

Town and Village of Nunda

Zoning Law

November 14, 2005

Chapter 1 ZONING

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ARTICLE I
Intent, Applicability and Definitions

1-1. Title.

This chapter shall constitute and be known as “The Zoning Law of the Town and Village of Nunda,” New York, heretofore know as the “Nunda Zoning Law” and may be cited as such.

1-2. Intent; word usage.

- A. The intent of this chapter is to encourage appropriate and orderly physical development; promote public health, safety, convenience and general welfare; classify, designate and regulate the location and use of buildings, structures and land for agricultural, residential, commercial, industrial or other uses in appropriate places; and, for said purpose, to divide into districts of such number, shape and area as may be deemed best suited to carry out these regulations and provide for their enforcement.
- B. This chapter is one of the key mechanisms for implementing the Comprehensive Plan’s vision of guiding development in Nunda to provide a balance of developed uses and open space throughout the Town and Village of Nunda; to create residential neighborhoods close to but not negatively impacted by recreation, employment and shopping opportunities; and to avoid the negative impacts of uncontrolled access and demands for inefficient expansion of public utilities.
- C. These regulations are in accordance with a well-considered Comprehensive Plan and have been made with reasonable concern for the character of each district and its suitability for particular uses.
- D. For the purposes of this chapter, all terms used in the present tense include the future tense. All terms in the plural number include the singular number, and all terms in the singular number include the plural number, unless the natural construction of the term indicates otherwise. The term “person” includes a firm, association, organization, partnership, trust, company or individual. The term “shall” is mandatory and directory. The term “may” is permissive. The term “used” includes the terms “designated, intended or arranged to be used.”

1-3. Applicability.

- A. Except as herein provided, no building or land in the Town or Village of Nunda shall be used or occupied nor shall any building or part thereof be erected, moved or altered unless in conformity with the regulations of this chapter. Existing buildings, structures and uses, which do not comply with the

regulations of this chapter shall be allowed to continue subject to the provisions of Article VIII of this chapter relating to nonconformities.

B. The provisions of this chapter shall be separable in accordance with the following rules:

(1) If any court of competent jurisdiction shall adjudge any provision of this chapter to be invalid, such judgment shall not affect any other property, building or structure.

(2) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter to a particular property, building or structure, such judgment shall not affect the application of said provision to any other property, building or structure.

1-4. When effective; lawfully issued variances or special use permits; pending applications.

A. This chapter shall become effective 30 days from the date of adoption.

B. Any variance or special use permit which could be lawfully issued under the most recent provisions of this chapter shall continue to be valid. Any variance or special use permit which could not be issued after the effective date of these regulations shall be allowed to continue subject to the provision of Article VIII relating to nonconformities.

C. Any construction or alteration of a building or structure which has not yet obtained a Certificate of Occupancy but which has commenced construction at least 90 days before the effective date in accordance with a valid building permit shall be allowed to complete construction. If such building or use is not in conformance with the regulations of this chapter it shall be subject to the provisions of Article VIII relating to nonconformities.

D. This chapter and any amendments thereof shall apply to all applications pending and not yet finally decided on the date of adoption except that in any case where a public hearing has been held, the application shall be decided in accordance with the law in effect on the date of such hearing.

1-5. Definitions.

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

ACCESSORY DWELLING – A second residential unit that is found on the same lot as the principle dwelling.

ADULT USE – See Article XV.

AGRICULTURAL OR FARM BUILDING – Any building used for the housing of agricultural equipment, products, livestock or poultry, or for the incidental or

customary processing of farm products, and provided that such building is located on, operated in conjunction with and necessary to agricultural or farming operations as defined in this article. The term "farm building" shall not include dwelling units.

AGRICULTURAL CONSTRAINTS – Consist of environmental and physical features that restrict the land from effective farming opportunities, including but not limited to, the shape of the parcel, wet or rocky conditions, and existing land cover.

AGRICULTURAL OR FARMING OPERATION – The use of a parcel of land for gain in the raising of agricultural products, trees, nursery stock, livestock, poultry or dairy products, and when in a state certified Agricultural District, any additional uses allowed by New York State Agriculture and Markets Law. It includes necessary farm buildings and the storage of necessary equipment.

AGRICULTURAL OPERATION, INTENSIVE – The raising of livestock or processing of agricultural products such that the use of land and agricultural products grown on the premises is subordinate to the use of specialized buildings and equipment or agricultural products purchased elsewhere.

AGRICULTURAL OPERATION, NON-INTENSIVE – Activities including, but not limited to: grazing of livestock, forage and feed crop production, sod farming, and fruit and nut tree orchards; excluding, however, feed lots, hog farms, dairies, poultry and egg production facilities, bee-keeping and apiaries, horse boarding, and riding stables.

AGRICULTURAL RESEARCH FACILITY - A use primarily related to agricultural research that is affiliated with an educational institution.

AGRICULTURAL SUPPORT INDUSTRY – Any industry that services farm production including feed and seed stores, farm machinery, livestock, commercial composting facility, and veterinary services.

ALLEY – A publicly or privately owned service-way less than 22 feet in width providing a secondary means of access to abutting properties.

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

ANIMAL VETERINARY OFFICE - A facility providing animal medical care, run by a licensed Doctor of Veterinary Medicine (DVM).

APARTMENT – See “dwelling, multi-family.”

BANQUET, CONFERENCE FACILITY – A facility that offers space and/or food service for banquets, conferences, receptions, educational, corporate, charitable or other social gatherings, including indoor and outdoor activities.

BAR OR TAVERN – A business establishment with a New York State Liquor License authorizing sale of liquor for on-premises consumption in which liquor sales represent 25% or more of sales receipts.

BASEMENT – A story partly underground but having more than $\frac{1}{2}$ of its height above finished grade.

BED AND BREAKFAST – A dwelling in which overnight accommodations are provided or offered in the place of residence for transient guests for compensation.

BERM – An earthen mound designed to provide visual interest, screen undesirable views and/or decrease noise or to control the direction of water.

BOARDING OR ROOMING HOUSE – A dwelling where not less than five or more than 10 unrelated persons are furnished sleeping accommodations or lodged for a fee with or without meals.

BUFFER – A combination of physical space and vertical elements, such as plants, berms, fences or walls, the purpose of which is to separate and screen incompatible land uses from each other and/or to protect wildlife habitats, wetlands, stream corridors and other significant environmental features.

BUILDING – Any structure having a roof supported by columns, piers or walls and intended for commerce, shelter, housing or enclosure of persons, animals or chattel.

BUILDING, ACCESSORY – a subordinate building located on the same lot with the principle building, occupied by or devoted to an accessory use. Where an accessory building is attached to the principle building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the principle building.

BUILDING PERMIT – That permit issued by the Code Enforcement or Zoning Officer for the construction, relocation or extension of buildings in compliance with the provisions of this Chapter.

BUILDING, PRINCIPLE – A building in which is conducted the main use of the lot on which said building is located.

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

BUILDING HEIGHT – The vertical dimension measured from the average elevation of the finished grade adjoining the exterior walls of a building to the highest point of the roof for flat roofs, to the deck-line of a mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof.

BULK AND USE REGULATIONS – The maximum size of a building and its location on a lot as defined by density and dimension standards viewed as appropriate for the specific zoning district.

CAMP – Any area of land on which are located three or fewer cabins, tents, trailers, shelters or other accommodations of a design or character suitable for seasonal or other temporary living purposes.

CAMPGROUND – A parcel of land used or intended to be used by two or more tents, travel trailers, or other recreational vehicles on a transitory or seasonal basis and conducted as a business or as part of a public use or as part of a private club.

CAR PORT – A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three sides.

CELLULAR TOWERS – See Telecommunications tower or tower in §1-95.

CELLAR – A story partly underground and having _ or more of its clear height below finished grade. A “cellar” shall not be counted as a story in determining the building height.

CEMETERY – Property used for the interring of the dead.

CERTIFICATE OF OCCUPANCY – A certificate issued by the Code Enforcement Officer signifying that a parcel of land is being used in a lawful manner with respect to the provisions of this chapter and all applicable building codes.

CHURCH – A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

CLUB, PRIVATE – An organization whose premises are restricted to its members and their guests.

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

COMMERCIAL GARAGE – A building used for the storage of motor vehicles and in which services are carried on for profit.

COMPREHENSIVE PLAN – The materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive materials that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of Nunda.

CONGREGATE HOUSING – Congregate Housing is a community living option, which provides the elderly some support while promoting independence.

CONSERVATION EASEMENT – An agreement by the property owner to restrict the use of a designated portion of such property to a particular use or to prohibit use of a designated portion of such property for certain uses.

CONVENIENCE STORE – Small commercial establishments, catering primarily to residents of nearby areas, providing frequently needed retail goods and personal services.

CONVENTION CENTER – A building used for the gathering of groups of people or providing large-scale meeting space.

CULTURAL USE FACILITY OR MUSEUM – Any building, room or area designed or utilized primarily for the presentation to the general public of live theater, dance performances, musical concerts, cinema, lectures, exhibits of various art forms or exhibits of cultural, academic or scientific material which are not characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities.

CURB LEVEL – The mean street grade established by municipal code or, in the absence of an established grade, the mean level of the existing curb or of the lot at the street line.

CUSTOMARY AGRICULTURAL OR RESIDENTIAL ACCESSORY USES – Uses customarily located on the same lot with agricultural or residential uses, including, but not limited to, fences, swimming pools, decks, storage sheds, garages, dog runs, car ports, porches, storage sheds, and gazebos.

DAY-CARE CENTER – A place other than an occupied residence providing or designed to provide day care for seven or more persons on a regularly scheduled basis for more than three but less than 24 hours per day.

DECIDUOUS – A plant with foliage that is shed annually.

DEED OR TRACT RESTRICTIONS – Legal language recorded in an instrument in the chain of title for a lot, which describes specifically limitations or restrictions on the use of the property.

DENSITY STANDARDS – Determine the measure of the quantity of a particular use allowed at a particular location. The four basic measures include dwelling units per acre, minimum lot sizes, floor-area ratio (FAR), and maximum height restrictions.

DRIVE-THROUGH FACILITY- A use or portion of a use which by design of physical facilities or by service or packaging procedures encourages or permits customers to receive a service or obtain a product which may be consumed or used in a motor vehicle on the premises.

DRY-CLEANING OUTLET – An establishment used primarily to collect and distribute articles or goods of fabric to be subjected to the process of dry cleaning, dyeing or stain removal elsewhere. A dry-cleaning outlet may also include equipment to press articles of fabric cleaned elsewhere or dry-cleaning machines using only noncombustible and nonflammable solvents.

DWELLING – A building or portion thereof used exclusively as the residence or sleeping place of one or more persons and may include garage space for personal automobiles.

DWELLING, ATTACHED OR ROW – A single-family dwelling with party walls separating it from adjacent units on both sides.

DWELLING, MULTI-FAMILY – A building or portion thereof containing three or more dwelling units designed or used for occupancy by three or more families living independently of each other.

DWELLING, SEMI-DETACHED – A single-family dwelling separated by a party wall from only one adjacent dwelling unit.

DWELLING, SINGLE-FAMILY – A dwelling unit designed for or occupied exclusively by one or more persons living as a single, nonprofit housekeeping unit.

DWELLING, TWO-FAMILY – A building containing two dwelling units and used or intended to be used exclusively for occupancy by two families living independently of each other, or two single-family dwellings having a party wall in common.

DWELLING UNIT – One or more rooms providing living facilities for one family or housekeeping unit, including equipment for cooking, living and sleeping purposes and provisions for the same.

DWELLING UNIT, ACCESSORY – An accessory use involving a separate and complete dwelling unit either in or added to an existing single-family dwelling, or a separate accessory building on the same lot as the principal dwelling.

EASEMENT – An agreement between a private landowner and a municipal agency or a qualified not-for-profit corporation to restrict development, management, or use of land.

EVERGREEN – A plant with foliage that persists and remains green year-round.

FAMILY- One person or a group of related persons living together as a single household occupying a dwelling unit.

FAMILY DAY-CARE HOME – An occupied family residence providing day care for three to six children for more than three hours per day. See §390, 1(e) of the Social Services Law of the State of New York.

FARM – See “agricultural or farming operation.”

FARM CAMP – A camp located on a farm used or designated to be used for persons who are transient farm laborers and/or transient farm laborers and their families, whether or not for compensation.

FARM STAND – A booth, stall or motorized vehicle from which produce and farm products are sold to the general public.

FARM TENANT HOUSE – A dwelling specifically for the housing of workers associated with a single farm employer.

FEED LOT – Is determined to be any of the following facilities:

- A. Any tract of land or structure wherein any type of fowl or the by-product thereof are raised for sale at wholesale or retail;
- B. Any structure, pen or corral wherein cattle, horses, sheep, or goats are maintained in close quarters for the purpose of fattening such livestock before final shipment to market;
- C. The raising of swine under any conditions.

FENCE – A work or structure consisting of either woven wire, woven wood, picket, board or other material, or combination thereof, designed to either limit access to an area or screen an area from view or both.

FLAMMABLE LIQUIDS – As defined by the New York State Uniform Fire Prevention and Building Code.

FLOODPLAINS – A land area adjoining a watercourse that is likely to be flooded once every 100 years.

FLOOR AREA, TOTAL – The sum of the gross horizontal areas of the floor or floors of a building, which are enclosed and usable for human occupancy, or the conduct of business. Said areas shall be measured between the inside face of exterior walls or from the centerline of walls separating two uses. Said areas shall not include areas below the average level of adjoining ground, garage space or accessory building space (includes basement but not cellar).

FOREST OR WOODLAND - All areas of five or more contiguous acres of woods or sensitive areas of less than five acres.

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

GASOLINE STATION – See “motor vehicle service station.”

GASOLINE STATION, NEIGHBORHOOD – A business that provides only gasoline sales and small convenience items.

GOLF COURSE, PRIVATE – A recreation facility consisting of at least nine holes, each with tee, green, and fairway, located on a parcel of land containing at least twenty-five (25) acres, as distinguished from golf driving ranges and miniature golf. Club membership is required in order to use the facility.

GOLF COURSE, PUBLIC – A recreation facility consisting of at least nine holes, each with tee, green, and fairway, located on a parcel of land containing at least twenty-five (25) acres, as distinguished from golf driving ranges and miniature golf. Club membership is not required to use the facility.

GOVERNING BOARD – The Town and/or Village Boards of Nunda.

GREEN – Located in a central position in the neighborhood and surrounded by streets and/or building lots on at least three sides. It is designed and landscaped as a space for common neighborhood use.

GREENHOUSE, COMMERCIAL—A glass or plastic enclosed structure for cultivating plants that must have controlled temperature and humidity, used to grow plants for wholesale or retail purposes.

GREENHOUSE, PERSONAL—A glass or plastic enclosed structure for cultivating plants that must have controlled temperature and humidity, not used for wholesale or retail purposes.

HOME OCCUPATION – Any occupation or profession, excluding retail sales to customers or motor vehicle repairs on the premises, which:

- A. Can be conducted without substantial change in the appearance, character or traffic generation of the residence.
- B. Is carried on by a member of the household residing in the dwelling unit.
- C. Is clearly incidental and accessory or secondary to the use of the dwelling unit for residential purpose

HOMEOWNER’S ASSOCIATION – An organization of residential property owners residing within a particular development who contractually agree to provide, reserve and maintain commonly owned facilities and/or open space, in accordance with New York State law.

HOTEL – A building containing rooms intended, designed, or used, rented or hired out, to be occupied for sleeping purposes by transient guests and/or the general public.

HORTICULTURAL USE – Any land or greenhouses used for the commercial production, sale, or research of vegetative products.

IMPERVIOUS SURFACE – The horizontal area of ground covered by a surface through which water cannot infiltrate, such as buildings or asphalt driveways or parking areas.

INN – A commercial facility for the housing and feeding of transients.

JUNKYARD – A place where waste, discarded or salvaged materials are bought, sold, exchanged, stored, baled, cleaned, packed, disassembled or handled or where automobile wrecking takes place, but not including pawnshops and establishments for the sale, purchase or storage of used furniture, household equipment and clothing.

KENNEL – A commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.

LANDLOCKED PARCEL – A lot or parcel of land without direct access to a public or private road.

LANDSCAPED AREA – That area of a site plan not consisting of structures or pavement. Landscaped area shall consist of those areas on a site plan that are planted, seeded or provide similar vegetative or landscaped cover, including ponds.

LAUNDRY, SELF-SERVE – A business establishment providing clothes washers and dryers for hire to be used by customers on the premises.

LIGHT INDUSTRIAL USE – A facility that manufactures, designs, assembles, or processes a product for wholesale or retail sale. The industry does not result in the dissemination of dust, smoke, smog, observable gas, fumes, or odors or other atmospheric pollution, electrostatic interference, glare or vibration; and it is compatible with other uses of the district.

LIVESTOCK – Any domestic animal, including, but not limited to, cattle, horses, emus, ostrich, alpaca, poultry, donkeys, mules, burros, sheep, hogs or goats of greater than three months' age.

LOT – A parcel of land considered as a unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use and the customary accessory use and open spaces belonging to the same. A lot, within the meaning of this chapter, may or may not be a lot as shown on a subdivision plot or assessment record.

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

LOT COVERAGE – The percentage of the lot area covered by impervious buildings or structures including parking areas, driveways and walkways.

LOT DEPTH – The mean horizontal distance between the front and rear lot lines, measured at right angles to the front lot line.

LOT LINES – The property lines bounding the lot. In the case of a lot abutting more than one street, any such lot line will be considered a front lot line.

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

LUMBER YARD – An establishment that sells lumber and other building materials from a yard.

MACHINE SHOP – A building used for the purpose of fabricating metal parts for various applications.

MASSING – The sense of bulk, size, and shape of a structure, usually perceived by reference to the surrounding space and nearby structures and natural features such as trees.

MINI-STORAGE FACILITIES – A building, structure or lot designed for the temporary storage of furniture, equipment, machinery, or other items upon a rental basis for multiple persons.

MOBILE HOME – A structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein and complies with Part 1220 of the New York State Uniform Fire Prevention and Building Code and federal Department of Housing and Urban Development standards; excluding, however, travel trailers, motorized homes, pickup coaches and camping trailers. This definition does not include modular manufactured homes as defined by the New York State Uniform Fire Prevention and Building Code.

MOBILE HOME, DOUBLE-WIDE – A mobile home consisting of two sections, combined at the site, with a width of no less than 20 feet, while still retaining their individual chassis for possible future movement and complying with Part 1220 of the New York State Uniform Fire Prevention and Building Code and federal Department of

Housing and Urban Development standard; excluding however, travel trailers, motorized homes, pickup coaches and camping trailers. This definition does not include modular manufactured homes as defined by the New York State Uniform Fire Prevention and Building Code.

MOBILE HOME PARK – A parcel of land where two or more mobile homes are parked or which is planned and improved for the placement of mobile homes by the public not including farm camps within the Town or Village Agricultural District and State District Boundaries.

MODULAR HOME - A factory-manufactured home which incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a foundation on a building site. Such home shall be constructed and installed in accordance with the requirements of Subchapter B of the New York State Fire Prevention and Building Code and shall bear an insignia of approval issued by the New York State Fire Prevention and Building Code Council. Factory-manufactured homes shall be deemed to be single- or two-family or multiple dwellings. This definition does not include doublewide mobile homes as defined by the New York State Uniform Fire Prevention and Building Code.

MOTEL – A building or group of buildings, whether detached or in connected units, used as individual sleeping units designed primarily for transient automobile travelers and providing accessory off-street parking and, if desired, restaurant facilities. The term “motel” shall also include tourist courts, motor lodges and similar uses.

MOTOR VEHICLE REPAIR – Engine repair, body work, frame straightening, painting, upholstering, steam cleaning, electrical work, tune-ups and all other vehicle repair services not specifically listed in the definition of motor vehicle service stations.

MOTOR VEHICLE SALES AREA – Any building, land area or other premises used for the display or sale of new or used automobiles, motorcycles, trucks, trailers or boats, but not including any repair work other than warranty and other repair service conducted as an accessory use on such premises.

MOTOR VEHICLE SERVICE STATION:

- A. Any building, land area or other premises, or portion thereof, used or intended to be used for any one or a combination of the following activities:
 - (1) Retail dispensing or sales of motor vehicle fuels.
 - (2) Retail dispensing or sales of motor vehicles lubricants, including oil changing and chassis lubrication where substantial disassembly is not required.

- (3) Retail dispensing or sales of motor vehicles coolants.
- (4) Retail repair or replacement of parts, such as windshield wiper blades, light bulbs, air filters, oil filters, batteries, belts, tires, fuses, lubrication of vehicles, and the like.
- B. Motor vehicle wrecking, repair, parking or storing of motor vehicles for hire, and the operation of more than one towing vehicle shall not be deemed permissible accessory uses of a motor vehicle service station.

MOTOR VEHICLE WASH – Any building or premises, or portion thereof, the use of which is devoted to the business of washing motor vehicles for a fee, whether by automated cleaning devices or otherwise.

MOTOR VEHICLE WRECKING – The dismantling or disassembling of motor vehicles or trailers, or the storage, sale or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

NATURE PRESERVE – An area designated for the preservation of unique or locally significant natural resources for the purposes of protection and public education.

NATURE PRESERVE, PRIVATE – An area designated for the preservation of unique or locally significant natural resources for the purposes of protection.

NEIGHBORHOOD – A residential development, or mixed-use development where the primary use is residential housing.

NONCONFORMING BUILDING – A building which in its design or location does not conform to the regulations of this chapter for the district in which it is located.

NONCONFORMING LOT – A lot of record lawfully existing at the date of adoption of this chapter or any amendment thereto which does not have the minimum width or contain the minimum area for the district in which it is located.

NONCONFORMING USE – Any use of any building, structure or land lawfully existing at the date of adoption of this chapter or any amendment thereto which does not conform to the use regulations of the district in which it is situated.

NURSERY – Land or greenhouses used to raise flowers, shrubs, and plants for sale.

OUTDOOR RECREATION – Activities including, but not limited to, private golf courses, golf driving ranges, golf pitch and putt courses, recreation courts, open space,

playing fields, swimming pools, bike trails, multi-use trails, hiking trails, miniature golf, go carts and water parks.

OUTDOOR RECREATION, PRIVATE CLUB – Activity based facility with use restricted to members and their guests. Activities including private golf courses, golf driving ranges, golf pitch and putt courses; recreation courts; open space; playing fields; swimming pools; bike trails; hiking trails; and similar facilities for outdoor recreation.

OUTPATIENT HEALTH CENTER - A business establishment providing primarily health services, such as emergency care, laboratory facilities or minor surgery to ambulatory patients rather than diagnostic treatment typical of a doctor's office.

OVERLAY ZONE – An additional layer of regulations related to a specific environmental constraint such as floodplain boundaries or wetlands that supercedes the restrictions of the underlying zoning district.

PARKING – For the purposes of this law, the act of depositing a registered motor vehicle at a location after it has been driven to that location under its own power, pending the return of the same or another driver and any accompanying passengers. This term shall include any trailers remaining attached to the vehicle or to motor vehicles, registered or unregistered, including trailers, which are drawn or towed to a location, detached, and left at that location.

PARKING AREA – Off-street parking areas and loading and unloading areas required by Article X.

PARKWAY – A narrow strip of open space surrounded by streets on all sides and generally intended for use in a smaller neighborhood.

PLANNING BOARD– The officially established Planning Board of the Town and Village of Nunda.

PLAT – A map, drawing, or rendering of a subdivision that usually contains narrative elements.

PROPERTY LINE – See also "lot lines."

PUBLIC USES – Any one or more of the following uses, including grounds and accessory buildings necessary for their use:

- A. Public parks, playgrounds and recreational areas when authorized or operated by governmental authority.

- B. Nursery schools, elementary schools, high schools, colleges or universities having curriculum approved by the Board of Regents of the State of New York.
- C. Public libraries and museums.
- D. Not-for-profit fire, ambulance and public safety buildings.
- E. Structures occupied by governmental uses.

RECREATION, INDOOR COMMERCIAL – Business primarily devoted to the amusement of the general public such as theaters, bowling alleys, indoor amusement arcades and health clubs. Incidental food service may also be included. For purposes of this Zoning Law, adult uses are not considered as indoor commercial recreation.

RECREATIONAL AREA – A space designed and used for active and passive participatory athletic and general recreation activities.

RESIDENTIAL CARE FACILITY – A community-based residence under public, voluntary, nonprofit or proprietary sponsorship that provides residential services and twenty-four-hour supervision to four or more persons. Such a facility is operated by sponsor-approved staff.

RESIDENTIAL CONCENTRATION – Any development where more than 15 new residential units are planned in the Mixed Use, Neighborhood Transitional, Rural Residential Cluster Districts or properties adjacent to the Village of Nunda.

RESTAURANT – Any establishment, however designed, at which food is sold for consumption on the premises to patrons seated within an enclosed building or elsewhere on the premises. A snack bar or refreshment stand at a public, semipublic or community swimming pool, playground, playfield or park, or an approved vendor operating these recreational facilities for the convenience of the patrons of the facility, shall not be deemed to be a restaurant.

RESTRICTIVE COVENANTS – Limits uses to the continuation of certain activities that preserve unique features of a building or land area.

RETAIL – The sale of goods, articles or consumer services individually or in small quantities directly to the consumer.

RIGHT-OF-WAY – A strip of land, either public or private, occupied or intended to be occupied by a street, sidewalk, trail, railroad, electrical transmission line, oil or gas pipeline, water main, sanitary or storm sewer or other similar use.

ROADSIDE STAND – A permanent or temporary structure for the sale of agricultural products primarily produced on the premises.

RURAL HERITAGE FEATURES – Historical, cultural, and environmental resources that are assets to the community including, but not limited to, farmland preservation, scenic byways, heritage areas, parks, and historic roads and transportation corridors.

SALVAGE YARD – See Junk Yard.

SCREEN – A method of reducing the impact of noise, glare and unsightly visual intrusions with less offensive or more harmonious elements, such as plants, berms, fences, walls or any appropriate combination thereof.

SEASONAL ACCOMODATIONS – A building containing rooms intended, designed, or used, rented or hired out, to be occupied for sleeping purposes by transient guests and/or the general public. The facility is open for business during a specific time of year.

SERVICE-ORIENTED BUSINESS – A business providing skilled professional labor to consumers including insurance offices, restaurants, financial services, business to business consulting, and other similar services.

SENSITIVE AREAS – Areas that include steep slopes and unique wildlife habitat.

SETBACK, MINIMUM FRONT – The least required horizontal distance between the edge of pavement or curb and any structure measured at the shortest point. For lots on unimproved roadways, the minimum front setback is defined as the least required horizontal distance between the edge of the roadway surface and any structure measured at the shortest point.

SETBACK, MINIMUM REAR – The least required horizontal distance between the rear lot line and any structure measured at the closest point.

SETBACK, MINIMUM SIDE – The least required horizontal distance between the side lot line and any structure measured at the closest point.

SHADE TREE – Usually a large deciduous tree (rarely, evergreen) planted for its high crown of foliage or overhead canopy.

SHOPPING CENTER, COMMUNITY – A grouping of retail and service uses providing a wide range of such uses, including apparel and/or home furnishings. Such centers typically range in size from 100,000 to 450,000 square feet.

SHRUB – A woody plant, smaller than a tree, consisting of several stems from the ground or small branches near the ground, may be deciduous or evergreen.

SIGNAGE – See Article XI

SITE PLAN REVIEW – See Article XIV.

SPECIAL USE PERMIT – A permit provided by the Zoning Board of Appeals for a use requiring review, for uses that are not permitted expressly in a district but are listed as requiring a special use permit.

SPORTS CLUB – A social organization whose focus is athletic activities.

STABLE (COMMERCIAL) – Premises on which two or more horses not the property of the proprietor are boarded, or on which horses are maintained commercially for hire, exhibition, or sale.

STABLE (PRIVATE) – Premises on which is maintained not more than one horse not the property of the proprietor, and including horses of the proprietor not maintained for commercial purposes; is accessory to a farm or dwelling.

STEEP SLOPE – Grade change of 15% or more.

STORY – That portion of a building between the surface of any floor and the surface of the floor next above, and any portion of a building used for human occupancy between the topmost floor and the roof. For purposes of height measurement, in determining the permissible number of stories, a basement shall be counted, but a cellar shall not be counted.

STORY, HALF – A story with at least two (2) opposite exterior sides meeting a sloping roof not more than two (2) feet above the floor of such story.

STREET – A public or private thoroughfare that affords the principal means of access to abutting property.

STREET LINE – That line determining the limit of the highway right-of-way of the public street, either existing or contemplated.

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

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

STRUCTURE, MIXED USE – A structure that contains multiple uses, such as retail, office, commercial, or residential.

SUBDIVISION – See §1-106.

SWIMMING POOL, PRIVATE – A swimming pool operated as an accessory use to a residential dwelling unit or units located on an individual residential lot.

SWIMMING POOL, PUBLIC – A publicly or privately owned pool open to the general public or on a membership basis and having appropriate dressing room facilities, recreation facilities and off-street parking area.

TELECOMMUNICATIONS TOWER – See §1-95.

TEMPORARY OR SEASONAL OCCUPANCY – The use of any premises or structure for living and/or sleeping purposes for 180 days or less in any calendar year.

TEMPORARY USE – Any activity conducted for a specific limited period of time that may not otherwise be permitted by the provisions of this chapter. Examples of such uses are buildings incidental to new construction that are removed after the completion of the construction work.

TENANT – An occupant who temporarily holds or occupies land, a building or other property owned by another.

TRADITIONAL NEIGHBORHOOD DEVELOPMENT (TND) – A development pattern that caters to the pedestrian requiring a walkable scale and a mix of residential and commercial uses similar to a traditional village.

TRAVEL TRAILER – A vehicular portable structure designed as a temporary dwelling for travel, recreational and vacation uses and not for year-round living.

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

USE, ACCESSORY – A use clearly incidental and subordinate to the principle use whether located in a principle or accessory building and located on the same lot therewith. In no case shall such accessory use dominate, in area, extent or purpose, the principle lawful use or building.

USE, PRINCIPLE – The main use for which a building or lot is used or intended to be used.

VARIANCE, AREA – The authorization by the Zoning Board of Appeals for the use of land in a manner, which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE – The authorization by the Zoning Board of Appeals for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations.

WAREHOUSE – A building designed or used for the storage of merchandise, furniture or other commodities.

WIND ENERGY CONVERSION SYSTEM – A system of components which converts the kinetic energy of the wind into electrical or mechanical power.

YARD, FRONT – An open space extending the full width of the lot between the front lot line and the principle building, unoccupied and unobstructed by any buildings or structures from the ground upward.

YARD, REAR – An open space extending the full width of the lot between the rear lot line and the required minimum rear setback, unoccupied and unobstructed by any buildings or structures from the ground upward, except those permitted by §1-42.

YARD, SIDE – An open space extending from the front yard to the rear yard between the side lot line and the required minimum side setback, unoccupied and unobstructed by any buildings or structures from the ground upward, except those permitted by §1-42.

ZONING BOARD – The officially established Zoning Board of Appeals of the Town and Village of Nunda.

ZONING DISTRICT – The classification of lands as established in this chapter.

ZONING PERMIT – A permit issued by the Code Enforcement or Zoning Officer stating that the purpose for which a building or land is to be used is in conformity with the uses permitted and all other requirements under this chapter for the district in which it is located.

ARTICLE II
Administration

1-6. Enforcement.

It shall be the duty of the Code Enforcement or Zoning Officer to keep a record of all applications for permits and a record of all permits issued with a notification of all special conditions relating thereto. Such records shall be filled in by the Code Enforcement or Zoning Officer and shall be available for use by the Town and Village Boards of the Town and Village of Nunda and the Municipal Clerks. The Planning Board of the Town and Village of Nunda shall issue no permit for the use of any property not in conformity with the requirements of this chapter and all other regulations of the Town and Village of Nunda.

1-7. Duties of Code Enforcement or Zoning Officer.

- A. For the purpose of this chapter, in the Town of Nunda it shall be the duty of the Code Enforcement Officer, or any duly authorized assistants and in the Village of Nunda it shall be the duty of the Zoning Officer, or any duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this chapter and to issue certificates and permits as outlined in the following section.
- B. If, in the course of work, the Code Enforcement or Zoning Officer determines that any plans, buildings or premises are in violation of the provisions of this chapter, he/she shall order the responsible party in writing to remedy such conditions. Said written order shall specify the nature of the violation found to exist, the remedy ordered and the time permitted for such action, the penalties and remedies which may be invoked, and the violator's right of appeal, all as provided for by this chapter.
- C. On the serving of notice by the Code Enforcement or Zoning Officer to the owner of any violation of any of the provisions of this chapter, the Certificate of Occupancy for such building or use shall be held null and void. A new Certificate of Occupancy shall be required for any use of such building or premises.
- D. The Code Enforcement or Zoning Officer shall maintain a permanent record of all matters and all action taken. Such records shall form a part of the records of the office and available for use by the governing board and other municipal officials and shall be available for inspection by the public.

1-8. Certificates and permits.

- A. The certificates and permits enumerated herein are hereby established for the equitable enforcement and administration of the provisions of this chapter. A zoning permit or special use permit shall be prerequisite to the erection or alteration of a building structure or use thereof, unless herein exempted, but only if the alteration increases the dimensions or changes the use of existing facilities thereof.
- B. Zoning permit. The Code Enforcement or Zoning Officer is hereby empowered to issue a zoning permit for any plans regarding the construction or alteration of any building or part of any building, or the change in the use of any land or building or part thereof, where it has been determined that such plans are not in violation of the provisions of this chapter.
- C. Special use permit. Upon written direction of the Zoning Board of Appeals, the Code Enforcement or Zoning Officer is hereby empowered to issue any special use permit provided for by this chapter after site plan review if required. Special use permits are for those uses having some special impact or uniqueness which require a careful review of their location, design, configuration and special impact or uniqueness or which require a careful review of their desirability of permitting their establishment on any given site. They are uses that may or may not be appropriate in a particular location depending on a weighting, in each case, of the public need and benefit against the local impact and effect. A special use permit may be issued with conditions, including requirements for review and renewal, based upon careful review by the Zoning Board of Appeals.
 - 1. No special use permit will be granted by the Zoning Board of Appeals unless the Board, after a public hearing, shall find that such special use permit or modification will:
 - a. Be in harmony with the general purpose and intent of this chapter, taking into account the location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it and the size of the site with respect to streets giving access thereto.
 - b. Not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures.
 - c. Not create a hazard to health, safety or general welfare.
 - d. Not be detrimental to the flow of traffic in the vicinity.
 - e. Not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
 - 2. In the review and approval of special permits, the following additional factors shall be considered:
 - a. General conformance with the intent of the Nunda Comprehensive Plan and guidelines for development associated with it.
 - b. Consistency with development standards and guidelines of the zoning district in which it is located.
 - c. Criteria for the review of site plans enumerated in Article XIV.

- D. Certificate of Occupancy. The Code Enforcement Officer is hereby empowered to issue a Certificate of Occupancy which shall certify that all provisions of this chapter have been complied with in respect to the location and use of the building, structure or premises in question. The Code Enforcement Officer is also empowered to issue a Certificate of Occupancy for nonconforming uses, provided that the nonconforming use is defined and the descriptions of nonconformance with this chapter are listed.

1-9. Application procedures.

- A. Procedures of a zoning permit.

- (1) All applications for a zoning permit shall be made to the Code Enforcement or Zoning Officer in the detail specified in §1-10 of this article. Where the proposed use is a permitted agricultural operation or a single- or two-family residential use, the Code Enforcement or Zoning Officer shall carefully consider the application for compliance with this chapter and either issue or deny a zoning permit. When the application is for any other use in any district, a preliminary site plan application, in accordance with Article XIV, shall serve as the zoning permit application, and the Planning Board shall be responsible for reviewing compliance with this chapter and directing the Code Enforcement or Zoning Officer to approve, approve with conditions or deny an application.

- (2) Zoning permits shall be issued in duplicate and one copy shall be posted conspicuously on the premises while any alterations are being completed.

- B. Procedures for appeal. Should an applicant choose to appeal a decision by the Code Enforcement or Zoning Officer to deny issuance of a zoning permit, an application for an appeal shall be filled out, submitted along with supporting documents to the Town or Village Clerk, depending on location, for referral to the Zoning Board of Appeals for action. Where applicable under §239-l, m and n of the General Municipal Law, one copy of the application shall also be submitted to the County Planning Board.

- C. Procedures for special use permit. All applications for special use permits shall be made to the Code Enforcement or Zoning Officer. The Code Enforcement or Zoning Officer, after determining that an application is in proper form, shall transmit one copy of the application and all supporting documents to the Zoning Board of Appeals for action thereon. Where applicable under §239-m and §239-n of the General Municipal Law, one copy of the application shall also be submitted to the County Planning Board.

- D. Procedures for a Certificate of Occupancy. Following the completion of the construction, reconstruction or alteration of any building or where a change in the use of a structure is proposed, the applicant shall transmit by registered mail or deliver in person to the Code Enforcement Officer a letter stating that such

construction has been completed or that a new use has been proposed. Within seven days of the receipt of this letter, the Code Enforcement Officer shall make all necessary inspections of the completed structure or proposed use to determine the conformance with this chapter. A Certificate of Occupancy shall be issued only if the Code Enforcement Officer finds that the construction or proposed use complies with all the requirements and provisions of this chapter.

1-10. Application details.

- A. Application for a zoning permit (where Site Plan Review is not required). Each application for a zoning permit shall be made on forms available from the Code Enforcement or Zoning Officer. The materials to be submitted with the application shall clearly show the conditions on the site at the time of the application, the features of the site which are to be incorporated into the proposed use or building and the appearance and function of the proposed use of building. At a minimum, the application shall include the following information and plans for both before and after conditions.
- (1) The applicant's name and address and interest in the subject property.
 - (2) The owner's name and address, if different than the applicant, and the owner's signed consent to the filing of the application.
 - (3) The street address or legal description of the subject property.
 - (4) The location, use, design, dimensions, setbacks and height of each use and building.
 - (5) Location of any easements and water supply and sewage disposal facility.
- B. Application for a special use permit. Each application for a special use permit shall be made on forms available from the Code Enforcement or Zoning Officer and shall contain at least the following information.
- (1) The applicant's name and address and interest in the subject property.
 - (2) The owner's name and address, if different than the applicant, and the owner's signed consent to the filing of the application.
 - (3) The street address or legal description of the subject property.
 - (4) An application for site plan approval, as required by Article XIV of this chapter.
 - (5) A written statement addressing each of the standards set forth in §1-17C and stating specifically how the proposed special use permit relates to and meets each such standard.
 - (6) An agricultural data statement if the proposed use is located on or within 500 feet of a farm operation in a county agricultural district.
 - (7) Any additional information that may be required to demonstrate compliance with any additional standards imposed on the special use permit by the particular provision of this chapter authorizing the special use.

1-11. Application fees.

Each application for a permit provided for by this article shall be accompanied by a fee, payable in cash or other form of security, approved by the Municipal Attorney in accordance with the schedule adopted by resolution of the governing board. The fee schedule is available at the Town or Village Clerk's Office.

1-12. Public hearing.

The Zoning Board of Appeals shall conduct a public hearing on applications referred to it by the Code Enforcement or Zoning Officer in accordance with the procedures and requirements established in Town Law §267-a and Village Law §7-712-a for appeals and in Town Law §274-b and Village Law §7-725-b for special use permits. The Planning Board shall hold a public hearing in accordance with the procedures and requirements established in Town Law §274-a and Village Law §7-725-a on applications referred to it for Site Plan Review. For special use permits in residential and transitional districts requiring site plan approval from the Planning Board, the hearing may be a hearing with the Planning Board and the Zoning Board of Appeals. Public notice of all such hearings shall be printed in a newspaper of general circulation at least five days prior to the date of the hearing.

1-13. Planning Board action on permit applications.

Within 62 days from the date of such public hearing, and following a report back by the County Planning Board when applicable, the Planning Board shall by resolution either approve, approve with conditions or disapprove the application so heard. The Board shall communicate its action, in writing, to the Town or Village Clerk, the applicant, and to the Code Enforcement or Zoning Officer within five days of the meeting at which it decided upon the application. When applicable, compliance shall be required in accordance with the provisions of §239-m and §239-n of the General Municipal Law for County Planning Board review.

- A. If an application is approved by the Planning Board, the Code Enforcement or Zoning Officer shall be furnished with a copy of the approving resolution of the Board and shall issue the permit applied for in accordance with the conditions imposed by the Board.
- B. If any application is disapproved by the Planning Board, the reasons for such denial shall be set forth in the Board's resolution, and a copy of such resolution shall be transmitted to the Code Enforcement or Zoning Officer. The Code Enforcement or Zoning Officer shall deny the application accordingly by providing the applicant with a copy of the Board's reasons for disapproval.

- C. The Town or Village Clerk shall maintain a record of all approved or denied applications. Such permanent record shall be available to the Municipal Clerk, the Town or Village Assessor and, where applicable, the County Planning Board.

1-14. Revocation and expiration of permits.

- A. The Code Enforcement or Zoning Officer may revoke a zoning permit at any time if it appears that the application is in any material respect false or misleading or that work being completed differs materially from that proposed in the application.
- B. Any zoning or special use permit not exercised within one calendar year from its date of issuance shall become null and void.

ARTICLE III
Boards

1-15. Creation, appointment and organization of Zoning Board of Appeals.

- A. A Zoning Board of Appeals, pursuant to General Municipal Law Articles 5-G and 5-J, Town Law Article 16 §267, and Village Law §7-712 is hereby created by the governing boards of the Town and Village of Nunda.
- B. Appointment of members. The Town and Village Boards which adopt local laws or ordinances and any amendments thereto pursuant to the powers granted by this article shall appoint a Zoning Board of Appeals consisting of five members as shall be determined by such local laws or ordinances and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The Town and Village Boards may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the Town and Village Boards for such purpose. In making such appointments, the Town and Village Boards may require board of appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members.
- C. Town or Village Board members ineligible. No person who is a member of the Town or Village Boards shall be eligible for membership on such board of appeals.
- D. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term, which shall be equal in years to the number of members of the board.
- E. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the Town or Village Board shall appoint the new member for the unexpired term.
- F. Removal of members. The Town or Village Board shall have the power to remove, for cause, after public hearing, any member of the Zoning Board of Appeals from its municipality for cause. Any Zoning Board of Appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town or Village Board by local law or ordinance.
- G. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such

chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

H. Alternate members.

(a) Alternate Zoning Board of Appeals member positions are hereby established for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest or when a member is absent. Alternate members of the Zoning Board of Appeals shall be appointed by resolution of the Town and Village Boards, for terms established by the Town and Village Boards.

(b) The chairperson of the Zoning Board of Appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.

(c) All provisions of this section relating to Zoning Board of Appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

1-16. Minimum requirements for Zoning Board of Appeals members.

A. Training. Each Board member is required to complete three hours of training per calendar year.

B. Attendance. Each Board member shall be required to attend 75% of the scheduled meetings in each calendar year. In addition, failure to attend three consecutive meetings without good cause may be grounds for removal from the Board.

1-17. Powers and duties of Zoning Board of Appeals.

The Zoning Board of Appeals shall have all the powers and duties prescribed by §267-b of the Town Law and §7-712 of Village Law of the State of New York and by this chapter. These powers and duties are more particularly specified as follows:

A. Interpretation. Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect hereto.

B. Variances. When in its judgment, the public safety, convenience and welfare will be served, the Zoning Board of Appeals may vary or modify the application of the regulations or provisions of this chapter relating to the use, construction

or alteration of structures or use of the land. In such cases, the Board is empowered to grant exceptions in harmony with the general purpose and intent of this chapter. Variances will be granted in appropriate and specific cases only after public notice and hearing and subject to such appropriate conditions and safeguards the Zoning Board of Appeals may impose.

- (1) As used in this chapter, a variance is authorized for height, area, size of structure, size of yards and open spaces or for establishment or expansion of a use otherwise not allowed. A variance shall not be granted solely because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.
- (2) Variance procedures.
 - (a) An application for the approval of a variance shall be made, by an owner of an interest in the lot, to the Code Enforcement or Zoning Officer on forms available therefrom, accompanied by the necessary fees and documents as provided in this chapter and the regulations issued hereunder.
 - (b) The application shall be accompanied by a map drawn to an appropriate scale and showing all existing and proposed characteristics of the site and adjacent properties necessary for consideration of the variance request. For applications where site plan approval is also required, a preliminary site plan in accordance with Article XIV of this chapter shall be required.
 - (c) An application for a use variance in or within 500 feet of an agricultural operation in a county agricultural district shall be accompanied by an agricultural data statement.
 - (d) The application for a use variance shall be accompanied by an affidavit by the applicant explaining that application of zoning regulations has caused unnecessary hardship. For a use variance, the affidavit must prove each of the following:
 - [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence.
 - [2] That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.
 - [3] That the requested use variance, if granted, will not alter the essential character of the neighborhood.
 - [4] That the alleged hardship has not been self-created.
 - (e) An application for an area variance shall be accompanied by a narrative answering the following:

- [1] Whether granting such variance has the potential to produce undesirable change in the character of the neighborhood or a detriment to nearby properties.
 - [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 could have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - [5] Whether the alleged difficulty was self-created.
- (f) The Zoning Board of Appeals shall fix a time and place for a public hearing thereon and shall provide for the giving of notice as follows:
- [1] A notice shall be published in the official newspaper of the Town or Village at least five days prior to the date thereof.
 - [2] The Code Enforcement or Zoning Officer shall mail a copy of such notice to all agencies, municipalities, authorities, etc., as prescribed in §267-a of the Town Law, §7-712-a of Village Law and §239-m of the General Municipal Law.
 - [3] The applicant shall, at least seven (7) days prior to the date of the hearing, give notice in writing by registered mail or by service in person, with adequate proof of contact thereof to all property owners within 200 feet of the property to be affected by said appeal or to all property owners of contiguous land or properties adjoining said property to be affected, and other interested property owners as may be designated by the Board of Appeals. The applicant must furnish proof of services in writing and properly notarized.
- (g) The Board shall approve, with or without conditions, or disapprove the application within 62 days of the public hearing as specified in §267-a of Town Law and §7-712-a of Village Law and shall communicate its action, in writing, to the Town or Village Clerk, the applicant, and to the Code Enforcement or Zoning Officer within five days of the meeting at which it decided upon the application. When applicable, compliance shall be required in accordance with the provisions of §239-m and §239-n of the General Municipal Law for County Planning Board review.
- (h) The Code Enforcement or Zoning Officer shall, upon receipt of the notice of approval and upon application by the applicant, collect all required fees and issue a building permit or such other

approval permitting the variance, subject to all conditions imposed by such approval.

- C. Special use permits. To hear and decide upon application for such permits as specified in this chapter. In approving the application for a special use permit, the Board may impose reasonable conditions and restrictions directly related and incidental to the proposed special use permit. A special use permit shall be granted only if evidence is presented which establishes that:
- (1) The proposed building or use will be in harmony with the general purpose, goals, objectives and standards of the Comprehensive Plan and this chapter.
 - (2) The proposed building or use will not have a substantial or undue adverse effect upon adjacent property the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare.
 - (3) The proposed building or use will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations.
 - (4) The proposed building or use will be adequately served by essential public facilities and services.
 - (5) The proposed building or use complies with all additional standards imposed on it by the particular provision of this chapter authorizing such use.
 - (6) All steps possible have been taken to minimize any adverse effects of the proposed building or use on the immediate vicinity through building design, site design, landscaping and screening.
 - (7) If appropriate, a performance bond or other suitable financial guaranty has been provided to assure compliance with the conditions of the special use permit.

1-18. Creation, appointment and organization of Planning Board.

- A. A Planning Board, pursuant to General Municipal Law 5-G and 5-J, Village Law Article §7-718 and Town Law Article 16 §271, is hereby created by the Town and Village Boards of the Town and Village of Nunda.
- B. Authorization. The Town and Village Boards of the Town and Village of Nunda are hereby authorized by local law or ordinance, to create a Planning Board consisting of seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the Planning Board may designate a member to serve as chairperson. The Town and Village Boards may, as part of the local law or ordinance creating said Planning Board, provide for the compensation of

Planning Board members. In making such appointments, the Town and Village Boards may require Planning Board members to complete training and continuing education courses in accordance with any local requirements for the training of such members.

- C. **Appropriation for Planning Board.** The Town and Village Boards are hereby authorized and empowered to make such appropriation as it may see fit for Planning Board expenses. The Planning Board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding the appropriation that may be made therefore by the Town and Village Boards for such Planning Board.
- D. **Town or Village Board members ineligible.** No person who is a member of the Town or Village Boards shall be eligible for membership on such Planning Board.
- E. **Terms of members first appointed.** The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term, which shall be equal in year to the number of members of the board.
- F. **Vacancy in office.** If a vacancy shall occur otherwise than by expiration of term, the Town or Village Board shall appoint the new member for the unexpired term.
- G. **Removal of members.** The Town or Village Board shall have the power to remove, for cause, after public hearing, any member of the Planning Board from its municipality. Any Planning Board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town or Village Board by local law or ordinance.
- H. **Chairperson duties.** All meetings of the Planning Board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
- I. **Alternate members.**
 - (a) Alternate Planning Board member positions are hereby established for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest or when a member is absent. Alternate members of the Planning Board shall be appointed by resolution of the Town and Village Boards, for terms established by the Town and Village Boards.
 - (b) The chairperson of the Planning Board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter

before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.

- (c) All provisions of this section relating to Planning Board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

1-19. Minimum requirements for Planning Board members.

- A. **Training.** Each Board member is required to complete three hours of training per calendar year.
- B. **Attendance.** Each Board member shall be required to attend 75% of the scheduled meetings in each calendar year. In addition, failure to attend three consecutive meetings without good cause may be grounds for removal from the Board.

1-20. Powers and duties of Planning Board.

The Planning Board shall have the powers and duties as specified below.

- B. **Plats.** The Planning Board will approve plats showing lots, blocks or sites, with or without streets or highways, and conditionally approve preliminary plats and pass and approve the development of plats already filed in the office of the Clerk of the County of Livingston if such plats are entirely or partially undeveloped.
- C. **Site plan.** The Planning Board will approve, approve with conditions or deny site plans in accordance with Article XIV of these regulations.

1-21. Conflict with other laws.

Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or those imposing the higher standards shall govern.

1-22. Amendments.

- A. The regulations, restrictions, uses and boundaries provided in this chapter and the Official Zoning Map may be amended, supplemented, changed, modified or repealed in accordance with the provisions of §264 and §265 of the Town Law and §7-708 and §7-724 for all property in the Town and Village of Nunda and all other applicable laws of the State of New York and in accordance with the following procedures.

- B. Whenever any person, firm or corporation desires that any amendments or changes be made in this chapter, including the text and/or the Zoning District Map as to any property in Nunda, there shall be presented to the Town and Village Boards a petition requesting such change or amendment (Changes requested for Article VI require adoption only by the municipality in which a zoning district is located). The petition shall clearly describe the property and its boundaries and shall indicate the existing zoning district and the requested zoning district. The petition shall also show existing highways, municipal boundary lines and state parks, name and addresses of all property owners bordering the proposed change. A filing fee pursuant to regulations adopted by the Town or Village Board shall be paid at the time of filing the petition.
- C. All such amendments shall be referred to the Planning Board for review and recommendation.

ARTICLE IV
Violations

1-23. Enforcement.

It shall be the duty of the Code Enforcement or Zoning Officer and any duly authorized assistants to enforce the provisions of this chapter or of any determination of the Zoning Board of Appeals and/ or the Planning Board.

1-24. Penalties for offenses.

The violation of any of the provisions of this chapter is an offense and shall subject the person violating the same to a fine not exceeding \$500 or to imprisonment not exceeding 15 days, or both.

1-25. Continued violation.

Each day's continued violation shall be considered a separated and distinct offence.

1-26. Other relief.

Nothing contained in this article shall preclude the municipality or its agents from seeking such other relief as may be lawful in order to compel adherence to the terms of this chapter and otherwise enforce the same.

ARTICLE V
Districts

1-27. Districts established.

The Town and Village of Nunda are hereby divided into the following types of districts, which shall be differentiated according to use and area and hereafter used and developed for the purposes designated:

AG	Agricultural District
NRD	Neighborhood Residential District
NTD	Neighborhood Transitional District
OSD	Open Space District
MU	Mixed Use District
V-NRD	Village-Neighborhood Residential District
V-NTD	Village-Neighborhood Transitional District
V-MU	Village-Mixed Use District

1-28. Official Zoning District Map.

The above districts shall be located, bounded and described as shown on the Zoning District Map of the Town and Village of Nunda, which has been designated the Official Zoning District Map of the Town and Village, now on file with the Town and Village Clerks and, together with the boundaries and the designations therein, is made part of this chapter.

1-29. Interpretation of district boundaries.

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

- A. Distances shown on the Zoning District Map are perpendicular or radial distances from street lines measured back to the zone boundary line, which lines in all cases, where distances are given, are parallel to the street line.
- B. Where district boundaries are indicated as approximately following the center of streets or highways, street lines or highway right-of-way lines, such centerlines, street lines or highway right-of-way lines shall be construed to be such boundaries.
- C. Where district boundaries are so indicated that they approximately follow the lot line, such lot lines shall be construed to be said boundaries.
- D. Where district boundaries are so indicated that they are approximately parallel to the centerlines or street lines of streets or the centerlines or right-of-way lines of highways, such district boundaries shall be construed as being parallel

thereto and at such dimension shall be determined by the use of the scale shown on said Zoning District Map.

- E. Where the boundary of a district follows a railroad line or is parallel thereto, such boundary shall be deemed to be located, or shall be measured from a point, midway between the main tracks of said railroad line.
- F. Where the boundary of a district follows a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the Town or Village of Nunda unless otherwise designated. If no distance is given, the dimension shall be determined by the use of the scale shown on said Zoning District Map.
- G. If an uncertainty still exists as to a boundary line following review of the above items, then the Zoning Board of Appeals shall determine such boundary location.

1-30. Regulations.

Except as herein provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the allowable uses and standard for development set forth for each district by this chapter, nor shall any open space contiguous to any building be encroached upon or reduced in any manner, except in conformity to the area and bulk requirements, off-street parking requirements, landscaping requirements and all other regulations designated in this chapter for the district in which such building or use is located. In the event of any such unlawful encroachment or reduction, such building or use Certificate of Occupancy shall become void.

1-31. Prohibited Uses.

Uses not expressly stated as permitted uses, accessory uses or specially permitted uses are prohibited unless they are considered a nonconforming use.

ARTICLE VI
Zoning District Regulations

1-32. Agricultural District (AG).

- A. Intent.** One of the primary land uses in the Town and Village of Nunda is agriculture or agriculture related industries. In an effort to retain viable tracts of farmland, restore the economic stability of the agriculture economy in the Town, Village, and County, and retain the rural landscape and quality of life related to farming, the Town and Village of Nunda has identified a local municipal agricultural district, in accordance with the Nunda Comprehensive Plan of 2001, that is separate, but supportive, of the County Agricultural District boundaries. Therefore, the Agricultural District has been established to:
1. Reserve areas within the Town and Village that have prime agricultural or state significant soils;
 2. Provide for agricultural uses and uses compatible with or supportive of agriculture within the district;
 3. Avoid conflicts between agricultural and non-agricultural uses by limiting the type and amount of non-agricultural uses within the district;
 4. Direct non-agricultural development away from prime agricultural soils, state significant soils, and farm operations; and
 5. Retain tracts of land of sufficient size to encourage viable farming operations.
- B. District Boundary Formation.** As part of the Comprehensive Plan, the Town and Village identified areas where active farming and viable soils exist and should be conserved. Additional consideration was given to areas that, while not currently used for agriculture or another use that limits the feasibility of viable agriculture practices, could be used for agriculturally related purposes in the future. These areas were included in the formation of district boundaries to the extent practical and based upon significant analysis with the intent to minimize impacts associated with nuisance related concerns.
- C. Permitted Uses.** Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIII.
1. Agricultural or Farming Operation.
 2. Bed and Breakfast.
 3. Church.
 4. Agricultural Support Industry.

5. Greenhouse or Nursery, Commercial.
 6. Family Daycare Home.
 7. Dwelling, Single-Family.
 8. Nature Preserve.
 9. Sports Club.
 10. Roadside Stand.
 11. Animal Veterinary Office.
 12. Golf Course, Public or Private.
 13. Cemetery.
 14. Customary Agricultural or Residential Accessory Uses.
 15. Public Uses.
- D. Special Use Permit. Uses permitted with a special use permit from the Zoning Board of Appeals subject to the requirements of §1-17C. Such uses are subject to general development standards for specific uses found in Article VII, Regulations Applicable to All Zoning Districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without detrimental impact to adjacent uses.
1. Home Occupation (§1-58).
 2. Recreational Area.
 3. Banquet, Conference Facilities.
 4. Residential Wind Energy Conversion Systems (Article XVI).
 5. Commercial/Industrial Wind Energy Conversion Systems (Article XVI).
 6. Lumber Yard.
 7. Agricultural Research Facility.
 8. Kennel or Stable, Commercial (§1-50).
 9. Garage storage of commercial vehicles when used in the resident's business. Heavy equipment, garbage trucks, oil tanker trucks, and tractor-trailers are omitted from this allowance and this accessory use is permitted only on building lots that are at least three acres in size.
 10. Telecommunications Towers (Article XII).
 11. Mini-storage facility.
- E. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 110.
- F. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 110.

- G. **Minimum Setback.** Please see the Town and Village of Nunda Bulk and Use Table, Page 110.
- H. **Height.** Please see the Town and Village of Nunda Bulk and Use Table, Page 110.

1-33. Neighborhood Residential District (NRD).

- A. Intent. The Neighborhood Residential District provides for residential infill development surrounding traditional town centers including village and hamlet areas and their logical extensions, a range of housing types is encouraged. Low-intensity business activity is permitted in mixed-use buildings at residential scale.
- B. Permitted Uses. Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIII.
1. Dwelling, Single-Family.
 2. Dwelling, Two-Family
 3. Apartment.
 4. Dwelling, Attached or Row.
 5. Customary Agricultural or Residential Accessory Use.
 6. Bed and Breakfast/Inn.
 7. Boarding or Rooming Houses for up to four roomers.
 8. Congregate Housing designed within the "civic" building type.
 9. Church.
 10. Structure, Mixed Use up to 3,000 SF of first floor area.
 11. Agricultural or Farming Operation.
 12. Cemetery.
 13. Public Use.
- C. Special Use Permit. Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of §1-17C. Such uses are subject to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.
1. Accessory Dwelling (§1-60).
 2. Home Occupation (§1-58).
 3. Commercial use in a mixed-use building, located on an arterial or at the intersection of a neighborhood street and a larger capacity street.
 4. Family Daycare Home.
 5. Banquet, Conference Facilities.
 6. Outdoor Recreation.
 7. Recreation Area.

8. Transit-oriented parking lot as a principal use.
- D. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 111.
- E. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 111.
- F. Minimum Setback. Please see the Town and Village of Nunda Bulk and Use Table, Page 111.
- G. Height. Please see the Town and Village of Nunda Bulk and Use Table, Page 111.
- H. General Requirements.
 1. Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings, which adhere to the scale, volume, spacing, and setback of existing buildings along fronting streets, exhibit demonstrable compatibility.
 - b. New buildings, which exceed and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article I illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.
 - (1) On new streets, allowable building and lot types will establish the development pattern.
 - (2) New construction favors retail first floor, office, or residential second floor.
 - (3) Every building lot shall have frontage upon a public street or square.

1-34. Neighborhood Transitional District (NTD).

- A. Intent.** The purpose of the Neighborhood Transitional District is to provide mixed or multi-family residential development at a density consistent with the surrounding uses. In existing mixed-use areas of the village or hamlet areas and subject to a special use permit, small commercial uses may also be appropriate, generally in existing buildings. Generally these areas near commercial/service centers, acting as transition between neighborhood residential development densities and commercial/industrial densities, and where public water and sanitary sewers are available or shall be encouraged.
- B. Permitted Uses.** Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII, Regulations applicable to All Zoning Districts, and, if applicable, subdivision approval in accordance with Article XIII.
1. Dwelling, Single-Family.
 2. Dwelling, Two-Family.
 3. Customary Agricultural or Residential Accessory Use.
 4. Accessory Dwelling, subject to the requirements of Article VII, §1-60.
 5. Apartments at a density of up to 6 units per acre, subject to the requirements of Article VII, §1-59.
 6. Church.
 7. Family Daycare Home regulated by §390 of the Social Services Law of the State of New York or a commercial day-care center.
 8. Bed and Breakfast/Inn.
 9. Public Use.
 10. Restaurant.
 11. Residential Care Facility.
 12. Funeral Home.
 13. Cemetery.
 14. Home Occupation located in principal building (§1-58).
 15. Non-Intensive Agriculture or Farming Operations. Unless exempted by New York State Agriculture and Markets Law Article 25AA, only agricultural or farming operations, excluding intensive agricultural operations, in lawful existence as of the date of adoption of these regulations shall be allowed to continue and shall be considered permitted or conforming uses subject to the regulations of the Agricultural District in §1-32.
- C. Special Use Permit.** Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of §1-17C. Such uses are subject

to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.

1. Home Occupation, in accessory building (§1-58).
2. Mobile Home Park (§1-61).
3. Recreation, Indoor Commercial.
4. Banquet, Conference Facilities.
5. Outdoor Recreation.
6. Motor Vehicle Repair Shops (§1-65).
7. Low-Intensity Professional Office or Service-oriented Business; including, but not limited to, retail, restaurant or bar use, and mini storage facilities. General use should occupy less than 2,000 square feet; however, larger uses with low traffic generation and operational characteristic may be allowed.
8. Club, Private.

D. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 112.

E. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 112.

F. Minimum Setback. Please see the Town and Village of Nunda Bulk and Use Table, Page 112.

G. Height. Please see the Town and Village of Nunda Bulk and Use Table, Page 112.

1-35. Open Space District (OSD).

- A. **Intent.** The Town and Village of Nunda are fortunate to have significant tracts of open space. These areas define the rural lifestyle and landscape that many residents and visitors enjoy and directly associate with their quality of life. The Open Space District is provided to minimize the impact of conventional development practices on significant natural vistas and landscape features (rural heritage features) essential to the rural quality of life viewed as integral to the welfare of the community.
- B. **Permitted Uses.** Permitted uses shall be as follows, subject to requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, regulations applicable to all zoning districts in accordance with Article VII, and, if applicable, subdivision approval in accordance with Article XIII.
1. Dwelling, Single-Family.
 2. Customary Agricultural or Residential Accessory Use.
 3. Agricultural or Farming Operation.
 4. Agricultural Support Industry.
 5. Church.
 6. Family Daycare Home as regulated by §390 of the Social Services Law of the State of New York.
 7. Golf Course, Public or Private.
 8. Cemetery.
 9. Roadside Stand.
 10. Transit-oriented Parking Lot.
- C. **Special Use Permit.** Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of §1-17C. Such uses are subject to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.
1. Outdoor Recreation, Private Club.
 2. Nature Preserve, Private.
 3. Kennels or Stables, Commercial (§1-50).
 4. Banquet/Conference Facilities.
 5. Mobile Home Park (§1-61).
 6. Horticultural Use /Greenhouse, Commercial.
 7. Junkyard.

8. Telecommunications Tower (Article XII).
 9. Residential Wind Energy Conversion Systems (Article XVI).
 10. Commercial/Industrial Wind Energy Conversion Systems (Article XVI).
 11. Dwelling, Multi-Family (§1-59).
 12. Machine Shop, small scale (Two or less employees).
 13. Campground (§1-62).
 14. Recreational Areas such as miniature golf, go-carts, drive-in movie theatres, downhill skiing, rodeo facilities and racetracks.
 15. Adult Uses (Article XV).
 16. Home Occupation (§1-58).
- D. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 113.
- E. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 113.
- F. Minimum Setback. Please see the Town and Village of Nunda Bulk and Use Table, Page 113.
- G. Height. Please see the Town and Village of Nunda Bulk and Use Table, Page 113.

1-36. Mixed Use District (MU).

- A. Intent. To implement the vision of the Nunda Comprehensive Plan, the intent is to provide use and development regulations appropriate to revitalization of the historic Nunda commercial center. Particular attention should be paid to façade treatments and signage, pedestrian circulation and, if applicable, building location and vehicle circulation so that the historic village development pattern remains intact.

The Mixed Use District is provided for the location of shops, services, small workplaces, civic and residential buildings central to a neighborhood or grouping of neighborhoods and within walking distance of dwellings. Since the Town and Village of Nunda desire the retention of its rural landscape and quality of life, mixed-use areas are based upon existing village and hamlet centers.

- B. Permitted Uses. Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIII.
1. Bed and Breakfast accommodations as a secondary use of a primary residence or the primary use of an accessory structure.
 2. Inn accommodations.
 3. Retail and Service-oriented Businesses uses less than or equal to 20,000 square feet of first floor area.
 4. Structure, Mixed- Use less than or equal to 10,000 square feet in first floor area to include retail or service uses on the first floor or street side of the building, and office or residential on the upper floors or to the rear of the building.
 5. Public Uses.
 6. Offices less than or equal to 10,000 square feet in first floor area.
 7. Dwelling, Single-Family.
 8. Dwelling, Multi-Family.
 9. Church.
 10. Customary Residential Accessory Use.
 11. Apartments as an upper story use of a mixed-use structure or as an integrated component of a mixed townhouse and single-family residential development.
 12. Day-care, as defined by Section 390 of the Social Services Law of the State of New York.
 13. Clubs, Private.

14. Bar, tavern or any use, which is licensed to provide alcoholic beverages for on-premise consumption.
 15. Restaurant, including accessory outdoor dining facilities.
- C. **Special Use Permit.** Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of § 1-17C. Such uses are subject to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.
1. Secondary garage not related to residential use.
 2. Gasoline Stations, Neighborhood (§ 1-65).
 3. Motor Vehicle Service Station or Sales (§ 1-65).
 4. Motor Vehicle Repair Shop (§ 1-65).
 5. Motor Vehicle Wash.
 6. Convenience store with retail fuel sales (§1-65).
 7. Parking lot as principal use.
 8. Accessory outdoor sales or storage of goods, materials or equipment (§1-53).
 9. Home Occupation (§1-58).
 10. Light Industrial Uses.
- D. **Lot Size.** Please see the Town and Village of Nunda Bulk and Use Table, Page 114.
- E. **Lot Coverage.** Please see the Town and Village of Nunda Bulk and Use Table, Page 114.
- F. **Minimum Setback.** Please see the Town and Village of Nunda Bulk and Use Table, Page 114.
- G. **Height.** Please see the Town and Village of Nunda Bulk and Use Table, Page 114.
- H. **General Requirements**
1. Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings, which adhere to the scale, volume, spacing, and setback of existing buildings along fronting streets, exhibit demonstrable compatibility.

- b. New buildings, which exceed and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.
 - (1) On new streets, allowable building and lot types will establish the development pattern.
 - (2) New construction favors retail first floor, office, or residential second floor.
 - (3) Every building lot shall have frontage upon a public street or square.
- 2. Street front architectural features. Street front facades, particularly "infill" lots, should be respectful of and sympathetic to adjacent buildings' stringcourse, cornice and water table heights, rhythm and proportion of windows and doors, and the scale and massing of architectural elements. Pedestrian amenities should be an integral part of the design, including exterior lighting, signage, awnings, canopies, curbcuts, entrances and display windows.

1-37. Village-Neighborhood Residential District (V-NRD).

- A. Intent.** The Village-Neighborhood Residential District provides for residential infill development surrounding traditional town centers including village and hamlet areas and their logical extensions, a range of housing types is encouraged. Low-intensity business activity is permitted in mixed-use buildings at residential scale.
- B. Permitted Uses.** Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIII.
1. Dwelling, Single-Family.
 2. Dwelling, Two-Family
 3. Apartment.
 4. Dwelling, Attached or Row.
 5. Customary Residential Accessory Use.
 6. Bed and Breakfast/Inn.
 7. Boarding or Rooming Houses for up to four roomers.
 8. Congregate Housing designed within the "civic" building type.
 9. Church.
 10. Structure, Mixed Use up to 3,000 SF of first floor area.
 11. Agricultural or Farming Operation.
 12. Cemetery.
 13. Public Use.
- C. Special Use Permit.** Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of §1-17C. Such uses are subject to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.
1. Accessory Dwelling (§1-60).
 2. Home Occupation (§1-58).
 3. Commercial use in a mixed-use building, located on an arterial or at the intersection of a neighborhood street and a larger capacity street.
 4. Family Daycare Home.
 5. Banquet, Conference Facilities.
 6. Outdoor Recreation.

- 7. Recreation Area.
 - 8. Transit-oriented parking lot as a principal use.
- D. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 115.
- E. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 115.
- F. Minimum Setback. Please see the Town and Village of Nunda Bulk and Use Table, Page 115.
- G. Height. Please see the Town and Village of Nunda Bulk and Use Table, Page 115.
- H. General Requirements.
- 1. Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings, which adhere to the scale, volume, spacing, and setback of existing buildings along fronting streets, exhibit demonstrable compatibility.
 - b. New buildings, which exceed and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article I illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.
 - (1) On new streets, allowable building and lot types will establish the development pattern.
 - (2) New construction favors retail first floor, office, or residential second floor.
 - (3) Every building lot shall have frontage upon a public street or square.

1-38. Village-Neighborhood Transitional District (V-NTD)

- A. Intent.** The purpose of the Village-Neighborhood Transitional District is to provide mixed or multi-family residential development at a density consistent with the surrounding uses. In existing mixed-use areas of the village or hamlet areas and subject to a special use permit, small commercial uses may also be appropriate, generally in existing buildings. Generally these areas near commercial/service centers, acting as transition between neighborhood residential development densities and commercial/industrial densities, and where public water and sanitary sewers are available or shall be encouraged.
- B. Permitted Uses.** Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII, Regulations Applicable to All Zoning Districts, and, if applicable, subdivision approval in accordance with Article XIII.
1. Dwelling, Single-Family.
 2. Dwelling, Two-Family.
 3. Customary Residential Accessory Use.
 4. Accessory Dwelling, subject to the requirements of Article VII, §1-60.
 5. Apartments at a density of up to 6 units per acre, subject to the requirements of Article VII, §1-59.
 6. Church.
 7. Family Daycare Home regulated by §390 of the Social Services Law of the State of New York or a commercial day-care center.
 8. Bed and Breakfast/Inn.
 9. Public Use.
 10. Restaurant.
 11. Residential Care Facility.
 12. Funeral Home.
 13. Cemetery.
 14. Home Occupation located in principal building (§1-58).
 15. Non-Intensive Agriculture or Farming Operations. Unless exempted by New York State Agriculture and Markets Law Article 25AA, only agricultural or farming operations, excluding intensive agricultural operations, in lawful existence as of the date of adoption of these regulations shall be allowed to continue and shall be considered permitted or conforming uses subject to the regulations of the Agricultural District in §1-32.
- C. Special Use Permit.** Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of §1-17C. Such uses are subject

to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.

1. Home Occupation located in accessory building (§1-58).
2. Mobile Home Park (§1-61).
3. Recreation, Indoor Commercial.
4. Banquet, Conference Facilities.
5. Outdoor Recreation.
6. Motor Vehicle Repair Shops (§1-65).
7. Low-Intensity Professional Office or Service-oriented Business; including, but not limited to, retail, restaurant or bar use, and mini storage facilities. General use should occupy less than 2,000 square feet; however, larger uses with low traffic generation and operational characteristic may be allowed.
8. Club, Private.

D. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 116.

E. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 116.

F. Minimum Setback. Please see the Town and Village of Nunda Bulk and Use Table, Page 116.

G. Height. Please see the Town and Village of Nunda Bulk and Use Table, Page 116.

1-39. Village-Mixed Use District (V-MU).

- A. Intent.** To implement the vision of the Nunda Comprehensive Plan, the intent is to provide use and development regulations appropriate to revitalization of the historic Nunda commercial center. Particular attention should be paid to façade treatments and signage, pedestrian circulation and, if applicable, building location and vehicle circulation so that the historic village development pattern remains intact.

The Village-Mixed Use District is provided for the location of shops, services, small workplaces, civic and residential buildings central to a neighborhood or grouping of neighborhoods and within walking distance of dwellings. Since the Town and Village of Nunda desire the retention of its rural landscape and quality of life, mixed-use areas are based upon existing village and hamlet centers.

- B. Permitted Uses.** Permitted uses shall be as follows, subject to the requirements specified below and elsewhere in these regulations, especially site plan approval in accordance with Article XIV, landscaping in accordance with Article IX, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIII.
1. Bed and Breakfast accommodations as a secondary use of a primary residence or the primary use of an accessory structure.
 2. Inn accommodations.
 3. Retail and Service-oriented Businesses uses less than or equal to 20,000 square feet of first floor area.
 4. Structure, Mixed- Use less than or equal to 10,000 square feet in first floor area to include retail or service uses on the first floor or street side of the building, and office or residential on the upper floors or to the rear of the building.
 5. Public Uses.
 6. Offices less than or equal to 10,000 square feet in first floor area.
 7. Dwelling, Single-Family.
 8. Dwelling, Multi-Family.
 9. Church.
 10. Customary Residential Accessory Use.
 11. Apartments as an upper story use of a mixed-use structure or as an integrated component of a mixed townhouse and single-family residential development.
 12. Day-care, as defined by Section 390 of the Social Services Law of the State of New York.
 13. Clubs, Private.

14. Bar, tavern or any use, which is licensed to provide alcoholic beverages for on-premise consumption.
 15. Restaurant, including accessory outdoor dining facilities.
- C. Special Use Permit. Uses permitted with a special use permit from the Zoning Board of Appeals, subject to the requirements of §1-17C. Such uses are subject to the general development standards for specific uses found in Article VII regulations applicable to all districts, to site plan approval in accordance with Article XIV, to landscaping requirements in accordance with Article IX, and to other standards as may be required under Site Plan Review by the Planning Board to assure development and operation of the use without a detrimental impact on adjacent uses.
1. Secondary garage not related to residential use.
 2. Gasoline Stations, Neighborhood (§ 1-65).
 3. Motor Vehicle Service Station or Sales (§1-65).
 4. Motor Vehicle Repair Shop (§1-65).
 5. Motor Vehicle Wash.
 6. Convenience store with retail fuel sales (§1-65).
 7. Parking lot as principal use.
 8. Accessory outdoor sales or storage of goods, materials or equipment (§1-53).
 9. Home Occupation (§1-58).
 10. Light Industrial Uses.
- D. Lot Size. Please see the Town and Village of Nunda Bulk and Use Table, Page 117.
- E. Lot Coverage. Please see the Town and Village of Nunda Bulk and Use Table, Page 117.
- F. Minimum Setback. Please see the Town and Village of Nunda Bulk and Use Table, Page 117.
- G. Height. Please see the Town and Village of Nunda Bulk and Use Table, Page 117.
- H. General Requirements
1. Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.
 - a. New buildings, which adhere to the scale, volume, spacing, and setback of existing buildings along fronting streets, exhibit demonstrable compatibility.

- b. New buildings, which exceed and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume.
 - (1) On new streets, allowable building and lot types will establish the development pattern.
 - (2) New construction favors retail first floor, office, or residential second floor.
 - (3) Every building lot shall have frontage upon a public street or square.
- 2. Street front architectural features. Street front facades, particularly “infill” lots, should be respectful of and sympathetic to adjacent buildings’ stringcourse, cornice and water table heights, rhythm and proportion of windows and doors, and the scale and massing of architectural elements. Pedestrian amenities should be an integral part of the design, including exterior lighting, signage, awnings, canopies, curbcuts, entrances and display windows.

ARTICLE VII
Regulations Applicable to All Zoning Districts

1-40. Principal buildings.

No single-family or two-family residential lot shall have erected upon it more than one principal building. No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered to provide a yard or open space for any other principal building.

1-41. Accessory buildings.

- A. All accessory buildings in the Village-Neighborhood Transitional District, Village-Neighborhood Residential District, and Village-Mixed Use District require a building permit from the Village of Nunda Zoning Enforcement Officer.**
- B. In all other zoning districts, a building permit is not required for accessory buildings with:
 - (1) a total floor area of 200 square feet or less,**
 - (2) a maximum height of 10 feet, and**
 - (3) no permanent foundation.****
- C. All accessory buildings, either attached or detached, must conform to the setback requirements of the zoning district in which it is located.**

1-42. Permissible structures within minimum required side or rear setbacks.

- A. Fences six feet or less in height, excluding dog runs, may be located along the side or rear lot line.**
- B. Unenclosed steps, stairways or ramps providing access to the first story of a building may extend into any required setbacks, but may not interfere with any traffic. Decks and porches shall not extend into required setbacks.**

1-43. Access to improved street.

No permit for the construction of any building shall be approved, unless such structure has access from an improved street or a street on an official map, plan, approved subdivision or duly filed plat in accordance with Subdivision of Land, Article XIII.

1-44. Clear vision at intersections.

Clear vision shall be maintained on corner lots in a triangle formed by the street lines of such lots to a point 35 feet from the intersection and a line connecting those points. Within that area no fence, wall, hedge, screen planting, bushes or shrubbery shall be

permitted higher than two feet above the average finished grade of the lot. Trees shall be permitted within the area only if maintained and trimmed so that no branches or foliage is less than eight feet above the average finished grade of the lot.

1-45. Lots in more than one district.

Where a district boundary line, as appearing on the Official Zoning Map, divides a lot in a single ownership at the time of this enactment, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than 50 feet beyond the district boundary line.

1-46. Corner and through lots.

The locations of all buildings on corner lots and on lots extending between two parallel streets shall comply with the following requirements: any yard fronting on an improved street shall be a front yard, one other yard shall be a rear yard, any other yards shall be a side yard.

1-47. Creation of a new lot.

When a new lot is formed so as to include within its boundaries any part of a former lot on which there is an existing building or use, the subdivision must be carried out in such a manner as will not infringe upon any of the provisions of this chapter, either with respect to any existing structures or use or any proposed structures or use.

1-48. Travel trailers.

Except as permitted by §1-56, Temporary Uses and Structures, no person shall use or occupy any travel trailer, tent trailer, tent or motor home for living or sleeping quarters within Nunda for more than 45 days per calendar year, unless such use is carried on within a campground.

1-49. Keeping of Livestock.

Keeping, sheltering, harboring or maintaining livestock, except as part of an agricultural or farming operation, or a property located in a state certified, county managed Agricultural District, shall be subject to the following standards:

- A. The minimum size parcel for keeping, sheltering, harboring or maintaining livestock shall be five acres.

- B. No housing or stabling of livestock or storage of manure or other odor- or dust-producing material shall be allowed within 50 feet of any lot line separating the livestock use from adjacent residences or other uses.
- C. Slaughterhouses and rendering plants are prohibited.

1-50. Kennels.

Kennels shall be subject to the following requirements:

- A. Demonstration that the kennel will not create nuisance conditions for adjoining properties due to noise or odor.
- B. Demonstration that all animals will be confined to the property.
- C. Demonstration of adequate methods for sanitation and sewage disposal.
- D. Every kennel and its associated outside dog runs shall be located at least 200 feet from the nearest dwelling (other than the owner or user of the property) and at least 100 feet from any lot line.

1-51. Dumping of waste material.

Dumping, piling or accumulation of refuse, garbage (other than in closed containers which are regularly emptied in a lawful manner), waste material, scrap or other noxious substances is prohibited.

1-52. Filling and excavating.

- A. Any excavation or filling, including removal of topsoil, shall require Site Plan Review by the Planning Board in accordance with the requirements of Article XIV.
- B. Placement of fill must be in accordance with Planning Board approved Site Plans, particularly sections in relation to drainage, erosion control and flood hazard prevention. Installation or improvement of natural or constructed drainage channels may be required to assure adjacent property owners are not negatively impacted by fill activities.
- C. Any grade alteration, which involves removal of vegetation, but no built improvements on an area greater than 5,000 square feet, shall be seeded to provide an effective cover crop within the first season after initiation of the grade change operation.
- D. Only unregulated fill materials, such as uncontaminated soil, asphalt, brick, stone, concrete, glass and organic debris from the premises may be used in such fill activities.

1-53. Outdoor storage of materials and equipment.

- A. No material of any kind shall be stored outdoors in any zoning district, except on a one- or two-family lot, unless:
 - (1) Allowed as part of and approved site plan;
 - (2) Used in the construction or alteration of a structure on the same lot or in the same development and stored for not more than one year or not more than 60 days after completion of construction, whichever is less; or
 - (3) Such outdoor storage is limited to machinery, equipment or supplies essential to the operation of a farm or storage of any products grown on the premises of a farm or nursery.
 - (4) NYS Agriculture and Markets Law Section 25AA, the property is located in a state certified, county managed Agricultural District and the storage is expressly allowed by New York State Agricultural and Markets Law.
- B. No more than one unregistered, unlicensed motor vehicle is allowed to be stored outside on any lot except in accordance with §1-65, Motor vehicle fueling, service, sales or repair establishment.
- C. No front yard shall be used for any open storage or other storage of boats, motor homes, camping trailers, utilities trailers or other similar equipment for more than 90 days in a 12-month period.
- D. All enclosed storage shall be within structures, which meet the requirements of the New York State Uniform Fire Prevention and Building Code. Storage in mobile homes not connected to public utilities or tractor-trailer bodies is not allowed in any district.
- E. No outdoor storage shall occur within 100 feet of a residential or transitional district. Outdoor storage shall provide a combination of distance and appropriately dense plantings or setback from residential or transitional uses or districts.

1-54. Ponds.

A pond or any artificial body of water over a depth of two feet must be set back a minimum of 100 feet from all property lines and existing septic systems.

1-55. Fences, walls and other structural screening elements.

- A. A Fence Permit from the Code Enforcement or Zoning Enforcement Officer is required prior to installation of a fence unless prohibited by the New York State Agriculture and Markets Law.
- B. Any fence shall have its most pleasant or decorative side facing the adjacent properties. The fence posts and other supporting structures of the fence shall face the interior of the area to be fenced.

- C. The height of all fences shall be measured from the average finished grade of the lot at the base of the fence.
- D. Fences six feet or less in height, excluding dog runs, may be located along the side or rear lot line.
- E. Fences may be erected, altered or reconstructed to a height not to exceed three (3) feet above ground level when located within twenty-five (25) feet of the street.
- F. Fences may be erected, altered or reconstructed to a height not to exceed six (6) feet above ground level when located more than twenty-five (25) feet of any street.
- G. Fences incorporating barbed wire, electric current or similar materials or devices shall be allowed only when necessary for agricultural or public utility operations and, unless part of an agricultural operation, shall be subject to a minimum ten-foot setback.
- H. The Planning Board, as part of subdivision or Site Plan Review, may require a fence or other screen to shield adjacent residences or other uses from undesirable views, noise or light.
- I. Fences and walls shall be maintained to provide functional, visual and structural integrity.
- J. Fences designed to maim or injure prospective intruders are prohibited except as authorized in Subsection E above.
- K. All fences shall be in compliance with §1-44 regarding clear vision at intersections.
- L. These regulations shall not apply to retaining walls.

1-56. Temporary uses and structures.

Temporary use permits may be issued by the Code Enforcement or Zoning Officer for a period not exceeding one year for nonconforming uses incident to housing and construction projects, including such structures and uses as the storage of building materials and machinery, the processing of building materials, a real estate office located on the tract being offered for sale or a temporary dwelling, such as a recreational vehicle with appropriate provisions for water supply and sewage disposal used during construction of a dwelling, provided that such permits are conditioned upon agreement by the owner or operator to remove the structure or structures or use upon expiration of the permit or issuance of any applicable Certificate of Occupancy. Such permits may be renewed upon application to the Code Enforcement or Zoning Officer for additional periods not exceeding one year.

1-57. Swimming pools.

Residential swimming pools shall comply with New York State Uniform Fire Prevention and Building Code Regulations §4101. Pool and/or deck placement shall comply with structure setback requirements of the applicable zoning district. Residential swimming pools require a Swimming Pool Permit from the Code Enforcement or Zoning Enforcement Officer.

1-58. Home Occupations.

- A. The occupation or profession shall be carried on wholly within the principal building.
- B. Not more than two persons outside the household residing in the dwelling shall be employed in the home occupation.
- C. There shall be no exterior display, other than a sign (Article XI §1-90A, §1-91F), no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building.
- D. No offensive odor, noise, vibration, smoke, dust, heat or glare shall be produced, nor will the storage or handling of hazardous material be allowed.
- E. No more than 40% of the floor area of the residence will be allowed for the used of the home occupation.
- F. The Zoning Board of Appeals may grant a special use permit to house the home occupation in an accessory building, subject to the requirements of §1-17C.
- G. Site plan is required for Home Occupations. For home occupations with more than two employees, a Special Use Permit is required.
- H. Deliveries shall not interfere with safe traffic movement on adjacent roadways.

1-59. Multi-family dwellings.

- A. Driveways for ingress and egress shall be as required by the Town and Village of Nunda.
- B. The minimum distance between buildings in a multi-family development shall be 25 feet. No multi-family dwelling or required recreation area shall be closer to a preexisting single family or two-family dwelling than 50 feet.
- C. Parking areas may be located in any yard other than the front yard, but no closer than 20 feet from any property line and shall comply with all other regulations of the district in which the use is located.
- D. Every multi-family dwelling building in a development shall have minimum setback of 20 feet from all interior roads, driveways and parking areas.
- E. Each multi-family dwelling development shall provide a recreation area or areas furnished with suitable equipment at a standard of 100 square feet for each dwelling unit with minimum of 1,600 square feet per area.
- F. Multi-family dwellings must be served by public water and sanitary sewers.

- G. Development applications for multi family dwelling units shall be subject to Site Plan Review by the Planning Board in accordance with Article XIV.
- H. No multi-family building shall contain more than eight dwelling units.

1-60. Accessory dwelling units.

- A. The owner(s) of the lot upon which the accessory dwelling unit is located shall reside within the principal or accessory dwelling unit.
- B. An accessory dwelling unit may be located either in the principal building or in an accessory building.
- C. The area for an accessory dwelling unit shall not exceed 40% of the area of the principal dwelling unit.

1-61. Double-wide mobile homes and mobile home parks.

- A. All double-wide mobile homes and preexisting single-wide replacements installed and occupied pursuant to this section shall conform to the New York State Uniform Fire Prevention and Building Code.
- B. All mobile homes installed and occupied pursuant to this section shall also comply with such additional construction regulations as may be adopted by resolution of the governing board(s).
- C. All double-wide mobile homes and single-wide replacements must be skirted prior to the issuance of a Certificate of Occupancy.
- D. The minimum size of a mobile home park shall be 20 acres.
- E. The minimum size of a lot in a mobile home park shall be 8,000 square feet.
- F. Minimum required setbacks.
 - (1) Front: 30 feet from an interior road.
 - (2) Side: 30 feet.
 - (3) Rear: 30 feet.
- G. No mobile home or communal recreation area in a mobile home park shall be located closer to a preexisting single-family or two-family dwelling than 50 feet.
- H. Private roads providing access to individual lots in a mobile home park shall have a pavement as required by the Town or Village of Nunda Department of Public Works.
- I. Every mobile home park shall provide common recreational open space furnished with suitable equipment at a standard of 100 square feet per dwelling unit with a minimum area of 12,000 square feet per park.
- J. Mobile home parks shall be served by public water and sanitary sewers, unless a suitable package treatment system is utilized and approved by the Planning Board.

1-62. Campgrounds.

- A. Minimum size of a campground shall be 10 acres.
- B. Campsites shall have a minimum area of 2,500 square feet and a minimum width of 40 feet.
- C. Roadways in the camp shall have a minimum width of 12 feet for one-way traffic and 18 feet for two-way traffic.
- D. All roads and parking areas shall be paved or dust-treated.
- E. Suitable covered garbage and recycling receptacles shall be available.
- F. Plans for sewage disposal, water supply, waste disposal and electrical hookups and the number and location of toilets, sinks, showers, water spigots and dump stations shall receive approval of the New York State Department of Environmental Conservation and/or the Livingston County Department of Health.
- G. Buildings shall be set back at least 100 feet from major streams and 50 feet from minor streams. Natural vegetation shall be retained wherever possible.

1-63. Roadside stands.

- A. If allowed by district regulations, produce, including fresh fruit, vegetables, flowers or other products, may be sold or offered for sale as an accessory use.
- B. Such sales may take place only during the period of May 1 through November 30 each year, except that apples, pumpkins, squash and honey produced on the premises may be sold year-round, and Christmas trees may be sold during the Christmas season. The hours of operation shall be no greater than 8:00am to 8:00pm daily, local time.
- C. If such sales of produce are from a structure, such structure shall not exceed 1,200 square feet in area nor exceed 13 feet in height.
- D. The Planning Board during Site Plan Review shall ensure that the proposed structure is architecturally compatible with the surrounding neighborhood and that adequate off-street parking is provided.
- E. One sign may be erected on the premises, attached to the stand, not exceeding one foot in height and two feet in length, identifying the farm stand.
- F. Nothing herein contained shall be applicable to the sale of livestock or the bulk sale of produce.

1-64. Drive-through facilities.

- A. All vehicle stacking areas shall be clearly identified through the use of pavement markings, signs and/or curbing and landscaping features and shall be designed so they do not interfere with safe pedestrian and vehicle circulation on the site or along the public right-of-way.

- B. The length of stacking areas shall be determined by the maximum length of stacking required to serve vehicles during the facilities peak hour of operation.
- C. All drive-through establishment vehicle stacking areas shall be located a minimum of 30 feet from any lot line adjoining a residential or transitional district.
- D. Any speaker system installed as part of the drive-through establishment shall be located a minimum of 30 feet from any property line adjoining a residential property.

1-65. Motor vehicle fueling, service, sales or repair establishment.

- A. In addition to the information required for Site Plan Review as specified in Article XIV, the site plan submitted shall also show the location and number of fuel tanks to be installed, the dimensions and capacity of each storage tank, the depth the tanks will be placed below the ground, the number and location of pumps to be installed and the type of structure and accessory buildings to be constructed.
- B. All fuel pumps shall be located at least 25 feet from any street or property line.
- C. The entire area of the site traveled by motor vehicle shall be hard-surfaced.
- D. Any repair of motor vehicles shall be performed in a fully enclosed building, and no motor vehicle shall be offered for sale on the site, except in accordance with an approved site plan. No motor vehicle parts or partially dismantled motor vehicle parts or partially dismantled motor vehicles shall be stored outside of an enclosed building.
- E. Up to 5 motor vehicles may be temporarily stored outside, not exceeding two months, at a repair or service establishment if adequate off-street parking spaces are available.
- F. Accessory goods for sale may be displayed outdoors on the pump island and the building island only. The outdoor display of oil cans and/or antifreeze and similar products may be placed on the respective island if provided for in a suitable stand or tank.
- G. No motor vehicle establishment with fuel-dispensing equipment shall be located within 300 feet of any public entrance to a church, school, library, hospital or charitable institution. Such distance shall be measured in a straight line from said public entrance to the lot line nearest said entrance along the street line.

1-66. Incentive zoning.

- A. Intent. The purpose of the incentive zoning provision is to offer incentives to applicants who provide amenities that assist Town and Village of Nunda in implementing specific physical, environmental or cultural policies of the Comprehensive Plan.

- B. Applicability.** Incentives may be offered to applicants in any district who offer an acceptable amenity to the community in exchange for the incentive.
- C. Allowable amenities.** The selection of land or other amenities within a parcel to be considered for incentive zoning shall be made by the applicant and subject to the approval of the Planning Board. The following amenities may be accepted by the governing board:
- (1) Permanent conservation of natural areas or agricultural lands.
 - (2) Provision of passive/active open space.
 - (3) Infrastructure improvements.
 - (4) Public access to waterfronts.
 - (5) Provision of trail linkages.
 - (6) Preservation of scenic views.
 - (7) Provision of cross access easement or shared access.
- D. Allowable incentives.** The following incentives may be granted by the local governing board to the applicant on a specific site:
- (1) Increases in dwelling unit density. Such density shall be limited to one dwelling unit per acre unless public water and sewers are available.
 - (2) Increases in lot coverage.
 - (3) Changes in setback or height standards.
- E. Criteria and procedure for approval.** Applications for incentives in exchange for amenities shall be submitted to the governing board of the municipality in which the property is located. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be proposed by the applicant:
- (1) The proposed amenity.
 - (2) The value of the proposed amenity.
 - (3) A narrative which:
 - (a) Describes the benefits to be provided to the community by the proposed amenity.
 - (b) Provides preliminary indication that there are adequate sanitary sewers, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located in order to accommodate additional demands, if any.
 - (c) Explains how the proposed amenity promotes implementation of the Comprehensive Plan.
 - (d) Describes the requested incentive and its value.
 - (4) The Planning Board will review the proposal and report to the governing board with its evaluation of the adequacy with which the amenity(s)/incentive(s) fit the site and how they relate to adjacent uses and structures. The Planning Board's review shall be limited to the planning, design and layout considerations involved with project review

or such other issues as may be specifically referred by the local governing board.

- (5) The local governing board will review the Planning Board's report. The local governing board will notify the applicant as to whether it is willing to further consider the proposal and hold a public hearing thereon.
- (6) All applicable requirements of the State Environmental Quality Review Act (SEQRA) shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sanitary sewer, water, transportation, waste disposal and fire protection facilities to:
 - (a) Serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal.
 - (b) Serve the onsite amenity and incentive, given the development scenario described in Subsection 6(a) above.
- (7) Following the hearing and in addition to compliance with all SEQRA requirements, the local governing board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other boards and officials for review and comment. In order to approve an amenity/incentive proposal, the local governing board shall determine that the proposed amenity provides sufficient public benefit to act on an application for site plan or subdivision approval pursuant to applicable regulations.
- (8) Following preliminary plan approval and subject to meeting all conditions imposed on the preliminary plan, including all documentation required by the Town or Village Attorney and local governing board on the amenity, the applicant may submit a final plan for review and approval.

1-67. Performance standards.

A. Applicability.

- (1) Planning Board action. In approving the site plan, the Planning Board shall decide whether the proposed use will conform to applicable performance standards required by local, State or Federal laws or which are generally recognized performance standards for a given industry.
- (2) Use subject to the performance standards procedures.
 - (a) All uses subject to site plan review must comply with these performance standards.

- (b) In addition, if the Code Enforcement or Zoning Officer has reasonable grounds to believe that any other existing or proposed use violates any of the performance standards, such proposed use may be required to certify compliance with these performance standards or such existing use may be cited for violation of these regulations.
- (c) Agricultural uses within state certified, county managed Agricultural Districts may not be subject to performance standards outlined in this chapter.

B. Performance standards procedures.

- (1) The Code Enforcement or Zoning Officer as part of the sketch plan conference shall tentatively identify whether a proposed use will be required to certify compliance with any performance standards. Certification may require signing a written statement or presentation of construction detail and a description of the specifications for the mechanisms and techniques to be used in restricting the emissions of any dangerous and objectionable elements. The applicant shall also file with such plans and specifications an affidavit acknowledging understanding and stating agreement to conform to the same at all times. Any information which is designated by the applicant as a trade secret and submitted herewith will be treated as confidential under provisions of the New York State Freedom of Information Law. During the course of Site Plan Review, the Planning Board will determine if the applicant's proposal falls within the performance standards.
- (2) Stormwater. For all developments disturbing more than one acre, New York State Department of Environmental Conservation (NYSDEC) requires that Municipalities receive a copy of the Storm Water Pollution Prevention Plan (SWPPP) prior to plan approval. Owner is required to comply with the NYSDEC's "SPEDES General Permit for Storm Water Discharge from Construction Activity" Permit # G-P-02-01

ARTICLE VIII
Nonconforming Uses, Buildings and Lots

1-68. Nonconforming uses and buildings.

- A. Except as otherwise provided in this chapter, the lawful use of land or buildings existing on the date of the adoption of this chapter may be continued although such use of building does not conform to the regulations specified in this chapter. However, the following provisions shall apply to all such nonconforming uses:
- (1) No nonconforming lot shall be further reduced in size.
 - (2) No nonconforming building shall be enlarged, extended or increased unless such enlargement would tend to reduce the degree of nonconformance. This shall not be interpreted to prohibit additions to residential dwellings that do not impact the degree of nonconformance with regard to setbacks or minimum lot size.
 - (3) No nonconforming use may be expanded except by grant of a variance by the Zoning Board of Appeals.
 - (4) Existing single-wide mobile homes lawfully in place may be replaced by single-wide mobile homes, which meet the requirements of the New York State Uniform Fire Prevention and Building Code and Federal Department of Housing and Urban Development (HUD) standards and shall comply with Article VII, §1-61.
- B. Discontinuance. In any district, whenever a nonconforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of one year, such nonconforming use shall not be reestablished, and all future uses shall be in conformity with the provisions of this chapter. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such considered to be completed, all rights to reestablish or continue such nonconforming use shall thereupon terminate.
- C. Except as allowed by §1-69 regarding nonconforming lots, no building damaged by fire or other causes to the extent of more than 50% of its value shall be repaired or rebuilt except in conformity with the regulations of this chapter. Nothing in this chapter shall prevent the strengthening or restoring to a safe condition any wall, floor or roof which has been declared unsafe by the Code Enforcement or Zoning Officer.
- D. A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50% of the assessed value of the building unless said building is changed to conform to the requirements of this chapter.

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

1-69. Nonconforming lots.

A residential lot existing at the time of passage of this chapter which is less than the required area or width or cannot meet the required front setback for any residential use in the district and was owned or under contract for purchase by persons other than those owning or leasing adjoining lots at the time of adoption of these regulations may be used for residential purposes, provided that the lot has a front setback equal to at least 60% of the required minimum and that minimum side and rear setback requirements can be met.

ARTICLE IX
Landscaping, Screening and Buffer Regulations

1-70. Intent.

The following standards are intended to implement the goals and policies of the Comprehensive Plan by assuring an acceptable degree of buffering between land uses, particularly between residential and nonresidential uses, providing a balance between developed uses and open space, enhancing the visual and aesthetic appearance of the community and encouraging preservation of existing natural features. Specifically, these regulations are intended to:

- A. Provide natural visual screening of parking areas and along property boundaries to protect the existing visual quality of adjacent lands.
- B. Reduce surface runoff and minimize soil erosion through the natural filtering capability of landscaped areas.
- C. Provide natural buffers that reduce glare and noise, provide wildlife corridors and protect wildlife habitats, wetlands, stream corridors and other significant environmental features.
- D. Moderate the microclimate of parking areas by providing shade, absorbing reflected heat from paved surfaces and creating natural wind breaks.
- E. Enhance the overall visual quality of the community by surrounding developed areas with a variety of plant materials that are consistent and compatible with the existing natural vegetation of the area.

1-71. Applicability.

These landscaping regulations shall apply to all uses in all districts. More specifically, requirements and procedures shall be as follows:

- A. Building permits for construction of new single-family or two-family dwellings in major subdivisions shall require preservation of existing vegetation.
- B. Major residential subdivisions shall be required to submit landscaping plans in accordance with §1-73 of this article indicating appropriate landscaping of entrances, common open spaces and recreation areas and perimeter buffer areas.
- C. Development activities requiring site plan approval shall submit, as part of such approval, a landscaping plan in accordance with §1-73 of this article.

1-72. General requirements for commercial and industrial uses.

- A. Existing site vegetation and unique site features, such as stone walls, shall be incorporated into landscaping plans to the maximum extent feasible. Existing

healthy trees, which are retained, shall be credited against the requirements of these regulations in accordance with their size and location.

- B. Issuance of a Certificate of Occupancy shall require completion of lot grading, seeding and required landscaping or posting of a performance guaranty acceptable to the Code Enforcement or Zoning Officer if the applicant cannot perform the work due to seasonal impracticalities.
- C. All required landscaping shall be of healthy stock, planted according to accepted horticultural practices. Landscaping plans shall clearly indicate who is responsible for plant maintenance during the first 12 months after planting, and a performance guaranty shall be posted for assuring replacement in kinds of plants, which die or become diseased within that time.
- D. All required landscaping shall be maintained in healthy condition. Failure to maintain such landscaping or to replace dead or diseased landscaping required by this article shall constitute a violation of these regulations.
- E. All plant material adjacent to parking areas, loading areas and driveways shall be protected by barriers, curbs or other means by damage from vehicles or from stormwater runoff.
- F. Where existing conditions make compliance with these regulations not feasible, the Planning Board, at its discretion, may approve planters, plant boxes or pots containing trees, shrubs and/or flowers to comply with the intent of these regulations.

1-73. Landscaping plan for commercial or industrial uses.

- A. Based on the scale and location of the project the Planning Board shall determine whether the landscaping plan must be prepared by a licensed landscape architect, landscape designer, licensed engineer or other professional. All landscaping plans shall contain the following information:
 - (1) A title block with the name of the project, then name of the person preparing the plan, a scale, North arrow and date.
 - (2) All existing significant plant materials on the site.
 - (3) Existing and proposed structures.
 - (4) Topographical contours at two-foot intervals.
 - (5) Parking areas.
 - (6) Access aisles.
 - (7) Drainage patterns.
 - (8) Location, size and description of all landscape materials existing and proposed, including all trees and shrubs, and shall identify those existing plant materials that are to be removed.
 - (9) Other information as may be required by the Code Enforcement or Zoning Officer and/or the Planning Board.

- B. Alternative landscaping plans may be submitted, provided that they meet the purpose and intent of these regulations.

ARTICLE X
Off-Street Parking and Loading Regulations

1-74. Intent.

The intent of this article is to prevent or alleviate congestion on public streets and to promote the public safety and welfare by establishing standards for the provision of off-street parking and loading spaces.

1-75. Applicability.

- A. In all districts, every industrial, business, institutional, recreational, residential or other use shall provide, at the time of any change of use or when any building or structure is erected, enlarged or increased in capacity, off-street parking for motor vehicles in accordance with the requirements of this and other applicable sections of these regulations, especially site plan approval in accordance with Article XIV and landscaping with Article IX.
- B. Loading spaces shall be provided and maintained for commercial and residential uses on the same premises with every building or structure erected, occupied, enlarged or intended to be used, involving the receipt or distribution by vehicles of material or merchandise. No such activity shall use public right-of-way or parking area for standing, loading and unloading services.
- C. Bus, taxi or passenger loading spaces may also be required, depending on the use.

1-76. Location of required spaces.

Parking and loading spaces shall be located in accordance with the following:

- A. For single-family, semi-detached, two-family, attached and accessory dwelling units, off-street parking shall be provided on the same lot with the building it serves.
- B. For multi-family dwellings, required off-street parking shall be located as close to the use as possible, given site conditions, and in no case more than 200 feet from the building it is required to serve.
- C. Access drives for any commercial or industrial use through any residential district shall not be permitted.
- D. The location, dimensions and signage of handicapped parking shall meet the requirements of the Americans with Disabilities Act (ADA).

1-77. Computation of required spaces.

- A. In places of public assembly in which patrons or occupants are accommodated in pews, benches or other similar seating facilities, each 24 inches of such seating shall be counted as one seat for the purpose of determining adequacy of parking.
- B. If spaces are provided on the basis of employees or students, the number on the maximum shift or peak period shall be used.
- C. Unless otherwise specified, off-street parking standards are based on square feet of all floor area, including the area of any accessory buildings.

1-78. Exceptions.

At the discretion of the Planning Board, uses within 500 feet of a municipal parking lot or designated on-street parking may be wholly or partially exempt from off-street parking requirements.

1-79. Alternate parking arrangements.

- A. The collective provision of off-street parking areas for two or more buildings or uses located on adjacent lots is permitted. Unless it has been demonstrated that joint use is appropriate in accordance with Subsection C below, the total of such off-street parking facilities shall not be less than the sum required for the various buildings or uses computed separately. Furthermore, the land upon which the collective facilities are located must be owned or leased by one or more of the collective users.
- B. Off-site parking. Off-site parking meeting the location requirements of §1-76 may be used to meet the requirements of this article. Such off-site parking shall be subject to deed, lease or contract restrictions acceptable to the Municipal Attorney binding the owner, heirs or assigns to maintain the required number of spaces available throughout the life of such use.
- C. Joint use. The off-street parking requirement of two or more use, structures or parcels of land may be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point in time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use. For all joint use parking areas and access drives, a legal maintenance agreement must be created to address the care and maintenance of the parking and entrance facilities.

1-80. Nonconforming parking and loading.

No building or lot alterations nor change of use shall be allowed which would increase the degree of nonconformity with the off-street parking and loading regulations of this article.

1-81. Off-street parking and loading standards by usage.

The listed parking standards reflect reasonable standards for most uses in most locations. The Nunda governing boards, in adopting these standards, are providing guidance to future developers, tenant and residents of uses requiring off-street parking and loading. From an environmental and cost perspective, it is always desirable to construct the least number of parking spaces to accommodate a particular use. The following general requirements apply to all off-street parking.

- A. Applicants are encouraged to provide evidence of lesser parking and loading demand if appropriate.
- B. The Planning Board, at its discretion, may require less off-street parking or loading if warranted based on the information presented. In any case where less off-street parking is required, the Planning Board reserves the right to require the set-aside of additional open space sufficient to accommodate the amount of off-street parking which would ordinarily be required.
- C. The Planning Board also reserves the right to request additional information, such as but not limited to expected number of employees, students, expected attendance or expected deliveries, relevant to judging the adequacy of listed parking and loading standards. Such information may result in application of off-street parking standards higher than those listed.
- D. For uses not listed, the required number of off-street parking or loading spaces shall be determined by the Planning Board based on similarity to listed uses and information provided by the applicant.
- E. In all cases, provided off-street parking and loading should be sufficient to prevent frequent use of on-street parking areas by customers or employees or the loading and unloading of passengers or materials from the public right-of-way in such a manner that is disruptive to traffic.
- F. In addition to the off-street parking required based on the following standards, one appropriately sized parking space shall be available for each commercial vehicle used in any business conducted on or from the premises.
- G. The Planning Board reserves the right to require off-street parking spaces suitable for vehicles with boats or trailers in tow.

1-82. Design standards for off-street parking spaces.

- A. All parking areas shall be located to the side or rear of the primary use. In some instances, at the discretion of the Planning Board, one row of convenience parking for commercial uses, not to exceed the primary building front length,

may be located to the front of the primary structure if sufficient space is available and appropriate ingress and egress point is located with adequate buffering provided to separate the parking area from the roadway.

- B. The size of standard perpendicular off-street parking spaces shall be a minimum of nine feet wide by 20 feet long.
- C. All parking areas, passageways and driveways serving commercial or industrial uses shall be illuminated adequately during the hours between sunset and sunrise when the parking area is in operation. Adequate shielding shall be provided by commercial and industrial uses to protect adjacent residential uses and traffic on adjacent roadways from the glare of such illumination. Adequate buffering (i.e. fencing, landscaping) shall be provided to protect adjacent residential uses from the glare of automobile headlights.
- D. Off-street parking areas shall include landscaping in accordance with Article IX.
- E. Where parking spaces abut sidewalks, landscaped areas, lighting fixtures, or fences, appropriate car stops shall be installed to prevent encroachment on or damage to such features.
- F. All off-street parking areas of more than 20 spaces shall provide a snow-storage area independent of required parking and loading areas.
- G. All required parking areas shall be independent of required emergency access lanes, loading areas and drive-through queuing lanes.
- H. No driveway to an off-street parking area shall be located closer than 50 feet to the intersection of any two streets or within 20 feet of any side lot line. The distances from the driveway to the intersection shall be measured by extending the curblines of the intersecting street until it intersects the curblines, extending if necessary of the driveway in question.
- I. Driveways shall be designed to provide for the safe and efficient movement of traffic between the roadway and the site, to eliminate the potential for stacking of vehicles along the public right-of-way and to minimize interference with pedestrians and vehicles using the site and the public right-of-way.

1-83. Design standards for loading spaces.

- A. Required loading spaces shall be 12 feet by 35 feet, with a fourteen-foot height clearance. If tractor-trailer deliveries are expected, at least one loading space 12 feet by 55 feet shall be provided.
- B. All required loading areas shall be independent of required emergency access lanes, parking areas and drive-through queuing lanes.

ARTICLE XI
Sign Regulations

1-84. Intent.

The intent of these provisions is to promote and protect the public health, safety and welfare by providing comprehensive time, place and manner restrictions on signage which shall include controls on size, height, quantity, location, spacing, shape, scale, proportions, lighting, motion, design and appearance. More specifically, the provisions of this article are intended to accomplish the following:

- A. Protect and enhance community appearance.
- B. Encourage commercial signs and graphics to be designed so as to be functional and compatible with the aesthetic appearance of the building they are located on and the surrounding neighborhoods.
- C. Reduce the frequency and magnitude of hazards to motorists and pedestrians caused by sign obstructions and distractions.
- D. Preserve and create more attractive business and residential environments.
- E. Conserve the value of buildings and properties and preserve existing neighborhood character.

1-85. Definitions.

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

A-FRAME SIGN – A portable sign with two or more steeply angled sides.

ARCHITECTUREAL FEATURE – A prominent or significant part or element of a building, structure or site.

ATTENTION-GETTING DEVICE – Any flag, streamer, spinner, light, balloon or similar device or ornamentation used for purposes of attracting attention for promotion.

AWNING and/or CANOPY – A roof-like protective cover over a door, entrance, window or outdoor service area that projects from the face of a structure and is constructed of durable materials, including but not limited to fabrics and/or plastics.

AWNING and/or CANOPY SIGN – Any sign that is a part of or attached to an awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area. A marquee is not a canopy

BANNER – Any sign of lightweight fabric or similar material that is mounted to a pole or a building at one or more edges.

BILLBOARD – A surface whereon advertising matter is set in view conspicuously and such advertising does not apply to premises or any uses of premises wherein it is displayed or posted.

BUILDING DIRECTORY SIGN – a sign listing the tenants or occupants of a building or group of buildings and that may indicate their respective professions or business activities.

BUILDING FRONTAGE – The width of a building facing a street or public parking lot; in the case of a corner lot, it may be either frontage at the option of the applicant. Where a mall exists, 'building frontage' shall mean that portion of the building perimeter facing a street or designated parking areas; in the case of two such perimeters, it may be either frontage at the option of the applicant.

BULLETIN BOARD – See "changeable-copy sign."

CHANGEABLE-COPY SIGN – A sign or portion thereof with character, letters or illustrations that can be changed or rearranged without altering the face or the surface of the sign.

COPY – Character, letters or illustrations that can be changed or rearranged on a changeable-copy sign.

DIRECTIONAL SIGN – Any sign limited to directional messages, principally for pedestrian or vehicular traffic, such as "one-way," "entrance" and "exit."

EXTERIOR ENTRANCE – A direct entrance from a public space to a habitable or tenantable space.

FASCIA SIGNS – See "wall sign."

FLAG – Any fabric, banner or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision or other entity.

FREESTANDING SIGN – A sign supported by one or more upright poles, columns or braces placed in or on the ground and not attached to any building or structure.

GRAPHIC SIGN – A sign, which is an integral part of a building façade. The sign is painted directly on, carved in or otherwise permanently embedded in the facade.

GROUND SIGN – See “freestanding sign.”

HANGING SIGN – See “projecting sign.”

HOLIDAY DECORATION SIGN – Temporary signs, in the nature of decorations, clearly incidental to and customarily and commonly associated with any national, local or religious holiday.

ILLUMINATED (DIRECTLY) SIGN – A sign designed to give forth artificial light directly from a source of light within such a sign.

ILLUMINIATED (INDIRECTLY) SIGN – A sign illuminated with a light so shielded that no direct rays therefrom are visible elsewhere on the lot where said illumination occurs.

LOGO – Any picture, shape or drawing, with or without letters or words, used to identify a product, service, business or organization.

MARQUEE – Any hood, awning or permanent construction that projects from a wall of a building, usually above an entrance.

NONCONFORMING SIGN – Any sign that does not meet the requirements of this article.

POLE SIGN – A sign that is mounted on a freestanding pole or other supports.

POLITICAL SIGN – A temporary sign announcing or supporting political candidates or issues in connection with any national, state or local election or caucus.

PROJECTING SIGN – Any sign other than a wall sign that is attached to and projects from the wall or face of a building or structure.

REFLECTIVE SURFACE – Any material or device which has the effect of intensifying reflected light, such as Scotchlite (trademark), Dayglo (trademark) or glass beads.

ROOF SIGN – A sign that is mounted upon the roof of a building.

SANDWICH SIGN – See “A-frame sign.”

SEE-THROUGH LETTERED SIGNS – Letters on a sign with transparent background, such as lettering on a window.

SIGN – Any material, structure or device, or part thereof, composed of lettered or pictorial matter which is located out-of-doors or on the exterior of any building or indoors as a window sign, displaying an advertisement, announcement, notice or name, and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interest of any person or business or cause when such is placed in view of the general public.

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

SIGN PERMIT – No sign shall be hereafter erected, placed or maintained at any place in the Town or Village of Nunda except as provided by this article and only after a permit therefore has been obtained in compliance with the provisions of this article, unless stated otherwise.

TEMPORARY ADVERTISING OR PROMOTIONAL BANNER – A banner that is in use for no more than two (2) weeks at a time.

TENANT IDENTIFICATION SIGN – A sign designed or intended to identify a tenant, occupant or establishment.

VEHICLE SIGN – Signs displayed on licensed and registered motor vehicles, which are used in conjunction with a business.

WALL SIGN – A sign attached to and erected parallel to the face of a building and supported throughout its length by such building.

WINDOW AREA – The total area of any single windowpane or series of windowpanes separated by mullions.

WINDOW SIGN – A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material or located inside within four feet of the window, but not including graphics in connection with customary window display of products.

WINDOW SIGN, TEMPORARY – A window sign not permanently affixed that does not identify the tenant, occupant or establishment and is limited to a maximum use of 120 days.

1-86. Nonconforming signs; applicability.

- A. Upon the adoption of this article, all nonconforming signs shall cease and desist at the time when there is any one or more of the following:
 - (1) A change in ownership.
 - (2) A change in use.
 - (3) Failure to maintain signs.
 - (4) Destruction or damage of said sign to the extent that 51% of its replacement cost as of the time of the destruction or damage.
 - (5) Creation of a hazard or disturbance to the health, safety and welfare of the general public as determined by the Code Enforcement or Zoning Officer.
- B. For the purpose of these regulations, the term "sign" does not include:
 - (1) Signs erected and maintained pursuant to and in discharge of any governmental function, including state or federal historic markers, or required by any law, ordinance or governmental regulation.
 - (2) Repainting, cleaning and other normal maintenance and repair of a sign or sign structure, unless a structural change is made or if the repair is in violation of the sign regulations.
 - (3) Memorial tablets or signs and locally designated historic markers not exceeding two square feet in area.
 - (4) Flags, emblems or insignias of the United States, the United Nations or similar organizations of which this nation is a member.
 - (5) Signs for the direction or convenience of the public, including signs that identify rest rooms or locations of public telephones or traffic control devices; however, the total area shall not exceed two square feet.

1-87. General regulations.

Signs are important components of the streetscape. However, signs do more than communicate information. By the quality of their design, they can either contribute to or diminish the character or appearance of structures as a whole. They can serve as attractive accents, or they can clutter and detract from the street's character. The purpose of these general requirements is to promote the visual cohesiveness of the streetscape by encouraging signs to be harmonious with the architecture of each building and the character of the surrounding area.

- A. No sign shall be permitted in any zoning district except in compliance with the provisions of these regulations.
- B. No sign shall be erected, altered, moved or used without first obtaining a sign permit where required, and signs shall be used only for a permitted use,

pecially permitted use or for a nonconforming use which may lawfully continue in accordance with the terms of these regulations.

- C. The Planning Board as part of site plan or subdivision review, or the Code Enforcement or Zoning Officer in reviewing sign permits not subject to such review, shall consider the compatibility of the sign's location, color(s), lettering, size and overall design with onsite and adjacent architecture and community character.
- D. If any sign consists of banners, posters, pennants, ribbons, streamers, spinners, balloons, searchlights and other similar moving, fluttering or revolving, flashing, smoke-generating or visual signal generation or animated devices that creates an adverse impact on safe traffic movements or strings of lights used for the purpose of advertising, illumination or attracting attention, the Code Enforcement or Zoning Officer will have the authority to have the offending sign or part thereof removed.
- E. Pictorial designs, logos and trademarks shall be permitted, provided that they are incorporated in and made a part of a permitted sign face, and the area thereof is included in calculating the total permitted sign face area allowed under these regulations.
- F. No application for approval of signs or for a sign permit shall be processed or permitted unless permission is granted from the property owner.
- G. No sign shall project across or over a property line or lease line without permission of the property owner.
- H. All signs shall comply with applicable provisions of the State of New York Uniform Fire Prevention and Building Code.
- I. Roof signs shall not exceed 18 square feet in area and no more than half of the width of the building. For buildings with multilevel roofs, signs are permitted only on the lowest roof and shall not exceed 10 feet in height from the mounting point on the roof.
- J. Maintenance of all signs:
 - (1) All signs and all components thereof, including supports, braces and anchors, shall be kept in a good state of repair.
 - (2) If the message portion of a sign is removed or a business or other activity is no longer operating, it shall be the property owner's responsibility to assure that the abandoned sign is promptly removed or properly covered to the satisfaction of the Code Enforcement or Zoning Officer.
- K. Every principal building or structure shall have street identification numbers. Such numbers shall be Arabic in design and must be the following size and placed in the following manner:
 - (1) Five (5) inch minimum height numbers and mounted in a secure fashion to the building's front wall, or to a porch or other fixed appurtenance in front of the building, or otherwise mounted in a manner that could be readily be seen from the street or road. All street numbers affixed to the

building shall be mounted at a height between four feet and ten feet above grade. Trees, shrubs, or other obstructions shall not block the view of the street numbers.

(2) One set of street numbers at a minimum height of four inches mounted on a rural (roadside) mailbox or on a post either of which will not be more than ten feet from the roadway. Such set of numbers will be posted on both sides of the mailbox or post if used.

- L. Billboards are prohibited in all zoning districts.
- M. Signs containing luminous material, sequin-studded letters or lettering with fluorescent paint are prohibited.
- N. Flashing, rotating, and moving signs, as well as signs with visible moving parts or simulation of movement are prohibited.
- O. No sign shall be erected or allowed to exist so as to constitute a traffic hazard. No sign or other advertising structure as regulated by any of the provisions of this section shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision; or at any location where, by reason of position shape or color, it may interfere with, obstruct the view or be confused with any authorized traffic sign, signal or device or makes use of word, phrases, symbols or character in such a manner as to interfere with, mislead or confuse traffic.

1-88. Location.

Off-premises signs are not permitted except as follows. Signs permitted within this section may also be on-premises.

- A. Signs necessary for the direction, regulation and control of traffic, street name signs, legal notices, warnings at railroad crossings and other official signs which are similarly authorized or erected by a duly constituted governmental body.
- B. Temporary signs directing persons to temporary exhibits, shows or events and sponsored by a nonprofit organization may be erected subject to the requirements in §1-89G and/or §1-89J.
- C. Political signs shall be permitted to be displayed off-premises, provided that permission is granted by the owner of the property on which it is displayed and subject to the requirements in §1-89F.
- D. Signs of civic organizations.

1-89. Permitted signs in all districts.

The following signs are permitted in any appropriate district without a permit:

- A. A nameplate, which shall not exceed two square feet in area on each side and must be attached to the building in some manner.
- B. Signs denoting the name and address of the occupants of the premises, which signs shall not exceed two square feet in area on each side.

- C. Signs advertising the sale, lease or rental of the premises upon which the sign is located, which sign shall not exceed six square feet in area, provided that such sign is erected or displayed not less than five feet from the property line. There shall not be more than one such sign per lot, except that on a corner lot two signs, one facing each street, shall be permitted. Such sign shall be removed within 24 hours after the time of sale, lease or rental.
- D. Signs customarily incidental to places of worship, libraries, museums, social clubs or societies, schools or municipal buildings which signs or bulletin boards shall not exceed 16 square feet in area and shall be located on the premises of such institution, provided that such signs or bulletin boards are erected or displayed not closer than 10 feet to any property line. There shall not be more than one bulletin board per lot, except that on a corner lot two signs, one facing each street, shall be permitted.
- E. Signs announcing no trespassing, signs indicating the private nature of the road, driveway or premises, and signs controlling the fishing or hunting on the premises, provided that the area of any one side of any such sign shall not exceed two square feet.
- F. Political signs shall be permitted to be displayed, provided that permission is granted by the owner of the property on which it is displayed. Such sign shall not project more than four feet in height above the natural grade on which the sign is located. Political signs may be erected not more than 60 days prior to the election or caucus to which they relate and shall be removed by the owner or occupant of the property not later than seven days thereafter.
- G. Signs/banners directing persons to temporary exhibits, shows or events and sponsored by a nonprofit organization may be erected subject to the following requirements:
 - (1) Permission is granted by a property owner, including state, county, town, village, utility companies and businesses, in writing, that a sign may be erected.
 - (2) Signs/banners directing shall not exceed 30 inches in height and 40 feet in length.
 - (3) Signs shall not be posted earlier than four weeks before the occurrence of the exhibit, show or event and shall be removed within one week after the exhibit, show or event.
- H. Window signs are permitted in all districts, provided that the following standards are complied with:
 - (1) See-through lettered window signs may not cover more than 80% of the total window area.
 - (2) An opaque sign may not cover more than 20% of the total window area.
 - (3) In case of a door, a window sign may not cover more than 10% of the window space in which it is located.

- I. Credit card advertisements or trade association emblems which are displayed together in an area which does not exceed one square foot may be displayed. Such signs shall be displayed flat on window or door surfaces. The purpose of these signs shall be solely to offer a service and not to advertise the business.
- J. Use of one temporary sandwich or A-frame sign, not to exceed two consecutive weeks per event, is permitted to identify premises for sale, rent, lease or directional; to identify a promotional sales event; to identify special exhibits, shows or events; or to identify a business conducted on the property in which said sign shall not exceed six square feet on each side to be used during the event/business hours only and not to exceed four feet above the natural grade on which the sign is located. Such signs are subject to the requirements provided in this section. No such sign shall be located in the street right-of-way. Permanent sandwich or A-frame signs are prohibited.

1-90. Permitted signs in Agricultural, Open Space, and Neighborhood Residential zoning districts.

A. Home occupation sign.

- (1) One home occupation sign shall be permitted for an approved home occupation. Such sign shall be no larger than two square feet in sign area. Shall not be closer than 10 feet from any property line; and, if a ground sign, shall not exceed four feet in height above the natural grade on which the sign is located. The sign may contain only the name and/or name of business and/or occupation of the resident.
- (2) On any town or village roads internal to a subdivision, Subsection A(1) above shall apply.
- (3) A home occupation sign(s) shall be permitted for an approved home occupation on a state or county road other than A(1) and (2) above, provided that the sign shall not exceed 10 square feet in area on either of two sides. The sign may contain only the name, products sold and/or name of the business and/or occupation of the resident; if a ground sign, shall not exceed six feet in height above the natural grade on which the sign is located; and no more than two signs shall be allowed for each such business or commercial activity conducted on the premises. A sign permit is not required.

B. Residential development signs:

- (1) Residential development signs shall be permitted at the main entrances of a development or sub division of real property provided that such subdivision shall contain at least five subdivision lots. A residential development sign shall be limited in height to not more than six feet above the natural grade on which the sign is located and shall be limited to 16 square feet in area. All residential development signs shall be

- freestanding and composed of durable materials and shall be complementary in design to the development or the surrounding area. Residential development signs shall require a sign permit and be subject to the criteria and standards of this article and additional standards required by the Planning Board through the subdivision approval process.
- (2) If proposed for location in the public road right-of-way, permanent provisions for sign maintenance are required. Generally, such signs are only allowed if part of a subdivision with a homeowner' association. Alternative long-term maintenance arrangements must be acceptable to the Planning Board.
 - (3) If proposed for location on private property outside the public road right-of-way, the owner of the property on which the sign is located shall be responsible for maintenance of the sign. A note to this effect shall be shown on the subdivision plan.
 - (4) Temporary residential development signs may be erected in suitable locations within the public road right-of-way or on adjacent public property. Such signs shall require a temporary sign permit. Such permits shall be for one year and may be renewed subject to demonstration of adequate sign maintenance. Such signs shall be removed by the owner or subdivision applicant when the last lot is sold or upon failure to renew the temporary sign permit.
- C. Garage sale signs. Such signs shall be erected not more than 72 hours prior to the garage sale and shall be removed at the conclusion of the garage sale. A sign permit is not required.
- D. Home improvement/contractor signs. Any temporary sign, not to exceed six square feet in area, identifying the name and services of a contractor/engineer/architect involved in a home improvement/contract or project within or upon the premises. Any such sign shall be placed no closer than 10 feet to any side property line shall project no more than four feet in height above the natural grade on which the sign is located and shall not limit visibility for safe entrance into a highway or interferes with pedestrian traffic. The sign shall be removed after the completion of the improvement project but not to exceed one year. A sign permit is not required.
- E. Townhouses or apartments. One identification sign not to exceed 16 square feet in area, indicating only the name and street address of the project, shall be permitted for each project. Such sign shall not be closer than 10 feet to any property line and shall not project more than six feet in height above the natural grade on which the sign is located. In the case of a wall sign, such sign shall not exceed 12 square feet in area, indicating only the name and street address of the project. Identification signs shall be subject to the criteria and standards of this article and the Planning Board.

1-91. Permitted signs in Mixed Use and Neighborhood Transitional Development zoning districts.

A. Business Identification Signs.

(1) Wall signs.

- (a) One wall sign not to exceed two square feet for each linear foot of width of the front of the wall of the building, or portion of the building occupied by the business, or a maximum of 100 square feet, whichever is less.
- (b) For multiple-story buildings, wall signs shall only be permitted on the ground floor.
- (c) The sign should identify the owner or enterprise conducting the business, the business engaged in upon the premises or products or services sold, or any combination of these.
- (d) Where a building has frontage on more than one street or public highway, one wall sign is permitted for each street frontage.

(2) Building directory sign for a multiple-use structure. One building directory sign indicating the name of the occupants of the building and the building number in order to direct persons to their proper destination once they are on site shall be permitted. Signs are to be no larger than 16 square feet in area on each side, including the nameplates of all the tenants or uses, and shall project not more than six feet in height above the natural grade on which the sign is located. The proposed sign's construction shall complement the architectural style and materials of the building it will serve. The proposed sign shall be subject to Planning Board review through the site plan approval process and shall require a sign permit. In determining the design, location and hours of illumination, the Board shall be guided by other pertinent sections of these regulations.

B. One projecting sign, provided that:

- (1) Such sign shall not exceed six square feet in area and shall not project more than two feet from the wall or surface to which it is mounted.
- (2) Such sign shall be at least eight feet to the bottom of the sign above the ground level immediately below and shall not in any way interfere with normal pedestrian or vehicular traffic.
- (3) There shall be no more than one projecting sign for each business or public entrance.
- (4) The supporting structure shall not be included in calculation of the sign area.

C. One on-premises freestanding business sign, provided that:

- (1) It indicates the name of the business. Such sign shall be no larger than 20 square feet in area and shall not project more than 10 feet in height above

the natural grade on which the sign is located. The proposed sign's construction shall compliment the architectural style and materials of the building it will serve. The proposed sign shall be subjected to Planning Board review through the site plan approval process and shall require a sign permit. In determining the design, location and hours of illumination, the Board shall be guided by other pertinent sections of these regulations.

- (2) Only one such sign may be permitted on each property. In the case of a lot occupied or intended to be occupied by multiple business enterprises (i.e., a neighborhood or community shopping center or plaza), one freestanding sign indicating the name of the development and the individual businesses shall be permitted.
 - (3) Such a sign may be double-faced.
 - (4) All freestanding signs shall be located a least 10 feet from any property line. Where property abuts a public right-of-way, the freestanding sign shall be setback at least 10 feet from the right-of-way.
 - (5) The location of the sign is such so as not to interfere with visibility for vehicular/pedestrian traffic entering or leaving the lot or traveling on any street.
- D. Signs for direction, provided that such sign(s) do not exceed two square feet in area. Such signs may indicate the entrance and exit to the property and location of parking. Such signs shall not project more than four feet in height above the natural grade on which the sign is located and shall be no closer than five feet to any property line.
- E. Temporary advertising or promotional banners.
- (1) Only one such sign shall be displayed by any business at one time.
 - (2) The size of any such banner shall count toward the total square footage of business identification signs allowed by §1-91A(1).
 - (3) No sign permit shall be required.
- F. Home occupation sign.
- (1) One home occupation sign shall be permitted for an approved home occupation. Such sign shall be no larger than two square feet in sign area. Shall not be closer than 10 feet from any property line; and, if a ground sign, shall not exceed four feet in height above the natural grade on which the sign is located. The sign may contain only the name and/or name of business and/or occupation of the resident.
 - (2) On any town or village roads internal to a subdivision, Subsection A(1) above shall apply.
 - (3) A home occupation sign(s) shall be permitted for an approved home occupation on a state or county road other than A(1) and (2) above, provided that the sign shall not exceed 10 square feet in area on either of two sides. The sign may contain only the name, products sold and/or

name of the business and/or occupation of the resident; if a ground sign, shall not exceed six feet in height above the natural grade on which the sign is located; and no more than two signs shall be allowed for each such business or commercial activity conducted on the premises. A sign permit is not required.

G. Residential development signs:

- (1) Residential development signs shall be permitted at the main entrances of a development or sub division of real property provided that such subdivision shall contain at least five subdivision lots. A residential development sign shall be limited in height to not more than six feet above the natural grade on which the sign is located and shall be limited to 16 square feet in area. All residential development signs shall be freestanding and composed of durable materials and shall be complementary in design to the development or the surrounding area. Residential development signs shall require a sign permit and be subject to the criteria and standards of this article and additional standards required by the Planning Board through the subdivision approval process.
- (2) If proposed for location in the public road right-of-way, permanent provisions for sign maintenance are required. Generally, such signs are only allowed if part of a subdivision with a homeowner' association. Alternative long-term maintenance arrangements must be acceptable to the Planning Board.
- (3) If proposed for location on private property outside the public road right-of-way, the owner of the property on which the sign is located shall be responsible for maintenance of the sign. A note to this effect shall be shown on the subdivision plan.
- (5) Temporary residential development signs may be erected in suitable locations within the public road right-of-way or on adjacent public property. Such signs shall require a temporary sign permit. Such permits shall be for one year and may be renewed subject to demonstration of adequate sign maintenance. Such signs shall be removed by the owner or subdivision applicant when the last lot is sold or upon failure to renew the temporary sign permit.

H. Garage sale signs. Such signs shall be erected not more than 72 hours prior to the garage sale and shall be removed at the conclusion of the garage sale. A sign permit is not required.

I. Home improvement/contractor signs. Any temporary sign, not to exceed six square feet in area, identifying the name and services of a contractor/engineer/architect involved in a home improvement/contract or project within or upon the premises. Any such sign shall be placed no closer than 10 feet to any side property line shall project no more than four feet in height above the natural grade on which the sign is located and shall not limit

visibility for safe entrance into a highway or interferes with pedestrian traffic. The sign shall be removed after the completion of the improvement project but not to exceed one year. A sign permit is not required.

- J. Townhouses or apartments. One identification sign not to exceed 16 square feet in area, indicating only the name and street address of the project, shall be permitted for each project. Such sign shall not be closer than 10 feet to any property line and shall not project more than six feet in height above the natural grade on which the sign is located. In the case of a wall sign, such sign shall not exceed 12 square feet in area, indicating only the name and street address of the project. Identification signs shall be subject to the criteria and standards of this article and the Planning Board.

1-92. Additional regulations.

- A. Awnings and/or canopy signs. Awnings and/or canopy signs are movable or fixed ornamental roof-like structures extended from the face of a structure and constructed of durable materials, including fabrics, which may contain their own illumination and may display lettering or other business insignia.
 - (1) No part of any awning or canopy shall:
 - (a) Project more than three feet from the structure face to which it is attached.
 - (b) Extend above the height allowed for structures in the respective zoning districts.
 - (c) Extend into any setback areas.
 - (d) Be lower than eight feet above the ground elevation of the wall face of the structure to which it is attached.
 - (2) A permit is required for the placement of awnings and/or canopy signs. Prior to the issuance of a sign permit, the applicant shall furnish to the Code Enforcement or Zoning Officer plans and specifications for the proposed installation. The application may be referred to the Planning Board prior to a sign permit being issued to consider the appropriate relationship between the size, design and shape of the awning and/or canopy sign and of the structure to which it will be attached, as well as the placement of the awning and/or canopies on the structure.

1-93. Application for permit; fees; issuance.

- A. Application for a sign permit. Application for the permit shall be made in writing to the Code Enforcement or Zoning Officer upon forms prescribed by and provided by the Code Enforcement or Zoning Officer and shall contain the following information:
 - (1) The name, address and telephone number of the applicant.

- (2) Location of buildings, structures or land to which, or upon which, the sign is to be erected.
- (3) A detailed drawing or blueprint showing a description of the construction details of the sign and showing the colors, lettering and/or pictorial matter composing the sign; position of lighting and other extraneous devices; and a location plan showing the position of the sign on any building or land and its positioning in relation to nearby buildings, structures or existing signs and to any private or public streets or highway.
- (4) Written consent of the owner of the building, structure or land to which or upon which the sign is to be erected in the event that the applicant is not the owner thereof.
- (5) A copy of any required or necessary electrical permit issued for said sign or a copy of the application thereof.

B. Fees.

- (1) The fees to be paid to the Town or Village of Nunda for the erection of each sign are listed on the schedule in the Town or Village Clerk's Office.
- (2) The Code Enforcement or Zoning Officer or other designated local official shall issue a permit number for each sign, which shall be permanently attached to or displayed on each sign, billboard or structure so that it may readily be ascertained that a permit has been issued for each use.

C. Issuance of permit. It shall be the duty of the Code Enforcement or Zoning Officer, upon the filing of any application for a sign permit to erect a sign, to examine such plans, specifications and other plans submitted with the application and, if necessary, the building or premises upon which it is proposed to erect the sign or other advertising structure. If it shall appear that the proposed sign is in compliance with all the requirements of this article and other laws and ordinances of Nunda, the Code Enforcement or Zoning Officer shall then, upon payment of the required fee in accordance with the schedule, shall approve the sign permit. If it shall appear that the proposed sign is not in compliance with this article or the laws and ordinances of the Town or Village of Nunda, the Code Enforcement or Zoning Officer shall deny the sign permit within 10 days of its receipt.

ARTICLE XII
Telecommunications Facilities

1-94. Intent.

The intent of these regulations is to promote the health, safety and general welfare of the residents of the Town and Village of Nunda. Specifically, these regulations are intended to:

- A. Provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations.
- B. Minimize the number of telecommunications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures.
- C. Minimize adverse visual effects from telecommunications facilities by requiring careful siting, visual assessment and appropriate screening.

1-95. Definitions.

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

ANTENNA (E) – A system of electrical conductors that transmit or receive electronic frequency signal. Such signals shall include but not be limited to radio, television, cellular, paging and personal communication services (PCS).

ACCESSORY FACILITY – Any facility or structure serving or being used in conjunction with a telecommunications tower and located on the same lot as the telecommunications tower. Examples of such facilities include transmission equipment and storage sheds, buildings or cabinets.

CO-LOCATION – The shared use of existing telecommunications facilities or other structures.

TELECOMMUNICATIONS FACILITY – Telecommunications towers, antenna(e) and accessory facilities used in connection with the provision of radio, television, cellular telephone, PCS, paging and similar services.

TELECOMMUNICATIONS TOWER OR TOWER – A structure on which transmitting and/or receiving antenna(e) are located. It includes, without limit, freestanding towers, guyed towers, monopoles and other similar structures.

1-96. Applicability.

- A. No telecommunication facility shall be used, erected, moved, reconstructed, changed or altered, except after approval of a special use permit, site plan, and in conformity with these regulations. No existing structures shall be modified to serve as a telecommunications facility unless in conformity with these regulations.
- B. These regulations shall apply to all zoning districts.
- C. Exemption to these regulations are limited to:
 - (1) New uses that are accessory to residential uses, such as satellite dishes and television antenna(e).
 - (2) Amateur radio operators as licensed by the federal communications commission (FCC).
 - (3) Lawful or approved uses existing prior to the effective date of these regulations.
- D. Where these regulations conflict with other laws and regulations of the Town or Village of Nunda, the more restrictive shall apply, except for tower height restrictions, which are governed by these special use standards.

1-97. General requirements.

- A. No special use permit or renewal thereof or modification of a current special use permit relating to a telecommunications facility shall be authorized by the Zoning Board of Appeals unless it finds that such telecommunications facility:
 - (1) Is located in the Agricultural or Open Space zoning districts, as defined by the Town and Village.
 - (2) Is necessary to meet the current or expected demand for service.
 - (3) Conforms to all applicable regulations promulgated by the federal Communications Commission (FCC), Federal Aviation Administration (FAA) and other federal agencies.
 - (4) Is considered a public utility in the State of New York.
 - (5) Is designed and constructed in a manner which minimizes visual impact to the extent practical.
 - (6) Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.
- B. A site plan, in conformance with Article XIV of this chapter. The site plan shall show elevations, height, width, depth, types of materials, color schemes and other relevant information for all existing and proposed structures, equipment, parking and other improvements. The site plan shall also include a description of the proposed telecommunications facility and such other information that the Planning Board requires.
- C. A completed environmental assessment form (EAF), including a visual EAF addendum, pursuant to State Environmental Quality Review Act (SEQRA).

- Particular attention shall be given to the visibility of the facility from key view points identified in the visual EAF, existing treelines and proposed elevations.
- D. A landscape plan delineating the existing trees or areas of existing trees to be preserved, the location and dimensions of proposed planting areas, including the size, type and number of trees and shrubs to be planted, curbs, fences, screening elevations of fences and material used.
 - E. A safety analysis of the electromagnetic environment surrounding the proposed telecommunications facility must accompany any special use permit or site plan application, modification or renewal thereof. The safety analysis shall be prepared by a qualified electromagnetic engineering specialist or health professional qualified to produce such analysis. The safety analysis must demonstrate that the general public electromagnetic radiation exposure does not exceed the standards set by federal regulations.
 - F. The Town or Village Board may, at the expense of the applicant, employ its own consulting assistance to review the findings and conclusions of the safety analysis, visual analysis or structural inspection provided by the applicant.
 - G. When including the construction of a tower, such tower must be designed to accommodate future shared use by at least one other telecommunication service provider. If co-location is proposed, and the height of the tower is not increased by said co-location, a new Special Use Permit is not required. However, the additional equipment shelter located at the base of the tower will require site plan approval.

1-98. Co-location.

- A. The shared use of existing telecommunications facilities or other structures shall be preferred to the construction of new facilities. Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate onto an existing telecommunications facility or upon an existing structure, such as a silo, water tank or emissions stack. The application shall include an adequate inventory report specifying existing telecommunication towers and structures exceeding 75% of the height of the proposed tower within the applicant's cell grid area. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to the proposed location.
- B. The applicant must demonstrate that the proposed telecommunications facility cannot be accommodated on existing telecommunications facility sites in the inventory due to one of the following reasons:
 - (1) The planned structures would exceed the structural capacity of existing and approved telecommunications facilities, or other structures, considering existing and planned uses for those facilities.

- (2) The planned equipment would cause radio frequency interference with other existing or planned equipment and cannot be placed so it can function effectively and reasonably.
- (3) Existing or approved telecommunications facilities or structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
- (4) Other technical reasons make it impractical to place the equipment proposed by the applicant on existing facilities or structures.
- (5) The property owner or owner of the existing telecommunications facility or other structure refuses to allow such co-location.

1-99. Lot standards.

- A. A lot leased or owned for the purpose of construction of a tower as part of a telecommunications facility shall not result in the creation of a nonconforming lot.
- B. All telecommunications facilities shall comply with the greater of the setback standards of the underlying zoning district, the fall zone of the tower or the height of the tower.
- C. The entire fall zone may not include public roads and must be located entirely within property either owned or leased by the applicant or for which the applicant has obtained an easement and may not contain any structure other than those associated with the telecommunications facility.

1-100. Lighting, screening and aesthetics.

- A. Towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA). However, an applicant may be required to add FAA-style lighting and marking if, in the judgment of the Planning Board, such a requirement would be of direct benefit to public safety.
- B. The use of any portion of a telecommunications facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers or balloons is prohibited.
- C. The facility shall have the least practical visual effect on the environment, as determined by the Planning Board. Any tower that is not subject to FAA marking pursuant to Subsection A of this section shall:
 - (1) Have a galvanized finish or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board; or

(2) Be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its designed function.

- D. Accessory facilities shall maximize the use of building materials, colors and textures designed to blend in with the natural surroundings.
- E. In addition to a visual EAF addendum, the Planning Board may require visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, line-of-sight drawings and/or visual simulations.
- F. Proposed telecommunications facilities shall have appropriate vegetative screening around the tower base area and any accessory facilities to screen their view from neighboring residences, recreation areas or public roads. Such screening shall include the maximum feasible retention of existing vegetation. The Planning Board may similarly require screening adjacent to waterways, landmarks, refuges, community facilities or conservation or historic areas within common view of the public.

1-101. Access and parking.

- A. Accessways shall make maximum use of existing public or private roads to the extent practical. New accessways constructed solely for telecommunications facilities must be at least 20 feet but no more than 30 feet wide and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- B. The road surface (driveway) shall be centered within accessways and shall not comprise more than 60% of the width of the accessway.
- C. Parking areas shall be sufficient to accommodate the greatest number of service vehicles expected on the premises at any one time.
- D. Driveways or parking areas shall provide adequate interior turnaround, such that service vehicles will not have to back out onto a public thoroughfare.
- E. Equipment or vehicles not used in direct support, renovation, additions or repair of any telecommunications facility shall not be stored or parked on the facility site.

1-102. Security.

- A. Towers and accessory facilities shall be surrounded by a fence or wall at least eight feet in height of a reasonable design approved by the Planning Board, but with limited visual impact. Barbed wire is not to be used in residential areas or

on public property unless specifically permitted by the or by the Planning Board as part of Site Plan Review and special use approval.

- B. Motion-activated or staff-activated security lighting around the base of a tower or accessory facilities may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeter has been entered.
- C. There shall be no permanent climbing pegs within 30 feet of the ground of any tower.
- D. A locked gate at the junction of the accessway and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

1-103. Engineering and maintenance.

- A. All telecommunications facilities shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent applicable standards of the Institute of Electronic and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
- B. All telecommunications facilities shall be inspected at least every fifth year for structural integrity by a New York State licensed professional engineer. A copy of the inspection report shall be submitted to the Code Enforcement or Zoning Officer.

1-104. Removal.

- A. The applicant shall submit an agreement, in writing, to remove all towers, antenna(e), accessory facilities, etc., if such facilities become technically obsolete or cease to be used for its originally intended purpose for more than 12 consecutive months. Upon removal of said facilities, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soil.
- B. The applicant must submit an analysis, certified by a New York State licensed professional engineer, of the cost of removal of the telecommunications facility and surrounding property restorations.
- C. Prior to obtaining a building permit, the applicant must provide a financial security bond for the removal of the telecommunications facility, with the Town or Village of Nunda as the designated assignee, in an amount approved by the Planning Board, but not less than \$100,000.

ARTICLE XIII
Subdivision of Land

1-105. Authority for plat approval; compliance with policy.

- A. By the authority of the resolution of the respective Town or Village Board of the Town and Village of Nunda, the Planning Board of the Town or Village is authorized and empowered to approve plats showing lots, blocks or sites, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the office of the Clerk of the County and to approve preliminary plats within the code enforcement of Nunda.
- B. It is the policy of the Planning Board to consider land subdivision plats as part of a plan for the orderly, efficient and economical development of Nunda. This means, among other things, that land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace and that proper provisions shall be made for drainage, water supply, sewerage and other needed improvements.
- C. All proposed lots shall be laid out and of such a size so as to be in harmony with the development pattern of neighboring properties so that the proposed streets shall compose a convenient system conforming to the Official Zoning Map, and shall be properly related to the proposals shown on the Comprehensive Plan, and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of firefighting equipment to buildings, and so that proper provision shall be made for open spaces for parks and playgrounds or for natural resource protection.
- D. In order that land subdivisions may be made in accordance with this policy, these regulations shall be known as the "Nunda Land Subdivision Regulations."

1-106. Definitions.

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

COLLECTOR STREET – A street that serves or is designed to serve as a traffic way for a neighborhood or as a feeder to a major street.

DEAD-END STREET or CUL-DE-SAC – A street or portion of a street with only one vehicular traffic outlet.

DRAINAGE RIGHT-OF-WAY – The lands required for the installation of stormwater sewers or drainage ditches or field tiles are required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

ENGINEER or LICENSED PROFESSIONAL ENGINEER – A person licensed as a professional engineer by the State of New York.

LANDLOCKED PARCEL – A lot or parcel of land without direct access to a public or private road.

MAJOR STREET – A street that serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic-generating areas.

MAJOR SUBDIVISION – Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots or any sized subdivision requiring any new street or extension of municipal facilities.

MINOR STREET – A street intended to serve primary access to abutting properties.

MINOR SUBDIVISION – Any subdivision which contains not more than four lots fronting on an existing street; does not include any new street or road; does not require the extension of municipal facilities; does not adversely affect adjacent properties; and is not in conflict with any provision of the Comprehensive Plan and Official Zoning Map of the Town and Village of Nunda, or these regulations.

MUNICIPAL ENGINEER – The designated engineer of the code enforcement of Nunda or a position assigned with similar duties.

PRELIMINARY PLAT – A drawing or drawings, clearly marked ‘preliminary plat,’ showing the significant features of a proposed subdivision, as specified in §1-112 of this chapter, submitted to the Planning Board for the purposes of consideration prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

RESUBDIVISION – Revision of all or part of an existing filed plat.

STREET PAVEMENT – The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH – The width of the right-of-way, measured at right angles to the centerline of the street.

SUBDIVIDER – Any person, firm, corporation, partnership or association who shall lay out any subdivision or part thereof as defined herein, either personally or on behalf of ownership, lessee or building development, and shall include resubdivision.

SUBDIVISION – The legal division of any tract of land into two or more lots, plots, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership, lease or building development, and shall include resubdivision.

SUBDIVISION PLAT or FINAL PLAT – A drawing, in final form, showing a proposed subdivision, containing all information or details required by law and by these regulations to be presented to the Planning Board for approval and which, if approved, may be duly filed or recorded by the applicant in the office of the County Clerk.

SURVEYOR – A person licensed as a land surveyor by the State of New York.

UNDEVELOPED PLATS – Those plats existing at the time of the enactment of this chapter that have been filed in the office of the County Clerk, where 20% or more of the lots within the plat are unimproved.

1-107. Applicability.

Whenever any subdivision or resubdivision of land is proposed and before any contract for the sale of or any offer to sell any lots in such subdivision or any part thereof is made and before any permit for the erection of a structure in such proposed subdivision shall be granted, the subdivider or a duly authorized agent shall apply, in writing, for approval of such proposed subdivision in accordance with the following procedures.

Subdivisions where all resulting lots are greater than or equal to 20 acres in size are exempted from Town and Village subdivision review.

All lots shall have direct access to a public or private road. Landlocked parcels are prohibited.

1-108. Pre-application sketch plan conference.

Prior to the application for approval of a subdivision plat for either a major or minor subdivision, the subdivider is encouraged to have a sketch plan conference with the Code Enforcement or Zoning Officer. The purpose of the sketch plan conference shall be to present to the Code Enforcement or Zoning Officer, for initial review, discussion and comment, a design concept or plan for the development of a parcel or parcels

within the code enforcement of Nunda. During the conference, the applicant and the Code Enforcement or Zoning Officer shall review and discuss the basic subdivision design concept and generally determine the information to be required and provided on the sketch subdivision plat.

1-109. Sketch plan submission requirements.

- A. Prior to submitting an application for approval of a subdivision plat, for either a major or a minor subdivision, the subdivider shall submit a sketch plan for informal review by the Planning Board. The sketch plan shall contain the following information:
- (1) The general location of the site with respect to existing or proposed streets and rights-of-way, permanent open space, as well as buildings and other facilities.
 - (2) Specific identification of all properties, subdivisions, streets and easements within 200 feet of the parcel.
 - (3) General identification of all existing utilities in the area.
 - (4) Identification of internal streets or traffic circulation pattern, if any, of the proposed development, including pedestrian-ways.
 - (5) The location of all existing and proposed structures on the site, and designated uses for each.
 - (6) Identification of existing zoning classification(s) of the property and all adjacent properties, and any restrictions on land use of the site.
 - (7) Identification of existing natural features on the site, including, but not limited to, forested land and/or woodlots, floodplains, stream corridors, Federal or State wetlands, and Federal-, State-, County- or municipal-owned lands or within 200 feet of the site.
 - (8) A soils overlay and topographic map if general site grades exceed 5% or if portions of the site have susceptibility to erosion, flooding or ponding.
- B. The Planning Board shall determine whether the sketch plan meets the purposes of this article. The Planning Board shall also determine whether the proposed subdivision is a minor subdivision or a major subdivision for the purposes of this article. The Planning Board shall inform the subdivider of the necessary action to take in meeting the requirements of this article.

1-110. Procedures for review of major and minor subdivision plats.

A. Application.

- (1) Prior to subdividing land in the Town or Village of Nunda, the subdivider shall submit an application for approval of a subdivision plat to the Code Enforcement or Zoning Officer.

- (2) The Code Enforcement or Zoning Officer shall determine, if the Planning Board has not previously done so, whether the proposed subdivision is a major or minor subdivision for the purposes of this chapter. If the determination requires interpretation, the Code Enforcement or Zoning Officer shall request the Planning Board to make the determination at its next regular meeting.
 - (3) If the proposed subdivision is determined to be a minor subdivision, the subdivider shall submit a final plat for a minor subdivision, in conformance with the requirements listed in 1-111 of this article, and §276 and §277 of Town Law and §7-728 and §7-730 of Village Law.
 - (4) If the proposed subdivision is determined to be a major subdivision, the subdivider shall, prior to filing a final plat for a major subdivision, submit a preliminary plat for a major subdivision, in conformance with the requirements listed in §1-112 of this article, and §276 and §277 of the Town Law and §7-728 and §7-730 of Village Law.
- B. Number of copies. The subdivider shall submit a minimum of eight copies of the plat unless otherwise specified by the Planning Board or Code Enforcement or Zoning Officer.
- C. Study proposed subdivision. The Board shall study the practicability of the proposed subdivision, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to water supply, sewage disposal, drainage, natural resources, lot sizes and arrangements, the future development of the adjoining lands as yet unsubdivided and the requirements of the Comprehensive Plan, and the Official Zoning Map and regulations. Where applicable, the Planning Board shall also consider the arrangement, location and width of streets and driveways or access roads as well as other circulation elements with regard to their relation to the topography of the land, safety and efficiency, and the adequacy of municipal facilities proposed to serve the subdivision. Planning Board review of subdivision plats shall also comply with SEQRA.
- D. Public hearing. A public hearing shall be held by the Planning board within 62 days from the submission of a complete subdivision plat for approval or within 62 days after the filing of the notice of completion of a draft environmental impact statement, if required. Said hearing shall be advertised at least once in a newspaper of general circulation at least five days before such hearing or 14 days prior if a hearing under the SEQRA. Further, the Planning Board is authorized, upon written application, to waive the public hearing for any of the following conditions:
- (1) Subdivision of land into lots of 10 or more acres which have been and will continue to be used for agriculture and on which no residential dwelling shall be built.
 - (2) Minor subdivisions that do not require public improvements.

- (3) Slight changes in lot lines for a filed subdivision. Such lot-line changes must not alter substantially the lot dimensions or overall subdivision design nor significantly affect drainage, water supply, natural resources or traffic circulation.**

1-111. Final minor subdivision plat approval.

- A. Applications for plat approval for minor subdivisions shall be accompanied by a fee established by resolution of the Town or Village Board.**
- B. All applications for final minor subdivision plat approval shall be made in writing in accordance with the administrative checklist available from the Code Enforcement or Zoning Officer. Final plats for minor subdivision must be prepared by a licensed surveyor, other maps and drawings submitted as part of a final minor subdivision plat approval may be required to be prepared by a licensed engineer, architect, landscape architect or surveyor, and certified by the seal and signature of such engineer, architect or surveyor.**
- C. The subdivider shall submit eight copies of the minor subdivision plat, prepared at a scale of not more than 100 feet but not less than 50 feet to the inch, showing:**
- (1) A location map, showing that portion which is to be subdivided in relation to the entire tract and the distance to the nearest existing street intersection. The location map may be drawn to a smaller scale than the subdivision plat itself.
 - (2) The name and address of the owner(s) of the land to be subdivided and the subdivider and the names of all adjoining property owners as disclosed by the most recent municipal tax records.
 - (3) The Tax Map sheet, block and lot numbers.
 - (4) The proposed pattern of lots, including lot width, depth and area, within the subdivided area.
 - (5) All existing restrictions on the use of land, including easements and covenants.
 - (6) The zoning district, including exact boundary lines of the district, if more than one district, and any proposed changes in the zoning district lines and/or the text of this Chapter, Zoning, applicable to the area to be subdivided.
 - (7) The location of existing adjacent property lines.
 - (8) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearing and distances, made and certified by a licensed land surveyor.
 - (9) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the State Department of Health, and a note to this effect shall be stated on the plat.
 - (10) The proposed subdivision name and the names of the municipality and county in which it is located.
 - (11) The date, North arrow, and map scale.
 - (12) The plat to be filed with the County Clerk shall be printed and produced in accordance with the standards established by the County Clerk.

- D. The following documents shall also be submitted:
- (1) All forms and information necessary for compliance with New York State Quality Review Act (SEQRA).
 - (2) An agricultural data statement if the proposed subdivision is in or within 500 feet of a farm operation in a county agricultural district.
 - (3) Result of soil percolation and groundwater availability tests if deemed necessary by the Planning Board.
- E. Action on final plat for minor subdivision. The Planning board shall, within 62 days from the date of the public hearing, conditionally approve, disapprove or grant final approval and authorize the signing of such plat. The grounds for refusal shall be stated in the records of the Planning Board. Such plat shall not be approved unless previously signed by all other applicable municipal and/or utility officials.

1-112. Preliminary major subdivision plat approval.

- A. Applications for plat approval for major subdivisions shall be accompanied by a fee established by resolution of the Town or Village Board.
- B. All applications for preliminary major subdivision plat approval shall be made in writing in accordance with the administrative checklist available from the Code Enforcement or Zoning Officer. Preliminary plats for a major subdivision must be prepared by a licensed land surveyor, other maps and drawings submitted as part of a preliminary major subdivision plat approval shall be prepared by a licensed engineer, architect, landscape architect or surveyor and certified by the seal and signature of such engineer, architect or surveyor.
- C. The applicant shall submit eight copies of the major subdivision plat, prepared at a scale of not more than 100 feet but not less than 50 feet to the inch, showing:
 - (1) A location map, showing that portion which is to be subdivided in relation to the entire tract and the distance to the nearest existing street intersection. The location map may be drawn to a smaller scale than the subdivision plat itself.
 - (2) The name and address of the owner of the land to be subdivided and the subdivider and the names of all adjoining property owners as disclosed by the most recent municipal tax records.
 - (3) The Tax Map sheet, block and lot numbers.
 - (4) Within 500 feet of the property, all the utilities available and all streets that are either proposed, mapped or built.
 - (5) The proposed pattern of lots, including lot width, depth and area, within the subdivided area.
 - (6) All existing restrictions on the use of land, including easements and covenants.

- (7) The location of any wells and septic systems within 100 feet of any property boundary.
 - (8) Boundaries and designation of any flood hazard zones located on the property.
 - (9) The zoning district, including exact boundary lines of the district, if more than one district, and any proposed changes in the zoning district lines and/or the text of this chapter, Zoning, applicable to the area to be subdivided.
 - (10) The location of existing property lines, easements, structures and natural features within 200 feet of the proposed subdivision. Natural features shall include, but are not limited to, forested land and/or woodlots, floodplains, stream corridors, Federal or State wetlands, and Federal-, State-, County- or municipal-owned lands.
 - (11) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by monuments as approved by the Municipal Engineer and shall be referenced and shown on the plat.
 - (12) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the State Department of Health and all other applicable public utilities, and a note to this effect shall be stated on the plat.
 - (13) The proposed subdivision name and the names of the municipality and county in which it is located.
 - (14) The date, North point, and map scale.
 - (15) All parcels of land proposed to be dedicated to public use and the conditions of such dedication, including maintenance easements.
 - (16) The location of existing and proposed sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
 - (17) Contours with intervals of two feet or less as required by the board, including elevations on existing roads and the approximate grading plan if natural contours are to be changed more than two feet.
 - (18) Location of proposed permanent open space.
- D. Applications involving improvements intended for public dedication shall include plan and detail sheets for the required improvements. The form and design criteria and construction specifications of the relevant municipality and other public utility agencies.
- (1) The width and location of any streets or public ways or places shown on the Official Zoning Map or the Comprehensive Plan, within the area to be subdivided, and the width, location, grades and street profiles of all streets or public ways proposed by the subdivider.

- (2) The approximate location and size of all proposed waterlines, valves, hydrants and sewer lines; connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the New York State Public Health Law; and profiles of all proposed water- and sewer lines.
- (3) A storm drainage plan indicating the methodology used, the quantity of stormwater projected, the approximate location and size of proposed lines, and their profiles and connection to existing lines or alternate means of disposal.
- (4) Plans and cross section showing the proposed location and type of sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains and the size and type thereof; the character, width and depth of pavements and subbase; and the location of manholes, basins and underground conduits.
- (5) Preliminary designs of any bridges or culverts that may be required.
- (6) Where the topography is such as to make difficult the inclusion of any of the required facilities within the public areas as laid out, the preliminary plat shall show the boundaries of proposed permanent easements over or under private property, which permanent easement shall not be less than 20 feet in width and shall provide satisfactory access to an existing public highway or public open space shown on the subdivision plat or the Official Zoning Map.

E. The following documents shall be submitted for approval:

- (1) All forms and information necessary for compliance with New York State Quality Review Act (SEQRA).
- (2) An agricultural data statement if the proposed subdivision is within 500 feet of a farm operation in a county agricultural district.
- (3) Records of soil percolation tests and ground water availability, demonstrating that any proposed on-site water supply and sewage disposal systems are feasible for the lot sizes and density of the proposed subdivision.
- (4) If the application covers only part of the subdivider's entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch, showing an outline of the platted area with its proposed streets and indication of the probable future street system with its grades and drainage in the remaining portion of the tract, shall be considered in light of the entire holdings.
- (5) A copy of such covenants or deed restrictions as are intended to cover all or part of the tract shall be provided.

F. Action on preliminary plat for major subdivision. Within 62 days after the date of the public hearing, the Planning Board shall approve, with or without

modifications, or disapprove such preliminary plat. The grounds of a modification, if any, as it deems necessary for submission of the plat in final form. A copy of the resolution, including any conditions or modifications necessary for final plat approval shall also be mailed to the subdivider or duly authorized agent.

1-113. Final major subdivision plat approval.

A. Application and fee.

- (1) Within six months of the approval of the preliminary plat, the subdivider shall file with the Planning Board an application for approval of the subdivision plat in final form.
- (2) All applications shall be accompanied by a fee established by resolution of the Governing Board.
- (3) If the final plat is not submitted within six months of the approval of the preliminary plat, the Planning Board may revoke the approval of the preliminary plat.

B. Number of copies. The subdivider shall submit to the Code Enforcement or Zoning Officer a copy of the application and three copies of the plat, plus the original and one true copy of all offers of cession, covenants and agreements and two prints of all construction drawings. These documents shall be submitted at least 10 days prior to the regularly scheduled meeting of the Planning Board.

C. Endorsement of state and county agencies. Applications for approval of plans for sewer and water facilities will be filed by the subdivider with all the necessary Town, Village, County, and State agencies. Endorsement and approval by the Livingston County Department of Health shall be secured by the subdivider before official submission of the final subdivision plat.

D. The following documents shall be submitted for approval: The plat to be filed with the County Clerk shall be printed and produced in accordance with the standards established by the County Clerk. The plat shall be drawn at the same scale required for the preliminary plat and oriented with the North point at the top of the map. When more than one sheet of the same size shall be filed, an index sheet of the same sized shall be filed, showing to scale the entire subdivision with lot and block numbers clearly legible. The plat will show:

- (1) The proposed subdivision name or identifying title and the name of the municipality and county in which the subdivision is located, the name and address of the record owner and subdivider and the name, license number and seal of the licensed land surveyor.
- (2) Street lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.

- (3) Sufficient data acceptable to the Municipal Engineer to determine readily the location, bearing and length of every street line, lot line and boundary line and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.
 - (4) The plat shall also clearly label those public open spaces that are to be dedicated to the municipality and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreement or the provisions for such maintenance.
 - (5) All offers of cessation and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Municipal Attorney as to their legal sufficiency.
 - (6) Lots and blocks within a subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing municipal practice.
 - (7) Permanent reference monuments shall be shown and shall be constructed in accordance with specifications of the Municipal Engineer. They shall be placed as required by the Municipal Engineer and their location noted and referenced upon the plat.
 - (8) All lot corner markers shall be permanently located satisfactorily to the Municipal Engineer and shall be at least 5/8 inch (if metal) in diameter and at least 24 inches in length and located in the ground at existing grade.
 - (9) Monuments of a type approved by the Municipal Engineer shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street intersections, angle points in street lines, points of curves and such intermediate points as shall be required by the Municipal Engineer.
 - (10) Street names must be indicated on the plat and shall have been approved by the Livingston County 911 Coordinator to ensure that they do not duplicate nor resemble phonetically existing street names within the emergency service area.
- E. Construction drawings, including plans, profiles and typical cross section, as required, showing the proposed location, size and type of streets, sidewalks, street lighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, facilities, shall be submitted as part of the plat.
- F. Public hearing. If a final plat, as submitted, is not in substantial agreement with the approved preliminary plat, the plat shall be subject to a public hearing as required by Town Law §276 and §7-728 of Village Law.
- G. Action on proposed subdivision plat. The Planning Board shall, by resolution, grant final approval, conditionally approve with or without modifications, or

disapprove the subdivision plat. The action shall be taken within 62 days of its receipt by the Code or Zoning Enforcement Officer if no hearing is required to be held or, in the event a hearing is held, within 62 days after the date of such hearing or within such other time specified by state, town or village law. If the subdivision is conditionally approved, the Secretary of the Planning Board shall, when completed, authorize the signing of the final plat. Signing of the final plat for recording also requires the completion of required improvements or posting of a financial security bond as outlined in §1-114.

1-114. Required improvements.

- A. Improvements and financial security bond. Before the Planning Board grants final approval of the subdivision plat, the subdivider shall follow the procedure set forth in either Subsection A(1) or (2) below.
- (1) Financial security bond. A financial security bond shall be submitted for construction and improvements shall be approved as to form by the Municipal Attorney and as to amount by the Municipal Engineer. The member of the Planning Board designated to sign plats shall not sign a plat until a financial security bond, if required, has been received by the Code Enforcement or Zoning Officer and approved by the Town or Village Board.
- (2) Installation of required improvements. The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Municipal Engineer and a map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements prior to final subdivision approval, then said map shall be submitted prior to endorsement of the plat by the appropriate Planning Board officer. However, if the subdivider elects to provide a bond or certified check for all required improvements as specified in Subsection A(1), such bond shall not be released until such map is submitted.
- B. Modification of design improvements. If, at any time before or during the construction of the required improvements, if it is demonstrated to the satisfaction of the Municipal Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the subdivider shall submit the proposed modifications in a form acceptable to the Municipal Engineer. The Municipal Engineer may approve, upon agreement by the previously delegated member of the Planning Board, that the proposed modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Municipal Engineer

shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regularly scheduled meeting.

- C. **Inspection of improvements.** At least five days prior to commencing construction of required improvements, the subdivider shall notify the Code Enforcement or Zoning Officer, in writing, of the proposed construction schedule. It is the applicant's responsibility to schedule and coordinate required inspections and to assure that all specifications and requirements are met and to assure the satisfactory completion of improvements and utilities required by the Planning Board.
- D. **Proper installation of improvements.** If the Municipal Engineer or Code or Zoning Enforcement Officer shall find, upon inspection of the improvements performed before the expiration date of the performance bond, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he/she shall so report to the Town or Village Board, Code Enforcement or Zoning Officer and Planning Board. The Town or Village Board shall then notify the subdivider and, if necessary, take all necessary steps to preserve the municipality's right under the financial security bond. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

1-115. Filing of approved subdivision plats.

- A. **Final approval and filing.** Upon completion of the requirements in §1-111 and §1-113 above and notation to that effect upon the subdivision plat, it shall be deemed to have final approval and shall be properly signed by the appropriate officer of the Planning Board (Chairperson or Acting Chairperson) and shall be filed by the applicant in the office of the County Clerk. Any subdivision not so filed or recorded within 62 days of the date upon which such plat is approved shall become null and void.
- B. **Plat void if revised after approval.** No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

1-116. Acceptance of public streets and recreation areas.

- A. **Public acceptance of streets.** The approval by the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Town or Village of Nunda of any street, easement or other open space shown on such subdivision plat.
- B. **Ownership and maintenance of recreation areas.** When a park, playground or other recreation area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by Town or Village Nunda of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Town or Village Board covering future deed and title dedication and provisions for the cost of grading, development, and equipment of any such recreation area.

1-117. Cluster Developments

- A. **Intent.** The purpose of this development approach is to promote the residential development that offers variety in lot size, configuration, topography and affordability. This development alternative shall result in design and development that promotes the most appropriate use of the land, facilitates the adequate and economical provision of streets and utilities and preserves the natural and scenic qualities of open land.
- B. **Authority.** Authorization is hereby granted to the Joint Planning Board, pursuant to §278 of the Town Law and §7-738 of the Village Law, to vary the zoning requirements as to lot size, lot width and setback requirements in connection with a proposed subdivision plat, subject to the standards and procedures contained herein. Such variations shall result in cluster developments. The Joint Planning Board is further authorized under appropriate Town and Village Law to require the use of the cluster development concept.
- C. **Applicability.** This authorization shall be applicable to the Agricultural (AG), Open Space (OSD), Neighborhood Residential (NRD), and Village-Neighborhood Residential (V-NRD) Zoning Districts and shall be used only when the Joint Planning Board determines that its use will benefit the community.
- D. **Permitted Use.** The permitted uses within a cluster development shall be the same as those otherwise permitted in the zoning district in which it is located.
- E. **Development standards and controls.** Except as specified herein, all development standards and controls normally applicable to other residential subdivisions and uses shall be applicable to a cluster development.
 - 1. **Density.** The maximum permitted density within a cluster development shall not exceed the number of units that would be achieved within a conventional subdivision on the same parcel(s). A cluster development shall include a minimum of three lots. Individual lot areas in cluster

developments will be a minimum of 20,000 sq.ft. Smaller lots may be allowed, due to site limitations, by the Joint Planning Board during the Site Plan Review process.

- F. Common open space areas will be at least thirty-five percent of the total development area excluding roads, sidewalks and other rights-of-way but including trails and boulevard medians that also support passive recreation areas.
- G. Common open space will be located so as to buffer new residential development from incompatible neighboring uses such as active agriculture and intensive commercial.
- H. Common open space will be at least 50 percent usable for passive or active non-motorized recreational use.
- I. All lands determined to be common open space are considered forever wild.
- J. A homeowners' association or similar mechanism, for the long-term ownership and maintenance of common open space shall be provided, subject to approval of the Joint Planning Board. Provision, satisfactory to the Municipal Attorney, shall also be made for the long-term ownership and maintenance of roadways, drainage ways and other improvement features within the cluster development.

1-118. Variances and waivers.

- A. Application for Area Variance. Notwithstanding any provision of law to the contrary, where a plat contains one or more lots which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an Area Variance pursuant to §267-b of Town Law and §7-712-b of Village Law, without the necessity of a decision or determination of the Code Enforcement or Zoning Officer. In reviewing such application, the Zoning Board of Appeals shall request the Planning Board to provide a written recommendation concerning the proposed variance.
- B. Waiver of requirements. The Planning Board may waive, when reasonable, any requirements of improvements for the approval, approval with modifications or disapproval of subdivisions submitted for its approval. Any such waiver shall depend upon whether the improvements are found not to be requisite in the interest of the public health, safety and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision. Any such waiver must be included in the official minutes of the Planning Board.

ARTICLE XIV
Site Plan Review and Approval

1-119. Intent.

The purpose of Site Plan Review is to implement the recommendations of the Comprehensive Plan. Specifically, Site Plan Review is intended to determine compliance with the objectives of this chapter where inappropriate development may cause a conflict between uses in the same or adjoining zoning district by creating conditions which could adversely affect the public health, safety or general welfare.

1-120. Applicability.

Prior to the issuance of a building permit, special use permit, variance or other discretionary approval required from the Planning Board or Zoning Board of Appeals for construction, alteration or change of use in any district, except for a single-family or two-family dwelling and related accessory uses, or a nonintensive agricultural operation permitted by right, the Code Enforcement or Zoning Officer shall require the preparation of a site plan. The Code Enforcement or Zoning Officer shall refer the site plan to the Planning Board for its review and approval in accordance with the standards and procedures set forth in this article.

1-121. Sketch plan conference.

- A. Applicants are encouraged to meet with the Code Enforcement or Zoning Officer and/or the Planning Board to review the basic site design concept and determine the information to be required on the preliminary site plan. The purpose of the sketch plan conference is to discuss with the applicant the project's conformity with the Nunda Comprehensive Plan, to determine whether the activity is subject to the performance standards of §1-67, and to advise the applicant of other issues or concerns. The sketch plan conference provides an opportunity to indicate whether the proposal, in its major features, is acceptable or whether it should be modified before expenditures for more detail plans are made.
- B. Required data. Information to be included on the sketch plan is as follows:
 - (1) An area map showing the parcel under consideration for Site Plan Review and all parcels, structures, subdivisions, streets, driveways, easements and permanent open space within 200 feet of the boundaries thereof.
 - (2) A soils overlay and topographic map if general site grades exceed 5% or if portions of the site have susceptibility to erosion, flooding or ponding.
 - (3) General identification of all existing natural features and utilities on the site and in the area.

- (4) The location of all existing and proposed structures on the site and designated uses for each.
- (5) Identification of existing zoning classification(s) of the property and all adjacent properties and any restrictions on land use of the site.

1-122. Preliminary site plan application.

- A. Application for preliminary site plan approval. An application for preliminary site plan approval shall be made in writing to the Code Enforcement or Zoning Officer and shall be accompanied by information drawn from the following checklist.
- B. Preliminary site plan checklist. Additional design standards and directions regarding the items to be shown on specific plan sheets may be found in the administrative checklist available from the Code Enforcement or Zoning Officer. The preliminary site plan shall include:
 - (1) Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
 - (2) North arrow, graphic scale and date.
 - (3) Boundaries of the property, plotted to scale.
 - (4) The location of existing property lines, easements, structures, streets, driveways and natural features within 200 feet of the proposed site or at the discretion of the Planning Board. Natural features subject to other state or federal regulations that may restrict development.
 - (5) Grading and drainage plan, showing existing and proposed contours. The drainage plan shall also clearly explain the methodology used to project stormwater quantities and the resultant peak flow conditions.
 - (6) Location, proposed use, hours of operation and height of all buildings. Summary of the amount of square footage devoted to each use requiring off-street parking or loading.
 - (7) Number, location, design and construction materials of all parking and loading areas, showing access and egress. Location of reserved parking areas as required by the off-street parking regulations of Article X, §1-81.
 - (8) Provision for pedestrian access.
 - (9) Size, type, location and screening of all facilities used for recycling and disposal of solid waste.
 - (10) Location, dimensions and vehicle capacity of drive-through facilities and related queuing lanes.

- (11) Building elevation(s) showing building massing, window and door spacing and treatments and other architectural features; and indication of building materials suitable to evaluate architectural compatibility.
- (12) Location, purpose and holder of all proposed easements or dedications for utilities, recreation, conservation or other purpose.
- (13) Location, size, screening and type of material for any proposed outdoor storage.
- (14) Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences.
- (15) Description of the type and quantity of sewage expected, the method of sewage disposal and the location, design and construction materials of such facilities.
- (16) Description of the type and quantity of water supply needed, the method of securing water supply, and the location, design and construction materials of such facilities.
- (17) Location of fire and other emergency zones, including the location of fire hydrants.
- (18) Location, design and construction material of all energy-distribution facilities, including electrical, gas and wind power and solar energy and other public utility facilities, such as cable or phone service.
- (19) Location, size, design and construction materials of all proposed signs.
- (20) Location of proposed buffer areas, including existing vegetative cover.
- (21) Location, type, height, brightness and control of outdoor lighting facilities.
- (22) Size, location and use of recreation areas for multi-family dwellings as required by §1-59.
- (23) Identification of permanent open space or other amenities provided in conjunction with cluster or incentive zoning provisions.
- (24) A table summarizing each building footprint, total size in square feet and number of stories; the number of dwelling units and the amount of square feet devoted to each use type; size, in square feet or acres, of access, parking and circulation areas and the number of loading, queuing and parking spaces; size in square feet of landscaped and natural open space; and size in square feet and text of all signs.
- (25) A landscaping plan and planting schedule in accordance with Article IX.
- (26) Other elements integral to the proposed development as considered necessary by the Planning Board, to include showing railroads or any other type of transportation facilities not specified.

- (27) All forms and information pursuant to New York State Environmental Quality Review Act (SEQRA).
- (28) An agricultural data statement if the proposed use is located on or within 500 feet of a farm operation in a county agricultural district.
- (29) For all developments disturbing more than one acre, New York State Department of Environmental Conservation (NYSDEC) requires that Municipalities receive a copy of the Storm Water Pollution Prevention Plan (SWPPP) prior to plan approval. The owner is required to comply with the NYSDEC's "SPEDES General Permit for Storm Water Discharge from Construction Activity" Permit # G-P-02-01.

C. Required fee. The fee will be established by the Town or Village Board and paid when the application is made.

1-123. Planning Board review of preliminary site plan.

The Planning Board's review of a preliminary site plan shall include, as appropriate, but is not limited to, the following:

A. General considerations as to:

- (1) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls for parking, loading and drive-through facilities.
- (2) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience. In general sidewalks shall be required along all dedicated roads on lots within 1,000 feet of a school, park or residential concentration.
- (3) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (4) Location, arrangement, size, design and general architectural and site compatibility of buildings, lighting, signs and landscaping.
- (5) Adequacy of stormwater calculation methodology and stormwater and drainage facilities to eliminate off-site runoff and maintain water quality.
- (6) Adequacy of water supply and sewage disposal facilities.
- (7) Size, location, arrangement and use of required open space and adequacy of such open space to preserve scenic views and other natural features, to provide wildlife corridors and habitats, to provide suitable screening and buffering; and to provide required recreation areas.
- (8) Protection of adjacent or neighboring properties against noise, glare, or other similar nuisances.
- (9) Adequacy of community services, including fire, ambulance and police protection, and on-site provisions for emergency services, including fire lanes and other emergency zones, fire hydrants and water pressure.

- (10) Adequacy and unobtrusiveness of public utility distribution facilities, including those for gas, electricity, cable television and phone service. In general, all such utility distribution facilities shall be required to be located underground.
 - (11) Conformance with the Nunda Comprehensive Plan and other planning studies.
 - (12) Conformance with density, lot size, height, yard and lot coverage and all other requirements of district regulations.
- B. Applicant to attend Planning Board meeting. Applicant and/or duly authorized representative shall attend the meeting of the Planning Board.
 - C. Site plans shall also provide conformance with the performance standards of §1-67.
 - D. Consultant review. The Planning Board may consult with the Code Enforcement or Zoning Officer, Fire Commissioners and other appropriate local and county officials and departments and its designated private consultants, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
 - E. Public hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the members of the Planning Board, such public hearing shall be conducted within 62 days of the receipt of the application for preliminary site plan approval and shall be advertised in a newspaper of general circulation in the Town and Village of Nunda at least five days before the public hearing.

1-124. Planning Board action on preliminary site plan.

- A. Within 62 days after public hearing or within 62 days after the application was filed if no hearing was held, the Planning Board shall act on the application for preliminary site plan approval. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, disapproved or approved with modifications.
- B. The Planning Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, and conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

1-125. Final site plan approval procedure.

- A. After receiving approval, with or without modifications, from the Planning Board on a preliminary site plan, the applicant shall submit a final detailed site plan to the Planning Board for approval. If necessary, engineered and architectural drawings could be required by the Planning Board. If more than six months has elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review. The Planning Board may also require a new public hearing. The final site plan shall conform substantially to the approved preliminary site plan. It should incorporate any modifications that may have been recommended by the Planning Board in its preliminary review. All such compliance shall be clearly indicated by the applicant on the appropriate submission.
- B. The following additional information shall accompany an application for final site plan approval.
 - (1) Record of application for and approval status of all necessary permits from local, state and county officials.
 - (2) An estimated project construction schedule.
 - (3) A legal description of all areas proposed for municipal dedication.
 - (4) A conservation easement or other recordable instrument executed by the owner for any permanent open spaces created and whether such open space is the result of Site Plan Review, clustering or incentive zoning provisions.
- C. If no building permit is issued within one calendar year from the date of final site plan approval, the final site plan approval shall become null and void.

1-126. Referral to County Planning Board.

Prior to taking action on the final site development plan, the Planning Board shall refer the plan to the County Planning Board for advisory review and a report in accordance with §239-m of General Municipal Law.

1-127. Planning Board action on final site plan.

- A. Within 62 days of receipt of the application for final site plan approval, the Planning Board shall notify the Code Enforcement or Zoning Officer, in writing, of its decision. The Planning Board shall file its decision with the Town or Village Clerk within five days of the final Planning Board decision.
- B. Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due and financial security bond if required, the Planning Board shall endorse its approval on a copy of the final site plan. A copy of the

approved final site plan shall be filed with the Code Enforcement or Zoning Officer and may be provided to the applicant.

- C. Upon disapproval of a final site plan, the Planning Board shall so inform the Code Enforcement or Zoning Officer, and the Code Enforcement or Zoning Officer shall deny a building permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. The Planning Board shall file its decision with the Town or Village Clerk within five days of the final Planning Board decision.

1-128. Reimbursable costs.

Costs incurred by the Planning Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan or inspection of required improvements shall be charged to the applicant. Estimated review fees shall be deposited into an escrow account when making application for preliminary site plan approval. Estimated inspection fees shall be deposited into an escrow account prior to Planning Board endorsement of final site plan approval.

1-129. Financial security bond.

No Certificate of Occupancy shall be issued until all improvements shown on the site plan are installed or a financial security bond has been provided for improvements not yet completed. The financial security bond shall be approved as to form by the Municipal Attorney and as to amount by the Municipal Engineer. The member of the Planning Board designated to sign site plans shall not sign until a financial security bond, if required, has been received by the Code Enforcement or Village Officer and approved by the governing board.

1-130. Inspection of improvements.

The Code Enforcement or Zoning Officer shall be responsible for the overall inspection of site improvements. The applicant shall be responsible for advance notice for inspection coordination with officials and agencies, as appropriate. The Code Enforcement or Zoning Officer may retain the services of a qualified private consultant to assist with inspection of site improvement.

1-131. Integration of procedures.

Whenever the particular circumstances of a proposed development require compliance with either the special use permit procedure pursuant to §1-10B of this chapter, or the requirements for the Subdivision of Land in Article XIII, the Planning Board and Zoning Board of Appeals shall attempt to integrate, as appropriate, Site Plan Review as

required by this section with the procedural and submission requirements for such other compliance.

Article XV
Adult Uses

1-132. Findings and legislative intent.

It is recognized that there are some uses which, because of their very nature, under certain circumstances have serious objectionable operational characteristics, which may produce a deleterious effect upon adjacent areas. Special regulation of these uses is necessary to ensure that adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The Town and Village of Nunda find it in the public interest to enact these regulations. The purpose of these regulations is to prevent or lessen the secondary effects of adult entertainment uses, and not to inhibit freedom of speech.

1-133. Applicability.

No adult use establishment shall be constructed or operated, except after approval of a special use permit, site plan, and in conformity with these regulations. No existing structures shall be modified to serve as an adult use unless in conformity with these regulations.

1-134. Definitions.

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

ADULT- Any person 18 years of age or older. (A minor is any person under the age of 18.)

ADULT BOOKSTORE – An establishment having a substantial or significant portion of its stock-in-trade consisting of books, magazines, periodicals, videos, computer software, films for on-premise viewing by use of motion-picture devices or any other coin-operated means, and any other materials that are distinguished or characterized by their emphasis on matter depicting, describing or relating to sexual activities or male or female genitalia. An establishment with a segment or section devoted to the sale or display of such material is also considered an adult bookstore. These establishments customarily exclude minors by reason of age.

ADULT ENTERTAINMENT CABARET – A public or private establishment, or any part thereof, which presents any of the following entertainments or services on one or more occasions for observation by patrons therein and which is operated for profit; topless female dancers; strippers; male or female impersonators; exotic dancers; topless waitressing, bussing or service; or service or entertainment where the servers

or entertainers wear pasties and/or G-strings. Adult entertainment cabarets customarily exclude minors by reason of age.

ADULT PEEP SHOW – A theater which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and which is not open to the public generally but excludes any minor by reason of age.

ADULT THEATER – A theater that customarily presents motion pictures, films, videotapes or slide shows, that is open to the public generally but excludes any minor by reason of age whether or not they are accompanied by a parent or guardian.

ADULT USE – See “adult bookstore,” “adult entertainment cabaret,” “adult theater” and “adult peep show.”

1-135. Requirements.

- A. Adult uses are subject to the following requirements in addition to those set forth in other sections of the Town and Village of Nunda Zoning Law:
 - 1. No adult use shall be allowed within:
 - a. 500 feet of another existing adult use.
 - b. 1,000 feet of recreational facilities, a preexisting school, a licensed daycare facility, place of worship, funeral home or cemetery.
 - c. 1,000 feet of any single-family, two-family or multi-family dwelling.
 - 2. No more than one adult use shall be located on any lot
 - 3. The distances provided above shall be measured from one property boundary line to another property boundary line.
 - 4. No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to sexual activities or male or female genitalia from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, screen or other opening.
- B. A special use permit issued under the provisions of the Town and Village of Nunda Zoning Law shall not be transferable.

Article XVI
Wind Energy Conversion Systems

1-136. Intent.

The purpose of this Article is to promote and protect the public health, safety and welfare of the Town and Village of Nunda by regulating the installation of Wind Energy Conversion Systems.

1-137. Definitions

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

COMMERCIAL/INDUSTRIAL WIND ENERGY CONVERSION SYSTEMS – A wind energy conversion system (WECS) designed or operated to provide energy principally to consumers located off the premises and that does not meet the requirements established for a residential WECS.

RESIDENTIAL WIND ENERGY CONVERSION SYSTEMS – A WECS designed or operated to provide energy principally to the residence and accessory structures located on the lot, or on contiguous lots held in common ownership.

WIND ENERGY CONVERSION SYSTEMS (WECS) – A system of components which converts the kinetic energy of the wind into electrical or mechanical power.

1-138. Applicability.

A. Residential WECS.

1. Permitted with a Special Use Permit in the Agricultural and Open Space Zoning Districts.
2. Site Plan Review is required.
3. Maximum number of towers per lot or on contiguous lots held in common ownership: one.
4. Maximum tower height: 60 feet measured from the ground to the highest arc of the blade tip.
5. Minimum blade height: 15 feet as measured from the bottom arc of the blade tip to the ground.
6. Minimum tower setback distance from the nearest property line: a distance measured 1 _ times the height of the tower. The height of the tower is measured by calculating the distance along the vertical axis of the tower from the ground to the highest arc of the blade tip.
7. Minimum distance from guy wire to property line: 15 feet.

8. Tower access. The tower shall be made inaccessible to unauthorized personnel.

B. Commercial/Industrial WECS

1. Permitted with a Special Use Permit in the Agricultural and Open Space Zoning Districts.
2. Site Plan review is required.
3. Maximum number of towers per lot: limited by special permit.
4. Maximum tower height: limited by special permit.
5. Minimum blade height: 15 feet as measured from the bottom arc of the blade tip to the ground.
6. Minimum tower setback distance from nearest property line: a distance measured 1 _ times the height of the tower. The height of the tower is measured by calculating the distance along the vertical axis of the tower from the ground to the highest arc of the blade tip.
7. Tower access. The tower shall be made inaccessible to unauthorized personnel.
8. Public interest and public benefit: The granting of a Special Use Permit for a commercial/industrial WECS shall be conditional upon a finding by the Zoning Board of Appeals that the proposal is in the public interest and provides substantial benefit to the community, the burden of proof of which shall rest with the applicant.
 - a. Location. Before it may approve the installation of a commercial/industrial WECS, the Zoning Board of Appeals shall make a finding of fact that the location of the facilities do not substantially adversely affect the surrounding area, the burden of proof of which shall rest with the applicant.

1-139. Submission requirements.

- A. In addition to any information, drawings or plans required by Article XIV, Site Plan Review and Approval, each application for approval of a WECS shall be accompanied by:
 1. A dimensional representation of the various structural components including the conversion system, supporting structures or tower, guy wires, if any, base and footings.
 2. Design data which shall include basis of design, foundation, manufacturer's dimensional drawings, installation, back-up braking system, and operation instructions. Certification that the design of the supporting structure or tower is sufficient to withstand wind load

requirements as set forth in the Building Code, and any other stresses imposed by the WECS on the structure.

3. Visual Environmental Assessment Form (EAF) addendum under the New York State Environmental Quality Review Act (SEQR).
4. Drawings indicating methods of making tower inaccessible to unauthorized personnel.

B. For commercial/industrial WECS, the following information shall also be provided:

1. A digital elevation model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three miles from the center of the project.
2. No fewer than four color photos no smaller than 4" x 6" taken from locations within a 3-mile radius of the proposed project, computer-enhanced to simulate the appearance of the as-built aboveground site facilities as they would appear from these locations.

1-140. Standards

- A. Noise control. A WECS shall not produce a noise level at any lot line greater than the ambient nighttime level of the area. The ambient nighttime noise level shall be measured and provided by the applicant.
- B. Lighting. No WECS shall be lighted artificially unless such lighting is required by a State or Federal agency.
- C. Electromagnetic interference. No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
- D. Location of wires. All wires, cables or other connections serving the WECS shall be buried underground unless such facilities can be connected to utility poles which existed prior to the time an application for a WECS has been submitted.

- E. Maintenance. Every two years, the owner shall submit a structural report to the Building Inspector attesting to the structural integrity of the wind generator, tower and/or support system.
- F. Removal. Any WECS that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such WECS shall remove same within 90 days of receipt of notice notifying the owner of such abandonment. Failure to remove an abandoned WECS within said 90 days shall be grounds to remove the WECS at owner's expense.

APPENDIX

Bulk and Use Tables
Town Zoning District Map
Village Zoning District Map