

**TOWN OF GERRY  
ZONING LAW**

## TABLE OF CONTENTS

		<u>Page</u>
ARTICLE	I <u>Title, Enacting Clause &amp; Purpose</u> .....	1
Section	101 Title.....	1
	102 Enacting Clause.....	1
	103 Purpose.....	1
	104 Application of Regulations.....	1
ARTICLE	II <u>Interpretations &amp; Definitions</u> .....	3
Section	201 Language, Interpretations.....	3
	202 Definitions.....	3
ARTICLE	III <u>Establishment of Districts</u> .....	12
Section	301 Creation & Enumeration of Districts.....	12
	302 Zoning Map.....	12
	303 Interpretation of Boundaries.....	12
ARTICLE	IV <u>District Regulations</u> .....	14
Section	401 Agricultural – Residential 1 (AR1).....	14
	402 Business – Light Industry (B-1).....	15
	403 Flood Plain (FP).....	16
	404 Low Density Light Industry (LDLI).....	16
	405 Groundwater Protection Overlay District 17-A.....	17
ARTICLE	V <u>General Provisions</u> .....	25
Section	501 Access to Public Street.....	25
	502 Contiguous Parcels.....	25
	503 Corner Lots.....	25
	504 Heights.....	25
	505 Existing Substandard Size Lots.....	25
	506 Visibility.....	26
	507 Interpretation of Permitted Uses.....	26
	508 Fences & Walls.....	26
	509 Top Soil.....	26
	510 Maintaining Lot Areas.....	26
	511 Established Front Yards.....	28
	512 Storage Structures.....	28
	513 Number of Buildings on Lot.....	28
	514 Farm Animals in Business District.....	28
	515 Temporary Permits for Mobile Homes.....	29
	516 Mobile Homes and Manufactured Home Standards.....	29
ARTICLE	VI <u>Supplemental Regulations</u> .....	32
Section	601 Cluster Residential Development.....	32
	602 Gravel & Sand Operations.....	34

	603 Oil & Gas Wells.....	34
	604 Private Swimming Pool.....	35
	605 Off-street Parking.....	36
	606 Loading and Unloading.....	37
	607 Signs.....	37
	608 Junk Cars & Heavy Vehicles.....	40
	609 Service Stations.....	41
	610 Garage & Lawn Sales.....	42
	611 Unsafe Buildings.....	42
	612 Travel Trailer – Accessory Use.....	43
	613 Mobile Home Parks.....	43
	614 Travel Trailer Parks.....	44
	615 Maintenance of Front Yards.....	45
	616 Private Camps.....	45
	617 Tree Tops & Flooding.....	46
	618 Vehicular Dismantling & Scrap Yards.....	46
	619 Gas Compressors, Generators and Related Equipment.....	50
	620 Sludge & Sewage Operations.....	52
	621 Communication Towers.....	54
	622 Adult Entertainment Facilities.....	59
	623 Manufactured Home Conditions .....	
	624 Wind Energy Conversion Systems .....	
ARTICLE	VII <u>Administration by Building Inspector</u> .....	64
Section	701 Enforcement.....	64
	702 Duties of Building Inspector.....	64
	703 Building Permits.....	65
	704 Schedule of Fees.....	66
	705 Issuance of Appearance Tickets.....	66
ARTICLE	VIII <u>Nonconforming Uses</u> .....	67
Section	801 Continuation.....	67
	802 Unsafe Structures.....	67
	803 Alterations.....	67
	804 Prior Approved Construction.....	67
	805 Restoration.....	67
	806 Abandonment.....	67
	807 Displacement.....	67
	808 District Changed.....	68
	809 Nonconforming Signs.....	68
	810 Nonconforming Yards.....	68
	811 Use Changes.....	68
ARTICLE	IX <u>Zoning Board of Appeals</u> .....	69
Section	901 Creations.....	69
	902 General Procedures.....	69

	903 Interpretations.....	69
	904 Use & Area Variances.....	69
	905 Mandatory Referrals.....	71
ARTICLE	X <u>Town Planning Board</u> .....	72
Section	1001 Creation.....	72
	1002 Duties.....	72
	1003 Special Use Permits.....	72
	1004 Mandatory Referrals.....	74
ARTICLE	XI <u>Amendments by Town Board</u> .....	75
Section	1101 Procedures.....	75
	1102 Mandatory Referral.....	75
	1103 Referral to Town Planning Board.....	75
ARTICLE	XII <u>Violations &amp; Penalties</u> .....	76
Section	1201 Violations.....	76
	1202 Penalties.....	76
ARTICLE	XIII <u>Legality</u> .....	77
Section	1301 Conflicts.....	77
	1302 Separability.....	77
	1303 Repealer.....	77
	1304 Effective Date.....	77

**ARTICLE I**  
**TITLE, ENACTING CLAUSE, PURPOSE**

**SECTION 101**                      **Title**

A Local Law regulating the location, construction and use of buildings, structures, and the use of land in the Town of Gerry, County of Chautauqua, State of New York, and for said purposed dividing the Town into districts. This Local Law shall be known and cited as the Zoning Law of the Town of Gerry.

**SECTION 102**                      **Enacting Clause**

Pursuant to the authority conferred by Article 16 of the Law of the State of New York and for each of the purposes specified therein, the Town Board of the Town of Gerry, County of Chautauqua and the State of New York, has ordained and does hereby enact the following Local Law regulating and restricting the location, size and use of buildings and other structures, and the use of land in the Town of Gerry.

**SECTION 103**                      **Purpose**

The zoning regulations and districts herein set forth and outlined upon the zoning map are made in accordance with a comprehensive plan for the purpose of promoting the public health, safety, morals, convenience, order, prosperity, and general welfare of the community. They have been designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, public utilities, schools, parks; and other public requirements. They have been made with reasonable consideration, among other things, as to the character of each district and its suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

**SECTION 104**                      **Application of Regulations**

Except as hereinafter provided:

A. No building or land shall hereafter by used or occupied, and no building or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified for the district in which it is located.

B. No building shall hereafter be erected or altered:

- (1) to accommodate or house a greater number of families;
- (2) to occupy a greater percentage of lot area, or
- (3) to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.

C. No part of a yard or other open space about any building is required for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building.

D. Health Department Rules – the regulations of the State and County Health Departments with respect to water supply and sewage disposal facilities will apply. The applicant for a building or zoning permit must obtain a copy of the required health department permits for attachment to his application, before the issuance of local approval by the building or zoning inspector.

E. Multiple Residence Law – For all dwellings with three or more dwelling units or any dwelling two or more stories in height with five or more roomers, the “Multiple Residence Law,” Chapter 61B of the Consolidated Laws, sets forth certain requirements with regard to fire safety, size of rooms, and other minimum health and safety specifications.

F. Building Code – No building shall be erected or altered unless it complies with any building code which has been adopted by the Town of Gerry.

G. Subdivision Laws – State and existing local subdivision laws must be complied with, in addition to this zoning law.

H. The final responsibility for the conforming of buildings and use to the requirements of this law shall rest with the owner or owners of such building or use and the property on which it is located.

I. No building or buildings shall be erected in the Town which will limit the usefulness or depreciate the value of surrounding property.

J. No entry or exit from a public road shall be constructed prior to the developer contacting the appropriate highway department to coordinate the project. Applicable jurisdictional laws must be followed.

**ARTICLE II  
DEFINITIONS**

**SECTION 201                      Language & Interpretations**

For the purpose of this Local Law certain terms or words herein shall be interpreted or defined as follows: Words used in the present tense include the future tense. The singular included the plural. The word “person” includes a corporation as well as and individual. The word “lot” includes the word “plot” or “parcel.” The term “shall” is always mandatory. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged or designed to be used or occupied.”

**SECTION 202                      Definitions**

Certain words and terms used in this Local Law are defined as follows:

**ACCESSORY BUILDING OR USE** – An accessory building or use is one which:

- Is subordinate to and serves a principal building or principal use.
- Is subordinate in area, extent or purpose to the principal building or principal use served.
- Contributes to the comfort, convenience, or necessity or occupants of the principal building or principal use served.
- Is located on the same lot as the principal building or principal use served.
- Signs, home occupations, and farm stand are permitted only as accessory uses. The words “accessory uses” shall apply to uses accessory to uses permitted in the particular subsection (either Uses Permitted by Right or Uses Permitted by Special Exception) of this Local Law in which it is found.

**AGRICULTURE LIMITED** – The production of crops, plants, vines, and trees, provided no odor or dust is produced within 100 feet of any building or adjacent property.

**ALTERATION** – Is as applied to a building or structure, a change or rearrangement in the structural parts, or in the exit facilities, or an enlargement, whether by extending on a side or increasing in height, or moving from one location or position to another; the term “alter” in its various modes and tenses and its particular form, refers to the making of an alteration.

**APARTMENT HOUSE** – A building arrangement, intended or designed to be occupied by three (3) or more families living independently of each other.

**BUILDING** – Any structure having a roof supported by columns or by four independent, nonparty walls and intended for the shelter, housing, or enclosure of person, animals, or chattel. Mobile homes are considered buildings for the purposes of this definition.

**BUILDING AREA** – The total of areas taken on a horizontal plan at the main grade level of the principal buildings and all accessory buildings exclusive of uncovered porches, terraces, and steps. All dimensions shall be measured between the exterior faces of walls.

**BUILDING INSPECTOR** – Inspects and maintains the building construction of the Town Zoning Law and the New York State Uniform Fire and Building Code.

**BUILDING LINE** – A line formed by the intersection of a horizontal plane of average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In 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 PERMIT** – Written approval by the Building Inspector in accordance with this Zoning Law to construct or alter a structure or use a parcel of land in a specified way.

**BUILDING SETBACK LINE** – An established line within a property defining the minimum required distance between the face of any structure to be erected and the right-of-way line in an adjacent highway.

**CAMP** – See Travel Trailer Camp.

**CLUB** – An organization catering exclusively to members and their guests including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial membership and purposes of such club.

**COMMUNICATION TOWER** – Any structure designed for the support of any device for transmitting and/or receiving signals for the purpose of communication, including but not limited to broadcast, short wave, citizens band, AM radio, FM radio, television, microwave, cellular, digital or personal communication devices.

**CUSTOMARY HOME OCCUPATION** – A use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. Such use also conforms to the following conditions:

- Not more than one-third of the floor area of one story of principal building is so used.
- No nonresidents are employed.
- Only customary household appliances and equipment is used.
- There is no outside display of commodities.
- No advertising except as allowed by Section 607.
- No offensive noise, vibration, smoke, dust, odors, heat, or glare shall be produced.

- Examples of acceptable uses include art studio, dressmaking, musical instruction to a single pupil.
- Sufficient off-street parking in accordance with Section 605.

CUSTOMARY ACCESSORY BUILDING – See Accessory Building.

DUPLEX – A building arranged, intended, or designed to be occupied by two (2) families living independently of each other.

DWELLING UNIT – One (1) or more rooms within a building providing living facilities, including equipment and provision for cooking for a single household including one (1) or more persons living as a family.

EATING AND DRINKING ESTABLISHMENTS – Places where food and/or beverages are prepared and/or sold for consumption on the premises or for take-out, including restaurant, tea rooms, cafeterias, bars, taverns, and lunchrooms.

ESSENTIAL SERVICES – The erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies, of gas, electrical, steam, water, sewage, and communication systems, and facilities. Railroad trackage and facilities and bus shelters shall also be considered as providing an essential service.

FAMILY – One (1) or more persons, related by birth, marriage, or other domestic bond, occupying a dwelling unit and living as a single non-profit housekeeping unit.

FIRE INSPECTOR - Inspects and maintains the fire and life safety of New York State Uniform Fire and Building Code.

FLOOD OR FLOODING – Means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of streams, rivers, or other inland areas of water; or (2) abnormally rising lake waters resulting from severe storms or hurricanes.

FLOOD INSURANCE BOUNDARY MAP – The official map from the Federal Insurance Administration by each community that has a flood hazard problem.

FLOOD PLAIN – A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation, or any area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPROOFING – Means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, and contents of buildings.

FLOOD PROTECTION ELEVATION – Means the level and elevation above which a particular use will be considered safe from flooding. Such estimate are updated with the

100-year flood elevation. Such elevations will be designated at various points on the official map.

FLOODWAY – The designated area of a flood plain required to carry and discharge waters of a given magnitude.

FLOODWAY FRINGE AREA – the designated area of a flood plain adjacent to the floodway and within the 100-year special flood hazard area.

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.

GARAGES, PRIVATE – A secondary building used in conjunction with a primary building which provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

GARAGES, PUBLIC – Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, including the supply of gasoline and oil.

HIGHWAY ACCESS POINT – The distance between any vehicular entrance or exit to the street.

HOME FOR AGED – A structure principally used to house senior citizens in which a separate household is established for each family. Nursing home are not considered to be a home for aged.

HOME OCCUPATION – See Customary Home Occupation.

JUNK YARD – The use of more than 100 square feet of the area of any lot for the collecting, storage or sale of waste paper, rags, scrap metal, salvaged machines or appliances or similar materials as interpreted by the Zoning Board of Appeals. Additionally, the collecting, dismantling, storage or salvaging of more than two (2) automobiles which are not registerable or capable of passing a state safety inspection.

LOT – Any parcel of land occupied, or designed to be occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this Zoning Law.

LOT, AREA – An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres.

LOT, COVERAGE – That percentage of the lot area which is devoted to building area. District regulations refer to the maximum percentage of the lot area devoted to building area.

LOT LINE – Any dividing one lot from another.

LOT WIDTH – The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

LOW DENISTY LIGHT INDUSTRY - This district is designed to accommodate a wide range of light manufacturing and related uses which conform to a high level of performance standards. Manufacturing establishments of this type, within completely enclosed buildings on a relatively large landscaped lots will be situated in selected areas on State and County highways throughout the Town in a manner which will be consistent with present land uses in the Town.

MOTOR VEHICLE SERVICE STATION – Any area of land, including structures therein, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and which may or may not include facilities for lubricating washing or otherwise servicing motor vehicles, but not including the painting thereof by any means, body and fender work, or the dismantling or replacing of engines.

MOBILE HOME – A transportable single-family living quarters suitable for year-round occupancy. Mobile homes contain the same utility systems (water, waste and electricity) as found in conventional immobile housing. Mobile homes are supported by a frame which is an integral part of the unit. Mobile homes are not designed to be live in except when set up on a lot with the proper utilities. Both double wide mobile homes shall be referred to or treated as conventional dwelling units.

MOTOR HOMES – A self-propelled relatively small temporary living quarters and are generally used as mobile vacation homes. Motor homes generally have self-contained independent utility systems. This includes recreational vehicles (R.V.'s).

MUNICIPALITY – Shall mean the Town of Gerry.

NONCONFORMING USE – That use of a building, structure or land legally existing at the time of enactment of this Zoning Law and which is not one of those permitted in the district in which it is situated.

OFFICE – A place which is used to conduct a business or profession and is occupied by a physician, surgeon, dentist, lawyer or person providing similar services or in whose office the functions of consulting, record keeping, and clerical work are performed.

ONE HUNDRED YEAR FLOOD – The waters of a flood that on the average is likely to occur once every 100 years.

OPEN SPACE – Common, or public, or private greens, parks, or recreation areas, including playgrounds, woodland conservation areas, walkways, trails, stream crossings and drainage control areas, golf courses, swimming pools, tennis courts, ice skating rinks, and other similar recreational uses, but which may not include any such uses or activities which produce noise, glare, odor, air pollution, fire hazards, or other safety hazards, smoke, fumes, or any use or activity which is operated for profit, or other things detrimental to existing or prospective adjacent structures or to existing or prospective development of the neighborhood.

PARKING SPACE – A required off-street parking space shall be an area of not less than one hundred and sixty-two (162) square feet nor less than eight and one-half (8½) feet wide by nineteen (19) feet long, exclusive of access drives or aisles, ramps, columns, or office and work areas, accessible from streets, or alleys, or from private driveways or aisles leading to streets or alleys and to be used for the storage or parking of passenger automobiles or commercial vehicles under one and one-half (1½) ton capacity. Aisles between vehicular parking spaces shall not be less than twelve (12) feet in width when serving automobiles parked at forty-five (45) degree angle in one direction nor less than twenty (20) feet in width.

PRIVATE CAMP – A parcel of land utilized on a seasonal basis for recreations purposes. All other zoning restrictions apply to private camps.

PUBLIC – Owned, operated, or controlled by a governmental agency (Federal, State or Local) including corporation created by law for the performance of certain specialized governmental functions, a public school district, or a service district.

REGULAR FLOOD INSURANCE PROGRAM OR REGULAR PROGRAM – The permanent program which is entered only after detailed flood information is provided by the Federal Insurance Administration; e.g., Floodway/Floodway Fringe Area, Flood Insurance Rate Map.

RESIDENCE, SINGLE-FAMILY DETACHES – A detached building designed to contain one (1) dwelling unit.

RESIDENCE, TWO-FAMILY – either of the following:

- (1) A building having two (2) side yards and accommodating but two (2) dwelling units, with one family living over the other.
- (2) A detached building containing two (2) dwelling units separated by a party wall, each having one (1) side yard.

RESIDENCE, MULTI-FAMILY – A building used or designed for three (3) or more dwelling units including apartment houses and town houses.

SECTION – Unless otherwise noted section and section numbers shall refer to this law.

SEMI-PUBLIC – Places of worship, institutions for the aged and children, nurseries, nonprofit colleges, hospitals, libraries, cemeteries, and institutions of a philanthropic nature. Also, open space.

SIGN – Any structure or part thereof, attached thereto, or painted, or represented thereon which shall display or including any letter, word, model, banner, flag, pennant, insignia, devise of representation used for the purpose of bringing the subject thereof to the attention of the public. The word sign does not include the flag, pennant or insignia of any nation, state, city, or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious, or like organization, or the property thereof.

SIGN, ADVERTISING – Any outdoor sign, including those signs already described in Section 607 C and D, which display information on uses, events, goods, products, services or facilities offered at location other than on the tax lot where the sign is located. The words “advertising sign” include the word “billboard”

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) sided (straight sides) geometric shape which most closely outlines the said sign. Only one (1) side of a sign shall be used in measuring the area.

SIGN, BUSINESS – A sign for permitted use conducted on the premises which shall identify the written name and/or the type of business and/or any trademark of an article for sale or rent on the premises or otherwise call attention to the use conducted on the premises.

SIGN, IDENTIFICATION – A sign for permitted use conducted on the premises or for articles sold or distributed by that use, or displaying the name of the premises.

SIGN, INSTRUCTIONAL – Any sign conveying instructions with respect to the use of the premises or a portion of the premises on which it is maintained or a use or practice being conducted on the premises.

SIGN, NAMEPLATE – Any sign attached directly to the wall of a building occupied by the person to who such sign indicated the name, occupation and/or address of the occupant. A nameplate shall not be over two (2) square feet in size.

SIGN, TEMPORARY – A sign which offers premises for sale, rent, or development; or announces special events or calls attention to new construction or alteration; or offers a sale of seasonal garden produce, garage, household, porch items or signs of similar nature; or political signs. Temporary status of signs will expire after ninety (90) days.

SPECIAL USE PERMIT – A Special Use Permit deals with special permission, granted only by the Planning Board to occupy land for specific purposes when such use is not permitted by right, but is listed as permitted by Special Use Permit.

**SPECIAL FLOOD HAZARD AREA** – Means that maximum area of the flood years (i.e., that has a one (1) percent change of being flooded each year – “100-Year Flood”).

**STORY** – That portion of a building included between the surface of any floor and the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF** – A story under a gable, hip, or gambrel roof, the wall plates of which , on at least two (2) opposite exterior walls, are not more than two (2) feet above the floor of such story.

**STRUCTURE** – A building constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground.

**SUBSTANTIAL IMPROVEMENT** – Is defined as any repair, reconstruction or improvement of a structure, the cost of which equal or exceeds fifty (50) percent of the case value of the structure either (1) before the improvement is started or (2) if the structure has been damaged and is being restored, before the damage occurred.

**TOWN HOUSE** – A dwelling unit designed to be occupied as a residence for one (1) family and one (1) of a group of three (3) or more attached dwellings, placed side by side, separated by walls, each containing one (1) or two (2) stories, and each having separate front and rear, or side and rear, or front and side entrances from the outside.

**TRACT** – A large piece of land under single ownership and developed or to be developed as a single entity for two (2) or more units of use.

**TRAVEL TRAILER CAMP – COMMERCIAL CAMPGROUND** – A parcel of land used or intended to be used, let or rent on a seasonal basis for occupancy by campers or for occupancy by or of travel trailers, motor homes, tents or movable or temporary dwelling, rooms or sleeping quarters of any kind. Such a parcel shall be a minimum of 100 acres and shall be subject to conditions set by the Planning Board in accordance with Section 614.

**TRAVEL TRAILER (CAMPER)** – A relatively small temporary living quarters designed to be hauled behind a vehicle. Travel trailers are not designed as permanent living quarters and generally are used on a seasonal basis. They are supported primarily by their own wheels. Travel trailers generally have self-contained utility systems.

**USE** – Any purpose for which land or a building is designed, arranged, intended or for which it is, or may be occupied or maintained.

**VARIANCE** – Permissive waivers from the terms of the law, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the law will result in unnecessary hardship or practical difficulty so that the spirit of the law shall be observed and substantial justice done and granted by the Zoning Board of Appeals.

YARD, FRONT – The area extending across the entire width of the lot between the building line, or front main wall of a building and the front right-of-way line (where right-of-way is unknown, a line twenty-five (25) feet from center of improved portion on Town of Gerry roads and a line of thirty-five (35) feet from center of improved portion of State and County roads) and into which space there shall be no extension of building partitions in any district, or parking space(s) including any enveloping wall, fence or hedge around the parking area in any non-commercial districts.

YARD, REAR – The area extending across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for parking, loading and unloading space, and garages and carports.

ZONING BOARD OF APPEALS – Shall mean the Zoning Board of Appeals of the Town.

**ARTICLE III  
ESTABLISHMENT OF DISTRICTS**

**SECTION 301                      Creation & Enumeration of Districts**

For the purpose and provisions of this Local Law, the Town of Gerry is hereby divided into the following types of districts.

Agricultural-Residential 1	(AR1)
Business-Light Industrial	(B-1)
Flood Plain	(FP)

**SECTION 302                      Zoning Map**

The boundaries of the aforesaid zoning districts are hereby established as shown on the map entitled, "Zoning District Map of the Town of Gerry, New York, Dated 1979," which map accompanies and is made a part of this Local Law and shall have the same force and effect as if the zoning map, together with all notations, references, and other information shown thereon, were fully set forth and described herein.

**SECTION 303                      Interpretation of District 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. Where district boundaries are indicated as approximately following the center lines of streets or highways, street liens, or highway right-of-way lines shall be construed to be such boundaries.

B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.

C. Where district boundaries are so indicated that they are approximately parallel to the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance is give, such dimension shall be determined by the use of the scale shown on said Zoning Map.

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

E. Any flood boundary shown on the zoning map indicates general location only. The precise location of flood plain boundaries shall be established by the Building Inspector after consulting with the Chautauqua County Planning Board.

F. Any party aggrieved by an interpretation may appeal to the Zoning Board of Appeal, whose decision will be final. However, all decisions of the Zoning Board of Appeals are subject to court reviews in accordance with applicable laws of the State of New York. The burden of proof shall be on the appellant.

**ARTICLE IV  
DISTRICTS**

**SECTION 401**

**Agricultural-Residential District (AR1)**

A. Uses Permitted by Right:

Single-Family Dwelling House  
Duplex (Two-Family) Dwelling  
Agricultural Uses  
Outdoor Storage of One of Each of the Following:  
    Camper, Cargo Trailer, Boat, Boat Trailer. Each must be owned for  
    personal use by a resident on the premises.  
Garage When Accessory to Family Dwelling  
Storage Structure Accessory to Family Dwelling  
Customary Accessory Building or Uses in Accordance with the Definition in  
    Section 202.  
Public Uses (e.g., Library, Schools, Civic Building, Highway Building, etc.)  
Essential Services and Supporting Structures (e.g., utility lines, and utility  
    support buildings)  
Parking Spaces in Accordance with Section 605.  
Oil & Gas wells in accordance with Section 603.

B. Uses Permitted by Special Use Permit:

Multiple Family Apartments  
Mobile Home Park in Accordance with Section 613  
Customary Home Occupation in Accordance with Definition in Section 202  
Private Camp in Accordance with Definition in Section 202  
Travel Trailer Camp (Same as Commercial Campground) in Accordance with  
    Section 202  
Gravel & Sand Extraction in Accordance with Section 202  
Churches or similar Place of Worship, Parish Houses, Rectories  
Swimming Pools in Accordance with Section 604  
Cemetery  
Undertaking Establishment  
Golf Course  
Cluster Residential Development in Accordance with Section 601  
Mobile Homes in conjunction with the erection of a single-family or multiple-  
    family dwelling unit in accordance with section 515  
Communication Towers

C. Area Standards\*:

	Municipal Sewers	
	<u>Without</u>	<u>With</u>
Minimum Lot Size (Acres)	2	1
Minimum Lot Width (Feet)	200	150
Maximum Lot Cover (% of Lot Area)	40%	40%
Minimum Front Yard (measured from right-of-way in feet)	100	100
Minimum Rear Yard (Feet)	75	75
Minimum Side Yard (Feet)	50	50
Maximum Stories	2½	2½
Minimum First Floor Space for each Dwelling Unit (Square feet)	750	750

Note: \* Area Standards apply to all listed uses unless other standards are specified in other sections of this law.

**SECTION 402                      Business District (B-1)**

A. Uses Permitted by Right:

- All uses allowed in AR1 District by right (Section 401)
- Rodeos
- Farm animals in accordance with Section 514

B. Uses Permitted by Special Use Permit:

- Stores and Shops Conducting Retail Business
- Nursing Homes
- Housing for the Elderly
- Restaurants and Other Places Serving food or beverages
- Day Care Centers
- Banks
- Office Buildings
- Barber Shops and Beauty Parlors
- Gas Stations
- Multiple Family Dwelling Units
- Home Occupations
- Swimming Pools in accordance with Section 604
- Cemetery
- Cluster Residential Development in accordance with Section 601

C. Area Standards:

	Municipal Sewers	
	<u>Without</u>	<u>With</u>
Minimum Lot Size (square feet)	15,000	10,000
Minimum Lot Width (feet)	100	80
Maximum Lot Cover (% of lot area)	60%	60%
Minimum Front Yard ( measured from right-of-way in feet)	25	25
Minimum Rear Yard (feet)	20	20
Minimum Side Yard (feet)	15	15
Maximum Stories	2½	2½

**SECTION 403      Flood Plain (FP)**

On the original 1979 zoning, this article and page was included. Planning & Development of Chautauqua County shows Gerry’s original as a blank page 20. In the beginning prior to 1979, page 20 was AR 3 District. AR 3 District was the designated mobile home location in town. It was deleted at the last minute.

**SECTION 404      Low Density Light Industry (LDLI)**

A. Uses Permitted by Right:

Those permitted in AR1 Section 401 by right

B. Uses Permitted by Special Use Permit

Those permitted in AR1, Section 401 and:

Subject to the conditions set out in ARTICLE VI, Section 620

Office Buildings

Research and Development

Light Manufacturing

Warehouse

C. Area Standards

Minimum Lot Size (Acres)	5
Maximum Lot Cover	20%
Minimum Lot Frontage along Road or Right-of-Way	300’
Minimum Setback for Structure on Lot from Road or Right-of-Way	100’
Minimum Rear Yard (feet) from boundary line	100’
Minimum Side Yard (feet) from boundary line	100’
Maximum Stories	2

## **SECTION 405**

## **Groundwater Protection Overlay District (GP)**

### **A. Statement of Intent**

The purpose and intent of the Groundwater Protection Overlay District is, in the interest of public health, safety and general welfare, to preserve the quality and quantity of the Town's groundwater resources in order to ensure a safe and healthy drinking water supply, despite the lack of a municipal supply at the present time. This is to be accomplished by regulating land uses which might contribute to the contamination of any aquifer identified as necessary for the present and future water supply of the residents of the Town of Gerry.

### **B. General Scope and Authority**

The Groundwater Protection Area shall be considered as overlaying other zoning districts. Any uses permitted in the portions of the districts so overlaid shall be permitted subject to all the provision of the protection area. In any cases where conflicts arise between these supplemental regulations and any other existing regulations, the more restrictive regulations shall apply.

The boundaries of the Groundwater Overlay District reflects the best hydrogeologic information available as of the date of the map. Boundary delineation does not imply that specific hydrogeologic testing has been performed or that specific information is available. Rather, it indicates that 1) based on best estimates and professional judgment these areas are more critical to protect and 2) require stricter standards than outlying areas. Where these bounds are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in questions to show where the boundaries should be properly located. At the request of the owner(s), the Town may engage a professional geologist, hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology to determine more accurately the location and extent of an aquifer or recharge area, and may charge the owner(s) for the entire cost of the investigation.

### **C. Establishment and Delineation of Groundwater Protection Areas**

For the purposes of this protection area, there are hereby established within the Town of Gerry, certain groundwater protection areas which consist of any aquifer, the land above such aquifer, and the aquifer's most significant recharge areas as follows:

#### **Zone I: Primary Protection Zone**

The Primary Protection Zone, as delineated, shall include those permeable geologic deposits that allow surface water, either from streams or precipitation, to enter into the aquifer flow system. Most notably these are the deltaic areas of Hatch Creek, Folsom Creek, Mill Creek and the Towerville and Kimball Stand Areas in the vicinity of the Cassadaga Creek Valley, including a five-hundred (500) foot buffer zone. It will also include those geologic deposits that have an area extent greater than one (1) square mile,

are composed of highly permeable material, and can be used as a future source of public and private water supply.

#### Zone II: Secondary Protection Zone

The Secondary Protection Zone is identified as the watershed areas tributary to the deltas comprising Zone I. As delineated, these areas shall include land outside the aquifer area that may contribute runoff overland and/or through surface streams for groundwater recharge.

#### Zone III: Tertiary Protection Zone

The Tertiary Protection Zone, as delineated, shall include all land comprising the floor of the Cassadaga Creek Valley.

#### D. Permitted Uses in Groundwater Protection Areas

The following uses are permitted within the Groundwater Protection Areas provided that all necessary permits, orders or approvals required by local, state, or federal law shall have been obtained:

##### (1) Zones I, II and III: Primary, Secondary and Tertiary Protection Zones

All uses currently permitted under the Zoning Law of the Town of Gerry are permitted in the Groundwater Protection Overlay Districts subject to the provisions of this Section.

##### (2) Nonconforming Uses

Notwithstanding any other provision herein, a nonconforming use within the Groundwater Protection Area may be continued and maintained so long as it remains otherwise lawful. No such use shall be enlarged, altered, extended, or operated in any way which increases its threat to groundwater quality or otherwise contravenes with the purpose and intent of this Section.

In the event that a nonconforming use has cease for a consecutive period of one (1) year or eighteen (18) months during any three (3) year period, such nonconforming use may not be resumed except in conformity with the provision of all districts within which it is located.

#### E. Restrictions and Requirements in Groundwater Protection Areas

##### (1) Prohibited Uses and Activities

a. The discharge, land application or disposal of any hazardous material, toxic substance or radioactive material is prohibited in all three zones.

b. The production or processing of bulk quantities of any hazardous material or toxic substance is prohibited in all three zones.

c. The open storage of pesticides, herbicides, fungicides and artificial fertilizers within seventy-five (75) feet linear distance of any watercourses in Zone III is prohibited.

d. The dumping or disposing of snow or ice collected offsite from roadways, or parking areas is prohibited in Zone I; dumping or disposing of snow or ice collected offsite from roadways or parking areas is prohibited within 100 feet of any watercourse in Zone II.

e. The bulk storage of coal or chloride salts is prohibited in Zones I and II except in a water-tight ventilated structure constructed on an impervious surface. Any outside area used for loading, handling, or mixing shall be designed so as to prevent seepage and runoff from entering the groundwater or any watercourse.

f. Any form of underground injection of hazardous materials or toxic substances is prohibited in all three zones.

g. Gas stations are prohibited in Zone I; gas stations are prohibited within Zone II within 500 feet of any watercourse and are subject to review and approval by the Chautauqua County Health Department; gas stations are subject to review and approval by the Chautauqua County Health Department in Zone III.

h. Solid waste disposal facilities and junkyards are prohibited in Zone I; these activities are subject to review and approval by the Chautauqua County Health Department in Zones II and III and must be in compliance with all New York State Department of Environmental Conservation rules and regulations.

i. The minimum lot size for single-family and two-family houses, or houses with 10 or fewer people, and a flow of less than 1,000 gallons per day shall be square feet; all septic systems must comply with Article IV of the Sanitary Code of the Chautauqua County Health Department and requires the review and approval of the Chautauqua County Health Department.

j. The use of septic system cleaners which contain toxic substances or hazardous material is prohibited in all three zones.

k. The disposal of toxic substances or hazardous materials by means of discharge to a septic system is prohibited in all three zones.

l. The spreading of sewage sludge is prohibited in Zone I; in Zone II the spreading of sewage sludge is prohibited in accordance with Section 621 of this (Gerry) Zoning Law.

m. All permitted industrial and commercial uses are subject to review by the Town of Gerry.

(2) Other Requirements for Groundwater Protection Zones

a. Petroleum Bulk Storage Facilities installed above and below ground require permits and are subject to compliance with those standards described under 6 NYCRR Parts 612, 613 and 614 as administered by the New York State Department of Environmental Conservation and in compliance with the County Sanitary Code.

b. Bulk storage of toxic substances or hazardous material is subject to compliance with 6 NYCRR Parts 595, 596 and 597 as administered by the New York State Department of Environmental Conservation and Section 603 of this Zoning Law.

c. Quarries, gravel mining and excavations are permitted in accordance with 6 NYCRR Part 420 and the State Environmental Quality Review Act as administered by the New York State Department of Environmental Conservation and Section 603 of this Zoning Law; all on-site activities of these operations are subject to the provision of Section 405 herein; mining and excavation activities must be reviewed and exhibit that appropriate protective measures will be taken and may be permitted upon special approval of the Town of Gerry.

All mining activities may be subject to a review by the Chautauqua County Health Department.

Operations which commence on or after the effective date of these regulations shall install a minimum of one (1) groundwater monitoring well in a direction up gradient from on-site activities. The specific location of these groundwater monitoring wells shall be determined by a professional geologist, hydrogeologist engineer, or other qualified expert trained and experienced in hydrogeology.

Frequency of required water quality sampling from monitoring wells shall be determined on a site-specific basis.

Access to monitoring wells shall be provided to employees of the Town of Gerry for purposes of any additional water quality sampling deemed appropriate.

d. Vehicular servicing, including but not limited to, automotive repair stations, body shops, car washes, rust proofing operations, dealerships and maintenance garages and barn, is allowed within the Groundwater Protection Area provided that the following requirements are met:

i. Floor drains must be connected to a holding tank or sanitary sewer equipped with an oil and grit separating tank;

ii. Wastes collected in a holding tank must be disposed of through a licensed water hauler;

iii. Waste degreasing solvents must be stored in drums or a holding

tank and disposed of through a licensed waste hauler;

iv. Waste oil must be stored properly in tanks or drums for disposal by a licensed waste hauler;

v. Storage facilities for tanks and/or drums require coated concrete floors and dikes to retain accidental spills or leaks; a permanent roof to protect tanks or drums and to prevent precipitation from entering dikes. Drums should be sealed, and tanks and drums must be located away from floor drains;

vi. Large drip pans should be kept beneath drums which have spigots and are stored in horizontal positions on racks.

vii. Potentially contaminated scrap including but not limited to scrap parts, batteries and used filters shall be stored in proper containers to prevent environmental release of contaminants;

viii. Activities must be in compliance with the State Drinking Water Act Underground Injection Control Regulations.

e. Application of pesticides, herbicides, fungicides or chemical fertilizers shall be performed in accordance with the recommendations and label of the manufacturer and in accordance with Chautauqua County Soil and Water Conservation District and Soil Conservation Service recommended best management practices.

Property owners who enlist the services of a commercial pesticide, fungicide, or herbicide applicator shall ensure that the applicator is certified and licensed by the New York State Department of Environmental Conservation.

This provision applies also to golf courses and farms.

f. Conversion of a one-family house using a septic tank to a two-family house using a septic tank requires the approval of the Chautauqua County Health Department.

g. Site plans for all proposed industrial and commercial uses shall be accompanied by a detailed and complete description of the anticipated uses and their operations.

h. Dry wells connected to drains from buildings must comply with Safe Drinking Water Act Underground Injection Control regulations and require approval from the Town of Gerry; floor drains must also comply with these regulations if applicable.

i. Storm water management plans must be developed in accordance with federal and state regulations.

j. Activities which have potential to contaminate groundwater in the Groundwater Protection Areas must have contingency plans approved by the Town of Gerry and must ensure these plans are easily accessible to appropriate personnel and that copies of plans have been distributed to appropriate emergency entities.

k. Parking lots and other large impermeable surfaces which may impede recharge of groundwater are restricted in Zone I and subject to review by the Chautauqua County Health Department.

l. Oil and gas wells in all zones must comply with all applicable New York State Department of Environmental Conservation requirements, including drilling, maintenance and closure, and must be in accordance with Section 603 of this Gerry Law.

m. Whenever there is a questions as to the groundwater contamination potential of a proposed use, the expert opinion of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation, and the State and County Health Departments may be requested.

#### F. Special Permits in Groundwater Protection Areas

Any use of property within the Groundwater Protection Areas shall be permitted only upon obtaining a special permit from the Town of Gerry when the use:

(1) Violates or does not meet any of the provisions of Section 405 herein;

(2) Is a development, other than residential, or real property exceeding [\$X] in development cost; [??]

(3) Is a use that anticipates an average daily on-site water consumption exceeding [X] gallons per day (gpd). [??]

#### G. Application for Special Permit in Groundwater Protection Areas

All applicants for a special permit to develop in the Groundwater Protection Areas shall submit the following:

(1) Name, address and telephone number of the applicant.

(2) If the applicant is a corporation, the name, address and telephone number of all the corporate officers and directors.

(3) A map and report showing the location of the premises for which the permit is sought and plan prepared by a licensed professional engineer or architect showing all features of the system necessary for the satisfactory conveyance, storage, distribution, use

and disposal of sanitary wastes, storm water wastes, process wastes, toxic substances and hazardous materials, solid wastes and incidental wastes within the property boundaries of the business or commercial establishment.

(4) When the use of toxic substances or hazardous materials averages an amount equal to or in excess of 55 liquid gallons per month or 500 pounds dry weight per month, the applicant must provide for any design features, operating plans, and any other protection measures as the Town of Gerry deems appropriate and sufficient to prevent and/or monitor groundwater contamination especially in the vent of a potential leak or spill of these substances and must develop a contingency plan.

a. When the use of toxic substances or hazardous materials averages less than 55 liquid gallons per month or 500 pounds dry weight per month, and when the project is determined to have a potential negative impact on groundwater quality, the Town of Gerry mad demand the applicant to provide for any and all design features, operating plans, contingency plans and/or such other protection measures as per this Section.

(5) When storage of toxic substances or hazardous materials at any one time is equal to or exceeds a total of 220 liquid gallons or a total of 2000 pound dry weight, the applicant must provide for any and all design features, operating plans, contingency plans and such other additional protection measures as the Town of Gerry may require to prevent and/or monitor and/or remediate groundwater contamination especially in the event of a potential leak or spill of these substances.

a. When storage of toxic substances or hazardous material at any one time is less than a total of 220 liquid gallons or a total of 2000 pounds of dry weight, the Town of Gerry may demand the applicant to provide for any and all design features, operating plans, contingency plans and such other additional protection measures as per Section 405.

(6) Such other nonproprietary information as the Town of Gerry shall request in order to have all facts before it prior to making their decision.

(7) Copies of any applications to permits from any other government agencies.

(8) List of all toxic substances or hazardous material known to be used or stored on the premises together with sufficient detail to appraise the Town of Gerry of the method of storage and the amount of toxic substances or hazardous materials on the premises.

(9) Method of disposal of toxic substances or hazardous materials.

(10) A full report regarding the use and storage of all toxic substances and all hazardous materials

## H. Requirements of Water Well Drillers

All water well drillers must submit a uniform well log as per the specifications of the Chautauqua County Health Department; permits, to be issued by the Chautauqua County Health Department, are required of drillers to ensure receipt of this date. The information required in the well logs is as follows:

- (1) types of sediments and the order in which encountered
- (2) depth of well
- (3) depth to water table
- (4) location of well
- (5) pumping rate
- (6) water quality of well water
- (7) problems encounter

**ARTICLE V  
GENERAL PROVISIONS**

**SECTION 501**                      **Access to Public Street**

Except as otherwise provided for in this Local Law, every building shall be constructed or erected upon a lot, or parcel of land which abuts upon a public street unless a permanent easement of access to a public street was of record prior to the adoption of this Law.

**SECTION 502**                      **Contiguous Parcels**

When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in the ownership, they shall be used as one lot for such use.

**SECTION 503**                      **Corner Lots**

Both street sides of a corner lot shall be treated as front yards in the application of bulk and area requirements.

**SECTION 504**                      **Height**

A. The height limitation of this Law shall not apply to church spires, belfries, cupolas, penthouses, and domes, not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks, bulkheads, similar features, and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in cross-sectional area 20 percent of the ground floor area of the building.

B. The provisions of this Law shall not apply to prevent the erection above the building height limit of a parapet wall or cornice for ornament (and without windows) extending above such height limit not more than five (5) feet.

**SECTION 505**                      **Existing Substandard Sized Lots**

The minimum area requirements specified for each type of allowed use shall not prevent the construction of an allowable use on a substandard sized lot which existed and was officially recorded at the time of enactment of this zoning law if the following conditions are met:

A. The substandard lot is not less than seventy-five (75) percent of all the applicable standards and,

B. The County Health Department approves the lot.



required yards, courts, other open spaces, or minimum lot area allocated to any building shall, by virtue of change of ownership or for any other reason be used to satisfy yard, court, other open space, or minimum lot requirements for any other building.

B. Division of Zoning Lots – No zoning lot improved with a building or buildings shall hereafter be divided into two (2) or more zoning lots and no portion of any zoning lot which is improved with a building or buildings shall be sold, unless all zoning lots resulting from each such division or sale and improved with a building or buildings shall not be less conforming to all the bulk regulations of the zoning district in which the property is located.

C. Location of Required Open Space – All yards, courts, and other open spaces allocated to a building or dwelling group shall be located on the same zoning lot as such building or dwelling group.

D. Required Yards for Existing Buildings – No yards now or hereafter provided for a building existing on the effective date of this Local Law shall subsequently be reduced below 8 feet to the adjoining lot line unless granted permission by the Zoning Board of Appeals pursuant to an Area Variance application.

E. Permitted Obstructions in Required Yards – The following shall not be considered to be obstructions when located in the required yards specified:

(1) In All Yards – Open terraces not over four (4) feet above the average level of the adjoining ground but not including a permanently roofed-over terrace or porch; awnings and canopies; steps, four (4) feet or less above grade, which are necessary for access to a permitted building, or for access to a zoning lot from a street or alley; chimneys projecting eighteen (18) inches or less into the yard; recreational and laundry drying equipment; arbors and trellises and flag poles; open fire escapes may extend into yard four feet six inches (4'6").

(2) In Front Yard – one (1) story bay windows projecting three (3) feet or less into the yard; and overhanging eaves and gutters projecting three (3) feet or less into the yard.

(3) In Rear Yards – Enclosed, attached or detached off-street parking spaces; open off-street parking spaces; necessary sheds, tool rooms, and similar buildings or structures for domestic or agricultural storage, balconies; breezeways and open porches; one (1) story bay windows projecting three (3) feet or less into the yard; overhanging eaves and gutters projecting three (3) feet or less into the yard. No accessory buildings shall be nearer than ten (10) feet to any principal building unless attached.

(4) In Side Yards – Overhanging eaves and gutters projecting into the yard for a distance not exceeding forty (40) percent of the required yard width, but in no case exceeding thirty (30) inches.

**SECTION 511****Established Front Yards**

In an existing neighborhood where structure are not set back from the right-of-way, the distance specified by this law, it shall be determined by the Building Inspector what appropriate setback will be permitted by new construction or by alterations to existing structures in order to aesthetically blend with existing adjacent structures. The varied setback will be based on the average of the setbacks of the two adjacent structures minus up to five (5) feet. Any variation requested which is in greater variation than that permitted by this rule will require an Area Variance.

**SECTION 512****Storage Structures**

A storage structure shall generally, be permitted in all districts. However, the following regulations shall apply to these structures:

- A. Size – All storage structures regardless of size require a building permit.
- B. Yard Requirements – If a storage structure is to be accessory to a primary dwelling unit, the yard requirements for the appropriate district will be met whenever it is reasonably possible. If the deviation from the yard requirements is greater than fifty (50) percent, the Building Inspector shall assist the applicant in determining an appropriate location which considers, among other things, the potential effects of neighboring properties.

**SECTION 513****Number of Buildings on Zoning Lot**

No more than one principal detached residential building shall be located on a zoning lot, nor shall a principal detached residential building be located in the same zoning lot with any other principal building.

**SECTION 514****Farm Animals in Business District**

Traditional farm animals may be maintained within the Business District (B-1) under the following conditions:

- A. Animals shall not be raised for profit or as a commercial venture.
- B. Animal shall be fenced so as not to be able to come within fifty (50) feet of adjacent residential structures nor within ten (10) feet of any boundary line.
- C. Animals shall be kept for recreational use or for home consumption of its products.

**SECTION 515**

**Temporary Permits for Mobile Homes**

A Temporary Special Use Permit for a mobile home may be applied for from the Planning Board in conjunction with the construction of single or multiple-family dwelling units.

The request must include, in addition to all information needed for any Special Use Permit, a time schedule for commencement and completion of the dwelling unit. As a minimum, construction on the dwelling unit shall begin within one (1) year from the date when the mobile home is placed temporarily on the lot. Additionally, the mobile home shall be removed within three years from the date that it was first placed on the lot, at which time the dwelling unit shall be livable.

The placement of the mobile home on the lot shall be in accordance with area standards unless the Planning Board determines that such conforming placement would not be practical, in which case the conditions will be specified.

AMENDMENT #1 ZONING ORDINANCE  
TEMPORARY PERMITS FOR MOBILE HOMES  
ARTICLE 5 SECTION 515

Upon application by the landowner, the Planning Board may grant extensions of time up to a maximum of two (2) years for completion of the dwelling provided the landowner (applicant) can show a good faith effort in completing construction of the dwelling unit.

Definition – For the purpose of this amendment the word “unit” shall be defined to refer to a “Mobile Home” or a “Manufactured Home”.

**SECTION 516**

**Mobile Home and Manufactured Home Standards**

**Unit size and construction** – The basic dwelling unit (TGZL-401C) must be 750 square feet, as it is delivered to the site, without additions as must conform to NYSFP & BC Chapter D., Article 2 1210.1 through 1222.3 (Reference).

**Septic System** – Each unit must have its own septic system approved by the Chautauqua County Board of Health. An approved Board of Health application must accompany the required building permit and become part of the permit when issued.

**Installation and Skirting** – Installation must conform to (Reference) NYSFP & BC, Chapter D., Article 3, 1223.1 through 1223.7B. Skirting is to be of painted galvanized metal, aluminum siding, vinyl siding or masonry and the metal of vinyl is to be similar in appearance to the unit. The skirting must be installed within 60 days of placement of unit on site.

**Unit Insulation** – The following minimum insulation standards set forth by Niagara Mohawk Power Corp., National Fuel Gas Corp., and New York State Fire Prevention and Building Code.

Roofs or ceiling	U = 0.05 R-19
Exterior walls	U = 0.07 R-14
Floors over unheated area	U = 0.08 R-11
Glazing – Windows & Sliding glass doors	U = 0.69 (Single glazed with Storms)
Entrance Doors	U = 0.40 (Solid wood with storm or insulated door)
Heating ducts exposed in unheated areas	U = -.20 R-5

**Electric Standards** – All wiring within the unit shall meet UL standards for the mobile home industry and have a legible UL label. The service entrance cable shall be solid bonded from the meter to the distribution box within the unit and must have at least a 100 amp. service panel. All connections between the meter and the unit distribution box shall be approved mechanical cable connectors. All convenience outlets, wall or ceiling, must be wired with three conductor cable not smaller in size than #12. Prior to occupancy a certificate of compliance as issued by the underwriters local inspector as to service entrance, convenience outlets and distribution panel capacity must be presented to the Building Inspector.

**Fire Code Compliance** – Each unit must be equipped with at least one smoke detector and be in compliance with NYSFP & BC Chapter B, 1060.2 through 1060.2C-3.

**Additions** – Any addition to the basic unit, either attached or separate from, must be similar in appearance and quality to the basic unit and requires a building permit. A mobile home may be used as a separate living unit and not attached to any existing dwelling as an addition. (Reference) NYSFP & BC Chapter D 1223.7A & 7B.

**Certification** – The seller must provide to the purchaser of a unit intended for placement within the township, a notarized certificate stating that the unit complies with all listed standards of the Town of Gerry Zoning. This certification must be attached to and become part of the building permit.

**Amendment Review** – This entire group of amendments to the present zoning law shall remain in force for a period of three years and then be reviewed by the Town Board and after proper advertisement, a public hearing is to be held and a vote taken at the next Town Board meeting to rescind or extend these amendments for an additional period of four years, with the same procedure to be repeated every four years.

**Compliance** – Should any noncompliance be evident to the Building Inspector upon his inspection of the placement of the unit on the site, he must insure compliance or prompt removal of the unit after advising the owner in writing.

References

NYSFP & BC – New York State Fire Prevention & Building Code

ULC – Underwriters Laboratory Code  
TGZL – Town of Gerry Zoning Law

**ARTICLE VI  
SUPPLEMENTAL REGULATIONS**

**SECTION 601                      Cluster Residential Development**

A. Purpose – The purpose of the procedures, standards, and controls of the cluster residential development is to provide a means to take advantage of natural physical features of an area by permitting reductions in bulk and area requirements for individual of open space ancillary to dwelling units.

B. Procedure:

(1) Application for establishment of cluster residential development shall be made to the Building Inspector. The Building Inspector shall refer the application to the Planning Board for consideration.

(2) The Planning Board shall require the applicant to submit documentation indicating conformance to all design and improvements required by this law. Such documentation shall include but not be limited to the following:

(a) Overall development plans drawn to scale showing: exact sized, shape, and location of lot to be built upon. Kind, location, occupancy capacity of structures, bulk and uses; general floor plan of buildings; location and identification of open spaces, streets, and all other means for pedestrian and vehicular circulation, parks, recreational areas and other non-building sites; provisions for automobile parking and loading including size, arrangement, and number of space and placement of lighting standards; general landscape plan; general location and nature of public and private utilities (including underground utilities) and other community facilities and services (including maintenance facilities).

The applicant shall include such other pertinent information as the Planning Board shall prescribe.

The movement of all vehicles and ingress and egress drives for all off-street parking and loading area (both front and rear) to insure the prevention of blockage of vehicles entering and leaving the site; preliminary architectural and engineering sketches showing plan levels, elevation, landscape plan and any other necessary information related to water runoff control, slope, contours, type of building, etc.; area to be utilized for storage of materials and type of architectural screen to be used.

Such other information as may be required by the Planning Board to determine their recommendation or decision.

(b) Written statement of: facts concerning the suitability of the

site, the proposed density, the location and proposed uses and facilities for development in accordance with the provisions of this law.

Purposes showing proposed provisions to be made for services, maintenance and continued protection of the cluster and planned unit development and adjoining territory.

Disposition of open-space lands and provisions for maintenance and control of the open-space land, financial responsibility for such open-space land must be clearly indicated.

Phasing of construction or timing regarding each development area.

The applicant shall include such other pertinent information as the Planning Board shall prescribe.

(3) In reaching its decision on the proposed development, the Planning Board shall consider, among other things, the need for the proposed use in the proposed location, the existing character of the neighborhood in which the use would be located and the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent property.

(4) The Planning Board shall approve, approve with conditions or disapprove such application. The decision of the Planning Board shall be accomplished within 30 days from when all information necessary has been supplied by the applicant.

#### C. Standards:

(1) Any owner of not less than five (5) contiguous acres of land located in a district permitting cluster of residential development may request in writing to the Building Inspector that the regulations of cluster residential development apply to his property.

(2) Uses permitted shall be the uses permitted in the district in which the cluster residential development is located.

(3) The regulations of the district in which the cluster residential development is located shall be observed and maintained with the following exceptions:

(a) The minimum lot area as established in the district in which the cluster residential development is located may be reduced by twenty (20) percent;

(b) The minimum lot width at the building line may be reduced by ten (10) percent;

(c) The minimum front yard may be reduced to not less than seventy-five (75) feet;

(d) The minimum rear yard may be reduced by not more than five (5) feet wherever the lot abuts common open-space land.

(e) The maximum lot coverage shall be increased by no more than five (5) percent of the resulting lot area.

(f) The minimum side yards may be reduced by not more than three (3) feet per side.

(g) All lots within the planned residential area shall face and be serviced by existing or new streets constructed within the planned residential site boundaries, but shall not face on collector-type or arterial-type streets.

(h) Open space land shall be set aside for the common use and enjoyment of all residents in the cluster residential development. In general, the land set aside for permanent open-space shall be the area differential between the regulations and requirements of the district and the requested requirements. Access to the open-space lands must be convenient to all residents.

(i) Applicable sections of General Provisions and Supplemental Regulations of this Law shall be followed.

## **SECTION 602                      Gravel & Sand Operations**

Non mine or quarry operations are authorized until a temporary Special Use Permit is received from the Planning Board. This Special Use Permit shall be renewed annually. The following regulations shall be adhered to:

A. No excavation; blasting or stockpiling of materials shall be located within three hundred (300) feet of any public road or other property line.

B. No power-activated sorting machinery or equipment shall be located within six hundred (600) feet of any public road or other property line and all such machinery shall be equipped with satisfactory dust elimination devices.

C. All excavation slopes shall be adequately fenced as determined by the Building Inspector.

D. All gravel and sand operations shall be restored to safe and aesthetically please state within two (2) months after termination of the operation.

## **SECTION 603                      Oil and Gas Wells**

A. All oil or gas wells and gas and oil storage facilities which includes all oil and gas equipment such as above ground pipes, vent regulators, gauges, tanks, compressors and cogeneration equipment and shall be located in accordance with the following specifications:





Multi-family residence	Dwelling unit
Church	5 fixed seats
Homes for Aged	3 residents
Elementary School	20 students
High School & College	12 students
Library	100 sq. feet
Places of assembly, convention hall & dance hall	200 sq. feet
Club, Lodge (without sleeping accommodations)	4 members
Places providing sleeping accommodations, hotels, motels, & tourist homes	sleeping unit
Mortuaries of Funeral Parlors	1/8 viewing room, plus 1 for every employee
Offices, Banks	100 sq. ft. floor area
Food Market	200 sq. ft. floor area
Eating & Drinking Establishments	4 seats or 1 for each 200 sq. ft. whichever is more
Bowling Alley	½ alley
Other commercial	300 sq. ft. sales area
Industrial	Employer (max. work Shift)
Other uses not listed above	500 sq. ft. floor area

**SECTION 606                      Loading & Unloading**

A. Off-street loading and/or unloading spaces for commercial vehicles while loading and/or unloading shall be providing on each lot where it is deemed that such facilities are necessary to serve the use of used on the lot. The number of loading and/or unloading spaces required for commercial and/or industrial vehicles while loading and/or unloading shall be in addition to the off-street parking requirements listed in Section 605. Each loading and/or unloading space shall be at least fourteen (14) feet wide, sixty (60) feet long and shall have at least a fifteen (15) foot vertical clearance; shall have a sixty (60) foot maneuvering area; shall have an all-weather surface to provide safe and convenient access during all seasons; shall not be constructed between the street right-of-way line and the building setback line.

**SECTION 607                      Signs**

A. Temporary signs are allowed in all districts. Other signs are permitted only when necessary to use(s) permitted on premises in the district in which located.

B. Wherever located and whatever their nature, signs shall conform to the following regulations.

- Construction, Maintenance and Removal: Every permitted sign must be

constructed of durable material and maintained in good condition and repair. Should the Town of Gerry Code Enforcement Officer, determine, following an inspection of the sign, that the sign is unsafe or insecure, or has been constructed, erected or is being maintained in violation of the Town of Gerry Zoning Law, then the Code Enforcement Officer shall serve the permittee or the landowner with a written notice specifying the violation and defects. In the event the permittee or landowner fails to comply within thirty (30) days after receiving such notice, such sign may be removed or altered at the direction of the Code Enforcement Officer to comply with the provisions of the Town of Gerry Zoning Law at the expense of the permittee or landowner.

- Electric Bulbs: No electrical bulbs shall be exposed unless satisfactorily shielded from view by a globe or other visible barrier.
- Ingress, Egress: No sign shall be erected or located as to prevent free ingress or egress from any window, door, or fire escape.
- Light, Air: No sign shall be placed in such a position that it will obscure light or air from a building.
- Attachments: No signs shall be permitted which are pasted, stapled, or otherwise attached to public utility poles or trees within the street right-of-way line.
- Traffic: No sign shall be so erected or located that, by reason of its location, shape or color, or the color, shape or location of the lights used in conjunction therewith, such sign might interfere with traffic or be confused with or obstruct the view of effectiveness of any official traffic sign, traffic signal, or traffic marking.
- Glare: Illuminating arrangements for signs shall be such that the light is concentrated upon such sign and that there shall be no glare cast upon the street, the sidewalk or adjacent property.
- Flashing Sign: No sign shall be a flashing sign. Flashing signs shall be defined herein as meaning any sign that: flashes by giving off or reflecting light; or moves; or revolves in any way; or has flowing or moving lights or parts of the sign; or alternates in any way its color, shape or intensity of illumination.
- Abutting Sign: No sign shall be placed to face on an abutting residential district except when authorized by a variance.
- Contrary to Zoning: No signs shall be erected containing information on it which states or implies that a property may be used for any purpose not permitted under the provisions of this Zoning Law.
- Cessation: If a use ceases for a period of six (6) calendar months, signs must be removed. Such signs may be removed by the municipality at the expense of the owner or lessee of the property on which said sign is located.

- Within Roads: No sign shall extend within a street or road right-of-way.
- Setbacks, Yards: In matters of setback and required yards and other such respects free-standing signs larger than eight (8) square feet shall be regarded as buildings within the meaning of this law.
- Height: The top of no sign shall be more than forty (40) feet in height measured from the surface of the earth.
- Building Signs: Signs attached to a building or buildings shall not project more than eighteen (18) inches from the wall upon which they are attached. Signs must be attached to parapet walls or other wall surfaces made a part of the main structure. Signs erected on a separate superstructure attached to the roof of the building to any other part of the building above the roof line shall not be permitted. No sign shall project higher than four (4) feet above the parapet line or the roof line, whichever is higher.

C. The following regulations apply to specific kind of signs:

- Temporary Sign: No real estate signs shall exceed six (6) square feet in area, with no more that two (2) such signs permitted use. Other signs shall not exceed twelve (12) square feet in area, and such signs shall be removed immediately upon the completion of work and the site or building on which the sign was erected shall be restored to its original condition upon removal of such signs.
- Instructional Sign: Instructional signs may be represented by free standing signs or building signs each of which shall not exceed four (4) square feet in area.
- Identification and Business Signs: In business districts, identification and business signs for each commercial parcel shall be limited to at total area of one hundred (100) square feet in size. No individual sign shall be greater than sixty-four (64) square feet in size. In all other districts identification and business signs shall be limited to a total area of thirty (30) square feet in size. In the case of corner lots maximum sign areas may be doubled.

D. The following signs shall be exempted from these regulations: directional, street, traffic, public safety, information or public service signs such as those advertising availability of rest rooms, telephone or similar public conveniences, and signs advertising meeting times and places or non-profit service or charitable clubs or organizations, may be erected or maintained provided that such signs do not advertise any commercial or industrial establishment, activity, or organization.

E. A permit from the Building Inspector shall be required before a sign other than a temporary sign may be created, altered, or enlarged. A permit may not be issued by the Building Inspector unless all sign regulations in this Law are met. All requests for erection, alteration, or enlargement of any sign must be accompanied by a plan drawn to

scale showing the exact size, shape, height, and dimensions of such sign and its proposed location or placement upon any structure or property.

#### F. Advertising Signs

(1) Location – All advertising signs, as previously defined herein, shall be located in an overlay district as follows:

That area immediately adjacent to New York State Route 60 extending 500 feet from the centerline of the roadway to either side beginning at a point seven hundred fifty (750) feet from the intersection of the Miller Road and New York State Route 60 and continuing to the southerly boundary of the Town of Gerry.

(2) Maximum number of display faces – An advertising sign may have a maximum number of two (2) display faces on each structure where the display faces are situated back to back. Side by side advertising signs are not allowed. Vertical stacking of display faces is not allowed.

(3) Spacing and Setback – All advertising signs shall be separated by a minimum radius of seven hundred fifty (750) feet. All advertising signs shall be located at least forty (40) feet from the edge of the road right-of-way.

(4) Number of Advertising Signs – As of the effective date of this amendment there will be a total of ten (10) advertising signs allowed within the aforescribed overlay district.

(5) Size – The maximum advertising sign shall be three hundred square feet or surface area per side.

(6) Non-conforming Advertising Signs – Any non-conforming advertising sign will be allowed to continue in use in their present condition and size. Any non-conforming advertising sign which is removed from the position it occupied at the effective date of this amendment and not restored within thirty (30) days shall be presumed abandoned and discontinued and may not be restored or re-erected except as provided for in the Town of Gerry Zoning Law. Nothing herein shall be deemed to prevent maintaining a non-conforming sign in good repair and safe condition.

(7) Identifier – All Advertising Signs shall have a conspicuous and easily read identifier that provides the name of the current sign owner, address and telephone number.

### **SECTION 608**

### **Regulation of Junk Cars, Heavy Vehicles & Trash**

#### A. Junk Automobiles:

(1) Definition – A motor vehicle (excluding farm vehicles) which is not in

a condition for legal use on public highways or which is in the process of being dismantled, or unlicensed, or unregistered.

(2) In all Districts a maximum of two (2) junk automobiles shall be allowed to be maintained outdoors.

(3) Junk vehicles shall be stored out of sight of adjacent properties and roadways to the greatest degree possible.

(4) Three (3) junk automobiles shall constitute a junk yard. Junk yards are permitted within the township when properly licensed and when operated and maintained in conformity with the rules and regulations of Vehicle Dismantling Junk Yards.

**B. Heavy Vehicles:**

(1) Definitions – Heavy vehicles shall mean automobile wreckers, commercial trailers, semi-trailers, or any vehicle or truck with dual wheels (four wheels mounted of the rear axle of a non-recreational vehicle.)

(2) The parking of heavy vehicles in all Districts shall be permitted unless it can be shown that there will be a nuisance associated with the vehicle.

**C. Trash Storage in Yards:**

(1) Definition – For the purpose of the general health and welfare of the people and of the Zoning Law, the use of more than one hundred (100) square feet of the area of any lot for the collecting, storage, or sale of wastepaper, rugs, scrap metal, salvaged machines, appliances or similar material shall constitute a junk yard.

**SECTION 609**

**Service Stations**

A. No public garage or motor vehicle service station, or private garage for more than five (5) vehicles shall have a vehicular entrance closer than two hundred (200) feet to an entrance to a church, school, theater, hospital, public park, playground, or fire station. Such measurement shall be taken as the shortest distances between such entrances across the street, and along the street frontage if both entrances are on the same side of the street or within the same square block.

B. All motor vehicle service stations shall be so arranged and all gasoline pumps shall be so placed, as to require all servicing on the premises and outside the public way; and no gasoline pump shall be placed closer than 50 feet to any side property line.

C. No inoperative motor vehicles shall be kept on the premises of motor vehicle service stations for longer than two (2) weeks.





- Entrance and exits to the park shall be safely designed.
- A twenty (20) foot buffer zone shall be established around the perimeter of the park.
- Open recreation areas shall be set aside at central locations at a rate of four hundred (400) square feet per mobile home.

**SECTION 614                      Travel Trailer Camps (Commercial Campgrounds)**

Travel trailer camps shall comply with the following standards:

- All lots (pads) shall be a minimum of seventy-five (75) feet from any highway. In addition, other setback requirements specified in this Law shall apply.
- Off-street parking, loading, and maneuvering space shall be provided.
- Access to the park must be designed to assure safe and convenient movement of traffic into and out of the park with a minimum disruption of traffic on adjacent streets. This shall include a minimum clear view of one hundred and fifty (150) feet while pulling out onto the adjacent street.
- A twenty (20) foot wide buffer zone of appropriate vegetation shall be provided around the circumference of the park where adjacent property uses is of such a nature that there could be conflicts.
- Minimum lot (pad) sizes shall be 30 x 60 feet.
- Walkways shall be provided to service buildings.
- Open recreations space shall be provided in convenient locations and the total area available shall equal the sum of the lots (pads) area.
- The maximum length of occupancy per year shall be eight (8) months. Trailers shall not be utilized as a permanent residence.
- Accessory uses such as snack bars, recreations facilities, showers, laundromats, etc., customarily associated with travel trailer parks shall be permitted. However, the land utilized in this manner should not account for more than 10% of the total area of the park and the services shall be directed towards the occupants of the park. Finally, no commercial character shall be visible from outside the park and such services shall only be allowed when the number of sites is sufficient to support these services.
- Parks shall not be located so as to cause heavy traffic to be directed through residential areas not accustomed to heavy traffic.

**SECTION 615****Maintenance of Front Yards**

It shall be prohibited to collect, store, or in any way maintain in a front yard wastepaper, rags, scrap metal, machines, appliances, or items similar in nature to the above mentioned as determined by the Zoning Board of Appeals.

**SECTION 616****Private Camps**

Any area of land or water, including any building or group of buildings used for temporary or seasonal living, camping or recreations purposes with a staff of counselors, but excluding public owned areas or buildings used for such purposes.

No camp shall be operated on a site less than 10 acres in area, and there shall be no more than one camper for every 2,000 square feet of site area with a maximum of 400 campers permitted at any camp. The operation of motor vehicles within the camp area shall be prohibited.

Outdoor areas, including camping or picnic area and playground or sports areas shall be located at least 125 feet from all property lines. The Board of Appeals may require suitable fencing and buffer zones for safety reasons or protection and landscaping to control the emission of noise and light beyond the boundaries of the campsite.

There shall be provided on the site one off-street parking space for each member of the camp staff and one space for every two campers. Parking area shall be at least 50 feet from the street line and 50 feet from side and rear lot lines, and shall be suitable screened and permanently improved.

Each structure in a camp which is intended for residence, cooking, or recreations purposes shall be equipped with toilets and wash basins which drain into approved septic systems in accordance with the rules and regulation promulgated by the Chautauqua County Health Department. There shall be at least one toilet and one wash basin for each 10 campers, with separate facilities for male and female.

No buildings or structures shall be located closer than 200 feet to any property line. Temporary structures may be permitted, but shall not cover more than five (5) percent of the site and shall not be more than one story in height.

Overnight accommodations for campers or staff members shall be limited to one bed for every 5,000 square feet of site area. Every building which is to be used for sleeping purposes shall have at least 100 square feet of floor space for each bed, including bedroom or dormitory, closets and bathrooms, but excluding all other space.

There shall be at least one acre of suitably improved playground or sports area for every 100 campers, or major portion thereof.



which is not in a condition for legal use on public highways or which is unlicensed or unregistered, or is in the process of being dismantled.

### 3. Licensing Requirements

A. This ordinance requires that (1) a license be obtained from the Town Board and (2) a certificate of location be received from the local Zoning Planning Board.

B. The Planning Board, upon receipt of the necessary application fees, will evaluate the proposed location of the dismantling or scrap yard and certify that it is not contrary to the requirements of the zoning law with respect to the location.

C. The Planning Board shall also take into consideration the location of the proposed dismantling or scrap yard in relation to churches, schools, hospitals, public buildings, places of public assembly, nursing homes, homes or institutions for the elderly or infirmed. It shall consider whether or not the proposed location can be reasonable protected from affecting the public health, welfare, safety or other cause. Aesthetic considerations must also be weighed.

D. The applicant shall comply with all other reasonable requests of the Planning Board.

E. The Planning board shall hold a hearing on the application not less than three nor more than six weeks from the date of receipt of the application. Notice of the hearing shall be sent to the applicant and also published in the official newspaper not less than ten (10) days before the hearing.

F. At the time of the hearing, the Planning Board shall hear the applicant and all other persons wishing to be heard on the application. The Planning board shall take into account the applicant's ability to comply with the zoning requirements and applicant's background as to any convictions for any type of larceny or receiving of stolen goods and to any other matter within the purpose of the law.

G. Within two weeks of the hearing, the Town Board will make a finding as to whether or not the applicant shall be granted the license. If approved, the license fees must be paid, and the certificate of approved location shall be issued to remain in effect until April 1 of the following year. The Town Board will review compliances prior to approval of the renewal application. Approval is personal and may not be assigned to other persons without the approval of the Town Board.

### 4. Restrictions

The following restrictions shall be placed on the vehicular dismantling and scrap yards:

#### A. Fences

1. Dismantling or scrap yards shall be completely surrounded with a fence for security purposes of at least eight (8) feet in height, aesthetically pleasing in appearance, and effectively screen the contents of the dismantling yard from public view.

2. There shall be located a gate in the fence which shall be kept locked at all times except when the dismantling or scrap yard is in operation.

3. The fence shall be located a minimum of fifty (50) feet from adjacent public highways and at least twenty-five (25) feet from all other property lines.

4. All vehicles, parts, scrap and work on such vehicles, parts and scrap shall take place within the fenced area.

5. Where topography, natural growth of timber or other considerations accomplished the purpose of fencing, the fencing requirements may be reduced by the governing body, provided that such natural barrier conforms with the purpose of fencing.

#### B. Location Considerations

1. Dismantling and scrap yards shall be allowed where there will be a minimum negative effect of the character of existing neighborhoods.

2. No dismantling or scrap yards shall be permitted within five hundred (500) feet of a church, school, public building, place of public assembly, nursing home, homes or institutions for the elderly or infirmed.

3. Dismantling and scrap yards shall not be permitted to be located upon sloped areas where an eight (8) foot fence will not reasonably screen said vehicles and scrap.

C. Off-street parking shall be provided for customers.

#### D. Fire Safety

1. Inside, adjacent to and contiguous with the fence, a strip of land at least ten (10) feet wide shall be kept clear of all dry grass or other combustible material so as to provide a fire lane around the whole area.

2. There shall be maintained at least one fire extinguisher of design and capacity, approved by the local fire chief, for each fort thousand (40,000) square feet of area. Each extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available. Each extinguisher shall be inspected and serviced in accordance with NFPA regulations.

3. The vehicles, parts and scrap shall be dismantled and/or disassembled

by means other than burning (a cutting torch is permissible). They shall be arranged in neat rows so as to permit easy, clear passage through the area.

#### E. Visual Considerations

1. There shall be no stacking of vehicles or scrap above eight (8) feet in height from the ground.
2. Vehicles and scrap which have been crushed may be loaded onto the bed of a truck which shall be removed from the premises within a reasonable time period.

#### F. Minimum Lot Size

1. No dismantling or scrap yard shall be allowed on a lot size less than five (5) acres.
2. Residence shall not be included to make up the minimum lot size.

#### G. Other Consideration

1. Suitable sanitary facilities shall be provided in accordance with Chautauqua County health laws.
2. Inspection of vehicular dismantling and scrap yards by the Building Inspector and the local Fire Chief shall be allowed at any reasonable time to insure compliance with this and other laws.
3. The movement of disabled vehicles to and from the dismantling yard on town, county or state highways must comply with county and state motor vehicle regulations.

4. Other requirements as deemed necessary.

#### 5. Licensing Fee

A. Yearly fee of one hundred dollars (\$100) prorated from date of application to April 1 of the following year.

B. License fee to be paid at the time of the Town Board approval.

#### 6. Enforcement and Penalties

A. For any and every violation of the provisions of this ordinance, the owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, and the lessee or tenant of any entire building or entire premises where such violation have been committed or shall exist, and the owner, general



located on land owned or leased by the operator of the equipment and placed no closer than 500 feet (as a safety factor only) from any dwelling unit which is present on the date the permit is granted and all proposed residential construction for which a zoning permit has been received and substantial work has been completed within 1 year from the granting of the permit.

2. Noise Levels –

a. Decibel level (existing equipment) – The compressors, generators and equipment connected thereto shall be designed, operated and maintained by the owner or operator so that the sound level produced by the equipment does not exceed 40 decibels (A-weighted) (expressed as 40 dBA) sound level at the exterior of any presently existing residence and all proposed residential construction for which a zoning permit has been received and substantial work has been completed within 1 year from the granting of the permit.

b. Decibel level (proposed equipment) – the compressor, generator and equipment connected thereto shall be designed, operated and maintained with good engineering practices and shall not emit noise at a level exceeding 40 dBA at the distance from the compressor predicted by the inverse square law and atmospheric attenuation at standard conditions to yield 40 dBA when the criteria ((52 + 10 log HP) dBA at 50' on-axis to the heat-exchanger fans) is invoked.

c. The compressor, generator and equipment shall not be operated except for daytime testing until the owner or operator demonstrates that the compressor meets the performance standards expressed in Paragraphs C(2)a and C(2)b above. It is the responsibility of the owner or operator of the equipment to satisfy these standards.

d. The same standards of performance described in Paragraphs C(2)a, C(2)b and C(2)c above shall be required for any continuously operating power source and meeting this requirement shall be the responsibility of the owner and/or operator of the source.

3. Certification of Noise Level – Prior to being granted a permit for the placement of equipment, the owner or operator of the equipment proposed to be placed shall be responsible for verifying that the equipment and quieting devices (silencer, low speed fan, building, buffers, etc.) as proposed will meet the specified db level requirements. An ambient noise study conducted by a qualified expert in acoustical engineering must be submitted in writing with the permit application for the ambient noise level of the location and at occupied dwelling units located in proximity thereto. Additionally, after placement of the equipment is completed along with the specified quieting devices, the same noise consultant must verify that the decibel requirements are complied with.

4. Buffers – Where it is deemed necessary, either a natural or man-made



6. A sludge operation may only occur in an AR-1 district.
7. All sludge operations must be carried out in strict conformity with the conditions set forth in the permits issued by the State of New York and its agencies as well as those permits issued by the Town of Gerry.
8. The generator of Sludge or Sewer Sludge must provide a “Performance Security Bond” to the Town of Gerry in the amount of \$1,000,000.00 to insure compliance with all aspects of NY State and Local laws, rules, regulations and permits.
9. A negative buffer zone, with minimum width of 100 feet separating the application site and any surface water stream channel (intermittent or perennial).
10. The generator of Sludge or Sewage Sludge must, prior to application for the Special Use Permit, establish and submit with the Permit, base line data of parameters for the heavy metal cadmium, nickel, copper, chromium, lead and zinc also testing for all known toxic chemicals. Testing is to be conducted on all water wells or water sources that are located down slope of the application site. Water testing is to be conducted on an annual basis with a copy of all test results being submitted to the Town Clerk of the Town of Gerry within ten working days of sampling.

#### D. Definitions

1. Sludge – Means any solid, semisolid or liquid waste generated from a wastewater treatment plant, water supply treatment plant, or air pollution control facility but does not include the treated effluent from a wastewater treatment plant.
2. Sewage Sludge – Means the accumulated semisolids or solids resulting from treatment of wastewaters from publicly or privately owned or operated sewage treatment plants.
3. Sludge Operations – The storage and/or application of sludge or sewage sludge.
4. Water Wells and Water Sources – Potable water for human and animal consumption.
5. Grazing Animals – Those domestic animals that use the method of grazing ground cover to maintain body, strength, vital organs and produce animal products such as milk or meat.
6. Contamination – Anything that prohibits safe water and/or ground usage.
7. Generator – That treatment plant whether private or public owned.
8. Negative Buffer Zone – A strip of land bordering a stream channel that is

inhabited by a variety of plant life, trees, shrubs, grasses, etc. for the purpose of restricting surface water runoff and providing nutrient uptake.

## **SECTION 621**

### **Communication Towers**

A. Purpose – The purpose of this section is to promote the health, safety and general welfare of the residents of the Town of Gerry; to provide standard for the safe provision of communications consistent with applicable Federal and State regulations; to minimize the total number of communication towers in the community by encouraging shared use of existing and future towers, and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from communication towers by requiring careful siting, visual impact assessment, and appropriate landscaping thereby protecting the natural features and aesthetic character of the Town of Gerry.

#### B. Application of Special Use Regulation

1. No communication tower, except those approved prior to the effective date of this Section, shall be used unless in conformity with these regulations. No communication tower shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a communication tower unless in conformity with these regulations.

2. Applications proposing to co-locate on a previously approved communication tower do not require a Special Use Permit. They are, however, subject to Site Plan Review in accordance with Subsection J. The Planning Board (the Board) may require the applicant to submit any of the items under Subsection C(1) below as part of the Site Plan Review process.

#### C. Share Use of Existing Tall Structure

At all times, the shared use of existing tall structures (for example: municipal water towers, multi-story buildings, farm silos, etc.) and existing or approved towers shall be preferred to the construction of any new towers.

1. An applicant proposing to share use of an existing tall structure shall be required to submit:

(a) A completed application for Special Permit,  
(b) Documentation of intent from the owner of the existing facility to allow shared use.

(c) A Site Plan. The site plan shall show all existing and proposed structures and improvements, including antennae, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for the new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

(d) An engineer's report certifying that the proposed shared use will not diminish the structure, and explaining what modifications, if any, will be required in order to certify the above.

(e) A completed Environmental Assessment Form and

(f) A copy of its Federal Communications Commission (FCC) license.

2. If any applicant proposing to share use of an existing tall structure submits complete and satisfactory documentation in accordance with Subsection C(1) above, and if modifications indicated according to Subsection (1) are deemed insignificant by the Board, after the Board conducts a hearing and complies with all SEQRA provisions, the Board shall grant a special permit without further review under this section. If the Board determines that any modifications indicated according to Subsection C(1) are significant, it may require further review according to Subsections H through P below.

#### D. New Communication Tower

The board may consider a new communication tower when the applicant demonstrates that shared use of existing tall structures and exiting or approved towers is impractical. An applicant shall be required to present an adequate report with an inventory of all existing tall structures and existing or approved towers within a reasonable distance of the proposed site. This distance shall be determined by the Board in consultation with the applicant. The report shall outline opportunities for shared use of these facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

#### E. Share Usage of an Existing Tower Site for Placement of New Tower

Where share use of existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection D above. Any proposal for a new communication tower on an existing tower site shall be subject to the requirements of Subsections G through O below.

#### F. No Tower at New Location

The Board may consider a new communications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing tall structures, and existing or approved towers is impractical and submits a report as described in Subsection D above; and when the Board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with Subsection E. Any proposal for a new communication tower shall also be subject to the requirements of Subsections G through P below.

## G. New Towers

### Future Shared Use.

The applicant shall design a proposed new communications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the Board a letter of intent committing the owner of the proposed new tower and his/her successors in interests to negotiate in good faith for shared use of the proposed tower by other communications providers in the future. This letter shall be filed with the Zoning Officer prior to issuance of a building permit. The letter shall commit the new tower owner and his/her successor in interest to:

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

## H. Site Plan Review

The applicant shall submit the following:

1. An applicant shall be required to submit a site plan which shall show all existing and proposed structures including lighting and improvements including roads, buildings, towers, guy wires and anchors, antennae, parking and landscaping, and shall include grading plans for new facilities and roads.
2. Supporting Documentation – The applicant shall submit a complete shore Environmental Assessment Form, a complete Visual Assessment Form (visual EAF Addendum), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower and justification for any clearing required. The applicant shall also submit a copy of its FCC license.

## I. Lot Size and Setbacks

All proposed communication tower accessory structures shall be located on a single parcel and shall be setback from abutting parcels and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining residential properties.

1. Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased the entire area required shall be leased from a single parcel unless the Board determines that this provision may be waived.

2. Communications Towers shall comply with all existing setback requirements of the underlying zoning district, or shall be located with a minimum setback from any property line equal to at least five hundred (500) feet or thirty percent (30%) of the height of the tower, whichever is greater. Accessory buildings shall comply with minimum setback requirements in the underlying zoning district.

#### J. Visual Impact Assessment

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

1. A Zone of Visibility Map shall be provided in order to determine the locations where the tower may be seen.

2. Pictorial representations of before and after view from any key view points both inside and outside of the Town, including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Board shall determine the key sites at a pre-submission conference with the applicant.

3. Assessment of the alternative tower designs and color schemes, as described in Subsection K below.

#### K. New Tower Design

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

1. Any new tower shall be designed to accommodate future shared use by other communications providers.

2. Unless specifically required by other regulations, a tower shall have a finish that minimizes its degree of visual impact.

3. The maximum height of any new tower shall not exceed that which shall permit operation with only that artificial lighting prescribed by state and/or federal law and/or regulations. The Board at its discretion may modify this requirement if the applicant can justify the need to exceed this height limitation.

4. No lighting shall be permitted unless required by the Federal Aviation Administration. If tower lighting is necessary, the applicant shall fully disclose to the Board all lighting options. Only the minimal amount of tower lighting necessary to meet state and/or federal laws and/or regulations shall be authorized. Light pollution or light spillover to the nearby and distant properties shall be minimized to the greatest degree possible by use of shielding. The Board shall upon review approve only the lighting scheme that it determines to be least obtrusive to the affected properties.

5. The Board may request a review of the application by a qualified engineer or in order to evaluate the need for and the design of any new tower.

6. Accessory buildings will be non-habitable structures used in conjunction with a communication tower and located on the same lot as the tower. Said buildings shall maximize the used of building materials, colors and textures designed to blend with the natural surroundings.

7. A sign shall be conspicuously placed near the base of a tower and it shall generally state that danger exists and no access is permitted. No portion of any tower or accessory building shall be used for a sign other than as stated or for any other advertising purpose, including but not limited to: company name, phone numbers, banners and streamers.

#### L. Existing Vegetation

Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four (4) inches in diameter ( measured at height four (4) feet off the ground) shall take place prior to the approval of a special permit.

#### M. Screening

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

#### N. Access

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private shall be made. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

#### O. Parking

Parking shall be provided to assure adequate emergency and service access. The Board shall determine the number or required spaces based upon a recommendation from the applicant. Two parking spaces shall be located in any required yard.



intended market. Neither is it the intent nor effect of this law to condone or legitimize the distribution of obscene materials.

Section 2. FINDINGS

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Town Board and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini-Theaters*, 426 U.S. 50 (1976), *F.W./PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), *Barnes v. Glen Theater, Inc.*, 511 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 Supreme Court 1382 (2000), and on studies in other communities including, but not limited to Phoenix, Arizona; Minneapolis/St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma, Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport New, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin, the Town Board finds:

a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operation of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

b) Certain employees of sexually oriented businesses defined in the law as adult theaters and adult cabarets engage in higher incidents of certain types of illicit sexual behavior than employees of other establishments.

c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

d) Offering and providing such space encourages such activities, which creates unhealthy conditions.

e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses.

f) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiosis, salmonella infections and shigella infections.

g) That here in Chautauqua County we have, in recent years, had an HIV-AIDS outbreak which has caused the County to become aware of the inherent problems.

h) The development and proliferation of adult entertainment facilities without regulations as to siting, concentrations and location may result in the deterioration of residential neighborhoods and business districts. In addition, if these types of businesses are located near schools, churches and/or other residing in the Town of Gerry.

i) The findings noted in Subsections "a" through "h" raise substantial governmental concerns.

j) Sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.

Section 3. Adding §620 entitled Adult Entertainment Facilities to Article VI Supplemental Regulations of the Town of Gerry Zoning Law to read as follows:

Section 622 ADULT ENTERTAINMENT FACILITIES

A. Definitions

1. Adult Book/Video/Media Store: An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined herein, or an establishment with a segment or section devoted to the sale or display of such material.

2. Adult Entertainment Facilities: Means and refers to “adult news-racks”, “adult book stores”, adult motion picture theaters, and “exotic cabarets”.

3. Adult Motion Picture/Video Theater: And enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by persons within the use.

4. Adult New Rack: Any machine or device, whether coin operated or not, which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the “specified sexual activities” or specified anatomical areas” defined herein.

5. Exotic Cabaret: A night club, bar or restaurant or similar commercial establishment which regularly features 1) persons who appear nude or semi-nude; or 2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities” or 3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”.

6. Specified Sexual Activities: a.) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; c) fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

7. Specified Anatomical Areas: a) less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately above the areola; b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

B. Location

The following provisions shall apply to the location of adult entertainment facilities: a) adult entertainment facilities shall be permitted only in B-1 Business – Light Industrial Districts, as established under Article 111 of the Zoning Law of the Town of Gerry, upon approval of a special use permit; b) no adult entertainment facility shall be

permitted within 500 feet of any lot with a residential use; c) no adult entertainment facilities shall be permitted within 1000 feet of any:

1. school,
2. religious institution, or
3. Public park or public recreation facility.

C. Additional Sign Requirements

The following provision shall apply to signs erected or maintained in connection with adult entertainment facilities: a) no off-site signs shall be permitted.

D. Public Display of Certain Matter Prohibited

Materials offered for sale from “adult news-racks” shall not be displayed or exhibited in any manner which exposes to the public view any picture of illustration depicting any “specified sexual activity” or any “specified anatomical area”. Material offered for sale or viewing at any adult entertainment facility shall not be displayed or exhibited in a manner which exposes any depiction of “specified sexual activity” or “specified anatomical areas” to the view of persons outside the building or off the premises on which such store or theater or use is located.

E. Restrictions Cumulative in Nature

The restrictions set forth in this law are in addition to any applicable provision of the Zoning Law of the Town of Gerry. In the event of any conflict between any such provisions, the more restrictive provisions shall be applied.

F. Penalties

Any violation of any provision of this Law by any person, corporation or entity shall be punishable by a fine of not less than \$350.00, or imprisonment. Each week’s continued violation shall constitute a separate additional violation. The Town may also, in addition to the above penalties, seek any and all other remedies, such as set forth in Section 7-714 of the Town Law of the State of New York, and/or any other legal remedies, as it deems necessary and appropriate.

G. Severability

Each section and provision of this law are hereby declared to be independent divisions and subdivisions and notwithstanding any other evidence of legislative intent, it is hereby declared to be controlling legislative intent that if any provision of this law or the application thereof to any person or circumstances is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section, or provisions would have been passed independently of such section or provisions so known to be invalid.

Section 4. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing with the Secretary of State of New York.

**ARTICLE VII  
ADMINISTRATION BY BUILDING INSPECTOR**

**SECTION 701                      Enforcement**

This law shall be enforced by the Building Inspector who shall be appointed by the Governing Body of the Tow of Gerry. No building permit or certificate of occupancy shall be issued by him except where there is compliance with all provisions of this law.

**SECTION 702                      Duties of Building Inspector**

It shall be the duty of the Building Inspector in connection with this Law to do the following:

- Make a record of nonconforming uses.
- Issue building permits and certificates of occupancy or refuse to issue the same and give the reasons for such refusal to the applicant.
- Keep a record of all applications for permits and a record of all permits issued with a notation of all special conditions involved.
- Receive all required fees and deposit them with the Town Clerk.
- Keep the Town Board and the Zoning Board of Appeals and Planning Board informed and advised of all matters, other than routine matters in connection with this Law.
- Submit such reports as may deem necessary.
- Whenever possible to advise and assist persons applying for building permits with the preparation of their applications.
- Assist in securing warrants and prosecution of violators of the provisions of this Law.
- Serve all notices that may be required to be served in connection with this Law.
- Make recommendations for keeping the Zoning Law and accompanying map up-to-date.
- Inspect new construction or changes of use during and/or after construction or change in use to insure conformity with the provisions of this Law and other applicable laws.

## **SECTION 703**

### **Building Permits**

No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Building Inspector. No building permit shall be issued for any building where said construction, addition, or alteration or use thereof would be in violation of any provision of this Law unless so granted by written approval of the Board of Appeals.

The application for a building permit shall be made on a form obtained from the Building Inspector. It shall include a statement of the materials to be used, an estimate of cost, the location, the proposed use, and the sanitation facilities to be provided (if any are needed). A copy of required Health Department permits must be attached to the building permit application.

Building permits shall be valid for a six-month period only; however, they may be extended for an additional six-month period with the approval of the Building Inspector. Within one year from the date the building permit is granted the exterior of the structure shall be completed, backfilling, and rough grading will be accomplished, and no new building materials will be stored outside. Upon expiration of the one-year period a Use Variance will be required in order to not be in violation with the zoning law.

All applicants for building permits along with two copies of a layout or plot plan drawn to scale and showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of all existing buildings and accessory buildings or any buildings that are to be erected, the location of adjoining highway right-of-way lines, and such other information as may be necessary to determine and provide for the enforcement of this Law may be transmitted by the Building Inspector to the Planning Board for their review and recommendation. The sanitation, sewage, and waste disposal facilities shall comply with standards approved by the County and State Health Departments.

All applications for building permits for commercial buildings submitted to the Building Inspector must contain information detailing drainage and landscaping plans, off-street parking, off-street loading, and any other data the Planning Board deems necessary.

One copy of the layout or plot plan shall be returned to the applicant when approved in writing by the Planning Board and a building permit shall then be granted by the Building Inspector after receipt of payment of the appropriate fee as specified in Section 704.

The Building Inspector may attempt to notify adjacent property owners when requests are filed for building permits on adjoining property, if in the opinion of the Building Inspector the proposed project is of such a nature to be controversial. Failure of such adjacent property owners to receive such notice, however, shall not be a basis for invalidating such a building permit, nor of contesting the actions of the Building

Inspector, Board of Appeals, Planning Board, or the Town Board in regard to the issuance or withholding of such permit.

**SECTION 704**                      **Schedule of Fees**

See Town Clerk for schedule of fees.

**SECTION 705**                      **Issuance of Appearance Tickets**

The Town of Gerry Code Enforcement Officer shall have authority to issue an appearance ticket to persons for alleged Town of Gerry Zoning Law Violations and New York State Building and Fire Code violations as provided under Criminal Procedure Law sections 150.10 and 150.70

## **ARTICLE VIII**

### **NONCONFORMING USES**

#### **SECTION 801                    Continuation**

The lawful use of any building or land existing at the time of the enactment of this Law may be continued although such use does not conform with the provisions of this Law.

#### **SECTION 802                    Unsafe Structures**

Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition.

#### **SECTION 803                    Alterations**

A nonconforming building may not be structurally altered during its live to an extent exceeding in aggregate cost of fifty (50) percent of the assessed full value of the building unless said building is changed to a conforming use.

#### **SECTION 804                    Prior Approved Construction**

Nothing herein contained shall require any change in plan, construction, or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three (3) months of the date of such permit.

#### **SECTION 805                    Restoration**

All lawful nonconforming uses which are damaged or destroyed by fire or other causes may be repaired, rebuilt, or reestablished if a building permit is applied for within six (6) months after such damage or destruction; however, the nonconforming use shall not be increased or extended beyond the extent to which it existed on the effective date of this Law.

#### **SECTION 806                    Abandonment**

Whenever a nonconforming use have been voluntarily discontinued for a period of one (1) year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this Law.

#### **SECTION 807                    Displacement**

No nonconforming use shall be extended to displace a conforming use.

**SECTION 808****District Changed**

Whenever the boundaries of a district or zone shall be changed so as to transfer an area from one district or zone to another district or zone of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

**SECTION 809****Nonconforming Signs**

All nonconforming signs, billboards, commercial advertising structure and statutory, and supporting members, shall be completely removed from the premises not later than three (3) years from the effective date of this Law or amendment thereto. This provision for removal shall not apply to permissible types of signs which are improperly located on a lot or building.

**SECTION 810****Nonconforming Yards Changes**

An allowed use which is not in conformance with yard requirements (e.g., setback, etc.) may be removed and replaced with another structure (same use) which is more in compliance with the yard requirements without going through area variance procedures. The Building Inspector shall determine the applicability of this Section to specific cases.

**SECTION 811****Use Changes**

Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.

A legal nonconforming use may be changed to another nonconforming use which is of such a character so as to be less a nuisance and more in conformance with the zoning law requirements. Once changed, the use would not be allowed to return to the original use. The Zoning Board of Appeals would make all determinations as to what new nonconforming uses would be allowable through the normal use variance procedure.

**ARTICLE XI**  
**ZONING BOARD OF APPEALS**

**SECTION 901**                      **Creation**

A Board of Appeals is hereby created. Said Board shall be appointed and function in accordance with enabling law. Said Board shall consist of five (5) Town residents. The Board may prescribe for its affairs.

**SECTION 902**                      **General Procedures**

The Board of Appeals shall act in strict accordance with procedure specified by law and by this Zoning Law. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Zoning Law involved, and shall exactly set forth the interpretation that is claimed, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted as the case may be. At least fifteen (15) days before the date of the hearing required by law on the application or appeal to the Board of Appeals, the secretary of said Board may at their discretion transmit to the Town Planning Board a copy of said application or appeal, and the Planning Board shall submit a report of such advisory opinion prior to the date of such hearing. Upon failure to submit such report, the Planning Board shall be deemed to have approved the application or appeal. Every decision of the Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board of Appeals on the particular case.

**SECTION 903**                      **Interpretation**

The Board of Appeals shall have the power to interpret the meaning of this zoning law whenever called upon by the Town Board, Building Inspector or an aggrieved party who has been denied a Building Permit. This interpretation power shall include the determination of district boundary lines.

**SECTION 904**                      **Use & Area Variances**

A. Reasons for Variances – The Zoning Board of Appeals has the authority to vary or modify the strict letter of the Zoning Law where literal interpretation would cause practical difficulties (Area Variances) or unnecessary hardships (Use Variance).

B. Applicability & Limitations – The Zoning Board of Appeals can decide appeals from a person who feels aggrieved by a decision of the Building Inspector. The Board may reverse, affirm, or modify the decision made by the Building Inspector.

The Zoning Board of Appeals has absolutely no power to amend the Zoning Law and must exercise great care to insure that its rulings do not in effect amend the Zoning Law.

C. Basis for Granting Area Variances – Area Variances provide relief of a dimensional nature, (e.g., lot shape or grade) and must be based on practical difficulty. The burden of proof is on the applicant and if relief is warranted it should be the minimum necessary.

The following five determinations must be considered in order to decide if “Practical Difficulty” is present:

(1) How substantial the variation is in relation to the requirements of the Zoning Law.

(2) The effect of the proposal on increased population density and governmental facilities (e.g., fire, water, etc.).

(3) Whether a substantial change in the character of the neighborhood or a detrimental effect on adjoining properties would take place.

(4) Whether the difficulty can be eliminated by some other reasonable alternatives other than a variance (e.g., add room to other side of house).

(5) Will justice be served in allowing the variance.

The fact that the practical difficulty was self-imposed does not disqualify the applicant from being granted an Area Variance.

If a property owner will suffer significant economic injury by strict interpretation of the area standards and practical difficulties are present, then the Area Variance can only be denied based on health, safety or general welfare reasons.

D. Basis for Granting Use Variances – Use variances provide relief to an applicant who is denied by the Building Inspector the right to use land or structures in a certain manner since the use is not listed as an allowable use in the Zoning Law. In order to be granted the Use Variance the applicant must prove that “Unnecessary Hardship” exists and this is accomplished by showing all of the following:

(1) The land in question cannot yield a reasonable return if used only for a purpose allowed in the district. This does not mean that profits will not be maximized.

(2) The use requested by the variance will not alter the essential character of the neighborhood, and be detrimental to properties in the vicinity.

(3) the plight of the applicant is due to unique circumstances and not to the general conditions in the neighborhood. This last factor shall not in itself be the basis for denying a Use Variance.

In the case of Use Variance, if the hardship is self-imposed then the variance should, generally speaking, be denied. An example of this would be the purchase of property that it deems to be necessary or desirable.

The decisions must be written in the form of a resolution and must state in detail the reasons for granting or denying the variance and the conditions imposed.

**SECTION 905            Mandatory Referral (General Municipal Law 239-1 & m**

A. Before issuing a Special Use permit or granting a variance affecting any real property lying within a distance of five hundred (500) feet of the boundary of this Municipality or from the boundary of any existing or proposed county or state park or other recreational area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, or from the channel owned by the county or for which the county has established channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, the matter shall be referred to the Chautauqua County Planning Board.

B. Within thirty (30) days after receipt of a full statement of such referred matter, the Chautauqua County Planning Board to which referral is made, or an authorized agent of said agency shall report its recommendations thereon to the Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If the Chautauqua County Planning Board fails to report within such period of thirty (30) days, the Board of Appeals may act without such report. If the Chautauqua County Planning Board disapproves the proposal, or recommends modification thereof, the Board of Appeals shall not act contrary to such disapproval or recommendations except by a vote of the majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.

C. Within seven days after final action by the Board of Appeals, modifications or disapproval of a referred matter, the Board of Appeals shall file a report of the final action it has taken with the Chautauqua County Planning Board which has made the recommendations, modifications or disapprovals.

**ARTICLE X  
PLANNING BOARD**

**SECTION 1001                    Appointment**

The Town Board shall appoint a Planning Board consisting of five (5) members as prescribed by Town Law.

**SECTION 1002                    Duties**

The Planning Board for the Town shall have the following duties with respect to this Zoning Law:

A. To investigate, study, and submit reports on all appeals and matters referred to it by the Board of Appeals, Building Inspector or Town Board.

B. To submit written reports within thirty (30) days after reference to it of any appeal or other matter unless the time shall be extended by the Building Inspector or Board making the reference.

C. to review and recommend applications for cluster residential developments prior to the issuance of a Building Permit, Special Use Permit, or Occupancy Permit. Such site plans shall be submitted through the Building Inspector to the Planning Board at least ten (10) days prior to its next scheduled meeting and shall consist of the documentation required in Section 601.

D. To review and make recommendations on proposed Zoning Law amendments prior to action by the Town Board.

E. To issue Special Use Permits in accordance with Section 1103 for any of the uses for which this Zoning Law requires the obtaining of such permits.

**SECTION 1003                    Special Use Permits**

A. General Provisions – The special uses listed in this Zoning Law for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Zoning Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

B. Standards – The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of

adjacent land and buildings or impair the value thereof. Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration, or lights, than would be the operations of any permitted use.

In the granting of Special Use Permits, the Town Planning board shall attaché such conditions and safeguards as it deems appropriate under this Law.

The Planning Board shall include in their analysis of applications for Special Use Permits a consideration for the need of an appropriate buffer zone. If such barrier is deemed necessary then this condition will be included in the written decision and the Building Inspector shall insure that appropriate vegetation is planted within a reasonable time after completion of the project.

C. Special Standards Relating to Private Camps – Prior to the granting of a Special Use Permit for the utilization of land for a private camp, consideration of the following will be made by the Planning Board:

- (1) Size of Lot – Minimum 10 acres required.
- (2) Location of structures on the lot.
- (3) Type, size, and method of construction for any proposed structures.  
Note that, if a mobile home is proposed to be used, it must meet the minimum floor space requirements of Section 401C.
- (4) Buffer Zones – Existing or proposed.
- (5) Other requirements as deemed necessary by the Planning Board.

D. Procedures – The Town Planning Board shall act in strict accordance with procedure specified by law and by this Zoning Law with regard to public hearings, notices, publications, etc.

A plan for the proposed development of a site for designated special use shall be submitted with an application for a Special Use Permit, and such plan shall show the location of all buildings, lots, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the Town Planning Board deems necessary.

E. Expiration – A Special Use Permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for more than one (1) year for any reason.

F. Existing Violations – No Special Use Permit shall be issued for a property where there is an existing violation of this Law.

G. Special Standards Relating to Communication Towers – The Planning Board may not grant a Special Use Permit for the erection, relocation, reconstruction or alteration of a communication tower unless in conformity with the regulations in Section 620 Communication Towers.

**SECTION 1004**

**Mandatory Referrals**

General Municipal Law 239 1 & m must be followed when issuing Special Use Permits. See Section 905 for the procedure to be followed.

**ARTICLE XI  
AMENDMENTS**

**SECTION 1101                    Procedure**

The Town Board may from time to time on its own motion or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this Law after public notice and hearing.

**SECTION 1102                    Mandatory Referral**

General Municipal Law 239 1 & m must be followed when amending a Zoning Law. See Section 905 for the procedure to be followed.

**SECTION 1103                    Referral to Town Planning Board**

Prior to acting on any Zoning Law or Zoning Map amendments, the Town Board shall advise the Town Planning board of the proposed amendment.

The Planning Board shall have 30 days in which to review the proposed amendment and return their recommendation to the Town Board. After the 30 days has expired, the Town Board may act without receipt of a recommendation from the Planning Board.

**ARTICLE XII  
VIOLATIONS AND PENALTIES**

**SECTION 1201                      Violations**

Whenever a violation of this Law occurs, any person may file a complaint in regard hereto. All such complaints must be in writing and shall be filed with the Building Inspector, who shall properly record such complaint and immediately investigate. However, the Town Board shall be responsible for insuring compliance with this Law when it is brought to their attention that a violation may exist, even though no formal complaint is filed.

**SECTION 1202                      Penalties**

Any violation of any provision of this Law by any person shall constitute a misdemeanor and shall be punishable by fine not to exceed five hundred (\$500.00) dollars, or imprisonment for a period not to exceed six (6) months, or both. Each week's continued violation shall constitute a separate additional violation.

**ARTICLE XIII  
LEGALITY**

**SECTION 1301                    Conflicts**

In their interpretation and application, the provisions of this Law shall be held to be minimum requirement, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this Law are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive or that imposing the higher standards, shall govern.

**SECTION 1302                    Separability**

The invalidity of any provision of this Law shall not invalidate any other part thereof.

**SECTION 1303                    Repealer**

Any previously adopted Zoning Law or regulations of the Town of Gerry, together with all changes and amendments thereto, is hereby repealed and declared to be of no effect.

**SECTION 1304                    Effect**

This Local Law shall take effect ten (10) days after the date of its publication and posting as required by Town Law and became effective June 1, 1979.