order to preserve the character, appearance, desirability and value of property in this community.
- C. Permit required. It shall be unlawful for any person to use a manufactured home as habitation or dwelling without first having secured a building permit and certificate of occupancy from the Code Enforcement Office of the Town of Phelps.
- D. Definitions. As used in this section, the following terms shall have the meanings indicated:

EXISTING USES — A use lawfully in existence at the time this section becomes effective, including manufactured homes.
- E. Regulation of individual manufactured homes outside a manufactured home park.
 - (1) Application for a permit. Application shall be made to the Code Enforcement Officer, in writing, for a building permit. The application forms will be provided by the Town and shall be submitted with the fee as required by Chapter A157, Fees. Application must be accompanied by a plot plan drawn near to scale showing the proposed location on the lot (with measured

setbacks from all lot lines) of the manufactured home; driveway; parking; well and septic system, if required; proposed landscaping and any other proposed structures or facilities. The site plan must be reviewed and approved by the Planning Board.

- (2) The following regulations shall apply to building permits for individual manufactured homes.
- (a) Permitted districts: Manufactured homes having a pitched main roof with roofing shingles or tiles and shingled or clapboard siding, attached by anchoring devices to a continuous perimeter masonry or concrete foundation, will be considered the same as a conventional built home and are permitted in all zoning districts. All site work must meet the Town of Phelps codes in the same manner as a conventional built home. Tow bars and hitches shall be removed upon installation. Conformance is to be determined by the Code Enforcement Office of the Town of Phelps.
 - (b) Certification: A manufactured home shall bear a label certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards and must comply with the New York State Uniform Fire Prevention and Building Codes.
 - (c) Lot requirements: A manufactured home must comply with the minimum lot size, minimum yard dimensions, maximum height of buildings and maximum building coverage of lot, as set forth in the Town of Phelps Schedule of Regulations.⁸
 - (d) Attached enclosures:
 - [1] Manufactured homes may have attached enclosures, provided that such enclosures do not exceed 25% of the floor area of the manufactured home. An enclosed attached garage or open carport shall not be counted against the floor area limitation of 25%.
 - [2] Attached structures shall require a building permit and may be submitted as part of the original application or may be submitted as a separate application at a later date.
 - (e) Foundations: to be prepared in accordance with the New York State Residential Building Codes.
 - (f) Accessory uses: One accessory detached and enclosed building shall be permitted on the same lot with a manufactured home. The accessory building shall not exceed the gross floor area of the manufactured home, except where the total lot area is substantially above the minimum required, in which case the

8. Editor's Note: Said schedule is at the end of this chapter.

Board of Appeals may approve a larger accessory building. "Substantial," for the purpose of this subsection, shall mean a lot area of 1 1/2 times the minimum lot area.

- (g) Certificate of occupancy: After all requirements of this chapter have been met, a certificate of occupancy must be received prior to occupancy of the manufactured home for use as a residential dwelling.
- (h) Replacement: Should the individual having a manufactured home certificate of occupancy replace the manufactured home for which the original building permit was obtained, he/she shall notify the Code Enforcement Officer or Town Board of such change and obtain a new building permit prior to the actual replacement of the existing manufactured home. A new certificate of occupancy will have to be issued prior to occupying the new home.
- (i) Nonwaiver: The issuance of a building permit and/or a certificate of occupancy pursuant to the provisions of this chapter shall not be deemed to waive compliance by the holder thereof or by the property owner or by the occupant of said manufactured home with any statute of the State of New York and the Municipal Code or health regulations of the Town of Phelps.
- (j) Variances: The Board of Appeals may grant a variance from any of the regulations of this section.
- (k) Time limit for completion: A certificate of occupancy for an individual manufactured home must be obtained from the Code Enforcement Officer within six months from the date of approval for the building permit. Failure by the applicant to obtain the certificate of occupancy will, without any further notice, make the building permit null and void. A new permit must be applied for.

F. Placement of a manufactured home for a family hardship.

- (1) Purpose: To provide a means whereby a single-wide manufactured home can be placed on the same lot as a principal residence due to a family member being unable to live alone without daily oversight.
- (2) Permit required: It shall be unlawful to place a manufactured home per Subsection F(1) above without first securing a special use permit from the Code Enforcement Officer of the Town of Phelps.
- (3) Definitions: As used in this section, the following terms shall have the meanings indicated:

FAMILY HARDSHIP — An immediate family member whose condition does not allow him/her to live alone without daily oversight.

IMMEDIATE FAMILY MEMBER — A grandmother, grandfather, father, mother, brother, sister, son, daughter or spouse of the owner of the principal residence.

SINGLE-WIDE — Not wider than 14 feet and delivered in one piece.

(4) Regulations for family hardship:

(a) Application for special use permit. Application shall be made to the Code Enforcement Officer, in writing, for a permit. The application forms will be provided by the Town and shall be submitted with the fee required by Chapter A157, Fees. Applications must be accompanied by a plot plan drawn near to scale showing the proposed location on the lot of the manufactured home; driveway; parking; well and septic system, if required; proposed landscaping and any other proposed structures or facilities.

(b) The following regulations shall apply to special use permits for family hardships. A special use permit may be issued in all zoning districts of the Town of Phelps for a single-wide manufactured home placed on a lot for a family hardship, provided:

[1] The home and its placement conform to all regulations pertaining to manufactured homes.

[2] The manufactured home must bear a label certifying that it was built in compliance with the Federal Manufactured Housing Construction and Safety Standards and must comply with New York State Uniform Fire Prevention and Building Codes.

[3] A qualified medical doctor's letter is submitted certifying the immediate family member's condition and the expected duration of condition. A new letter must be submitted if the condition lasts longer than expected.

(c) Removal of home: The home must be removed from the lot within 60 days when:

[1] The immediate family member improves to where he/she can resume living without daily intervention.

[2] The immediate family member passes away.

G. Temporary permit for a manufactured home.

(1) A temporary permit for a period of time stated may be issued by the Code Enforcement Officer without a building permit and without compliance with the requirements of § 145-13 for the following cases:

- (a) An unoccupied manufactured home, that has been replaced by an upgrade or a conventional built home, may be temporarily parked for a period of three months, enabling the owner to sell or otherwise dispose of same.
 - (b) A manufactured home may be parked temporarily for use as an office or storage facility to accommodate a construction project for the term of the construction project but not to exceed 12 months.
 - (c) A manufactured home, if occupied or intended to be occupied pending construction, as herein defined, may be parked temporarily on a lot by the occupant of the manufactured home pending the construction of the permanent dwelling for such owner on said lot, provided that the owner has first obtained a building permit for such construction. Such parking shall not continue for a period in excess of 12 months and shall cease when the permanent dwelling under construction is completed. The Code Enforcement Officer may extend time for completion for an additional period not to exceed 12 months.
- (2) Existing nonconforming use. The owner of an existing individual manufactured home located outside of an existing mobile home park, as of the date of enactment of this section may replace that unit, provided that:
- (a) The replacement unit is equal to or greater in floor area than the unit being replaced and conforms with the requirements of § 145-13.
 - (b) The unit being replaced has not been vacant for the period of the previous 12 months.
 - (c) The unit being replaced is removed from the lot within three months from the date the replacement unit is occupied.
 - (d) The replacement unit will comply with all other requirements of § 145-13 including application for approval of a building permit; provided, however, that the building permit will not be denied for the following reasons:
 - [1] The right to replace an existing manufactured home, as provided above, will not apply in any case where the existing use has been approved by a temporary or special use permit which is conditional, in that it limits the use to a specified duration or hardship. When the condition(s) specified have ceased to exist, the manufactured home will be removed from the lot, as herein required.

§ 145-14. Manufactured home courts or parks. [Amended 10-3-1994 by L.L. No. 2-1994]

- A. Permit required. It shall be unlawful for any person, firm or corporation to establish or maintain a manufactured home park within the Town of Phelps without first having secured a special use permit as is required under the provisions of this chapter. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- B. Title and purpose. This section shall be known as the "Manufactured Home Park Regulations of the Town of Phelps" and shall be for the purpose of promoting the public health, safety and welfare of the inhabitants of the Town of Phelps. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:
- HOME COURT LICENSE — A certificate authorizing maintenance and operation of a manufactured home park. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- PERMIT — A written permit issued by the Board of Appeals permitting the construction, alteration and extension of a manufactured home park under the provisions of this chapter and regulations issued hereunder. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- D. Application procedures for special use permit. Application shall be made for a special use permit for a manufactured home park pursuant to procedures and requirements under this chapter. Supplementary provisions hereinafter set forth shall be considered as minimum requirements by the Board of Appeals on any application. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- (1) An application for a special use must be obtained from and filed with the Code Enforcement Officer of the Town of Phelps. A filing fee based upon the schedule of fees in Chapter A157, Fees, to be nonrefundable, will be retained by the Code Enforcement Officer.
 - (2) The application must contain a legal description of property on which the proposed park will be located.
 - (3) A sketch map must be enclosed with said application and must contain:
 - (a) General sketch plan of the proposed park, including the number of lots, lot size locations, recreation areas, accessory buildings and service buildings; and also showing on sketch plan.
 - (b) Abutting property owners and present use of this property.
 - (c) Proposed access and egress routes.
 - (d) Present and proposed sewer, water and other utility lines.

- (e) Any unusual special land features, such as streams, creeks, areas subject to flooding and areas of steep slopes in excess of 15°.
- (4) Said application, when completed and filed and the fee deposited with Code Enforcement Officer, will be forwarded to the Planning Board for review within 10 days before or at next regularly scheduled Planning Board meeting.
- E. Planning Board action. The Planning Board, having received said application, will study the application and make recommendations thereto to the Board of Appeals in accordance with § 145-54.
- F. Site requirements.
 - (1) Minimum site: five acres.
 - (2) Size of lots and yards. Every lot shall meet the following minimum requirements:
 - (a) Lot area per manufactured home: minimum 6,000 square feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (b) Front yard setback depth from manufactured home development street: 20 feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (c) Front yard setback depth from manufactured home development right-of-way: five feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (d) Front yard setback from manufactured home lot line: 15 feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (e) Side yard setback depth from manufactured home lot line: 10 feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (f) Rear yard setback depth from manufactured home lot line: 10 feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (g) Minimum width: 60 feet; minimum length: 100 feet.
 - (3) No manufactured home shall be located closer than 100 feet to any highway line and shall be no closer than 50 feet to any adjoining property line. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (4) Maximum plot coverage by any manufactured home and appurtenant structures shall not exceed 40%. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- G. Accessory buildings on individual lots or stands. One accessory building not exceeding 100 square feet is permitted. This building must be of a building material that is approved by the New York State Uniform Fire

Prevention and Building Code. This building may be of a preconstructed material. **[Amended 10-3-1994 by L.L. No. 2-1994]**

- H. Minimum size of individual manufactured homes. The minimum size of any individual manufactured home in a park will not be less than 500 square feet. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- I. Entrance platform. Each manufactured home shall be provided with an entrance platform of concrete asphalt or equivalent at least eight feet by 20 feet and four inches in depth. This platform will be located at the main entrance to the manufactured home and may act as base for railings and steps for manufactured home. This platform may also be part of the patio area. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- J. Skirts. Each manufactured home owner shall be required to enclose the bottom portion of the manufactured home with either a metal or wood skirt or enclosure within 30 days after arrival in the park. Such skirts shall be uniform in appearance in design and type. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- K. Parking areas. Each manufactured home lot must have two parking spaces, preferably off-street. Parking facilities may be provided so that each manufactured home lot would have one off-street parking area. A common parking area may be utilized for second vehicle parking area and guest parking and for delivery and service vehicles. Each parking space must have a minimum of 250 square feet. In new developments, no on-street parking shall be permitted. Parking spaces shall be provided for all park service buildings and meeting the provisions of this chapter. No boats, camp haulers, trailers or motor vehicles not designed for passengers shall be parked or stored at any place within the manufactured home park except in designated areas. No unlicensed motor vehicles or trailers or parts thereof or junk of any nature or description shall be parked or stored within the manufactured home park. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- L. Sidewalks. Sidewalks will only be required from the street to the entrance of a manufactured home. Said sidewalk must be of concrete, macadam or hard surface. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- M. Screen; fences and walls. Fences and walls shall be provided in lieu of screening shrubbery. These items shall be provided around areas which, because of height or other factors, constitute a hazard to the public or to property.
- N. Landscaping. Proper landscaping, if appropriate, should be by mutual agreement with the Planning Board and the park developer.
- O. Fire protection. Suitable fire apparatus and/or communication with the local Fire Department shall be provided. In rural areas, a pond may be provided for water supply in case of fire.

- P. Roadway; access. The entrance road connecting the manufactured home park streets with a public road shall have a minimum road width of 20 feet or a total of 36 feet, including right-of-way. It is recommended that a separate access and egress be provided where appropriate. The road shall be constructed of blacktop or equivalent. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- Q. Internal streets.
- (1) The width of all internal streets must be at least 20 feet, with an additional five-foot right-of-way provided for on each side.
 - (2) All internal streets shall be constructed of blacktop or the equivalent of the same and shall be designed, graded and leveled as to permit the safe passage of emergency and other vehicles at a speed of 15 miles per hour.
 - (3) Each street shall be named and each manufactured home lot therein will be given a permanent number which shall be affixed to the manufactured home and shall be visible from the street. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- R. Lighting. Streets should be illuminated from dusk to dawn with such lighting meeting the recommendations of the utility company.
- S. Sanitary and water facilities. All such facilities must meet the requirements of the Department of Environmental Conservation or other agencies having authority thereof. Approval by said agencies is required before any permit will be issued.
- (1) Storm drainage pipes, ditches, etc., may be required with the request of the Planning Board.
 - (2) Garbage and refuse.
 - (a) Each manufactured home park shall provide sanitary equipment to prevent littering of the grounds and premises with rubbish, garbage and refuse. Each manufactured home shall have containers with tightly fitting covers. Regular disposal shall be provided for all rubbish, trash and garbage. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (b) Storage areas for garbage, rubbish and trash containers will be adequately screened by either a solid fence or appropriate screening vegetation.
 - (3) Burning. No garbage or refuse of any kind shall be burned.
- T. Electrical distribution system; individual electrical.
- (1) General requirements. Every park shall contain an electrical wiring system consisting of wiring fixtures, equipment and appurtenances which shall be installed and maintained in accordance with the

local electric power company's specifications and regulations. All wiring fixtures and connections must have the approval of any approved underwriters or inspection agency.

- (2) Specific regulations.
 - (a) Each manufactured home shall be supplied with not less than a one-hundred-ampere service. If the manufactured home is to be heated electrically, then a two-hundred-ampere service is recommended for each unit. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (b) All utilities shall be placed below ground.
 - (c) All grounding wiring in the manufactured home must be retained. **[Amended 12-8-1998 by L.L. No. 7-1998]**

U. Fuel supply and storage.

- (1) General requirements. All fuel oil supply systems provided for manufactured homes, service buildings and other structures shall be installed and maintained in conformity with the rules and regulations of the authority having jurisdiction when provided.
- (2) Specific requirements.
 - (a) All fuel oil tanks shall be placed at the rear of the manufactured home and not located less than five feet from any exit. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (b) Supports or standards for fuel storage tanks are to be of a noncombustible material.
- (3) Natural gas supply. Natural gas piping systems installed in manufactured home parks shall be maintained in conformity with accepted engineering practices. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- (4) Liquefied gas.
 - (a) Such system shall be provided with safety devices to relieve excessive pressures and shall be arranged so that the discharge terminates at a safe location.
 - (b) Systems shall have at least one accessible means for shutting off gas. This means shall be located outside of the individual manufactured home. **[Amended 12-8-1998 by L.L. No. 7-1998]**
 - (c) All liquid propane gas piping shall be well supported and protected against mechanical injury.
 - (d) Storage tanks shall not be less than 100 pounds and must be located at the rear of the manufactured home and no closer

than five feet from any exit. **[Amended 12-8-1998 by L.L. No. 7-1998]**

- (e) It is recommended that a central underground gas storage system be furnished.

V. Recreational areas; open spaces.

- (1) Every manufactured home park shall have a minimum of 5,000 square feet of recreation area for the public use of persons living in the park and no less than 200 square feet per manufactured home. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- (2) The Planning Board, as a condition of approval, may establish such conditions on the ownership, use and maintenance of open spaces as it deems necessary to assure the preservation of such open spaces for their intended purposes.
- (3) It is recommended that this recreation area be centrally located, but other areas may be better utilized for this purpose, depending on topography and location of manufactured home park. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- (4) The design of such areas shall be appropriate for the intended use and location.

W. Service buildings.

- (1) Service buildings shall meet all the requirements of this chapter.
- (2) Service buildings may be consolidated so that essential services and management operations may be in one building. Single construction is preferable if service buildings would adequately serve all manufactured home lots. **[Amended 12-8-1998 by L.L. No. 7-1998]**

X. Sales. **[Amended 12-8-1998 by L.L. No. 7-1998]**

- (1) Sale of lots in manufactured home park. No manufactured home lot shall be sold within a manufactured home park.
- (2) Manufactured home sales. No manufactured home shall be offered for sale, displayed for sale or sold within a manufactured home park unless such manufactured home is connected to all operating utilities and is placed on a lot within the manufactured home license or a designated sales area which meets all the conditions of this chapter.

Y. Special use permit; license for operation; maintenance of manufactured home park. After all rules, regulations and provisions of this chapter and the Municipal Code of the Town of Phelps have been met, the Code Enforcement Officer shall issue a special use permit and license for operation and maintenance of a manufactured home park. Said

applicant shall file a licensing fee as set forth in Chapter A157, Fees. Said license is for a twelve-month period. **[Amended 12-8-1998 by L.L. No. 7-1998]**

- Z. Renewal fee. Within 40 days of expiration of said license, the applicant must file for renewal of the license. At this time, the Code Enforcement Officer and/or other authorities may make inspections of said manufactured home park to determine if compliance with provisions of this chapter and all other rules, regulations and codes have been met. After proper examination and notification, a renewal license will be issued by the Code Enforcement Officer. The renewal fee will as set forth in Chapter A157, Fees. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- AA. Transfer of license. No person holding a license shall transfer said license until such time as the Code Enforcement Officer or other authority shall have an opportunity to examine such park to determine if compliance to this section and other rules and regulations have been complied with. If approved by the Code Enforcement Officer, a new license shall be issued upon payment of the transfer fee.
- BB. Transfer fee. The transfer fee shall be as set forth in Chapter A157, Fees.
- CC. Inspection of manufactured home park. Any duly authorized representative of the Town may inspect a manufactured home park at reasonable intervals and at reasonable times to determine compliance with this section. **[Amended 12-8-1998 by L.L. No. 7-1998]**
- DD. Suspension of revocation of license. Conviction of the offense of violation of this chapter and any sanction or part thereof may, in addition to other penalties herein provided, result in suspension of the license in the discretion of the court.
- EE. Appeal by licensee. The right of appeal and time and manner for perfecting any judgment or decision of the court made therein shall be as provided by law on conviction of a violation of a Town ordinance.
- FF. Management and duties of licensees.
- (1) Every manufactured home park shall be under the direct management of the owner or licensee or his agent or representative. Such person or persons shall: **[Amended 12-8-1998 by L.L. No. 7-1998]**
- (a) Operate such park from an office located within the park.
- (b) Maintain a bound book containing a record of the names of all persons accommodated at the park, and their home address.
- (c) Maintain an accurate record of the make, model number and year of each manufactured home in park. This record shall be available to any authorized person inspecting the park.

- (2) The person or persons to whom a license has been issued shall operate the park in compliance with this chapter and shall provide adequate supervision to maintain the park and keep its facilities and equipment in good repair and in a clean, sanitary condition.
- (3) The licensee will also:
 - (a) Provide for adequate snow removal on all streets.
 - (b) Provide for adequate garbage, rubbish and trash collection.
 - (c) Provide to the Tax Assessor within 14 days following the arrival of any manufactured home the information called for by the Tax Assessor and will also notify the Tax Assessor within 14 days following the departure of any manufactured home from park. **[Amended 12-8-1998 by L.L. No. 7-1998]**

GG. Bond required. The owner of a manufactured home park shall be bonded annually in an amount to be determined by the Town Board for the benefit of the Town and the occupants or lessees of the manufactured home park. **[Amended 12-8-1998 by L.L. No. 7-1998]**

§ 145-15. Residential conversions. [Amended 10-3-1994 by L.L. No. 2-1994]

All residential conversions shall have at least two off-street parking spaces per dwelling unit, and each unit shall have adequate light, air, heating and plumbing facilities and shall have at least 3,000 square feet of lot area and 600 square feet of floor area for each dwelling unit, but no converted building shall have more than a total of four dwelling units.

§ 145-16. Automobile salvage and wrecking operations, outdoor storage and junk yards.

- A. Automobile salvage and wrecking operations, outdoor storage and junkyards shall require a license for such operation. **[Added 10-3-1994 by L.L. No. 2-1994]**
 - (1) The license shall be valid for a period of one year.
 - (2) The license must be renewed annually.
 - (3) The license fees shall be as set forth in Chapter A157, Fees.
- B. The area used for the above purposes:
 - (1) Shall be enclosed by a substantial fence and suitable natural hedge with openings only for access and egress. The fence shall be:
 - (a) At least six feet in height.
 - (b) Kept in good order and repair.

- (2) Shall not be located nearer than 200 feet to any residential or commercial district
 - (3) Shall have no storage between the fence and hedge and the public right-of-way.
 - (4) Shall be no nearer than 25 feet from any nearest public highway right-of-way line.
- C. Inside and adjacent to and contiguous with such fence a strip of land at least 10 feet in width shall be kept free of all dry grass or other growth or other combustible material so as to provide a fire lane or line around the whole area where the activity or business of the licensee is being conducted.
- D. The autos, parts and materials dealt in by the licensee shall be disassembled or dismantled by means other than by burning. They shall be piled to a reasonable height and arranged in neat rows so as to permit easy, clear passage through the area.
- E. There shall be maintained at each such place of activity or business for which a license is issued at least one fire extinguisher of approved design and capacity for each 40,000 square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available.
- F. When the area is not supervised by the licensee or his employees, the fence shall be locked at a secure gate in a secure manner.
- G. Suitable sanitary facilities shall be available, connected to approved public sewer or septic tanks, for the use and convenience of the employees of the licensee as well as the general public visiting the area.
- H. The area of the licensee's activity or business shall not be used as a dump area nor as a place for the burning and disposal of junk or trash.
- I. The minimum lot size for any area used for any of the above purposes shall be 10 acres, with a minimum width of 300 feet and a minimum front, side and rear yards of 100 feet. **[Added 8-5-1991 by L.L. No. 1-1991]**
- J. No highly inflammable or explosive liquids, solids or gases shall be in bulk above ground. Fuel tanks for equipment use as regulated by the New York State Department of Environmental Conservation and tanks or drums of fuel directly connected with heating devices or appliances located on the same premises as the tanks or drums of fuel are excluded from this provision. **[Added 8-5-1991 by L.L. No. 1-1991]**
- K. Materials or wastes which might cause fumes or dust or which constitute a fire hazard or which may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors and only in closed containers. **[Added 8-5-1991 by L.L. No. 1-1991]**

- L. No materials or wastes shall be deposited on any premises in such form or manner that they may be transferred off such premises by natural causes or forces. **[Added 8-5-1991 by L.L. No. 1-1991]**

§ 145-17. Regulations. [Amended 10-3-1994 by L.L. No. 2-1994]

Retail uses in the Industrial District. Such uses shall be permitted only where the applicant can prove to the Board of Appeals that such use is necessary to serve primarily industrial uses in the vicinity.

§ 145-18. Planned development groups.

- A. Under the standard provisions of this chapter, a separate ground area, referred to in this chapter as a district lot, must be designated, provided and continuously maintained for each structure or use. Pursuant to the procedure hereinafter set forth, two or more such structures may be erected and maintained on the same district lot. Also, several district lots may be combined into one plan covering a planned development group. The procedure is intended to permit diversification in the location of structures and to improve circulation facilities and other site qualities while ensuring adequate standards relating to public health, safety, welfare and convenience in the use and occupancy of buildings and facilities in planned groups.
- B. Before approving the site plan, the Board of Appeals shall make findings with respect to the following: **[Amended 10-3-1994 by L.L. No. 2-1994]**
- (1) Traffic access. That all proposed site traffic accessways are adequate but not excessive in number, adequate in grade, width, alignment and visibility and not located too near street corners, entrances to schools or places of public assembly and other similar considerations.
 - (2) Circulation and parking. That the interior circulation system is adequate and that all required parking spaces are provided and are easily accessible.
 - (3) Paving and drainage. That there shall be adequate design of grades, paving, gutters, drainage and treatment of turf to handle stormwaters and to prevent erosion and formation of dust.
 - (4) Disposal of usable open space. That in accordance with the spirit and intent of this chapter, wherever possible, usable open space is disposed of in such a way as to ensure the safety and welfare of residents.
 - (5) Arrangement of buildings. That adequate provision has been made for light, air, access and privacy in the arrangement of buildings to each other. Each dwelling unit shall have a minimum of two exterior exposures.

- (6) Proper landscaping. That the proposed site is properly landscaped, the purpose of which is to further enhance the natural qualities of the land. Where adjacent land use dictates, proper screening and buffer zones may be required. No certificate of occupancy shall be issued for any such building or buildings unless the same conforms in all respects to such site plan and unless all facilities included in the site plan have been in accordance therein.
- (7) Signs and lighting. That signs and lighting devices shall be properly arranged with respect to traffic control devices and adjacent residential districts.

§ 145-19. (Reserved)⁹

§ 145-20. Kennels. [Added 8-5-1991 by L.L. No. 1-1991]

- A. Site preparation or construction of a kennel shall not commence nor shall any existing structure be occupied as a kennel until the final site plan approval has been granted by the Planning Board and a special use permit has been granted by the Zoning Board of Appeals.
- B. The site plan shall contain provisions for adequate measures to prevent offensive noises and odors and a plan for disposal of all animal wastes.
- C. Refuse shall not be incinerated upon the lot on which the kennel is located.
- D. No kennel shall be closer than 100 feet to any lot line other than the front lot line. This shall include all outdoor areas enclosed by fences for the use of animals. No shelters shall be located in the front yard. Also, no kennel shall be located closer than 300 feet to an existing dwelling.

9. Editor's Note: Former § 145-19, Excavations, as amended, was repealed 7-9-2012 by L.L. No. 3-2012. Former § 30.42I, Requirements for extractive industries permit; topsoil removal, which immediately followed that section, was repealed 10-3-1994 by L.L. No. 2-1994.

ARTICLE VI
General Regulations

§ 145-21. Conformance required.

No building, structure or land shall be used or occupied and no building or part thereof shall be erected, moved, enlarged or structurally altered unless in conformity with the regulations of this chapter, except that any existing building or use may be continued and any building or other improvements may be maintained or repaired.

§ 145-22. Supplementary regulations.

The provisions of this chapter shall be subject to such exceptions, additions or modifications as herein provided by the following supplementary regulations:

- A. Frontage upon a public street. Every principal building shall be built upon a lot with frontage upon a public street improved to meet the standards of the Town of Phelps.
- B. Lot for every residential building. Every residential building hereafter erected shall be located on a lot, as herein defined, and there shall be not more than one residential building on one lot, except as specifically permitted elsewhere in this chapter. If more than one lot is located on a piece of property, each lot must meet the requirements of this chapter.
- C. Parking space. Off-street parking space shall be provided as specified in Table 1¹⁰ and shall be provided with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which the same is situated unless otherwise stated and shall not thereafter be encroached upon or reduced in any manner. No permanent parking facilities shall be permitted in any required front yard.
- D. Attached accessory buildings. An accessory building attached to the main building shall comply in all respects with the requirements of this chapter applicable to the main building.
- E. Detached accessory buildings. Detached accessory buildings shall be located to the rear of the rear building line of the principal structure and shall comply with the provisions of the schedule governing their location.
- F. Through lots. Where a single lot under individual ownership extends from a street to a street, the widest street shall be deemed the street upon which the property fronts.
- G. Corner lots. Corner lots shall provide the minimum front yard requirements for the respective district for both intersecting streets.

10. Editor's Note: See § 145-24B of this chapter.

- H. Provision of yard or other open space. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as providing a yard or open space for any other building, and no yard or other open space on another lot shall be considered as providing a yard or open space for a building on any other lot.
- I. Intersection of two or more streets. At the intersection or interception of two or more streets, no hedge, fence or wall higher than three feet above the grade of the road, nor any obstruction to vision, shall be permitted on any lot nearer than 30 feet from either street or property line nor in the area forming a triangle when these points are connected. **[Amended 10-3-1994 by L.L. No. 2-1994]**
- J. Lot frontage and traffic plan. Where a building lot has frontage upon a street which on the traffic plan or Official Map of the Town of Phelps is contemplated for right-of-way widening, the required front yard area shall be measured from such proposed future right-of-way line.
- K. New structures on existing lots less than the required minimum lot area. A permit may be issued for the erection of a building on a lot or parcel for which a valid conveyance has been recorded or contract of sale has been signed and the conveyance recorded prior to the adoption of this chapter, notwithstanding that the area of such lot or parcel is less than that required for the district in which such parcel or lot lies, provided that all yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit are complied with insofar as such is feasible, and provided that the owner of such a lot or parcel does not own other lots or parcels contiguous thereto. If this be the case, such other lots or parcels, or so much thereof as might be necessary, shall be combined with the original lot or parcel to make a single conforming lot or parcel, whereupon a permit may be issued, but only for such combined lots or parcels even though their total is less in area than required by this chapter for the district in which they lie. In the case of contiguous lots or parcels acquired by a municipal corporation through foreclosure proceedings prior to or subsequent to the adoption of this chapter, these lots or parcels shall be sold in such manner that they may comply with the requirements of this section.

§ 145-23. Regulations.

The restriction and controls intended to regulate in each zoning district are set forth in the attached schedule and supplemented by other schedules of this chapter.¹¹

§ 145-24. Off-street parking.

In all districts, in connection with every manufacturing, business, institutional, recreational, residential or any other use, there shall be

11. Editor's Note: The Schedule of Regulations is included at the end of this chapter.

provided, at the time any building or structure is erected or is enlarged or increased in capacity, off-street parking spaces in accordance with the requirements set forth herein. The number of required off-street parking spaces shall be the number required for the entire building structure.

A. Size and access.

- (1) Each off-street parking space shall have an area of not less than 200 square feet exclusive of access drives or aisles, and each parking space shall have a minimum width of 10 feet. Except in the case of one- and two-family residences, no parking area provided hereunder shall be established for fewer than three spaces.
- (2) There shall be adequate provision for ingress and egress to all parking spaces. Access drives or driveways shall not be less than 10 feet wide.

B. Parking for churches, synagogues and houses of worship. The number of required off-street parking spaces may be eliminated or reduced if there exists within 500 feet of the church, synagogue or house of worship public or private parking lots containing a sufficient number of off-street parking spaces to satisfy the requirements of Table 1. The church, synagogue or house of worship must provide the difference if the number of parking spaces in the private or public lots is below the number required by Table 1. Any spaces provided in public or private lots must be shown to be legally available for worshipers on the day or days of greatest use.

Table 1	
Minimum Off-Street Parking Requirements	
Use	Minimum Required Off-Street Parking Spaces
Dwelling [Amended 10-3-1994 by L.L. No. 2-1994]	2 for each dwelling unit
Apartments	1 for each apartment
Churches, synagogues and houses of worship	1 for each 5 seats
Community buildings, country clubs, social halls, lodges, fraternal organizations and similar uses	1 for each 200 square feet of floor area used in connection with the operation
Professional offices or home occupations permitted in a Residential Zone	1 for each dwelling, plus 5 spaces
Motels and rooming houses	1 for each rentable unit
Funeral home or mortuary	10 spaces

Table 1	
Minimum Off-Street Parking Requirements	
Use	Minimum Required Off-Street Parking Spaces
Garage or automobile repair shop	10 spaces
Restaurant or other eating place	1 space for each 5 seats
Retail or service business	1 space for each 300 square feet of floor area
Wholesale, storage or other commercial building	1 space for each 1,000 square feet of floor area
Bowling alley	4 spaces for each alley
Nursing home	1 space for each 3 beds
Manufacturing, industrial and general commercial	1 for each 1,000 square feet, plus 1 for each 4 employees in the maximum working shift

NOTE: For structures and land uses that do not fall into the categories listed above, a reasonable and appropriate requirement for off-street parking requirements shall be determined in each case by the Board of Appeals, which shall consider each new use based on the factors involved.

§ 145-25. Off-street loading.

In any district, in connection with every building or building group or part thereof hereafter erected which is to be occupied by manufacturing or commercial uses or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same zone lot with such building, off-street loading berths in accordance with the requirements of Table 2 following.

- A. Size and location. Each loading space shall be not less than 10 feet in width and 35 feet in length and shall have a minimum clearance of 14 feet and may occupy all or any part of any required yard.
- B. Joint facilities for parking or loading. Off-street parking and loading facilities for separate uses may be provided jointly if the total number of spaces so provided is not less than the sum of the separate requirements for each use, and provided that all regulations governing the location of accessory spaces in relation to the use served are adhered to. Further, no accessory space or portion thereof shall serve as a required space for more than one use unless otherwise approved by the Board of Appeals in accordance with the purposes and procedures set forth herein.

- C. For retail and service establishments, commercial, wholesale, manufacturing, storage and miscellaneous uses, the following parking requirements apply:

Table 2	
Minimum Off-Street Loading Requirements	
Required Off-Street Loading Floor Area (square feet)	Berths
From 5,000 to 25,000	1
From 25,000 to 40,000	2
From 40,000 to 60,000	3
From 60,000 to 100,000	4
For each additional 50,000	1 additional or fraction thereof

§ 145-26. Minimum living areas. [Amended 5-16-1988 by L.L. No. 2-1988]

In any district, in connection with every building used as a residence or dwelling, there shall be a minimum living area in accordance with the requirements of Table 3 following:

Table 3	
Schedule of Minimum Living Areas	
Type	Minimum Living Areas (square feet)
Single-family dwelling	720
Manufactured home	840
Seasonal dwelling	600
2-family dwelling, per unit	600
Multiple-family dwelling, per unit	500
Residential conversions, per unit	600

§ 145-27. Fences. [Added 7-2-1990 by L.L. No. 2-1990]

- A. No fence in an R-1 District shall exceed six feet in height, except that such fences shall not exceed four feet in height in front yards.
- B. No barbed or electric fence shall be located in an R-1 District.

- C. No fence in a C-1 or M-1 District shall exceed eight feet in height, except that such fences shall not exceed four feet in height in a front yard.
- D. Fences for kennels and for the purpose of enclosing farmland and horses and cattle shall not exceed eight feet in height.
- E. Fencing used to enclose a tennis court on a residential property may be permitted up to 10 feet in height, provided that such fencing is not less than 25 feet from all side and rear lot lines.
- F. Except as hereinabove set forth, all fences must be erected on the property lines, and no fence or portion of fence shall be erected within or so as to encroach upon a public right-of-way. The better side of the fence shall face the neighbor. **[Amended 10-3-1994 by L.L. No. 2-1994]**
- G. All fences shall be maintained in a safe, sound and upright condition.

§ 145-28. Satellite dishes. [Added 7-2-1990 by L.L. No. 2-1990]

No person shall cause, suffer or permit the erection and/or maintenance of any parabolic dish or other antenna or device, the purpose of which is to receive television, radio and/or microwave or other electrical signals from space satellites, except as set forth herein:

- A. Any such antenna shall be located in the side or rear yard. No more than one satellite antenna shall be located on any residential lot. On a corner lot, no antenna shall be located in a front yard of a street or highway on which said lot fronts.
- B. No antenna shall be installed until a building permit has been granted as provided herein.
- C. No antenna shall be located over or upon an easement.
- D. The diameter of such dish shall not exceed 12 feet, and its height shall not exceed 20 feet. If installed on a building, its height shall not exceed six feet above the roofline nor 30 feet above the highest ground level of said building.
- E. No part of a satellite antenna or its installation shall be within five feet of the side or rear lines of the lot on which it is located.
- F. The antenna shall be of such solid color or earth tone to reduce or eliminate as far as possible aesthetic concerns of residents of adjoining properties. The antenna shall be maintained in good repair and condition and in said color or tones. The color of such antenna shall be solid and black, brown, beige or similar in color.
- G. The installation of such antenna shall be performed in a good and workmanlike manner and designed to assure that no safety problem

shall be reasonably anticipated from electrical, wind, weather or other condition.

- H. No display or advertising of any kind shall be permitted on any part of the satellite antenna.

§ 145-28.1. Preservation of topsoil. [Added 3-14-2016 by L.L. No. 2-2016]

- A. No topsoil shall be removed from any property located within the R-AG District except in conformance with this section.
- B. For all property within the R-AG District, where lowering of the existing topography is to take place, the owner of the property shall protect the existing topsoil on the site by:
- (1) Identifying the depth of the topsoil.
 - (2) Segregating the topsoil/A horizon of the natural soil and, if not utilized immediately, stockpiling this material separately from other spoil, and providing needed protection from wind and water erosion or contamination.
 - (3) Once the site has been rough-graded and is in the process of being prepared for replacement of topsoil that has been temporarily removed, the site shall first be decompacted, which helps mitigate the impacts of soil compression/soil compaction during construction on a site.
 - (4) Topsoil removed shall be redistributed in a manner that:
 - (a) Achieves an approximately uniform and stable thickness and is consistent with the preapproved grading and drainage systems. Soil thickness may also be varied to the extent such variations help meet the revegetation goals.
 - (b) Prevents excess compaction of the topsoil and soil underneath.
 - (c) Protects the topsoil from wind and water erosion before and after seeding and planting.
- C. Exemptions. The provisions of this section shall not apply to:
- (1) The removal of topsoil as an incidental part of normal agricultural practices, such as greenhouse operations and nurseries for horticultural products; normal agricultural practices specifically do not include the sale of topsoil as a stand-alone product from any properties located within the R-AG District.
 - (2) Where an applicant for site plan approval can demonstrate through a professionally engineered grading and drainage plan(s) that requiring the topsoil to remain on the property would prevent the

construction of any buildings, structures, driveways, or any other facilitates/improvements for which the property is currently zoned.

- (3) The removal of topsoil as an incidental part of road building within the limits of the right-of-way of any Town, county or state highway or for the sole purpose of building roads and slopes incidental thereto which lie within the area of a subdivision approved by the Town of Phelps Planning Board.
 - (4) The removal of topsoil as an incidental part of buildings and/or structures constructed on any farm (as that term is defined within § 145-4).
 - (5) The removal of topsoil in connection with the construction and installation of public/municipal water and/or sewer lines.
- D. In addition to any penalty, restitution, abatement or other remedy permitted by this chapter:
- (1) Anyone violating this section shall, at his or her expense, replace all the topsoil taken from a property with topsoil that shall be of equal or greater quality than that removed from such property. Said restoration of the topsoil shall take place within nine months of being found in violation of this section.
 - (2) The Code Enforcement Officer shall not issue any building permit or certificate of occupancy for any property that is in violation of this section and which has not been restored pursuant to Subsection D(1) herein.
- E. To the extent that this section is in conflict with any other section of this chapter, the more-restrictive section shall apply.

ARTICLE VII
Swimming Pools
[Added 10-3-1994 by L.L. No. 2-1994]

§ 145-29. Purpose.

- A. In pursuance of the authority conferred by the Town Law in the State of New York and in order to promote the health, safety and general welfare of the inhabitants of the Town of Phelps, this Article is hereby enacted.
- B. All construction and operation referred to in this Article must be in accordance with federal, state and local laws and codes. All sanitary conditions must comply with the rules of the State and County Boards of Health.

§ 145-30. Definitions.

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

ABOVEGROUND SWIMMING POOL — All swimming pools having all or any section of their exterior wall above the surrounding ground level.

IN-GROUND SWIMMING POOL — All swimming pools having their entire water surface below the level of the surrounding ground.

PERMANENT CONSTRUCTION — The installation of an aboveground or below-ground swimming pool which requires more than one foot excavation for any part of the pool and/or constructed of concrete, wood, metal or other materials and/or encircled or partly encircled by deck or platform, any part of which cannot be dismantled for storage.

SWIMMING POOL — All private or semiprivate swimming, bathing or wading pools, ponds or tanks above or below the ground, of permanent or temporary nature, which have a depth of more than 24 inches and/or a water surface of more than 100 square feet and which are excavated, erected, constructed or created by damming of a stream, whether out of doors or inside a structure or building.

TEMPORARY CONSTRUCTION — The installation of an aboveground swimming pool which requires less than one foot excavation for any part of the pool, with no platform encircling or partly encircling the pool, other than an entrance platform four feet by four feet maximum size, all of which can be dismantled and stored.

§ 145-31. Uses.

- A. A swimming pool shall be deemed to be a structure under this chapter of this Code, and where applicable, all work must be done in accordance with the New York State Uniform Fire Prevention and Building Code.

- B. A swimming pool may be permitted only as an accessory structure to a principal building used for residential purposes. Said pool shall be for the exclusive use of the occupants of the principal building and their guests.
- C. A swimming pool may be permitted when said use is not as an accessory structure to the principal building only upon application to the Zoning Board of Appeals in accordance with this chapter. Pools used normally by the public, such as clubs and similar organizations, must comply with the New York State Department of Health regulations.
- D. The building line of the pool shall be considered to be its inside wall.

§ 145-32. Permits.

- A. Building permit required. Before any swimming pool is moved, placed, erected, assembled or excavated upon a lot or created by damming a stream, a building permit shall be required.
- B. Additions and alterations. A building permit shall be required for any enlargement of an existing pool, for a dressing shelter, a pump house, a filter house, an enclosure for the pool or any other structure erected in conjunction with the swimming pool. Such structures shall conform to all provisions of the New York State Uniform Fire Prevention and Building Code and the Municipal Code and all other rules and regulations of the Town and shall not unduly interfere with the use or enjoyment of the adjacent property.
- C. Application.
 - (1) Each application for a building permit to erect, construct, dam a stream or excavate a swimming pool or to enlarge an existing pool or to build an ancillary structure must be accompanied by a building permit fee and by plans in sufficient detail to show the following:
 - (a) A plot plan of the property on which the swimming pool is to be constructed or placed showing the location of the swimming pool in reference to the side lines, rear lines, grades, basement and other structures on the property and existing electrical service lines and electrical lines.
 - (b) The pool dimensions and depths.
 - (c) The location and dimensions of the fence, and any structures or appurtenances built or that are to be built in conjunction with the swimming pool.
 - (d) The estimated cost of the proposed swimming pool.
 - (e) The location and type of waste disposal and drainage system of the property.

- (f) The location and source of water supply.
 - (g) The location, size and description of all proposed electrical connections, lighting (both above and below the ground) and any pool-heating device.
- (2) These plans, along with structural calculations and details, must be prepared and signed by either the owner of the property or a licensed professional engineer or a registered architect or a recognized pool contractor who is an accredited member of the National Swimming Pool Institute.

§ 145-33. Location.

- A. A swimming pool shall be considered a structure which shall conform to the setback and other standards of the district in which it is located.
- B. The location of a permanent or temporary swimming pool on the property must:
 - (1) Not be placed in the front yard.
 - (2) Be at least 15 feet from any house basement.
 - (3) Be at least 20 feet from any active well, septic tank, leach bed, etc., unless conditions warrant a lessening or increasing of this distance.
 - (4) Not endanger the health and/or safety of its user and does not unduly interfere with the use and enjoyment of the adjacent property.

§ 145-34. Construction and equipment.

- A. Design and construction. The swimming pool shall be designed and constructed in such a manner as to not endanger the health and/or safety of its users or nonusers and to not unduly interfere with the use and enjoyment of adjacent property.
- B. Filtering equipment. The swimming pool shall be required to have adequate equipment to properly recirculate, filter, algaecide and germicide the water of the pool with provisions and instructions for maintenance of the same.
- C. Ladder or steps. The swimming pool must be equipped with proper safeguards for users of the pool. At least one ladder, not more than two feet from the bottom of the pool, steps or equal, must be provided at a location to facilitate quick exit.
- D. Safety equipment.
 - (1) All swimming pools must have a rescue pole made of aluminum, fiber glass, bamboo or equal material, stored within 15 feet of the

swimming pool's interior edge. The rescue pole shall be in length at least 1/2 of the swimming pool's width or 1/2 of the swimming pool's diameter, depending on the type of pool.

- (2) All swimming pools must have a ring buoy with at least 25 feet of attached rope or cord prominently stored within 10 feet of the pool's interior edge. The type of ring buoy must meet the specifications as set forth by the National Swimming Pool Institute or the American Red Cross.
- E. Referral to Code Enforcement Officer. The Code Enforcement Officer shall pass upon the safety and adequacy of the design, materials, construction and equipment of all swimming pools. In doing so, he/she may be guided by the minimum standards for residential pools of the National Swimming Pool Institute.
- F. Height. No part of the pool structure, with the exception of deck fencing, shall project more than 4 1/2 feet above the surrounding existing grade, except by special permit.
- G. Plumbing. Where applicable, all plumbing must conform to the plumbing regulations of the New York State Uniform Fire Prevention and Building Code.

§ 145-35. Water supply and drainage.

- A. Water supply.
- (1) There shall be no fixed or direct connection to any nonpotable water supply.
- B. Drainage.
- (1) There shall be no drainage connection to a sanitary sewer.
 - (2) It must be possible to drain all pools into a storm sewer or a natural waterway either by gravity, siphon or through the filter pump system.
 - (3) There shall be no drainage over adjoining property without permission or consent of owners.

§ 145-36. Fence.

An enclosure shall be provided around outdoor swimming pools which surrounds the pool and accessory equipment only. Such enclosure shall be at least four feet in height and shall have a maximum clearance to adjoining grade of two inches, and openings, if provided, shall prohibit the passage of a two-inch diameter sphere. Such enclosure shall resist a horizontal force of 50 pounds per foot applied at a height of four feet. Structural bracing shall be within the enclosure. Gates or doors shall be self-closing and self-latching with the latch handle at least 40 inches above grade or located within the enclosure. Aboveground pools with at least 46 inches

between pool decking or pool top adjoining grade are exempt from this requirement, provided that access is restricted. A pool less than 24 inches deep is exempt from this requirement. Every aboveground swimming pool having an exterior wall 40 inches or more above the ground and which uses an entrance device other than a simple ladder for entrance to and exit of the pool or its surrounding deck or platform shall have a fence encircling the entrance device at least five feet from the point where such permanent ladder or entrance device touches the ground or would touch the ground if extended downward.

§ 145-37. Electrical work and heating.

- A. Conformance with State Code. All lighting and electrical work shall conform to the New York State Uniform Fire Prevention and Building Code and be inspected and approved by the New York State Board of Fire Underwriters. Also, all underground wiring and lighting shall be of low voltage.
- B. Disturbance of adjoining owners prohibited. No lighting shall be installed in such a manner that it may be an annoyance to the owners of adjacent property. Under normal circumstances, floodlighting or the illumination of adjacent property, among other things, will be sufficient to constitute an annoyance.
- C. Safety restrictions. No pool shall be erected within 10 feet of existing electrical service lines, nor shall electrical lines be strung over the water surface nor within four feet of the outer edge of the pool.

§ 145-38. Maintenance.

Every swimming pool presently constructed or installed or hereafter constructed or installed shall be maintained at all times in such manner as never to constitute a public nuisance, a hazard or a menace to health or safety. Any such hazard which may exist or develop in or in consequence of or in connection with any such swimming pool shall be forthwith abated and/or removed by the person in possession, owning or having jurisdiction over such pool, upon receipt of notice from the town.

§ 145-39. Reasonable use required.

Use of a swimming pool shall be in a reasonable manner and at reasonable times so as not to cause undue discomfort and/or annoyance to adjacent residents.

§ 145-40. Existing pools.

All sections of this Article shall apply to existing pools except §§ 145-32A, 145-33, 145-34E, F, and G and 145-37.

§ 145-41. Penalties for offenses.

A person who shall violate any provision of this Article or who fails to comply therewith or who shall violate or fail to comply with any order or regulation made thereunder shall be punished therefor as provided in § 145-56B of this chapter and § 268 of the Town Law of the State of New York.

ARTICLE VIII
Supplementary Regulations

§ 145-42. Lot height; yard regulations.

A. Lot regulations.

- (1) Lot frontage. The minimum lot frontage of any lot shall be measured along the minimum building setback line as required for the district in which it is located.
- (2) Required area or space cannot be reduced. The area or dimension of any lot, yard, parking area or other space shall not be reduced to less than the minimum required by this chapter; and, if already less than the minimum required by this chapter, said area or dimension may be continued and shall not be further reduced.
- (3) Minimum lot sizes where there is no public water or sewer. Unless the regulations of the district in which they are located require greater lot areas or widths, the following regulations shall apply:
 - (a) Not served by public water or sewer. Lots not served by a public water or sanitary sewer system or other systems approved by the Division of Sanitation, New York State Department of Health, shall not be less than 100 feet frontage at the building line and not less than one acre in area. **[Amended 10-3-1994 by L.L. No. 2-1994]**
 - (b) Not served by public sewer. Lots served by a public water system and an individual on-lot sewage disposal system such as a cesspool or septic tank shall not be less than 100 feet frontage at the building line nor less than 15,000 square feet in area.
 - (c) Minimum lot size for two or more family dwellings. Lots to be developed with private water supply and sewage disposal systems or private sewage disposal systems for two or more family dwelling structures may require larger lot sizes and widths than are specified above and because of unusual subsoil or geological conditions found to exist on the particular location in question. In such cases, the minimum lot area otherwise required shall be increased where necessary to the extent required to allow the proposed water and/or sewage installation to operate effectively in order to protect the public health, safety and welfare. Detailed plans for such water and/or sewage systems shall be submitted to the Code Enforcement Officer and approved by him/her before a building permit shall be issued. The suitability of the proposed systems shall be certified by the New York State Department of Health and/or the County Board of Health having jurisdiction.

B. Height regulations.

- (1) General application. No building or structure shall have a greater number of stories or greater number of feet than are permitted in the district where such building is located.
- (2) Permitted exceptions. Height limitations stipulated elsewhere in this chapter shall not apply to open amusement uses, church spires, belfries, cupolas and domes, monuments, water towers, chimneys, smokestacks, flagpoles, radio and television towers, masts and aerials; or to parapet walls, except that no parapet wall may extend more than four feet above the limiting height of the building; or to farm buildings or structures on farms, provided that these farm buildings are not less than 40 feet from every lot line.

C. Yard regulations.

- (1) Side yard of corner lot. The side street setback line of any corner lot shall not be less than 1/2 of the depth of the minimum front yard required on any adjoining lot fronting on a side street. Any corner lot delineated by subdivision after the adoption of this chapter shall provide a side street setback line which shall not be less than the minimum front yard required on any adjoining lot fronting on the side street.
- (2) The type of district for a lot being in more than one zoning district is that district at the minimum front yard line. **[Added 2-1-1988 by L.L. No. 1-1988]**
- (3) Projections into required yards. Certain architectural features may project into required yards as follows:
 - (a) Cornices, canopies, eaves or other similar architectural features may project into side yards.
 - (b) Fire escapes may project into side and rear yard.
 - (c) Bay windows, balconies, fireplaces, uncovered stairways and necessary landings and chimneys may project into yards.
 - (d) Patios may be located in side and rear yards; provided, however, that such patio shall be no closer than 10 feet to any side or rear lot line. **[Amended 10-3-1994 by L.L. No. 2-1994]**
- (4) Additional yards required where commercial and industrial uses abut residential districts. All uses permitted in commercial or industrial districts, which abut, at the lot line, or are on the same street as a Residential District, shall provide yards, where they abut, to at least the minimum yard requirements in accordance with such Residential Districts.

D. Accessory structures.

- (1) Minimum yard regulations.

- (a) Unattached accessory structures in Residential Districts. Accessory structures, which are not attached to a principal structure, may be erected in accordance with the following restrictions:
 - [1] No accessory structure is located closer than 10 feet to the side and rear lot lines.
 - [2] No accessory structure is located closer to a principal structure than 10 feet.
 - (b) Attached accessory structures in Residential Districts. When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.
- E. Accessory structures in other districts. Accessory structures shall comply with front and side yard requirements for the principal structure to which they are accessory and shall not be closer to any rear property line than 10 feet.

§ 145-43. Nonconforming uses of buildings and/or land. [Amended 8-2-1982 by L.L. No. 1-1982; 4-2-1984 by L.L. No. 1-1984]

- A. Continuation of existing uses. Except as otherwise provided in this chapter, the lawfully permitted use of buildings and/or land existing at the time of the adoption of this chapter and any amendments thereto may be continued, although such use does not conform to the standards specified in this chapter for the district in which such building or land is located. These uses shall be deemed nonconforming uses and are subject to the following regulations:
- (1) A nonconforming use of a building and/or land shall not be changed to another nonconforming use, unless the Zoning Board of Appeals shall, after a public hearing held upon notice, finds it is a nonconforming use similar to or less nonconforming than the immediately preceding use. However, the use shall not be found to be similar or less nonconforming:
 - (a) If it is operated later any afternoon (meaning after 5:00 p.m.), nor if it is operated earlier any day (meaning before 9:00 a.m.), than the immediately preceding use;
 - (b) If it shall include changing from a use which did not involve the sale of nonalcoholic beverages to a use involving the sale of alcoholic beverages; or
 - (c) If it shall include changing from the sale of food and/or beverages primarily for off-premises consumption to the sale of the same primarily for on-premises consumption.

- (2) If the nonconforming use of a building or land or any portion thereof ceases for any reason for a period of two years or more or is changed to a conforming use, any future use of such building and/or land or the portion thereof shall conform to the provisions of this chapter. However, if the legally existing nonconforming use is interrupted by a natural catastrophe or accidental cause beyond the control of the owner of the premises, such preexisting nonconforming use may be resumed, with any reconstruction to be of the same size and on the same location, with such reconstruction to be completed and such use resumed within two years from the date of such interruption.
 - (3) The nonconforming use of land shall not be increased to cover a greater area or a different portion of the premises. A nonconforming use conducted in part of a building shall not be extended to any other part of the building, nor may such building be enlarged or added to for the purpose of extending or increasing such nonconforming use. A building that is conforming in use, but does not conform as to the height, yard, parking, loading or land coverage requirements of this chapter, shall not be added to or structurally altered to increase any nonconformity.
- B. If a business goes out of business, it cannot be grandfathered onto the next owner. **[Added 10-3-1994 by L.L. No. 2-1994]**

ARTICLE VIIIA

**Adult Use and Entertainment Establishments
[Added 6-5-2000 by L.L. No. 4-2000]****§ 145-43.1. Title.**

This article shall be known as the "Adult Use and Entertainment Establishments Regulation Law" of the Town of Phelps, and shall be added to the comprehensive development regulations of the town.

§ 145-43.2. Legislative intent.

- A. In the development and execution of this article, it is recognized that adult uses and entertainment establishments, because of their very nature, have serious objectionable, operational characteristics when concentrated under certain circumstances and can have a deleterious effect on adjacent areas.
- B. It is the purpose of this article to regulate the creation, opening, commencement and/or operation of adult use and entertainment establishments, as herein defined, in order to achieve the following:
- (1) To preserve the character and the quality of life in the Town of Phelps' neighborhoods and business areas.
 - (2) To control such documented harmful and adverse secondary effects of adult uses on the surrounding areas as: decreased property values; attraction of transients; parking and traffic problems; increased crime; loss of business for surrounding nonadult businesses; and deterioration of neighborhoods.
 - (3) To restrict minors' access to adult uses.
 - (4) To maintain the general welfare and safety for the Town of Phelps' residents.

§ 145-43.3. Definitions.

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

ADULT USE AND ENTERTAINMENT ESTABLISHMENTS — A public or private establishment, or any part thereof, which presents any of the following entertainment, exhibitions or services: topless and/or bottomless dancers; strippers; topless waitressing, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both; adult arcades, adult bookstores or adult video stores; adult cabarets; adult motels; adult motion-picture theaters; adult theaters; escort agencies; nude model studios and sexual encounter centers. Adult use and entertainment establishments customarily exclude minors by reason of age and are those businesses defined as follows:

- A. **ADULT ARCADE** — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other image-producing devices, which are regularly used to show films, motion pictures, videocassettes, slides or other photographic reproductions, are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.
- B. **ADULT BOOKSTORE or ADULT VIDEO STORE:**
- (1) A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business advertising to the sale or rental, for any form of consideration, of any one or more of the following:
 - (a) Books, magazines, periodicals or other printed matter or photographs, films, motion picture, videocassettes, or video reproductions, slides, compact disks, computer software or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - (b) Instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.
 - (2) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental, for consideration, the specified materials which depict or describe specified sexual activities or specified anatomical areas. For purposes of this definition, "principal business purpose" shall mean 25% or more of any of the following:
 - (a) The number of different, titles or kinds of such merchandise.
 - (b) The number of copies or pieces of such merchandise.
 - (c) The amount of floor space devoted to the sale and/or display of such merchandise.
 - (d) The amount of advertising which is devoted to such merchandise, either in print or broadcast media.

- C. ADULT CABARET — A nightclub, bar, nonalcoholic or "juice" bar, restaurant or similar commercial establishment which regularly features:
- (1) Persons who appear nude or in a state of seminudity; or
 - (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- D. ADULT MOTEL — A hotel, motel or similar commercial establishment which:
- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and which advertises the availability of sexually oriented type of material by means of a sign visible from a public right-of-way, or by means of off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
 - (2) Offers sleeping rooms for rent on a regular basis for a period of time that is less than 10 hours; or
 - (3) Allows a tenant or occupant of a room to subrent the room for a period of time that is less than 10 hours.
- E. ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- F. ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- G. ESCORT AGENCY — A person or business association who or which furnishes, or offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- H. MASSAGE PARLOR — Any place where, for any form of consideration or gratuity, massage, alcohol rub or administration of fomentations, electric or magnetic treatments or any other treatment manipulation

of the human body occurs as apart of or in connection with specified sexual activities, or where any person providing such treatment, manipulation or service related thereto, exposes his or her specified anatomical areas. The definition of adult use shall not include the practice of massage in any licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

- I. NUDE MODEL STUDIO — Any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.
- J. SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or exposure of specified anatomical areas, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude. The definition of adult uses shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

ESCORT — A person who, for a fee, tip or other consideration, agrees to or offers any of the following: act as a date for another person; for consideration; to privately model lingerie for another person; or to privately perform a striptease for another person.

MINOR — A person less than 18 years of age.

NUDITY or STATE OF NUDITY — The appearance of:

- A. Human bare buttocks, anus, male genitals, female genitals or areola or nipple of the female breast; or
- B. A state of dress which fails to opaquely and fully cover human bare buttocks, anus, male genitals, female genitals, pubic region or areola or nipple of female breast.

PERSON — An individual, proprietorship, partnership, corporation, association or other legal entity.

PROMOTE — To manufacture, issue, sell, give, provide, lend, mail, deliver, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise or to offer or agree to do the same.

SADOMASOCHISTIC ABUSE — Actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

SEXUAL CONDUCT — Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or if such be female, breast.

SEXUAL EXCITEMENT — The condition of human male or female genitals when in a state of sexual stimulation or arousal.

SPECIFIED ANATOMICAL AREAS —

- A. Unless completely and opaquely covered, human genitals, pubic region, buttocks or breasts below a point immediately above the top of the areola.
- B. Even if completely and opaquely covered, male genitals in a discernibly turgid state.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts.
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy.
- C. Masturbation, actual or simulated.
- D. Excretory functions.

§ 145-43.4. Regulated uses.

- A. Special regulations are necessary to ensure that the adverse effects of these specific uses will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing concentration of these uses.
- B. Uses subject to these controls and special regulations are as follows:
 - (1) Adult use and entertainment establishments.
 - (2) Adult arcade.
 - (3) Adult bookstore or adult video store.
 - (4) Adult cabaret.
 - (5) Adult motel.
 - (6) Adult motion-picture theater/adult theater.
 - (7) Escort agency.

- (8) Nude model studio.

§ 145-43.5. Allowed zoning districts.

All regulated uses as defined herein may only be created, opened, commenced or operated within the M-1 Zoning District within the Town of Phelps.

§ 145-43.6. Location within allowed zoning districts.

- A. All regulated uses shall be permitted only in the allowed zoning district as set forth in § 145-43.5 hereof, and, within such a district, the site and location shall be regulated as follows:
- (1) Residential zoning district boundary: not allowed within 500 feet of the boundary of any residential zoning district in the town.
 - (2) Residential use: not allowed within 500 feet of the property line of a parcel used for residential purposes in the town.
 - (3) Place of worship, school day care: not allowed within 500 feet of the property line of a parcel containing a church, synagogue, other place of worship, library, school, day-care facility, park, or playground, within the town.
 - (4) School bus stop: not allowed within 150 feet of a school bus stop.
 - (5) Same parcel: not allowed on the same parcel as another adult use and entertainment establishment.
 - (6) Proximity to another regulated use: not allowed within 1,000 feet of the property line of another regulated use, whether or not such other establishment is located in the town.
- B. The above distances of separation shall be measured from the nearest exterior wall of the portion of the structure containing the regulated use.

§ 145-43.7. Display prohibited.

All regulated uses shall be conducted in an enclosed building. It shall be a violation to display or exhibit in the open air (outside of the establishment), through a window or by means of a depiction or decoration, or to allow to be displayed or exhibited, any specified anatomical area or specified sexual activity.

§ 145-43.8. Issuance of permit.

- A. No regulated use shall be established in the Town until the issuance of an operating permit by the Code Enforcement Officer. Such permit shall be issued upon a determination by the Code Enforcement Officer that such regulated use is in conformance with all of the provisions of this article.

- B. In order for the Code Enforcement Officer to make such determination, the applicant shall submit the following minimum information:
- (1) A completed application on a form to be provided by the Town and application fee.
 - (2) A parcel location map.
 - (3) A drawing, drawn to scale, indicating the portion of the parcel to be developed in the regulated use, as well as all required appurtenances.
 - (4) A clear and concise description of the proposed use.
 - (5) A site plan review.

§ 145-43.9. Appeal of Code Enforcement Officer's determination.

Any person aggrieved by the action of the Code Enforcement Officer shall appeal such action to the Town Zoning Board of Appeals in the form and manner prescribed by that Board. Such appeal shall be filed within 30 days of the Code Enforcement Officer's determination being filed with the Town Clerk.

§ 145-43.10. Penalties for offenses.

- A. Any person, firm, corporation or entity who or which shall violate any portion of this article shall be guilty of a violation and, upon conviction thereof, shall be fined in an amount not to exceed \$500 for each violation. The continuation of a violation of the provisions of this article shall constitute, for each day the violation is continued, a separate and distinct offense hereunder.
- B. The owner and/or any occupant and/or any tenant and/or general agent of a building, premises or part thereof where such a violation has been committed or does exist shall be guilty of such an offense.
- C. Any person, firm, corporation or entity violating any of the provisions of this article shall become liable to the Town for any expense or loss or damage occasioned the Town by reason of such violation.
- D. The imposition of penalties herein prescribed shall not preclude the Town or any person from instituting appropriate legal action or proceedings to prevent a violation of this article, or to restrain or enjoin the use or occupancy of a building, premises or part thereof in violation of this article.

§ 145-43.11. Enforcement.

This section gives the Town of Phelps Code Enforcement Officer the authority to enforce this article as well as any local, county or state police.

ARTICLE IX
Permits; Certificates of Occupancy

§ 145-44. General procedure.

- A. General sequence of steps. All persons desiring to undertake any new construction, structural alteration or changes in the use of a building or lot shall apply to the Code Enforcement Officer for a building permit by filling out the appropriate application form and by submitting the required fee. The Code Enforcement Officer will then either issue or refuse the building permit or refer the application to the Board of Appeals. After the building permit has been received by the applicant, he/she may proceed to undertake the action permitted in the building permit and, upon completion of such action, shall apply to the Code Enforcement Officer for a certificate of occupancy. If the Code Enforcement Officer finds that the action of the applicant has been taken in accordance with the building permit, he/she will then issue a certificate of occupancy allowing the premises to be occupied.
- B. Building permit types. Under the terms of this chapter, the following classes of building permits may be issued:
- (1) Permitted use. A building permit for a permitted use may be issued by the Code Enforcement Officer on his own authority.
 - (2) Special uses. A building permit for a special use may be issued by the Code Enforcement Officer after review by the Planning Board and upon the order of the Board of Appeals.
 - (3) Building permit after an appeal or a request for a variance. A building permit may be issued by the Code Enforcement Officer upon the order of the Board of Appeals and after a public hearing held by the Board of Appeals for the purpose of deciding upon the appeal or a request for a variance.

§ 145-45. Permit required. [Amended 11-7-1988 by L.L. No. 6-1988]

No building or structure shall be erected, enlarged, structurally altered or moved until a building permit therefor has been issued by the Code Enforcement Officer, and no alterations to an existing building shall be made without a building permit, unless such alterations shall cost less than \$10,000; not materially affect structural features; not affect fire-safety features such as smoke detectors, sprinklers, required fire separations and exits; not involve the installation or extension of electrical systems; and not include the installation of solid-fuel-burning heating appliances and associated chimneys for flues. No building permit or certificate of occupancy shall be issued for any building where said construction, addition, alteration, moving or use thereof would be in violation of any of the provisions of this Zoning Chapter or where any necessary Town Planning Board subdivision approval has not been granted. No zoning permit shall be issued by the Code Enforcement Officer except in conformity with the

provisions of this chapter, unless he/she receives a written order from the Board of Appeals and/or Planning Board in the form of an administrative review, special use permit or variance as provided by this chapter.

§ 145-46. Contents of application.

There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this chapter.

§ 145-47. Public record. [Amended 10-3-1994 by L.L. No. 2-1994]

One copy of such layout or plot plan shall be returned, when approved by the Code Enforcement Officer, together with such permit to the applicant upon the payment of a fee as set forth in Chapter A157, Fees. The second copy with a copy of each application with accompanying plan shall become a public record after a permit is issued or denied.

§ 145-48. Water supply and sewage and disposal.

All water supply and sewage disposal installations shall conform with the New York State Department of Health regulations. No plot plan shall be approved by the Code Enforcement Officer in any zone unless such conformity is certified on the plan. Drainage affecting adjacent properties shall be considered by the Code Enforcement Officer before issuing a building permit, including possible runoffs to said properties.

§ 145-49. Issuance of permits.

A. Issuance.

- (1) It shall be the duty of the Code Enforcement Officer to issue a building permit, provided that he/she is satisfied that the structure, building, a sign, parking area of premises and the proposed use thereof conform with the requirements of this chapter, and that all other reviews and actions, if any, called for in this chapter or other provisions of the Municipal Code have been complied with and all necessary approvals secured therefor.
- (2) All building permits shall be issued in duplicate, and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, workman or other person shall perform any building operations of any kind unless a building permit covering such operation has been displayed as required by this chapter, nor shall they perform building operations of any kind after notification of the revocation of said building permit.

- B. Denial of permits. When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this chapter, he/she shall refuse to issue a building permit, and the applicant may appeal to the Board of Appeals for a reversal of the Code Enforcement Officer's decision.

§ 145-50. Expiration.

A building permit shall expire after one year if the applicant fails to implement his application as filed with the Code Enforcement Officer.

§ 145-51. Revocation of permits. [Amended 10-3-1994 by L.L. No. 2-1994]

If it shall appear, at any time, to the Code Enforcement Officer that the application or accompanying plot is in any material respect false or misleading, or the work being done upon the premises differs materially from what is called for in the application filed with him/her under the Municipal Code, existing laws or ordinances, he/she may forthwith revoke the building permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to said Code Enforcement Officer. After the building permit has been revoked, the Code Enforcement Officer, in his discretion, before issuing the new building permit may require the applicant to file an indemnity bond in the favor of the Town of Phelps with sufficient surety conditioned for compliance with this chapter, other provisions of the Municipal Code and all building laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building if it does not so comply.

§ 145-52. Special uses.

All special use applications shall be accompanied by plans and such other information as may be required in this chapter.

§ 145-53. Certificate of occupancy. [Amended 11-7-1988 by L.L. No. 6-1988]

- A. No building erected subject to the New York State Uniform Fire Prevention and Building Code and this chapter shall be used or occupied until a certificate of occupancy has been issued. No building enlarged, extended or altered or upon which work has been performed which required the issuance of a building permit shall be occupied unless a certificate of occupancy has been issued. No change shall be made in the nature of the occupancy of an existing building unless a certificate authorizing the change has been issued. The owner or his agent shall make application for a certificate of occupancy.
- B. A temporary certificate of occupancy may be issued if the building or structure or a designated portion of a building or structure is sufficiently complete that it may be put to the use for which it is intended. A temporary certificate of occupancy shall expire six months

from the date of issuance, but may be renewed an indefinite number of times.

- C. No certificate of occupancy shall be issued except upon an inspection which reveals no uncorrected deficiency or material violation of the Uniform Code in the area intended for use and upon payment of the appropriate fee.

§ 145-54. Review of applications.

- A. Referral from the Board of Appeals. The Board of Appeals shall refer to the Planning Board all applications for special uses and any other applications or appeals which, in its opinion, require review by the Planning Board.
- B. Criteria for review. The Planning Board shall review such applications in accordance with applicable criteria set forth in Articles IV and V. **[Amended 10-3-1994 by L.L. No. 2-1994]**
- C. Report to the Board of Appeals. The Planning Board may approve, disapprove or approve subject to conditions or modifications and shall report its findings to the Board of Appeals within 30 days of receipt thereof; such report shall state all recommended conditions and modifications and the reasons for such recommended approval or disapproval. **[Amended 10-3-1994 by L.L. No. 2-1994]**

ARTICLE X
Enforcement; Offenses

§ 145-55. Enforcement.

This chapter shall be enforced by the Code Enforcement Officer who shall be appointed by the Town Board. No building permit or certificates of occupancy shall be issued by him/her except where all the provisions of this chapter have been complied with.

§ 145-56. Complaints; penalties for offenses.

A. Complaints of violations. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be filed with the Code Enforcement Officer who shall properly record such complaint and immediately investigate and report thereon to the governing body.

B. Penalties for offenses. **[Amended 10-3-1994 by L.L. No. 2-1994]**

(1) Any person or other legal entity who fails to comply with or who violates this chapter or who shall refuse a reasonable request to inspect any premises or who shall have aided or abetted the commission of any such violation shall each be guilty of a separate offense and, upon conviction thereof, shall be punishable as follows:

(a) For a first offense, by a fine of \$350 or imprisonment for a period not to exceed six months, or both. **[Amended 8-10-2015 by L.L. No. 3-2015]**

(b) For a second offense, both of which were committed within a period of five years, by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both.

(c) For a third or subsequent offense, all of which occurred within a period of five years, by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both.

(2) However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors; and, for such purposes only, all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation after notice shall constitute a separate additional violation. **[Amended 8-10-2015 by L.L. No. 3-2015]**

C. Procedure for abatement of violations. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any regulation made under authority conferred hereby,

the governing body or, with its approval, the Code Enforcement Officer or other proper official, in addition to other remedies, may institute any appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

ARTICLE XI
Appeals

§ 145-57. Procedure for appellant.

- A. An appeal to the Board of Appeals from any ruling of any administrative officer administering any portion of this chapter may be taken by any person aggrieved or by an officer, board or bureau of the Town affected thereby. Such appeal shall be taken by filing with the officer from whose action the appeal is taken and with the Board of Appeals by filing with the Secretary thereof a notice of appeal, specifying the grounds therefor.
- B. All applications and appeals made to the Board of Appeals shall be in writing on forms prescribed by the Code Enforcement Officer. Every application or appeal shall refer to the specific provision of this chapter and shall exactly set forth the interpretation that is claimed, the plans for a special use or the details of the variance that is applied for, in addition to the following information:
- (1) The name and address of the applicant or appellant.
 - (2) The name and address of the owner of the district lot to be affected by such proposed change or appeal.
 - (3) A brief description and location of the district lot to be affected by such proposed change or appeal.
 - (4) A statement of the present zoning classification of the district lot in question, the improvements thereon and the present use thereof.
 - (5) A reasonably accurate description of the present improvements and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon.

§ 145-58. Procedure for Code Enforcement Officer.

- A. The notice of appeal in any case where a permit has been granted or denied by the Code Enforcement Officer shall be filed within 60 days of the action (e.g., denial) by the administrative official. The Code Enforcement Officer shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from was taken or in lieu thereof certified copies of said papers. **[Amended 10-3-1994 by L.L. No. 2-1994]**
- B. It shall be competent for the Code Enforcement Officer to recommend to the Board of Appeals a modification or reversal of his action in cases

where he/she believes substantial justice requires the same but where he/she has not himself sufficient authority to grant the relief sought.

§ 145-59. Procedure for the Board of Appeals.

- A. Hearing on appeal. The Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board of Appeals prior to the hearing of such appeal. Upon the hearing, any party may appear in person or by agent or attorney.
- B. Time of decision. The Board of Appeals shall decide upon the appeal within 62 days after the conduct of said hearing. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board of Appeals.

§ 145-60. Expiration of appeal decision.

Unless otherwise specified by the Board of Appeals, a decision on any appeal or request for a variance shall expire if the applicant fails to obtain any necessary building permit or to comply with the conditions of said authorized permit within six months from the date of authorization thereof.

§ 145-61. Stay of proceedings. [Amended 10-3-1994 by L.L. No. 2-1994]

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies for the Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by the court of record on application, on notice to the Code Enforcement Officer and on due cause shown.

§ 145-62. Appeal from decision of Board of Appeals.

All decisions of the Board of Appeals are subject to court review in accordance with applicable laws of the State of New York.

§ 145-63. Hearings. [Added 10-3-1994 by L.L. No. 2-1994]

- A. Adjournment. Upon the day for hearing any application or appeal, the Board of Appeals may adjourn the hearing for a reasonable period for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

- B. Required interval for hearings on applications and appeals after denial. Whenever the Board, after hearing all the evidence presented upon an application or appeal under the provisions of this chapter, denies the same, the Board of Appeals shall refuse to hold further hearings on said or a substantially similar application or appeal by the same applicant, his successor or assign for a period of one year, except and unless the Board of Appeals shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Such rehearing would be allowable only upon a motion initiated by a member of the Board of Appeals and adopted by the unanimous vote of the members present, but not less than a majority of all members.¹²

12. Former § 30.68, Fees, which immediately followed this subsection, was deleted 10-3-1994 by L.L. No. 2-1994. See now Ch. A157, Fees.

ARTICLE XII
Board of Appeals

§ 145-64. Establishment; organization.

- A. Establishment. Pursuant to the provisions of § 267 of the Town Law of the State of New York, a Board of Appeals is hereby established in the Town of Phelps.
- B. Appointment. The Board of Appeals shall consist of five members to be appointed by the Town Board. The terms of the initial appointees shall be for one, two, three, four and five years from and after the date of appointment. Their successors, including such additional members as may be appointed by the Town Board, shall be appointed for the term of five years after the expiration of the terms of their predecessors in office.
- C. Appointment to fill vacancies. Appointments to fill vacancies shall be for the unexpired term of the member or members whose term or terms become vacant. Such appointments to fill such vacancies shall be made in the same manner as the original appointment.
- D. General grant of power. The Board of Appeals shall perform all the duties and have all the powers prescribed by the laws of the State of New York and as herein described.
- E. Votes necessary for a decision. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to decide in favor of the appellant any matter upon which it is required to pass under the terms of this chapter or to effect any variation of this chapter.

§ 145-64.1. Alternate member. [Added 12-22-1997 by L.L. No. 4-1997]

- A. Title. This section shall be known as a "Local Law Designating the Appointment of an Alternate Member to the Town of Phelps Zoning Board of Appeals."
- B. Appointment; term; compensation. The Town Board of the Town of Phelps, Ontario County, New York, hereby designates that, in addition to the five regular members of the Zoning Board of Appeals, one alternate member shall be appointed to serve on the Town of Phelps Zoning Board of Appeals. An alternate member shall be appointed by resolution of the Town Board, and the term of office shall be for five years. The Town Board may provide for compensation to be paid to said alternate.
- C. Incompatible offices; conflict of interest. As with regular members, the alternate member shall hold no elective office in the Town of Phelps nor

be permitted to act on any matter in which he/she or she has, either directly or indirectly, any personal or financial interest.

- D. Voting privileges. The alternate member may participate in discussions of the proceedings but may not vote except in the absence of a quorum of a regular meeting. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. The absent regular member shall not thereafter vote in any manner with respect to that application.
- E. Amendment of Town Law. The foregoing provisions shall, where applicable, specifically amend and supersede § 267 of the Town Law of the State of New York. Where not so amended, § 267 shall remain in full force and effect.

§ 145-65. Permitted actions. [Amended 10-3-1994 by L.L. No. 2-1994]

- A. Orders, requirements, decisions, interpretations, determinations. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as, in its opinion, ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
- B. Use variances.
 - (1) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.
 - (2) No such use variance shall be granted by a Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence; that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood; that the requested use variance, if granted, will not alter the essential character of the neighborhood; and that the alleged hardship has not been self-created.

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

C. Area variances.

- (1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances, as defined herein.
- (2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; whether the requested area variance is substantial; whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (3) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

D. Imposition of conditions. The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this Zoning Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

E. Special use permits. The Zoning Board of Appeals shall have the power to grant special use permits in accordance with Article V.

§ 145-66. Procedure for action.

A. The Board of Appeals shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made

to the Board shall be in writing, on forms prescribed by the Code Enforcement Officer and in accordance with § 145-57. Every appeal or application shall refer to the specific provision of this chapter involved and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. At least 30 days before the date of the hearing required by law on an application or appeal to the Board of Appeals, the Secretary of said Board shall transmit to the Planning Board a copy of said application or appeal, together with a copy of the notice of the aforesaid hearing and shall request that the Planning Board make a determination in accordance with § 145-54.

- B. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

ARTICLE XIII
Amendments

§ 145-67. Town Board authority to amend.

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter after public notice and hearings as provided by § 265 of the Town Law of the State of New York.

§ 145-68. Review by Planning Board.

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

§ 145-69. Public notice and hearing.

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

- A. Public notice. By publishing a notice at least 10 days in advance of such hearing in the official Town newspaper of the Town of Phelps; such notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents and shall name the place or places where copies of the proposed amendment may be examined.
- B. Personal notice.
 - (1) A copy of such notice shall be mailed to every association of residents of the Town which has registered its name for this purpose with the Town Clerk.
 - (2) A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any state park shall be given to the regional State Park Commission having jurisdiction over such state facility at least 10 days prior to the date of such public hearing.
 - (3) A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any city, village, Town or county shall be given to the Clerk of such municipality and to the Clerk of the Board of Supervisors at least 10 days prior to the date of such hearing.
- C. Opportunity to be heard. At the public hearing, full opportunities to be heard shall be given to any citizen and all parties in interest.

- D. Adoption after protest. The favorable vote of at least four members of the Town Board shall be required before the passage of an amendment which is protested by the owners of 20% or more of the area of:
- (1) The area of the land included in such proposed change; and
 - (2) The land immediately adjacent extending 100 feet therefrom or of that directly opposite thereto, extending 100 feet from the street frontage of such opposite land.
- E. Changes, amendments or supplements. All changes, amendments or supplements to this chapter and to the Zoning Map, which forms a part hereof, shall be adopted in accordance with the provisions of § 265 of the Town Law of New York State.

ARTICLE XIV

On-Premises Businesses**[Added 2-12-2007 by L.L. No. 1-2006]****§ 145-70. Purpose and intent.**

- A. The purpose of this article is to provide regulations for occupational and business uses from residential properties in an effort to make those properties more economically viable and strengthen the local economy while preserving the residential and agricultural nature of the Town of Phelps. This article establishes requirements and guidelines for permitting occupational and business uses and activities conducted within, from and upon property designated as a primary residence. This article is intended to apply to all businesses and occupational uses from residential properties.
- B. Occupational and business uses of buildings, accessory structures, and property that are subordinate to the primary residential or agricultural use shall be conducted in a manner that is generally compatible with the residential and agricultural premises of RAG and R-1 zoning districts and is compatible to the residential and agricultural character, appearance and livability of the surrounding properties and overall neighborhood.

§ 145-71. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ON-PREMISES BUSINESS — An occupation, profession or trade conducted within or from an approved residential dwelling and/or accessory structures by one or more occupants residing in the dwelling that is clearly incidental and subordinate to the primary or principal use of the dwelling and property of residential or agricultural purposes.

§ 145-72. General requirements and performance criteria.

All on-premises businesses shall comply with the following requirements prior to or as a result of compliance with any conditions of approval required for issuance of an on-premises business special use permit:

- A. Activities associated with an on-premises business shall be conducted primarily within the residential dwelling and/or in an enclosed accessory building or structure;
- B. The display, storage or parking of materials, goods, supplies, or equipment outside of the dwelling is permitted in an enclosed accessory building, or in the side or rear yard. Where possible, the area used for such display, storage or parking shall be screened from view from all public streets and adjacent property through the use of natural

landscaping materials, or, a combination of natural landscaping and other man-made or fabricated screening materials, e.g., fencing, etc.;

- C. The number of part-time or full-time nonresident employees working upon the premises shall not exceed five employees at the same time. Additional employees may be permitted at the discretion of the Planning Board.
- D. All applicable state, federal and local business and/or occupational licenses and any other approvals required shall be obtained or applied for at the time of application for an on-premises business. All activities associated with an on-premises business and overall property from which such on-premises business is being conducted shall comply with all local, county, and state building, fire, sanitary, health and other applicable requirements and regulations, including homeowner's association, subdivision and other recorded property restrictions and covenants. Noncompliance with any applicable requirement and/or regulations may be grounds for denial of an on-premises business permit application.
- E. The owner/proprietor of an on-premises business shall be responsible for notifying the Planning and Zoning Boards of any changes in the conduct of the on-premises business that are different from that included in the description provided as part of the application or from any conditions or restrictions imposed as part of the permit. Such changes may result in the need for a new application and reclassification of the on-premises business and imposition of new conditions or requirements.
- F. The owner/proprietor of an on-premises business shall reside in the dwelling from which the on-premises business is being conducted.
- G. Activities associated with an on-premises business shall not generate excessive traffic, parking, solid or liquid waste, water consumption, noise, vibrations, smoke, dust, odor, heat glare, disturbance or interference with the provision of electrical, television or other utility services, or create any safety hazards exceeding those which are typically and customarily produced by and/or associated with a residential dwelling and residential uses in the zoning district and surrounding neighborhood within which the subject property and on-premises business is located.
- H. The residential dwelling, accessory structures, and overall property shall remain residential in character and appearance that are typical and customary for residential property located in the area within which the on-premises business is located.
- I. Truck deliveries or pickup of supplies or products associated with an on-premises business shall be limited to the type of vehicles and pickup/delivery hours that are typical and customary for residential dwellings and uses located in the area within which the on premises business is located.

- J. In order to ensure that an on-premises business does not become a nuisance to the surrounding properties and property owners, the Planning Board may impose reasonable conditions as deemed necessary to protect the health, safety and welfare of such properties, property owners, and general public.
- K. Multiple on-premises businesses may be permitted from a single residence provided that the general requirements and specific performance criteria set forth in this section can be met based on an accumulation of the activities, characteristics, etc., of all on-premises businesses conducted from such dwelling.
- L. The use of exterior signs shall be permitted as described in the applicable portions in the Code of the Town of Phelps.
- M. Owners/proprietors of an on-premises business shall permit a reasonable inspection of the premises by the Code Enforcement Officer, or other agency having jurisdiction or responsibility for enforcing applicable laws, requirements, and regulations at the time of application or after the on-premises business has commenced operation in order to determine compliance with the requirements of this article and/or the conditions of the permit. The portion of the premises to be inspected shall be limited to the general area where the on-premises business is to be conducted or currently conducted from and limited in scope to general requirements and performance criteria of this Code.
- N. All on-premises business permits shall be deemed valid for an indefinite period of time provided the requirements of this Code are met. Whenever the Planning Board has reasonable cause to believe that any of the general or specific requirements and/or performance criteria set forth in this article, or, that conditions imposed as part of the on-premises business permit are being or have been violated, the Planning Board shall have the right to revoke or modify the on-premises business permit, including but not limited to imposing stricter conditions upon operation of the on-premises business and/or owner/proprietor.
- O. The granting of an on-premises business permit shall not constitute a covenant running with the property from which such on-premises business is being conducted. An on-premises business permit shall not be transferable to another property and shall automatically and immediately terminate and become null and void upon the sale, lease, or transfer of the property to a party different than to whom the on-premises business permit was originally granted.

§ 145-73. Permit procedures.

- A. Application for a on-premises business permit shall be made to the Code Enforcement Officer by completing a Planning Board Application and shall be accompanied by all supporting information required therein and an application fee established by the Town Board for such permits.

- B. The Planning Board shall review the application which shall be subject to a public hearing and approved, approved with conditions, or denied by the Planning Board at the second regularly scheduled Planning Board meeting after first review is complete. In addition to review by the Planning Board, approval shall be contingent upon any outside agency review required, if any. In the event that the Planning Board determines that the on-premises business for which an application has been received does not conform to one or more of the general requirements and performance criteria, the Planning Board has the right to deny the application.
- C. On-premises businesses shall be a special use as described in Article V of this chapter. However, only in regards to on-premises businesses, the responsibilities of the Zoning Board of Appeals as enumerated in §§ 145-10, 145-11, and 145-12 of Article V of this chapter shall be placed upon the Planning Board. In addition, only in regards to on-premises businesses, the responsibilities of the Planning Board as enumerated §§ 145-10, 145-11 and 145-12 of Article V of this chapter shall be placed upon the Zoning Board of Appeals.
- D. Appeal of any decision of the Planning Board may be reviewed by the Zoning Board as a request for a use variance.
- E. The owner/proprietor of all existing on-premises businesses being conducted from properties zoned RAG or R-1 on the effective date of this article shall have a period of 180 calendar days from such date to apply for the necessary on-premises business permit. The permit will be granted to all existing on-premises businesses applying within the period of 180 days provided the on-premises businesses meet the general requirements and performance criteria set forth in § 145-72 or at the discretion of the Planning Board. In addition, the on-premises business permit fee will be waived for all existing on-premises businesses that apply for a permit within the same period of 180 days. After 180 calendar days from the effective date of this article, any existing on-premises business will be subject to the full extent of this Code and all applicable fees.

§ 145-74. through § 145-79. (Reserved)

ARTICLE XV
Solar Energy Systems
[Added 1-8-2018 by L.L. No. 1-2018]

§ 145-80. Purpose and intent.

- A. The purpose of this article is to provide for the location, regulation and processing of applications for solar energy systems within the Town of Phelps. The intent is to both encourage the use of renewable energy systems based on sunlight and at the same time to protect the natural, visual, historic, economic, cultural and agricultural resources of the Town and to minimize adverse impacts associated with solar energy systems.
- B. Solar energy systems are hereby allowed within the Town to protect the health, safety, welfare of Town residents, property and the environment. This article regulates, among other things, the location, and design and in some cases the operation of solar energy systems in order to:
- (1) Protect the health, safety and general welfare of the residents of the Town of Phelps.
 - (2) Establish predictable regulations for solar energy systems activities.
 - (3) Take advantage of a renewable energy source.
 - (4) Avoid potential impacts to adjacent properties from solar energy systems.
 - (5) Ensure harmony and compatibility with surrounding land use patterns.
 - (6) Ensure consistency with the Town's Comprehensive Plan to protect the agricultural lands within the Town.

§ 145-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BUILDING-INTEGRATED PHOTOVOLTAIC SYSTEM — A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight system, roofing materials and shading over windows.

GROUND-MOUNTED SOLAR ENERGY SYSTEM — A solar energy system that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure, for the primary purpose of producing electricity for onsite consumption.

LARGE-SCALE SOLAR ENERGY SYSTEM — A solar energy system that is ground-mounted and produces energy primarily for the purpose of offsite sale and/or consumption.

ROOF-MOUNTED SOLAR ENERGY SYSTEM — A solar panel system located on the roof of any legally permitted building and or structure for the purpose of producing electricity for onsite and/or offsite consumption.

SOLAR ENERGY EQUIPMENT — Electrical energy storage devices, material, hardware, inverters and/or other electrical equipment and conduit of photovoltaic devices associated with the production of electrical energy.

SOLAR ENERGY SYSTEM — An electrical generating system composed of a combination of both solar panels and solar energy equipment.

SOLAR PANEL — A photovoltaic device capable of collecting and converting solar energy into electrical energy.

§ 145-82. Applicability.

The requirements of this article shall apply to all solar energy systems installed or modified after its effective date, excluding general maintenance and repair and building-integrated photovoltaic systems.

§ 145-83. Solar as accessory use or structure.

A. Roof-mounted solar energy systems.

- (1) Roof-mounted solar energy systems that use the electricity onsite and/or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.
- (2) Height. Roof-mounted solar energy systems shall be exempt from the maximum height restrictions of the zoning district within which they are located.
- (3) Aesthetics. Roof-mounted solar energy system installations shall incorporate, when feasible, the following design requirements:
 - (a) Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and the highest edge of the system.
- (4) Reviews and permits. Roof-mounted solar energy systems that use the energy onsite and/or offsite shall be required to obtain a building permit, and roof-mounted solar energy systems shall be exempt from site plan review and special use permit review.

B. Ground-mounted solar energy systems.

- (1) Ground-mounted solar energy systems that use the electricity primarily for onsite consumption are permitted as accessory structures in all zoning districts within the Town.

- (2) Height and setback. Ground-mounted solar energy systems shall not exceed 15 feet in height and shall adhere to the setback requirements of the underlying zone district.
- (3) Lot coverage. Ground-mounted solar energy systems are limited to the maximum building coverage of lot designated for each zone district, and the surface area covered by ground-mounted solar panels shall be included in the total lot coverage.
- (4) Location. All ground-mounted solar energy systems shall be installed in the side or rear yards.
- (5) Reviews and permits. Ground-mounted solar energy systems that use the electricity primarily onsite shall be required to obtain a building permit from the Town. Ground-mounted solar energy systems other than for one- and two-family dwellings shall be required to obtain site plan approval as set forth in Chapter 115 of the Town Code. All installations must be performed in accordance with the applicable electrical and building codes, the manufacturer's installation instructions and industry standards, and prior to the operation of the electrical connections must be inspected by the Town Code Enforcement Officer or by an appropriate electrical inspection person or agency as determined by the Town.
- (6) Where site plan approval is required elsewhere in the regulations of the Town for a development or activity, the site plan review shall include review of the adequacy, location, arrangement, size, design and general site compatibility of the proposed ground-mounted solar energy systems.

§ 145-84. Large-scale solar systems as permitted use.

- A. Large-scale solar energy systems are a permitted use, subject to the requirements set forth in this section, within the following zone districts:
 - (1) Commercial District (C-1).
 - (2) Mining District (M-1).
 - (3) Mining Overlay District (MOD).
 - (4) Neighborhood Commercial C-2 District.
- B. The following requirements shall apply to all large-scale solar energy systems in each zone district that they may be located:
 - (1) Height and minimum yard/setback. Large-scale solar energy systems shall be no more than 15 feet in height and shall have a minimum yard/setback of 40 feet for the front, each side and rear.

- (2) Lot coverage. Large-scale solar energy systems shall not exceed 60%. The surface area covered by solar panels shall be included in the total lot coverage.
- C. Large-scale solar utilities shall not be located within the following areas of potential sensitivity:
- (1) One-hundred-year flood hazard zones considered a V or AE Zone on the FEMA Flood Maps.
- D. Site plan approval required. Large-scale solar energy systems shall be required to obtain site plan approval from the Town Planning Board. The site plan application and its requirements for obtaining site plan approval (Chapter 115 of the Town Code) shall be supplemented by the following additional provisions:
- (1) If the property of the proposed project is to be leased, legal consent between all parties, specifying the uses(s) of the land for the duration of the project, including easements and other agreements, shall be submitted.
 - (2) Blueprints showing the layout of the solar energy system signed by a professional engineer or registered architect and the generating capacity of the large-scale solar energy system on a monthly and annual basis shall be required.
 - (3) The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.
 - (4) Property operation and maintenance plan. Such a plan shall describe continuing photovoltaic maintenance and property upkeep and maintenance, such as mowing and trimming.
 - (5) Detailed plans and specifications for any proposed fencing to be installed, including but not limited to the location(s), height and type of fencing material(s) to be installed.
 - (6) Decommissioning plan.
 - (a) To ensure the proper removal of large-scale solar energy systems, and to ensure the site will be restored to a useful, nonhazardous condition, without delay, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of site plan approval and the issuance of a building permit. The decommissioning plan must specify that after the large-scale solar energy system is no longer in use, it shall be removed by the applicant or any subsequent owner and that this be in the form of a recorded instrument legally binding on the owner of the large-scale solar energy system and to the real property on which it is installed. The decommissioning plan shall also include the requirement

that any subsequent transfers of the large-scale solar energy system and/or the real property from the date of the site plan approval shall be conditioned on the transferee agreeing to be held responsible and liable for the decommissioning plan.

- (b) The decommissioning plan shall include the energy-generating capacity of the large-scale solar energy system on an annual basis together with a provision that annually, on or before January 30th of each year, a report shall be furnished to the Town Code Enforcement Officer reporting the amount of energy generated by the large-scale solar energy system.
- (c) The decommissioning plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the site to a useful and nonhazardous condition and shall include but not be limited to the following:
 - [1] Removal of aboveground and belowground equipment, structures and foundations.
 - [2] Restoration of the surface grade and soil after removal of equipment.
 - [3] Revegetation of restored soil areas with native seed mixes, excluding any invasive species.
 - [4] A time frame for the completion of the site restoration work.
 - [5] A cost estimate detailing the projected cost prepared by a professional engineer or contractor, and cost estimates shall take into account inflation.
- (d) If the large-scale solar energy system is not completed and functioning within 18 months of the issuance of the site plan approval and/or issuance of a building permit, the Town may notify the permittee to complete construction within 180 days. If the permittee fails to perform, the Town may notify the permittee to implement the decommissioning plan. The decommissioning plan must be completed within 180 days of notification by the Town to so implement the decommissioning plan. Removal of large-scale solar energy systems must be completed in accordance with the decommissioning plan.
- (e) Upon cessation of activity of a constructed facility for a period of one year and/or generating less than 50% of the approved capacity, the Town may notify the permittee to implement the decommissioning plan. Within 180 days of notice being served, the permittee can either restore operation to 80% of approved capacity or implement the decommissioning plan.

- (f) If the permittee fails to fully implement the decommissioning plan within the one-hundred-eighty-day time period, the Town may, at its discretion, provide for the restoration of the site in accordance with the decommissioning plan and may recover all costs and expenses incurred for such activities from the defaulted permittee. The costs incurred by the Town shall be assessed against the property, shall become a lien and tax upon the property, and shall be enforced and collected with interest by the same officer and in the same manner as other taxes.
- E. Additional design standards. In addition to the standards provided for in § 115-2, the following additional principals and standards shall be applied to applications for large-scale solar systems:
- (1) A landscape buffer shall be provided around the large-scale solar energy system and solar panels to provide screening from adjacent properties and roads and to minimize glare to adjacent properties and roadways and traffic thereon.
 - (2) Removal of trees and other existing vegetation shall be minimized or offset with planting elsewhere on the property.
 - (3) Roadways within the site shall not be constructed of impervious materials and shall be designed to minimize the extent of roadways constructed and soil compaction.
 - (4) All on-site utility and transmission lines shall, to the extent feasible, be placed underground.
 - (5) Signs. A sign not to exceed eight square feet shall be displayed on or near the main access point and shall list the facility name, owner, phone number and address. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- F. Reviews and permits. Large-scale solar systems that are ground-mounted and produce energy primarily for the purpose of offsite sale and/or consumption shall be required to obtain site plan approval as set forth in Chapter 115 of the Town Code and shall be required to obtain a building permit from the Town. As part of the building permit application, a large-scale solar energy system to be connected to the utility grid shall provide a proof of concept letter from the utility company acknowledging the large-scale solar energy system will be connected to the utility grid. All installations must be performed in accordance with the applicable electrical and building codes, the manufacturer's installation instructions and industry standards and prior to the operation the electrical connections must be inspected by the Town Code Enforcement Officer or by an appropriate electrical inspection person or agency as determined by the Town.
- G. The Planning Board may impose conditions on its approval of any site plan under this article in order to enforce the standards referred to in

this article or in order to discharge its obligations under the State Environmental Quality Review Act (SEQRA).