

PLANNING BOARD

March 19, 2018

MEMBERS PRESENT: Tom Dougherty, Larry Stabell, Pam Trowbridge, Jay Blatchley, Brandon Calmes, Richard Rheinheimer  
MEMBERS ABSENT: Shawn Shanahan  
OTHERS PRESENT: Jerry Yoder & members of the public

The meeting was called to order at 7:30pm. Everyone present recited the pledge to the flag. The minutes from the February 19, 2018 meeting were read. Larry Stabell made a motion to approve the minutes as read; Jay Blatchley second. All ayes; the minutes were approved.

Pfalzer: Mr. Pfalzer's land separation was approved at the July 17, 2017 Planning Board meeting with the condition that the separation be completed within six months. Due to unforeseen circumstances, Mr. Pfalzer is requesting an extension of six months to get the land separation completed. Jay Blatchley made a motion to grant the six month extension; Brandon Calmes second. All ayes; extension approved.

Proposed Zoning Changes: see attached.

Model Solar Energy Law: see attached.

Larry Stabell made a motion to forward all agreed on changes from tonight in the Proposed Zoning Changes and Model Solar Energy Law be submitted to the Town Board; second by Jay Blatchley. All ayes; Planning Board changes will be made to the Proposed Zoning Changes and the Model Solar Energy Law and forwarded to the Town Board.

Jay Blatchley made a motion to adjourn the meeting; Brandon Calmes second. All ayes; meeting adjourned at 9:02PM.

Respectfully submitted

Alice Calmes,  
Town Clerk

## Proposed Zoning Law Changes January 2018

### Article IV, Section 402 – Definitions:

- 1) Addition – Definitions; included with Solar Energy Zoning Law (attached)
- 2) Addition – Compatibility; The characteristics of different uses or activities that permit such uses or activities to be located near each other in harmony and without conflict. Some elements affecting compatibility include: intensity of occupancy as measured by dwelling units per acre or gross square footage per acre; pedestrian or vehicular traffic generated; volume of goods handled, and such environmental affects as noise, vibration, odor, glare, air pollution or radiation.
- 3) Addition – Firearms; “A small arms weapon, as a rifle or pistol or shotgun, from which a projectile is fired by gunpowder.”
- 4) Addition – Gun Range; “An area provided with targets for the controlled practice of shooting firearms.”
- 5) Addition – Landscaping and Horticultural Service; Included in this category are companies engaged in landscape design and architecture; soil preparation and grading; irrigation systems; tree, shrub and lawn planting; hardscape construction including: retaining walls, pathways and patios; lawn care and landscape maintenance; arborist services including tree trimming and line clearance.
- 6) Addition - Outdoor Wood Boiler; “The outdoor wood boiler is an appliance and is accessory to the building being heated on the same piece of property.”
- 7) Addition – Privately Operated Dump; “the non-profit accumulation/disposal of personal property i.e.; garbage, trash, junk, refuse, and slow or non-

biodegradable materials.” As approved in the March 23, 2009 Zoning Board of Appeals meeting.

- 8) Addition – Recreational Vehicle; “A vehicular camping unit primarily designed as temporary living quarters for recreational ,camping, travel or seasonal use that either has its own motive power, or is mounted on or towed by another vehicle. Recreational vehicles include, but are not limited to, camping trailers, fifth wheel trailers, motor homes, park trailers, travel trailers, and truck campers.”
- 9) Change – Satellite Dish; “A structure which is designed and /or intended to receive, relay or send digital communications to or from orbiting or geostationary satellites.”
- 10) Addition – Temporary Structure (includes accessory structure); “Any structure that can be considered temporary by the nature of its ability to be assembled, disassembled, moved, or altered without physical change to the land or property upon which it is located, regardless of size (includes accessory use). Such temporary structures shall require a Zoning/Building permit when placed in a location subject to public assembly usage. Such temporary structures shall require a Zoning/Building permit when serviced by hardwired and plumbed utilities. ”
- 11) Addition – Tiny House; “Single dwelling units of 400 square feet in area or less.”

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## **Article VI General Provisions, Section 603**

### **A. One Principle Building and Use per Lot...**

Addition - #5; Accessory Apartment.

In zoning districts where permitted, accessory apartments (detached or attached) shall meet the following requirements:

(a) Number limited. Only one accessory apartment shall be permitted on a lot.

(b) Parking. Additional off-street parking space is required and shall be prescribed by the Planning Board.

(c) Minimum floor area. At least three hundred (300) square feet of heated floor area shall be provided per adult occupant. The heated floor area for an accessory apartment shall be at least 300 square feet and shall not exceed 900 square feet or the size of the principal dwelling, whichever is less.

(f) Water and Sewer. The Genesee County Health Department must certify that the septic tank facilities meet applicable countywide health rules; or if served by public water and/or sanitary sewer, the Town of Darien/Monroe County Water Authority must certify those utilities are adequate to serve both the principal dwelling and the accessory apartment.

(g) Occupancy. Either the accessory apartment or the principal dwelling unit shall be owner-occupied.

**H. The minimum habitable floor area for structures shall be as follows:**

<u>Residential Uses per Dwelling Unit</u>	<u>Square Feet</u>
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Revise-delete: (other than mobile home) and replace: (Primary Dwelling)

Justification: Mobile home to be deleted from Zoning, additions to accessory apartments, guest houses, and ECHO are addressed as unique to each in other sections of Zoning Law.

**K. Off street parking facilities shall adhere to the following:**

Addition – #8; Vehicle Parking in Residential Zoning Districts.

#### **L. Any fence erected in the Town shall adhere to the following:**

Remove - #1: “Before a fence for other than agricultural purposes shall be erected, a zoning permit must be obtained from the Zoning Enforcement Officer. A request for a permit shall be accompanied by a site plan which shall show the height and location of the fence in relation to all other structures and buildings, and in relation to all streets, lot property lines and yards.”

Justification: 19 CRR-NY 1203.3 of the Uniform Code specifically exempts permit requirements for installation of fences which are not part of an enclosure surrounding a swimming pool. The Zoning Officer does not have the time and resources necessary to permit, inspect, and/or track offenses related to this statute.

#### **M. Prohibited Uses**

Addition - #6: “Binary explosives, theatrical flash agents, exploding targets.” Mixing binary components together constitutes manufacturing explosives. Persons manufacturing explosives for their own personal, non-business use only (e.g., personal target practice) is specifically prohibited.

Justification: Binary explosives are pre-packaged products consisting of two separate components, usually an oxidizer like ammonium nitrate and a fuel such as aluminum or another metal. These components typically are not listed separately on the List of Explosive Materials and do not meet the definition of "Explosives" in 27 CFR 555.11. Therefore, ATF does not regulate the sale and distribution of these component chemicals, even when sold together in binary "kits." However, when the binary components are combined, the resulting mixture is an explosive material subject to the regulatory requirements found in 27 CFR, Part 555. (Reference – Bureau of Alcohol, tobacco and firearms)

Mixing binary components together constitutes manufacturing explosives.  
Persons manufacturing explosives for their own personal, non-business use only

(e.g., personal target practice) are not required to have a Federal explosives license or permit. (Reference – Bureau of Alcohol, tobacco and firearms)

### **Section 605, B. Accessory Structures –**

Addition - #4; As pools shall be temporary structures; any associated pool decks used solely as an accessory to the pool, shall also be temporary structures. As associated temporary structures, such decks shall meet the setback requirements for the above ground pool (25 feet). Pool decks shall be removed with the removal of the pool.

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### **Article VII - Requirements by Districts, Section 701 – Low Density Residential**

#### **B. Permitted Accessory Uses**

#### **C. Uses Permitted With A Special Use Permit**

Remove - #3; Mobile Home Park (see below –Article VIII)

Addition - #28; Accessory Apartment (Take out ECHO section of Zoning Law)

Addition - #29; Landscaping and Horticultural Services and related activities

Addition - #30; Large Scale Solar Energy System

#### **Section 703 – Recreational District**

#### **C. Uses Permitted With A Special Use Permit**

Addition – C, 1; Large Scale Solar Energy System

#### **Section 704 – Commercial District**

#### **C. Uses Permitted With A Special Use Permit**

Addition – C, 22; Large Scale Solar Energy System

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### **Article VIII – Supplementary Regulations**

Remove – Section 803 Mobile Homes and Mobile Home Parks

Justification – Obsolete. A mobile home was constructed in a factory prior to June 15, 1976, with or without a label certifying compliance with NFPA, ANSI or a specific state standard. Mobile homes are regulated by Article 21-B Manufactured Homes and Part 1210 Manufactured Home Regulations.

Replace –Section 803 (as) **Guest House;**

Correction – **Section 817 Wind Energy Conversion Unit (WECU) And Wind energy Conversion System (WECS)**

Delete redundant sentences. See Attached.

Add-**Section 822 Waste Containers/Dumpsters**

The location of all waste containers and/or dumpsters for multifamily and nonresidential uses shall be determined by the Planning Board through the site plan review process. Relocation of existing waste containers and/or dumpsters shall also be subject to review and approval by the Planning Board. The Planning Board may require screening of waste containers/dumpsters. This provision shall not apply to the temporary placement of garbage cans awaiting collection or the temporary use of dumpsters or roll-offs during a cleaning, moving or construction project.

In Summary, these proposed changes are needed to assist the Zoning Officer to effectively administer the needs of the community by giving him the tools necessary to resolve inconsistencies that currently exist. It is also requested that the current Zoning Law Binder be reissued to include all local laws that have been passed. It is apparent that many issues have been resolved, but the Zoning Binder not updated. Inconsistencies exist between local laws and the current Binder as issued. It is also imperative that an updated Zoning Law be available electronically on the Town web site for residence use. Many personnel hours are wasted offering information to the public that should be readily available to residents, contractors, appraisers, realtors, and lawyers.

## Model Solar Energy Law

### 1. Authority

This Zoning for Solar Energy Law is adopted pursuant to [sections 261-263 of the Town Law, sections 7-700 through 7-704 of the Village Law, or sections 19 and 20 of the City Law] of the State of New York, which authorizes the Town of Darien to adopt zoning provisions that advance and protect the health, safety, and welfare of the community, and “to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.”

### 2. Statement of Purpose

A. This Zoning for Solar Energy Law is adopted to advance and protect the public health, safety, and welfare of the Town of Darien, including:

- 1) Taking advantage of a safe, abundant, renewable, and non-polluting energy resource;
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single family houses; and
- 3) Increasing employment and business development in the region by furthering the installation of Solar Energy Systems.

### 3. Definitions

**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 systems, 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 or consumption.

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

**SOLAR ENERGY EQUIPMENT:** Electrical energy storage devices, material, hardware, inverters, 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.

#### 4. Applicability

The requirements of this law shall apply to all Solar Energy Systems installed or modified after its effective date, excluding general maintenance and repair and Building-Integrated Photovoltaic Systems.

#### 5. Solar as an Accessory Use or Structure

##### A. Roof-Mounted Solar Energy Systems.

1) Roof-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted as an accessory use in all zoning districts when attached to any lawfully permitted building or structure.

2) Height. Solar Energy Systems shall not exceed the maximum height restrictions of the zoning district within which they are located and are provided the same height exemptions granted to building-mounted mechanical devices or equipment.

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 eighteen (18) inches between the roof and highest edge of the system.

4) Roof-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from site plan review under the local zoning code or other land use regulations.

##### B. Ground-Mounted Solar Energy Systems.

1) Ground-Mounted Solar Energy Systems that use the electricity primarily onsite are permitted as accessory structures in LDR, Commercial and Recreational districts.

2) Height and Setback. Ground-Mounted Solar Energy Systems shall adhere to the height and setback requirements of the underlying zoning district.

3) Lot Coverage [Lot Coverage Percentage]. The surface area covered by Ground-Mounted Solar Panels shall be included in total lot coverage.

4) All such Systems in residential districts shall be installed in the side or rear yards.

5) Ground-Mounted Solar Energy Systems that use the electricity primarily onsite shall be exempt from site plan review under the local zoning code or other land use regulations.

#### 6. Approval Standards for Large-Scale Solar Systems as a Special Use

A. Large-Scale Solar Energy Systems are permitted through the issuance of a Special Use Permit within LDR, Commercial and Recreational districts, subject to the requirements set forth

in this Section, including site plan approval. Applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Zoning Enforcement Officer and referred, with comments, to the Planning Board for its review and action, which can include approval, approval on conditions, and denial.

B. Special Use Permit Application Requirements. For a special use permit application, the site plan application is to be used as supplemented by the following provisions:

1) If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(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 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 plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

5) Maintenance and/or Performance Bond. Prior to approval of any application by the Planning Board, the Town Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to remove the installation and restore landscaping consistent with the best interests of the landowner and/or Town of Darien in the event the applicant fails to comply with its decommissioning obligation with same to be annually reviewed for financial sufficiency (with any decision relating to continued financial sufficiency also to be in the sole discretion of the Town Board). The amount required shall be determined in the sole discretion of the Planning Board, based on the unique characteristics of the site. As a part of the foregoing review process, an owner or operator shall provide financial documentation, financial statements or any other information requested by said Board on an annual basis. The Town of Darien reserves the right to request reasonable access to the property upon notice and consent.

6) Decommissioning Plan. To ensure the proper removal of Large-Scale Solar Energy Systems, a Decommissioning Plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a special use permit under this Section. The Decommissioning Plan must specify that after the Large-Scale Solar Energy System can no longer be used, it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the Decommissioning Plan shall be prepared by a Professional Engineer or Contractor. Cost estimations shall take into account inflation. Removal of Large-

Scale Solar Systems must be completed in accordance with the Decommissioning Plan. If the Large-Scale Solar Energy System is not decommissioned after being considered abandoned, the municipality may remove the system and restore the property and impose a lien on the property to cover these costs to the municipality.

C. Special Use Permit Standards.

1) Application Fee

a. To initiate the review process contemplated by this Section, including site plan review, an application for a Large-Scale Solar Energy System shall remit an application fee to the Town in the amount of seven hundred fifty dollars (\$750.00) per megawatt of generating capacity. Said sum shall not be refundable in whole or in part.

b. The applicant shall pay the fees and expenses of any consultant(s) used by the Planning Board or Town Board to assist in the review of the application.

c. The Town Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.

d. Any application hereunder shall not be deemed complete until the funds are deposited with said Town.

2) Host Agreement – Before a permit can be issued by the Town Board, a Host Agreement may be entered into by the applicant and the Town Board (VAGUE – TIME FRAME?)

3) Height and Setback. Large-Scale Solar Energy Systems shall adhere to the height and setback requirements of the underlying zoning district.

4) Lot Size. Large-Scale Solar Energy Systems shall be located on lots with a minimum lot size of ten (10) acres.

5) Lot Coverage. A Large-Scale Solar Energy System that is ground-mounted shall not exceed fifty percent (50%) of the lot on which it is installed. The surface area covered by Solar Panels shall be included in total lot coverage.

6) All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the owner's contact information shall be placed on the entrance and perimeter of the fencing. The type of fencing shall be determined by the Planning Board. The fencing and the system may be further screened by any landscaping needed to avoid adverse aesthetic impacts.

7) Any application under this Section shall meet any substantive provisions contained in local site plan requirements in the zoning code that, in the judgement of the Planning Board are applicable to the system being proposed. If none of the site plan requirements are applicable, the Planning Board may waive the requirement of a site plan review.

8) The Planning Board may impose conditions on its approval of any Special Use Permit under this Section under the State Environmental Quality Review Act (SEQRA).

9) Transfer of Facility

a. No transfer of any Large-Scale Solar Energy Systems, nor the sale of the entity owning such facility shall occur without prior approval of the Town, which approval shall be granted upon:

i) The receipt of proof of the ability of the successor to meet all requirements of this Local Law; and

ii) The written acceptance of the transferee of the obligations of the transferor under this Local Law.

b. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.

7) Abandonment and Decommissioning

Solar Energy Systems are considered abandoned after six (6) months without electrical energy generation and must be removed from the property. Applications for extensions are reviewed by the Zoning Enforcement Officer for a period of six (6) months.

8) Enforcement

Any violation of this Solar Energy Law shall be subject to the same civil and criminal penalties provided for in the zoning regulations of the Town of Darien.

9) Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgement of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.