

ZONING LAW
OF THE
VILLAGE OF ESPERANCE
NEW YORK

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ARTICLE I - Scope, Title and Purpose

1-1. Scope

This law regulates and restricts the location, construction, alteration, occupancy and use of buildings and structures and the use of land in the Village of Esperance, and for said purposes divides the Village into zoning districts.

1-2. Title

This law shall be known and may be cited as the "Zoning Law of the Village of Esperance, New York."

1-3. Statutory authority; purposes

This law is enacted pursuant to the Village Law of the State of New York, Section 7-700 to protect and promote the public health, safety, morals, comfort, convenience, economy, aesthetics and the general welfare, and for the following additional purposes:

- A. To promote and effectuate the orderly physical development of the Village of Esperance in a comprehensive manner in accordance with the Village of Esperance Comprehensive Plan (adopted October 25, 2004).
- B. To encourage the most appropriate use of land in the community in order to conserve and enhance the value of property.
- C. To promote and protect the character and stability of established development.
- D. To enhance the physical environment of the village and promote aesthetics.
- E. To eliminate or improve any existing detrimental conditions with regard to land or buildings or the use thereof.
- F. To regulate building densities in order to assure access of light and air, in order to facilitate the prevention and fighting of fires, in order to prevent undue concentration of population, in order to lessen congestion on streets and highways and in order to provide efficient municipal services in the future.
- G. To improve transportation facilities and traffic circulation and to attempt to provide adequate on and/or off-street parking and loading facilities.
- H. To assure privacy for residents and freedom from nuisances and harmful unsightly uses.
- I. To protect the community against unsightly, obtrusive and noisome land uses

and operations.

J. To facilitate the proper administration and appropriate and effective enforcement of the regulations contained in this law.

ARTICLE II - Word Usage and Definitions

2-1. Word usage

A. Except where specifically defined herein all words used in this law shall carry their customary meanings. Words used in the present tense shall include the future. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

B. The word "shall" or "must" is always mandatory. The word "may" is permissive. The word "building" or "structure" includes any part thereof. The word "lot" includes the word "plot" or "parcel." The word "person" includes an individual person, a firm, a corporation, and a co-partnership.

C. The phrase "used for" includes "arranged for", "designed for", "intended for", "maintained for", and "occupied for".

2-2. Definitions

For most definitions, any Standard English dictionary can be used. However, when used in this law, the following terms shall have the meanings indicated:

ACCESSORY APARTMENT -- A separate dwelling unit, in conformity with this law, which is subordinate in size and intensity of use to the primary use of the building in which it is located.

ACCESSORY BUILDING -- A building detached from and subordinate to a main building on the same lot and used for purposes customarily incidental to those of the main building.

ACCESSORY USE -- A use customarily incidental and subordinate to the principal use and located on the same lot as such principal use.

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

Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices which are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions, are maintained to show images to five or fewer persons per machine at any one

time, and where the images so displayed are distinguished or characterized by depicting or describing “specified sexual activities” or “specified anatomical areas”.

Adult Bookstore or Adult Video Store means a commercial establishment that has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its interior business advertising from the sale or rental for any form of consideration any one or more of the following:

- (A) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or described “specified sexual activities” or “specified anatomical areas”; or
- (B) instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an Adult Bookstore or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas”. For purposes of this definition, “principal business purpose” shall mean twenty-five percent (25%) or more of any of the following:

- (1) the number of different titles or kinds of such merchandise;
- (2) the number of copies or pieces of such merchandise;
- (3) the amount of floor space devoted to the sale and/or display of such merchandise; or
- (4) the amount of advertising that is devoted to such merchandise, either in print or broadcast media.

Adult Cabaret means a nightclub, bar, non-alcoholic or ‘juice’ bar, restaurant, or similar commercial establishment which regularly features:

- (A) persons who appear in a state of nudity; or
- (B) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- (C) films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

Adult Motel means a hotel, motel or similar commercial establishment which:

- (A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and which advertises the availability of sexually oriented type of material by means of a sign visible from the public right of way or by means of off-premise advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- (B) offers sleeping rooms for rent on a regular basis for a period of time that is less than (10) hours; or

(C) allows a tenant or occupant of a room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

Adult Theater means a theater, concert hall, auditorium or similar commercial establishment which for any form of consideration features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

Escort Agency means a person or business association who furnishes, or offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

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

Massage Parlor any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with “specified sexual activities”, or where any such person providing such treatment, manipulation, or service related thereto, exposes his or her “specified anatomical areas”. The definition of Adult Use shall not include the practice of massage in any licensed hospital, nor by a licensed massage therapist physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program.

Nude Model Studio means any place where a person who appears in a state of nudity or displays “specified anatomical areas” is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.

Sexual Encounter Center means a business or commercial enterprise that, as one of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of “specified sexual activities” or exposure of “specified anatomical areas”, or activities between persons when one or more of the persons is in a state of “nudity” or “semi-nude”.

Minor means a person less than eighteen (18) years of age.

Nudity or a State of Nudity means the appearance of “specified anatomical areas”.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Regularly means more than once annually.

Semi-Nude means a state of dress in which clothing covers no more than the “specified anatomical areas”, as well as portions of the body covered by supporting straps or devices.

Specified-Anatomical Areas means (a) unless completely and opaquely covered, human genitals, pubic region, buttocks, or female breasts below a point immediately above the top of the areola; and (b) even if completely and opaquely covered, male genitals in a discernibly turgid state.

Specified Sexual Activity means and includes any of the following:

- (A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts;
- (B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (C) masturbation, actual or simulated; or
- (D) excretory functions.

AGRICULTURE -- The raising of crops, horticultural or nursery products for gain, including sale of farm produce and agricultural products at the premises.

ALTERATION -- As applied to a building or structure, a change or rearrangement in the structural parts, interior partitions or exit facilities of such building or structure; or any enlargement thereof, whether by extension on any side or by an increase in height; or the moving of such building or structure from one location to another.

AREA REGULATIONS -- Standards that control the height, density, intensity and location of structures.

BAR -- A structure or part of a structure primarily for the sale or dispersing of liquor by the drink.

BILLBOARD -- A sign or structure which directs attention to an idea, product, business, activity, service or entertainment which is conducted, sold or offered elsewhere than upon the lot on which such sign is situated.

BUFFER STRIP -- Land area used to visibly separate one use from another or to shield or block lights, noise or other nuisances.

BUILDING -- Any structure which is permanently affixed to the land, has one (1) or more floors and a roof and is intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING MATERIAL – for the purposes of this law, untreated lumber, vinyl or wood siding, roofing material, bricks, and cinder blocks that are in a usable condition.

BUILDING, TEMPORARY -- Any structure that meets the definition of a building, but is not permanently affixed to the land and can be moved or disassembled easily to move from one place to another. Examples include some sheds, carports, temporary storage units (PODs), etc...

BULK -- The size, volume, area and shape of buildings and structures and the physical relationship of their exterior walls or their location to lot lines, other buildings and structure or other walls of the same building, and all open space required in connection with a building, other structure or tract of land.

BUSINESS DIRECTORY -- Signs located at intersections providing directions to businesses on nearby streets.

BUSINESS USE -- Buildings in which the primary or intended occupancy or use is the transaction of administrative, business, civic or professional service and where the handling of goods, wares or merchandise, in limited quantities, is incidental to the primary occupancy or use.

CALENDAR YEAR – One full year from the month of January through the month of December.

CELLAR -- Any space in a building, the structural ceiling level of which is less than four (4) feet above the average finished grade where such grade meets the exterior walls of the building. A "cellar" shall not be counted in determining the permissible number of stories.

CLINIC -- Any structure or group of structures occupied by medical practitioners, including but not limited to doctors, dentists, chiropractors, opticians, optometrists, etc., and related services for the purpose of providing health services to people on an outpatient basis.

CLUBHOUSE -- A building, or portion thereof, used by a club (a group of people organized for a common purpose to pursue common goals, interests or activities, and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings and a constitution and bylaws) not conducted for profit and which is not an adjunct to or operated by or in connection with a public tavern, cafe or other place of business.

COMMUNITY GARDEN -- an area where residents have the opportunity to garden (cultivation of herbs, fruits, flowers, or vegetables) on lands which they do not individually own.

CONGREGATE HOUSING FACILITY -- A building providing rental housing for the elderly, sometimes called "enriched housing" or "assisted living", that allows individuals to maintain their independence through provision of private or semiprivate rooms, shared dining and certain other shared facilities.

CORNER LOT -- A lot fronting on two (2) streets at their intersection.

COVERAGE -- That lot area or percentage of lot area covered by buildings and structures, including accessory buildings and structures.

DECIBEL (db) -- A unit of sound pressure level. The noise level in an average residence is about 50 decibels.

DEVELOPMENT, SPECIAL FLOOD HAZARD AREA – Any man-made change to improved or unimproved real estate, including but not limited to buildings and other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials. (Note: this definition only pertains to development in a special flood hazard area.)

DISTRICT -- A part, zone or geographic area within the municipality in which certain zoning or development regulations apply.

DWELLING -- Any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, except a mobile home or trailer.

DWELLING, MULTIFAMILY -- A dwelling arranged, intended or designed for occupancy by three (3) or more households living as families independently of each other and with separate and individual cooking facilities.

DWELLING, ONE-FAMILY -- A detached house designed for the use of a single household, including two (2) or more people living as a family, and wherein not more than three (3) people are sheltered or fed for profit. A pre-HUD manufactured home or trailer as defined herein shall not be considered a dwelling within the meaning of this law. A manufactured home as defined herein shall be considered a dwelling within the meaning of this law.

DWELLING, TWO-FAMILY -- Any building under one (1) roof, with or without a party wall, designed or arranged for occupancy by two (2) households living as families and with individual cooking facilities.

DWELLING UNIT -- A building or an entirely self-contained portion thereof containing complete housekeeping facilities for only one (1) family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entranceways or other hallways or porches) or cooking or sanitary facilities in common with any other "dwelling unit".

EASEMENT -- A right-of-way granted, but not dedicated, for limited use of private land for a public or quasi-public or private purpose, and within which the lessee or owner of the property shall not erect any permanent structure, but shall have the right to make any other use of the land which is not inconsistent with the rights of the grantee.

ESSENTIAL EMERGENCY FACILITIES-- Buildings and uses necessary for furnishing adequate emergency services for the public health, safety or general welfare. Such uses include, but are not limited to, police stations, fire stations, ambulance squads, and helipads/ports.

ESSENTIAL SERVICES-- The erection, construction, alteration or maintenance by public utilities or the Village or other governmental agencies of underground, surface or overhead electrical, gas or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits,

cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories, in connection therewith reasonably necessary for the furnishing of adequate service by such public utilities or the Village or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

FAMILY -- One or more persons living together as a single, nonprofit housekeeping unit or household.

FLAG -- Flags of the United States, the state, the city, foreign nations having diplomatic relations with the United States and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction, provided that such a flag shall not exceed 30 square feet in area and shall not be flown from a pole the top of which is no more than 100 feet in height. These flags must be flown in accordance with protocol established by the Congress of the United States for the stars and stripes. Any flag not meeting any one or more of these conditions shall be considered a banner sign and shall be subject to regulation as such.

FLOODPLAIN – Any land area susceptible to being inundated by water from any source.

FRONTAGE - That side of a lot or building abutting on a street or private right-of-way and ordinarily regarded as the front yard.

GARAGE, PORCH or YARD SALE – A sale of personal property that takes place on residential property that has not been issued a permit to operate commercially. Includes all auctions, garage sales, lawn sales, yard sales, flea markets, attic sales, moving sales, estate sales or any similar sale where personal property is exposed, displayed and offered for sale to the general public on private property either outdoors or under or within any permanent or temporary structure.

GARBAGE – Any material other than untreated wood, paper, cardboard, dried leaves.

GROUP HOME -- A dwelling that houses no more than six unrelated individuals who live as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability.

HEIGHT OF BUILDING -- The vertical distance measured from the average ground level at the sides of the building to the extreme high point of the building, exclusive of chimneys and similar fixtures.

HOME OCCUPATION – An occupation or a profession which:

1. Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit;
2. Is carried on by members of the family whose primary residence is in the dwelling unit and no additional, outside employees;
3. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes.

In particular, a Home Occupation includes, but is not limited to the following:

1. Art Studio;

2. Barber Shops and Beauty Parlors;
3. Dressmaking;
4. Professional office of a physician, dentist, lawyer, engineer, architect, accountant, teaching of music or dancing to one (1) pupil at a time, or real estate dealer within a dwelling occupied by the same.
5. Mail order

However, a Home Occupation shall not be interpreted to include the following:

1. Commercial Stables and Kennels
2. Veterinarian Offices or Animal Hospital
3. Restaurants
4. Funeral Homes and Mortuaries
5. Tourist Accommodations
6. Greenhouses
7. Clinic or hospital
8. Garage, porch or yard sale

A Home Occupation must conform to the applicable provisions in this law.

HOSPITAL -- an institution providing medical, surgical, or psychiatric testing and treatment for people who are ill, injured, pregnant, etc. on an inpatient, outpatient, or emergency care basis: often involved with public health programs, research, medical education, etc...

JUNK – 1) Any worn-out, cast-off, discarded, or neglected item or 2) material that has been collected or stored for salvage or conversion to another use. Building materials, as defined in this law, stored in an orderly fashion shall not be constituted as junk unless occupying an outside area greater than two (2) cubic yards.

JUNK VEHICLE – Any motor vehicle whether automobile, bus, truck, tractor, motor home, motorcycle, moped, motorized bicycle, snowmobile, or any other device originally intended to have an operating motor and intended for travel and meets one or more of the following:

- 1) It is unlicensed/unregistered.
- 2) It is abandoned, wrecked, stored, discarded, dismantled, or partly dismantled.
- 3) It is not in condition for legal use upon the public highway.
- 4) It is in such condition as to cost more to repair and replace in operating condition than its reasonable market value at the time before such repair.
- 5) It has remained unused for three (3) months or more and cannot be removed under its own power.

JUNKYARD – The use of one (1) cubic yard or more of area on any lot outside a building, used for or occupied by the storage, keeping or abandonment of junk. Regardless of area, the outside storage of two (2) or more junk vehicles or the major parts thereof for three (3) months or more shall be deemed to make the lot a "junkyard." Regardless of area, the outside storage of one (1) or more appliances, including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, ice makers, and televisions shall be deemed to make the lot a "junkyard".

KENNEL – Any establishment including cages, dog runs, and structures wherein more than three (3) dogs which are over six (6) months old are kept for sale, boarding, care or breeding, for which a fee is charged.

LIVESTOCK -- Cattle, sheep, hogs, goats, horses, poultry, fur bearing animals (excluding cats and dogs).

LOT -- A tract or parcel of land held in single or joint ownership, not necessarily shown on a duly recorded map, which is occupied or capable of being occupied by buildings, structures and accessory buildings, including such open spaces as are required by this law. The term lot shall also mean parcel, plot, site, or any similar term.

LOT AREA -- The square foot area of land contained within the limits of the property lines bounding that lot. Any portion of a lot included in a public street or easement shall not be included in calculating lot area.

LOT DEPTH -- The minimum distance from the public street right-of-way or easement line of a lot to the rear lot line of such lot.

LOT WIDTH -- The dimension measured along the frontage of a public street or easement in the front yard and also along the front and rear yard minimum required setback at substantially right angles to the depth of the lot.

MANUFACTURED HOME – A one family dwelling unit built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) Code which meets or exceeds the following criteria:

- A. The dwelling unit has a minimum width of twenty feet
- B. The floor area meets the minimum square footage requirement of the New York State Building Code.
- C. The roof covering is a material commonly used in residential construction.
- D. The exterior siding is of a type of material commonly used in residential construction.
- E. All towing devices, wheels, axles, and hitches must be removed.
- F. It is installed on a permanent foundation.
- G. Any skirting must either match the exterior siding of the dwelling, or must be, or simulate the appearance of, block, brick or stone.

MANUFACTURING, HEAVY -- A use involving the manufacture of a product, requiring heavy, noisy or otherwise objectionable disturbances, such as vibration, dust and odors, and/or involving the use of heavy machinery or transporting equipment around the site.

MANUFACTURING, LIGHT -- A use involving the manufacture of a product, but not requiring heavy, noisy or otherwise objectionable disturbances, such as vibration, dust and odors, nor involving the use of heavy machinery or transporting equipment around the site.

MOTOR VEHICLE – All vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

NONCONFORMING BUILDING -- Any building or other structure which does not conform to area regulations for the district in which such building is located, either at the effective date of this law or as a result of subsequent amendments thereto.

NONCONFORMING USE -- Any use of a building, other structure or tract of land which does not conform to the use and/or area regulations for the district in which such use is located, either at the effective date of this law or as a result of subsequent amendments thereto.

OUTDOOR RECREATION AREA -- Public or private land developed with facilities for passive recreation, e.g., trails or a picnic area, and/or with facilities for active outdoor individual or organized recreation, such as ball fields, tennis courts, swimming or ice-skating.

OUTDOOR WOOD BURNING FURNACE – A device/structure that is designed to burn solid fuel so that heat is provided to the interior of a building and is typically detached from the structure that it heats.

PARCEL - An area of land resulting from the division of a tract of land for the purposes of transfer of ownership, use or improvement.

PARK or PARKING -- The standing of a vehicle, whether occupied or not, on public or private property.

PERSONAL PROPERTY – Includes any and all tangible property of any type or description capable of being the object of a sale regulated hereunder, including without limitation, household goods, fixtures, furnishings, appliances, antiques, rummage, clothing, printed matter, and handicraft.

PLAT - A drawing, map, chart, plan, written description (deed) or plotting indicating the subdivision or resubdivision of land, which indicates existing site features of a tract and its surroundings and the general layout of the proposed subdivision, to be used as a basis for the Code Enforcement Officer to determine that minimum area requirements of the zoning law are met.

PRE-HUD MANUFACTURED HOME -- A one family dwelling that is wholly, or in part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards Act of June 15, 1976. Also commonly referred to as a mobile home.

PREMISES -- A lot, together with all the buildings and uses thereon.

PRINCIPAL STRUCTURE – The one main building on a parcel excluding accessory buildings.

RECREATIONAL VEHICLE – see definition under “TRAILER”.

SCREENED – Minimizing to the greatest extent possible the ability of an object/activity to be seen from public roads and neighboring properties through the use of fencing, landscaping or other visually appealing methods.

SERVICE STATIONS -- An area of land, including structures thereon, or any building or part thereof that is used primarily for maintaining motor vehicles and/or the sale and direct delivery to motor vehicles of gasoline or any other motor vehicle fuel or of other lubricating substances. Service stations include sale of motor vehicles, sale of motor vehicle accessories, and facilities for lubricating, servicing motor vehicles, auto bodywork, welding or painting.

SETBACK -- The distance in feet from the street line to the principal building on a lot.

SIGNS -- Any structure or part thereof or any device attached to a structure or painted or represented on a structure which shall display or include any lettering, wording, model, drawing, picture, banner, flag, insignia, device, marking or representation used as or which is in the nature of an announcement, direction or advertisement. A "sign" includes a billboard, neon tube, fluorescent tube or other artificial light or string of lights outlining or hung upon any part of a building or lot for the purposes mentioned above, but does not include the flag or insignia of any nation or of any governmental agency or of any political, educational, charitable, philanthropic, civic, professional, religious or similar organization, campaign, drive, movement or event which is temporary in nature.

A. SIGN, ADVERTISING -- A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises and only incidentally on the premises if at all.

B. SIGNS, BUSINESS -- A sign which directs attention to a business or profession conducted on the premises or to a commodity or product available on the premises. A "for sale" sign or a "to let" sign relating to the property on which it is displayed shall be deemed a "business sign."

C. SIGN, DIRECTLY ILLUMINATED -- A sign which incorporates any artificial lighting as an inherent part or feature or which depends for its illumination on transparent or translucent material or electricity or radioactivated or gaseous material or substance.

D. SIGN, FLASHING -- An illuminated sign on which the artificial lighting is not maintained stationary or constant in intensity and color at all times while in use.

E. SIGN, ILLUMINATED -- A sign designed to give forth any artificial light or designed to reflect such light deriving from any source which is intended to cause such light or reflection.

F. SIGN INDIRECTLY ILLUMINATED -- A sign illuminated with an artificial light which is separated from or is not an intrinsic part of the sign itself.

G. SIGN, REPRESENTATIONAL -- Any three-dimensional sign which is built so as to physically represent the object advertised.

SIGN AREA -- The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights but excluding the supports if they are not used for advertising purposes. All faces of the sign shall be counted in computing the area. Any neon tube, string of lights or similar device shall be deemed to have minimum dimensions of one (1) foot.

SITE PLAN -- The development plan for one or more lots on which is shown the existing and proposed conditions of the lot, including topography, vegetation, drainage, floodplains, marshes and waterways; open spaces, walkways, means of ingress and egress, utility services, landscaping, structures and signs, lighting and screening devices; and any other information that reasonably may be required in order that an informed decision can be made by the approving authority.

SPECIAL FLOOD HAZARD AREA – Land in the floodplain within the Village of Esperance subject to a one percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, or A99. It is also commonly referred to as the base floodplain or 100-year floodplain.

SPECIAL USE PERMIT -- The permit required for a use which, because of its unique characteristics, requires individual consideration in each case by the Planning Board before it may be permitted in the district enumerated in this law.

STEALTH TELECOMMUNICATIONS FACILITIES – Telecommunications facilities needed by Federal Communication Commission licensed providers that employ a camouflage technique to antennae and building materials. Examples include, but are not limited to, placement of antennas in church steeples, silos, or other existing high structures or towers to hold antenna that look like trees or other natural features in the environment.

STREET -- A highway or road intended primarily for the purposes of vehicular traffic, including the following:

- A. **STREET, MINOR** - A road the primary purpose of which is, to collect vehicular traffic from individual dwellings or places of business.
- B. **STREET, COLLECTOR** - A road the primary purpose of which is, to collect vehicular traffic from minor streets and deliver it to major traffic streets.
- C. **STREET, MAJOR** - A road the primary purpose of which is, to collect vehicular traffic from collector streets and deliver it to destination points or arterial highways such Interstate Route I-88.

STRUCTURE -- Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

SUBDIVISION - The division; for purposes of immediate or future sale, lease, partition by the court for distribution to heirs or devisees, transfer of ownership, building or lot development; of any parcel of land into two (2) or more lots, plots, sites or other divisions of land; with or without streets or highways. Excluding lot line adjustments that do not result in the creation of a new parcel.

TOURIST HOME -- A private residence in which overnight accommodations are provided for not more than ten (10) transient paying guests.

TRAILER or RECREATIONAL VEHICLE -- A vehicle with or without its own motor power, equipped for or used for living purposes and mounted on wheels or designed to be so mounted and transported.

USABLE OPEN SPACE -- A portion of the ground area of a lot, free of structures of any kind, including parking spaces and driveways. Said space shall be available and accessible to all occupants of the building or buildings on the lot for recreational purposes.

YARD – An open space on a lot not occupied with a building or structure.

YARD, FRONT – An open space on the same lot with a building, between the front wall of the building and the centerline of the public street or easement. If a lot abuts a public street, then the side that faces the public street shall be considered the front, even if access to the lot is through a private driveway (easement) from another direction or it is a corner lot.

YARD, REAR -- An open space on the same lot with a building, between the rear wall of the building and the rear of the lot, and unoccupied except for accessory buildings and open porches, which in the aggregate, shall occupy not more than thirty-five percent (35 %) of the area.

YARD, SIDE -- An open, unobstructed space on the same lot with a building, between the building and the side line of the lot and extending through from the front to the rear yard into which space there shall be no extension of building parts other than eaves with an overhang of not more than two (2) feet, rainwater leaders, windowsills and other such fixtures, open steps for a distance not exceeding four (4) feet, and bay windows not more than twelve (12) feet wide at one (1) floor level only and for a distance not exceeding two (2) feet.

ZONING BOARD OF APPEALS -- An officially constituted body whose principal duties are to consider requests for interpretations or for variances from the strict application of this law.

ARTICLE III - Establishment of Zoning Districts

3-1. Establishment and Intent of Zoning Districts

In order to fulfill the purposes of this law, the Village of Esperance establishes and is hereby divided into the following five (5) zoning districts:

RC	Residential Conservation
RM	Residential Mixed
RV	Residential Village
MSM	Main Street Mixed
P	Public

A. The Residential Conservation (RC) district is a primarily single family residential zone with unobtrusive home occupations permitted upon issuance of a special use permit. This district has larger lot sizes than the Residential Village (RV) in order to reduce negative impacts to water quantity and quality and from individual septic systems. Where and when public water and/or sewer is available, lot sizes may be reviewed and lot size reductions recommended.

B. The Residential Mixed (RM) district is a single family and multi-family residential zone with compatible commercial uses permitted upon issuance of a special use permit. This district has lot size requirements similar to Residential Conservation (RC). Although single family residential is allowed, it is not the intent of the Village to develop this zone solely with single-family homes, thereby excluding the possibility of other uses.

C. The Residential Village (RV) district is a single family and multi-family residential zone with unobtrusive home occupations permitted upon issuance of a special use permit. This district has smaller, traditional lot sizes following the historic pattern of the Village.

D. The Main Street Mixed (MSM) district is a residential and commercial district that is designed to offer flexibility of uses. Many uses can be proposed and reviewed provided that architectural styles are used that respect the character of Esperance, certain performance standards are met, and good site planning is involved.

E. The Public (P) district includes churches, parks, museums, open space, and sensitive environmental areas.

3-2. Official Zoning Map

The location and boundaries of said zoning districts are shown on the map designated "Official Zoning Map of the Village of Esperance," certified by the Village Clerk. Said map, together with everything shown thereon and all amendments thereto, is hereby adopted and is declared to be an appurtenant part of this law.

3-3. 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 centerlines of watercourses and roads, said boundaries shall be construed to be coincident with such lines. Such boundaries shall be deemed to be automatically moved if a centerline or right-of-way line of such street, highway, public utility easement or watercourse is moved a maximum of fifty (50) feet.
- B. Where district boundaries are indicated as approximately following the village boundary lines, property lines, lot lines or projections thereof, the center lines of streams, rivers, ponds or other bodies of water said boundaries shall be construed to be coincident with such lines or projections thereof.
- C. Where district boundaries are so indicated that they are approximately parallel to the village boundary lines, property lines, lot lines, right-of-way lines or projections thereof, said boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map or as shall be determined by the use of the scale shown on the Zoning Map.
- D. Where a district boundary line divides a lot held in single or joint ownership of record at the time such line is established the regulations for the less restricted portion of such lot shall extend not more than thirty-five (35) feet into the more restricted portion.
- E. In all other cases, where not dimensioned, the location or boundaries shown on the map shall be determined by the use of the scale appearing thereon.
- F. Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by A through E above, the Zoning Board of Appeals shall interpret the district boundaries.

ARTICLE IV – Regulations/Administration

4-1. Application of Regulations

A. No activity listed below shall be commenced except in full compliance with this Law and an appropriate zoning approval has been issued by the appropriate Village Board or Official:

1. Erection or demolition of a building or structure;
2. Change of the exterior structural dimensions of a building or structure;
3. Change in use of land, buildings or structures through the establishment of a new use, or through expansion, enlargement or relocation of an existing use;
4. The resumption of any use which has been discontinued for a period of one year or longer; or
5. Placement of a sign as regulated in this Law.

B. No zoning approval is required for the following (building permit may be required):

1. Exempt signs listed in 5-4 (C);
2. Fences or walls in compliance with 5-16;
3. Interior structural alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure;
4. Minor accessory structures such as sidewalks, driveways, playground equipment and up to two (2) small utility sheds of one hundred twenty (120) sq. ft. or less and ten (10) feet high or less located in the rear or side yard.

C. No building or premises shall be erected, altered, or used except for one (1) or more of the uses designated for any district as provided by the attached Use and Area Schedule (Appendix A). No more than one principal structure per lot is allowed in any zoning district. For example, in the RV, one parcel can contain a two-family dwelling by right and a home occupation by special use permit, but cannot contain two one-family dwellings on the same parcel. In the MSM, one parcel can contain a one-family dwelling and an accessory shed by right and two retail stores by special use permit, but cannot contain two one-family dwellings on the same parcel.

D. No building or premises shall be erected, altered, or used unless all area requirements are met in accordance with the attached Use and Area Schedule (Appendix A). Parcels in existence prior to the adoption of this law may be exempt from area requirements as described in Article 6. No new parcel depth in the RM and RC districts may exceed four times its width. No new parcel depth in all other districts may exceed five times its width.

4-2. Interpretation

A. In interpreting and applying the provisions of this law, they shall be held to be the minimum requirements for promoting the health, safety, morals and the general welfare of the Village of Esperance. 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.

4-3 Enforcement

A. The provisions of this law shall be enforced by an agent to be appointed by the Village Board of Trustees, who shall be known as the Code Enforcement Officer. It shall be the duty of the Code Enforcement Officer to issue permits as herein provided; to keep a record of all applications for permits and a record of all permits issued, with notation of all special conditions involved; and to check performance under permits issued for conformity to permit authorizations. He/She shall file and safely keep copies of all plans submitted and the same shall form a part of the records of his/her office and shall be available for the use of the Board of Trustees and other officials of the Village of Esperance. The Code Enforcement Officer shall issue no permit for the construction or use of any building or for the use of any land unless it conforms also to the requirements of all other ordinances of the Village of Esperance.

B. The Code Enforcement Officer shall refer to the Planning Board for review all applications for a special use as provided by Article 4 of this law.

4-4 Zoning Permits

A. Zoning permit shall hereafter be secured from the Code Enforcement Officer prior to construction, erection or alteration of any building or part of building and prior to any change in the use of land from that of one classification to another, except that no permit shall be required for any construction work having a cost of appraised value of less than two hundred dollars (\$200). All requests for zoning permits shall be made in writing by the owner or his authorized agent and shall include a statement of the use or intended use of the building or buildings or land and shall be accompanied by a plan, drawn to scale, showing the proposed building or use in its exact relation to property lines and to street or road lines, and, if deemed necessary by the CEO, by a written statement from a qualified engineer, or by other satisfactory evidence, to the effect that the line of the bounding street or road has been accurately located and staked on the ground. An application for a zoning permit shall be acted upon within ten (10) days after receipt thereof.

B. Any use listed on the schedule as a permitted use only needs to be reviewed by the Code Enforcement Officer. If applicable area requirements are not met, the Code Enforcement Officer shall deny a permit and an application can be made to the Zoning Board of Appeals for an area variance. If a use is not permitted, the Code Enforcement Officer shall deny a permit and application can be made to the Zoning Board of Appeals for a use variance. If a use is a special use, the Code Enforcement Officer shall not deny, but shall refer the application to the Planning Board for review. The Code Enforcement Officer shall make all decisions in writing in order that proper procedures take place and proper appeals to the Zoning Board of Appeals for variances and/or interpretations can be made when necessary.

4-5 Certificate of Occupancy or Certificate of Compliance

A. No building hereafter constructed, erected or altered under a zoning permit shall be occupied or used in whole or in part for any use whatsoever, and no change of use of any building or part of building or of any land shall hereafter be made, until a certificate of occupancy or certificate of compliance has been issued by the Code Enforcement Officer, indicating that the building or use complies with the provisions of this law and the Building Code and with the terms of the zoning permit issued. A certificate of occupancy or certificate of compliance shall be granted or denied within ten (10) days after receipt of written' application therefore.

4-6 Amendments

A. Proceeding as prescribed by law, the Board of Trustees may, from time to time, on its own motion or on petition, amend, supplement or change the regulations and the districts herein provided. In case, however of a protest against such change, signed by the owners of twenty percent (20%) or more of the area of the land included in a proposed change of district, or by the owners of twenty percent (20%) or more of the area of the land immediately adjacent extending one hundred (100) feet there from, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land such amendment shall not become effective except by the favorable vote of at least two-thirds of the members of the Board of Trustees. Further, all such proposed changes in regulations or in districts shall be referred by the Board of Trustees to the Village Planning Board for report thereon not less than thirty (30) days prior to final adoption thereof by the Board of Trustees. Referral to the Schoharie County Planning Commission pursuant to General Municipal Law Section 239-m may also be required.

4-7. Prohibited Uses

A. In the districts where manufacturing or light industry may occur (RM or MSM), no manufacturing use nor any trade, industry, use or purpose that is noxious or offensive by reason of the emission of odor, dust, smoke, toxic or noisome fumes, radiation, gas, noise, vibration or excessive light, or any combination of the above which is dangerous and prejudicial to the public health, safety and general welfare, shall be permitted, and this includes more specifically but is not limited to the following such uses:

1. Stockyards, slaughterhouses and the processing of meats for animal foods.
2. The handling or storage of junk and the disassembly of motor vehicles and the storage of used car parts unless conducted entirely within a building, and the storage of used building materials for resale unless conducted entirely within a building.
3. The storage of crude oil or any of its volatile or asphaltic oils or other highly inflammable liquids in aboveground tanks with unit capacity greater than ten thousand (10,000) gallons. All tanks having a unit capacity greater than five hundred fifty (550) gallons shall be properly diked with a dike or dikes having a capacity of one and one-half (1 ½) times the capacity of the tanks or tank surrounded.

4. The storage, baling or treatment of junk, rags, bottles or scrap paper unless entirely within a building.

5. Any process of assembly, manufacture or treatment normally constituting a nuisance by reason of smoke, odor, dust, vibration or noise, including but not limited to such things as: foundries, forge shops and boiler works; the manufacture or refining of asphaltic oils; the manufacture or processing of cork, fertilizer, linoleum, oilcloth and glue or gelatin; the tanning and storage of rawhides; the manufacture of paint, oil, turpentine, shellac, enamel or varnish; fat rendering; and fish smoking or curing; provided, however, the above shall not apply to exclude an industry, whether or not specifically mentioned, if such industry, after supplying satisfactory evidence to the Planning Board, is certified by that Board to be free of the nuisance characteristics typical of its kind, by reason of special design of structure or innovation in processes or other circumstances.

B. Outdoor wood burning furnaces are prohibited in all zoning districts except the RC and RM districts. Outdoor wood burning furnaces must be located behind the building that it heats, never in a front yard.

C. If a proposed use is not listed as a permitted or special use in the applicable zoning district in Appendix A, it is considered prohibited.

4-8. Special Use Permits

Each use for which application for a special use permit is made shall be considered individually by the Planning Board and, if approved, shall conform to the detailed standards as the Board may determine are appropriate to the particular use. To better facilitate the understanding of a special use permit, it is to be understood that special uses will be permitted only as allowed in the schedule (Appendix A). It shall also be understood that a special use differs from a variance in that a variance is an authority to use certain property in a manner not allowed by this law pertaining to the district, while a special use is a permit to use property in a manner in which this law expressly allows, as designated in the schedule.

A. Complete Application: An application for a special use permit shall include:

(1) a proposed site plan at an appropriate scale showing the size and placement of the lot, the design and location of proposed facilities (driveways, parking spaces, landscaping, fences, buffer strips), water supply, sewage treatment.

(2) a brief narrative describing the proposed use.

(3) if the applicant is not the owner of the property, a signed statement from the owner of the property authorizing application for special use.

(4) proper Environmental Assessment Form (EAF) with Part I completed. (a full EAF is required for all Type I actions, but the Planning Board

may require a full EAF for unlisted actions)

(5) a fee established annually by the Village Board of Trustees.

(6) The Planning Board, upon a majority vote of the members, may require a survey of property if needed to ensure proper setback, to solve a property line dispute, or for any other valid reason. The Planning Board, upon a majority vote of the members, may require existing or proposed contour lines to be identified on a lot in order to review drainage plans or because ground disturbance will take place as a result of approval.

B. A public hearing shall be held within sixty-two (62) days from the day a complete application as described above, is received and dated by the Planning Board Chair. Public notice of the hearing shall be printed in a newspaper of general circulation in the Village at least five days prior to the hearing. The Planning Board shall decide upon the application within sixty-two (62) days after the hearing. Such decision may be extended by mutual consent of the applicant and the board. The decision shall be filed in the Village Clerk's office within five business days after such decision is rendered and a copy mailed to the applicant.

C. Before granting any special use permits, the Planning Board shall determine that the special use requested is in accordance with the community standards and will not disrupt the relationship of zoning districts within the Village, and further consider:

(1) If such special use encourages the orderly beneficial development of the Village.

(2) The suitability of the property for the proposed use considering its size, topography, vegetation, soils, hydrology and, if appropriate its ability to be screened (landscaping/fences) from neighboring properties and public roads.

(3) Environmental, social and economic impacts of traffic, noise, dust, odors, release of harmful substances, solid waste disposal, glare, or any other nuisances.

(4) Any restrictions or conditions on design of structures or operation of the use (including hours of operation/architecture) necessary either to ensure compatibility with surrounding uses or to protect the natural and scenic resources of the Village.

(5) Adequacy of parking for the proposed use, and its accessibility to fire, police, and emergency vehicles.

(6) Conditions and safeguards, including financial provisions for the completion of conditions, maintenance of property held in common, or other acts.

(7) Supplementary standards as listed in Article 5 of this law and, if located in the MSM or RM districts, performance standards as listed in Section 4-9 of this law.

D. If the provisions regarding any type of special use shall be declared invalid by any court, then such special use shall become a use not allowed in that district.

E. A special use permit granted under this law shall run with the land of the heirs, successors or assigns of the original holder and shall be acknowledged in like form and manner as a deed. If deemed necessary by the planning board, a special use permit may be issued for a limited time period with an expiration date or for review to check compliance with any permit conditions for possible renewal. The Village Clerk shall maintain a record book and record therein in suitable order every such permit.

F. A special use permit shall be deemed to authorize only one (1) particular special use and shall expire if the special use shall cease for more than twelve (12) consecutive months for any reason.

G. No permit shall be issued for a special use for a property where there is an existing violation of this law.

H. Where a proposed special use permit contains one or more features which do not comply with area requirements, application may be made to the Zoning Board of Appeals for an area variance without the necessity of a decision or determination of the code enforcement officer.

4-9. Main Street Mixed (MSM) and Residential Mixed (RM) Performance Standards

All MSM special uses and all RM special uses may be allowed after approval of a Special Use Permit in accordance with Section 4-8 of this law and no land use shall be established or maintained unless it complies with the performance standards in this section. Continued conformance with such standards shall be a requirement for the continuance of any certificate of occupancy or certificate of compliance subject to the following performance standards:

A. Noise

1. Sound levels shall be determined at the property line of the lot from which the noise is emitted. Sound measurements shall be accomplished through the sound-level meter having an A-weighted filter constructed in accordance with specifications of the American National Standards Institute.

2. The following uses and activities shall be exempt from these noise regulations:

[i] Temporary construction noises between the hours of 7:00 a.m. and 10:00 p.m.

[ii] Unless otherwise noted in this law, transient noises of moving sources, such as motor vehicles and railroads.

[iii] Noises from safety signals, fire alarms, security alarms, warning devices and emergency pressure relief valves.

[iv] The sound of bells or chimes from a church.

[v] Yard and lawn maintenance equipment engaged in normal yard and lawn maintenance operations between the hours of 7:00 a.m. and 10:00 p.m.

[vi] Snow removal equipment.

3. No person, firm or corporation shall allow the emission of sound in air which, as measured at the property lines, has a sound level in excess of 70 decibels on the A-weighted scale between the hours of 7:00 a.m. and 10:00 p.m. and in excess of 60 decibels on the A-weighted scale between the hours of 10:00 p.m. and 7:00 a.m.

4. No operation of recreational or other power equipment including but not limited to all-terrain vehicles, snowmobiles, lawn mowers (including modified racing lawn mowers), leaf blowers, chain saws, or revving of motor vehicle engines shall occur between the hours of 10:00 p.m. and 7:00 a.m. unless being used for snow removal.

B. Smoke. The density of smoke and other atmospheric pollutants shall be measured by the Ringelmann Smoke Chart, as published by the United States Bureau of Mines. No person, firm or corporation shall permit the emission of smoke or any other atmospheric pollutant, from any source whatever, for a period or periods aggregating more than four minutes in any one hour which exceeds the density or equivalent opacity of No. 1 on the Ringelmann Chart as measured at the point of emission. The emission of smoke or any other atmospheric pollutant shall not be permitted, regardless of quantity, if it is in any way detrimental to the public health or safety or is a source of damage to property.

C. Particulate matter. No person, firm or corporation shall permit the emission of any particulate matter, from any source whatever, to exceed one pound per hour per acre of lot area. The emission from all sources within any lot area of particulate matter containing more than 10% of particles having a diameter larger than 44 microns is prohibited.

D. Odor. No person, firm or corporation, excluding farms and farm operations, shall permit the emission of any offensive odor at the property line of the lot from which the odor is emitted.

E. Fire and explosion. The storage, use or manufacture of detonable material, flammable solids ranging from active burning to intense burning flammable gases or flammable liquids shall not be permitted.

F. Electromagnetic interference. No land use or operation shall be allowed which produces any perceptible electromagnetic interference with normal radio or television reception outside the boundaries of the lot on which such use or operation takes place.

G. Toxic or noxious matter. No land use or operation shall be permitted which permits or causes the escape of any toxic or noxious fumes, gases or other matter outside the building in which the use is conducted.

H. Flammable liquids and hazardous materials. Storage of such materials shall be according to provisions in 29 CFR 1910.106, Flammable and Combustible Liquids.

I. Radiation. No emission or discharge of radioactive gases, liquids or solids shall be permitted.

J. Vibration.

1. The following uses and activities shall be exempt from these vibration regulations:
[i] Temporary construction activities between the hours of 7:00 a.m. and 10:00 p.m.
2. No activity shall cause or create a steady state or impact vibration discernible at any lot line.

K. Liquid or solid wastes. The discharge of any or all wastes shall be permitted only if in complete accordance with all standards, laws and regulations of the Schoharie County Department of Health, New York State Department of Environmental Conservation or any other regulatory agency having jurisdiction. Facilities for the storage of solid waste shall be so located and designed as to be screened from the street or from any adjoining property and so as to discourage the breeding of rodents or insects.

L. Lights. All exterior lighting in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties. Hours of lighting may be limited by the Planning Board in acting on any site development plan.

M. Outside storage. Materials, supplies and products shall not be stored in any front or side yard area nor in any required yard. All outside storage areas shall be neatly kept, fenced, lighted and screened from any existing or proposed road or any adjoining residential use.

N. Fences. The Planning Board may require the fencing or screening, or both, of any hazardous or potentially dangerous conditions that in the opinion of the Board might cause injury to persons or damage to property.

O. Motor Vehicle Repair. No person, persons, firm, partnership or corporation shall at any hour of the day or night make mechanical repairs of any nature or description whatsoever to any motor vehicle while said motor vehicle is parked or standing on any public street, avenue, road highway or public parking lot within the Village of Esperance, except in the event of an emergency.

P. Parking. The standards of Article 5 Section 5-5 of this law shall be used as a guideline. Motor vehicle parking shall be off-street when possible.

In the case of any application for the establishment of a use subject to the above performance standards, the Planning Board may require the applicant, at his or her own expense, to provide such evidence as it deems necessary to determine whether the proposed use will conform to said standards.

If the Planning Board deems it necessary, expert advice may be obtained, with the cost of such advice paid for in advance by the applicant, as a condition of further consideration of his or her application. The report of any expert consultants shall be promptly furnished to the applicant.

Concurrently during the course of special use permit review, the Planning Board will determine if the applicant's proposal will conform to the performance standards.

4-10 Enforcement of Performance Standards

If, in the judgment of the Code Enforcement Officer or the Village Board, there is a violation of the performance standards:

A. The Code Enforcement Officer shall give written notice, by registered or certified mail, to the owner and tenants of the property upon which the alleged violation occurs, describing the

particulars of the alleged violation and the reasons why it is believed that there is a violation in fact and shall require an answer or correction of the alleged violation to the satisfaction of the Code Enforcement Officer within a reasonable time limit set by said Officer. The notice shall state that, upon request of those to whom it is directed, technical determinations of the nature and extent of the violation as alleged will be made and that, if violation as alleged is found, costs of the determinations will be charged against those responsible, in addition to such other penalties as may be appropriate and that, if it is determined that no violation exists, costs of determination will be borne by the Village.

B. If, within the time limit set, there is no reply but the alleged violation is corrected to the satisfaction of the Code Enforcement Officer, he or she shall note "Violation Corrected" on his or her copy of the notice and shall retain it among the records of the Officer.

C. If there is no reply within the time limit set and the alleged violation is not corrected to the satisfaction of the Code Enforcement Officer within the time limit set, he or she shall proceed to take action in accordance with Article IX of this law.

4-11 Notice of Public Hearings

Notification of public hearings for a use variance, site plan, or special use permit occurring within 500' of an adjacent municipality shall be made to the clerk of such municipality by mail or electronic transmission at least ten (10) days prior to the hearing.

ARTICLE V - Supplementary Regulations

NOTE: Some items in Article V may not apply to property with an approved special use permit. The written conditions of the special use permit shall supersede this Article.

5-1. Recreational Vehicles/Boats

A. No recreational vehicle or trailer shall be parked and occupied in any district for a period of more than two weeks in any one calendar year without a permit issued by the Code Enforcement Officer. A permit may be issued for a period not exceeding three (3) months and shall not be renewable within the same calendar year.

B. All occupied recreational vehicles or trailers, regardless of the area on which they are located, must be connected to any existing water and sanitary sewer systems of the village following the issuance of a permit by the Code Enforcement Officer to locate in the particular area for the specified time allowed under this law.

C. No recreational vehicle or trailer shall be occupied in the village on a permanent basis.

D. Outside storage of boats and recreational vehicles or trailers in all districts shall be restricted to driveways, side yards, or rear yards. Boats, recreational vehicles, and trailers in excess of 20 feet in length shall be no less than five feet from property lines.

5-2. Service Stations

Special Use Permits will be issued for service stations in the MSM district only, provided the Planning Board finds that the use complies with the necessary performance standards and that the station conforms to the following additional requirements:

A. If there is a residence on an adjoining lot (immediately adjacent – not a vacant parcel or street), the service station parcel shall be screened.

B. Hydraulic hoists, pits and lubricating, greasing, and other servicing equipment shall be entirely enclosed within a building.

C. The number of active service bays in the building shall be limited to a maximum of four (4).

D. The travel and parking areas shall be leveled with stone, brick, pavement, or concrete. The Planning Board may require that any landscaped area be separated from travel areas by a low curb or other method deemed appropriate.

E. All service stations shall be so arranged and all gasoline pumps shall be so placed as to require all services to be done on the premises and off the public way. No gasoline pump shall be placed closer to any property line than twenty-five (25) feet.

F. The number of motor vehicles permitted to be stored, advertised for sale or parked outdoors at any time on property containing a service station shall be calculated by the Code Enforcement Officer or Planning Board as follows: Measure the area of the lot consisting of public street frontage multiplied by a 20 foot buffer and divided by 180. The resulting number shall be rounded down to the nearest whole.

(Note: The average motor vehicle parking area is 9 feet by 20 feet or 180 square feet).

(Example: A lot has 100 feet of street frontage. $100 \times 20 = 2,000/180 = 11$ motor vehicles).

G. Side and rear yards shall not be less than twenty (20) feet in width.

H. Existing service stations at the time of adoption of this Zoning Law will need to apply for a special use permit and comply with Section 5-2 (A, B, F) within 1 year of the adoption of this law and filing with the Secretary of State.

5-3. Regulations Applicable to all Zoning Districts

A. No operation of recreational or other power equipment including but not limited to all-terrain vehicles, snowmobiles, lawn mowers (including modified racing lawn mowers), leaf blowers, chain saws, or revving of motor vehicle engines shall occur between the hours of 10:00 p.m. and 7:00 a.m. unless being used for snow removal. No construction noise discernable on another property shall occur between the hours of 10:00 p.m. and 7:00 a.m.

B. Odor. No person, firm or corporation, excluding farms and farm operations, shall permit the emission of any offensive odor at the property line of the lot from which the odor is emitted.

C. Fire and explosion. The storage, use or manufacture of detonable material, flammable solids ranging from active burning to intense burning flammable gases or flammable liquids shall not be permitted.

D. Electromagnetic interference. No land use or operation shall be allowed which produces any perceptible electromagnetic interference with normal radio or television reception outside the boundaries of the lot on which such use or operation takes place.

E. Toxic or noxious matter. No land use or operation shall be permitted which permits or causes the escape of any toxic or noxious fumes, gases or other matter outside the building in which the use is conducted. Open burning of garbage is not permitted.

F. Flammable liquids and hazardous materials. Storage of such materials shall be according to provisions in 29 CFR 1910.106, Flammable and Combustible Liquids.

G. Radiation. No emission or discharge of radioactive gases, liquids or solids shall be permitted.

H. Vibration.

1. The following uses and activities shall be exempt from these vibration regulations:

[i] Temporary construction activities between the hours of 6:00 a.m. and 9:00 p.m.

2. No activity shall cause or create a steady state or impact vibration discernible at any lot line.

I. Lights. All exterior lighting in connection with all buildings, signs or other uses shall be directed away from adjoining streets and properties.

J. Livestock and pets. Any animal, kept in accordance with all applicable laws, shall not be permitted to “run at large” without restraint or confinement. This provision does not apply to cats that are properly cared for by an owner. Properly cared for includes providing adequate food and water, shelter and spading or neutering appropriately.

K. Driveways. Prior to starting any construction, any new driveway on a village street shall require a permit from the Code Enforcement Officer (CEO). A property owner must furnish culvert pipe of a diameter and length prescribed by the CEO and pay for any cover material, if required. A driveway approach shall be a minimum of 4 inches below the edge of the pavement to prevent water from flowing onto the pavement. If a driveway crosses over a sidewalk, the sidewalk must be above or level with the driveway surface. Sidewalks shall not be paved over, removed, or blocked at any time unless the Village Code Enforcement Officer grants such approval.

L. Garage, Porch, or Yard Sales. Garage, porch or yard sales are meant to be temporary and are permitted in all zones provided that a garage sale permit is obtained from the Village by the property owner. Garage sales are limited to no more than 20 days on any one property in any one calendar year and no more than 3 contiguous days. Signage used for a garage sale must be removed within 2 days after the end of the sale. Continuous garage or yard sales (more than 20 days per calendar year or more than 3 contiguous days), except in the MSM district with a special use permit, are not permitted in the Village of Esperance.

M. Motor Vehicle Repair. No person, persons, firm, partnership or corporation shall at any hour of the day or night make mechanical repairs of any nature or description whatsoever to any motor vehicle while said motor vehicle is parked or standing on any public street, avenue, road highway or public parking lot within the Village of Esperance, except in the event of an emergency.

N. Junk, junk vehicle and junkyards. No person, persons, firm, partnership or corporation shall operate a junkyard or store junk or a junk vehicle that is not contained in a fully enclosed building or accessory building.

5-4. Signs

A. General Procedures

1. Unless specifically exempted by this law, no sign shall be erected, altered, or relocated within the Village of Esperance without first obtaining a sign permit from the Planning Board.
2. Unless specifically exempted by this law, before erecting a new sign or expanding or otherwise changing an existing sign, an applicant shall:
 - (a) Obtain an application and a copy of the Zoning Law.
 - (b) Design the sign in accordance with the sign regulations and the Sign Design Guidelines, Appendix C in the Comprehensive Plan, taking into account where the sign will be located and how it will be constructed and mounted.
 - (c) Submit the completed application form, along with appropriate photographs, drawings, sketches and color chips to the Village Planning Board.
3. Once a permit is issued, the sign must be built and displayed according to the specifications in the approved application. Any changes require a new application.

B. General Regulations

1. A sign shall not interfere or obstruct any official traffic sign, signal, or marking and shall not interfere with adequate line of vision for safety purposes at any intersection or access to a street.
2. A sign may be illuminated provided that the lighting used shall be shielded from neighboring properties and directed solely at the sign. Neon-type lighted signs (excluding 1 non-flashing, interior window mounted neon "OPEN" sign per business in the MSM and RM Districts) and portable signs mounted on wheels are not allowed. No exterior sign shall be illuminated between midnight and 5:00 a.m. Any business that serves the public between the hours of midnight to 5:00 a.m. may apply to the CEO for a waiver to this requirement. The CEO must receive a positive recommendation by a majority of the Planning Board before granting such waiver.
3. Temporary portable signs (less than 60 days) may be granted by the Code Enforcement Officer for a new business until a permanent sign is installed. Signs advertising or announcing a building project or a business, service or product expected to be available on the same or another site may be erected or placed at the time of issuance of a building permit for construction of the building project or of the structures intended to house the business, service or product, for less than 60 days in accordance with all other provisions of this law and other local law. In any case where said building permit lapses, said sign shall be removed.

4. All permanent signs shall be constructed and erected in a safe and sturdy manner. All electrical installation shall be underground for freestanding signs.

5. Signs must be kept in good repair such that they do not detract from the neighborhood or constitute a safety hazard. If the Code Enforcement Officer has reason to believe that a sign is an eyesore or is in an unsafe condition, the Code Enforcement Officer may issue a violation notice detailing the reasons for doing so, and give the owner a specified number of days to correct the problem. If it is not corrected, the Village may order the sign removed at the expense of the owner.

6. No sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light(s). No pennants, ribbons, streamers, spinners, or other similar moving devices are allowed. No sign may rotate or move by means other than those that swing in the wind.

7. It shall be unlawful to attach any sign or signs to any pole owned by the Village of Esperance or to maintain such signs so attached, and any such sign heretofore so attached shall be removed from such village-owned pole.

8. All off-premise signs advertising a product are prohibited. All billboards are prohibited. Up to 2 off-premise signs per business that advertise business name and nature of business only are allowed, provided that they do not exceed 6 square feet each.

C. Exempt Signs. Such signs include:

1. Seasonal decorations on private property.

2. Legal notices posted as required by law.

3. Street, safety, or directional signs installed and maintained by the Village, County, or State.

4. Up to three national and/or state flags per premises.

5. Signs on registered motor vehicles except those meant to circumvent this law by means of the size of the lettering and/or placement of the vehicle on property.

6. Up to two temporary signs located at least 200 feet apart to direct public to a special event or sale, provided such signs are posted for a period not to exceed 5 consecutive days and not more than 10 days per year. Such signs shall not exceed four (4) square feet.

7. Signs incident to a legal process or necessary to the public welfare. This includes election signs or public hearing signs provided that they are not placed more than 3

months before an election or public hearing and removed within 14 days after an election or public hearing.

8. Temporary development signs during construction repairs or alterations not to exceed two signs, each not to exceed four square feet in area.

D. Regulations for RC and RV District Signs

1. No signs except the following shall be permitted:

(a) Residential name plates and address plates not larger than two (2) square feet.

(b) real estate signs or rental signs when placed on properties for sale or rent, not larger than eight (8) square feet.

E. Regulations for MSM and RM Districts

1. All signs shall meet the following requirements:

(a) No sign shall be placed on the roof of a building nor extend more than four (4) feet above the building or part of the building to which it is attached, except this shall not apply to a sign painted on the roof of a building, to be seen from the air.

(b) No freestanding sign shall exceed ten (10) feet in height and any sign larger than eight (8) square feet shall not have less than three (3) feet of open space at the bottom, extending its entire length.

(c) Business signs and professional signs shall be limited to one (1) exterior sign for each business unit or business premises for each exposure.

(d) No sign shall project more than eighteen (18) inches beyond that surface of the building to which it is attached. Such signs shall not extend more than twenty (20) feet above the ground level or more than four (4) feet above the roof of the building at the point of location of the signs, whichever is less restrictive.

(e) Signs projecting into a public right-of-way shall have a clearance of not less than ten (10) feet above the sidewalk or surrounding ground and not less than fifteen (15) feet above any public driveways, alley or thoroughfare, excepting therefrom barber signs or barber poles affixed to buildings at entrances to barbershops and projecting not more than twelve (12) inches into a public right-of-way, which shall have a clearance of not less than seven (7) feet above the sidewalk or surrounding ground.

(f) The total area of such sign shall not exceed three (3) square feet for each lineal foot of building frontage of a given business premises for each exposure;

provided, however, that no building may be considered to have more than two (2) exposures, or three (3) exposures in the case of a corner building, for purposes of this section. Permitted areas notwithstanding, the dimension of any sign shall not exceed three (3) feet.

(g) Colored lights of such shape and hue that they may be confused with official traffic lights and signals are prohibited.

(h) In all districts, with respect to setbacks from the street, required yards and other such matters freestanding signs larger than eight (8) square feet shall be regarded as buildings or structures within the meaning of this law. Advertising display painted or pasted upon a building or other surface shall be regarded as coming within the above regulations.

F. Removal of signs following termination of business.

1. Upon the termination of any business within the Village of Esperance, all advertising signs used in connection therewith and erected or existing upon the property where said business was located shall be removed, and upon the failure of the operator of said business to remove all such signs, it shall be the responsibility of the property owner to do so within thirty (30) days after the termination of said business.

2. The provisions of this subsection shall not apply to permanent signs of any seasonal business that shall reopen within one (1) year, but shall apply to temporary signs, posters and business advertisements of temporarily closed businesses.

5-5. Recommended off-street parking or storage space

A. When possible, off-street automobile parking or storage space should be provided as indicated below. Due to limited parking availability in the Village, these standards are provided as guidelines, but must be adhered to the most practical extent possible and when space allows. The following uses must adhere to the additional parking standards elsewhere in this law: service stations. In the review of special use permits the Planning Board must utilize the State Environmental Quality Review Act and traffic and parking issues will be addressed as part of the environmental review.

1. Residential uses.

(a) One- and two-family structures: (2) spaces per household.

(b) Multifamily structures: one and one-half (1- 1/2) spaces for each household and two (2) spaces for each household.

2. Home occupations.

(a) All such uses other than the office of a physician or dentist: one (1) space per one hundred (100) square feet of floor area or portion thereof devoted to such activity.

(b) Office of a physician or dentist: four (4) spaces for each doctor or dentist engaged on the premises plus one (1) space for each additional employee.

3. Bed and Breakfast: one (1) space for each rental room.

4. Light industrial uses.

(a) One (1) space for each four hundred (400) square feet of floor area devoted to manufacture, including printing, publishing and laundry or dry-cleaning plant.

(b) One (1) space for each two thousand (2,000) square feet of floor area devoted to storage or stationary operating equipment.

(c) One (1) space for each three thousand (3,000) square feet, of area devoted to outside storage including used car lots and equipment rental or sale yards.

(d) Any industrial use: one (1) space for each company vehicle.

5. Commercial uses.

(a) Retail business or service, bank or post office: one (1) space for each two hundred fifty (250) square feet of retail floor area.

(b) Theaters: one (1) space for each fifteen (15) seats.

(c) Office, including professional, personal service, public utility or public one (1) space for each three hundred (300) square feet of gross floor area.

(d) Restaurant, bar or nightclub one (1) space for each fifty (50) square feet of customer floor area.

(e) Wholesale: one (1) space for each two thousand (2,000) square feet of gross floor area.

(f) Automobile service stations: see 5-2(F) in this law.

(g) Funeral home: one (1) space for each five (5) seats of auditorium capacity.

(h) Any commercial use: one (1) space for each company vehicle.

B. Dimensions of off-street automobile parking spaces. Every such space provided shall be at least nine (9) feet wide and twenty (20) feet long, and every space shall have direct and usable driveway access to a street or alley, with minimum maneuver area between spaces as follows:

(1) Parallel curb parking: five (5) feet end to end with twelve-foot aisle width for one-directional flow and twenty-four foot aisle width for two-directional flow.

(2) Thirty-degree angle parking: thirteen-foot aisle width for one-directional flow and twenty-six foot aisle width for two-directional flow.

(3) Forty-five-degree angle parking: sixteen-foot aisle width for one directional' flow and twenty-six foot aisle width, for two-directional flow.

(4) Sixty-degree angle parking: twenty-one-foot aisle width for one directional flow and twenty-six-foot aisle width for two-directional flow.

(5) Perpendicular parking: twenty-six-foot aisle width for one directional and two-directional flow.

C. Combination of uses. In the case of a combination of uses the total requirements for off-street automobile parking spaces shall be the sum of the separate requirements for the various uses.

D. Fractional space. Whenever the computation of parking requirements results in an ultimate fraction of a space, a full space shall be provided.

E. Location of required spaces. In any residential zone, required off-street automobile parking spaces shall be provided on a buildable portion of the same lot as the building to which such spaces are incidental, and in all other zones such spaces shall be provided on the same lot as the use which they serve.

F. Construction of parking areas. Parking areas shall have a year round surface of asphalt or concrete or crusher run. The individual spaces shall be visibly marked with paint or other durable material as to ensure maximum use of required spaces.

5-7. Fire escapes

A. Nothing herein contained shall prevent the projection of an open, fireproof fire escape or stairway into a rear or side yard for a distance not exceeding eight (8) feet.

5-8. Excavations

A. Any proposed excavation adversely affecting natural drainage or structural safety of adjoining buildings or land shall be prohibited. Excavation shall not create objectionable dust or noise or contribute to soil erosion nor create any noxious or injurious substance or condition or cause public hazard.

B. In any district excavation relating to the construction, on the same lot of a building or structure for which a building permit has been issued shall be permitted. In the event that construction of the building or structure is stopped prior to completion and the building permit is allowed to expire, the premises shall immediately be cleared of any rubbish or building materials, and any excavation with a depth greater than two (2) feet below existing grade shall immediately be filled and the topsoil replaced or all such excavations shall be entirely surrounded by a substantial fence at least six (6) feet high that will effectively block access to the area in which the excavation is located.

5-9. Accessory buildings

A permitted accessory building (including temporary) may be located in any required side or rear yard, provided:

- A. It does not project nearer to the fronting street than the main building.
- B. It meets all set backs for the district.
- C. It does not occupy more than thirty percent (30%) of the existing property excluding required setbacks.

5-10. Permanence of yards and other open spaces

No spaces applied or necessary under this law to satisfy the yard or area requirements in relation to any building now or subsequently built shall be counted as part of a required open space or required area in relation to any other building.

5-11. Multiple dwellings

The following supplemental regulations shall apply to all multiple-dwelling developments:

- A. There shall be provided on the same lot a suitable equipped and landscaped area or areas, which shall constitute not less than twenty-five percent (25%) of the required usable open space.
- B. The maximum building length shall be one hundred sixty (160) feet.
- C. The minimum distance between principal buildings shall be twenty-five (25) feet for structures three (3) stories or less in height and fifty (50) feet for structures greater than three (3) stories in height.

5-12. Home occupations

In the RC and RV districts a home occupation requires a special use permit.

5-13. Public utility facilities

A. Public utility distribution facilities necessary to serve the districts in which they are located shall be uses permitted by right in all districts. Such facilities shall include but not be limited to electric distribution lines, including related equipment, poles, wires, transformers and related appurtenances thereto, telegraph and telephone lines, sewer distribution, water distribution mains and gas distribution mains.

B. All other public utility facilities, including but not limited to stealth telecommunications facilities and electric substations, shall be permitted only upon obtaining a special use permit from the Planning Board.

5-14. Stealth Telecommunication Facilities and Antenna

A. Stealth Telecommunications Facilities shall comply with all setbacks applicable to the land use area in which they are proposed to be located. The minimum setback for all new, freestanding towers shall be at least one and one half (1.5) times the height of the structure on all four (4) sides of the base.

B. Before construction of a tower and/or antenna, a bond must be obtained to insure removal expenses in the event this occurs. The amount of the bond must be able to cover the entire cost of removal of the tower and accessory structures. The projected removal costs shall be verified by an engineer. A copy of the engineer's report and a copy of the bond shall be filed in the building inspector's office prior to the issuance of a building permit. In the event of a necessary removal, it shall be completed within three (3) months of notification.

5-14.1 Application of special use regulations

A. No Stealth Telecommunications Facility shall hereafter be used, erected, moved, reconstructed, changed or altered in any district in the Village of Esperance except after approval of a Special Use Permit and in conformity with these regulations. No existing structure shall be modified to serve as a transmission and/or receiving tower unless in conformity with these regulations. Any changes must be approved by a licensed engineer.

B. These regulations shall apply to all property in all districts where application for special use permit is allowed for stealth telecommunications facilities. Special Use Permits must receive proper Planning Board review in accordance with the review guidelines outlined in this law.

C. Exceptions to these regulations are limited to new uses that are accessory to residential uses, and lawful or approved uses existing prior to the effective date of this law.

D. Where these regulations conflict with other laws and regulations of the Village, the more restrictive shall apply, except for tower height restrictions, which are governed by these special use standards.

E. Stealth telecommunications facilities proposed by an applicant that is not a public utility as defined by relevant statute (i.e. Public Service Law § 2 [17], [23]; Tax Law § 186-a [2] [a] [i])

shall not be permitted unless the applicant can utilize evidence from and show need to use the facilities by a licensed public utility. (i.e.: Stealth telecommunications facilities proposed to be built on speculation will not be permitted in the Village of Esperance.)

F. The Planning Board may not waive any requirement for stealth telecommunications facilities without approval of the Village Board of Trustees.

5-14.2 Additional requirements for sharing existing facilities

A. At all times, shared use of existing tall structures, or existing or approved towers shall be preferred to the construction of new, freestanding towers.

B. A completed application for a Special Use Permit, which includes detailed information on the construction and operation of the facility, and any additional information that might be required by the Planning Board.

C. The applicant must show need for using the facility by a licensed public utility.

D. Any interference with radio and/or television waves in the area must be corrected.

E. Documentation of intent from the owner of the existing facility to allow shared use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use.

F. Lights, if required by FAA guidelines and deemed necessary due to height of the tower, will be affixed in a manner that has the least impact on surrounding properties.

G. A site plan showing all existing and proposed structures and improvements including antennae, roads, buildings, guy wires and anchors, parking, landscaping, and shall also include grading plans for new facilities and roads. The site plan shall also include the location, and distance from the nearest residence. The highest part of the antennae shall not extend more than thirty (30) feet above the highest part of the structure.

H. Documentation of the proposed intent and capacity of use, which shall include the transmission and maximum effective radiated power, the direction of maximum lobes, and associated radiation from the antennae.

I. A Licensed Professional Engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, and will not hamper existing emergency networks, and if needed, what modifications are necessary to certify the above.

J. A completed Full Environmental Assessment Form approved by the New York Department of Environmental Conservation.

K. A copy of its Federal Communications Commission license.

L. A copy of the lease agreement.

5-14.3 Additional requirements for new towers

A. An applicant proposing to construct a new, freestanding tower shall apply for a Special Use Permit and such application shall include:

- (1) Detailed information on the construction and operation of the facility.
- (2) A site plan which shall show all existing and proposed structures and improvements including towers and antennae, roads, buildings, guy wires and anchors, parking and landscaping, and shall also include the location and distances from the nearest residences. The tower/antennae will be no closer than five hundred (500) feet from the nearest residence.
- (3) Documentation on the proposed intent and capacity of use, which shall include the transmission and maximum effective radiated power, the direction of maximum lobes, and associated radiation from the antennae.
- (4) Justification for the height of any tower or antennae and justification for any land or vegetation clearing required.
- (5) A completed Full Environmental Assessment form in accordance with the State Environmental Quality Review Act, and a landscaping plan with particular attention to visibility from key viewpoints.
- (6) Lights, if required by FAA guidelines and deemed necessary due to height of the tower, will be affixed in a manner that has the least impact on surrounding properties.
- (7) If the tower/antennae should cause any interference with radio or television waves in the area, it must be corrected.
- (8) Evidence of need by a licensed public utility that a new tower is necessary and that no alternative sites are available which would better serve that need.
- (9) A "Zone of Visibility Map" shall be provided in order to determine locations where the tower may be seen.
- (10) Assessment of the visual impact of the tower base, guy wires, accessory buildings, and overhead utility lines from abutting properties and roads.
- (11) A copy of its Federal Communications Commission license.
- (12) A copy of any proposed lease agreement.

(13) A licensing fee of \$1,000.00 payable to the Village of Esperance. This fee shall be annual and paid to the Village on January 1 of each year until such facility is removed.

5-15. Adult Use and Entertainment Establishments

5-15.1 Allowed Zoning District.

All Adult Use and Entertainment Establishments as defined herein may only be created, opened, commenced or operated within the Residential Mixed (RM) zoning district within the Village of Esperance by special use permit issued by the Planning Board.

5-15.2 Location within Allowed Zoning Districts

An Adult Use and Entertainment Establishment shall be allowed after issuance of a special permit only in the allowed zoning district set forth in Section 5-15.1 hereof, and, within such district, shall have minimum area requirements as described in the Zoning Law and the structure the adult use is located in and any accessory use/structure shall not be allowed:

- A. within fifty (50) feet of the property line of a parcel used for residential purposes in the Village;
- B. within four hundred fifty (450) feet of the property line of a parcel containing a church, synagogue, other place of worship, active cemetery, library, school, licensed day-care facility, park, playground, government facility commonly visited by the public (i.e. post office, Town office, State/Federal/County office), nursing home, adult home, or hospital, whether or not such use is located in the Village; or,
- C. on the same parcel as another Adult Use and Entertainment Establishment

The above distances of separation shall be measured from the nearest exterior wall or corner of the structure containing the Adult Use and Entertainment Establishment.

5-15.3 Standards appropriate to Special Use Permit for Adult Use and Entertainment Establishment

The Village of Esperance intends to protect the scenic beauty of the Village and the value of property in the Village. Therefore, Adult Use and Entertainment Establishments shall meet all applicable requirements in the Zoning Law and shall be designed to be as least intrusive as possible by using the following additional standards:

- A. Such use and parking area shall be adequately fenced and/or buffered (landscaping/berms) for screening from any adjacent property and lighting shall be directed away from adjacent property and public highways.
- B. Parking shall be located in the side or rear yard and no parking space may be located less than fifty (50) feet from any property line.
- C. Any structure containing the Adult Use and Entertainment Establishment and any accessory structure shall have a residential appearance similar to existing dwelling units (excluding

mobile homes) in the Village of Esperance. Building design shall avoid areas of blank wall sections and windows or one-way windows, shall comply with Section 5-15.4 (Display Prohibited).

5-15.4 Display Prohibited

All adult uses and entertainment establishments shall be conducted in an enclosed building. It shall be a violation to display or exhibit (in the open air, through a window, or by means of a sign, depiction or decoration), or to allow to be displayed or exhibited, any “specified anatomical area” or “specified sexual activity”.

5-16 Fences

The setback requirements of this Law shall not apply to retaining walls or fences less than six (6) feet high in any side or rear yard, or any front yard fences or walls less than four (4) feet high, except where corner clearances are required for traffic safety. Board or split rail fence, which does not fully obstruct visibility, may be higher. All fences and walls are required to be a minimum of three (3) feet off the property line on the side of the property and built with the better (finished) side facing out. Fences may be built on the property line if all impacted property owners provide written consent of agreement with fence placement. Such written consent shall run with the land.

5-17 Floodplains

Any proposed construction or other development that will occur in a special flood hazard area must comply with the provisions of the Village of Esperance Flood Damage Prevention Law. See definitions for a description of development as it pertains to the Flood Damage Prevention Law.

ARTICLE VI - Nonconforming Uses

6-1. Applicability of regulations

All uses and buildings and other structures not conforming to the regulations of the district in which they are located at the time of the enactment of this law shall be known and regarded as "nonconforming" and the following regulations shall apply to them unless stated otherwise in this Law (exceptions specifically in Section 6-2).

6-2 Time to comply for specific uses

The following uses will not be permitted to be nonconforming indefinitely and must comply with the regulations in this law in the time specified after law adoption and filing with Secretary of State:

Garage, Porch or Yard Sales (see 5-3L)

6 months

Service Stations (see 5-2(H))

1 year

All nonconforming uses in the RV and RC zones shall have any outside stored equipment screened from adjacent parcels and the street within 1.5 years. An unrestricted entrance and exit from the street may be provided.

6-3. Continuation

A nonconforming building or use may be continued but may not be changed to another nonconforming use. No additions to or extensions of a nonconforming building or use may be made exceeding twenty-five percent (25%) of the occupied floor area or twenty-five percent (25%) of the cubical contents of the building or buildings or twenty-five percent (25%) of the service capacity of a use conducted all or partially in the open. Subsequent to such an extension or addition to a nonconforming building or use there shall be no further additions or extensions except in accordance with the regulations of the district in which such building or use is located.

6-4. Revisions; destruction; discontinuance

If a nonconforming building or use is subsequently changed to conform to the regulations of the district in which it is located, it shall not again be altered or used except in accordance with such regulations. If a nonconforming building is destroyed by any cause to the extent of seventy-five percent (75%) or more of its assessed value or its bulk, it shall not be rebuilt and reoccupied except in conformity with the regulations of the district in which it is located. No nonconforming sign or billboard, if blown down or otherwise demolished or taken down, shall be reconstructed or replaced. The discontinuance of a nonconforming building or use for a consecutive period of twelve (12) months shall be deemed a permanent discontinuance, and thereafter the building shall not be reoccupied except in conformity with the regulations of the district in which it is located and the use shall not be resumed.

6-5. Deficient yards or area per dwelling

Area limitations shall not apply to a building or other structure which is nonconforming only in respect to required yard space or area per dwelling unit, except that no such building or other structure shall be altered, added to or reconstructed to extend further into an already deficient setback. For example, if a side setback is 20 feet and an existing building is 10 feet from the side lot line, an addition that would make the setback less than 10 feet cannot be built without an area variance. However, if an addition will occur on a preexisting lot with less than the required square footage and not impact existing setbacks, no area variance is needed.

6-6. Buildings on small lots

Notwithstanding the limitations imposed by any other provision of this law, any lot held in single and separate ownership prior to the adoption of this law and whose area or width is less than the specified minimum lot requirements of this law for the district may be considered as complying with such minimum lot requirements, and no variance shall be required for the issuance of a building permit, provided that:

1. Such lot does not adjoin any other lot or lots held by the same owner, whose aggregate area is equal to or greater than the minimum lot area required for that district.
2. All other bulk requirements for that district are complied with.
3. In any district where residences are permitted, such undersized nonconforming lots may be used for not more than one (1) single-family dwelling.
4. Lots smaller than six thousand (6,000) square feet and/or with less than fifty (50) feet of lot width may not be built upon.

6-7. Change to another nonconforming use

A. No nonconforming use conducted entirely in the open may be changed to another nonconforming use.

B. The nonconforming use all or partially conducted in a building or buildings may be changed to another nonconforming use only after a public hearing and determination by the Zoning Board of Appeals that the proposed new use will be no more detrimental to its neighborhood and surroundings than is the use it is to replace. In determining relative detriment, the Zoning Board of Appeals shall take into consideration, among other things, traffic generated; nuisance characteristics such as emission of noise, dust and smoke; fire hazards; and hours and manner of operation.

6-8. Temporary permits

A. Temporary permits may be authorized by the Planning Board, for a period not to exceed one (1) year, for a nonconforming use incidental to a housing or construction project, including

such structures or uses as storage of building materials and machinery, the processing of building materials and a real estate office located on a tract being offered for sale, provided such a permit is issued upon written agreement by the owner to remove the structure or structures or the use upon expiration of the permit. Such a permit may be annually renewed for a total period not exceeding three (3) years.

ARTICLE VII – Planning Board and Zoning Board of Appeals

7-1 Planning Board

A. There is hereby created a Planning Board of five (5) members, to be appointed by the Mayor and a chair designated, subject to approval of the Board of Trustees. In the absence of a chair, a majority of the Planning Board may designate a member to serve as acting chair. No person who is a member of the Board of Trustees or the Zoning Board of Appeals shall be eligible for membership on the Planning Board.

B. The members of the Planning Board shall not be paid for service, but may be paid mileage and reasonable fees to attend pertinent training sessions as deemed appropriate by the Village Board of Trustees and duly approved before attending the training.

C. Of the initial appointees to the Planning Board, one (1) shall serve until the first day of January following the date of appointment, one (1) until the first day of the second January thereafter, one (1) until the first day of the third January thereafter, one (1) until the first day of the fourth January thereafter, and one (1) until the first day of the fifth January thereafter. Their successors shall be appointed, upon the expiration of their respective terms, to serve five (5) years. The Board of Trustees shall have the power to remove any member of the Planning Board for cause and after public hearing. Cause includes, but is not limited to, missing more than four (4) meetings in any year or not attending any pertinent training sessions for a consecutive period of more than two (2) years. Vacancies shall be filled for the unexpired term of the member whose place has become vacant.

D. Every member of the Planning Board shall annually attend one or more training or continuing education course related to work of the Planning Board. On January 1 of each year, the Chair of the Planning Board shall submit in writing to the Village Clerk the training/course name, date attended, and location held for each training/course attended by Planning Board members during the year. Failure of a member to attend required training may result in removal from the Planning Board.

E. The responsibilities of the Planning Board include reviewing applications for special use permits, reviewing sign permit applications, area verification for subdivisions, preparation of changes to the Village Comprehensive Plan (unless the Village Board creates a special board for this purpose), review of proposed amendments to this law, and any other matter that the Board of Trustees shall by amendment to this law vest as responsibilities of the Planning Board. The Planning Board shall have the powers described in Village Law to carry out these functions.

F. All meetings of the Planning Board shall be held at the call of the Chair and at such other times as such Board may determine. All meetings of such board shall be open to the public. Such Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall

immediately be filed in the office of the Village Clerk within five (5) business days and shall be a public record.

G. The Planning Board may adopt forms and by-laws for the conduct of its meeting so long as such by-laws are consistent with this law. Such forms and by-laws shall be filed with the Village Clerk and made available to the public.

H. County Planning Board review. Applications for special uses shall be subject to referral to the County Planning Board pursuant to Section 239-m and n of the General Municipal Law, if located within five-hundred (500) feet of:

- (1) the Village boundaries; or
- (2) the boundaries of any existing or proposed County or State park or other recreation area; or
- (3) the right-of-way of any County or State highway, or
- (4) the right-of-way of any existing or proposed stream or drainage channel owned by the County or for which the County has established channel lines; or
- (5) the boundary of any existing or proposed County or State land on which a public building or institution is situated; or
- (6) the boundary of a farm operation in an Agricultural District.

The recommendation of the County Planning Commission must be received before a final decision is made on the application.

7-2 Zoning Board of Appeals

A. There is hereby created a Zoning Board of Appeals of three (3) members, to be appointed by the Mayor and a chair designated, subject to the approval of the Board of Trustees. In the absence of a chair, a majority of the Zoning Board of Appeals may designate a member to serve as acting chair. No person who is a member of the Board of Trustees or the Planning Board shall be eligible for membership on the Zoning Board of Appeals.

B. The members of the Zoning Board of Appeals shall not be paid for service, but may be paid mileage and reasonable fees to attend pertinent training sessions as deemed appropriate by the Village Board of Trustees and duly approved before attending the training.

C. Of the initial appointees to the Board of Appeals, one (1) shall serve until the first day of January following the date of appointment, one (1) until the first day of the second January thereafter, and one (1) until the first day of the third January thereafter. Their successors shall be appointed, upon the expiration of their respective terms, to serve three (3) years. The Board

of Trustees shall have the power to remove any member of the Board of Appeals for cause and after public hearing. Cause includes, but is not limited to, missing more than four (4) meetings in any year or not attending any pertinent training sessions for a consecutive period of more than two (2) years. Vacancies shall be filled for the unexpired term of the member whose place has become vacant.

D. Every member of the Zoning Board of Appeals shall annually attend one or more training or continuing education course related to work of the Zoning Board of Appeals. On January 1 of each year, the Chair of the Zoning Board of Appeals shall submit in writing to the Village Clerk the training/course name, date attended, and location held for each training/course attended by Zoning Board of Appeals members during the year. Failure of a member to attend required training may result in removal from the Zoning Board of Appeals.

E. All meetings of the Board of Appeals shall be held at the call of the Chair and at such other times as such Board may determine. Such Chair or, in his/her absence, the Acting Chair may administer oaths, and compel the attendance of witnesses. All meetings of such board shall be open to the public. Such Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. Every rule, regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Village Clerk within five (5) business days and shall be a public record.

F. Such Board of Appeals shall hear and decide appeals from any review, any order, requirement, decision or determination made by an administrative official charged with the enforcement of this law. Area variances may also be heard upon referral from the Code Enforcement Officer and from the Planning Board for subdivision area verification, special use permits and site plans. It shall also hear and decide all matters referred to it upon which it is required to pass under this law. The concurring vote of a majority of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor or the applicant any matter upon which it is required to pass under this law, or to effect any variation from this law. Such appeal may be taken by any person aggrieved or by an officer, department board or bureau of the village.

G. Such appeals to the Board of Appeals shall be taken within such time as shall be prescribed by Village Law Section 7-712-a, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

H. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Appeals, after the notice or appeal shall have been filed with him, that by reason of facts stated, in the certificate would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a

court of record upon application, on notice to the officer from whom the appeal is taken and on due cause shown.

I. The Board of Appeals shall fix a reasonable time for the hearing of appeals and give due notice thereof to the parties and decide the same within a reasonable time. Public notice of such hearing by publication in the official Village paper shall be provided at least 5 days prior to the hearing. At the hearing any person may appear in person or by agent or attorney. The Board of Appeals may reverse or affirm wholly or partly or may modify the order, requirement, decision or determination appealed from, and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this law, the Board of Appeals shall have the power, in passing upon appeals, to vary or modify the application of any of the regulations or provisions of this law relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of this law shall be observed, public safety and welfare secured and substantial justice done.

J. Upon any application to the Zoning Board of Appeals for a variance, the applicant for the variance must notify all property owners within a radius of three hundred (300) feet of the property for which the variance has been requested of the hearing to be held by the Zoning Board of Appeals. Such notice shall be sent by certified mail, return receipt requested, to all of said property owners as their names may appear on the Tax Roll of the Village of Esperance. It shall be the duty of the applicant for the variance to ascertain the names of the properly owners and to effect service of the notice required hereunder. No variance may be granted, nor any hearing conducted on the request for the variance, unless and until the applicant shall submit satisfactory proof to the Zoning Board of Appeals that it has complied with the terms and provisions hereof.

K. Any person or persons jointly or severally aggrieved by any decision of the Board of Appeals or any officer, department, board or bureau of the village, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the legality. Such petition must be presented to the court within thirty (30) days after the filing of the decision in the office of the village clerk.

L. The Zoning Board of Appeals may adopt forms and by-laws for the conduct of its meeting so long as such by-laws are consistent with this law. Such forms and by-laws shall be filed with the Village Clerk and made available to the public.

M. County Planning Board review. Applications for variances shall be subject to referral to the County Planning Board pursuant to Section 239-m of the General Municipal Law, if located within five-hundred (500) feet of:

- (1) the Village boundaries; or
- (2) the boundaries of any existing or proposed County or State park or other recreation area; or

- (3) the right-of-way of any County or State highway, or
- (4) the right-of-way of any existing or proposed stream or drainage channel owned by the County or for which the County has established channel lines; or
- (5) the boundary of any existing or proposed County or State land on which a public building or institution is situated; or
- (6) the boundary of a farm operation in an Agricultural District.

The recommendation of the County Planning Commission must be received before a final decision is made on the application.

7-3. Reimbursement of expenses incurred during proceedings

A. In any proceeding before the Zoning Board of Appeals or Planning Board, if it becomes necessary for the Village or its Boards to hire expert consultants in connection with surveying, engineering, architecture or other construction questions, in considering the application and the disposition to be made thereof, the applicant shall as a condition to such proceeding and upon written demand therefore by the village or its Board, reimburse the village for the reasonable fees and charges of any and all such consultants.

B. Reimbursement to the village of such charges by the applicant shall be a condition precedent to the determination of the village of such application as may be pending.

C. Further, by making any such application, the applicant shall be deemed to have consented to the village imposing such charges. Should the applicant fail to reimburse the village therefore, such charges shall be certified by the Village Board in question or the Village Clerk to the Assessor, whose duty it is to assess and levy taxes for said village, and such charges shall thereupon be and become a first and paramount lien upon the premises which is the subject of such application and shall be added to, recorded and collected in the same manner as the taxes next to be assessed and levied against such premises.

7-4. Variances – Use and Area

7-4.1 General Application Requirements for Variances

A. All applications for variances shall be accompanied by three (3) copies of a plot plan, drawn to scale with accurate dimensions, showing the location of existing and proposed structures on the lot.

B. Any variance that is not exercised within one (1) year of the date it is issued shall lapse without further hearing by the Zoning Board of Appeals.

7-4.2 Standards for Use Variances

A. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. To prove unnecessary hardship the applicant shall demonstrate that for each and every permitted and special use under the zoning regulations for the particular district where the property is located:

- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence
- (2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the land use area or neighborhood;
- (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) The alleged hardship has not been self-created.

All four of the above must be proven in order to grant a use variance. Failure to meet any one of the four requires denial of the use variance by the Zoning Board of Appeals.

B. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant.

7-4.3 Standards for Area Variances

A. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. In making this determination the Board shall also consider:

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) Whether the requested area variance is substantial;
- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and
- (5) Whether the alleged difficulty was self-created, which shall be relevant, but which shall not necessarily preclude the granting of an area variance.

B. The Zoning Board of Appeals, in granting area variances, shall grant the minimum variance that it deems necessary and adequate.

C. The Zoning Board of Appeals, in granting area variances, shall impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property. Such conditions shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

ARTICLE VIII – Subdivision Guidelines

8-1. Filing plats and/or deeds

A. Due to the small amount of land that is available in the Village of Esperance, the Village does not find it necessary to have a process to approve or deny subdivisions within the Village, pursuant to § 7-728 of the Village Law.

B. Any property owner that wants to file with the Schoharie County Clerk a plat and/or deed that involves subdivision shall only create parcels that are in accordance with this Zoning Law and must receive the proper written area verification from the Planning Board.

8-2. Planning Board Review and Area Verification

A. Prior to filing a plat and/or deed with the Schoharie County Clerk that involves subdivision, a land owner shall provide the Village Planning Board with a plat and/or deed that is adequate to determine that the minimum area regulations of this law are met. The Planning Board may require a survey to satisfy this requirement.

B. Within thirty (30) business days of receiving a plat and/or deed, if the Planning Board finds that the parcels involved in the plat and/or deed meet the minimum area regulations of the Village Zoning Law, the following written verification from the Planning Board Chair must be placed on the plat and/or deed:

“The Village of Esperance does not review subdivisions pursuant to § 7-728 of the Village Law. This plat and/or deed was reviewed by the Village Planning Board and the parcel(s) indicated on the plat and/or in the deed meet the minimum area regulations and have adequate access for emergency vehicles as required by the Village of Esperance Zoning Law. This verification does not guarantee that a parcel is buildable.”

C. The written verification must be signed and dated by the Planning Board Chair.

D. If the Planning Board finds that any parcel involved in the plat and/or deed that involves subdivision does not meet the minimum area regulations of the Village Zoning Law, the written verification will not be provided and such plat and/or deed shall not be filed with the Schoharie County Clerk unless the plat and/or deed is revised to meet the area regulations or an area variance is granted. If an area variance is granted, the Planning Board shall provide the written verification upon proper review and approval by the Zoning Board of Appeals.

ARTICLE IX - Penalties/Severability/Effective Date

9-1. Penalties for offenses

A. Any person, firm, corporation or entity found to be violating any provisions of this local law shall be served with a written notice by the Code Enforcement Officer or his/her designee, stating the nature of the violation and providing for immediate correction thereof. Such notice shall be served by one (1) of the following methods:

1. By personal service;
2. By certified mail, return receipt requested, addressed to his or their last known address as shown on the latest completed assessment roll of the Village of Esperance; or
3. By posting of such notice in a conspicuous place upon the premises affected, and a copy thereof mailed, addressed to his or their last known address as shown on the latest completed assessment roll of the Village of Esperance.

B. Any person, firm, Corporation or entity that shall violate any portion of this local law shall be guilty of a violation and, upon conviction thereof, shall be fined in an amount not to exceed five hundred dollars (\$500.00) for each violation. The continuation of a violation of the provisions of this law shall constitute, for each day the violation is continued, a separate and distinct offense hereunder.

C. The owner and/or any occupant and/or any tenant and/or general agent of a building, premises or part thereof where such a violation has been committed or does exist shall be guilty of such an offense.

D. Any person, firm, corporation or entity violating any of the provisions of this local law shall become liable to the Village for any expense or loss or damage occasioned the Village by reason of such violation.

E. The imposition of penalties herein prescribed shall not preclude the Village or any person from instituting appropriate legal action or proceedings to prevent a violation of this Local Law, or to restrain or enjoin the use or occupancy of a building, premises or part thereof in violation of this Local Law.

F. Any construction or alteration of structure upon which material progress has been made at the time of this enactment shall not be deemed in violation thereof.

9-2. Severability

It is hereby declared to be the intent of the Village Board of Trustees that:

A. If a court of competent jurisdiction finds any provisions of this law invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated

in the decision to be invalid, and all other provisions of the law shall continue to be separately and fully effective.

B. If a court of competent jurisdiction finds the application of any provision of this law to any building, other structure or tract or land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.

9-3. When Effective

This local law shall take effect upon its adoption and filing with Secretary of State.