

# **TOWN OF DARIEN ZONING LAW**

A LOCAL LAW REGULATING AND RESTRICTING THE LOCATION, CONSTRUCTION, AND USE OF BUILDINGS, STRUCTURES, AND THE USE OF LAND IN THE TOWN OF DARIEN AND FOR SAID PURPOSES DIVIDING THE TOWN INTO DISTRICTS.

## **ARTICLE I                      SHORT TITLE**

This Local Law shall be known as, and may be cited as, “The Zoning Law for the Town of Darien”.

## **ARTICLE II                      ENACTMENT CLAUSE**

The Town Board of the Town of Darien, County of Genesee, State of New York, having complied with the provisions of Article 16 of the Town Law, for the purposes set forth therein, do enact and ordain that the following articles and sections are enacted into law.

## **ARTICLE III                      PURPOSES**

The purposes of the Zoning Law are to encourage the most appropriate use of land throughout the Town and to conserve the value of property, with due consideration for the character of the zones and their peculiar suitability for particular uses; all in accordance with a comprehensive plan designed to lessen congestion in the streets; to secure safety from fire, flood, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land, to avoid undue concentration of population, and to that end to regulate the height, design appearance, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts, and other open space; the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes; and the height, size and location of these uses within the limits of the Town.

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## ARTICLE IV DEFINITIONS AND INTERPRETATION OF TERMS OR WORDS

### SECTION 401 INTERPRETATION OF TERMS OR WORDS

For the purpose of this Zoning Law, all words used in the present tense include the future tense. All words in the plural number include the singular number, and all the words in the singular number include the plural number, unless the natural construction of the word indicates otherwise. The word “person” includes a firm, association, organization, partnership, trust, company or corporation as well as an individual. The word “shall” is mandatory and directory. The word “may” is permissive. The word “used” includes “designed, intended or arranged to be used”.

### SECTION 402 DEFINITIONS

Accessory Building – A building situated on a lot, subordinate to the main building on the same lot, and used for purposes customarily incidental and subordinate to said main building (i.e., garage, storage shed, etc.).

Accessory Use – Use customarily incidental and subordinate to the principal use of buildings and located on the same land.

Accessory Structure – A structure the use of which is incidental to the principal use of the main structure and which is attached thereto or located on the same lot.

Adult Care – The provision of temporary or long term residential care and services to adults who, though not requiring continual medical or nursing care as provided by facilities licensed or operated pursuant to Article 28 of the Public Health Law or Articles 19, 23, 29 and 31 of the Mental Hygiene Law, are, by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable or substantially unable to live independently.

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Adult Care Facility – A facility other than a Family Type Home, which provides adult care. For the purposes of this Zoning Law, an Adult Care Facility shall include the following: adult home, enriched housing program, residence for adults, shelter for adults, public home and private proprietary adult-care facility as defined by New York State Department of Social Services Chapter II, Subchapter D, Part 485.

Adult Uses – See definitions in Section 812

Aggregated Project – Aggregated projects, which exceed two (2) adjoining lots or properties and are developed or operated in a coordinated fashion, but which have multiple entities separately owning one (1) or more of the individual WECS within the larger project. Associated infrastructure such as power lines or transformers or other components of the WECS while being owned by a separate entity or entities are included as part of an aggregated project for the purposes of this section.

Alterations – As applied to a building or structure, a change or re-arrangement in the structure parts, or an enlargement whether by extending on a side, increasing in height or moving from one (1) location or position to another.

Amusement Park – An outdoor facility, which may include structures and buildings, where there are various devices for entertainment, including rides, booths for the conduct of games or sale of items, and buildings for shows and entertainment.

Animal Shelter – Building or land used for the temporary harboring of stray or homeless dogs, cats, and other similar household pets, together with facilities for the provision of necessary veterinary care and adoption of the harbored animals.

Animal Waste Storage Facility – Any building, structure, pond, lagoon or yard for the bulk storage of animal waste for eventual removal and/or dispersion.

ANSI - American National Standards Institute

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Applicant - (WECS) – The person, firm, corporation, company, limited liability corporation or other entity which applies for approval under this ordinance, as well as the applicant’s successor(s), assign(s) and/or transferee(s) as to any approved WECS or testing facility. An Applicant must have the legal authority to represent and bind the landowner or lessee who will construct, own, and operate the WECS or testing facility. The duties and obligations regarding a zoning approval for any approved WECS or testing facility shall be with the owner of the WECS or testing facility, and jointly and severally with the owner and operator or lessee of the WECS or testing facility. Also known as “owner” or “operator”.

Area Variance – Authorization by the Zoning Board of Appeals to allow for the use of the land in a way that is not permitted by the dimensional or physical requirements by the zoning law. This type of variance is needed when a building application does not comply with the setback, height, lot, or area requirements of the zoning law.

Battery(ies) - A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

Battery Energy Storage Management System - An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

Battery Energy Storage System - One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

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- A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

Bed and Breakfast (Tourist Home) – A one (1) family dwelling (not necessarily owner-occupied) in which overnight accommodation is provided for not more than eight (8) transient people for profit and may include serving breakfast.

Buffer – A buffer is a designated area of land that protects an adjacent area from impacts of development. A buffer may take the form of a continuous strip of trees/or shrubs, a berm, or a similar barrier as directed by the Planning Board during the site plan review process.

Building – A structure wholly or partially enclosed within exterior and party walls, and a roof, affording shelter to persons, animals or property. For the purposes of this Zoning Law, a utility trailer or vehicle attached to the ground or otherwise immovable, shall be considered a building.

Building Area – The aggregate of the areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

Building Height – The vertical dimensions measured from the average elevation of the finished lot grade at the front of the building to the highest point of roof for flat roofs; to the deck line of a mansard roof; and to the average height between the plate and ridge of a gable, hip or gambrel roof.

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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.

Building Line – A line formed by the intersection of a horizontal plane at average grade level and a vertical plane with the exterior surface of the building on any side. In the case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

Building, Primary – A building or buildings, in which is conducted the main or principal use of the lot on which said building is situated.

Camping Ground – A parcel of land used or intended to be used, let, or rented for occupancy by campers or for occupancy by or of trailers, tents or movable or temporary dwellings, rooms, or sleeping quarters of any kind.

Cell - The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

Certificate of Compliance – A certificate issued by the Zoning Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certification shall acknowledge compliance with all the requirements of this Zoning Law and such adjustments thereto granted by the Zoning Board of Appeals.

Child Day Care – Shall mean for a child on a regular basis provided away from the child's residence for less than twenty-four (24) hours per day by someone other than the parent, stepparent, guardian or relative within the third degree of consanguinity of the parents or stepparents of such child. Child day care does not refer to care provided in:

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- A. A summer day camp, traveling summer day camp or children's overnight camp as defined in the New York State Sanitary Code;
- B. A program for school-age children operated solely for the purpose of religious education, sports, classes, lessons or recreation;
- C. A facility providing day service under an operating certificate issued by the New York State Department of Social Services;
- D. A facility providing day treatment under an operating certificate issued by the Office of Mental Health or by the Office for People with Developmental Disabilities.
- E. A kindergarten, pre-kindergarten or nursery school for children three (3) Years of age or older, or a program for school-age children conducted during non-school hours, operated by a public school district or a private school or academy which is providing elementary or secondary education or both in accordance with the compulsory education requirements of the Education Law, provided that such kindergarten, pre-kindergarten, nursery school or program is located on the premises or campus where the Elementary or secondary education is provided.

Child Day Care Center – Shall mean a program or facility in which child day care is provided on a regular basis to more than six (6) children for more than three (3) hours per day per child for compensation or otherwise, except those programs operating as a group family day care home, a family day care home, or school-age child care program as defined in this Section.

Club House – A building used to house a social, fraternal or service organization or club not organized or conducted for profit and which is not an adjunct to or operated by or in conjunction with a public tavern, café, or other place of business.

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Club Membership – A group of persons organized in accordance with the Not-For-Profit Law (i.e., fish and game clubs).

Cluster Development – A development of residential lots, each containing less area than the minimum lot area required for the zone within which such development occurs but maintaining the density limitation imposed by said minimum lot area through the provision of open space as part of the subdivision plan.

Commercial Communication Tower – A structure, including one or more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Commissioning - A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

Community Area – An area or space within a mobile home court, including fences, walls, and other minor structures, which is designated for joint use of occupants or restricted to non-residential use.

Community Residence – A supervised community home operated in compliance with the New York State Hygiene Law, which houses not more than fourteen (14) individuals and provides client supervision on a twenty-four (24) hour basis. For the purposes of this ordinance, an approved community residence as defined herein is considered a one-family dwelling.



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Commercial Excavation – A lot or part thereof used for the purpose of excavation, processing or sale of sand, gravel, or clay, or other natural mineral deposits or the quarrying of any kind of rock formation, and exclusive of the process or grading a lot preparatory to the construction of a building for which a building permit application has been filed. Commercial excavation shall be divided into two categories based on the scale and type of operation as follows:

- A. Major Excavation – All excavations requiring a New York State Mined Land Reclamation Permit shall be considered major excavations (ECL Article 23, Title 27, New York State Mined Land Reclamation Law: requires a permit mining 1,000 tons or 750 cubic yards, whichever is less within twelve successive calendar months).
- B. Minor Excavation – All excavations not requiring a New York State Mined Land Reclamation Permit shall be considered minor excavations.

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.

Comprehensive Plan – A written document that identifies the goals, objectives, principles, guidelines, policies, standards, and strategies for the growth and development of the Town of Darien.

Condition – A requirement or qualification that is attached to a reviewing board’s approval of a proposed project. A condition must be complied before the Zoning Enforcement Officer can issue a building permit.

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Contractor's Yard – Businesses engaged in construction of buildings and structures, remodeling and repairs to existing buildings and structures, electrical services, plumbing services, excavation and grading services, roofing and siding services, masonry services, paving services, well drilling, sewage disposal system installation and services, and other similar services.

Coverage – That percentage of the plot or lot area covered by the total building area.

Curb Level – The officially established grade of the curb in front of the midpoint of the lot.

Decision – The final determination of a local reviewing body or officer regarding an application for a permit or approval.

Dedicated-Use Building - A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- 1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- 2) No other occupancy types are permitted in the building.
- 3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- 4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:

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- a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
- b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

Density – The amount of development per acre on a parcel permitted under this Zoning Ordinance.

Disposal Transfer Station – A solid waste management facility, other than a Recyclables Handling and Recovery Facility exclusively handling non-putrescible recyclables, that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

District – A portion of the town identified on the official zoning map within which one (1) or more uses are permitted.

Dog Kennel – A kennel is a structure or facility that for any purpose harbors more than four (4 ) dogs over six (6) months of age; or that constitutes a business for keeping dogs for hire, or the business of breeding dogs for sale or boarding dogs, as certified by the Town Clerk on a parcel that has more than four (4) licenses for dogs that are more than six (6) months old.

Domestic Animal – Animals commonly kept as household pets including, but not limited to dogs, cats, caged birds, rabbits, guinea pigs, non-poisonous snakes, fish, turtles, frogs, mice, and ferrets. Species of animals, which are considered harmful (i.e., poisonous) to humans, shall not be considered domestic animals for the purposes of this Zoning Law.

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Dwelling Unit – One (1) or more rooms containing one (1) dwelling unit only.

Dwelling, One Family – A dwelling containing one (1) dwelling unit only.

Dwelling, Two Family – A dwelling containing two (2) dwelling units only.

Dwelling, Multi Family – A dwelling containing three (3) or more dwelling units.

Easement – The right to use a parcel of land to benefit an adjacent parcel of land, such as to provide vehicular or pedestrian access to a road or sidewalk.

Energy Code - The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

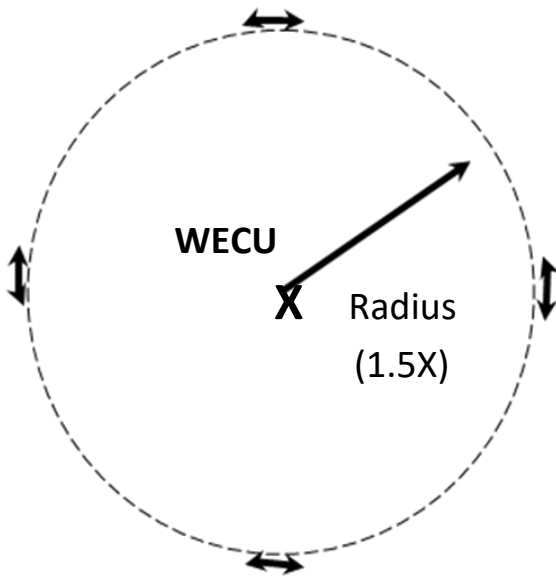
Environmental Assessment Form (EAF) – Used in the State Environmental Quality Review Act process. A form completed by an applicant to assist an agency in determining the environmental significance of a proposed action. A properly completed EAF must contain enough information to describe the proposed action, its location, purpose, and potential impacts on the environment.

Environmental Impact Statement (EIS) – An EIS is a written “draft” or “final” document prepared in accordance with the State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An EIS facilitates the weighing of social, economic, and environmental factors in the planning and decision-making process.

Fall Zone – For the purpose of this section, the “Fall Zone” is defined as the area on the ground within a prescribed radius from the base of a tower. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

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- A. The dimensions of the “Fall Zone” circumference shall be determined by its radius.
- B. The radius is a line segment that joins the center of a circle with any point on its circumference.
- C. The radius shall be equal to, not less than, 1.5 times the tower’s height as measured from ground level at the base of the tower, to the tip of the rotor blade when extended to the full vertical position.



### Example A.

If the WECU height is 290 feet from the ground to the top of the rotor blade when in the full upright position, the radius would be:  $1.5 \times 290' = 435'$  (radius).

The minimum fall zone area in this example will have a 435 foot radius at any point along the circumference.

Family – One (1) or more persons occupying a dwelling as a single housekeeping unit.

Family Day Care Home – Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, as provided for and registered by New York State Department of State. The name, description or form of entity, which operates a family day care home, does not affect its status as a family day care home. For the purposes of this Zoning Law, a family day care home shall be considered an

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accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Family Day Care Home, Group – Shall mean a family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per day per child for seven (7) to twelve (12) children for compensation or otherwise, as provided for and registered by New York State Department of State. The name, description or form of the entity, which operates a family day care home, does not affect its status as a family day care home. For the purposes of this Zoning Law, a group family day care home shall be considered an accessory use to a one (1) family dwelling and shall not require a zoning permit unless the building is being altered.

Family-Type Home – Adult care operated and provided for the purpose of providing long-term residential care, room, board and personal care, and/or supervision to four (4) or fewer adult persons unrelated to the operator. For the purposes of this Zoning Law a family-type home shall be considered a home occupation.

Farm – The use of a minimum of ten (10) acres of land for agricultural purposes including tilling of the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry and the necessary accessory uses for packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Farm Animal – See “Livestock”.

Feeder Line – Any power line that carries electrical power from one (1) or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

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Fence – An artificially constructed barrier of wood, masonry, stone, wire, metal, or any other manufactured material or combination of materials other than temporary uses such as snow fences or rabbit fences.

Firearms - A small arms weapon, as a rifle or pistol or shotgun, from which a projectile is fired by gunpowder.

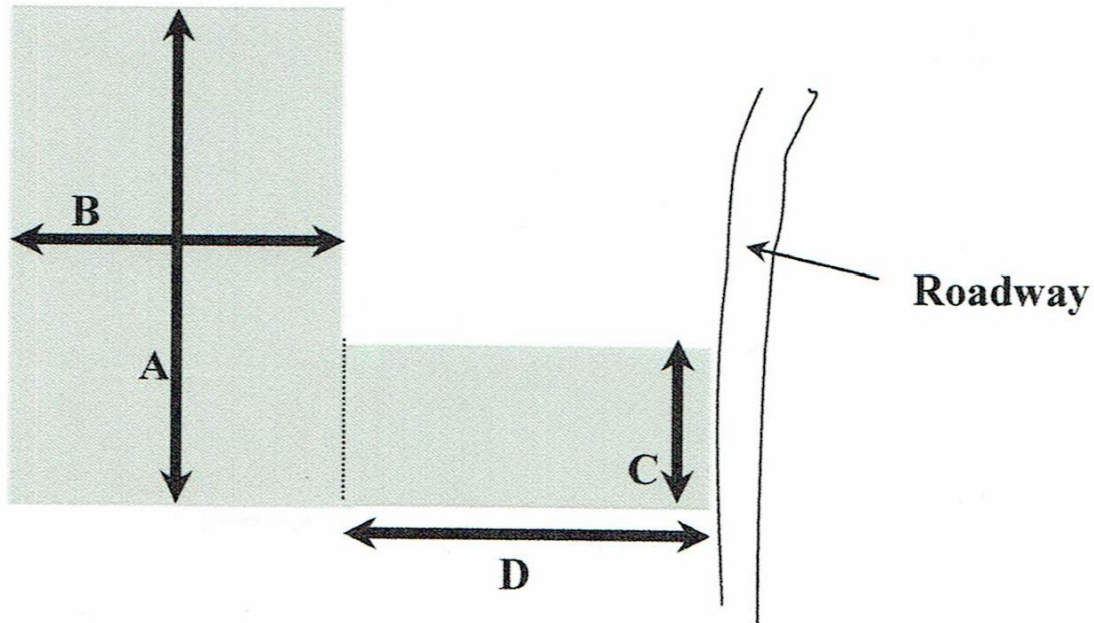
Fire Code - The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

Flag Lot – An “L” or “dogleg” shaped lot where the back portion (A/B) is suitable to meet the minimum lot size and;

- A. The back portion (A/B) must equal or exceed the minimum lot size (in square feet); and
- B. The minimum lot width (A) for the Zoning District in which it is located; and
- C. The front portion (C/D) extends to and has access to the public roadway but does not meet the minimum lot frontage requirements for the district in which it is located.
- D. Area (C/D) would normally be all or part of the private driveway.

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Example 1:

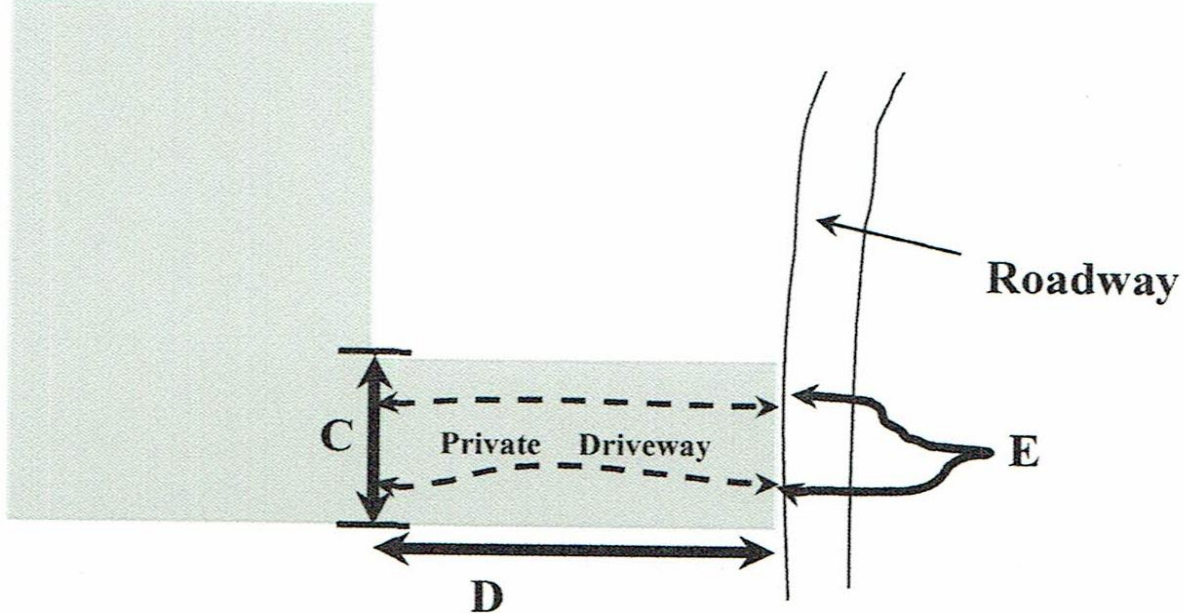


Private Driveway – A driveway that provides access to a Flag Lot which lacks the required frontage for an approved building lot in the zoning district within which it is located. The driveway must be located in area C/D as depicted in Example 2 and has a minimum lot width (c) of forty (40) feet. The driveway shall have a minimum clearance (i.e., trees, bushes, branches, rocks, and debris) of twenty (20) feet and have a fifteen (15) feet of hard surface (i.e., crushed hard packed, dustless stone, concrete or asphalt) centered within the twenty (20) feet minimum clearance required.



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Example 2:



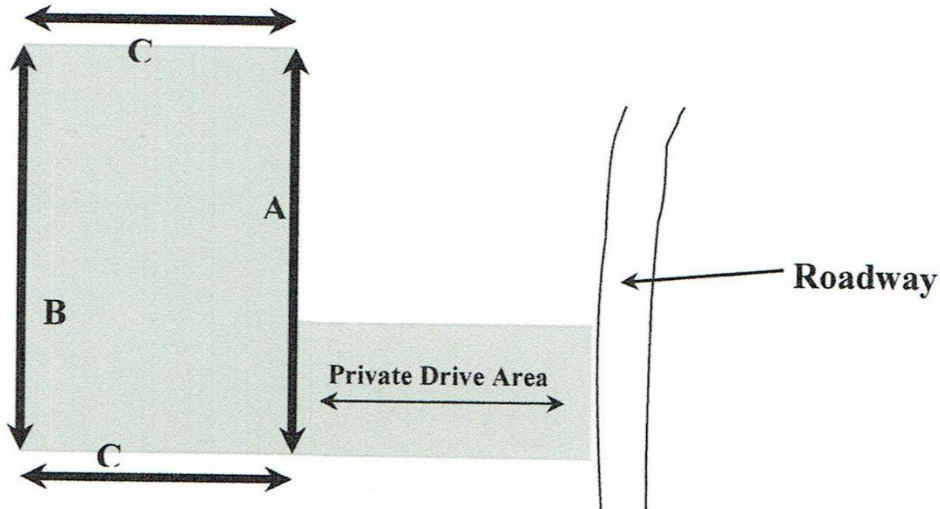
Yard

- A. Front: The front yard is bounded by the flag lots line (A), which faces the roadway. Does not include the Private Drive Area. (Example 1)
- B. Rear: The rear yard is bounded by the flag lot line (B) furthest from the roadway and behind front line. Does not include the Private Drive Area. (Example 2)
- C. Side: The side yards are bounded by the flag lot line (C) which is at right angles to the front and rear flag lot lines A/B. Does not include the Private Drive Area. (Example 3)

The yard definitions provided herein shall be used when referring to Zoning Schedule A.

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Example 3:



Floor Area Total - The sum of the gross horizontal areas of the floor or floors of a building, which are enclosed and usable for human occupancy, or the conduct of business. Said areas shall be measured between the inside face of exterior walls, or from the centerline of walls separating two (2) uses. Said areas shall not include areas below the average level of the adjoining ground, garage space, or accessory building space.

Frontage – The extent of a building or lot along one (1) public street as defined herein.

Gasoline Station – Any area of land including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry-cleaning or otherwise cleaning or servicing such motor vehicles or other commercial activities.

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Gasoline Station/Market (Convenience Store) – A gasoline station, which provides one (1) or more additional commercial services such as a restaurant, dairy bar, beverage market, food or grocery market or such a commercial use which also provides for gasoline sales. For the purpose of this definition, sales from vending machines are not considered commercial service.

Grade Established – The elevation of the centerline of the streets established by the Town authorities.

Grade Finished – The completed surfaces of lawns, walks, and roads brought to grades as shown on official plans or designs relating thereto.

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.

Gun Range - An area provided with targets for the controlled practice of shooting firearms.

Habitable Floor Area – The total floor area of all the habitable rooms in a dwelling unit.

Home Occupation – An accessory use of a dwelling unit for gainful employment involving the manufacture, provision or sale of goods, and/or services. In particular, a home occupation may include, but is not limited to, the following: art studio, barber shop/beauty parlors (limited to two (2) work stations); computer programmer, cook, day nursing, direct sale product distribution (Amway, Avon, Tupperware, etc.); draftsman, dressmaker or tailor, electrical/radio/television repair, financial planning and investment services, insurance agent, musician, photographer, professional offices of a physician, dentist, lawyer, accountant, engineer or architect, real estate office, teaching or tutoring (limited to two (2) students at one time), telephone answering, upholsterer, group family day care

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home and family-type home. However, a home occupation shall not be interpreted to include the following; motor vehicle repair shop, machine shop, welding and fabrication shop, commercial stables and kennels, restaurants or furniture refinisher.

Hub Height – The total height of the Tower exclusive of the rotor blades.

Ice Throw – Accumulated frozen moisture or ice buildup on the rotor and/or blades of a WECS that is or can be thrown during normal spinning or rotation.

Junk – Shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, scrapped, ruined, dismantled or wrecked motor vehicles or parts thereof, iron, steel and other old or scrap ferrous or non-ferrous materials, tires and pallets.

Junk Yard – Shall mean any place of storage or deposit, whether in connection with another business or not, where two (2) or more unregistered, old, or secondhand motor vehicles no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts there from, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose, such term shall include any place of storage or deposit for any purposes of used parts or waste materials, such as defined above, which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yards shall be construed to mean an establishment having facilities for processing iron, steel or non-ferrous scrap and whose principal product is scrap, iron, steel or non-ferrous scrap for sale for re-melting purposes only.

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.

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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.

Lead Agency – The lead agency is the “involved agency” under the State Environmental Quality Review Act that is principally responsible for undertaking, funding, or approving an action. The lead agency is responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required.

Light Industrial Use – The processing, fabrication, assembly or packaging of previously prepared or refined materials and/or prototype development, model making, service, repair or refinishing applications which do not involve the use of high hazard (see NYS Uniform Code Section 703.4) materials or processes, that result in the generation of noxious or annoying fumes, odors, noise or other disturbances.

Livestock – Animals such as, but not limited to horses, cattle, hogs, sheep, goats, poultry, exotic animals (i.e., ostriches, lamas, and alpacas), wildlife (i.e., bison, elk, and deer), and fur bearing animals.

Livestock, Unit of – One or more farm animals with an accumulated total body weight of one thousand (1000) pounds.

Lot – A parcel or area of land, the dimension and extent of which are determined by the latest official records or by the latest approved map of a sub-division of which the lot is a part.

Lot Area – An area of land, which determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres. Any portion of a lot included in a public street right-of-way shall not be included in calculating lot area.

Lot, Corner – A parcel of land at the junction of and fronting on two (2) or more intersecting streets.

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Lot Coverage – The percentage of the lot area which is devoted to a building area.

Lot Line – A line of record bounding a lot which divides one lot from another lot or from a public or private street or any other public space.

Lot Line, Front – In the case of a lot abutting upon only one street, the line separating the lot from the street; in the case of any other lot, the owner shall, for the purpose of this ordinance, have the privilege of electing any street lot line as the front lot line, except that where the majority of lots in any block are developed, the owner shall select the same front line as used by such other lots. In a subdivision approved by the Planning Board, said board may delegate front lot line on any lot having more than one street.

Lot Through – A lot, other than a corner lot, which has frontage on more than one (1) street.

Lot, Zoning – A parcel of land occupied, or to be occupied, by a principal use, or uses, together with permitted accessory uses, yards, and open spaces, having frontage on an officially accepted street and having not less than the minimum area required by these regulations for a lot in the zoning district within said parcel of land is located. A Lot or Record may or may not be a zoning lot.

Lot Depth – The average horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot Width – The horizontal distance between the side lot lines measured at right angles to its depth at the front lot line.

Lot of Record – An area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or in a legally recorded deed as filed in the official records of the County Clerk.

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Meteorological Tower (“MET” tower) – The tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, a Meteorological Tower (“MET” Tower) shall be considered as a Temporary Use. A Temporary Use Permit shall be applied for and approval received, prior to erecting and using a Meteorological Tower; in accordance with the ordinance, Section 903 B., Temporary Use Permit and Section 908 B.4., Temporary Uses and Structures.

Mixed Use – Areas appropriate for and facilitate quality mixed-use development in activity centers that are consistent with the Comprehensive Plan’s land use and transportation goals, objectives, policies and strategies.

Moratorium – An action that suspends the right of property owners to obtain development approvals while the Town Board takes time to consider, draft and adopt land use regulations or rules to respond to new or changing circumstances not adequately dealt with by its current zoning law.

Motel/Hotel – A building containing rooms intended or designed to be used or which are rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

Motor Vehicle Repair Shop – A building used for repair and servicing of motor vehicles.

Nationally Recognized Testing Laboratory (NRTL) - A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

## TOWN OF DARIEN ZONING LAW

NEC - National Electric Code.

NFPA - National Fire Protection Association.

Non-Conforming Building – A building that was constructed prior to the adoption of the zoning law or zoning amendment that is not in accordance with the dimensional provisions, such as building height or setback requirements, of that law or amendment.

Non-Conforming Lot – A lot of record existing at the date of the passage of this Zoning Law, which does not have the minimum width or contain the minimum area for the zone in which it is located.

Non-Conforming Use – A non-conforming use is a land use that is not permitted by a zoning law, but which already existed at the time this zoning ordinance or its amendment was enacted. Most non-conforming uses are allowed to continue but may not be expanded or enlarged.

Non-Dedicated Use Building - All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

Non-Participating Property - Any property that is not a participating property.

Non-Participating Residence - Any residence located on Non-participating Property.

Nursery – Any place used commercially as a garden for the open cultivation and growing of trees, shrubs, and other plants, including the replanting of said plants grown at places other than the nursery, exclusive of retail sales.

Occupied Community Building - Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.



## TOWN OF DARIEN ZONING LAW

Operator – The entity responsible for the day-to-day operation and maintenance of the WECU/WECS, including any third-party subcontractors.

Outdoor Wood Boiler - The outdoor wood boiler is an appliance and is accessory to the building being heated on the same piece of property.

Owner – Means the entity or entities with an equity interest in the WECU(s)/WECS, including their respective successors and assigns. Owner does not mean:

- A. the property owner from whom land is leased for locating the WECU/WECS (unless the property owner has an equity interest in the WECU/WECS); or
- B. any person holding security interest in the WECU/WECS solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECU/WECS at the earliest practicable date.

Patio – An outdoor living space with a floor designed to supplement the residential living area.

Parking Space, Off Street Automobile – An off-street area suitable for vehicular parking and having direct access to a road. The minimum area per automobile shall be two hundred (200) square feet with a minimum width of ten (10) feet.

Participating Property - A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

Planned Unit Development (PUD) – An overlay zoning district that permits land developments on several parcels to be planned as single units and contain both residential dwellings and commercial uses.

## **TOWN OF DARIEN ZONING LAW**

Planning Board – The officially designated Darien Town Planning Board, as established by the Town Board in accordance with Chapter 62 of the Consolidated Laws, Article 16, Section 271 and 272.

Plat – A site plan or subdivision map that depicts the arrangements of buildings, roads, and other services for a development.

Pond – A body of water (other than a swimming pool or landscaping pond) created through construction or other similar method, having a depth of two (2) or more feet. A small pond used for landscaping having a depth not exceeding twenty-eight (28) inches and a surface not exceeding one hundred fifty (150) square feet, shall not require a zoning permit.

Primary Use – The main or principal use to which a building or lot is to be used.

Privately Operated Dump - The non-profit accumulation/disposal of personal property i.e.; garbage, trash, junk, refuse, and slow or non-biodegradable materials.

Professional Office – An office used by a duly New York State licensed/registered architect, attorney, dentist, certified counselor, certified public accountant (CPA), chiropractor, engineer, insurance broker or salesman, massage therapist, optometrist, physician or surgeon, physical therapist, psychologist, real estate broker or salesperson, surveyor, teacher or veterinarian.

Property Line – The legal boundaries of a parcel of property, which may also coincide with a right-of-way line of a road, cart-way, and the like.

Public Utility – Telephone, electric and cable television, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer station; and all other facilities; equipment and structures necessary for conducting a service by a government or a public utility.

## **TOWN OF DARIEN ZONING LAW**

Recreational, Indoor – Includes, but is not limited to: bowling alley, theater, table tennis, and pool hall, skating rink, gymnasium, swimming pool, hobby workshop, arcade, and similar places of indoor recreation.

Recreational, Outdoor – Includes, but is not limited to: golf courses, golf driving range, trap, skeet, and archery range, swimming pool, skating rink, riding stable, tennis court, recreational stadium, skiing facility, hunting preserve, and similar places of outdoor recreation.

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.

Recyclables Handling and Recovery Facility – Recyclables handling, and recovery facility means a solid waste management facility, other than collection and transfer vehicles, at which recyclables are separated from the solid waste stream, or at which previously separated recyclables are collected and which is regulated by 6 NYCRR Part 360.

Rental Hall - Also known as a reception or meeting hall or a banquet hall. A building, facility, room, or portion thereof, which is rented, leased or otherwise made available by contract; to any person or group for a private event or function, that is not open to the public, whether or not a fee is charged.

Restaurant – Any establishment, however designated, at which food is sold for consumption on the premises to patrons seated within an enclosed building. However, a snack bar or refreshment stand at a public, semi-public or community swimming pool, playground, play field or park operated by the agency or group of an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

## TOWN OF DARIEN ZONING LAW

Restaurant-Drive-In – A restaurant at which food is sold for consumption off the premises. For the purposes of this Zoning Law, a restaurant which sells food for both on-premises and off-premises consumption shall be considered a drive-in restaurant.

Retail Trade – Establishment engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Roadside Stand – A direct marketing operation without a permanent structure and only offering outdoor shopping. Such an operation is seasonal in nature and features on-farm produce, as well as, locally produced agricultural products, enhanced agricultural products and handmade crafts.

Rooming House – An owner-occupied dwelling in which more than four (4) persons, either individually or as families, are housed for hire with or without meals.

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

Rotor Diameter – The cross-sectional dimension of the circle swept by the rotating blades.

Satellite Dish – A structure which is designed and /or intended to receive, relay or send digital communications to or from orbiting or geostationary satellites.

Self-Service Storage Facility – A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self-storage facility.

Service Station, Motor Vehicle – See “Motor Vehicle Repair Shop”.

## TOWN OF DARIEN ZONING LAW

Setback – The minimum allowable horizontal distance from a given point or line of reference, such as a thoroughfare right-of-way, water line, or prospective line to the nearest vertical wall or other element of building or structure.

Setback Area – The land base that falls within the specified setback.

Shadow Flicker – The effect when the blades of an operating wind energy conversion unit pass between the sun and observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

Shopping Center – A group of businesses occupying adjoining structures or parcels, having adequate space for loading and unloading and adequate off-street parking.

Sign – Any structure or part thereof, or any device attached to a structure or painted or represented on a structure, which shall display and include any letter, work, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. A sign includes any billboard, but does not include the flag, pennant, or insignia of any nation, or group of nations, or of any state, city or other political unit or of any political, educational, charitable, philanthropic, civic, professional, religious or like campaign, drive, movement or event. However, a sign as designed herein shall not include a similar structure or device located within a building.

Sign, Advertising – A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same lot.

Sign, Commercial – A sign, which directs attention to a business or profession conducted or to products sold upon the same lot.

Sign, Directional – A sign limited to providing information on the location of an activity, business or event.

## TOWN OF DARIEN ZONING LAW

Sign, Limited Purpose – A content neutral sign including real estate for sale signs, real estate for rent signs, yard sale signs, garage sale signs, open house signs community, civic, political, charitable, social, or educational message signs. Such sign shall be treated as a temporary sign.

Sign, Non-Commercial – A sign which identifies a, school, church, cemetery, public park or building, or volunteer fire department facility.

Sign, Portable – A sign, whether on its own trailer, wheels, or otherwise designed to be movable and not structurally attached to the ground, a building, a structure or another sign.

Sign, Temporary – A sign related to a single activity or event having a duration of no more than sixty (60) days.

Sign Area – The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four (4) sides (straight sides) geometric shape, which most closely outlines the said sign.

Site Plan – A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Law, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan.

Small Wind Energy System (SWES) – A wind energy system that is used to generate electricity, has a nameplate capacity of less than forty (40) kilowatts and a total height of one hundred seventy (170) feet or less. Sixty percent (60%) of all electricity or power generated on site by such system is required to be utilized on the same site.

## **TOWN OF DARIEN ZONING LAW**

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.

Special Use Permit – A specifically designated use that would not be appropriate generally without restriction in a zoning district, but which, if controlled as to number, area, location, relation to the neighborhood, or otherwise, in the opinion of the Planning Board, promotes the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity and/or the general welfare. Special Use Permits are approved by the Planning Board and then issued by the Zoning Enforcement Officer once conditions or other requirements are met and necessary fees are paid.

Stable, Private – An accessory building in which one (1) or more units of livestock are kept for private use and not for hire, remuneration or sale.

Stable, Public – A building in which any livestock are kept for remuneration.

Stabling of Farm Animals – A concentration of livestock within a building, structure or other defined area for the purpose of housing or feeding.

Street/Road – A public thoroughfare which has been dedicated or deeded to the public for public use, and which has been improved in accordance with municipal standards.

## **TOWN OF DARIEN ZONING LAW**

Street/Road Grade – The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

Street/Road Right-of-Way Line – That line determining the limit of the highway rights of the public, either existing or contemplated.

Structure – An assembly of materials, forming a construction framed of component structural parts for occupancy or use, including buildings.

Substations – Any electrical facility designed to convert electricity produced by wind turbines to a voltage greater than thirty-five thousand (35,000 KV) for interconnection with high voltage transmission lines shall be located outside of the road right of way.

Swimming Pool – A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a recirculating and/or controlled water supply and a depth of greater than two (2) feet.

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.



## TOWN OF DARIEN ZONING LAW

Temporary Use – An activity conducted for a specified limited period of time, which may not otherwise be permitted by the provisions of this Zoning Law. Examples of such uses are buildings incidental to new construction, which are removed after the completion of the construction work. Temporary Use Permits are approved by the Planning Board and then issued by the Zoning Enforcement Officer once conditions or other requirements are met and necessary fees paid.

Tiny House - Single dwelling units of 400 square feet in area or less.

Total Height – The distance between the ground at normal grade and the highest point of the installed WECU (being the tip of the blade when the blade is in the full vertical position).

Tower – The monopole, freestanding, or guyed structure that supports an activity.

Tower Height – See “Hub Height.”

Transmission Line – An electrical power line or lines that carry sixty-nine thousand (69,000) volts (69 KV) or more which are used to carry electrical energy over medium to long distances rather than directly interconnecting and supplying electrical energy to retail customers.

UL - Underwriters Laboratory, an accredited standards developer in the US.

Uniform Code - the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

Use – The specific purposed for which land, water or a building is designed, arranged, intended or for which it is or may be occupied or maintained.

## TOWN OF DARIEN ZONING LAW

Use Variance – A variance that allows a landowner to put his land to a use that is not permitted under the zoning law. This type of variance may be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance meets four statutorily prescribed conditions. The owner must apply to the Zoning Board of Appeals for a use variance.

Wind Energy Conversion Unit (WECU) – A wind driven machine that converts wind energy into electrical power for private use, sale or resale of generated electricity or for offsite use and is of equal to or greater than forty (40) kW in total nameplate generating capacity regardless of tower height. The WECU includes the tower, turbine, footings, and all equipment associated with individual units including the land area beneath encompassing the equivalent area of the circumference of the rotors.

Wind Energy Conversion System (WECS) – All WECUs, related transformers, electrical conductors, substations, and connection points to transmission or distribution lines.

Yard – An open, unoccupied space on the lot, plot, or parcel of land on which the building stands, which extends the entire length of the front or rear of the interior lot line.

Yard Area, Front – An open, unoccupied space on the same lot with the principal building, extending the full width of the lot and situated between the street/road right-of-way line and the front line of the building projected to the side lines of that lot. Setback line shall be synonymous with the rear limit of the required front yard area.

Yard, Rear – An open, unoccupied space on the same lot with the principal building extending across the full width of the lot and lying between the rear line of the lot and the nearest line of any building on the same lot. The depth of a rear yard shall be measured at right angles to the rear line of the lot, or if the lot is not rectangular, then in the general direction of its side building lines.

## **TOWN OF DARIEN ZONING LAW**

Yard, Side – An open, unoccupied space between the sideline of the lot and the nearest line of the building. It shall extend from the front yard to the rear yard, or in the absence of either, to the street or rear lot lines as the case may be. The width of a side yard shall be measured at right angles to the side line of the lot.

Zoning Board of Appeals – That board appointed by the Town Board, specifically to hear all appeals as provided by these regulations and other duties specifically set forth in this Zoning Law, New York State Town Law or as assigned to it by the Town Board.

Zoning Enforcement Officer (ZEO) – The local administrative official who is responsible for enforcing and interpreting the zoning law.

Zoning Map – A map, adopted by the Town Board, which divides the town into specific zoning districts. The zoning map, implemented through the text of the zoning law, constitutes the blueprint for the development of the town over time.

Zoning Permit – A document signed by the Zoning Enforcement Officer, as required by this Zoning Law, as a condition precedent to the commencement of a use or the erection, construction, reconstruction, restoration, alteration, conversion or installation of a structure or building.

# TOWN OF DARIEN ZONING LAW

## ARTICLE V ESTABLISHMENT OF DISTRICTS

### SECTION 501 DIVISION OF DISTRICTS

For the purposes and provisions of this Zoning Law, the following districts are hereby established.

<b>LDR</b>	Low Density Residential
<b>MDR</b>	Medium Density Residential
<b>REC</b>	Recreational
<b>C</b>	Commercial
<b>I</b>	Industrial
<b>PUD</b>	Planned Unit Development
<b>MU-CC #1</b>	Commercial Center Mixed Use Zone
<b>MU-CC #2</b>	Commercial Center Mixed Use Zone
<b>MU-NC</b>	Neighborhood Center Mixed Use Zone

### SECTION 502 ZONING MAP

The boundaries of all zone districts set forth in this Zoning Law shall be shown on a map bearing date of adoption. Said map shall be filed in the office of the Town Clerk and shall hereafter be “The Official Zoning Map” of the Town. Such map is hereby declared a part of this Zoning Law and shall be duly certified in accordance with Article 16 of the Town Law of the State of New York.

### SECTION 503 AMENDMENT OF MAP

In accordance with the provision of this Zoning Law, changes are made in district boundaries of other subject matter portrayed on the zoning map. Such changes shall be made on the Official Zoning Map promptly after the amendment has been approved by the Town Board, together with an entry on the minutes of such Board meeting as follows: “On (date), by official action of the Town Board, the following

## **TOWN OF DARIEN ZONING LAW**

change (changes) was (were) made in the Official Zoning Map: (brief description of nature of change)”, which entry shall be signed by the Supervisor and attested to by the Clerk. No amendment to this Zoning Law, which involves subject matter portrayed by the Official Zoning Map, shall become effective until such change and entry have been made on said map.

### **SECTION 504      RULES FOR DETERMINING BOUNDARIES**

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

- A. Unless otherwise indicated, the district boundaries are indicated as approximately following platted lot lines; centerlines of streets, highways, alleys or railroads, center lines of streams, reservoirs, or other bodies of water.
- B. Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, highways or railroads, or rights-of-way of same, or the center lines of streams, reservoirs or other bodies of water, or said lines extended, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map.
- C. Where a district boundary line, as appearing on the zoning map, divides a lot in a single ownership at the time of this enactment, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than fifty (50) feet beyond the district boundary line.

# **TOWN OF DARIEN ZONING LAW**

## **ARTICLE VI        GENERAL PROVISION**

### **SECTION 601        APPLICABILITY OF REGULATIONS**

No building shall hereafter be erected, and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged nor shall any land be used for any purpose other than those included among the uses listed as permitted uses in each zone by this Zoning Law and meeting requirements set forth in the appended Schedule. Nor shall any open space contiguous to any building be encroached upon or reduced in any manner, except in conformity to the area and bulk requirements, off-street parking requirements, and all other regulations designated in the Schedule and this Zoning Law for the zone district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this Zoning Law and the Certificate of Compliance shall become void.

### **SECTION 602        PRESERVATION OF NATURAL FEATURES**

In order that the natural features of the Town may be preserved, the following shall be adhered to:

- A. No structure shall be built within fifty (50) feet of the bed of a stream carrying water on an average of six (6) months of the year, or on land subject to periodic overflow.
  
- B. No persons, firm or corporation shall strip, excavate, or otherwise remove topsoil for sale or other use than on the premises from which taken, except in connection with the construction or alteration of a building on such premises and excavating or grading incidental thereto, or except as hereinafter specified (i.e., see provisions for Ponds and Commercial excavations).

## **TOWN OF DARIEN ZONING LAW**

- C. Existing natural features such as trees, brooks, drainage channels, and views shall be retained. Whenever such features interfere with the proposed use of such property, a retention of the maximum amount of such features consistent with the use of the property shall be required.

### **SECTION 603 REGULATIONS APPLICABLE TO ALL DISTRICTS**

The following regulations shall be applicable to all districts:

- A. One Principal Building and Use Per Lot – There shall not be more than one (1) principal building and one (1) principal use on any one lot in the Low Density residential (LDR), and the Medium Density Residential (MDR) Districts except as provided for in the following:
  - 1. An approved multifamily dwelling project.
  - 2. A single-family dwelling accompanying a non-residential permitted use on a lot in Low Density Residential (LDR) and Medium Density Residential (MDR) Districts.
  - 3. A single-family dwelling accompanying a non-residential use requiring a special use permit if approved by the Planning Board as part of the Special Use Permit application process.
  - 4. A permitted accessory use, building and/or structure by itself may be allowed on a parcel either prior to, without establishment of a primary use, provided it conforms with all applicable provisions of this Zoning Law.
- B. An accessory building attached to a primary building shall comply in all respects with the yard requirements of this Zoning Law for primary building.

## TOWN OF DARIEN ZONING LAW

- C. Every principal building shall be built upon a lot with frontage upon a public street improved to meet the Town's requirements. No yard or other open space provided about any building for the purpose of complying with the provisions of this Zoning Law shall be considered to provide a yard or open space for any other building.
- D. At the intersection of two (2) or more streets, no hedge, solid fence or wall (other than a single post or tree) which is higher than three (3) feet above curb level, nor any obstruction to vision, shall be permitted in the triangular area formed by the intersecting street lines and a line joining each thirty (30) feet distance from said intersection along said street line.
- E. In the MDR and LDR Districts, the first twenty-five (25) feet of a front yard shall not be used for the open storage of boats, vehicles, travel trailers or any other equipment except for vehicular parking on driveways.
- F. Not more than one (1) registered truck/trailer combination measuring no more than 102.36 inches wide (not including safety devices and rear view mirrors) x 80 feet long (front bumper of truck to rear of trailer) may be parked on the same lot in the MDR and LDR Districts. Additionally, not more than one (1) truck (a non-cargo carrying power unit) alone nor (1) semi-trailer alone may be parked on the same lot in an LDR or MDR District.
- G. For the purpose of regulating the location of accessory buildings on corner lots, and on lots extending through between two parallel streets, all portions of a corner lot or a through lot which front a public street shall be subject to the front yard requirements of the zoning district in which said corner lot or through lot is located.



## TOWN OF DARIEN ZONING LAW

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

<u>Residential Uses Per Dwelling Unit</u>	<u>Square Feet</u>
One-Family	1,040
Two-Family	750
Multi-Family	600

- I. Where a lot is formed hereafter from the part of a lot already occupied by a building, such separation shall be affected in such manner as not to impair conformity with any of the requirements of this Zoning Law with respect to the existing building and all yards and other required spaces in connection therewith, and no permit shall be issued for the erection of a building on the new lot created unless it complies with all the provisions of this Zoning Law.
- J. The provisions of this Zoning Law shall not apply to customary local utility distribution or collection lines for water, gas, telephone or electric service. all facilities such as pumping station, repeater station, and electric substations, which require a structure above grade, shall be subject to the yard requirements of this Zoning Law.
- K. Off-street parking facilities shall adhere to the following:
1. Off-street parking space shall be provided as further specified in this Zoning Law, and shall be furnished with necessary passageways and driveways. All such space shall be deemed to be required space on the lot on which it is situated, and shall not be encroached upon or reduced in any manner. All parking areas, passageways, and driveways (except where provided in connection with one-family residences) shall be surfaced with a dustless, durable, all-weather surface marked for car spaces, and shall be adequately drained, all subject to the approval of the Town Engineer.

## TOWN OF DARIEN ZONING LAW

2. For the purpose of this Zoning Law, a parking space shall be an area ten (10) feet wide and twenty (20) feet long, exclusive of passageways and driveways appurtenant thereto and providing access thereto.
  3. None of the off-street parking facilities required in the Zoning Law shall be required for any existing building or use, unless said building or use shall be enlarged.
  4. The collective provision of off-street parking areas by two (2) or more buildings or used located on adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately and further provided that the land upon which the collective facilities are located is owned or leased by one (1) or more of the collective users.
  5. All parking areas and appurtenant passageways and driveways serving commercial uses shall be illuminated adequately during the hours between sunset and sunrise.
  6. Adequate shielding shall be provided by commercial users to protect adjacent residential zones from the glare of such illumination and from that of automobile headlights.
  7. Where off-street parking areas abut residential zones, a planted buffer strip at least ten (10) feet wide and six (6) feet high shall be provided between the parking area and the adjoining property. The Planning Board may waive this requirement.
- L. Any fence erected in the Town shall adhere to the following:
1. Fences can be erected in town without a Zoning permit; however, they must still abide by the Zoning Law requirements.

## TOWN OF DARIEN ZONING LAW

2. Fences may be erected, altered or reconstructed to a height not to exceed three (3) feet above ground level when located within twenty (20) feet of the street right-of-way.
  3. Fences may be erected, altered or reconstructed to a height not to exceed eight (8) feet above ground level when located more than twenty (20) feet from the street right-of-way.
  4. Fences shall be erected with the “good” side facing towards neighboring properties.
  5. These restrictions shall not be applied so as to restrict the erection of a wall for a purpose of retaining earth.
  6. Temporary fencing shall not exceed four (4) feet in height and shall be at least fifty (50) percent open construction. The use of such fencing shall be limited to time periods not to exceed six (6) months at a time.
- M. A prohibited use includes any use not specifically permitted in a zoning district established by this Zoning Law and is hereby specifically prohibited from the district, and it is further provided that the following uses and activities shall be specifically prohibited in any zone in the Town of Darien.
1. Any use of any building or premises in such a manner that the health, morals, safety or welfare of the community may be endangered.
  2. Any use, which emits excessive and objectionable amounts of dust, fumes, noise, odor, smoke, vibration, glare or waste products.
  3. All billboards, signboards, advertising signs or devices not expressly related to the business conducted on the premises or otherwise specifically permitted by this Zoning Law.

## **TOWN OF DARIEN ZONING LAW**

4. Residential structures (other than the provisions for ECHO and temporary housing) without permanent foundations or without permanent connection to utilities.
  5. Privately operated dumps for the disposal or garbage, trash, junk, refuse and similar materials.
  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.
- N. In C, I and REC Districts, outside storage of equipment shall not take place within the minimum requirement front yard area other than as set forth in subparagraph "O" as follows.
- O. Commercial and Home Occupation uses shall not display or sell items within the required front yard unless a special use permit has been issued by the Planning Board which specifies to what extent, where and when merchandise can be displayed within the front yard.
- P. In addition to the minimum required lot frontage(s) set forth in this Zoning Law, all proposals shall also comply with New York State Town Law Section 280-a regarding access to emergency equipment (fire, police, ambulance, etc.) from the public highway to the building(s) and/or structure(s) on a lot.

### **SECTION 604 PERMITTED MODIFICATIONS**

- A. Height Modifications

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1. The height limitations of this Zoning Law shall not apply to flagpoles, radio or television antennae, transmission towers or cables, spires or cupolas, chimneys, elevator or stair bulkheads, penthouses, parapets or railings, water tanks or cooling towers, skylights, solar panels or similar structures, provided that such structures are located on the roof and in their aggregate coverage occupy no more than ten (10) percent of the roof area of the building.
  2. District building height regulations shall not apply to radio or television antennas, commercial communications towers, production model wind energy conversion systems (WECS), silos, water tanks, and domes not used for human occupancy.
  3. The provisions of this Zoning Law shall not apply to prevent the erection of a parapet wall or cornice for ornament, extending above the height limitations of this Zoning Law by not more than five (5) feet. Public and quasi-public buildings, schools, churches and other similar permitted uses shall increase the front, rear and side yards by one (1) foot for each foot by which such buildings exceed the height limit herein established for such zone in which it is located.
- B. Undersized Lots – Any parcel of land with an area or width less than prescribed for a lot in the zone in which such lot is located, which parcel was under one (1) ownership at the date of the adoption of this Zoning Law, and the owner thereof owns no adjoining land, may be used as a lot for any purpose permitted in the zone, provided that the minimum area requirements for such lot shall be twenty thousand (20,000) square feet of lot size and one hundred (100) feet of lot width; and further provided that all other regulations prescribed for the zone by this Zoning Law are complied with and the applicant has obtained the approval of the Genesee County Health Department.

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## C. Permitted Yard Modifications

1. Front Yards – In such cases in residential zones where the frontage on the same side of the street within five hundred (500) feet is fifty (50) percent or more developed, then the required front yard for a new structure may be modified to the average for such existing development. Otherwise, the requirements of Zoning Schedule A shall apply.
2. Side Yards – In the case of lots which comply with the provisions for modifications of Section 604 B, combined total side yard requirements, as specified in Schedule A, shall be reduced by six (6) inches for each foot by which a lot is less than the minimum lot width requirement specified in Schedule A for the zone in which located. In any case, the side yard area for either side yard shall not be reduced to less than fifty (50) percent of the requirements of the Schedule.

## **SECTION 605 LOCATION OF ACCESSORY BUILDINGS, STRUCTURES AND SATELLITE DISHES**

### A. Accessory Buildings

Accessory buildings are permitted as follows:

1. Accessory buildings with a total floor area of one hundred fifty (150) square feet or less and a building height of not more than nine (9) feet shall be permitted not closer than five (5) feet of the rear and side lot lines and shall not be permitted within the required front yard area.
2. Accessory buildings with a total floor area greater than one hundred fifty (150) square feet or a building height of greater than nine (9) feet shall be located in compliance within the required yard areas of the respective district.

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- B. Accessory Structures (other than buildings) – Accessory structures, other than buildings, are permitted as follows:
1. Accessory structures equal to or less than fifteen (15) feet in height, including satellite dishes with a diameter of greater than forty (40) inches but less than thirteen (13) feet, shall be permitted not closer than five (5) feet of the rear and side lot lines and shall not be permitted within the required front yard area. Satellite dishes with a diameter of forty (40) inches or less shall be exempt from this section.
  2. Accessory structures greater than fifteen (15) feet in height, including production model Wind Energy Conversion Systems (windmills) and satellite dishes greater than thirteen (13) feet in diameter, shall be located in compliance with the required yard area of the respective district.
  3. All swimming pools whose capacity is three thousand (3,000) gallons or more shall be located in other than the front yard and shall be set back a minimum of twenty-five (25) feet from any property line. Pools shall be installed, wired and enclosed in compliance with the New York State Uniform Fire Prevention and Building Code.
  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.

### **SECTION 606 STABLING FARM ANIMALS**

- A. There shall be no stabling livestock or storage of manure, fertilizer, or similar odor or dust producing substance within one hundred (100) feet of a lot line of a lot containing a dwelling or other residence.

## **TOWN OF DARIEN ZONING LAW**

- B. Disposal of animal wastes shall be in a manner which is acceptable to the Genesee County Soil and Water Conservation District (GCSWCD). Adherence to such acceptable animal waste disposal practices shall be a condition to the continued stabling of any farm animals.
- C. A minimum of four (4) acres of land shall be required to stable one (1) unit of livestock. Each additional unit of livestock shall require an additional two (2) acres of land until the minimum of ten (10) acres has been met, designating the property as a farm.

### **SECTION 607 RENTAL HALL PERFORMANCE STANDARDS**

- A. The application shall state the maximum seating capacity of the rental hall. Any expansion or enlargement of the capacity shall require a new permit.
- B. Membrane structures, tents or other accessory or temporary structures used to increase the maximum seating capacity are not permitted unless approved in the application and site plan review.
- C. Food preparation and kitchens may be permitted on site but are an accessory use to the rental hall. All kitchens and food preparation are subject to approval by the Genesee County Health Department.
- D. Alcoholic beverages may be permitted on site but must comply with provisions of a Catering Establishment under New York State Liquor Authority.
- E. Pyrotechnics may be permitted by issuance of an Operating Permit by The Town of Darien.
- F. All rental halls shall be connected to public water and public sewer supplies where available or be approved by the Genesee County Health Department.



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- G. Restroom facilities for use by the rental hall shall be provided on premises.
- H. Parking must comply with Section 603 of this chapter and be located entirely on-site.
- I. The proposed use shall not create a traffic hazard and is subject to review by the Town Highway Superintendent.
- J. Site Plan review will specifically address each of the following items:
  - 1. Maximum lot coverage as outline in Zoning Schedule A will not be exceeded for all buildings.
  - 2. Permitted hours of operation.
  - 3. Permissiveness of noise, specifically, acceptability and permitted hours of amplified music and acceptability and permitted hours of non-amplified music.
  - 4. Permitted use of inside space vs outdoor (open air) spaces as places of assembly.
  - 5. Use separation between rental hall and adjacent land uses, specifically as permitted in LDR and MDR districts. Yard setbacks will be doubled as outlined in Zoning Schedule A.
  - 6. Signage.
  - 7. Lighting.

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## ARTICLE VII REQUIREMENTS BY DISTRICTS

### SECTION 701 LDR-LOW DENSITY RESIDENTIAL DISTRICT

The LDR is designed primarily to provide an area for scattered residential development on larger sized lots in order to maintain the low-density nature of those specific areas.

#### A. Permitted Primary Uses

1. Single-family dwelling
2. Two-family dwelling
3. Church and other similar places of worship, parish house, convent, cemetery, and other facilities.
4. Public park, playground, and facilities deemed appropriate by the Town Board
5. Farms and related farming activities, buildings and structures, excluding animal waste storage facilities (see Subsection C of this Section)

#### B. Permitted Accessory Uses

1. Customary residential storage buildings/structures
2. Other customary accessory residential structures such as private swimming pools, fireplaces, etc.
3. Private stable
4. Satellite dish
5. Roadside stand (See Sec. 809)
6. Dog Kennel (parcel of property must be ten (10) or more acres in size)

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- C. Uses Permitted with A Special Use Permit
1. Public utility structure
  2. Motor vehicle service station and repair shop (See Sec. 804)
  3. Large Scale Solar Energy System
  4. Cluster residential development (See Sec. 806)
  5. Country club and golf course
  6. Camping grounds
  7. Club
  8. Pond (See Sec. 815)
  9. Multifamily dwelling
  10. Public stable
  11. Animal shelter
  12. Dog kennel (See Section 820)
  13. Production model WECS
  14. Bed and breakfast
  15. Rooming house
  16. Noncommercial part-time recreation uses, such as a cabin
  17. Battery Energy Storage System (See Sec. 811)
  18. Animal waste storage facility (See Sec. 810)
  19. Commercial excavation (See Sec. 805)
  20. Child day care facility
  21. Adult care facility
  22. Farm equipment sales, service and repair
  23. Professional office (not exceeding 2,500 sq. ft.)
  24. Commercial communication tower
  25. Wind energy conversion systems (WECS) (See Sec. 816)
  26. Small wind energy system (SWES) (See Sec. 817)
  27. Home occupation (See Section 808)
  28. Landscaping and Horticultural Services and related activities
  29. Rental Hall (See Sec. 607)

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## SECTION 702 MDR – MEDIUM DENSITY RESIDENTIAL DISTRICT

The MDR District is designed primarily to provide an area for somewhat concentrated residential development.

### A. Permitted Primary Uses

1. Single-family dwelling
2. Two-family dwelling
3. Church and other similar place of worship, parish house, convent, cemetery, and other such facilities
4. Public park, playground and facilities deemed appropriate by the Town Board
5. Farms and related farming activities, buildings and structures, excluding animal waste storage facilities (See Subsection C of this Section)

### B. Permitted Accessory Uses

1. Customary residential storage buildings/structures
2. Other customary residential structures such as swimming pool, fireplace and the like
3. Roadside stand (See Section 809)

### C. Uses Permitted with a Special Use Permit

1. Public utility structure
2. Country club and golf course
3. Cluster residential development (See Section 806)
4. Multifamily dwellings
5. Bed and Breakfast
6. Rooming house
7. Private stable

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8. Club
9. Production model WECS
10. Satellite dish
11. Funeral home
12. Child day care facility
13. Adult care facility
14. Professional office (not exceeding 2,500 sq. ft.)
15. Small wind energy system (SWES) (See Section 817)
16. Animal shelters (See Section 821)
17. Home occupation (See Section 808)
18. Dog kennel (See Section 820)
19. Rental Hall (See Section 607)

### **SECTION 703 REC – RECREATIONAL DISTRICT**

The REC District is designed to provide areas within the Town for large scale active and/or passive recreational activities.

#### **A. Permitted Primary Uses**

Public and commercial recreational facilities including, but not limited to, amusement parks, camping facilities, theaters, swimming facilities, retail stores, sports field and restaurants, which are not directly accessible from public roads. Site plan review by the Planning Board shall be required in accordance with Section 908.

#### **B. Permitted Accessory or Secondary Uses (Site Plan Review and Approval Not Required)**

Buildings, structures and amusement rides under two thousand five hundred (2500) square feet and under thirty-five (35) feet high and not directly accessible from the public highway and wholly within the existing facility, subject only to review by the Zoning Enforcement Officer.

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## C. Uses Permitted with a Special Use Permit

1. Public and commercial recreation facilities including, but not limited to, amusement parks, camping facilities, theaters, swimming facilities, retail stores, sports fields, ponds and restaurants, which are directly accessible from public roads.
2. Large Scale Solar Energy System
3. Rental Hall (See Sec. 607)
4. Battery Energy Storage System (See Sec. 811)

## D. Existing Residential Uses

Residential uses legally existing on the date of adoption of this Zoning Law, may be altered, repaired, rehabilitated, or remodeled provided such changes follow the appropriate area criteria found in the MDR District.

## SECTION 704 C-COMMERCIAL DISTRICT

The C District is designed to provide areas within the Town for concentrations of commercial uses. These districts are located along major highways to provide for maximum development potential.

### A. Permitted Primary Uses

1. Hotel, motel
2. Restaurant
3. Retail use and/or service
4. Personal service
5. Business and professional office
6. Bank and/or financial institution
7. Wholesale, warehouse and distribution center (enclosed-carried on entirely within a building with no outside storage)
8. Funeral home

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9. Contractor's yard
10. Farm equipment sales and service
11. Recreational vehicles sales and service
12. Self-service storage facility

### B. Permitted Accessory Uses

1. Accessory buildings and uses
2. Home occupation (See Sec. 808)
3. Roadside stand (See Sec. 809)

### C. Uses permitted with a Special Use Permit

1. Indoor recreation
2. Club
3. Drive-in service
4. Gasoline station-market (See Sec. 804)
5. Gasoline station (See Sec. 804)
6. Motor vehicle sales and/or repair shop (See Sec. 804)
7. Truck stop terminal
8. Public utility
9. Public garage
10. Animal hospital
11. Commercial excavation (See Sec. 805)
12. Child day care facility
13. Adult care
14. Adult business
15. Motor vehicle dismantling (See Sec. 813)
16. Outdoor recreation
17. Enclosed warehouse (carried on entirely within a building, no outside storage)
18. Multi-family dwellings

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19. Accessory residential uses (when accessory to a commercial use located on the same lot)
20. Small wind energy system (SWES) (See Sec. 817)
21. Light industrial use
22. Rental Hall (See Sec. 607)
23. Large Scale Solar Energy System
24. Battery Energy Storage System (See Sec. 811)

### **D. Existing Residential Uses**

Residential uses legally existing on the date of adoption of this Zoning Law, may be altered, repaired, rehabilitated, or remodeled provided such changes follow the appropriate area criteria found in the MDR District.

## **SECTION 705 MU-CC-COMMERCIAL CENTER MIXED USE ZONE DISTRICT**

The MU-CC District is designed to accommodate development of commercial centers. Commercial centers are activity centers that may vary in size and service area. They can service several neighborhoods within a surrounding residential area with a mix of retail, office, civic and shall have attached residential uses.

### **A. Commercial Mixed-Use Zone Defined**

1. Maximum depth of three hundred (300) feet, measured from the edge of the road right-of-way. The Commercial Center Mixed Use Zone shall not exceed the depth of an existing lot of less than three hundred (300) feet (i.e., a lot of which dimensions are three hundred (300) feet frontage equal side yard lot lines of two hundred seventy-five (275) feet and a rear lot line of three hundred (300) feet. In this case, the Commercial Center Mixed Use Zone shall not exceed two hundred seventy-five (275) feet.



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2. MU-CC #1 – The Low-Density Residential area from north bounds of Darien Tax Map # 2-1-42, southerly along the east side of Route 77 (Allegany Road) to the south bounds of Darien Tax Map # 11-1-5.12. (Excluding Flagley Cemetery and State Park Property). The Low Density Residential area from north bounds of Darien Tax Map # 2-1-54.22, southerly along the west side of Route 77 (Allegany Road) to the south bounds of Darien Tax Map # 10-1-16.2.
3. MU-CC #2 – The Low-Density Residential area from the east bounds of Darien Tax Map # 9-1-16.114, westerly along Broadway Road to the west property line of Darien Tax Map # 9-1-16.114. The depth of the area shall be measured from Broadway Road, northward three hundred (300) feet.

### B. Special Use Permit Requirement

All permitted uses identified in paragraph C below shall require a Special Use Permit Approval in accordance with this Zoning Law, Section 908 B.2. And Section 908 D. Special Use Permit.

### C. Uses Permitted with a Special Use Permit

1. Hotel, motel
2. Restaurant
3. Retail use and/or service
4. Indoor recreation
5. Club
6. Drive-in service
7. Gasoline station-market (See Sec.4)
8. Gasoline station (See Sec. 804)
9. Motor Vehicle sales and/or repair shop (See Sec. 804)
10. Public utility
11. Animal Hospital

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12. Child day care facility
13. Adult care
14. Outdoor recreation
15. Accessory residential uses  
(when accessory to a commercial use located on the same lot)
16. Personal service
17. Business and professional office
18. Bank and/or financial institution
19. Distribution center  
(enclosed-carried on entirely within a building with no outside storage)
20. Funeral Home
21. Agricultural equipment sales and service
22. Recreational vehicles sales and service
23. Self-service storage facility
24. Rental Hall (See Sec. 607)

### D. Permitted Accessory Uses

1. Accessory buildings and uses
2. Roadside stand (See Sec. 809)

### E. Existing Residential Uses

Residential uses legally existing on the date of adoption of this Zoning Law, may be altered, repaired, rehabilitated, or remodeled provided such changes follow the appropriate area criteria found in the LDR District.

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## SECTION 706 MU-NC-NEIGHBORHOOD CENTER MIXED USE ZONE DISTRICT

The MU-NC District is designed to accommodate development of neighborhood centers. Neighborhood centers are intended to be small, low impact, limited use centers. They are typically pedestrian and bicycle-oriented with limited parking for motor vehicles. Neighborhood centers are generally well integrated into the fabric of the surrounding residential area. They are intended to serve as an amenity for residents of the immediate neighborhood and support a variety of uses.

- A. MU-NC Zoning Overlay District. The MU-NC overlies the following areas:
1. The Medium Density Residential area from the north bounds of Darien Tax Map # 11-1-95, southerly along the east side of Route 77 (Allegany Road) to the south bounds of Darien Tax Map # 11-1-61.11. The MU-NC shall not overly the Commercial District identified on the Zoning Map in View #2.
  2. The Medium Density Residential area from the north bounds of Darien Tax Map # 10-1-17, southerly along the west side of Route 77 (Allegany Road) to the south bounds of Darien Tax Map # 10-1-52.
- B. Special Use Permit Requirement – All permitted uses identified in paragraph C. below, shall require Special Use Permit approval in accordance with this Zoning Law, Section 908 B.2. and Section 908 D. Special Use Permit.
- C. Uses Permitted with a Special Use Permit – Neighborhood centers should generally include a limited range of convenience goods and services in keeping with the character and scale of the surrounding neighborhood. Primary uses include a limited mix of small-scale neighborhood-serving retail, office, service, civic and attached residential uses. Neighborhood centers may also include establishments such as professional offices, beauty shops and restaurants. Auto-related uses or other uses that produce noxious fumes

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or excessive light and noise and drive-up and drive-through uses are prohibited within a neighborhood center. Appropriate residential types may include second floor units located above retail uses. Drive-up and drive-through uses are excluded.

- D. Existing Residential Uses – Residential uses legally existing on the date of adoption of this Zoning Law, may be altered, repaired, rehabilitated, or remodeled provided such changes follow the appropriate area criteria found in the MDR District.

### **SECTION 707 I – INDUSTRIAL DISTRICT**

The I District is designed to provide areas within the Town which are appropriate for industrial type uses. In limiting industrial uses to I District; it is the Town's intention to minimize the potential adverse impacts of such uses.

#### **A. Permitted Primary Uses**

1. Enclosed manufacturing industries (enclosed-carried on entirely within a building, no outside storage)
2. Enclosed warehouse or wholesale use (enclosed-carried on entirely within a building-no outside storage)
3. Enclosed service and repair
4. Machinery and transportation equipment, sales, service and repair
5. Enclosed industrial processes and service
6. Freight or trucking terminal
7. Contractor's yard
8. Public garage
9. Self-service storage facility

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

1. Accessory buildings, structures and uses

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- C. Uses Permitted with a Special Use Permit
  - 1. Gasoline stations (See Sec. 804)
  - 2. Gasoline station-market (See Sec. 804)
  - 3. Commercial excavation (See Sec. 805)
  - 4. Junkyard (See Sec. 807)
  - 5. Public utility
  - 6. Recyclables handling and recovery facility
  - 7. Disposal transfer station
  - 8. Unenclosed service and repair
  - 9. Unenclosed industrial processes and services
  - 10. Pond (See Sec. 815)

### **SECTION 708 PLANNED UNIT DEVELOPMENT (PUD)**

The purpose of the Planned Unit Development is to permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities, to provide harmonious land uses which offer a high level of amenities, to permit a mixture of residential and/or nonresidential areas, and to preserve natural and scenic qualities of the site during the development process.

- A. Procedure for Creation of A PUD District
  - 1. The owner of any tract of land in the Town of Darien consisting of a minimum of five (5) contiguous acres, may petition the Town Board through the Planning Board to designate the property described in the petition as a PUD District.

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2. The petition shall contain the exact name and address of the petitioner and reference records in the office of the Genesee County Clerk at which the deed conveying the property in question to the petitioner is recorded.
3. A PUD District may be created by the Town Board in accordance with the procedures detailed in Subsection B of this section.

### B. Procedure for Approval

1. Pre-Application Conference – Before submission of a preliminary application for approval as a Planned Unit Development, the developer is encouraged to meet with the Town Planning Board to determine the feasibility and suitability of his application before entering into any binding commitments or incurring substantial expenses of site plan preparation.
2. Preliminary Plan (Rezoning)
  - a. Planning Board Review and Approval – A preliminary plan application shall be submitted to the Planning Board at least fifteen (15) days prior to a regularly scheduled meeting.
    - (1) Within sixty-two (62) days of that regular scheduled meeting, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure by the Planning Board to act within the required time period shall constitute approval and the application shall be forwarded to the Town Board.
  - b. Submission Requirements – The applicant shall submit six (6) sets of such plans, drawings, elevations, and specifications as may

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be necessary and comparable to the requirements of subdivision plat approval. These six (6) sets shall be submitted to the Zoning Enforcement Officer. The preliminary plan shall be accompanied by a detailed justification for the proposal including such maps, charts and written material necessary for the Board to make an impartial judgment on the suitability and impact of the proposed PUD for the Town. Such material shall include, but not be limited to the following:

- (1) A mapped preliminary development plan of the property covered by the petition showing the approximate size and location of the various development areas (road rights-of-way, single-family housing areas, etc.) the number of residential structures and dwelling units within each residential area, the approximate square footage of non-residential use within each non-residential area and the amount of open space.
- (2) A written description of the proposal including the major planning assumptions and objectives, the probable effect on adjoining properties, the effect on the overall Town development plan and the effect on this Zoning Law.
- (3) Such additional written material, graphs or charts as are necessary to present the total number of acres in the site, the number and type of housing units, the gross and net residential densities, the approximate selling and/or rental prices of the units, and square feet of non-residential floor area including the approximate selling and/or rental price, the development

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schedule expressed in units per month (or year or any other appropriate time sequence), the phasing plan (if any), the approximate completion date of the entire project, and the estimated total construction cost of the project upon completion.

- (4) Such other written or graphic material as is necessary for the Board to judge the impact of the proposal on the Town. Such material shall include, but not be limited to the need for new public facilities and the adequacy of existing facilities including a statement of the intent to which the applicant intends to provide needed facilities, a fiscal impact statement including a summary of new costs and revenues to the Town due to the development, the projected new population, and the method of assuring that all open spaces will be permanently maintained and devoted to open space uses.
- c. Review Consideration – In review of the preliminary plans, the Planning Board shall consider the manner with which the proposal fits the general pattern of land use established by the Zoning Law, and the protection of the established and permitted uses in the area. It shall consider: the location of main and accessory buildings and their relation to one another, the circulation pattern of the site, and the amount, location, and access of parking and off-street loading space facilities; the height and bulk of buildings; the provision of open spaces, landscaped areas, signs, and similar features of the site plan; and the safeguards provided to minimize possible detrimental effects of the proposed development on adjacent property and the surrounding neighborhood; the manner of conformance with the official development policies of the Town; the effect on schools and other municipal facilities; and the manner in which natural and scenic characteristics of the site are preserved.



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- d. Town Board Review and Approval – Upon receipt of the Planning Board’s recommendations, the Town Board may, after a public hearing and forwarding the proposed zone change to the County Planning Board for review, amend the Zoning Law so as to establish and define the boundaries of the Planned Unit Development. If the rezoning request is approved to the PUD, such action does not authorize improvements to the rezoned land.
3. Final Plan
    - a. Ownership – Before final approval of the PUD plan, the applicant must show evidence of the full legal ownership in or of the land.
    - b. Planning Board Review and Approval – Upon approval of the zoning change, the applicant has one (1) year in which to submit a final plan to the Planning Board for review and recommendation to the Town Board. This submittal must be presented at least fifteen (15) days prior to the next regularly scheduled meeting of the Planning Board. Within sixty-two (62) days of that regularly scheduled meeting, the Planning Board shall recommend approval, approval with conditions or disapproval of the application to the Town Board.
    - c. Submission Requirements – The applicant shall submit detailed site plans comparable to the requirements for final approval of a subdivision plat.
    - d. Town Board Review and Approval – The Town Board shall make final approval in accordance with official town development policies and may impose reasonable conditions relating to that plan.

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## C. Design Standards

1. Area Requirements – Area, yard, coverage, height, density and supplementary regulation requirements shall be comparable to minimum requirements in appropriate zoning districts for each specific use, except each proposed lot's front line shall be measured from the setback of the front of the dwelling which is intended to be built from side lot line to the opposite side lot line and where the Planning Board finds that it is in the public interest to modify these requirements.
2. Traffic and Circulation – All proposed public roads should meet municipal design and construction specifications. Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system.
3. Common Open Space – All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:
  - a. Public dedication
  - b. Establishment of a Homeowners Association
  - c. Retention of responsibilities, control and maintenance by the developer
4. Performance and Maintenance Bonds – Performance and maintenance bonds may be required at the discretion of the Town Board.

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## ARTICLE VIII SUPPLEMENTARY REGULATIONS

### SECTION 801 OFF-STREET PARKING REQUIREMENTS

For every building hereafter erected, altered or changed in use there shall be provided at least the minimum number of off-street parking spaces set forth below. All off-street parking shall be designed in such a manner as to allow vehicles to exit onto the road without backing out on to it.

#### A. Residential Uses

1. One (1) and two (2) family dwellings – Two (2) parking spaces for every dwelling unit.
2. Multi-family dwellings – One and one-half (1 ½) parking spaces for every dwelling unit.
3. Home Occupation – The number of parking spaces required of the existing residential uses (see above) plus whatever additional parking spaces deemed necessary by the Planning Board.

#### B. Non-Residential Uses

1. Motels, hotels and rooming houses – One and one-half (1 ½) parking spaces per sleeping or dwelling unit plus one (1) space for each employee.
2. Barber and beauty shops – Two (2) parking spaces per station or chair plus one (1) space for each employee.
3. Business and professional offices, retail and service shops – One (1) parking space for every-one hundred fifty (150) square feet of building area plus one (1) space for each employee.

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4. Stores for the sale of furniture, appliances, or hardware – One (1) parking space for every three hundred (300) square feet of building area, plus one (1) space for each employee.
5. Supermarkets, self-service food stores- One (1) parking space for each one hundred (100) square feet of building area plus one (1) space for each employee.
6. Motor vehicle sales, farm equipment sales – One (1) parking space per every three hundred (300) square feet of building area.
7. Restaurant, cafeterias, barns, taverns -One (1) space for every three (3) seats for customers plus one (1) space for each employee.
8. Bowling alleys – Eight (8) parking spaces for each bowling lane.
9. Laundromats – One (1) parking space for every two (2) washing machines.
10. Churches similar public meeting places – One (1) parking space for every four seats in the main assembly unit plus one (1) space for each employee.
11. Clubs – One (1) parking space for every four (4) seats for members or customers plus one (1) space for each employee.
12. Industrial uses – One (1) space for each employee.

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13. Required off-street parking area for the above permitted uses may, under unusual circumstances and hardship, be located off-site provided that the parking area is not more than four hundred (400) feet from the premises of the principal building or use to be served by such areas, and provided that the owner or owners of said off-site parking areas relinquish all development rights over this property until such time that a parking space is provided elsewhere.

### C. Off-Street Loading and Unloading Requirements

1. Truck loading and unloading facilities shall be provided on the property to permit the transfer of goods in other than the front yards, customer parking area, or public street. A landscaping screen or no less than six (6) feet in height shall be required where off-street loading areas abut residential zones. Such off-street loading areas shall have access to a public alley or street.
2. Number of spaces required is as follows:
  - a. Any business uses with less than three thousand (3,000) square feet in total floor area; none.
  - b. For structures containing more than three thousand (3,000) square feet but less than twenty five thousand (25,000) square feet of floor area: one space (at least ten (10) feet wide and sixty (60) feet long) for each twelve thousand five hundred (12,500) square feet.
  - c. For structures containing twenty five thousand (25,000) square feet or more of gross floor area, the number of spaces to be provided shall be as specified in the following table:

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Square Feet	Number of Spaces
25,000 – 40,000	2
40,001 – 100,000	3
100,001 – 160,000	4
160,001 – 240,000	5
240,001 – 320,000	6
For each additional 100,000 Or fraction thereof	1 additional

3. Amount of area required for each loading space – Except as specified in Section 801, Subsection C, 2, a; each required off-street loading and unloading space shall be at least (10) feet wide, sixty (60) feet long and fourteen (14) feet high. Such space shall be clear and free of obstructions at all times.
  
4. Location of off-street loading area- Required off-street loading areas in all cases shall be located on the same lot or parcel of land as the structure they are intended to serve. In no case shall the required off-street loading space be considered as part of the area provided to satisfy off-street parking requirements as listed herein.

### SECTION 802      SIGNS

#### A.      General Provisions

Every sign, other than those provided for in Subsection B of this Section, shall require a zoning permit. All signs shall be designed and located in such a manner as to:

1.      Not impair public safety.
  
2.      Not restrict clear vision between a sidewalk and street or obstruct line-of-sight for vehicles entering, exiting or using the highway.

## TOWN OF DARIEN ZONING LAW

3. Not to be confused with any traffic sign or signal.
4. Withstand a wind pressure load of thirty (30) pounds per square foot.

A steady light may illuminate signs provided that lighting does not directly illuminate adjacent property. Flashing, oscillating and revolving signs are not permitted, unless necessary for public safety or welfare. Only signs installed by a governmental agency or required by a governmental agency, law or regulation, are permitted within the right-of-way for a public highway.

### B. Signs Permitted in All Districts without a Zoning Permit

1. The signs listed below are permitted in any district provided they are not placed within any public right-of-way. House numbers and resident's names may appear on mailboxes located within the public right-of-way.
2. One (1) number and/or name plate identifying residents, mounted on house or apartment not exceeding one (1) square foot in area.
3. One (1) lawn sign identifying residents, not exceeding one (1) square foot, or two (2) square feet if double-faced. Such signs are to be non-illuminated except by a light, which is an integral part of a lamppost if used as a support, with no advertising message thereon.
4. A limited purpose sign shall not exceed twelve (12) square feet and shall not be located less than ten (10) feet from a lot line. When applicable, limited purpose and/or temporary signs shall be removed within ten (10) days after the activity, event or function ends. Limited purpose and/or temporary signs used more than sixty (60) consecutive days per year shall require the issuance of a zoning permit and shall comply with the regulations for the respective zoning district where it is located.

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5. Signs necessary for public safety and welfare.

### C. Non-Conforming Signs

1. Non-conforming signs shall be removed at the expense of the owner when any use of the property on which the sign is located is discontinued.
2. Non-conforming signs may not be enlarged, extended, relocated or altered in any way, except to make them conform to provisions of this Zoning Law. This provision shall not restrict routine maintenance of non-conforming signs involving replacement of electrical parts and repainting.

### D. Signs Permitted in Medium Density, Neighborhood Center Mixed Use (MU-NC) and Low Density Residential Districts.

The following signs are permitted in MDR, MU-NC and LDR Districts upon issuance of a zoning permit.

1. One (1) home occupation sign not exceeding twelve (12) square feet in area.
2. One (1) non-commercial sign, not exceeding twelve (12) square feet in area on any one side and located not less than ten (10) feet from any lot line.
3. One (1) sign identifying the name of the farm owner or name of the farm not exceeding twelve (12) square feet in area and located not less than ten (10) feet from a lot line.



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4. Temporary signs, identifying a construction project and the specialists concerned, not exceeding twelve (12) square feet in area.
- E. Signs Permitted in Commercial, Commercial Center Mixed Use Zone (MU-CC #1 and MU-CC #2), Industrial and Recreation Districts.
1. Two (2) on-premise signs, one (1) of which may be freestanding, shall be allowed for each permitted use. If attached, such signs should not exceed an area equal to ten (10) percent of the wall area of the building or portion thereof to such use or activity. No sign shall project more than one (1) foot from the facade of the building.
  2. Freestanding commercial signs shall be permitted. Such signs shall conform to the following provisions relating to their number and size.
    - a. Each commercial or industrial use may have one (1) freestanding sign. Such freestanding sign shall have an area of not more than twenty five (25) square feet nor be more than twenty five (25) feet in height, located not less than ten (10) feet from the property line. Commercial uses which are located within a Commercial (C) District and which front on a State Highway may have a larger freestanding sign, which shall not exceed one hundred twenty-five (125) square feet in sign area, with a maximum width of eight (8) feet, a maximum height of thirty two (32) feet and a minimum setback of ten (10) feet from any property line.

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- b. In a shopping center or industrial park there may be one (1) directory sign at any location thereon which shall not exceed five (5) square feet in area for each acre of land in the shopping center or industrial park provided that no such sign shall exceed thirty (30) square feet in area. No individual freestanding sign shall be allowed in a shopping center.
3. Off-premise direction signs not exceeding four (4) square feet in size and limited to businesses located within the Town and to two (2) signs per use shall be permitted (only two (2) such signs per use are allowed within the Town).

### F. Signs Prohibited

The following types of sign are prohibited and shall not be permitted, erected, or maintained in any zoning district and the owner thereof shall upon written notice of the Zoning Enforcement Officer forthwith, in the case of immediate danger and in any case within not more than ten (10) days, make such sign conform with the provisions of this section or shall remove it. If within ten (10) days the order is not complied with, the Zoning Enforcement Officer may cause said sign to be removed at the expense of the owner.

1. Any sign which by reason of its size, location, content, coloring or manner of illumination, constitutes a traffic hazard or a detriment to traffic safety by obstructing the vision of drivers, or by obstruction or detraction from the visibility of any traffic control device on public streets and roads.
2. No person shall erect or maintain a sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

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3. Signs which make use of words such as “STOP”, “LOOK”, “DANGER”, and other words, phrases, symbols or character, in such a manner as to interfere with, mislead or confuse traffic.
4. Any sign which has any visible moving part, visible revolving parts or visible mechanical movement of any description (except time and temperature revolving signs as allowed) or other apparent visible movement achieved by electrical or kinetic means, including intermittent electrical pulsations, or by action of normal wind currents.
5. It shall be unlawful for any person to display upon a sign or other exterior advertising structure any obscene, indecent or immoral matter if it interferes with the property or normal movement of vehicular traffic.

### **G. Referral to State Park Commission**

Advertising signs or structures that are to be located within five hundred (500) feet of Darien Lake State Park must be reviewed and approved by the Genesee Region State Park Commission prior to installation, as required by Section 13.07 of the New York State Park and Recreation Law.

## **SECTION 803 NON-CONFORMING USES, STRUCTURES AND LOTS**

Except as hereinafter provided, the lawful use of any buildings or land existing at the time of the enactment or amendment of this Zoning Law may be continued although such use does not conform with this Zoning Law.

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- A. Nonconforming Structures – A nonconforming structure or part thereof may be restored to a safe condition only to the extent of its prior nonconformity. A nonconforming structure may be enlarged provided the enlargement does not increase the nonconformity of the structure. For example, a structure nonconforming by reason of its nearness to a side lot line may be extended rearward provided the extension does not further reduce the side yard to extend into the required yard. This section shall not apply to the nonconforming signs (See Section 802).
- B. Nonconforming Uses:
1. A nonconforming use may be changed to a conforming use.
  2. The right to continue a nonconforming use, once established and not abandoned, runs with the land, and this right is not confined to any one (1) individual or corporation.
  3. A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost fifty (50) percent of the assessed value of the building unless said building is changed to a conforming use.
  4. A nonconforming use discontinued for a period of one (1) year or more shall be considered abandoned and shall not be reestablished.
- C. Nonconforming Lots
1. A parcel of land shall not be subdivided so as to create a nonconforming lot.
  2. Existing nonconforming lots shall not be further reduced.

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### **SECTION 804      GASOLINE STATIONS, GASOLINE STATION-MARKETS, MOTOR VEHICLE SERVICE STATIONS AND REPAIR SHOPS**

Motor vehicle fueling, repair and/or service operations (see above heading) may be permitted in the Town upon issuance of a special use permit provided that the following standards are observed.

- A. In addition to the information required in the Special Use Permit application and enumerated in Section 908, the site plan submitted shall also show the number and location of fuel tanks to be installed, the dimensions, and capacity of each storage tank, the depth the tanks will be placed below the ground, the number and locations of pumps to be installed and the type of structure and accessory buildings to be constructed.
- B. The area and yard specifications for motor vehicle service stations are identified in Schedule A of the Zoning Law.
- C. The entire area of the site traveled by motor vehicles shall be hard surfaced (blacktop, concrete, or oil and stone treatment).
- D. Any repair of motor vehicles shall be performed in a fully enclosed building and no motor vehicle shall be offered for sale on the site. No motor vehicle parts, or partially dismantled motor vehicles, shall be stored outside of an enclosed building.
- E. No vehicles shall be permitted to be standing or parked on the premises of a motor vehicle service station other than those used by the employees in the indirect or direct operation of the establishment.

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- F. Accessory goods for sale may be displayed on the pump island and the building island only. The outdoor display of oil cans, and/or antifreeze and similar products may be displayed on the respective island if provided for in a suitable stand or rack.
- G. No motor vehicle service station or public garage shall be located within five hundred (500) feet of any public entrance to a church, school, library, hospital, charitable institution, or place of public assembly. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.
- H. Where such parking areas abut a residential zone, they shall be screened by a buffer area no less than ten (10) feet in depth composed of densely-planted evergreen shrubbery, solid fencing or a combination of both which, in the opinion of the Planning Board, will be adequate to prevent the transmission of headlight glare across the zone boundary line. Such buffer screen shall have a minimum height of six (6) feet above finished grade at the highest point of the parking area. The materials used shall be in keeping with the character of the adjacent residential area. If said shrubbery becomes decayed and fails to provide an adequate screen, the Zoning Enforcement Officer may direct the property owner to replace said shrubs.
- I. All fuel pumps shall be located at least (20) feet from any street or property line.

### **SECTION 805 COMMERCIAL EXCAVATIONS**

Except when incidental to the construction of a building on the same lot, the excavation, processing or sale of sand, gravel or clay or other natural mineral deposits, or the quarrying of any kind of rock formation shall require a special use permit from the Planning Board as provided for in Section 701 and Section 705.

# TOWN OF DARIEN ZONING LAW

## A. Major Excavation

1. State Permit – In order to obtain said special use permit, the applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law.
2. Reclamation – The applicant shall further be required to comply with the reclamation standards established by the New York State Department of Environmental Conservation while carrying out such use.

## B. Minor Excavation -As part of the application process for a special use permit, the applicant's plan shall be presented to the Genesee County Soil and Water Conservation District for its review and comments. Also, before issuing a special use permit, the Planning Board must find that such excavation will not endanger the stability of adjacent land or structures of the quality or quantity of groundwater and that it does not constitute a detriment to public health, safety or welfare by reason of excessive dust, noise, traffic, erosion, situation or other condition. In granting a special use permit, the Planning Board shall specify any reasonable requirement including the following:

1. Minimum Lot Area – The minimum lot area shall be ten (10) acres.
2. Minimum Setback Requirements – All buildings shall be located not less than one hundred (100) feet from any street or property line. The top of the slope of all excavation operations shall be located or shall occur not less than one hundred (100) feet from any street or property line. The setback area shall not be used in conjunction with the excavation and appurtenant activities except for one (1) public notice sign identifying the use of the property, fencing, berms, buffers, access roads and/or parking.

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3. Slope – During mining the banks of all excavations shall be maintained at a slope not to exceed the normal angle of repose of such material.
4. Drainage – All surface drainage and any waste matter shall be controlled to prevent any silt, waste products, process residues, etc. from flowing onto public roads, adjacent property or into any stream. Excavation areas shall be planned and graded to avoid collections of stagnant water.
5. Dust – All storage areas, yards, service roads, or other untreated open areas within the boundaries of the excavation area shall be so maintained and improved as to minimize dust or other wind-blown air pollutants.
6. Roadside Landscape – Existing trees and ground cover along public road frontage shall be preserved, maintained and supplemented in the entire area of the roadside setback for the purpose of screening and noise reduction. If, however, the existing topography and natural vegetation does not lend itself to an economically feasible supplement plan, the operation can, if properly landscaped with grass, trees and shrubs, grade back the over-burden around the perimeter of the excavation site to create a “berm” for the purpose of screening and noise reduction. No berm shall be constructed within twenty-five (25) feet of any right-of-way line or property boundary lines.
7. Fencing – Fencing may be required depending upon the existence of an earthen berm, the nature of the operations, distance from developed areas, distance from property lines, depth of the pit water and the slope of pit walls.



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8. Topsoil – All topsoil and subsoil shall be stripped from the excavation areas and stockpiled and seeded for use in accordance with the reclamation plan. The location of topsoil to be stored shall be identified. Such stockpiles shall be treated to minimize the effects of erosion by wind or water upon public roads, streams, or adjacent property.
9. Erosion – The applicant’s plan shall also include a provision for the control of soil erosion.
10. Hours of Operation – All operations shall be conducted between the hours of seven o’clock in the morning (7:00 a.m.) and six o’clock in the evening (6:00 p.m.) with no Sunday or holiday operations, except in the case of public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
11. Blasting and/or Processing – Operations involving blasting and on-site processing of mineral deposits shall not be allowed.
12. Reclamation Plan
  - a. The applicant shall submit a reclamation plan.
  - b. Reclamation plan: means the applicant’s proposal for reclaiming the affected land, including graphic and written description of the proposed use for all affected land, the method of reclaiming and a schedule for performing reclamation.
  - c. Where feasible, reclamation shall be a continuing operation. Grading topsoil replacement and replanting of the area designated for restoration shall continue during the permit period. All reclamation work shall be complete within one (1)

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year after the termination of operations, at the expense of the operator.

13. Performance Bond – A performance bond or some other financial security may be required in the discretion of the Planning Board to assure that the conditions stipulated in the approval of the special use permit are carried out. Any such security shall be in a form and amount acceptable to the Planning Board.

### C. Duration of Special Use Permit

1. The special use permit for a minor excavation shall be issued for a period of one (1) year, subject to a subsequent annual review and re-certification by the Planning Board based on a written request for such continuance, which request shall be submitted to the Town Zoning Enforcement Officer at least sixty (60) days prior to the expiration of each such one (1) year period. A public hearing shall not be required for such annual re-certification, except upon motion of the Planning Board or Town Board.
2. The special use permit for a major excavation shall continue as long as its New York State Department of Environmental Conservation permit remains in effect, it complies with the terms thereof, and it meets the reclamation standards established by New York State Department of Environmental Conservation.
3. If on-site mining or processing operations are not carried out continuously for one (1) year for a major or minor excavation, the site shall be considered abandoned, and, prior to any further excavation or processing, a new special use permit shall be required.

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## SECTION 806 CLUSTER RESIDENTIAL DEVELOPMENTS

Cluster residential development of one-family dwellings may be permitted, as set forth in NYS Town Law Section 278, in the LDR and MDR residential districts or the Town provided that the following conditions are observed:

- A. The project shall encompass a minimum land are of ten (10) acres.
- B. The developer shall dedicate all un-subdivided lands to permanent open space. In no case shall such lands be less than twenty-five (25) percent of the total project area. All such lands shall be suitable, in the opinion of the Darien Planning Board, for the intended use. Such lands shall be offered for dedication to the Town Board of the Town of Darien.
- C. The developer shall have received informal conditional approval of the Darien Planning Board of the design and arrangement of streets, lots, open spaces, and other elements of the project prior to filling out the special use permit application.
- D. The requirements of this Zoning Law insofar as overall density, minimum front, side, and rear yard areas for the outer boundaries of the entire project, maximum building height and maximum lot coverage area as specified in the zoning schedule of this Zoning Law. All other area requirements of this Zoning Law may be modified by the Planning Board.

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## SECTION 807 JUNKYARDS

- A. Establishment – No person shall operate, establish, or maintain a junkyard until he has obtained a special use permit in compliance with Section 908.
- B. Location Requirements – In reviewing this special use application, the Planning Board shall take into account, after proof of legal ownership or right to such use of the property for the permit period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings, or other places of public gathering; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or other causes.
- C. Aesthetic Considerations – The Planning Board shall also consider the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued general welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection, the Planning Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barrier protecting the junkyard from view. The proximity of the proposed junkyard to establish residential and recreational areas of main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.
- D. Fencing – Before use, a new junkyard shall be completely surrounded with a fence at least eight (8) feet in height which substantially screens the operation of such junkyard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than fifty (50) feet from a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junkyard except as removal shall be

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necessary for the transportation of same in the reasonable course of business. All wrecking or other work on such motor vehicles and parts shall be accomplished within the enclosure. Where topography, natural growth or other considerations accomplish the purposes of this paragraph in whole or in part, the fencing requirements hereunder may be reduced by the Planning Board, upon granting the special use permit provided, however, that such natural barrier conforms with the purposes of this section.

- E. Existing Junkyards – Existing junkyards shall continue to comply with the Town of Darien Junkyard Ordinance of November 6, 1968, until such time as they either cease operation, or apply for, and receive a special use permit as provided for in this Section.

### **SECTION 808 HOME OCCUPATIONS**

Purpose – The purpose of this provision is to allow for home occupations, which are compatible with the neighborhoods in which they are located. Some home occupations by the extent of the investment required therefore and/or the nature of their operation, have a tendency of increasing beyond the scope of a home occupation and thereby violating the use provisions of the zoning district in which such home occupation exists and adversely affecting surrounding property values.

- A. Conditions – The following conditions are intended to insure both that the home occupation is secondary to the residential use and that it is compatible with the residential character of the neighborhood:
  - 1. The home occupation shall be carried on inside the principal dwelling and/or inside a building or other structure accessory thereto.
  - 2. No alteration to the exterior of the principal dwelling and/or the accessory building or structure shall be made which changes the residential character thereof.

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3. No more than two (2) non-family persons shall be employed in the home occupation.
4. No more than twenty-five (25) percent of the floor area of the principal dwelling may be used for the home occupation and the total floor area to be utilized (including the accessory buildings and structures) shall not exceed five hundred (500) square feet.
5. There shall be no outside display of merchandise unless a special use permit has been obtained from the Planning Board as set forth under the provisions of Section 908. Such special use permit shall specify what outside display of merchandise is allowed, where and at what times.
6. There shall be no exterior advertising of the home occupation, except for a sign no larger than four (4) square feet for which a permit has been obtained pursuant to the provisions of Section 802.
7. There shall be no exterior storage of materials used in the home occupation.
8. No home occupation shall result in:
  - a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate size of the building in which such use is conducted.
  - b. Hazard of fire explosion or other physical hazard to any person, building, or vegetation.
  - c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in

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which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.

9. Adequate parking shall be provided as set forth in Section 801. Such off-street parking shall be located not less than ten (10) feet from any property line.
10. No residential lot shall contain more than one (1) home occupation.

### **SECTION 809      ROADSIDE STANDS**

- A. Roadside stands may be located in the LDR, MDR, and C Districts.
- B. Goods, other than firewood, sold shall primarily be home grown.
- C. There shall be a front yard setback of at least twenty (20) feet and side yard setbacks of at least twenty-five (25) feet each.
- D. Stands shall be of a portable nature and must be removed when not in use.
- E. Off-street parking shall be provided for a minimum of three (3) vehicles with additional provisions if traffic warrants.
- F. Two signs of not more than four (4) square feet each may be permitted, located not less than ten (10) feet from lot line.

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## **SECTION 810 ANIMAL WASTE STORAGE FACILITIES**

All proposals for installation and/or modification of animal waste storage facilities shall be submitted to the Genesee County Soil and Water Conservation District (GCSWCD) or U.S. Natural Resources Conservation Service (NRCS) for their review and determination as to acceptability. If a proposal is acceptable to GCSWCD, then the Planning Board will consider the potential impacts posed by such a facility upon surrounding land uses prior to taking final action.

## **SECTION 811 BATTERY ENERGY STORAGE SYSTEMS**

The purpose of this Battery Energy Storage System Law is to advance and protect the public health, safety, welfare, and quality of life of the Town of Darien creating regulations for the installation and use of battery energy storage systems, with the following objectives:

1. To provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of battery energy storage systems.
2. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.
3. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources; and
4. To create synergy between battery energy storage system development and other stated goals of the community pursuant to its Comprehensive Plan.



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## A. GENERAL

1. A building permit and an electrical permit shall be required for installation of all battery energy storage systems.
2. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act.
3. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Zoning Law.

## B. PERMITTING REQUIREMENTS FOR TIER 1 BATTERY ENERGY STORAGE

Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code and the "Battery Energy Storage System Permit," and exempt from site plan review.

## C. PERMITTING REQUIREMENTS FOR TIER 2 BATTERY ENERGY STORAGE SYSTEMS

Tier 2 Battery Energy Storage System are permitted through the issuance of a special use permit within the LDR, REC, C zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.

1. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

## **TOWN OF DARIEN ZONING LAW**

- a) Reviewed by the Zoning Enforcement Officer for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within ten (10) business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
- b) Subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town of Darien shall have a notice printed in a newspaper of general circulation in the Town at least five (5) days in advance of such hearing. Applicants shall have delivered the notice by first class mail to adjoining landowners or landowners within two hundred (200) feet of the property at least ten (10) days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
- c) Referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.
- d) Upon closing of the public hearing, the Planning Board shall act on the application within sixty-two (62) days of the public hearing, which can include approval, approval with conditions, or denial. The sixty-two (62) day period may be extended upon consent by both the Planning Board and Applicant.

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2. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
3. Signage.
  - a) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
  - b) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
4. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
5. Vegetation and tree-cutting. Areas within ten (10) feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

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6. Noise. The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of sixty (60) dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.
  
7. Decommissioning.
  - a) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
    - i. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
    - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
    - iii. The anticipated life of the battery energy storage system;
    - iv. The estimated decommissioning costs and how said estimate was determined;

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- v. The method of ensuring that funds will be available for decommissioning and restoration;
  - vi. The method by which the decommissioning cost will be kept current;
  - vii. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  - viii. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- b) Decommissioning Fund. The owner and/or operator of the energy storage system shall continuously maintain a fund or bond payable to the Town of Darien in a form approved by the Town for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.
8. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

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- a) Property lines and physical features, including roads, for the project site.
- b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- c) A [one- or three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- d) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- e) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- f) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
- g) Zoning district designation for the parcel(s) of land comprising the project site.

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- h) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Zoning Enforcement Officer prior to final inspection and approval and maintained at an approved on-site location.
- i) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems comply with the Uniform Code.
- j) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- k) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.

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- l) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
  
- m) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
  - i. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
  
  - ii. Procedures for inspection and testing of associated alarms, interlocks, and controls.
  
  - iii. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.



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- iv. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
- v. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- vi. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
- vii. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
- ix. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

### 9. Special Use Permit Standards.

- a) Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.

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- b) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.
  - c) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
  - d) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.
10. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Zoning Enforcement Officer of such change in ownership or operator within thirty (30) days of the ownership change. A new owner or operator must provide such notification to the Zoning Enforcement Officer in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Zoning Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

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## D. SAFETY

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards as applicable:
  - a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
  - b) UL 1642 (Standard for Lithium Batteries),
  - c) UL 1741 or UL 62109 (Inverters and Power Converters),
  - d) Certified under the applicable electrical, building, and fire prevention codes as required.
  - e) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
2. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.
3. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

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## E. PERMIT TIME FRAME AND ABANDONMENT

1. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of twenty-four (24) months, provided that a building permit is issued for construction [and/or] construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board within twenty-four (24) months after approval, the Town may extend the time to complete construction for [180] days. If the owner and/or operator fails to perform substantial construction after [36] months, the approvals shall expire.
2. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

## F. ENFORCEMENT

Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of the Town of Darien.

## G. SEVERABILITY

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment 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.

# TOWN OF DARIEN ZONING LAW

## SECTION 812 ADULT ESTABLISHMENT

Purposes – The Town of Darien conducted a study of the potential secondary affects posed by adult establishments. This study, along with other similar studies, has shown buildings and establishments operated as adult establishments pose secondary effects which may be detrimental and harmful to the health, safety, morals, and general welfare of a community. In order to promote the health, safety, morals, and general welfare of the residents of the Town of Darien, this Section is intended to control those secondary effects of adult establishments by restricting such uses to non-residential areas of the Town, and otherwise regulating their operation.

### A. Definitions

1. Adult Establishment – A commercial establishment including but not limited to adult bookstore, adult eating or drinking establishment, adult theater, adult model, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:
  - a. An adult bookstore is a bookstore which has a “substantial portion” (equal to or greater than twenty-five (25) percent) of its stock-in-trade and /or floor area as hereinafter defined any one (1) or more of the following.
    - (1) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical area”, or,

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- (2) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”.
- b. An adult eating or drinking establishment is an eating or drinking establishment, which regularly features any one (1) or more of the following:
- (1) Live performances which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or specified sexual activities”, or,
  - (2) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”, and
  - (3) Employees who as part of their employment, regularly expose to patrons “specified anatomical areas”, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
- c. An adult theater is a theater, which regularly features one (1) or more of the following:
- (1) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description “specified sexual activities” or “specified anatomical areas”, or,

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- (2) Live performances which are characterized by an emphasis upon the depiction or description of “specified anatomical areas” or “specified sexual activities”, and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
  - (3) An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.
- d. An adult motel is a motel which makes available to its patrons in their room films, slide shows, video tapes, or other visual representations with an emphasis on matter depicting, describing or related to specified sexual activities or specified anatomical areas.
- e. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths, and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

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- f. A nude model studio is any place where a person who appears in the 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 other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Law of New York State.
  - g. Any other adult commercial establishment is a facility – other than an adult bookstore, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or commercial studio, or business or trade school which features employees who as part of their employment, regularly expose to patrons “specified anatomical areas” and which is not customarily open to the general public during such features because it excludes minors by reason of age.
- 2. For the purposes of defining adult establishments, “specified sexual activities” are: (i) human genitals in a state of sexual stimulations or arousal; (ii) actual or simulated acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals, public region, buttock, anus, or female breast.
  - 3. “Specified anatomical areas” are: (i) less than completely and opaquely concealed (a) human genitals, pubic region (b) human buttock, anus or (c) female breast below a point immediately above the top of the areola; or (ii) human male genitals in a discernibly turgid state, even if completely and opaquely concealed.



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4. For the purposes of determining whether a “substantial portion” of an establishment includes an adult bookstore the following factors shall be considered: (i) the amount of floor area and cellar space accessible to customers and allocated to such uses; and (ii) the amount of floor area and cellar space accessible to customers and allocated to such uses as compared to the total floor area and cellar space accessible to customers in the establishment.
5. For the purposes of determining whether a bookstore has a “substantial portion” (equal to or greater than twenty-five (25) percent) of its stock in materials defined in paragraphs B. 1. B. (1) and (2) hereof, the following factors shall be considered: (i) the amount of such stock accessible to customers as compared to the total stock accessible to customers in the establishment; and (ii) the amount of floor area and cellar space accessible to customers containing such stock; and (iii) the amount of floor area and cellar space accessible to customers containing such stock as compared to the total floor area and cellar space accessible to customers in the establishment.
6. Person – A person, firm, partnership, corporation, association or legal representative, acting individually or jointly.
7. Substantial – For the purposes of the Section the term “substantial” shall mean an amount equal to or greater than twenty-five (25) percent of the total.

### B. Restrictions Affecting Adult Establishments

Adult establishments, including but not limited to an adult bookstore, adult eating or drinking establishments, or adult theater shall be permitted subject to the following restrictions:

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1. No such adult establishment shall be located within one hundred (100) feet of the boundaries of any Medium Density Residential (MDR) or Low Density Residential (LDR) zoning district or within five hundred (500) feet of any existing residential use located on another lot in the LDR or MDR districts.
  2. No such adult establishment shall be located within one thousand (1,000) feet of a pre-existing school, place of worship, or children's playground.
  3. No such adult establishment shall be located in any zoning district except the Commercial or Industrial Districts.
- C. Prohibition Regarding Public Observation – No adult establishment shall be conducted in any manner that permits the observation or any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from a property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, or other opening.

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## SECTION 813 MOTOR VEHICLE DISMANTLING

The purpose of this provision is to allow for the limited dismantling of motor vehicles in Commercial Districts, as either the primary use of an accessory use to another commercial operation. It is recognized that the operation of motor vehicle dismantling operations outside of properly permitted junkyards, without adequate regulations and conditions may pose adverse impacts upon neighboring land uses.

- A. Process – An applicant may apply to the Planning Board for a special use permit to establish a motor vehicle dismantling operation in the Commercial (C) District.
- B. Conditions - The following conditions are intended to ensure that the motor vehicle dismantling operation does not pose significant adverse impacts upon surrounding land uses, community character or appearance.
  - 1. The actual process of dismantling motor vehicles shall be carried on inside a building.
  - 2. Outside storage of motor vehicles prior to dismantling and the parts/portions thereof after dismantling, shall be limited to that area designated by the Planning Board. This outside storage area shall be fenced or otherwise screened from view from neighboring properties and public right of ways by a means acceptable to the Planning Board.
  - 3. No motor vehicle dismantling operation shall result in:
    - a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such is conducted.
    - b. Hazard of fire explosion or other physical hazard to any person, building, or vegetation.

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4. The Planning Board may require as a condition of the special use permit that the applicant install and maintain a buffer strip and/or fencing between the proposed motor vehicle dismantling operation and associated commercial use(s) and any adjoining land uses, if the Board determines such conditions is a reasonable mitigation factor.

### **SECTION 814 COMMERCIAL COMMUNICATION TOWERS**

No commercial communication tower shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a commercial communication tower unless in conformity with the Zoning Law.

- A. Site Plan Review – The applicant shall be required to submit a site plan in accordance with Section 908, Subsection C. In addition to Section 908, Subsection C, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.
- B. Supporting Documentation – The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF – SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing. The applicant must provide a coverage/interference analysis and capacity analysis that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K below.

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- C. Shared Use of Existing Towers and/or Structures – At all times, shared use of existing towers and/or structures (i.e., a water tower, building, etc.) shall be preferred to the construction of new commercial communication towers. An applicant shall be required to present an adequate report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower.
1. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.
  2. The Planning Board may consider a new commercial communication tower where the applicant demonstrates that shared usage of an existing tower/structure is impractical. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers/structures as well as documentation of the physical and/or financial reasons why shared usage is not practical. Written requests and responses for shared use shall be provided.
- D. Shared Usage of Site with New Tower – Where shared usage of an existing tower/structure is found to be impractical, the applicant shall investigate shared usage of an existing tower/structure site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection C, Paragraph 1 and 2 above. Any new commercial communication tower approved for an existing tower/structure site shall be subject to the standards of Subsections (F) through (N) below.

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- E. New Tower at New Location – The Planning Board may consider a new commercial communication tower on a site not previously developed with an existing tower/structure when the applicant demonstrates that shared usage of an existing tower site is impractical and submits a report as described in Subsection C.2 above.
- F. Future Shared Usage of New Towers – The applicant must examine the feasibility of designing a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. The Planning Board shall determine the scope of this analysis. This requirement may be waived, provided that the applicant demonstrates that provisions of future shared usage of the facility are not feasible and an unnecessary burden, based upon:
1. The number of Federal Communications Commission (FCC) licenses foreseeably available in the area;
  2. The kind of tower site and structure proposed;
  3. The number of existing and potential licenses without tower spaces;
  4. Available spaces on existing and approved towers; and
  5. Potential adverse visual impact by a tower designed for shared usage.
- G. Setbacks for New Towers
1. All proposed commercial communication towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy or adjoining residential properties.

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2. All commercial communication tower bases must be located at a minimum setback from any property line at a distance at least equal to the tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site; whichever of the foregoing is greater.
  3. The minimum setback requirement of this paragraph may be increased at the discretion of the Planning Board, or it may be decreased in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area.
  4. Such tower design and collapse zone must be acceptable to the Town Engineer.
  5. Accessory structures must comply with the minimum setback requirements in the underlying district.
- H. Visual Impact Assessment – The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new towers or any proposed modifications of an existing tower that will increase the height of the existing tower. Construction of a new commercial communication tower or modification of an existing tower shall be subject to the relevant guidelines and criteria below that are determined by the Planning Board at the pre-submission conference to be appropriate.

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1. Assessment of “before and after” views from key viewpoints both inside and outside of the Town, including state highways and major roads, from state and local parks, other public lands; from any privately-owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers.
  2. Assessment of alternative tower designs and color schemes, as described in Subsection I below.
  3. Assessment of visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
- I. New Tower Design – Alternate designs shall be considered for new towers, including lattice and single pole structures. Plans should show that the owners of the commercial communication tower have agreed to permit other persons to attach other communication apparatus, which do not interfere with the primary purposes of the commercial tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from, such attachment. The design of a proposed new tower shall comply with the following:
1. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have. Artificial lighting, including strobes, beacons, and other hazard avoidance lighting, shall be limited to that required by the Federal Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.



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2. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two additional antennae).
  3. The Planning Board may request a review of the application by a qualified structural engineer for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
  4. Accessory facilities shall maximize use of building materials, colors and textures to blend with the natural surroundings.
  5. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
  6. The applicant shall provide documentation to the Town/Village that certifies the operation of the proposed commercial communication tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
  7. Space on communication towers shall be made available for public safety purposes (i.e. Genesee County Public Safety Radio System) at no cost to public safety agencies.
- J. Existing Vegetation – Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of (4) feet off the ground) shall take place prior to approval of the special permit. Clear cutting of all trees in a single contiguous area exceeding twenty thousand (20,000) square feet shall be prohibited.

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- K. Screening – Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views and vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all commercial communication towers, at least one (1) row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten (10) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.
- L. Access – Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the tops of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- M. Parking – Parking shall be provided in accordance with Section 801. No parking space shall be located in any required yard.
- N. Fencing – Sites of proposed new commercial communication towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence eight (8) feet in height from finished grade, unless the applicant demonstrates to the Planning Board that such measures are unnecessary to ensure the security of the facility. Such security fencing shall surround the tower base as well as each guy anchor.

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- O. 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 cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal. The amount required shall be determined in the sole discretion of the Planning Board based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Planning Board prior to approval of any application to accomplish the foregoing.
  
- P. Annual Re-Certification – The owner/operator of a commercial communications tower shall annually, on the anniversary of original issuance of his/her special use permit provide a written certification to the Zoning Enforcement Officer that their tower is still in operation and currently being used as approved by the special use permit.
  
- Q. Removal of Obsolete/Unused Facilities – Approval of a new commercial communication tower facility shall be conditioned upon the applicant's agreement to remove such facility once it is no longer used. Removal of such obsolete and/or unused commercial communication towers facilities shall take place within twelve (12) months of cessation of use. The applicant shall submit an executed removal agreement with their application to ensure compliance with this requirement.

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- R. Special Use Permit and Site Plan Approval Exception – In furtherance of the advancement of technology, after the initial issuance of a special use permit for the erection of a Commercial Communication Tower, the Planning Board has the sole discretion to waive the special use permit process, including site plan review, for any additions to a tower once constructed and require the issuance of a zoning permit only. These additions/upgrades include, but are not limited to, antennas; satellite dishes; industry upgrades' and/or placement of new tenants. If waived, the Zoning Officer will be required to notify the Town Assessor of any addition/upgrade to said tower for assessment purposes within thirty (30) days of the issuance of the zoning permit. If said addition/upgrade to the Commercial Communication Tower is a new tenant, a copy of the pertinent lease agreement between the applicant and tenant will be required to be provided as an attachment to the zoning permit application.

### **SECTION 815 PONDS**

The purpose of this Section is to provide for the construction of ponds that are adequately designed and located so as to not pose adverse impacts upon surrounding land uses. Farm water supply, conservancy, storm water/erosion control and fire protection or other ponds may be located within the LDR, REC, C, and I Districts upon issuance of a special use permit provided the following criteria are met:

- A. The proposed pond is located not less than fifty (50) feet from any property line.
- B. The proposed pond design is considered acceptable by the Genesee County Soil and Water Conservation District.
- C. The pond is constructed in conformance with the design specifications in Subsection B of this Section, including any reseeding or re-vegetation requirements.

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## SECTION 816 WIND ENERGY CONVERSION UNIT (WECU) AND WIND ENERGY CONVERSION SYSTEM (WECS)

The purpose of this Section is to provide the necessary regulations for the establishment of Wind Energy Conversion Systems in the Low Density Residential District (LDR) and circumstances under which the use may be established without detriment to the public health, safety and welfare. Wind energy is an abundant, renewable and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Wind Energy Conversions Systems also enhance the reliability and power quality of the power grid, reduce peak power demands and help diversify the state's energy supply portfolio. The approval of a Wind Energy Conversion Unit or System is reserved by the Town Board.

### A. Site Plan Review

1. WECS may not be constructed, erected, located, altered or used without first obtaining review, approval and a permit pursuant to this Article.
  - a. The site plan, as specified herein, for all WECS must be reviewed by the Planning Board and its designated expert.
  - b. Upon completion of the Planning Board review of the WECS site plan, the Planning Board shall render an advisory recommendation to the Town Board recommending approval, denial or conditional approval of the site plan.
  - c. The Town Board may then approve, deny or impose conditions on the WECS site plan.

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2. An applicant proposing a WECS must submit the following site plan materials:
  - a. Survey of the property showing existing features such as contours, buildings, structures, streets, utility easements, rights-of-way, land use, land use district, ownership of surrounding property, and vehicular access.
  - b. Site plan showing the location of proposed structures;
  - c. Preliminary layout plans, including the location of new access roads and transmission lines'
  - d. A description of the routes used by construction and delivery vehicles and any road improvements that will be necessary in the Town to accommodate construction vehicles, equipment or other deliveries;
  - e. Anticipated construction schedule;
  - f. Description of operations (including anticipated regular and unscheduled maintenance); and
  - g. Storm Water Management Plan.
3. These site plan materials are required in addition to the items set forth in Article IX, Section 908.
4. The Planning Board may waive these submission requirements if this information is included in a Draft Environmental Impact Statement (DEIS).

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### B. Application and information to be submitted

Wind Energy Conversion Systems (WECS)/Wind Energy Conversion Units (WECS) may be permitted in the Low Density Residential District (LDR); subject to securing the appropriate permits in each case, and subject to the following regulations:

1. Special Use Permit – The applicant shall be required to apply for Special Use Permit approval in accordance with Section 908, Subsection D, Special Use Permit
2. Site Plan Review – The applicant shall be required to submit a site plan and receive approval in accordance with Section 908, Subsection C. In addition to Section 908, Subsection C, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.
3. Supporting Documentation – The Planning Board shall require that the Special Use Permit application and the accompanying Site Plan include the following documentation as supporting data to the application:
  - a. A completed signed Part I of the Environmental Assessment Form (Long EAF Form).
  - b. A completed Visual Impact Assessment as identified in Paragraph D. below.
  - c. Documentation on the proposed intent and capacity of use, anticipated electrical generation, as well as a justification for the height of any WECS/WECU and justification for any required clearing.

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- d. Abandonment, Removal and Site Restoration Plan. The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Town of Darien Planning Board for its review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all materials above and below ground; road repair costs, if any; and all re-grading and re-vegetation necessary to return the subject property to the condition existing prior to establishment of the wind energy facility. The restoration shall reflect the site-specific character including topography, vegetation, drainage, and any unique environmental features and shall be completed within one (1) year. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
- e. Applicant shall submit intent to provide sufficient liability insurance and all other insurances necessary so as to indemnify or otherwise hold the applicable governmental authorities harmless to any and all claims.
- f. Proof of Permission. Evidence that the applicant is the owner of the property involved or has the written, notarized permission of the owner(s) to make such an application.
- g. Wind Access Agreements. Evidence (a signed statement from the applicant) that the applicant has negotiated with adjacent landowners and has obtained written agreements with all landowners who could potentially interfere with the applicant's access to the wind.
- h. Location of existing and proposed electrical lines and facilities. Denote underground and overhead installation method on



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existing lines. (Note: all proposed electrical lines should, to the extent feasible, be located underground.)

- i. Submit an Erosion Control Plan.
- j. Maps – All maps shall include the location of all proposed WECU/WECS and related structures/facilities and access roads without obscuring map details. The Planning Board may require additional studies or maps, as it deems necessary. Maps to be included, as a minimum, are as follows:
  - i. Wind Resource Map: A map identifying wind characteristics including prevailing wind direction and minimum, maximum, and average speeds.
  - ii. Land Use Maps: A location map to scale of current and planned land uses (based on the current land use plan and/or comprehensive plan) within the project boundary and a one-mile radius beyond the project boundary on which the WECS is to be located.
  - iii. Zoning Maps: A location map to scale of the existing zoning districts including all dwellings within the project boundary and a one-mile radius beyond the project boundary on which the WECS is to be located.
  - iv. USGS Topographic Maps: (scale of 1:24,000).
  - v. Flood Plain Maps: Flood Insurance Rate Maps (FIRM) if the site is within one-half (1/2) mile of a flood plain.
  - vi. Soil Survey Map.

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- k. Other documentation as required by this Zoning Ordinance (i.e., Ag Data Statement).
  - l. Fees – Fees will be levied in accordance with this Zoning Ordinance, Section 905.
- C. Visual Impact Assessment – The Planning Board shall require the applicant to undertake a visual impact assessment of any proposed new WECU/WECS or any proposed modifications of an existing WECU/WECS that will increase the height of the existing WECU/WECS. Construction of a new WECU/WECS or modification of an existing WECU/WECS shall be subject to the relevant guidelines and criteria below that are determined by the Planning Board at the pre-submission conference to be appropriate.
- 1. The Planning Board may request a review of the application by a qualified structural engineer for evaluation of need for and design of any new WECU/WECS. The costs associated for such review shall be borne by the applicant.
  - 2. Siting and Installation
    - a. Electrical controls and control wiring and power lines shall be wireless or underground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.
    - b. The wind power generation facility, if interconnected to a utility system, shall meet the requirements for interconnection and operation as set forth in the current service regulations applicable to wind power generation facilities.

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- c. Any construction involving agricultural land should be done according to the NYS Department of Agriculture and Market “Guidelines for Agricultural Mitigation for Wind Power Projects.”
3. Setbacks for New WECU/WECS
    - a. The minimum setback distance between each wind turbine tower and overhead utility or transmission lines, other wind turbine towers, and meteorological towers shall be a distance no less than one and one half (1.5) times its total height.
    - b. Each wind turbine shall be set back from the nearest public road as determined at the nearest boundary of the underlying right-of-way for such public road, all surrounding property lines, electrical substations, and any dwellings a distance equal to no less than one and one half (1.5) times the sum of the WECU’s hub height from the ground plus its rotor diameter.
    - c. Each wind turbine shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than one and one half (1.5) times its total height, determined from the existing power line or telephone line.
    - d. The above set back requirements shall apply unless waived in writing, in the form of an easement that is recorded in the Genesee County Clerk’s Office, by the abutting landowner(s) and an area variance is granted by the Zoning Board of Appeals.

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4. Height (WECS/WECU)
  - a. Wind Energy Conversion Systems are not limited by height, except the Town Board, in making its final determination, shall insure that any WECS in excess of two hundred (200) feet would be established without detriment to the public health, safety and welfare.
  - b. In all cases, the minimum height of the lowest position of the Wind Energy Conversion Systems blade shall be at least thirty (30) feet above the ground and thirty (30) feet above the highest existing structure or tree within a two hundred fifty (250) foot radius.
5. Safety
  - a. Wind turbine towers shall not be climbable up to fifteen (15) feet above ground level.
  - b. All access doors to wind turbine towers and electrical equipment shall be lockable.
  - c. Use the minimum lighting necessary for safety and security purposes and use techniques to prevent casting glare from the site, except as otherwise required by the FAA or other applicable authority.
  - d. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure, rotor blades and turbine components.

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- e. As part of the Special Use Permit process, and prior to the issuance of a building permit, the applicant shall provide the town proof of a level of insurance to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.
  - f. Any wind energy system found to be unsafe by the local enforcement officer shall be repaired by the owner to meet federal, state and local safety standards or removed within six (6) months. If any wind energy system is not operated for a continuous period of twelve (12) months, the Town will notify the landowner by registered mail and provide forty-five (45) days for a response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the Town deems the timetable for corrective action as unreasonable, they must notify the landowner and such landowner shall remove the turbine within one hundred twenty (120) days of receipt of notice from the Town.
- 6. Unless specifically required by other regulations, all WECU/WECS shall have a neutral, non-reflective, earth tone, sky tone or similar finish that will minimize visual impact.
  - 7. Accessory facilities shall maximize use of building materials, colors and textures to blend with the natural surroundings.
  - 8. WECU/WECS shall be located so that the level of noise produced by the unit shall not exceed fifty-five (55) dBA as measured at the set back of one and one half (1 ½) times the height of the unit or one

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- thousand five hundred (1,500) feet from the property line, whichever is greater.
9. The applicant shall minimize or mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy facility. Additionally, the applicant shall provide documentation to the Town of Darien that certifies the operation of proposed WECU/WECS facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
  10. Avoid, to the extent practicable, the creation of artificial habitat for raptors or raptor prey, such as:
    - a. electrical equipment boxes on or near the ground that can provide shelter and warmth,
    - b. horizontal perching opportunities on the towers or related structures or
    - c. soil where weeds can accumulate.
  11. Wind turbines shall be set back at least two thousand five hundred (2,500) feet from Important Bird Areas as identified by the Federal and State Government and at least one thousand five hundred (1,500) feet from State-identified wetlands. These distances may be adjusted to be greater or lesser at the discretion of the Planning Board, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.
  12. No portion of a WECU/WECS may be used for signs or advertising purposes, including company name, banners, streamers, etc.

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### 13. Shadow Flicker

- a. Shadow Flicker Map – Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school, hospital, church or public library.
- b. Shadow Flicker Duration – Shadow flicker for all sensitive areas/locations within the project area shall be limited to thirty (30) hours per year and shall not exceed thirty (30) minutes per day.

### 14. Avian Analysis

- a. The applicant shall submit an avian study to assess the potential impact of proposed Wind Energy Conversion Unit/System upon bird and bat species. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information or critical flyways.
- b. The applicant must identify any plans for post-construction monitoring or studies. The analysis should also include an explanation of potential impacts and propose a mitigation plan, if necessary.
- c. This analysis can be submitted as part of an application or can be included in a Draft Environmental Impact Statement (DEIS).

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- D. Road Agreement – Before a permit can be issued by the Town Board, a Road Agreement shall be entered into by the applicant and the Town of Darien.
  
- E. Revocation of Permit – Grounds for revocation of a WECU/WECS shall be limited to one of the following findings as determined by the Town of Darien Zoning Enforcement Officer.
  - 1. The owner or operator of the facility fails to comply with the requirements of this ordinance at the time of issuance of the applicable permit.
  
  - 2. The owner/operator has failed to comply with the conditions of approval imposed, including any conditions stipulated by the town Board in its approval of a Special Use Permit.
  
  - 3. The facility has not been maintained in accordance with the standards set forth in the New York State Building Code.
  
  - 4. There have been excessive or continued violations.
  
  - 5. Revocation Process:
    - a. The owner/operator of a WECU/WECS shall be notified, by certified mail with return receipt requested, of noncompliance by the Town of Darien Zoning Enforcement Officer or his/her designee.
  
    - b. The owner/operator shall comply within thirty (30) days to the satisfaction of the Town of Darien Zoning Enforcement Officer or his/her designee.



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- c. If compliance is not obtained within thirty (30) days, the Town of Darien Zoning Enforcement Officer or his/her designee shall notify the Town of Darien Town Board of the noncompliance and request permission to proceed with appropriate legal action.

### F. Abatement

1. A special use permit for a WECU/WECS, after being approved by the Town of Darien Town Board, shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a special use permit has been abandoned, the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of record for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Town Board shall revoke a Special Use Permit. (The intent of this paragraph is to revoke a Special Use Permit which has not been “substantially started” within one (1) year of the Special Use Permit approval).
2. If any Wind Energy Conversion Unit/System remains non-functional or inoperative for a continuous period of one (1) year, the permittee shall remove said system at their expense. Removal of the system includes the entire structure including foundations, transmission equipment, and fencing from the property.
3. Non-function or lack of operation may be proven by reports to the State Energy Commission or by lack of income generation. The applicant, permit holder, and successors shall make available to the Town Supervisor and Zoning Enforcement Officer, all reports to and from the purchaser or purchasers of energy from individual Wind Energy Conversion Unit/Systems or from a wind farm, if requested.

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4. The applicant, permit holder, or successors, shall continuously maintain a bond/fund payable to the Town of Darien for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town of Darien Town Board.
5. Every seven (7) years on the anniversary of the Special Use Permit approval, the owner or successors, shall submit to the Town Board of Darien a current cost estimate for the removal of non-functional towers and appurtenant facilities. After review of the cost estimate the Town Board of Darien may at its discretion, adjust up or down, the value of the bond/fund.
6. If removal of towers and appurtenant facilities is required and the applicant, permit holder, or successors fails to remove the towers and appurtenant facilities from the property within thirty (30) days from the date of notification by the Zoning Enforcement Officer, the Town Board of the Town of Darien may contract for such removal and pay for removal from the funds identified in #4 above. The permit holder shall then have ninety (90) days within which to replenish the fund. Failure to replenish the fund shall be a breach of the condition of the Use Permit and as such, voids the permit.

### G. Application Fee

1. To initiate the review process contemplated by this Section, including site plan review, an applicant for a WECS shall remit an application fee to the Town in the amount of seven hundred and fifty dollars (\$750.00) per megawatt of generating capacity for each anticipated device. Said sum shall not be refundable in whole or in part.

## TOWN OF DARIEN ZONING LAW

2. 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.
  3. The Town Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.
  4. Any application hereunder shall not be deemed complete until the funds are deposited with said Town.
- H. Host Agreement – A Host Agreement shall be entered into by the applicant and the Town Board before a permit can be issued by the Town Board.
- I. Transfer of Facility
1. No transfer of any Wind Energy Conversion Unit/System, nor sale of the entity owning such facility shall occur without prior approval of the Town, which approval shall be granted upon:
    - a. The receipt of proof of the ability of the successor to meet all requirements of this Local Law; and
    - b. The written acceptance of the transferee of the obligations of the transferor under this Local Law.
  2. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.

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## SECTION 817 SMALL WIND ENERGY SYSTEMS (SWES)

- A. Purpose – The purpose of this Section is to provide the necessary regulations for the establishment of a Small Wind Energy System (SWES) in the locations and circumstances under which the use may be established without detriment to the public health, safety and welfare.
- B. Standards – A small wind energy system shall be a permitted use in all zoning districts (except mixed use) subject to the following requirements:
1. Setbacks – A wind tower for a small wind system shall be set back a distance equal to one and one-half (1½) its total height, from:
    - a. Any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road;
    - b. Any overhead utility lines, unless written permission is granted by the affected utility;
    - c. All property lines.
  2. Access
    - a. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access.
    - b. The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of twelve (12) feet above ground.

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3. Electrical Wires – All electrical wires associated with a small wind energy system, other than wires necessary to connect the wind generator to the tower wiring, the tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
4. Lighting – A wind tower and generator shall not be artificially lighted unless the Federal Aviation Administration requires such lighting.
5. Appearance, Color, and Finish – All SWES's shall have a neutral, non-reflective, earth tone, sky tone or similar finish that will minimize the visual impact.
6. Signs – All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.
7. Code Compliance – A small wind energy system including tower shall comply with all applicable New York State Building and Electrical codes, and the National Electrical Code.
8. Utility Notification and Interconnection – Small wind energy systems that connect to the electric utility shall comply with the New York State Public Service Commission regulations.
9. MET towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.

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### C. Permit Requirements

1. Application – A Special Use Permit application and Site Plan Review shall be required for the installation of a small wind energy system.
2. Site Plan – The applicant shall be required to submit a site plan and receive approval in accordance with Section 908, Subsection C. In addition to Section 908, Subsection C, the site plan shall show the following:
  - a. Property lines and physical lines and physical dimensions of the property
  - b. Location dimensions, and types of existing major structures on the property
  - c. Location of the proposed wind system tower
  - d. The right-of-way of any public road that is contiguous with the property;
  - e. Any overhead utility lines;
  - f. Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed)
  - g. Tower foundation blueprints or drawings
  - h. Tower blueprint or drawing

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3. Fees – Fees will be levied in accordance with this Zoning Ordinance, Section 905, fees for permits, amendments, variances, special use permits, site plan review, planned unit developments and other administrative and review costs.
4. Expiration – A permit issued pursuant to this ordinance shall expire if:
  - a. The small wind energy system is not installed and functioning within twenty-four (24) months from the date the permit is issued; or,
  - b. The small wind energy system is out of service or otherwise unused for a continuous twelve (12) month period.
5. Insurance – Applicant shall submit proof of sufficient liability insurance and all other insurances necessary so as to indemnify or otherwise hold the applicable governmental authorities harmless to any and all claims.

### D. Abandonment

1. A small wind energy system that is out-of-service for a continuous twelve (12) month period will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment to the owner of a small wind energy system that is deemed to have been abandoned. The Owner shall have the right to respond to the Notice of Abandonment within thirty (30) days from Notice receipt date. The Zoning Enforcement Officer shall withdraw the Notice of Abandonment and notify the owner that the Notice has been withdrawn if the owner provides information that demonstrates the small wind energy system has not been abandoned.

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2. If the small wind energy system is determined to be abandoned, the owner of a small wind energy system shall remove the wind generator from the tower at the Owner's sole expense within three (3) months of receipt of Notice of Abandonment. If the owner fails to remove the wind generator from the tower, the Zoning Enforcement Officer may pursue a legal action to have the wind generator removed at the owner's expense.

### E. Permit Procedure

1. An owner shall submit a Zoning Permit Application to the Zoning Enforcement Officer in accordance with the Zoning Ordinance, Section 904; Application Procedures.
2. The Zoning Enforcement Officer shall issue a Zoning/Building permit only after the following requirements are met:
  - a. The application materials show that the proposed small wind energy system meets the requirements of this section;
  - b. After the Planning Board has conducted the Site Plan review and approved or approved with modification the Site Plan.
3. If the application is approved, the Zoning Enforcement Officer will return one signed copy of the application with the permit and retain the other copy with the application.
4. If the application is rejected, the Zoning Enforcement Officer will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may appeal the Zoning Enforcement Officer decision to the Zoning Board of Appeals, pursuant to this Zoning Ordinance, Section 907, D.; Hearing Appeals.



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5. The Owner shall conspicuously post the building permit on premises so as to be visible to the public at all times until construction or installation of the small wind energy system is complete.
- F. Violations – It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance or with any condition contained in a building permit issued pursuant to this ordinance.
- G. Administration and Enforcement
1. This ordinance shall be administered by the Zoning Enforcement Officer or other official as designated by the Town Board.
  2. The Zoning Enforcement Officer may enter any property for which a building permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.
  3. The Zoning Enforcement Officer may issue orders to abate any violation of this ordinance.
  4. The Zoning Enforcement Officer may issue a citation for any violation of this ordinance.
  5. The Zoning Enforcement Officer may refer any violation of this ordinance to legal counsel for enforcement.

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### H. Penalties

1. Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as stipulated in this Zoning Ordinance, Section 910, Violation and Penalty.
2. Nothing in this section shall be construed to prevent the Town Board of Darien from using any other lawful means to enforce this ordinance.

# TOWN OF DARIEN ZONING LAW

## SECTION 818 FLAG LOTS

The purpose of this provision is to eliminate existing unusable, non-conforming flag lots and to provide reasonable limits on the development of those flag lots and to make sure that they do not cause development that is inconsistent with good planning principals and the Comprehensive Plan for the Town of Darien. This section does not allow for and it is further prohibited for any Town of Darien Official, to cause or approve the creation of a Flag Lot in the Town of Darien.

- A. Pre-existing Flag Lots – Flag Lots existing on or before the enactment of this Zoning Law (pre-existing lots) may be considered for approval as a Zoning Lot providing the lot meets all the requirements for a Flag Lot as set forth in this Section and further providing that the Flag Lot complies with all other applicable provisions of the Zoning Law for the Town of Darien.
- B. Duration – The requirements of this Section shall remain in effect until duly amended by the Town Board or at which time all pre-existing flag lots have been eliminated.
- C. General Requirements
  - 1. The Land Use Regulations of this Zoning Law, Article VII; Requirements by Districts shall be used to determine Permitted Primary Uses, Permitted Accessory Uses and Uses Permitted with a Special Use Permit for Flag Lots, which have been approved for use as a Zoning Lot. The District in which the lot is located shall dictate the use/s permitted.
  - 2. Zoning Schedule A shall be used to determine minimum lot size in square feet, minimum front, rear and side yard offsets in linear feet, maximum structure height in linear feet and the percentage of lot coverage for the type of use in the applicable district.

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3. Private driveways shall not be considered or used in the calculation for determining minimum lot widths or minimum front, rear or side yard offset requirements, as depicted in Zoning Schedule A (See Yard defined).

### D. Application Procedure

1. Use of Flag Lots as a Zoning Lot shall only be permitted after a Special Use Permit has been approved by the Town of Darien Planning Board, Zoning Permit approved by the Zoning Enforcement Officer and Building Permit issued by the Building/Code Inspector.
2. Each applicant seeking approval to use a Flag Lot as a Zoning Lot, shall complete, as a minimum and as determined by the Zoning Enforcement Officer, the Zoning Permit Application, Special Use Permit Application, Site Plan and Environmental Assessment Form (EAF).
3. The Zoning Permit Application shall be completed in accordance with this Zoning Law, Section 904; Application Procedures.
4. The Special Use Permit Application shall be completed in accordance with this Zoning Law, Section 908, B.2., Special Use Permits and Section 908, D., Special Use Permit.
5. The Site Plan shall be completed in accordance with this Zoning Law, Section 908 C., Site Plan Review.
6. The EAF (Short Form) shall be completed using the New York State Department of Environmental Assessment Form.
7. Other forms may be required, as determined by the Zoning Enforcement Officer.

## **TOWN OF DARIEN ZONING LAW**

- E. Approval Contingencies – As part of the Planning Board’s decision to grant a Special Use Permit, the board must consider and ensure the following conditions are satisfied.
1. Conditions shall be imposed so as to ensure the private driveway is of adequate size and construction to provide for emergency vehicles to enter and exit the property safely. Additionally, any private driveway that is more than one hundred (100) feet in length must contain a turn around of sufficient size to accommodate fire trucks, ambulances and other emergency vehicles. The Planning Board shall consult with the Fire Chief for the Town of Darien Fire Department to insure the appropriate condition(s) are imposed.
  2. Genesee County Health Department Permit approval/s will be required as appropriate (i.e. septic system and wells).

# TOWN OF DARIEN ZONING LAW

## SECTION 819 LIGHT INDUSTRIAL USES

Light industrial uses may be permitted in the Commercial Districts upon compliance with the following standards and the issuance of a Special Use Permit in conformance with Section 908.

- A. Process – An applicant may apply to the Planning Board for a Special Use Permit to establish a light industrial use in the Commercial Districts.
  
- B. Conditions – The following conditions are intended to ensure that a light industrial use is compatible with surrounding land uses:
  - 1. The proposed light industrial uses shall comply with all the construction and safety standards contained in the NYS Uniform Code and all other applicable laws, codes and regulations.
  
  - 2. No outside process or storage associated with the light industrial uses shall be permitted. Long term (greater than twenty-four (24) hours) storage of products and/or materials shall not be allowed in trucks or trailers parked on-site.
  
  - 3. No light industrial use shall involve a use classified as “high hazard” by the NYS Uniform Code (see Section 703.4) or use highly hazard materials. Use and storage of low and moderate hazard materials and processes shall be done in compliance with all applicable laws, codes and regulations. The Town Zoning Enforcement, Code Enforcement and representatives of the Fire Department shall have the authority to thoroughly inspect all light industrial uses at least annually and to perform spot inspections as they determine necessary to protect the public health and safety.

## TOWN OF DARIEN ZONING LAW

4. When located within a Commercial District, a building that is used for Light Industrial purposes shall be located a minimum of sixty (60) feet from the nearest residential property line.
5. When the Planning Board has determined that a buffer area may be necessary to protect surrounding land uses from a light industrial use, it may require the installation and maintenance of a buffer area. A buffer may take the form of a continuous strip of trees or shrubs, a berm, or a similar barrier as directed by the Planning Board during the site plan review process.
6. There shall be no exterior advertising of the light industrial use except for a sign, no larger than twenty (20) square feet, for which a permit has been obtained pursuant to the provisions of Section 802.
7. No light industrial use shall result in:
  - a. Dissemination of noise, vibration, smoke, observable gas or fumes, or other atmospheric pollutant beyond the boundaries of the immediate site of the building in which such use is conducted.
  - b. Hazard of fire, explosion or other physical hazard to any person, building or vegetation.
  - c. Radiation or interferences with radio or television reception beyond the boundaries of the immediate site of the building in which such use is conducted, or the testing of material or instruments in such manner as to constitute a public nuisance.
8. Adequate parking shall be provided as set forth in Section 801. Such off-street parking shall be located not less than ten (10) feet from any property line.

# TOWN OF DARIEN ZONING LAW

## SECTION 820 DOG KENNEL

- A. When considering an application for a Special Use Permit for a dog kennel, the Planning Board shall consider the size, breed and the number of dogs that are to be harbored at such dog kennel in addition to the potential impact upon surrounding property owners and on the neighborhood as a whole.
- B. Outside confinement or point of tethering of dogs in an MDR district shall be a minimum of twenty (20) feet from adjoining property on which a dwelling is located. Outside confinement or point of tethering of dogs in an LDR district shall be a minimum of fifty (50) feet from adjoining property on which a dwelling is located. Tethering shall be done so as to prevent the dog from occupying said setback areas.
- C. Such Special Use Permit shall be issued at the Planning Board's discretion. An Animal Waste Management Plan is required, and the applicant shall provide proof of a qualified professional acknowledging that the proposed plan is an "A Best Practice". Adherence to such plan shall be a condition to the continued operation of any kennel.
- D. A dog kennel located in an LDR district on a parcel of property which is ten (10) or more acres in size shall require a zoning permit only.
- E. Outside confinement or point of tethering of dogs located in an LDR district on a parcel of property which is ten (10) or more acres in size shall be a minimum of fifty (50) feet from the adjoining property which a dwelling is located.
- F. Provisions for shelter shall be available from 9:00 p.m. to 7:00 a.m.



# TOWN OF DARIEN ZONING LAW

## SECTION 821 ANIMAL SHELTER

- A. When considering an application for a special use permit for an animal shelter, the Planning Board shall consider the size, breed and number of dogs, cats and/or other household pets that are to be harbored at such animal shelter in addition to the potential impact upon surrounding property owners and the neighborhood as a whole.
- B. Outside confinement or point of tethering of animals in an MDR district shall be a minimum of twenty (20) feet from adjoining property on which a dwelling is located. Tethering shall be done so as to prevent the animal from occupying said setback area.
- C. Outside confinement or point of tethering of animals in an LDR district shall be a minimum of fifty (50) feet from adjoining property on which a dwelling is located. Tethering shall be done so as to prevent the animal from occupying said setback area.
- D. Such Special Use Permit shall be issued at the Planning Board's discretion.
- E. The harboring of more than four (4) dogs shall be considered a dog kennel. The harboring of animals defined as livestock such as, but not limited to, horses, hogs or goats shall be considered as the stabling of farm animals.
- F. An Animal Waste Management Plan is required, and the applicant shall provide proof from a qualified professional acknowledging that the proposed plan is an "A Best Practice". Adherence to such plan shall be a condition to the continued operation of any shelter.

# TOWN OF DARIEN ZONING LAW

## 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.

## SECTION 823 SOLAR ENERGY

- A. Purpose - 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.
- B. 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.

## TOWN OF DARIEN ZONING LAW

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.

### C. 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.

## TOWN OF DARIEN ZONING LAW

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.

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

1. 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 with conditions, and denial.
2. 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:
  - a. 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.
  - b. Blueprints showing the layout of the Solar Energy System signed by a Professional Engineer or Registered Architect shall be required.
  - c. The equipment specification sheets shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.

## TOWN OF DARIEN ZONING LAW

- d. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
  
- e. 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 the sole discretion of the Town Board). The amount required shall be determined at 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.

## TOWN OF DARIEN ZONING LAW

- f. 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 consider 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.
- 3.) Special Use Permit Standards.
    - a. Application Fee
      - i. 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.

## TOWN OF DARIEN ZONING LAW

- ii. 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.
  - iii. The Town Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.
  - iv. Any application hereunder shall not be deemed complete until the funds are deposited with said Town.
- 
- b. Host Agreement –A Host Agreement may be entered into by the applicant and the Town Board before a permit can be issued by the Town Board.
  - c. Height and Setback. Large-Scale Solar Energy Systems shall adhere to the height and setback requirements of the underlying zoning district.
  - d. Lot Size. Large-Scale Solar Energy Systems shall be located on lots with a minimum lot size of ten (10) acres.
  - e. 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.
  - f. 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.

## TOWN OF DARIEN ZONING LAW

- g. 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.
- h. 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).

### E. Transfer of Facility

- I. 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:
  - a. The receipt of proof of the ability of the successor to meet all requirements of this Local Law.
  - b. The written acceptance of the transferee of the obligations of the transfer or under this Local Law.
  - c. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.
  - d. 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.



## **TOWN OF DARIEN ZONING LAW**

- F. 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.

# **TOWN OF DARIEN ZONING LAW**

## **ARTICLE IX        ADMINISTRATION AND ENFORCEMENT**

### **SECTION 901       ENFORCEMENT**

The responsibility of administering and enforcing the provisions of this Zoning Law are hereby conferred upon the Zoning Enforcement Officer, who shall have the powers conferred upon him/her by this Zoning Law, those as may be reasonably implied there from and those powers conferred upon him/her by other applicable laws. He/she shall be appointed by the Town Board and receive such compensation as determined by the Town Board.

### **SECTION 902       DUTIES OF THE ZONING ENFORCEMENT OFFICER**

- A.    Applications and Permits – It shall be the duty of the Zoning Enforcement Officer, or his/her duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected so as to determine whether or not they are in violation of the provisions of this Zoning Law. He/she shall have the right to enter any building or premises during reasonable hours in the course of his/her duties.
  
- B.    Inspection and Review – It shall also be the duty of the Zoning Enforcement Officer, or his/her duty authorized assistants, to cause any plans, buildings or premises to be examined or inspected so as to determine whether or not they are in violation of the provisions of this Zoning Law. He/she shall have the right to enter any building or premises during reasonable hours in the course of his/her duties.
  
- C.    Violations and Written Orders – When the Zoning Enforcement Officer determines that any plans, building, or premises are in violation of the provisions of this Zoning Law, he/she shall issue a written notice of violation to the owner and/or other responsible party directing that said violation be remedied. Said written notice shall specify the nature of the violation found to exist, the remedy ordered, the time

## TOWN OF DARIEN ZONING LAW

permitted for such action, the penalties and remedies which may be invoked by the Town and the violator's rights of appeal.

- D. Revocation of Certificate of Compliance – On service of the above-described notice of violation, the Certificate of Compliance for such building or use shall be held null and void. A new Certificate of Compliance shall be required for any further use of such building or premises.
- E. Records – The Zoning Enforcement Officer shall maintain a permanent record of all matters considered and all action taken by him/her. Such records shall form a part of the records of his/her office and shall be available for the use of the Town Board and other officials of the Town. The records to be maintained shall include at least the following:
  - 1. Application File – A separate, permanent file shall be established for each application for a permit required by this Zoning Law at the time said application is filed. Such file shall contain one (1) signed copy of the application and all supporting documents and plans, notations regarding pertinent dates and fees, etc. one (1) copy of any resolution and/or decision of the Planning Board and/or Board of Appeals adopted in connection with the application, and the date the permit applied for was issued or denied by the Zoning Enforcement Officer, together with a copy of such permit or denial.
  - 2. Monthly Report – The Zoning Enforcement Officer shall prepare a monthly written report for the Town Board. Said report shall cite all actions taken by the Zoning Enforcement Officer, including all referrals made by him/her, all permits, and certificates issued and denied, all complaints of violations received, all violations found by him/her, and any action taken by him/her in connection with each such violation. The Zoning Enforcement Officer shall also provide a copy of this monthly report to the Tax Assessor, Planning Board, and Board of Appeals.

# TOWN OF DARIEN ZONING LAW

## SECTION 903 CERTIFICATES AND PERMITS

The following certificates and permits are hereby established for the equitable enforcement and administration of the provisions of this Zoning Law.

- A. Zoning Permit – The Zoning Enforcement Officer is hereby empowered to issue a zoning permit for plans involving the construction or alteration of a building or structure or part of a building or structure including signs, or the change in use of any land, building or structure or part thereof, where he determines that such plans comply with the provisions of this Zoning Law. A zoning permit is not a building permit. An applicant may need both permits.
- B. Temporary Use Permit – Upon written direction of the Planning Board, the Zoning Enforcement Officer is hereby empowered to issue a temporary use permit pursuant to Section 908. Except as otherwise provided in Section 908, a temporary use permit shall only be effective for a period not exceeding twelve (12) months, and such permit may be extended by the Zoning Enforcement Officer for an additional consecutive period not exceeding six (6) months.
- C. Emergency Housing Permit – The Zoning Enforcement Officer is hereby empowered to issue a non-renewable (i.e. fire, flooding, etc.), for a period not exceeding ninety (90) days in conformance with Section 803.
- D. Special Use Permit – The Zoning Enforcement Officer is hereby empowered to issue a special use permit when granted by the Planning Board as provided for in Section 908.
- E. Certificate of Compliance – The Zoning Enforcement Officer is hereby empowered to issue a Certificate of Compliance certifying that all provisions of this Zoning Law have been complied with in respect to the location and use of the building, structure or premises in question.

# TOWN OF DARIEN ZONING LAW

## SECTION 904 APPLICATION PROCEDURES

- A. Application – Applications for zoning permits shall be accompanied by a layout sketch, drawn to scale, showing the shape and dimensions of the lot to be affected, the size and location of all buildings or structures to be constructed, altered or extended as well as unaffected structures that shall remain, the intended use of each building or structure, the exact location of all utility and other easements and rights-of-way, and any other information with regard to the lot affected and neighboring lots as may be necessary for compliance with requirements of this Zoning Law. The applicant is solely responsible for the accuracy of all information, data and site plans submitted pursuant to this Zoning Law. Four (4) copies of the application, together with the layout sketch, shall be submitted. The Zoning Enforcement Officer shall carefully consider the application, layout sketch and any supporting documents for compliance with this Zoning Law and either issued or deny the zoning permit in a timely manner.
  
- B. Issuance of Zoning Permit – The Zoning Enforcement Officer shall issue a zoning permit only after the site plan, if required, has been approved by the Planning Board and any required variances and/or special use permits have been obtained. If a zoning permit is not obtained by the applicant with ninety (90) days after final approval, such approval shall be void.
  
- C. Installation of Foundation – The Zoning Enforcement Officer shall be notified when the site is prepared for installation of the foundation for any building or structure and shall inspect the site to check the proposed location thereof.

## **TOWN OF DARIEN ZONING LAW**

- D. Completion of Construction – A zoning permit shall expire if construction is not substantially completed within a period of one (1) year from the date said permit is signed by the Zoning Enforcement Officer. The Zoning Enforcement Officer may issue a six (6) month extension for good cause shown. Only two (2) such extensions shall be permitted.
- E. Location of Permit – The zoning permit shall be located readily visible to the public during the construction process.

### **SECTION 905 FEES FOR PERMITS, AMENDMENTS, VARIANCES, SPECIAL USE PERMITS, SITE PLAN REVIEW, PLANNED UNIT DEVELOPMENTS AND OTHER ADMINISTRATIVE AND REVIEW COSTS**

Fees may be charged for the processing of applications for the various Permits, amendments, and variances required and/or permitted by the provisions of this Zoning Law together with site plan review and Planned Unit Developments and other administrative and review costs. The fees shall be set by separate resolution of the Town Board and may be changed from time to time in the same manner.

### **SECTION 906 CERTIFICATE OF COMPLIANCE**

No Land shall be used, occupied or changed in use and no building hereafter erected, altered, or extended shall be used or changed in use until a Certificate of Compliance has been issued by the Zoning Enforcement Officer in accordance with the provisions of the Zoning Law.

# TOWN OF DARIEN ZONING LAW

## SECTION 907 BOARD OF APPEALS

- A. Organization – The Town Board shall appoint a five (5) member Board of Appeals and shall designate the chairperson thereof. In the absence of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson. Membership and terms of office for the Board of Appeals shall be as set forth in Town Law.
- B. Meetings, Minutes and Records – Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- C. Filing Requirements – Every rule, regulation, amendment, or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.
- D. Hearing Appeals – The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the Zoning Enforcement Officer or other administrative official. The concurring vote of a majority of the entire Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer, or to grant a use or area variance. In those instances where due to the location of the affected property, a variance request is subject to review under General Municipal Law Section 239m, a majority plus one (1) vote of the entire Zoning Board of Appeals is necessary to override a County Planning Board recommendation of disapproval or approval with modification. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.

## TOWN OF DARIEN ZONING LAW

When required by New York State Town Law Section 283-a, the Zoning Board of Appeals shall provide for coordination with the New York State Agricultural Districts program through use of an agricultural data statement form.

- E. Time of Appeal – Such appeal shall be taken within sixty (60) days after filing of any order, requirement, decision, interpretation or determination of the Zoning Enforcement Officer by filing with said official and with the Town Clerk a notice of appeal specifying the grounds thereof and the relief sought. Such notice of appeal shall be filed on forms available from the Zoning Enforcement Officer of Town Clerk. The cost of sending or publishing any notice relating to such appeal shall be borne by the appealing party in an amount set forth in a fee schedule established by the Town Board and shall be paid to the Town Clerk prior to the hearing of such appeal (See Section 905).
  
- F. Public Hearing Notice and Referrals
  - 1. The Zoning Board of Appeals shall hold a public hearing before deciding an appeal; such public hearing shall be advertised in accordance with Section 909 of this Zoning Law. When required by New York State Town Law Section 283-a, the Zoning Board of Appeals shall provide for coordination with the New York State Agricultural Districts program through use of an agricultural data statement form. When required by the provisions of Section 239 of the General Municipal Law, the Zoning Board of Appeals shall forward the application to the County Planning Board for its review.
  
  - 2. At least thirty (30) days before the date of the public hearing unless the Planning Board waives such time limit, the secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of the notice of hearing and all pertinent information for those appeals involving a use variance. The Planning Board shall inform the Zoning



## TOWN OF DARIEN ZONING LAW

Board of Appeals in writing of its advisory opinion (including recommendations) prior to the hearing. Failure of the Planning Board to inform the Zoning Board of Appeals within the allotted time shall be deemed to signify no recommendation on the application.

- G. Time of Decision – The Zoning Board of Appeals shall decide upon an appeal within sixty-two (62) days after the conduct of the public hearing. Prior to rendering its decision, the Board shall first complete the SEQR (State Environmental Quality Review) process.
- H. Filing of Decision and Notice – The decision of the Zoning Board of Appeals on an appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- I. Permitted Action by the Zoning Board of Appeals
  - 1. Interpretations, Requirements, Decisions and Determinations – The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determinations as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this Zoning Law (the Zoning Enforcement Officer) and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
  - 2. Use Variances – The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Enforcement Officer, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by this Zoning Law. No such use variance shall be granted by the Zoning Board of

## TOWN OF DARIEN ZONING LAW

Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
- b. 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;
- c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- d. That the alleged hardship has not been self-created.

The Zoning 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.

3. Area Variances – The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Zoning Enforcement Officer, to grant area variances for the area of dimensional requirements of the Zoning Law. 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

## TOWN OF DARIEN ZONING LAW

of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- a. 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.
- b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- c. Whether the requested area variance is substantial.
- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals but shall not necessarily preclude the granting of the area variance.

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

4. Imposition of Conditions – The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such

## **TOWN OF DARIEN ZONING LAW**

conditions shall be consistent with the spirit and intent of the Zoning Law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

- J. Solar Access – Pursuant to Chapter 74-2 of the New York State Laws of 1979, the siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this Chapter. Upon appeal pursuant to this Section of this Zoning Law, the Zoning Board of Appeals shall consider the specific conditions of the case and may make provisions for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof when hearing a request for an area variance.
- K. Rehearing – A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

### **SECTION 908 PLANNING BOARD**

- A. Organization – The Planning Board shall consist of seven (7) members appointed by the Town Board as provided for in Section 271 of the Town Law. The Town Board shall designate a member of said Planning Board to act as chairperson thereof, and upon its failure to do so, the Planning Board shall elect a chairperson from its own members. The Planning Board shall elect such other officers as necessary to conduct its business.

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## B. Powers and Duties

1. Site Plan Review – Review of site plans as set forth in New York State Town Law Section 274-a and this Zoning Law as set forth in Subsection C of this Section for any application for a zoning permit other than those for single family dwellings and those involving accessory uses, buildings and/or structures and those specified under Section 703 as not subject to Site Plan Review.
2. Special Use Permits – Granting of special use permits as set forth in New York State Town Law Section 274-b and this Zoning Law based upon the criteria set forth in paragraph D of this Section.
3. Review Use Variances – Review use variance applications referred to the Planning Board as set forth in Section 907 and make a recommendation to the Zoning Board of Appeals.
4. Temporary Uses and Structures – Grant permits for temporary uses and structures.
  - a. The Planning Board may direct the Zoning Enforcement Officer to issue a temporary use permit for a period of time not exceeding twelve (12) months, for incidental nonconforming uses and structures as follows:
    - i Temporary uses incidental to a construction project.
    - ii Temporary real estate sales office incidental to a subdivision.
    - iii Other similar temporary incidental uses which:

## TOWN OF DARIEN ZONING LAW

- (a). Do not have a detrimental effect upon the lawful use of land and activities normally permitted in the district in question, and
- (b). Contribute materially to the welfare and well-being of the Town.
- (c). Temporary use permits shall be conditioned upon and agreement by the applicant to remove the use upon expiration of the permit.
- (d). Temporary use permits may be reissued only once for an additional consecutive period not exceeding six (6) months.
- (e). The Planning Board shall hold a public hearing as part of the temporary use permit process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for the temporary use permit is accepted by the Planning Board, and such public hearing shall be advertised in accordance with Section 909 of the Zoning Law. When required by New York State Section 283-a, the Planning Board shall provide for coordination with the New York State Agricultural Districts program through use of an agricultural data statement form. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the temporary use permit to the Genesee County Planning Board for its review prior to taking any final action.

## TOWN OF DARIEN ZONING LAW

- C. Site Plan Review -The Planning Board, at a regular or special meeting, shall review and approve, approve with modifications, or disapprove a site plan in connection with any application for a zoning permit other than those for single family dwellings, those involving accessory uses, buildings and/or structures and those specified under Section 703 as not subject to Site Plan Review.
1. Notice and Public Hearing – The Planning Board may at its discretion hold a public hearing as part of the site plan review process. When a public hearing is held as part of the site plan review, the public hearing shall be held at a time fixed within sixty-two (62) days from the date of the application for site plan review is accepted by the Planning Board, and such public hearing shall be advertised in accordance with Section 909 of this Zoning Law. When required by New York State Town Law Section 283-a, the Planning Board shall provide for coordination with the New York State Agricultural Districts program through use of an agricultural data statement form. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the site plan to the Genesee County Planning Board for its review prior to taking any final action.
  2. Submission of Site Plan and Data – The applicant shall submit to the Town Clerk five (5) copies of a site plan and supporting data in a form satisfactory to the Planning Board, including, but not limited to, the following information presented in graphic form and accompanied by a written text.
    - a. Survey of property showing existing features, including contours, utility easements, large trees, buildings, uses, structure, streets, rights-of-way, zoning and ownership of surrounding property.

## **TOWN OF DARIEN ZONING LAW**

- b. Layout sketch showing proposed lots, blocks, building locations, and land use areas.
- c. Traffic circulation, parking and loading spaces, and pedestrian walks.
- d. Landscaping plans including site grading, landscape design, open space and buffer zone.
- e. Preliminary architectural drawings for buildings to be constructed, floor plans, exterior elevations and sections.
- f. Preliminary engineering plans, street improvements, storm drainage, water supply and sanitary sewer facilities and fire protection.
- g. Engineering feasibility study of any anticipated problem, which may arise from proposed development, as required by the Planning Board.
- h. Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i. Description of proposed uses, anticipated hours of operation, expected number of employees, and anticipated volume of traffic generated.
- j. Together with any other information requested by the Planning Board.



## TOWN OF DARIEN ZONING LAW

3. Site Plan Review Criteria – The Town Planning Board shall review the site plan and supporting data before approval, approval with modifications, or disapproval of such site plan, taking into consideration the following:
  - a. Harmonious relationship between proposed uses and existing adjacent uses.
  - b. Maximum safety of vehicular circulation between the site and street including emergency vehicle access.
  - c. Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety and emergency vehicle access.
  - d. Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
  - e. Adequacy of municipal facilities to serve the proposal including streets, water supply and wastewater systems, storm water control systems, and fire protection.
  
4. Area Variances – Notwithstanding any provisions of law to the contrary, where a proposed site plan contains one (1) or more features which do not comply with zoning regulations. Applications may be made to the Zoning Board of Appeals for an area variance pursuant to New York State Town Law Section 274-a, without the necessity of a decision or determination of an administration official charged with the enforcement of the zoning regulations.

## TOWN OF DARIEN ZONING LAW

5. Modifications and Conditions
  - a. The Planning Board may require changes or additions in relation to yards, driveways, landscaping, buffer zones, etc., to ensure safety, to minimize traffic difficulties and to safeguard adjacent properties. Should changes or additional facilities be required by the Planning Board, final approval of site plan shall be conditional upon satisfactory compliance by applicant in making the changes or additions.
  - b. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the Town.
6. Waiver of Requirements – The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law and may be exercised in the event any such requirements are found not to be requisite in the interest of public health, safety or general welfare or inappropriate to a particular site plan.

## TOWN OF DARIEN ZONING LAW

7. Reservation of Park Land on Site Plans Containing Residential Units
  - a. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required by the Planning Board or Zoning Law, a park or parks suitably located for playground or other recreational purposes.
  - b. Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.
  - c. In the event the Planning Board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the Planning Board may require a sum of money in lieu thereof to be established by the Town Board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan, which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively

## TOWN OF DARIEN ZONING LAW

- for park, playground, or other recreational purposes, including the acquisition of property.
- d. Notwithstanding the foregoing provisions of this subdivision, of the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to New York State law Section 276, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of re-subdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.
8. Performance Bond or Letter of Credit as a Condition of Site Plan Approval – The Planning Board may require as a condition of site plan approval that the applicant file a performance bond or Letter of Credit in such amount as the Planning Board determines to be in the public interest, to insure that proposed development will be built in compliance with accepted plans. Any such bond must be in a form acceptable to the Town Attorney for an amount approved by the Town Board.
  9. Performance Standards – In all districts, uses are not permitted which violate applicable county, state and/or federal codes and regulations pertaining to environmental issues. The Planning Board, under its powers of site plan review and approval, may in its discretion reject any uses if it determines that insufficient evidence has been submitted to show compliance with these environmental laws and regulations lies with the applicant.
  10. Decisions – The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the first regular monthly meeting of the Planning Board at least ten (10) days prior to

## TOWN OF DARIEN ZONING LAW

which the site plan and all supporting data required by this Article are submitted to the Town Clerk. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision, the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a site plan review is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail. Nothing herein shall preclude the holding of a public hearing in any matter on which a public hearing is not so required.

11. Changes and Revisions – Any applicant wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

D. Special Use Permit – The Planning Board, at a regular or special meeting, shall review and approve, approve with modification, or disapprove an application for a Special Use Permit. Uses requiring a special use permit are those, which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in the Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit. All provisions of this Zoning Law shall be followed, and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A Special Use Permit may be subject to conditions and safeguards imposed by the public welfare. Also, the Zoning Enforcement Officer shall at least annually inspect the use of the property in question to ensure compliance with conditions, which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Law.

## **TOWN OF DARIEN ZONING LAW**

1. Application – Applications for Special Use Permits shall be made in writing on the appropriate form obtained from the Zoning Enforcement Officer. Seven (7) copies of each application, including site plan, shall be submitted to the Zoning Enforcement Officer, who shall review the application for completeness prior to forwarding it to the Town Clerk and the Planning Board. The Zoning Enforcement Officer shall retain one (1) copy. Such site plan shall show location of all buildings, parking, access and circulation, open space landscaping and other information necessary to determine that the proposed special use complies with the intent of this Zoning Law.
2. Area Variance – Where a proposed Special Use Permit contains one (1) or more features which do not comply with the Zoning Law, application may be made to the Zoning Board of Appeals for an area variance pursuant to section 274-b of Town Law, without the necessity of a decision or determination of the Zoning Enforcement Officer.
3. Notice of Public Hearing – The Planning Board shall hold a public hearing as part of the Special Use Permit process. The public hearing shall be held at a time fixed within sixty-two (62) days from the date the application for Special Use Permit is accepted by the Planning Board, and such public hearing shall be advertised in accordance with Section 909 of this Zoning Law. When required by New York State Town Law Section 283-a, the Planning Board shall provide for coordination with the New York State Agricultural Districts program through use of an agricultural data statement form. When necessary under Section 239 of the General Municipal Law, the Planning Board shall forward the special use permit to the Genesee County Planning Board for its review prior to taking any final action.

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4. Conditions – The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said Special Use Permit, any such conditions must be met in connection with the issuance of the Special Use Permit by the Zoning Enforcement Officer.
5. Waiver of Requirements – The Planning Board is empowered, when reasonable, to waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in this Zoning Law and may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular Special Use Permit.
6. Decisions – The Planning Board shall decide any matter referred to it under this Subsection within sixty-two (62) days after the public hearing. Such time may be extended by mutual consent of the Planning Board and the applicant. Prior to rendering its decision, the Board shall first complete the SEQR process. In those instances where due to the location of the affected property, a Special Use Permit request is subject to review under General Municipal Law Section 239m, a majority plus one vote of the entire Planning Board is necessary to override a County Planning Board recommendation of disapproval or approval with modification. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy mailed to the applicant by regular mail.

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7. Abandonment of Special Use Permit – A Special Use Permit shall expire when there occurs a cessation of such use or activity, for which said special use was originally issued, for a period of one (1) year. Upon evidence that a Special Use Permit has been abandoned, the Zoning Enforcement Officer shall issue a notice of abandonment to the owner of records for the property by registered mail. If after sixty (60) days the owner has not provided satisfactory proof that the special use did not cease, the Planning Board shall revoke the special use permit.
  
8. Standards Applicable for all Special Use Permits – The Planning Board may issue a Special Use Permit only after it has found that all the following standards and conditions have been satisfied, in addition to any other applicable standards and conditions elsewhere in this Zoning Law.
  - a. The location and size of such use and intensity of the operations involved in or conducted therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous and shall be in harmony with the orderly development of the district.
  - b. The location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, nor impair their value.
  - c. The operation of the proposed use shall not be more objectionable to nearby properties than the operation of any permitted use.



## TOWN OF DARIEN ZONING LAW

- d. The proposed use shall not cause undue noise, vibration, odor, lighting glare, and unsightliness so as to detrimentally impact on adjacent properties.
- e. When a commercial or industrial special use abuts a residential property, the Planning Board may find it necessary to require screening of sufficient height and density (I.e. fences, hedges, etc.) to reduce or eliminate the conflicting environmental conditions previously mentioned.
- f. Electrical disturbances shall not be caused so as to disrupt radio or television communications in the immediate area.
- g. The proposed use shall meet the off-street parking and loading requirements of similar uses.
- h. Appropriate on-lot drainage shall be provided so as to eliminate any potential on-site water related problems. Also, the drainage systems created shall not detrimentally impact on adjacent properties.
- i. Traffic access to and from the use site, as well as on-lot traffic circulation, shall be designed so as to reduce traffic hazards. The Planning Board shall review and approve all such proposals.
- j. Such use shall be attractively landscaped. This shall involve grading, seeding, and regular mowing of the front yard area at a minimum.
- k. A Special Use Permit shall not be issued for a use on a lot where there is an existing violation of this Zoning Law.

## TOWN OF DARIEN ZONING LAW

- I. As a condition of all Special Use Permits, right of entry for inspection with reasonable notice shall be provided to determine compliance with the conditions of said permit.
  
  - m. In addition to the general standards for Special Use Permits as set forth herein, the Planning Board may, as a condition of approval for any such use, establish any other additional standards, conditions, and requirements it deems necessary or appropriate to promote the public health, safety and welfare, and to otherwise implement the intent of this Zoning Law.
  
  - n. The above standards are not intended to apply to uses whose regulation has been preempted by the State or Federal government, i.e. mining.
9. Performance Guarantee
- a. No certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed.
  
  - b. The sufficiency of such performance guarantee shall be determined by the Town Board after consultations with the Planning Board, Zoning Officer, Town Attorney and other appropriate parties.

# TOWN OF DARIEN ZONING LAW

## SECTION 909 PUBLIC HEARING AND NOTICE REQUIREMENTS

When a public hearing is required by Sections 907 and 908 of this Zoning Law, the requirements set forth in this Section as well as the applicable requirements of New York State Town Law shall be followed. The applicant shall pay all costs for the public hearing including, but not limited to, the legal advertisement(s) and the required mail notifications.

- A. Legal Advertisement – Each notice of a public hearing shall be published in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing for all zoning public hearings conducted by the Planning Board and the Zoning Board of Appeals.
- B. Notices to Surrounding Property Owners – Notice of a required public hearing shall be mailed by first class mail service to all owners of property located within two hundred and fifty (250) feet of the property which is the subject of the application when the property involved is located in an MDR District, or five hundred (500) feet when involved property is located in any other district, at least ten (10) days before the date of the hearing. For this purpose, the names and addresses of owners shown on the latest assessment records of the Town of Darien shall be used.
- C. Recess or Adjournment of a Public Hearing – The Planning Board, Town Board or Zoning Board of Appeals may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or to persons it decides may be interested in the proposal being considered. Upon recessing or adjournment, the time and date when the hearing is to be resumed shall be announced. No further notice of publication will be necessary.

# TOWN OF DARIEN ZONING LAW

## SECTION 910 VIOLATION AND PENALTY

- A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy, or change the use of, any building, structure, or land or part thereof in a manner not permitted by this Zoning Law or without the issuance of a valid zoning permit or certificate of compliance as required by this Zoning Law.
- B. It shall be further unlawful for any person to fail to comply with a written order of the Zoning Enforcement officer within the time fixed for compliance therewith.
- C. The Zoning Enforcement Officer may issue an appearance ticket to any person who fails to respond to a notice of violation and written order to correct the violation.
- D. It shall be unlawful for any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or for any person taking part of assisting in the construction, alteration, repair or use of any building, structure or land, to violate any of the applicable provisions of this Zoning Law, or any lawful order, notice, directive, permit or certificates issued or made hereunder.
- E. Any violation of this Zoning Law shall be punishable by a fine as set forth in Section 268 of Town Law as amended.
- F. The Zoning Enforcement Officer may, with permission of the Town Board, engage the Town Attorney or any other attorney approved by the Town Board to initiate legal action to enforce provisions of this Zoning Law.

## **TOWN OF DARIEN ZONING LAW**

- G. In addition to the foregoing remedies, the Town of Darien and/or its appropriate officials and authorities may maintain an action for injunction to restrain, correct or abate any violation of this Zoning Law and/or maintain an action at law for damages sustained as a result of any violation of this Zoning Law and/or seek any other remedy permitted by law. Damages may include, but not be limited to, the legal fees and court costs expended or incurred by the Town as a result of any legal proceedings brought hereunder.

### **SECTION 911 COMPLAINTS OF VIOLATION**

Whenever a violation of this Zoning Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Zoning Enforcement Officer who shall properly record such complaint, investigate it and take appropriate action in a timely manner.

### **SECTION 912 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)**

- A. The State Environmental Quality Review Act (SEQR) requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations (8 NYCRR Part 617) sets forth the SEQR regulations in detail and should be reviewed for compliance prior to undertaking any of the above-mentioned activities.

## TOWN OF DARIEN ZONING LAW

- B. As set forth in 8 NYCRR Part 617, determination of lead agency status is one of the initial steps in the SEQR process. When the Town is designated lead agency for a particular zoning action, the following boards (agencies) may typically be the lead agency for the actions identified as follows:

Zoning text amendment	Town Board
Zoning district amendment	Town Board
Special Use permits	Planning Board
Zoning Permit (if necessary)	Planning Board
Site Plan Review	Planning Board
Variances	Board of Appeals

1. When a project involves two (2) or more separate zoning actions, the board (agency) having final (last) approval would typically be the lead agency.
2. Nothing in this Section shall be interpreted to override the process for designation of lead agency status as set forth in 8 NYCRR Part 617.

- C. The SEQR process may extend the various procedural time limits set forth throughout this Zoning Law. For those actions taken under this Zoning Law subject to SEQR all time frames and deadlines otherwise set forth in this Zoning Law may be delayed until a Determination of Significance has been made and, if required, a Draft Environmental Impact Statement has been filed. An application is not complete, and, therefore, the review clock does not start, until a Determination of No Significance (Negative Declaration) has been made or until a Draft Environmental Impact Statement has been filed.

# TOWN OF DARIEN ZONING LAW

## ARTICLE X AMENDMENTS

### SECTION 1001 INITIATING AMENDMENTS

- A. Initiating Amendments – The Town Board may, from time to time, on its own motion, on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Zoning Law.
- B. Petitions – Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, filed in triplicate with the Town Clerk, and shall be accompanied by the required fee.

### SECTION 1002 REFERRAL OF PROPOSED AMENDMENTS TO THE TOWN PLANNING BOARD AND COUNTY PLANNING BOARD

- A. Referral to Town Planning Board – All proposed amendments other than those requested by the Planning Board shall be referred to the Planning Board for its optional recommendation thereon. The Planning Board shall submit its report prior to the public hearing.
- B. Referral to County Planning Board – Where required by Section 239 of the General Municipal Law or other applicable statute, a proposed amendment shall be referred to the Genesee County Planning Board, Board shall report its recommendations to the Town Board within thirty (30) days from the date of such referral. Failure of the Genesee County Planning Board to report within said period shall be deemed an approval of the proposed amendment by the said Board. In the event that the Genesee County Planning Board disapproves the amendment or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members

## **TOWN OF DARIEN ZONING LAW**

of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

### **SECTION 1003 HEARING ON PROPOSED AMENDMENT**

Before adopting any amendments to this Zoning Law, the Town Board shall give notice of a public hearing thereon to such persons and in such manner as required by Section 264 of Town Law, or other applicable law and shall hold a hearing thereon pursuant to such notice. Prior to taking final action on any amendment, the Town Board shall complete the SEQR process.

### **SECTION 1004 PETITION PROTESTING AMENDMENT**

In case of a protest against such change signed by the owners of twenty (20) percent or more, either of the land included in such proposed change, or of the land immediately adjacent thereto and extending one hundred (100) feet there from or of the land directly opposite thereto, and extending one hundred (100) feet, from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least three-fourths (3/4) of the members of the Town Board.

### **SECTION 1005 PERIODIC REVIEW BY PLANNING BOARD**

From time to time the Planning Board shall reexamine the provisions of this Zoning Law and the location of district boundary lines, and shall submit a report to the Town Board, recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.



# **TOWN OF DARIEN ZONING LAW**

## **ARTICLE XI      LEGAL STATUS PROVISIONS**

### **SECTION 1101      PROVISIONS ARE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this Zoning Law shall be considered as the minimum requirements to promote and to protect public health, safety, comfort, convenience, prosperity, and other aspects of the general welfare, and in particular:

- To promote the purposes set forth in the preamble to this Zoning Law and in the statements of legislative intent for the respective districts or groups of districts; and
- To provide a gradual remedy for existing conditions which are detrimental thereto.

### **SECTION 1102      CONFLICT WITH OTHER LAWS**

Whenever any provision of this Zoning Law and any other provision of law, whether set forth in the Zoning Law or in any other law, ordinance, or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

### **SECTION 1103      EXISTING ZONING PERMITS**

In all cases where:

- A zoning permit has been lawfully issued on the basis of an application showing complete plans for the proposed construction of a new building or other structure, or of an enlargement of an existing building or other structure which requires construction of foundations, and

## **TOWN OF DARIEN ZONING LAW**

- The adoption of this Zoning Law or of any subject amendment thereto, would make the completed building or other structures nonconforming or non-complying construction may nevertheless be continued in accordance with the zoning permit and a certificate of compliance may be issued for such nonconforming or non-complying building or other structure.

### **SECTION 1104 EXISTING PRIVATE AGREEMENTS**

This Zoning Law is not intended to abrogate or annul any easement, covenant, or any other private agreement.

### **SECTION 1105 SEPARABILITY CLAUSE**

It is hereby declared to be the legislative intent that, if any provision or provisions of this Zoning Law or the application thereof to any building or other structure, or tract of land, are declared by a court of competent jurisdiction to be invalid or ineffective in whole or in part, or to be inapplicable to any person or situation, the effect of such decision shall be limited to the provision or provisions which are expressly stated in the decision to be invalid or ineffective, or the zoning lot, building or other structure, or tract of land immediately involved in the controversy.

All other provision of this Zoning Law shall continue to be separately and fully effective, and the application of any such provision to other persons or situations shall not be affected.

### **SECTION 1106 REPEALER**

The ordinance entitled “The 1971 Zoning Local Law for the Town of Darien”, adopted on November 21, 1971 together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

# **TOWN OF DARIEN ZONING LAW**

## **SECTION 1107    EFFECTIVE DATE**

The public welfare demanding it, this Local Law shall take effect at Darien, New York on the 3<sup>rd</sup> day of December 1986. Any amendments to this Local Law shall be enacted by local law and shall take effect as provided under New York State Municipal Home Rule Law.