

**ZONING ORDINANCE  
OF THE TOWN OF GAINES  
ORLEANS COUNTY  
NEW YORK**

**ADOPTED 1983**

**AMENDED  
1993, 1995, 1997, 2002,  
2004, 2008, AND 2011**

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# **TOWN OF GAINES ZONING ORDINANCE**

## **ARTICLE I**

### **General Provisions**

#### **SECTION 101- TITLE**

This Ordinance shall be known as and may be cited as the "Zoning Ordinance of the Town of Gaines, Orleans County, New York, 1983," All existing Zoning Ordinances are hereby repealed, effective as of the effective date of this Ordinance.

#### **SECTION 102- DECLARATION OF PURPOSE**

This Zoning Ordinance is adopted pursuant to the provisions of Town Law of the State of New York, in order to promote and protect the public health, safety and general welfare and furtherance of the following more specific objections:

- (1) To protect the open and natural character of the land;
- (2) to guide and regulate the orderly growth, development and redevelopment of the Town of Gaines in accordance with a well-considered plan and with long-term objectives, principles and standards deemed beneficial to interest and welfare of the people;
- (3) To protect the established character and the social and economic well-being of both private and public property;
- (4) To encourage, in the public interest, the utilization of land for the purposes for which it is most appropriate and best suited.

#### **SECTION 103- CONFLICTS WITH OTHER LAWS**

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

#### **SECTION 104- VALIDITY AND SEVER ABILITY**

Should any section of or provisions of this Ordinance be determined by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such determination shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so determined to be unconstitutional or otherwise invalid.

#### **SECTION 105- FEES**

Fees shall be paid and collected in accordance with the fee structure in effect at the time of application and/or copies of documentation. A non-refundable fee schedule is posted and filed at the Town Clerks Office.

**TOWN OF GAINES ZONING ORDINANCE**  
**ARTICLE I**

**SECTION 106- VIOLATIONS AND PENALTIES**

Any person, firm or corporation who violates, disobeys neglects or refuses to comply with any provision of this ordinance, shall be guilty of an offense and upon conviction shall be subject to a fine and/or imprisonment in accordance with the following schedule:

1. First conviction shall be a minimum fine of \$100.00 up to a maximum fine of \$350.00.
2. Second conviction for the same offence both of which committed within a five (5) year period shall be a minimum fine of \$350.00 up to a maximum fine of \$700.00 and/or imprisonment up to six (6) months.
3. Third or subsequent conviction all of which were committed within a period of five (5) years shall be a minimum fine of \$700.00 up to a maximum fine of \$1,000.00 and/or imprisonment up to six (6) months.
4. Each week a violation is continued shall be deemed a separate additional violation.

**SECTION 107- ACTIONS**

In the event that any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used, or any land is divided into lots, blocks, or sites in violation of this Ordinance, the proper local authorities of the town, in addition to other remedies may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building structure, or land or to prevent any illegal act, conduct, business or use in or about such premises.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

### Definitions

#### SECTION 200- WORD TERMS AND DEFINITIONS

For purposes of this Ordinance, certain terms or words used herein shall be interpreted or defined as follows:

- (1) The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
- (2) Words used in the present tense include the future tense.
- (3) The singular includes the plural.
- (4) The words "shall" and "must" are mandatory, not discretionary.
- (5) The words "used" or "occupied" as applied to land and/or buildings shall be construed to include the words "intended, designed or arranged to be used or occupied."
- (6) The word "lot" includes the words "plot" or "parcel."

#### SECTION 210- DEFINITIONS

**ACCESSORY USE OR STRUCTURE:** A use or structure on the lot and of a nature customarily incidental to and subordinate to the principal use or structure.

**ADULT USES AND/OR BUSINESS:** Whenever used in the Town of Gaines Zoning Law, the words "adult use" or "adult uses" apply to the following types of establishments and also the definitions nudity in relationship to adult establishments:

- **ADULT BOOKSTORE:** An establishment which has a substantial or significant portion of its stock in trade, books, pamphlets, magazines or other periodicals, sculptures, photographs, pictures, slides, videotapes, films or sound recordings and which establishment excludes any minor by reason of age.
- **ADULT ENTERTAINMENT CABARET:** A public or private nightclub, bar restaurant or similar establishment which presents topless or bottomless dancers, go-go dancers, strippers, male or female impersonators, exotic dancers, or other similar entertainment, and which establishment excludes any minor by reason of age.
- **ADULT VIDEO STORE:** An establishment having as a substantial or significant portion of its stock in trade, videotapes or films for sale, rent or viewing on premises by use of motion picture devices, video equipment or other coin operated means, and which establishment excludes any minor by reason of age.
- **PEEP SHOW:** A theater which presents material in the form of live shows, films, or videotapes viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.
- **MASSAGE ESTABLISHMENT:** Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths and would exclude any minor by reason of age. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist or duly licensed massage therapist, or barber shops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs which have facilities for physical exercise such as tennis courts, racquet ball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

- **ADULT MOTEL**: A motel which excludes minors by reason of age, or which makes available to its patrons in their rooms films, slide shows or videotapes, which if presented in a public movie theater would exclude any minor by reason of age.
- **ADULT THEATER**: A theater that customarily presents motion pictures, films, videotapes, or slide shows and that excludes any minor by reason of age.
- **ADULT MODEL STUDIO**: Any establishment where, for any form of consideration or gratuity, figure models are provided to observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons other than the proprietor, paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution, which meets the requirements, established in the New York State Education Law for the issuance of conferring of, and is in fact authorized to issue and confer a diploma.
- **BODY PAINTING STUDIO**: An establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body and which excludes any minor by reason of age.
- **ESCORT**: A person who, for a fee, tip or other consideration, agrees or offers to act as a date for another person; for consideration, agrees or offers to privately model lingerie for another person; for consideration, agrees or offers to privately perform a striptease for another person; for consideration agrees or offers to engage in sexual acts; or, for consideration but without license granted by the State of New York, agrees or offers to provide a massage for another person.
- **ESCORT AGENCY**: A person or business association who furnishes or offers to furnish, or advertises to furnish escorts as of its primary business purposes for a fee, tip or other consideration.
- **NUDITY OR A STATE OF NUDITY**: Means the appearance of: (a) the appearance of human bare buttocks, anus, male genitals, female genitals, or areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and full cover human bare buttocks, anus, male genitals, female genitals, pubic region or areola or nipple of the female breast.
- **SEXUAL ACTIVITIES**: Means and includes any of the following: (a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breasts; (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (c) masturbation, actual or simulated; or (d) excretory functions.

**AGRICULTURE**: The use of land for agricultural purposes including tilling of the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry and the necessary uses for packing or storing or products provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

**AGRICULTURAL BUSINESS ESTABLISHMENTS (AGRI-BUSINESS)**: A business engaged in performing agricultural, animal husbandry, or horticultural services on a fee or contract basis, including corn shelling; hay and vegetables for the grower; agricultural produce milling and processing; horticultural services; crop dusting; fruit picking; grain cleaning; land grading; harvesting and plowing.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

**AGRICULTURAL OR FARM OPERATIONS:** Means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation” as defined in subdivision thirteen of this section and “timber processing” as defined in subdivision fourteen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

**AIRPORT:** Any area of land designed and set aside for the landing and taking off of aircraft.

**ALTERATIONS:** As applied to a building or structure, a change or rearrangement in the structural parts, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location to another.

**ANIMAL HOSPITAL:** A business that treats sick and disabled animals and houses them on the premises over night or for extended periods for treatment.

**ARTIFICIALLY CONSTRUCTED PONDS:** A pond constructed through excavation by machinery and not created naturally. The definition shall include Recreational Ponds (those ponds created artificially and not used in an Agriculture related business) and Farm Ponds (those ponds created artificially and used in an Agriculture related business).

**BED AND BREAKFAST AND/OR TOURIST HOME:** A dwelling, or part thereof, where overnight lodging, with or without the service of meals, is offered to up to eight (8) transient guests for compensation. This term includes hostels, but does not include a building or group of buildings designated as motel, tourist court, motor lodge, or similar terms.

**BUILDING:** Any structure which is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals or chattels.

**BUILDING HEIGHT:** The vertical distance measured from the mean level of the ground surrounding the building to a point midway between the highest and lowest point of the roof, but not including chimneys, spires, mechanical penthouses, towers, tanks and similar projections.

**BUSINESS, CONVENIENCE:** Small commercial establishments of 5,000 or less square feet in floor area catering primarily to nearby residential areas and providing convenience goods and services.

**BUSINESS, SERVICE:** A commercial establishment primarily providing services, rather than engaged in selling product.

**CAMPING TRAILER:** Any vehicle used or intended for temporary living or sleeping purposes, mounted on wheels and drawn by a power-driven vehicle, or any such type vehicle having its wheels removed.

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

**CARPORT:** A roofed structure, with or without enclosing walls, used for the storage of one or more motor vehicles.

**CHURCH:** Any structure used for worship or religious instruction, including social and administrative room’s accessory thereto.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

**CLUB:** Any organization catering to members and/or their guests, on premises and buildings for recreational or athletic purposes and not open to the general public, which is not conducted primarily for gain, providing there is not conducted any vending stand, merchandising or commercial activity except as required for membership and purposes of such club. For the purpose of this Ordinance "club" shall include lodges, fraternal organizations, mutual benefit societies, and other similar organizations.

**COMMERCIAL VENDOR CARTS:** A Commercial Vendor Cart shall be defined as a cart that sells food and/or other merchandise, which can be moved from location to location, either under its own power or with the assistance of a vehicle and/or trailer. The following shall not be considered as Commercial Vendor Carts: home "Lemonade" type stands, carts used with church events or carts used in connection with an established commercial business.

**COMMERCIAL DAY CARE CENTER:** A commercial day care center shall be defined as a free standing structure, not part of an existing residence or structure, providing for the care of children and which is not a residential day care center as defined in this Ordinance.

**DEVELOPMENT:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining dredging, filling, grading, paving, excavation or drilling operations, excluding normal maintenance to farm roads.

**DRIVE-IN BUSINESS:** Any place or premises utilized for the sale, dispensing, or serving of food, refreshments, or beverages, whether the customer consumes the food, refreshments or beverages in his motor vehicle or elsewhere on the premises.

**DWELLING:** Any building, structure or portion thereof, including a mobile home, designed, used or intended to be used exclusively as a residence or sleeping place for one (1) or more persons, with a gross habitable floor area of not less than 980 square feet.

**SINGLE-FAMILY:** A building containing one dwelling unit and designed for occupancy by one family only.

**TWO-FAMILY:** A building containing two dwelling units, designed or occupancy by not more than two families.

**MULTIPLE-FAMILY:** A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided.

**SEASONAL HOME:** A dwelling unit intended for occupancy only during certain times of the year, principally for recreational use by the owner, including beach cottages, hunting cabins, vacation cottages, summer cottages, vacation lodges, and similar seasonal dwellings.

**DWELLING UNIT:** One room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking, sleeping and bathroom facilities, designed for occupancy by one family.

**EAF:** Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

**ESSENTIAL SERVICES:** Erection, construction, alteration, operation or maintenance by municipal agencies or public utilities of telephone equipment enters, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.

# TOWN OF GAINES ZONING ORDINANCE

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**EXCAVATION(QUARRY, SANDPIT, GRAVEL PIT, SOIL REMOVAL):** A lot or land or part thereof used for the extracting top soil, subsurface, clay, sand, stone, gravel or other substances for sale, as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building which has an approved zoning permit.

**FAMILY:** One or more persons related to each other by blood, marriage or adoption and living together as single housekeeping unit. For the purpose of this ordinance, "family" shall also include up to three unrelated individuals living together as a single housekeeping unit.

**FARM LABOR HOUSING:** Any structure or building or combination of structures or buildings situated on a farmer's own land, in which are housed or intended to be housed, three or more persons not related by blood or marriage who are employed by the farmer and at least fifty-one percent (51%) of those housed in the farm labor housing are used in connection with the farmer's personal farming operation.

**FARM MACHINERY REPAIR SHOP:** A building or portion of a building, arranged, intended or designed to be used in connection with repairing and maintaining farm related equipment, excluding pickup trucks, cars, and other licensed road vehicles.

**FLOOR AREA, GROSS:** For the purpose of applying the requirements for off-street parking and loading, "gross floor area" in the case of offices, merchandising or service types of uses, shall mean the total floor area to be used or intended to be used by tenants, or for service to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for display or sales or merchandise. It shall not include areas used principally for non-public purposes such as storage, incidental repair, restrooms, fitting or alteration rooms or general maintenance or enclosed pedestrian malls or corridors.

**FLOOR AREA, HABITABLE:** 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.

**GARAGES, PRIVATE:** An accessory building used in conjunction with a principal building, which provides space for the storage of motor vehicles and/or other household items.

**GARAGES, PUBLIC:** Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, recreational vehicles, boats and other personal property.

**HOME OCCUPATION:** An occupation, as more fully described in Section 708, conducted in a dwelling unit, provided that:

- (a) No person other than a member or members of the immediate family residing on the premises shall be engaged in such occupation;
- (b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and shall not change the character of the dwelling or be externally evident except as otherwise permitted by this Ordinance.

**JUNK YARD:** A lot, land or structure or part thereof used for the collection, storage, disassembly, packing, sorting, salvage, buying, selling, or exchange of waste paper, rags, scrap, or discarded material or machinery of parts of any sort. Automobile junk yards as defined in the General Municipal Law, Section 136 Paragraph (c) shall be included within this definition.

# TOWN OF GAINES ZONING ORDINANCE

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**KENNEL:** Any lot or premises on which four (4) or more domestic animals more than four (4) months of age are housed, groomed, bred, boarded, trained or sold.

**LOT:**

(a) **Lot:** A parcel of land occupied, or designed to be occupied by one building and the accessory building or uses customarily incident to it, including such open spaces as are arranged and designed to be used in connection with such buildings.

(b) **Corner Lot:** A lot at the junction of and fronting on two or more intersecting streets, roads, or thoroughfares.

(c) **Thorough Lot:** An interior lot having frontage on two parallel or approximately parallel streets, roads or thoroughfares.

(d) **Depth of Lot:** The mean distance from the center of the road to its opposite rear line measured in the general direction of the side lines of the lot.

(e) **Lot Width:** The width of the lot between side lot lines at the front building line.

(f) **Lot Frontage:** That portion of a lot abutting on one side of a road, street or thoroughfare, measured along the line of said road street or thoroughfare.

(g) **Lot Line:** Any boundary line of a lot.

**MINING:** The use of an area of land to remove minerals, metals or other items of value from the ground for profit, including gas and oil wells.

**MOBILE HOME/MANUFACTURED HOME:** All Single Wide Mobile/Manufactured Homes and Double Wide Mobile/Manufactured Homes shall be constructed in accordance with all applicable United States Department of Housing and Urban Development standards and be suited or suitable for living purposes.

**A. Single-Wide/Manufactured Home:** A factory manufactured home, built on a permanent steel-framed chassis and designed to be transported to a site in one section, having a width or narrowest dimension of less than twenty-four (24) feet, which is intended to be used as permanent living quarters by a single family unit when connected to the required plumbing, heating and electrical utilities. For the purpose of this Ordinance, the removal of transport wheels and/or the anchoring of the home to a permanent foundation shall not remove it from this definition.

**B. Double-Wide Mobile/Manufactured Homes:** A factory manufactured home, built on a permanent steel-framed chassis and designed to be transported to a site in two or more sections, and when assembled having a width or narrowest dimension of twenty-four feet or more, which is intended to be used as permanent living quarters by a single family unit when connected to the required plumbing, heating and electrical utilities. For the purpose of this Ordinance, the removal of transport wheels and/or the anchoring of the home to a permanent foundation shall not remove it from this definition.

**MOBILE HOME PARK:** Any site, lot, field plot, parcel of tract of land upon which two (2) or more mobile homes are parked or located and for which use said premises and/or the mobile homes thereon are offered to the public or to any person for a fee.

**MODULAR HOUSE:** A housing unit constructed offsite consisting of more than one segment and designed to be permanently anchored to a foundation, to become a fixed part of the real estate, and which meets all the standards of the New York State Building Code.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

**MOTEL:** A building or group of buildings, whether detached or in connected units, containing transient and/or permanent lodging facilities for the general public. The term "motel" includes buildings designated as auto cabins, auto courts, motor lodges, tourist courts and similar terms,

**MOTOR VEHICLE REPAIR SHOP:** A building or portion of a building, arranged, intended or designed to be used in connection with repairing and maintaining motor vehicles.

**MOTOR VEHICLE STORAGE:** The term motor vehicle as set forth in Section 641 of this Ordinance shall include an automobile, truck, sport utility vehicle, van and motor home. The following shall not fall within the meaning of motor vehicle under Section 641, boats, personal watercraft, on and off road motorcycles, all terrain vehicles (3 or 4 wheels), motor scooter, recreational vehicle (without engine), campers and trailers, snowmobiles, and farm or farm related vehicles.

**NON-CONFORMING LOT, BUILDING OR STRUCTURE:** A lot, building or structure existing at the time of enactment of this Ordinance or any amendment thereto, which does not conform to the area regulations of the district or zone in which it is situated.

**NON-CONFORMING USE:** A use of land existing at the time of enactment of this Ordinance which does not conform to the regulations of the district or zone in which it is situated.

**PARKING SPACE:** Space available for the parking of one motor vehicle and having an area of not less than 200 (10x20) square feet, exclusive of passageways and driveways giving access thereto:

**PERMITTED USE (OR USE OF RIGHT):** A land use allowed authorized and permitted if in accordance with the regulations of this Ordinance.

**PROFESSIONAL OFFICE:** The office of place of business where professional services not involving the sale of goods or the keeping of stock in trade are offered to the public.

**PROHIBITED USE:** Any operation, use or activity which the Town, in order to protect the public health and welfare of its citizens, to protect the character of the community, and/or to be consistent with its land use and planning objectives, determines should not be conducted within the Town limits.

**PUBLIC/SEMI-PUBLIC/COMMUNITY FACILITIES:** The words "public/semi-public/community facilities", as used in this ordinance are intended to designate any one (1) or more of the following uses, including grounds and accessory buildings necessary for their use:

- A. Churches, places of worship, parish houses and convents.
- B. Public parks, playgrounds and recreational areas authorized or operated by a governmental authority.
- C. Nursery schools, elementary schools, high schools, colleges and universities.
- D. Golf courses and country clubs, however, not including clubs whose activities include the maintenance storage or takeoffs or landings of aircraft.
- E. Public libraries and museums.
- F. Not-for-profit fire, ambulance and public safety buildings.
- G. Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes, homes for adults, homes for the aged or residences for adults as the same are defined under the Public Health Law or the Social Services Law of the State of New York.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

- H. Facilities of not-for-profit membership corporations established for cultural, social, or recreational purposes.
- I. Recreational facilities, whether for profit or not-for-profit, such as swimming, tennis, platform tennis, bowling, hockey, ice skating or other indoor or outdoor sports.
- J. Day-care centers approved by the New York State Department of Social Welfare.

**RECREATION AREA:** Recreation area is any land or structure designed to be used for recreation purposes.

**RESIDENCE:** Any dwelling for habitation, either seasonally or permanently by one or more persons. A residence may be part of a multi-dwelling or multipurpose building, and shall include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

**RESIDENTIAL DAY CARE:** shall be defined to include either of the following:

- A. “Family Day Care Home”, shall mean a program caring for children for more than 3 hours per day and from three (3) to six (6) children. A family day care provider may, however, care for seven or eight children at any one time if no more than six of the children are less than school age and school aged children care is primarily before or after the period such children are ordinarily in school, during school, during school lunch periods, on school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the Social Services Department and the Social Services Department inspects such home to determine whether the provider can care adequately for seven or eight children.
- B. “Group Family Day Care Home”, shall mean a program caring for children for more than three hours per day per child in which child day care is provided in a family home for seven to ten children of all ages, or up to twelve children where all of such children are over two years of age, except for those programs operating as a “Family Day Care Home” (see definition for “Family Day Care Home above). A “Group Family Day Care Home” provider may provide child day care services to two additional children if such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session. There shall be one care giver for every two children under two years of age in the “Group Family Day Care Home”. A group family day care home must have at least one assistant to the operator present when child day care is being provided to seven or more children. This assistant shall be selected by the “Group Family Day Care Home” operator and shall meet the qualifications established for such position by the regulations of Social Services Department.

**RESTAURANT:** Any establishment, however designated, at which food is sold for consumption to patrons seated within an enclosed building or elsewhere on the premises.

**RIGHT-OF-WAY:** Land set aside for use as a street, alley, road or thoroughfare or as a means of access to adjoining premises.

**RETAIL GASOLINE STATION OR OUTLET:** Any establishment that sells gasoline to the public, including service stations, convenience stores, car washes and any other facility that sells gasoline or diesel fuel.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

**SATELLITE ANTENNA:** A free standing structure used for the reception of satellite transmissions of Television and/or Radio signals.

**SEASONAL TOURIST BUSINESS:** An Agriculture related business, which sells items that are grown and/or produced by the owner and is, closed a minimum of two (2) months per year. The following are not permitted as "seasonal tourist business": used car lots, motor vehicle repair shops, kennels, restaurants and other businesses of a similar nature.

**SETBACK-FRONT:** The required open unoccupied space between the center line of the road and front of the main structure, excluding porches, entrance steps and other similar structure on the front of the main structure.

**SETBACK-BACK:** The required open unoccupied space measured from the rear lot line to the nearest part of the main accessory structure.

**SETBACK-SIDE:** The required open unoccupied space measured from the side lot lines to nearest part of the main or accessory structure.

**SIGN:** Any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to attention of others.

**SIGN AREA:** The area within the confines of all edges of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely resembles the said sign.

**SITE:** The parcel of land where the WECS is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements.

**SITE PLAN:** A plot of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

**SITE PLAN REVIEW:** A review and approval process, conducted by the Planning Board, whereby Site Plans are reviewed utilizing the criteria enumerated in this Ordinance.

**SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS"):** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 10 kW and which is intended to primarily reduce on-site consumption of utility power.

**SOLID WASTE:** all putrescible and non-putrescible materials or substances that are discarded or rejected as being spent, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, rubbish, refuse, and demolition debris generated by and defined herein as industrial, commercial and household waste. In addition:

1. A material is "discarded" if it is abandoned by being:
  - a. disposed of;
  - b. burned or incinerated, including being burned as a fuel for the purpose of recovering usable energy; or
  - c. accumulated, stored, or physically, chemically, or biologically treated (other than burned or incinerated) instead of or before being disposed of.
2. A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked, land filled, or placed into or on any land or water.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

**SOLID WASTE MANAGEMENT FACILITY:** Any facility employed beyond the initial solid waste collection process and managing solid waste including, but not limited to: storage areas or facilities, transfer stations; rail: haul or barge-haul facilities; processing facilities; landfills; ash fills; disposal facilities; solid waste incinerators; recycling facilities; and commercial composting facilities.

**SOUND PRESSURE LEVEL:** Means the level which is equaled or exceeded a stated percentage of time. An  $L_{10} - 50$  dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

**SPECIAL EVENTS:** A Special Event shall defined as a parade, concert, carnival and/or other such related event that lasts for at least one (1) day, up to a maximum of ten (10) days. The following shall not be considered "Special Events": birthday parties, graduation parties, family reunions, church events and other similar events.

**SPECIAL PERMIT USES:** Those particular uses which are specifically permitted in a given district only when conditioning criteria enumerated in this Ordinance are met.

**STRUCTURE:** Anything constructed or erected with a fixed location on the ground or attached to some thing having a fixed location on the ground.

**SWIMMING POOL:** Any body of water, or receptacle for water, having a capability of a depth of eighteen (18) inches or more at any point, used or intended to be used for swimming, bathing or wading and permanently installed or constructed either above or below the surface of the ground.

**TELECOMMUNICATION FACILITY:** Any commercial equipment used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, radio and television broadcast communications and private radio communication services, and is regulated by the Federal Communications Commission both in accordance with the Telecommunications Act of 1996 and other federal laws. A Telecommunication Facility shall include monopole guyed, or latticework tower(s), as well as antenna(s), switching stations, principle and accessory telecommunication equipment and supporting masts, wires, structures, and buildings.

**TEMPORARY USE:** An activity conducted for a specified limited period of time.

**TOTAL HEIGHT:** The height of the tower and the furthest vertical extension of the WECS.

**TRAVEL TRAILER:** Any portable vehicle designed to be transported on its own wheels and intended to be used for temporary living quarters for travel, recreation or vacation purposes.

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

**VARIANCE:** A variance is a departure from this Ordinance granted by the Zoning Board of Appeals as it applies to a particular piece of property. Variances run with the land and to the benefit of subsequent owner of the property.

**WIND ENERGY CONVERSION SYSTEM ("WECS"):** A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE II

**WIND ENERGY FACILITY:** Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**WIND ENERGY METEOROLOGICAL (MET) TOWERS:** Any commercial equipment used in connection with the temporary collecting of data on the feasibility of installing “Wind Energy” producing towers in the Town of Gaines. Meteorological (MET) towers are to be used for the purpose of collecting data and shall not be used to produce “Wind Energy”. Meteorological (MET) Towers shall include monopole guyed or latticework tower(s), as well as antenna(s), supporting masts, wires, structures and buildings. Meteorological (MET) towers shall have a maximum height of 199 feet. Any tower over 199 feet in height will require an “Area Variance”.

**WIND MEASUREMENT TOWER:** A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction. Temporary (no more than 2 years) towers may be allowed as part of a Small WECS application, where the requested tower meets all height, setback and other requirements of section 728.

**YARD:** An open space on the same lot with a building unoccupied and unobstructed from the ground upward except as otherwise provide herein.

**YARD, FRONT:** The space within and extending the full width of the lot from the front lost line to the part of the principal building which is nearest to such front line.

**YARD, REAR:** An open space extending across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory buildings and open porches.

**YARD, SIDE:** An open space on the same lot with a principal building between the principal building and the side line of the lot extending through from the front yard to the rear yard.

**ZONING CERTIFICATE OF CONFORMITY:** A certificate issued by the Zoning Officer stating that a structure or the use thereof is in compliance with the provisions of this Ordinance.

**ZONING ENFORCEMENT OFFICER:** The administrative officer charged with the administering and enforcement of this Ordinance.

**ZONING PERMIT:** A document issued by the Zoning Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity With this Ordinance.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE III

### PERMITS AND PROCEDURES

#### SECTION 300- PERMITS REQUIRED

No use or structure shall be established or erected nor land developed until a permit has been issued by the Zoning Enforcement Officer in accordance with the provisions of this ordinance. All applications for permits shall be filed with the Town Clerk.

#### SECTION 301- APPLICATION PROCEDURE AND REQUIRED INFORMATION

- a. Applications for Zoning Permits must be submitted to the Town Clerk on forms prescribed by the Town.
- b. All information on the application form must be completed, and, in addition the following information must be submitted with the completed application.

##### 1. SKETCH MAP, SURVEY AND ENGINEER DRAWINGS

- a) Building Permit requirements: three (3) copies of a survey map prepared by a licensed Professional Engineer or licensed Land Surveyor and three (3) copies of construction drawings prepared by a Professional Engineer for new construction of homes, mobile homes, towers, commercial businesses, etc. All drawings must be signed and stamped by the Professional preparing them. House additions, porches, decks, barns, pole barns, storage sheds and garages require minor site plan and be hand drawn and do not require "Signed Professional Drawings". All buildings must comply with current New York State Building Codes. Information included with the drawings shall comply with Section 1003 of the Town of Gaines Zoning Law. Any applicant should meet with the Code Enforcement Officer to review what information is required for their building permit.

- b) Special Use Permits, Area Variances and Use Variances:

1. Major Site Plan Review: Five (5) copies of the a Sketch plan and/or five (5) copies of survey map prepared by a licensed Professional Engineer or licensed Land Surveyor and five (5) copies of construction drawings prepared by a Professional Engineer. All Professional drawings must be signed and stamped by the Professional preparing them and all sketch maps, Survey and Engineer drawings shall comply with Section 1003 of the Town of Gaines Zoning Laws.
2. Minor Site Plan Review: Five (5) copies of a site plan, which can be hand drawn and must comply with "Section 1003 Minor Site Plan Review" of the Town of Gaines Zoning Laws. It is recommend that an Applicant meet with the Town of Gaines Planning Board for a pre-application meeting to discuss the site plan requirements if the applicant is not sure of what type of Site Plan is needed (Minor or Major) or if the Applicant has questions about their application and/or project.

##### 2. APPROVAL OF WATER AND SEWAGE DISPOSAL SYSTEMS

Evidence of approval of the water supply and the sewage disposal system plans by the Orleans County Health Department, or its agent or a duly appointed agent of the Town of Gaines must be submitted at the time of application. Applications lacking such information shall not be accepted.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE III

### 3. **EVIDENCE OF PROPERTY OWNERSHIP OR INTENT TO PURCHASE**

Copies of deeds, titles, purchase agreements, or other proof of ownership or intent to purchase must be attached to an application before it will be accepted.

### 4. **LICENSES**

Any use currently licensed by Federal, State, County, or Town Agencies and already operating within the Town shall present evidence of currently valid licenses before any expansion permits are considered.

### 5. **FEE**

The appropriate non-refundable processing fee established by the Town Board in its processing fee structure shall be collected at the time of application. Also, a fee will be charged for copies of the Zoning Ordinance, Master Plan, Subdivision Regulations and/or Development Regulations.

- c. Any professional services required by the Town of Gaines in order to process an application, costs and fees for said professional services shall be borne by the applicant.
- d. Accessory items needing permits: Signs, Fences, Swimming pools, Decks and Storage Sheds. Permits for above items can be obtained from the Zoning Enforcement Officer.

## **SECTION 302- PRE APPLICATION CONFERENCE WITH PLANNING BOARD**

Pre application conferences with the Town Planning Board are strongly recommended for all applicants seeking permits for nonresidential uses. The sketch plan application requirement may be waived by the Planning Board if that Board informs the Zoning Enforcement Officer, in writing, that a pre application conference has been held and that a Site Plan will be submitted to the Planning Board.

## **SECTION 303- BUILDING PERMIT TYPES**

Under the terms of this Ordinance, the following classes of Building Permits may be issued:

### a. **Permitted Use**

A building permit for a permitted use may be issued by the Zoning Enforcement Officer of his own authority.

### b. **Special Permit Use**

A Special Permit for Special Permit Use may be issued by the Zoning Officer only after review by, and upon order of the Planning Board. Special Permit Uses are described in Article V and Article VII of this Ordinance.

### c. **Building Permit after an Appeal of Request for a Variance**

A building permit may be issued by the Zoning Enforcement Officer upon order of the Zoning Board of Appeals after a public hearing as more fully described in Article VII.

## **SECTION 304- BUILDING PERMIT GRANTED**

When all requirements of this Ordinance have been met, the Zoning Enforcement Officer shall forthwith issue a building permit and return one approved copy of the sketch plan map no later than fifteen (15) days after approval. The Zoning Enforcement Officer shall file one copy of the approved permit in the Town Clerk's Office. The Zoning Enforcement Officer shall make regular site visits during the period of construction of all buildings, structures or other facilities under construction in the Town of Gaines.

**TOWN OF GAINES ZONING ORDINANCE**  
**ARTICLE III**

**SECTION 305- TERMINATION OF PERMIT**

Any permit issued hereunder for which construction has not commenced or been completed within one (1) year shall expire one year from the date of issuance, unless the Zoning Enforcement Officer has approved and issued an extension of the original building permit. A building permit may be extended for a period not exceed nine (9) months in duration upon a good faith showing in the sole and absolute discretion of the Zoning Enforcement Officer that construction could not commence or be completed within the required one year from the date of issuance and after payment of any applicable renewal fee charged by the Town of Gaines.

**SECTION 306- CERTIFICATE OF CONFORMITY**

The applicant shall notify the Town Clerk when the structure is ready for final inspection. The Zoning Enforcement Officer shall then make a final inspection. If satisfied that all applicable codes, rule and regulations pertaining to the structure or use have been complied with and the project has been completed in accordance with the approved application, the Zoning Enforcement Officer shall issue a certificate of conformity with the Zoning Laws, granting final permission to occupy or use the structure.

**TOWN OF GAINES ZONING ORDINANCE**  
**ARTICLE IV**  
**ESTABLISHMENT AND DESIGNATION OF LAND USE DISTRICTS**

**SECTION 400- ESTABLISHMENTS OF DISTRICTS**

For the purpose of promoting the public health, safety, morals and general welfare of the Town of Gaines, the Town is hereby divided into the following types of districts:

- RA Residential/Agricultural
- C Commercial
- CH Commercial/Historical
- I Industrial

**SECTION 401- LOCATIONS OF BOUNDARIES**

The boundaries of said land use districts are hereby established as follows:

a) **RA (Residential/Agricultural) District**

All land situated within the Town of Gaines which is not hereafter designated and included in the C or CH districts.

b) **C (Commercial) District**

1. That portion of the Hamlet of Eagle Harbor within the Town of Gaines which lies within a circle having a five hundred feet radius and having its origin at the intersection of the Canal Road and the Waterport Road.
2. That portion of the Hamlet of Gaines bounded as follows: On the east by a line running north and south and 100 feet easterly from the intersection of Routes 104 and 279; on the west by a line running north and south and 1000 feet westerly from said intersection; and on the north and south by lines running east and west and each being 500 feet distant from the intersection of said Routes 104 and 279.
3. The east side of New York Route 98, bounded on the south by the north line of the Village of Albion, on the west by said Route 98, on the north by a line parallel with the center line of East Bacon Road and a distance of 1025 feet northerly therefrom at all points, and on the east by a line parallel to Route 98 and 500 feet east therefrom. The west side of New York Route 98, bounded on the south by east-west line 145 feet south of West Bacon Road, on the east by said Route 98, on north by a line parallel with center line of West Bacon Road and 260 feet west therefrom.

c) **CH (Commercial/Historical) District**

That portion of the Hamlet of Childs or Fairhaven bounded as follows: On the east by a line running north and south and 1500 feet easterly of the intersection of Route 104 and 98; on the west by a line running north and south and 1000 feet west of said intersection; and on the north and south by lines running east and west and each being 500 feet from the intersection of said Routes 104 and 98.

**SECTION 402- ZONING MAP**

Said land use districts are more particularly show and delineated on a map entitled "Zoning Map of the Town of Gaines, 1983", adopted by the Town Board of the Town of Gaines and certified by the Town Clerk, which map, with explanatory matter, is hereby incorporated by and made a part of this Ordinance.

**TOWN OF GAINES ZONING ORDINANCE**  
**ARTICLE IV**

**SECTION 403- INTERPRETATION OF DISTRICT BOUNDARIES**

Unless otherwise indicated on the Zoning Map the district boundary lines are intended generally to follow the center lines of streets, roads and thoroughfares, the center lines of railroad rights-of-way, existing lot lines, the mean water levels of streams and other waterways, and boundary lines, all as more particularly shown on the Zoning Map.

**.SECTION 404- DETERMINATION OF LOCATION OF BOUNDARIES**

In the event of uncertainty as to the exact location of a district boundary line in a particular instance, the Zoning Officer shall request that the Zoning Board of Appeals render a determination.

# **TOWN OF GAINES ZONING ORDINANCE**

## **ARTICLE V DISTRICT REGULATIONS**

### **SECTION 500- RA (RESIDENTIAL/AGRICULTURAL) DISTRICT**

#### **SECTION 501- PURPOSE**

The purpose of the residential/agricultural district is to provide a stable environment for residential development, free from incompatible uses, and to protect the agricultural lands and uses which often accompany residential areas from infestation by objectionable non-residential, non agricultural uses.

#### **SECTION 502- PERMITTED USES**

- 1) Agriculture and Agri Business.
- 2) Double-Wide Mobile/Manufactured Homes and Modular Homes.
- 3) Family Day Care Home and/or Group Family Day Care (see section 660 for requirements).
- 4) Farm Labor Housing in a NYS certified agricultural district (see section 665 for additional requirements).
- 5) One and Two-Family Dwellings.
- 6) Recreation Areas
- 7) Wind Energy Conversion System in a NYS certified agricultural district (see section 728.E.E.for additional requirements).

Note: Site Plan review is required on all proposed buildings 4,000 square feet and larger.

#### **SECTION 503- PERMITTED ACCESSORY USES**

Uses and structures customarily incidental to permitted uses and structures.

#### **SECTION 504- PERMISSIBLE SPECIAL USES REQUIRING SPECIAL USE PERMIT**

The following uses require a special use permit before they can be undertaken in the RA District and are subject to prior site plan review and approval by the Planning Board in accordance with Article X of this Ordinance:

- Airports
- Campgrounds
- Community Recycling
- Commercial Day Care Centers
- Essential Services
- Excavation and Mining
- Farm Labor Housing Lying Outside a NYS Certified Agricultural District
- Farm Machinery Repair Shop
- Home Occupations
- Kennels and Animal Hospitals
- Meteorological (MET) Towers
- Mobile Home Park
- Monument Shop
- Multiple Family Dwellings
- Professional Offices
- Pinball or Video Game Arcades
- Public/Semi-Public/Community Facilities

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE V

Satellite Antenna  
Seasonal Tourist Business  
Small Wind Energy Conversion System  
Telecommunication Facility

### SECTION 505- SPECIFICATIONS

a) Setback for buildings under 4,000 square feet.

Front: One hundred (100) feet, except for Ridge Road, which is one hundred and twenty (120) feet?

Side: Fifteen (15) feet.

Rear: Fifteen (15) feet.

Frontage: Two hundred (200) feet.

Height: Thirty-five (35) feet.

Minimum Lot Size: Forty thousand (40,000) square feet.

Density: No building shall occupy more than 80% of said parcel and/or lot.

Foundations:

1. One family dwelling: All one family dwellings structures erected, built or placed in the town of Gaines shall be placed on a masonry foundation, either of reinforced poured concrete or masonry block units with a minimum 4 foot crawl space, as measured from the bottom of the joist or steel structure to a poured cement floor. If a full basement is to be installed, reinforced poured concrete walls must be a least 7 foot high and if masonry block is used, it must be at least 11 courses high, properly reinforced and built in accordance with New York State Code. Where bedrock is found to be close to the surface to allow the required excavation depth, the footings may be placed directly on bedrock with the approval of the Zoning Enforcement Officer.
2. A poured concrete floor shall consist of not less than four (4) inches of minimum 3500 lb reinforced poured concrete over a waterproof membrane of not less than 0.006 inch or .0155 millimeters polyvinyl chloride, with joints lapped not less than 6 inches or 1.52 millimeters, or such other materials approved by the Zoning Enforcement Officer.
3. Other buildings/dwellings: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

b) Setback for buildings 4,000 square feet and larger:

Front: One hundred (100 feet, except for Ridge Road, which is one hundred and twenty (120) feet. All setbacks shall be measured from the centerline of the road.

Side: Fifty (50) feet.

Rear: Fifty (50) feet.

Frontage: Two Hundred (200) feet.

Height: Thirty-Five (35) feet.

Minimum Lot Size: Forty thousand (40,000) square feet.

Density: No building shall occupy more than 80% of said parcel and /or lot.

Foundations:

1. One family dwelling: All one family dwellings structures erected, built or placed in the town of Gaines shall be placed on a masonry foundation, either of reinforced poured concrete or masonry block units with a minimum 4 foot

**TOWN OF GAINES ZONING ORDINANCE**  
**ARTICLE V**

crawl space, as measured from the bottom of the joist or steel structure to a poured cement floor. If a full basement is to be installed, reinforced poured concrete walls must be a least 7 foot high and if masonry block is used, it must be at least 11 courses high, properly reinforced and built in accordance with New York State Code. Where bedrock is found to be close to the surface to allow the required excavation depth, the footings may be placed directly on bedrock with the approval of the Zoning Enforcement Officer.

2. A poured concrete floor shall consist of not less than four (4) inches of minimum 3500 lb reinforced poured concrete over a waterproof membrane of not less than 0.006 inch or .0155 millimeters polyvinyl chloride, with joints lapped not less than 6 inches or 1.52 millimeters, or such other materials approved by the Zoning Enforcement Officer.
3. Other buildings/dwellings: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

**SECTION 510- C (COMMERCIAL) DISTRICT**

**SECTION 511- PURPOSE**

The purpose of this district is to provide for the establishment of commercial uses essential to the development of a balanced economic base and to regulate commercial development such that it will not be detrimental or hazardous to the surrounding areas or detract from the character of existing residential, agricultural and historical areas.

**SECTION 512- PERMITTED USES**

Any use permitted in the RA District.

Business Services

Restaurants

Retail and Wholesale Businesses (excluding any use specifically provided for in Section 514)

Note: Site Plan review is required on all proposed buildings 4,000 square feet and larger.

**SECTION 513- PERMITTED ACCESSORY USE**

Those uses and structures customarily incidental to permitted uses and structures.

**SECTION 514- PERMISSIBLE SPECIAL USES REQUIRING SPECIAL USE PERMIT**

The following uses require a special use permit before they can be undertaken in the C District and are subject to prior site plan review and approval by the Planning Board in accordance with the provisions of Article X of this Ordinance:

Adult use and/or Business

Club

Commercial Day Care Centers

Drive-in Restaurants

Essential Services

Home Occupations

Hotels and Motels

**TOWN OF GAINES ZONING ORDINANCE**  
**ARTICLE V**

Junk Yards  
Kennels and Animal Hospitals  
Motor Vehicle Repair Shop and/or Body Repair shop  
Multiple Family Dwellings  
Pinball or Video Game Arcades  
Professional Offices  
Public/Semi-Public/Community Facilities  
Retail Gasoline Outlet  
Small Wind Energy Conversion System  
Telecommunication Facility

Any other retail or service use similar in nature and scale to foregoing special uses.

**SECTION 515- SPECIFICATIONS**

a) Setback for buildings under 4,000 square feet.

Front: One hundred (100) feet, except for Ridge Road, which is one hundred and twenty (120) feet?

Side: Fifteen (15) feet.

Rear: Fifteen (15) feet.

Frontage: Two hundred (200) feet.

Height: Thirty-five (35) feet.

Minimum Lot Size: Forty thousand (40,000) square feet.

Density: No building shall occupy more than 80% of said parcel and/or lot.

Foundations:

1. One family dwelling: All one family dwellings structures erected, built or placed in the town of Gaines shall be placed on a masonry foundation, either of reinforced poured concrete or masonry block units with a minimum 4 foot crawl space, as measured from the bottom of the joist or steel structure to a poured cement floor. If a full basement is to be installed, reinforced poured concrete walls must be a least 7 foot high and if masonry block is used, it must be at least 11 courses high, properly reinforced and built in accordance with New York State Code. Where bedrock is found to be close to the surface to allow the required excavation depth, the footings may be placed directly on bedrock with the approval of the Zoning Enforcement Officer.
2. A poured concrete floor shall consist of not less than four (4) inches of minimum 3500 lb reinforced poured concrete over a waterproof membrane of not less than 0.006 inch or .0155 millimeters polyvinyl chloride, with joints lapped not less than 6 inches or 1.52 millimeters, or such other materials approved by the Zoning Enforcement Officer.
3. Other buildings/dwellings: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

b) Setback for buildings 4,000 square feet and larger:

Front: One hundred (100) feet, except for Ridge Road, which is one hundred and twenty (120) feet. All setbacks shall be measured from the centerline of the road.

Side: Fifty (50) feet.

Rear: Fifty (50) feet.

# **TOWN OF GAINES ZONING ORDINANCE**

## **ARTICLE V**

Frontage: Two Hundred (200) feet.

Height: Thirty-Five (35) feet.

Minimum Lot Size: Forty thousand (40,000) square feet.

Density: No building shall occupy more than 80% of said parcel and /or lot.

Foundations:

1. One family dwelling: All one family dwellings structures erected, built or placed in the town of Gaines shall be placed on a masonry foundation, either of reinforced poured concrete or masonry block units with a minimum 4 foot crawl space, as measured from the bottom of the joist or steel structure to a poured cement floor. If a full basement is to be installed, reinforced poured concrete walls must be a least 7 foot high and if masonry block is used, it must be at least 11 courses high, properly reinforced and built in accordance with New York State Code. Where bedrock is found to be close to the surface to allow the required excavation depth, the footings may be placed directly on bedrock with the approval of the Zoning Enforcement Officer.
2. A poured concrete floor shall consist of not less than four (4) inches of minimum 3500 lb reinforced poured concrete over a waterproof membrane of not less than 0.006 inch or .0155 millimeters polyvinyl chloride, with joints lapped not less than 6 inches or 1.52 millimeters, or such other materials approved by the Zoning Enforcement Officer.
3. Other buildings/dwellings: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

### **SECTION 516- ADDITIONAL REQUIREMENTS**

No commercial use or structure shall be permitted within fifty (50) feet of the nearest lot line of any residential district.

### **SECTION 520- CH (COMMERCIAL/HISTORICAL) DISTRICT**

#### **SECTION 521- PURPOSE**

The purpose of the CH District is to preserve certain areas of historical or cultural significance in the Town of Gaines. It is recognized that in close proximity to the intersections of Route 98 and 104 in the Hamlet of Childs are a number of structures of significant historical importance, structures which co-exist with a variety of commercial uses. It is the intention of this district to restrict further commercial development unless it is consistent with the architectural, cultural and historical character of the area; and to promote and encourage the further historical development and preservation of the district.

#### **SECTION 522- APPLICABILITY**

The CH District is designated on the Zoning Map of the Town of Gaines. To the extent that the requirements of the following section are inconsistent with other provisions of this Ordinance, the provisions of the following section shall be controlling.

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**SECTION 523- PARTICULAR PROVISIONS AND REQUIREMENTS FOR CH DISTRICT**

- a) All development in the CH district shall require a Site Plan Review. In addition, all Commercial Development in CH district shall require a Special Use Permit.
- b) No demolition or substantial exterior alteration resulting in an essential change in a structure of building is allowed without Site Plan Approval.
- c) The Town Planning Board Site Plan Review must establish compliance with the following additional requirements:
  - 1. The proposed building or use is consistent with the architectural and historical significance of the area as a whole.
  - 2. The proposed building or use does not encroach upon, diminish or other wise adversely impact upon the other structures or uses within the district.
  - 3. Prior to the issuance of any permit authorizing the demolition of any building or structure in the CH District, it must be established to the satisfaction of the Planning Board that the physical condition of the building or structure is such that it would be financially infeasible to attempt to rehabilitate, renovate, restore or preserve the building or structure.
- d) In making any determination under this Section, the Planning Board may, as it in its discretion deems desirable, consult individuals with expertise in various aspects of historical/cultural development and/or redevelopment.

**SECTION 524- PERMITTED USES**

Agriculture

One Family Dwelling

Note: Site Plan review is required on all proposed buildings 4,000 square feet and larger.

**SECTION 525- PERMISSIBLE SPECIAL USES REQUIRING SPECIAL USE PERMIT**

The following uses require a special use permit before they can be undertaken in the CH District and are subject to prior site plan review and approval by the Planning Board in accordance with Section 523 and Article X of this Ordinance:

Antique Shops

Restaurants

Book Stores

Bed and Breakfast and/or Tourist Home

Carpet Store

Convenience Stores (7-11, Am/Pm, K&K, etc.).

Gift and/or Souvenir Store

Flower Store

Farm Produce Store (Agriculture Produce).

Kennel

Pet Store

Sporting Goods Store

\*(Adult uses and/or business are prohibited in the CH District)

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**SECTION 526- SPECIFICATIONS**

a) Setback for buildings under 4,000 square feet.

Front: One hundred (100) feet, except for Ridge Road, which is one hundred and twenty (120) feet?

Side: Fifteen (15) feet.

Rear: Fifteen (15) feet.

Frontage: Two hundred (200) feet.

Height: Thirty-five (35) feet.

Minimum Lot Size: Forty thousand (40,000) square feet.

Density: No building shall occupy more than 80% of said parcel and/or lot.

Foundations:

1. One family dwelling: All one family dwellings structures erected, built or placed in the town of Gaines shall be placed on a masonry foundation, either of reinforced poured concrete or masonry block units with a minimum 4 foot crawl space, as measured from the bottom of the joist or steel structure to a poured cement floor. If a full basement is to be installed, reinforced poured concrete walls must be a least 7 foot high and if masonry block is used, it must be at least 11 courses high, properly reinforced and built in accordance with New York State Code. Where bedrock is found to be close to the surface to allow the required excavation depth, the footings may be placed directly on bedrock with the approval of the Zoning Enforcement Officer.
2. A poured concrete floor shall consist of not less than four (4) inches of minimum 3500 lb reinforced poured concrete over a waterproof membrane of not less than 0.006 inch or .0155 millimeters polyvinyl chloride, with joints lapped not less than 6 inches or 1.52 millimeters, or such other materials approved by the Zoning Enforcement Officer.
3. Other buildings/dwellings: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

b) Setback for buildings 4,000 square feet and larger:

Front: One hundred (100 feet, except for Ridge Road, which is on hundred and twenty (120) feet. All setbacks shall be measured from the centerline of the road.

Side: Fifty (50) feet.

Rear: Fifty (50) feet.

Frontage: Two Hundred (200) feet.

Height: Thirty-Five (35) feet.

Minimum Lot Size: Forty thousand (40,000) square feet.

Density: No building shall occupy more than 80% of said parcel and /or lot.

Foundations:

1. One family dwelling: All one family dwellings structures erected, built or placed in the town of Gaines shall be placed on a masonry foundation, either of reinforced poured concrete or masonry block units with a minimum 4 foot crawl space, as measured from the bottom of the joist or steel structure to a poured cement floor. If a full basement is to be installed, reinforced poured concrete walls must be a least 7 foot high and if masonry block is used, it must be at least 11 courses high, properly

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reinforced and built in accordance with New York State Code. Where bedrock is found to be close to the surface to allow the required excavation depth, the footings may be placed directly on bedrock with the approval of the Zoning Enforcement Officer.

2. A poured concrete floor shall consist of not less than four (4) inches of minimum 3500 lb reinforced poured concrete over a waterproof membrane of not less than 0.006 inch or .0155 millimeters polyvinyl chloride, with joints lapped not less than 6 inches or 1.52 millimeters, or such other materials approved by the Zoning Enforcement Officer.
3. Other buildings/dwellings: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

### **SECTION 530- I (INDUSTRIAL) DISTRICT**

#### **SECTION 531- PURPOSE**

Although at the present time there are no areas in the Town of Gaines designated as Industrial Districts, it is recognized that the development of a balanced economic base in the Town may lead to the establishment of an industrial district at some time in the future. In order to ensure that any subsequent industrial development in the Town of Gaines is not detrimental or hazardous to the surrounding community, the following regulations shall be applicable to any industrial use hereafter undertaken in the Town of Gaines.

#### **SECTION 532- PERMITTED USES**

Only uses of a light industrial or agri-industrial nature, involving the processing, assembly or packaging of previously prepared or refined materials, will be permitted in the Town of Gaines; provided, however, that at no time shall any such use result in or cause:

- (1) Dust, smoke, smog, observable gas, fumes or odors, or other atmospheric pollution, objectionable noise, glare or vibration shall not be discernible beyond the property lines of the industry.
- (2) Hazard of fire or explosion or other physical hazard to any adjacent building or to any plant growth on any land adjacent to the site of the use.

All uses in the I District shall be subject to Site Plan Review in accordance with the provisions of Article X of this Ordinance.

#### **SECTION 533- PERMITTED ACCESSORY USES**

- a) Signs shall be permitted for advertising industrial activities on the premises which shall not exceed, in aggregate, fifteen (15) percent of the area of the front facade of the building. Such signs may be illuminated but shall not be of the flashing type.
- b) Private garage and storage buildings, which are necessary to store any vehicle, equipment, or materials on the premises.
- c) Off-street parking space subject to the provisions of Article VI of this Ordinance.

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**SECTION 534- OTHER PROVISIONS AND REQUIREMENTS**

- a) Residential uses shall be prohibited in this district.
- b) All industrial processes shall take place within the confines of an enclosed building. Incidental storage out of doors may be permitted provided that such materials are shielded from view from public streets, adjacent off-street parking areas and adjacent non-industrial districts by fencing, landscaping, or other appropriate measures.
- c) All uses permitted in this district shall set aside not less than ten percent of the lot to be devoted to seeding, planting, retention of tree cover, or other landscaping. This area shall be used for no other purpose.
- d) Each use in this district shall provide truck loading and unloading area in an amount sufficient to permit the transfer of goods and products in other than a public street, off-street parking area or front yard.
- e) Industrial structures shall be located so as to be a minimum of one hundred (100) feet from any non-industrial district. This one hundred foot buffer zone shall be perpetually maintained so as to provide visual screening and separation between industrial and non-industrial uses.
- f) Parking areas may be located in any of the required yard areas provided that they are not less than fifty (50) feet from a right-of-way line or twenty (20) feet from a property line.
- g) Site Plan Review is required on all proposed buildings 4,000 square feet and larger.

**SECTION 535- SPECIFICATIONS**

Setbacks:

Front: One hundred (100) feet, except for Ridge Road, which is one hundred and twenty (120) feet?

Side: Fifty (50) feet

Rear: Fifty (50) feet

Height: Thirty-five (35) feet

Density: No building shall occupy more than 80% of said parcel and/or lot

Frontage: Two hundred (200) feet

Minimum Lot Size: One (1) acre

Foundations: Constructed in accordance with all applicable Federal, State or local building codes, regulations or standards as determined by the Zoning Enforcement Officer.

**SECTION 540- F (FLOOD HAZARD) DISTRICT**

On May 20, 1976, the Town of Gaines was duly admitted into the Emergency Program phase of the National Flood Insurance Program (NFIP) on the condition that the Town would continue to carry out the objectives of the program and would at a future date adopt more stringent land management measures which would meet minimum Federal requirements and apply for admittance into the Regular Program phase of the NFIP. It is the intention of the Town of Gaines to hereafter adopt a local law, to be entitled "Town of Gaines Local Law NO. 1 of 1983", to regulate development in the Flood Hazard District. Upon the adoption of said local law, which shall thereafter be incorporated by reference in this Ordinance, the provisions of such local law shall govern all subsequent development in the Flood Hazard District.

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**REGULATIONS APPLICABLE TO ALL ZONING**

**SECTION 600- SIGNS**

Signs shall be permitted only in accordance with the standards set below.

**SECTION 601- GENERAL STANDARDS**

- a. No sign shall consist of lights which flash or move or appear to move.
- b. No sign shall be higher than the principal building to which it is an accessory.
- c. No general advertising sign unrelated to the use of the premises is allowed.
- d. No sign shall project into a public right-of-way.
- e. No sign shall be erected on a public utility pole or traffic control structure.
- f. The allowable signage in each District is as follows:
  1. C, CH and I Districts: The allowable signage is up to 96 square feet and no one sign shall exceed 36 square feet.
  2. RA District: One sign not to exceed 20 square feet.
- g. All permanent signage in all districts is subject to site plan review and require a permit.
- h. Additional signage:
  1. Additional signage maybe granted in the C, CH and I Districts if the applicant demonstrates the need of additional signage and submits a detailed Site Plan.
  2. Additional signage shall be granted to the applicant's existing business and shall terminate when the need no longer exists and is not transferable to a new owner.
- i. All signage must be removed with in thirty (30) day if the need no longer exists and/or other Special Use Permits related to the use of the signage has been revoked and/or canceled.
- j. All signs in existence at the time of the enactment of this ordinance shall allowed to remain, as long as the signage was either in compliance with the previous signage ordinance or was in place before the adoption of the Town of Gaines Zoning Ordinance (1983) and the use and/or need remains current.

**SECTION 602- TEMPORARY SIGNS**

Under certain circumstances, deviation from the above standards may be permitted. Temporary unlighted signs may be erected by or for non-profit organizations for a maximum forty-day period without a permit, provided that the sign will not constitute a traffic hazard and further provided that the sign is removed within 48 hours after completion of the advertised event.

**SECTION 605- PARKING**

This section is deigned to alleviate problems occasioned by inadequate or poorly designed parking facilities.

- a) All uses shall provide adequate off-street parking for all vehicles parked during typical peak use periods. Parking should be designed so as to minimize the need to back out onto public roads and to minimize parking along the shoulders of public roads.
- b) No parking space shall be less than 10'x20', exclusive of access ways and driveways.
- c) Off-street parking areas for non-residential uses shall provide clearly delineated access drives and aisles. Parking areas with parking spaces for fifty (50) or more vehicles shall delineate fire lanes and shall not include any parking meters.

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**SECTION 606- MINIMUM PARKING STANDARDS**

Minimum standards supplementary to the basic standard cited above are as follows:

- a) One parking space for every three seats in a public meeting place.
- b) One parking space for each employee at places of employment and one parking space per two hundred and fifty (250) square feet of gross floor area in a commercial establishment unless otherwise specified herein.
- c) One parking space for every two hundred (200) square feet of gross floor area in business and professional offices.
- d) One parking space for every one (100) square feet of gross floor area in supermarkets and self service food stores.
- e) All business (to include Permitted Uses, Special Use and Use Variance Permit) shall provide space for "turnaround" capabilities to prevent backing out onto a public road.

**SECTION 610- FENCES**

Fences erected in the Town of Gaines shall conform to the following standards unless otherwise specified in this Ordinance:

- a) Fences may be erected, altered or reconstructed to a height not exceeding six (6) feet for residential uses and to a height not exceeding eight (8) feet for non-residential uses.
- b) No fence shall cause obstruction to vision at any road, street or thoroughfare intersection.
- c) Fences constructed in Residential/Agricultural (RA) District shall be made of wood, vinyl and/or metal and shall either be pressure treated, painted or stained to prevent rust, rot or deterioration from the weather. Any fence which is painted shall be painted either white, brown, redwood or neutral color.
- d) No fence shall be constructed without a building permit issued by the Zoning Enforcement Officer. No building permit shall require the construction of a fence for Agriculture or Agricultural Business purposes.

**SECTION 615- SEWAGE DISPOSAL**

The improper disposal of sewage, including the discharge of sewage into a ditch, roadway, stream or lake or onto adjacent property, is not permitted.

**SECTION 620- UNSAFE BUILDINGS AND COLLAPSED STRUCTURES**

It is recognized that buildings made unsafe as consequence of damage by the elements, fire, age or general deterioration and structures that have collapsed as a consequence of neglect, deterioration or damage pose a serious threat to life and property in the Town of Gaines. It is the purpose of this section to promote the health, safety and general welfare of persons and property in the Town of Gaines by requiring that any such unsafe building or collapsed structure be repaired or demolished and removed, in accordance with the provision of Section 621 hereof.

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### SECTION 621- PROCEDURE

- a) **Investigation and Report:** When in his own opinion or upon receipt of information that a building (1) is or may become dangerous or unsafe to the general public (2) is open at the doorways and windows making it accessible to and an object of attraction to minors under eighteen years of age, as well as to vagrants and other trespassers, (3) is or may become a place of rodent infestation, (4) presents any other danger to the health, safety, morals and general welfare of the public or (5) is unfit for purposes for which it may lawfully be used, the Zoning Enforcement Officer shall cause or make an inspection thereof and report in writing to the Town Board his findings and recommendations in regard to its repair or demolition and removal.
- b) **Town Board Order:** The Town Board shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such building is unsafe and dangerous and order its repair if the same can be safely repaired or its demolition and removal, and further order that a notice be served upon the persons in the manner provided herein.
- c) **Notice; Contents:** The notice shall contain the following: (1) a description of the premises, (2) a statement of the particulars in which the building is unsafe or dangerous, (3) an order outlining the manner in which the building is to be made safe and secure, or demolished and removed, (4) a statement that a hearing will be held before the Town Board at a specified time and place and upon a minimum of fifteen (15) days notice, for the purpose of affording the owner or such other person who is entitled to notice pursuant to the provisions of subparagraph (d) hereof, the opportunity to be heard in opposition to the order, (5) a statement that the securing or removal of such building shall commence within thirty (30) days after such hearing, or within thirty (30) days after notice of default has been served if the owner or such other person who is served with notice does not appear at the hearing, and shall be completed within sixty (60) days after such hearing or within sixty (60) days after notice of default has been served, unless for good cause shown such time shall be extended, (6) a statement that in the event of neglect or refusal of the person so served with the notice to comply with the same within the time periods specified in such notice, the Town of Gaines will repair and secure, or demolish and remove, the offending building and all charges incurred by the Town in connection with the same will be assessed in accordance with the provisions of subparagraph (f) hereof.
- d) **Service of Notice:** The said notice shall be served (a) by personal service of a copy thereof upon the owner, executor, administrator, agent, lessee, or any person having a vested or contingent interest in such unsafe building as shown by the records of the receiver of taxes or of the County Clerk; or if no such person can be reasonably found (1) by mailing to such owner or other person by registered mail a copy of such notice directed to this last known address as shown by the above records and (2) by personal service of a copy of such notice upon any adult person residing in or occupying said premises if such person can be reasonably found and (3) by securely affixing a copy of such notice upon the unsafe building.
- e) **Filing of Notice:** A copy of such notice shall be filed in the office of the County Clerk of the County in such building or structure is located, which notice shall be filed by such Clerk in the same manner as a notice of pendency pursuant to Article Sixty-five of the Civil Practice Laws and Rules, and shall have the same effect as notice of pendency

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as therein provided, except as otherwise herein after provided in this subparagraph. A notice so filed shall be effective for a period of one year from date of filing, provided, however, that it may vacated upon the order of a Judge or Justice of a Court of record or upon the consent of the town attorney. The Clerk of the County where such notice is filed shall mark such notice and any record or docket thereof as canceled of record upon the presentation and filing of such consent of a certified copy of such order.

- f) **Assessment of Expenses:** All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building, including the cost of actually removing such building, shall be assessed against the land on which such building is located, shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and collection of a special ad valorem levy.
- g) **Emergency Cases:** Where it appears that there is present a clear and imminent danger to the life, safety or health of any person or property, unless an unsafe building is immediately repaired and secured or demolished, the notice required by subparagraph (c) hereof shall, in lieu of the requirements of subparagraphs (d) and (e) hereof, direct the owner of such other person as may be entitled to notice thereof to immediately repair and secure or demolish such unsafe building. Upon the failure or refusal of such owner or other person to repair or demolish such building within seventy-two (72) hours after service of such notice, the Town Board may by resolution authorize the Zoning Enforcement Officer to immediately cause such unsafe building to be repaired or demolished. The expense of such repair or demolition shall be a charge against the land on which it is located and shall be assessed, levied and collected as provided in subparagraph (f) hereof.

### SECTION 625- AREA OF STRUCTURE OCCUPANCY

No single-family dwelling or mobile home hereafter erected in the Town of Gaines shall contain less than twelve hundred square feet of habitable ground floor area in a one-story dwelling, nor less than nine hundred square feet of livable ground floor area in a one and one-half story dwelling, nor less than six hundred feet of livable ground floor area in a two-story dwelling. All single wide mobile homes shall have at least 980 square feet of habitable ground floor area and shall be located in a Mobile Home Park pursuant to section 712. The provisions of this section shall not apply to temporary structures housing employees working on land owned by the owner of the land upon which said housing facilities are located.

### SECTION 630- NON-CONFORMING USES, LOTS, and STRUCTURES

Lots, structures, uses of land and structures and characteristics of use which lawfully existed at the time of the enactment of these regulations and which would be prohibited or restricted under the terms of this Ordinance may be continued subject to the following provisions:

- a) **Enlargement:** No non-conforming use shall enlarge or increase, nor extended to occupy a greater area of land than was occupied at the effective date of the adoption of these regulations.
- b) **Unsafe Structures:** Any structure or portion thereof declared unsafe by a proper authority may be restored to a safe condition.
- c) **Alterations:** A non-conforming structure may not be reconstructed or structurally altered to an extent exceeding in aggregate cost fifty (50) percent of the full value of said structure, unless the structure shall be changed to a conforming use.

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- d) **Structures under construction:** Structures now under construction for a designated non-conforming use may be completed according to the present plan thereof within the period of one (1) year after this Ordinance takes effect for the designated use to be made thereof.
- e) **Reconstruction:** Any structure containing a non-conforming use which has been wholly or partially destroyed by means other than intent or design may be reconstructed or repaired within one (1) year thereafter for the designated non-conforming use existing prior to the event.
- f) **Discontinuance:** Whenever a non-conforming use has been discontinued or abandoned for a period of one (1) year or more, such used shall not thereafter be re-established, and any future use shall be in conformity with the provisions of these regulations.
- g) **Changes:** Once changed to a conforming use, no structure or land so changed shall be permitted to revert to a non-conforming use.
- h) **Displacement:** No non-conforming use shall be extended to displace a conforming use.
- i) **Moving:** Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.

**SECTION 640- TRAVEL TRAILERS/CAMPERS**

Travel trailers and campers shall not be occupied on an overnight basis except at an approved camping ground, or, with the consent of the owner, for a period not exceed ten (10) days on private land, provided all applicable health standards are met. Occupancy for periods longer than (10) days is permitted only upon receipt of a special permit issued by the Zoning Enforcement Officer.

**SECTION 641- MOTOR VEHICLE STORAGE AND PRIVATE SALES**

- a) Only 1 (one) unlicensed vehicle or 1 (one) vehicle that will not pass state inspection will allowed to stored on any property in the Town of Gaines unless otherwise permitted.
- b) Only one (1) motor vehicle for sale will be allowed to be displayed for sale for up to 60 days on any property in the Town of Gaines with no more than two (2) private sales occurring in any one calendar year.
- c) Motor vehicles may not be stored or displayed for sale on premises in the Town of Gaines unless it contains either a residential dwelling or other structure.
- d) This section shall not apply to the storage of sale of agricultural or farm related vehicles on premises located in either in the RA district or within the boundaries of a NYS certified agricultural district.

**SECTION 645- SWIMMING POOLS**

Swimming pools may be installed only as accessory structures to a dwelling for the private use of the owners or occupants of such dwelling and their families and guests. No swimming pool shall be installed or maintained unless:

- a) Such pool is installed in the rear or side yard of the premises.
- b) Anything in this Ordinance to the contrary notwithstanding, there shall be erected and maintained a good quality close woven stockade fence four (4) feet in height, enclosing

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the entire portion of the premises upon which such pool shall be installed and entirely surrounding the area in which such pool is located.

- c) Every gate or other opening in the fence enclosing such pool, except an opening through the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at such pool and shall be equipped with self-closing and self-locking devices.
- d) Such pool area shall not occupy more than fifty (50) percent of the open area of the rear yard after compliance with all set-back restrictions.
- e) Such pool shall be chemically treated in a manner sufficient to maintain the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.

### **SECTION 646- ARTIFICIALLY CONSTRUCTED PONDS**

All ponds artificially constructed on property located in the Town of Gaines shall be subject to the following regulations:

- a. Shall comply with all DEC regulations.
- b. Shall comply with Section 706 of Town of Gaines Zoning Ordinance (Excavation and Mining).
- c. Shall require Site Plan Review by the Town of Gaines Planning Board.
- d. Shall adhere to following setbacks:
- e. Front setback from road shall be a minimum of 150 feet
- f. Side and rear setback from property line shall be a minimum of 25 feet.
- g. Types of artificially constructed ponds and special regulations that apply:
  - 1. Recreational Ponds (artificially constructed ponds not used in an agriculture related business).
  - 2. Farm Ponds (artificially constructed ponds used in an agriculture related business).

### **SECTION 650- YARD, PORCH AND GARAGE SALES**

- a) Only two yard, porch and/or garage sales per household will permitted during a calendar year. A yard, porch and/or garage sale may last up two weeks, including spanning two weekends. If the yard, porch and/or garage sale are only being held on the weekends, the merchandise should be stored and/or covered during the week and should not be visible to the public.
- b) Any yard, porch and/or garage sale lasting longer than 2 weeks will be considered a “Home Occupation” and a “Special Use Permit” is required and the regulations under section 708 shall apply.

### **SECTION 655- SPECIAL EVENTS AND COMMERCIAL VENDOR CARTS**

**A. Special Events:** Special Events (parades, concerts, carnival, etc.) shall be permitted in the Town of Gaines by a permit issued by the Code Enforcement Officer, which will require the following information and/or conditions:

Type of Special Event

- 1. Type of special even
- 2. Location of special event
- 3. Dates and duration of the Special Event (Minimum of one day and maximum of 10 days) and dates of the Special Event.

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4. Name, Address and telephone number of the person requesting the Special Event permit.
5. Site plan of the Special Event, to include ample off street parking with turn-around capability, location of sanitary facilities, security for event, emergency facilities and type of temporary seating (if required) and location of all temporary buildings, including vendor carts. Site Plan must be approved by the Code Enforcement Officer and/or Town of Gaines Planning Town Board.
6. Copy of Liability Insurance Certificate to cover Special Event
7. Payment of the "Special Event Permit" fee (see Town of Gaines Fee Schedule).

**B. Commercial Vendor Carts:** Commercial Vendor Carts that sell food and/or merchandise shall be permitted only for Special Events (see above) and may require a "Special Event Commercial Vendor Permit" if vendor is not listed in the Special Event Permit. The "Special Event Commercial Vendor Permit" shall be issued by the Code Enforcement Officer. The permit application includes the following information and/or conditions:

1. Type of Vendor Cart (food or merchandise)
2. Name of Special Event
3. Location of Vendor Cart for Special Event
4. Dates and duration Vendor Cart will be used at the Special Event, including dates.
5. Name, Address and Telephone number of person responsible for the Vendor Cart
6. Copy of Liability Insurance Certificate.
7. Payment of the "Special Event Vendor Permit" Fee (see Town of Gaines Fee Schedule)

### SECTION 656- INDIVIDUAL MOBILE HOMES

- a) Mobile homes (to include "Single Wide" and "Double Wide") placed in the Town of Gaines will meet the following criteria:
  1. Meet all current regulations of the "Housing and Community ACT" of 1976; and
  2. Meet all state and local building codes; and
  3. Single wide mobile homes shall be placed and located only in Mobile Home Parks and/or used in agricultural operations as Farm Labor Housing. Double Wide mobile homes shall be permitted only in RA districts and Mobile Home Parks.
- b) Single Wide Mobile Homes shall be not less than nine hundred eighty (980) square feet and Double Wide Mobile Homes shall not less than twelve hundred (1200) square feet. The square footage shall be measured by exterior floor area dimensions.
- c) No structures, with the exception of a patio/deck, carport or door porch not exceeding eight feet in height, may hereafter be constructed so as to be attached or affixed to a mobile home without prior site plan review and approval, in accordance with Article X of this Ordinance.
- d) A storage shed must be located on each mobile home lot, if a full basement and/or garage is not provided on the mobile home lot.
- e) Every mobile home must be placed on permanent foundation of either full poured concrete or block wall and each home must be fastened to its foundation with half-inch bolts or equivalent. A minimum crawl space shall be provided under the mobile home.
- f) Mobile homes are subject to all applicable portions of the Town of Gaines Ordinance pertaining to single family dwellings.
- g) Existing Single Wide Mobile Homes that are located on lots not in a Mobile Home Park are permitted as long as the Single Wide Mobile Home is not removed from said lot. If the Single Wide Mobile is removed from said lot and/or said lot is vacant for (1) year, the current Town of Gaines Zoning Ordinance regulations shall apply.

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### **SECTION 660- RESIDENTIAL DAY CARE**

The following regulations shall apply to “Family Day Care Home” and “Group Family Day Care” providers located in the Town of Gaines as the same are defined under the heading Residential Day Care in Section 210 of this Ordinance:

1. Must be Licensed and Registered by the Buffalo regional headquarters of the “New York State Office of Children and Family Services” which is administered by the “Orleans County Department of Social Services”. The “Orleans County Department of Social Services” is responsible for registration, licensing and enforcement of “Family Day Care Homes” and “Group Family Day Care Homes”.
2. A “Family Day Care Home” and/or “Group Family Day Care” provider must register with Town of Gaines, provide a copy of the license and/or registration issued by “Orleans County Department of Social Services” and copy of liability insurance certificate that covers the either the “Family Day Care Home” or “Group Family Day Care” provider. The license issued by the “Orleans Department of Social Services” is reviewed every two (2) years and the home care provider must update the Town of Gaines of any changes to their license and/or registration.
3. A “Family Day Care Home” and/or “Group Family Day Care” provider must meet all New York State Building Codes, New York State Health Department Codes, and all “New York State Office of Children and Family Services requirements for a “Family Day Care Home” and/or “Group Family Day Care”.

### **SECTION 665- FARM LABOR HOUSING WITHIN AGRICULTURAL DISTRICTS**

- a) Farm Labor Housing located within the Town of Gaines lying within the boundaries of an Orleans County adopted, New York State certified agricultural district shall be subject only to Site Plan Review and approval as provided herein or under the provisions of this Ordinance.
- b) The maximum gross density of the farm labor housing shall not exceed six (6) dwelling units or single wide trailers per acre. The occupational density shall not exceed ten (10) persons per dwelling unit, or six (6) persons per single wide mobile home or ten (10) persons per double wide mobile home. All occupational density standards shall comply with Orleans County Health Department rules and regulations.
- c) All farm labor housing must continually comply with all applicable local, state and federal building codes, rules and regulations, including Health Department, Agriculture and Markets, H2A requirements, property maintenance codes and standards. All mobile homes used for farm labor housing shall in compliance with applicable HUD construction and safety standards in effect at the time of manufacture or shall be inspected and approved by the Code Enforcement Officer to ensure that the premises are structurally sound and free of heating and electrical system defects.
- d) All farm labor housing shall be connected to (a) either public water supply system or private well water system inspected and approved by the Orleans County Health Department, and (b) either public sanitary sewage disposal system or private septic system inspected and approved by the Orleans County Health Department.
- e) The minimum front setback from any public street shall be one hundred (100) feet, except for Ridge Road, where the front setback shall be one Hundred and twenty-five (125) feet. Side and rear setback shall be a minimum of twenty-five (25) feet.

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- f) Farm Labor Housing shall only be used during the growing and harvesting season (May through November), except when good cause is shown.
- g) At least fifty-one (51%) of those persons residing in the farm labor housing must be used in connection with the owner's personal farming operations and not the farming operations of others.
- h) If mobile home trailers are used as farm labor housing and such units remain unused or unoccupied for at least three(3)consecutive years, they shall be deemed abandoned and must be removed from the premises at the owner's and/or applicant's expense.
- i) The Code Enforcement Officer of the Town of Gaines shall have the right to inspect any farm labor housing unit any time with or without cause upon at least one (1) day's written notice to the owner and/or applicant. This provision shall not be construed in any way to limit the Code Enforcement Officer's right to enter upon the premises at any time as otherwise authorized by law.
- j) The requirements contained herein providing for Site Plan Review for farm labor housing in order to protect the general health, safety and welfare of the citizens of the Town of Gaines shall not be construed to unreasonable restrict farm structures or farming practices in contravention of the applicable provisions of the Agriculture and Markets Law of the State of New York.
- k) Farm Labor Housing shall be permitted in the Town of Gaines only within the limits of an Orleans County adopted New York State certified Agricultural District and not on any other parcel of land within the Town of Gaines wherever situated.

**SECTION 670- PROHIBITED USES**

In order to protect the public health and safety of the citizens of the Town of Gaines and adjacent residents, to protect community character and to effectuate land use and planning objectives the following operations, uses and activities shall be prohibited in the Town of Gaines:

- a) No hazardous, radioactive or infectious waste treatment, storage or disposal facility shall be permitted.
- b) No solid (including liquid) waste management facility (landfill, ash fill, solid waste incinerator, etc.) shall be permitted.
- b) No excavation and mining shall be permitted unless consistent with Section 706 herein.
- c) Mobile homes, travel trailers and/or travel campers shall not be permitted to be used as a storage building and/or storage shed.

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**SPECIAL PERMIT USE REGULATIONS**

**SECTION 700- AIRPORTS**

- a) An application for the establishment, construction, enlargement or alteration of an airport shall include, in addition to requirements for special use permits outlined in Article VII, the following statements and information:
  - 1) Name and address of the proponent.
  - 2) Classification of the proposed airport (commercial, non-commercial, or restricted).
  - 3) Type of aviation activities proposed (aircraft sales and service, flight instruction, crop dusting, air taxi, etc.)
  - 4) Number of aircraft expected to be based at the airport initially and with five (5) years.
  - 5) Type of aircraft expected to be based at the airport (single-engine, multi-engine, turboprop, jet, etc.)
  - 6) Whether an instrument approach procedure will be offered.
  - 7) Statement as to the anticipated number of daily operations.
  - 8) Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
  - 9) A copy of New York State Commissioner of Transportation's determination concerning this airport in accordance with the provisions of 249 of the New York State General Business Law.
  - 10) A site development plan of the airport, as approved by the Planning Board, which includes the following:
    - A. Scale no smaller than one inch equals one hundred feet (1"=100')
    - B. Location of existing and proposed structures.
    - C. Alignment of existing and/or proposed runways shall be shown in exact location and magnetic bearing to nearest 30 minutes.
    - D. Existing and proposed contours at five (5) foot intervals.
    - E. Location of aircraft parking and tie-down areas.
    - F. Provision for access and off street parking.
    - G. Provision for sanitary waste disposal and water supply.
    - H. Location and method of fuel storage.
  - 11) An area map at a scale of no less than one inch equals five hundred feet (1"=500') showing:
    - A. Distances, power lines, or other possible obstructions within two thousand (2,000) feet of the ends of runways shall be accurately plotted.
    - B. Properties within five hundred (500) feet shall be plotted and owners identified.
- b) The Planning Board may in its discretion except from the requirements of paragraph (a) above any airport established, constructed or maintained by an individual on his own property for his personal or hobby used, provided, however, that each of the following conditions are met:
  - 1) The average number of hours that the airport is in use each week does not exceed twelve;
  - 2) The airport is used only by the owner or by members of the owner's immediate family;

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- 3) The individual owns no more than two planes, neither of which is designed to accommodate more than six persons, including the pilot; and
- 4) The airport is utilized for any industrial or commercial purpose.
- 5) The requirements of 249 of the General Business Law are otherwise complied with.

**SECTION 701- CAMP GROUNDS**

Camping grounds shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles, and tents, vacation, and placement of a unit on a foundation in a camping ground is prohibited.

- a) Minimum site area: fifteen (15) acres.
- b) Not more than ten (10) travel trailers, campers, tents recreational vehicles or motor homes shall be permitted per acre of gross site area.
- c) A camping ground shall be so located that not entrance or exit from a site shall discharge traffic into any residential area nor require movement of traffic from the camping ground through a residential area. A camping ground shall have a minimum of two hundred (200) feet of frontage on a public street.
- d) Conditions of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors, or other adverse influences, and no portion of the camping grounds subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
- e) Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in camping grounds in such districts where such districts where such uses are not allowed as principal uses, subject to the following restrictions:
  1. Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the camping ground. Such establishments shall be restricted in their use to occupants of the camping ground.
  2. Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
  3. The structures housing such facilities shall not be located closer than one hundred (100) feet (except for Ridge Road, which is one hundred and twenty (120) feet) to any public street and shall not be directly accessible from any public street/road, but shall be accessible only from a street within the camping grounds.
- f) Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Health and/or Environmental Conservation, and shall receive approval from said agencies.
- g) Streets in camping grounds shall be private, but shall be constructed with a stabilized travel-way and shall meet the following minimum stabilized travel-way width requirements:

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1. One way, no parking: 12 feet
  2. One way with parking on one side, or two way with no parking: 18 feet
  3. Two way with parking on one side: 27 feet
  4. Two way with parking on both sides: 34 feet
- h) Each travel trailer site shall be at least two thousand five hundred (2,500) square feet in area and have a minimum width of forty (40) feet.
- i) A minimum of eight (8) percent of the gross area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. NO travel trailer site, required buffer strip, street right-of-way, storage area, or utility site shall be counted as meeting recreational purposes.
- j) Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exit. An adequate lighting system shall be provided for the camping ground.
- k) All utilities shall be underground.
- l) No less than one (1) covered twenty (20) gallon garbage receptacle shall be provided for each camp site. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
- m) All applicable sanitation standards promulgated by the State of New of York shall be met.
- n) Setbacks: Each building or structure within a camping ground shall comply with the setback regulations applicable to the zoning district in which such camping ground is located, except that travel trailers, campers, tents, motor homes and the motor vehicles propelling or carrying the same way may be located not closer than fifteen (15) feet to any side or rear lot line nor closer than sixty (60) feet to any front lot line.

**SECTION 702- CLUBS (LODGES, FRATERNAL ORGANIZATIONS, ETC.)**

- a) Minimum lot size: Forty thousand (40,000) square feet; minimum lot frontage: Two hundred (200) feet
- b) Landscaping areas or screening adequate to protect adjacent properties and land uses shall be provide on all side and rear lot lines.
- c) Minimum parking shall be one (1) per employee and one (1) per each three (3) members.
- d) Entrance and exit points shall be from major or secondary roads
- e) Where a club plans to serve food and/or alcoholic beverages, the club may not do so until:
  1. A Certificate of Conformity has been issued for the structure where the food and beverages are to be served and;
  2. If the club is part of a larger complex (such as a golf course, athletic field, flying club, etc.), a major part of the complex has been completed.

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**SECTION 703- COMMERCIAL DAY CARE CENTERS**

- a. A “Commercial Day Care Center” shall be subject to a Major Site Plan Review and requires engineered plans and drawings and instrument survey map, signed and stamped by New State Licensed professional.
- b. Requirements for a “Commercial Day Care Center” are as follows:
  - 1) Must have an active outdoor play area of 100 square feet per child.
  - 2) Outdoor play areas must be appropriately fenced in or otherwise protected from roads and nearby properties.
  - 3) No outdoor play equipment may be placed within ten (10) feet of any property line, fence, or structure.
  - 4) Minimum parking shall be one (1) space per staff member plus one (1) space per each two (2) children registered. Any commercial day center must also provide handicap parking as required by the New York state building code.
  - 5) All commercial day care centers shall comply with all New York State building codes. New York State Health Department Codes, requirements of the New York State Office of Children and Family Service Services, and any other applicable Federal, State or Local rules and regulations. Licensing shall be responsibility of the New York State Office of Children and Family Services. Code Enforcement shall be the responsibility of the Town of Gaines. The owner and/or provider of a Commercial Day Care Center shall provide a copy of their license or registration certificate from the New York Office of Children and Family Services, along with a copy of their liability insurance certificate the Town of Gaines Planning Board before a Special Use Permit will be issued.
  - 6) Additional conditions for operation of a commercial day care center may be imposed upon any applicant by the Town of Gaines Planning Board in its sole absolute discretion following review of the applicant’s site plan, review by the Town of Gaines Engineer of Record and final review by the Town of Gaines Planning Board.

**SECTION 704- DRIVE-IN RESTAURANTS**

- a) The following information shall be submitted as part of the application for site plan approval and the special use permit for drive-in restaurants, in addition to that information required by other sections of this ordinance:
  - 1. The location and dimensions of all structures including buildings, screened trash areas, fencing, and lighting (show direction and level of illumination).
  - 2. The location and dimensions of all off-street parking and ingress and egress locations.
  - 3. Proposed landscaping of site.
- b) All drive-in restaurants shall be a minimum of two hundred (200) feet from other such business, which distances shall be computed as follows:
  - 1. For such businesses on the same side of the street, two hundred (200) feet between the two (2) closest property lines.
  - 2. For such businesses on opposite sides of the street, two hundred (200) feet measured diagonally between the two (2) closest property corners.

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3. For four-corner intersections, one (1) such business may be located on diagonally opposite corners notwithstanding the two hundred (200) feet distance requirement.
- c) All drive-in restaurants shall provide for the storage of trash on the premises in areas designed and constructed to:
  1. Allow no view of the trash storage area from the street.
  2. Prevent waste paper from blowing around the premises or onto adjacent properties or public right-of-way.
  3. Permit safe, easy removal of trash by truck or hand.
- d) All driveways will be constructed in accordance with the following standards:
  1. The minimum distance from any driveway to the nearest property line shall be fifteen (15) feet.
  2. The minimum distance between driveways on the site shall be sixty-five (65) feet, measured from the curbs of the two (2) closest driveways.
  3. Drive-in restaurants adjacent to or integrated in a shopping center or cluster of commercial facilities shall use the common access with other business establishments in that center.
- e) Exterior lighting proposed for the site shall be planned, erected and maintained so it will not cast direct light or glare upon adjacent properties or public right-of-way. The light source shall not be higher than twenty (20) feet.
- f) Landscaping and fencing shall be provided to minimize visual unattractiveness and minimize conflicts with adjacent land uses.
- g) Water supply and sewage disposal systems shall be reviewed by the Orleans County Health Department.

**SECTION 705- ESSENTIAL SERVICES**

- a) Essential services may be allowed as special permit uses in all districts upon the approval of a special use permit by the Planning Board.
- b) The Planning Board shall determine the following prior to approving a special permit:
  1. The proposed installation in a specific location is necessary and convenient for efficiency of the essential service or the satisfactory and convenient provision of service to the area in which the particular use is located.
  2. The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is to be located. In determining whether any such proposed building conforms to the requirements of this:

The planning Board shall consider the proposed use of the structure, its anticipated hours of operation, the effect of the structure's location on traffic flow, and the adequacy of parking, landscaping, exterior lighting and noise control.
  3. All other applicable requirements of this code shall be met.

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**SECTION 706- EXCAVATION AND MINING**

- a) Minimum lot area: Ten (10) acres.
- b) All buildings and excavation operations shall be located or shall occur not less than one hundred (100) feet (except for Ridge Road, which is one hundred and twenty (120) feet) from any street or property line.
- c) The owner or operator of any existing excavation and mining operation shall maintain evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law and shall furnish such permit when applicable.
- d) No person or entity shall be permitted to transfer its rights or expand operations of any excavation or mining operation within the Town of Gaines henceforth from the effective date of this ordinance. Any hazardous conditions created as a result of the excavation and mining operation shall be barricaded or fenced to provide safety.
- e) No new excavation or mining operation shall be permitted to commence operation within the Town of Gaines henceforth from the effective date of this ordinance.
- f) Any permitted excavation and mining operation existing prior to the effective date of this ordinance shall be considered a non-conforming use. If such operation has not been actively excavated or mined within the twelve (12) months immediately preceding the effective date of this ordinance, then such rights to excavate and mine in the Town of Gaines shall extinguish.
- g) Any excavation and mining operation that has been active within the twelve (12) months immediately preceding the effective date of the ordinance shall be allowed to continue as permitted by the State of New York, but in no case shall such operations continue beyond seven (7) years from the effective date of this ordinance. A special use permit from the Planning Board shall be required upon the renewal of the permit from the State of New York.
- h) All equipment used for existing excavations and processing shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practical, noises and vibrations and dust conditions which are injurious or a nuisance to persons living in the vicinity.
- i) All existing operations shall be conducted between the hours of seven o'clock in the morning (7:00 A.M.) and six o'clock in the evening (6:00 P.M.) with no Sunday or holiday operations. This shall minimize community impacts.
- j) All land which has been excavated must be rehabilitated in accordance with reclamation plans approved by the Planning Board as part of the initial site plan review within one (1) year after the termination of operations. Said rehabilitation shall be at the expense of the operator.
- k) A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out.
- l) The planning Board shall consider the following criteria in their review of the special use permit request:
  - 1. The current use of the property to be excavated as well as the proposed use of the area subsequent to completion of the excavation and restoration thereof.
  - 2. The potential short-term and long-term effects of the proposal on the aesthetics and environment of the immediate and surrounding areas.

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3. The effect the proposal shall have concerning the productivity and suitability of the land for agricultural purposes and/or future development purposes.
  4. The amount of time, as estimated by the applicant that will be required for the completion of the proposed excavation and the restoration of the property.
  5. Noise and/or vibrations that may be created by the proposed operation.
  6. Any additional traffic that may be created by the proposed operation and the adverse effects the traffic may create in the general area of the proposed operation.
- m) Special Permits for excavation operations are of a two (2) year duration, unless the time remaining pursuant to paragraph (G) herein is less, in which case the duration shall be no longer the remaining time. Upon re-application, the Zoning Enforcement Officer may grant a permit renewal if all conditions of the original permit are complied with.
- n) Special use permits pursuant to this section shall be granted and/or renewed at the full discretion of the Town Planning Board.
- o) No person, firm or corporation shall strip, excavate or other wise remove top soil, subsurface soil, clay, sand, stone, gravel, minerals or any other substances from the ground for sale or any other use other than for use on the premises from which it was taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto. Any area of land consisting of more than one (1) acre from which top soil has been removed or covered over by fill shall be seeded to provide an effective cover crop within the first growing season following the start of said operation. Any such removal for use on the premises from which taken shall require a special use permit.

**EXEMPTION**

- a) The aforementioned restrictions shall not apply to the following:
1. Town related activities in which the Town removes limited amounts of excavated material created in the course of routine maintenance of the properties over which it has authority. Such material shall not be used for commercial purposes.
  2. Farmers or any other person, who digs, excavates or otherwise removes soil on such farm or property for the purpose of producing a pond on the same premises from which the soil was taken. Any soil removed for such purposes shall remain on the same property, unless such material is beneficially used by the Town for non-commercial purposes.

**SECTION 708- HOME OCCUPATIONS**

- a) No more that two (2) persons other than members of the immediate family or residents occupying such dwelling shall be employed in connection with the home occupation.
- b) A homes occupation must be conducted within a dwelling which is the bona fide residence of the principal practitioner or in any accessory building thereto.
- c) In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs, or the emission of sounds, noises, or vibrations.
- d) No outdoor display of goods or outside storage of equipment or materials used in the home occupation shall be permitted.

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- e) One (1) sign shall be permitted not to exceed twenty (20) square feet and section 601 sign regulations shall apply.
- f) No more than thirty (30) percent of the gross floor area of such residence shall be used for conduct of a home occupation.
- g) Only one commercial type vehicle used in connection with the home occupation may be parked upon the premises.
- h) No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
- i) A home occupation shall not be interpreted to include the following: commercial stables and kennels, restaurants, musical and dancing instruction to groups exceeding four (4) pupils, convalescent homes, mortuary establishments, garages or shops for the repair of motor vehicles and trades and businesses of a similar nature.
- j) Only one (1) "Home Occupation Special Use Permit" shall be issued to a property owner. A "Home Occupation Special Use Permit" can not be amended to include another "Home Occupation". If a property owner applies for another "Home Occupation Special Use Permit", the first or current "Home Occupation Special Use Permit" shall become Null and Void upon approval of the new "Home Occupation Special Use Permit" by the Town Planning Board.

**SECTION 709- HOTELS AND MOTELS**

- a) Minimum lot size: two (2) acres; minimum lot width: two hundred (200) feet; minimum front setback: one hundred (100) feet (except for Ridge Road, which is one hundred and twenty (120) feet); minimum side and rear setbacks: forty (40) feet.
- b) Restaurants, cafeterias, swimming pools, newsstands, pharmacies, barbershops, hairdressers, gift shops and other personal service shops for the convenience of guests may be permitted as accessory uses. With the exception of an identifying sign for the restaurants, no external evidence of these accessory uses is permissible.
- c) The licensing, registration and other requirements of Article 12 of the General Business Law and the requirements of any other applicable state and federal codes, rules and regulations shall be complied with.

**SECTION 710- JUNKYARDS**

In addition to providing regulations for initial establishment and operation of junkyards, the provisions of this section shall also apply to the expansion and/or alteration of junkyards heretofore in existence in the Town of Gaines:

- a) Minimum lot size: five (5) acres; minimum lot width: three hundred (300) feet; minimum front, side and rear setbacks: one hundred (100) feet (except for Ridge Road, which is one hundred and twenty (120) feet).
- b) A junkyard shall be completely surrounded by an opaque fence at least eight (8) feet in height which substantially screens the junkyard from the public view. The only means of access to the enclosed area shall be through a suitable opaque fence, which shall remain closed and locked at all times except during normal working hours of such junkyard.

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- c) All junk stored or deposited on the premises shall be kept within the confines of the fenced-in-area, except as is necessary to transport the same to and from the premises in the ordinary course of business.
- d) Special permits for junkyards are for a duration of two years. Upon reapplication, the Planning Board shall reissue a renewal permit if all conditions of the original permit have been complied with.
- e) The provisions of the New York State Junk Yard Law (General Municipal Law, Section 136) are hereby incorporated by reference; provided, however, that the term "junkyard" as the same is defined in Paragraph two (2) of such section shall not be construed to include three or fewer items of farm machinery/equipment, no longer intended or in condition for use on the farm, situated on the farmer's premises and used by the farmer for parts and/or repairs.

**SECTION 711- KENNELS AND ANIMAL HOSPITALS**

- a) Minimum lot size: 40,000 square feet; minimum lot frontage 200 feet.
- b) Adjacent properties shall be adequately protected from noise, odors, and unsightly appearance.
- c) All buildings, structures or other accessory uses shall be at least seventy-five (75) feet from any property line.
- d) All animals shall be kept within a totally enclosed building between 8:00 p.m. and 6:00 a.m.

**SECTION 712- MOBILE HOME PARKS**

- a) Special permits for the establishments and operation of mobile home parks are of a two (2) year duration. Upon reapplication, the Planning Board shall grant a permit renewal if all conditions of the original permit have been complied with.
- b) The minimum site area of proposed mobile home parks shall not be less than twenty (20) acres.
- c) Mobile home lots shall have an area of not less than seven thousand two hundred (7200) square feet. Each mobile homes lot shall front on an interior park roadway and have a minimum width of fifty (50) feet.
- d) Minimum front setback for mobile homes within the park: twenty (20) feet form an interior park roadway; minimum side setback: five (5) feet on one side with a total of twenty (20) feet on both sides; minimum rear set back: ten (10) feet.
- e) The minimum setbacks of every mobile home, building or other structure in a mobile home park from the nearest public street, road, or highway line shall be one hundred (100) feet ((except for Ridge Road, which is one hundred and twenty (120) feet), and from every other lot line of the mobile home park shall be forty (40) feet.
- f) Not more than one (1) mobile home shall be located on any one (1) mobile home lot. Every mobile home within a mobile home park shall be located on a mobile home lot or in a designated storage area shown on the approved site plan for said park.
- g) At least one (1) service building shall be constructed in each mobile home park which shall be adequate to provide for storage of all equipment, tools, and materials necessary for the maintenance of the park, and all such equipment, tools, and materials shall be stored within said building when they are not in use.

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- h) Each mobile home lot must have not less than two (2) off-street parking spaces. Such parking spaces shall be connected to the entrance of the mobile home by a permanent sidewalk having a minimum width of twenty-four (24) inches.
- i) No boats, campers, travel trailers, recreational vehicles, or unregistered and unlicensed motor vehicles shall be parked or stored at any place within a mobile home park except in areas designated and approved for such storage as part of the site development plan approval.
- j) Every roadway within a mobile home park shall have a minimum pavement width of twenty-two (22) feet and a minimum right-of-way width of fifty (50) feet. If cul-de-sacs exist, they shall have a minimum diameter of seventy (70) feet.
- k) A complete water distribution system approved by the Health Department, including a water service pipe for each mobile home lot or other appropriate water sources approved by the Health Department and evaluated during site plan approval.
- l) Appropriately spaced fire hydrants or access to water sufficient for fire fighting as determined during the site plan approval.
- m) A sanitary sewage disposal system approved by the Health Department and other appropriate agencies shall be installed, including a sewer connection for each mobile home lot or other adequate sewage disposal system approved by the Health Department and determined during site plan approval.
- n) All public utility, electric, gas, cable television and telephone lines shall be installed underground.
- o) Appropriate street lighting shall be installed on interior roadways with the minimum number of lights being one at each intersection or interior roadways with each other, or with abutting public roads, and at least every two hundred (200) feet where such intersections are more than two hundred (200) feet apart.
- p) A landscape plan shall be prepared and carried out which will assure the Planning Board that an appropriate planting of trees and shrubs will be included in the park design, including screening where necessary.
- q) No mobile home shall be located on a mobile home lot until the roadways; sanitary sewage disposal system, water supply system and storm drainage system serving said mobile home lot have been installed in accordance with approved site development plan for the mobile home park.
- r) Each roadway shall be named and noted upon signs at each roadway intersection. Each mobile home lot shall be assigned a permanent number which shall be noted on the mobile home lot in a location clearly visible from the roadway.
- s) All fuel tanks used for heating within a mobile home park, including all fuel tanks used for heating within mobile homes, shall be installed underground in accordance with NFPA standards.
- t) Every mobile home park shall have a recreational area or open space area for use by the occupants of the mobile home park. Such areas shall be as centrally located as the topography and design of the park permit. Such areas shall be not less than ten thousand (10,000) square feet or one thousand (1,000) square feet per mobile home lot in the park, whichever is greater.
- u) The park owner shall provide for the regular collection and disposal of garbage, trash, and rubbish.
- v) Not more than one (1) accessory building shall be permitted on any mobile home lot.

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- w) Each mobile home shall be enclosed at the bottom with either a metal, wood, or vinyl skirt or enclosure within thirty (30) days after placement of the mobile home on the lot.
- x) No enclosure or addition, with the exception of patios, door porches not to exceed eight (8) feet in width, carports, shall be constructed on or added or attached to the exterior of any mobile home.
- y) Every roadway within a mobile home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants or the park and necessary fire, police, ambulance, public utility maintenance and all necessary snow removal. The provisions of this subsection shall apply to mobile home parks hereafter established within the Town of Gaines.
- z) Register of Occupants. The owner of every mobile home park shall keep a record of the occupants and the mobile homes located within the park. A copy of such register shall be made available to the Zoning Officer upon his demand. Such register shall contain the following:
  - 1. The name and last address of each occupant.
  - 2. The make, model, year and serial number of each mobile home, and the mobile home space within the park on which the same is located.
  - 3. The dates of arrival and departure of each mobile home.
- aa) Sale of lots: Any sale of a mobile home space or spaces or portion of a mobile home park, other than the entire mobile home park, as shown on the plan of such park approved by the Town, shall thereupon immediately invalidate the permit for such park approved by the Planning Board. Any use of any of the premises within the mobile home park other than as mobile home park shall thereupon immediately invalidate the permit of such park approved by the Town Planning Board.
- bb) Home Occupations: Home occupations are not permitted in mobile homes located within a mobile home park.

**SECTION 713- MONUMENT SHOP**

- a) Minimum lot size: 40,000 square feet; minimum lot width: 200 feet.
- b) No parking shall be permitted within ten (10) feet of any lot line or building.
- c) Landscaping and fencing where appropriate shall be provided to minimize visual unattractiveness, and any signs erected on the premises shall comply with the provisions of Section 600 of this Ordinance.
- d) All loading and unloading of trucks and other vehicles on the premises shall take place entirely within the confines of an enclosed building so as not to be visible from public highways and residential structures in the area.
- e) No more than one hundred (100) monuments, grave markers or tombstones shall be stored or displayed on the premises outside the confines of an enclosed building, and any monuments, grave markers or tombstones stored or displayed on the premises outside an enclosed building shall be arranged in neat and orderly fashion.
- f) The monument shop shall be operated in such a manner as not to create dust, noise, vibration, smell or any other hazard or nuisance to any greater or more frequent extent than is customarily experienced in the district.

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**SECTION 714- MULTIPLE FAMILY DWELLINGS**

- a) The maximum gross density shall not exceed eight (8) units per acre.
- b) Minimum habitable floor area requirements:
  - 1. Townhouse unit, two (2) bedrooms or less: nine hundred (900) square feet.
  - 2. Town/house unit, three (3) bedrooms or more: one thousand fifty (1050) square feet.
  - 3. Apartment unit, efficient: six hundred (600) square feet.
  - 4. Apartment unit, one (1) bedroom: seven hundred fifty (750) square feet.
  - 5. Apartment unit, two (2) bedrooms: nine hundred (900) square feet.
  - 6. Apartment unit, three (3) bedrooms: one thousand fifty (1050) square feet.
- c) Setback requirements:
  - 1. The minimum front setback from any public street shall be one hundred (100) feet ((except for Ridge Road, which is one hundred and twenty (120) feet).
  - 2. The side and rear setbacks shall be fifty (50) feet from all other lot lines.
- d) All stairways to the second floor or higher shall be located inside the building.
- e) Access to public road:
  - 1. All multiple family dwelling developments must have direct access to a public road.
  - 2. If there are more than twelve (12) dwelling units in a multiple family dwelling development, direct access must be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
  - 3. If there are more than fifty (50) dwelling units in a multiple family development, or if in the opinion of the Planning Board the location or topography of the site indicates the need for additional access, the Planning Board may require such additional access as a condition of site plan approval.
- f) Requirements for off-street parking shall be tow (2) spaces for each unit.
- g) The aggregate lot coverage of multiple family dwelling developments shall not exceed thirty (30) percent of the total lot area.
- h) Plans submitted for site development approval shall include: sewage disposal, water supply, storm drainage, landscaping and lighting.

**SECTION 715- MOTOR VEHICLE REPAIR SHOP/SERVICE STATIONS/BODY AND/OR REPAIR SHOP**

- a) Minimum lot size: 40,000 square feet.
- b) Entrance and exit driveways shall have an unrestricted width of not less than twenty-five (25) feet and not more than thirty (30) feet, and shall be located not nearer than ten (10) feet from any property line and shall be designed as to avoid the necessity of any vehicle backing out into any public right-of-way.
- c) No more than five (5) licensed motor vehicles being serviced or repaired shall be stored or parked outdoors for more than 48 hours, and these shall be in areas effectively screened from all property lines.

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**SECTION 716- PROFESSIONAL OFFICES**

- a) Minimum lot size: 40,000 square feet; minimum lot frontage: 200 feet.
- b) Landscaped areas at least seven (7) feet in width or other suitable screening opaque in character shall be provided for perimeters of all areas used for off-street parking.
- c) No parking shall be provided within ten (10) feet of any lot line or building.
- d) Parking shall be provided at the rate of one (1) space per employee plus one (1) space per each four hundred (400) square feet of gross floor area.

**SECTION 717- PUBLIC/SEMI-PUBLIC/COMMUNITY FACILITIES**

- a) Minimum lot size: 40,000 square feet; minimum lot frontage: 200 feet or greater, subject to site plan approval.
- b) Landscaped areas at least ten (10) feet in width or other suitable screening, opaque in character, shall be provided for the entire length of any lot line adjacent to any residence or adjacent street.
- c) NO structure or use shall be located within fifteen (15) feet of any adjacent property line.
- d) Entrance and exit points shall be from major or secondary roads.

**SECTION 718- RETAIL GASOLINE OUTLETS**

- a) Minimum lot size: 40,000 square feet.
- b) Entrance and exit driveways shall have an unrestrictive width of not less than twenty-five (25) feet and not more than thirty (30) feet, and shall be located not nearer than fifteen (15) feet from any property line, and shall be designed to avoid the necessity of any vehicle backing out into any public right-of-way.
- c) Entrance and exit points shall be from a major or secondary road.
- d) All buildings shall be setback from the center of the major or secondary street, road or highway line a distance of not less than one hundred (100) feet, except for Ridge Road, which is one hundred and twenty (120) feet.
- d) Gasoline pump islands shall be located not less than seventy-five (75) feet from the street line and not less than thirty (30) feet from all other property lines.
- e) No building permit for any such establishment shall be issued within a distance of two hundred (200) feet of a school, church, hospital, nursing home, senior citizen housing or other place of public assembly designed for occupancy by more than fifty (50) persons, or within 500 feet of another gasoline station or repair garage on the same side of a street; the said distance to be measured in a straight line between the nearest points of each of the lots or premises, regardless of the distance where either premises is located.
- h) The entire area of the site traveled by motor vehicle shall be hard surfaced.
- i) Any repair of motor vehicles shall be performed in a fully enclosed building and not more than two (2) motor vehicles shall be offered for sale on the site at any one time. No motor vehicle parts, or partially dismantled motor vehicles shall be stored in an enclosed building.

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**SECTION 719- PINBALL AND VIDEO GAME ARCADES**

- a) Pinball and video game arcades shall not be permitted as home occupations.
- b) Arcades shall be closed between the hours of 12:00 midnight and 8:00 a>m>
- c) No one under the age of 16 years shall be permitted in an arcade during those hours when school is regularly in session.

**SECTION 720- BED AND BREAKFAST**

- a) Off-street parking shall be provided in the amount of one (1) space for each rentable sleeping unit.
- b) The dwelling shall be owner-occupied or adjacent to owner's primary residence.
- c) The dwelling may display one sign not to exceed 2' by 2'.
- d) The structure shall not be altered in a manner which would cause premises to differ from its residential character.
- e) The use of out buildings detached from the principal dwelling may be used for the purpose of a tourist home.
- f) The dwelling shall be limited to eight (8) paying guests at any one time.

**SECTION 722- SATELLITE ANTENNA**

The following standards shall be applied for installation of a satellite antenna:

- a) The satellite antenna shall be located within the proper setbacks of said property.
- b) The satellite antenna shall be located on the side or in the rear of the primary residence.
- c) The satellite antenna shall be properly screened with shrubs and/or other natural vegetation.

**SECTION 723- SEASONAL TOURIST BUSINESS**

- a) The following information shall be submitted as part of the application for site plan approval and special use permit:
  - 1. The location and dimensions of all structures, including screened trash areas, fencing and lighting (show direction and level of illumination).
  - 2. The location and dimensions of all off street parking and ingress, egress locations.
  - 3. Proposed landscaping site.
- b) Setbacks: minimum front setback of one hundred (100) feet (except for Ridge Road, which is one hundred and twenty (120) feet); side setback of fifteen (15) feet and a rear setback of fifteen (15). The minimum lot size shall be Forty thousand (40,000) square feet.
- c) The seasonal business shall provide suitable storage of trash in areas which are so designated and constructed as to allow no view of trash storage from the street to prevent waste paper form blowing around the site or on to adjacent properties of public right-of-way, and permit safe, easy removal of trash by truck or hand.
- d) Exterior lighting proposed on the proposed site, shall be planned, directed and maintained so that it will not cast direct light or glare upon adjacent properties or public right-of-way. The light source shall not be higher than 20 feet.
- e) Landscaping and fencing shall be provided to minimize visual unattractiveness and minimize conflicts with adjacent land uses.
- f) Water supply and sewage disposal systems shall be reviewed and approved by Orleans County Health Department.

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- g) The business shall be closed a minimum of two (2) months a year to qualify as a "Seasonal Tourist Business".
- h) The following are not permitted as a "Seasonal Tourist Business": used car lots, motor vehicle repair shops, kennels, restaurants and other businesses of a similar nature.
- i) The following signage shall be permitted:
  - 1. C, CH districts 96 square feet of signage, no one sign shall exceed 36 square feet.
  - 2. RA districts: 96 square feet of signage and no one sign shall exceed 20 square feet.
  - 3. Section 601 sign regulations shall apply.

**SECTION 725- FARM MACHINERY REPAIR SHOP**

- a) Minimum lot size: One hundred and sixty thousand (160,000). Side and Rear setbacks: Fifty (50) feet. Minimum road frontage: Four hundred (400) feet.
- b) Entrance and exit driveways shall have an unrestricted width of not less than twenty-five (25) feet and not more than thirty (30) feet, and shall be located not nearer than fifty (50) feet, from any property line and shall be designed as to avoid the necessity of any vehicle backing out into any public right-of-way.
- c) No more than (3) farm vehicles and/or related agriculture equipment being service or repaired shall be stored or parked outdoors for more than 48 hours, and these shall be areas effectively screened from all property lines.
- d) All oils, transmission fluids, brake fluids, etc., shall be disposed of according to the Department of Environmental Conservation (DEC) standards and procedures.
- e) Hours of operation shall be between the hours of 6:00 AM and 8:00 PM Monday through Saturday.
- f) Farm vehicles shall include tractors and related agriculture equipment, but shall not include pick up trucks, cars or other licensed road vehicles.
- j) The Farm Machinery Repair Shop must be owner operated.

**SECTION 726- TELECOMMUNICATION FACILITY**

- A. **Purpose:** The purpose of these supplemental regulations is to promote health, safety and the general welfare of the residents of the Town of Gaines; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations, to minimize the total 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; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, visual impact assessment, and appropriate landscaping.
- B. **General Criteria:** 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 Planning Board unless it finds that such Telecommunications Facility:
  - 1) Is necessary to meet current or expected demands for service.
  - 2) Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies;
  - 3) Is considered a public utility in the State of New York;
  - 4) Is designed and constructed in a manner which minimizes visual impact to the extent practical;

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- 5) Complies with all other requirements of this Ordinance, unless expressly superseded herein;
- 6) Is the most appropriate site among those available within the technically feasible area for the location of a Telecommunications Facility. The applicant must provide a minimum of 3 alternate sites for location of a Telecommunication Facility with in their proposed search area.
- 7) When including the construction of a tower, such tower is designed to accommodate future shared use by at least one (1) other telecommunication service provider. Any subsequent location of telecommunication equipment by other service providers on existing towers specifically designed for shared use shall not require a new or modified Special Use Permit if there would be no increase in the height of the tower. However, the additional equipment will require site plan approval by Town of Gaines Planning Board.

**C. Co-Location:** 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 within (share) an existing Telecommunication Facility or upon an existing structure. Th application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures exceeding seventy-five cent (75%) of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to the proposed location.

The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on existing Telecommunications Facility sites in the inventory due to one (1) of the following reasons:

- 1) The planned equipment would exceed the structural capacity of existing and approved Telecommunication Facilities or other structures, considering existing and planned use for those facilities;
- 2) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented.
- 3) Existing or approved Telecommunication Facilities or other 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 impracticable to place the equipment proposed by the applicant on existing facilities or structures;
- 5) The property owner or owner of the existing Telecommunication Facility or other structure refuses to allow such co-location.

**D. Dimensional Standards:**

- 1) A fall zone around any tower constructed, as part of a Telecommunications Facility must have a radius a least equal to the height of the tower and any antennae(s) attached upon it zenith. The entire fall zone may not include public roads and must be located on 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. If the Facility is attached to an existing structure, relief may be granted by specific permission of the Town of Gaines Planning Board on a case-by-case basis.

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- 2) All Telecommunications Facilities shall be located on a single parcel.
- 3) All Telecommunications Facilities shall comply with setback standards of the underlying zoning district. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. A lot leased or owned for the purpose of construction of a tower as part of Telecommunications Facility shall not result in the creation of non-conforming lot.  
The frontage requirement of the underlying zoning district shall not apply, provided the Telecommunications Facility is not proposed on a parcel to partition specifically for the Facility and/or is designed for occupancy by staff. In the absence of required frontage, an access way for service vehicles, either through easement, lease or ownership, shall be in accord with paragraph "G" herein.
- 4) Essential services such as "water, electric, gas, sewer, etc." shall be placed under ground to the proposed site.
- 5) The height of a Transmission Tower (199 feet or less) shall be exempt from requiring an "Area Variance". Any Transmission Tower over 200 feet would still require an "Area Variance".

**E. Lighting and Marking:**

- 1) Towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA).
- 2) Notwithstanding the preceding paragraph 1, an applicant may be compelled to add FAA-style lighting and marking, if in the judgement of the Town of Gaines Planning Board, such a requirement would be of direct benefit to public safety.

**F. Appearance and Buffering:**

- 1) The use of any portion of a Telecommunications Facility for signs, promotional or advertising purposed, including but not limited to company name, phone numbers, banners, steamers, and balloons is prohibited.
- 2) The facility shall have the least practical visual effect on the environment, as determined by the Town of Gaines Planning Board. Any tower that is not subjected to FAA marking, pursuant to paragraphs E.1 and E.2 herein, shall otherwise:
  - a) 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 Town of Gaines Planning Board, or;
  - b) 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.
- 3) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
- 4) The Town of Gaines Planning Board may require a State Environmental Quality Review (SEQR) Full EAF (Environmental Assessment Form) for proposed Facilities at key viewpoints in the community. A Visual Environmental Assessment Form (Visual EAF) may be required as an addendum to either the Full or Short EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF.
- 5) The Town of Gaines Planning Board shall require that the Facility have appropriate buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences,

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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.

- 6) Equipment or vehicles not used in direct support, renovations, additions or repair of any Telecommunications Facility shall not be stored or parked on the Facility site.

### **G. Access and Parking:**

- 1) Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways constructed solely for the Telecommunications Facilities must be at least twenty (20), but no more than thirty (30) ft. wide and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- 2) The road surface (driveways) shall be centered within access ways and shall not comprise more than 60% of the width of the access way.
- 3) Parking areas shall be sufficient to accommodate the greatest number of service vehicles expected on the premises at any one time.
- 4) Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out onto a public thoroughfare.

### **H. Security:**

- 1) Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by fencing at least eight (8) ft. in height, the top foot of which may, at the discretion of the Town Gaines Planning Board in deference to the character of the neighborhood, be comprised of three-strands of barbed wire to discourage unauthorized access to the site.
- 2) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance 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.
- 3) There shall be no permanent climbing pegs within fifteen (15) feet of the ground of any tower.
- 4) A locked gate at the junction of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

### **I. Engineering and Maintenance:**

- 1) Site plans for all Telecommunications Facilities must bear the seal of a professional engineer licensed to practice in the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and American National Standards Institute (ANSI).
- 2) Every Facility shall be inspected at least every second year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted to the municipal code enforcement officer.
- 3) A safety analysis by a qualified professional must accompany any special permit or site plan application, renewal thereof or modification for the purpose of certifying that general public electromagnetic radiation exposure does not exceed standards set by Federal Regulations.

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- 4) The municipality, at the expense of the applicant, may employ its own consulting assistance for site plan review to review the findings and conclusions of safety analysis, visual analysis, or structural inspection, provided by the applicant.

**J. Removal:**

- 1) At the time of submittal of the application of a Special Use permit for a Telecommunications Facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures as well as any towers(s) dedicated solely for use within a Telecommunications Facility if such Facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve (12) consecutive months. Upon removal of said Facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.
- 2) At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the Telecommunications Facility and property restoration, with the municipality as the assignee, in an amount approved by the Town of Gaines Planning Board, but not less than fifty thousand (\$50,000) dollars.
- 3) At times of renewal or modification of the Special Use Permit, the Town of Gaines Planning Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the Telecommunications Facility and property restoration.

**SECTION 727- ADULT USES AND/OR BUSINESS**

- A) Adult uses, due to their nature, have serious objectionable characteristics that can have a significant impact on the neighborhood and community in which they are located, particularly when located in close proximity to residential, recreational and agriculture areas. The objectionable characteristics of these uses are further heightened by their concentration in any one area thereby having deleterious effects on adjacent areas. The uncontrolled proliferation of such uses would be inconsistent with town as a primarily residential and family oriented community as well as a primary agriculture area. Such uses can contribute to the blighting or downgrading of areas in which they are located as a result of their related potential for an increase in crime and undermining of the economic, moral and social welfare of the community. The special use regulations deemed necessary to control the undesirable secondary effects arising from adult uses are set forth below in section "B". The primary purpose of these controls and regulations is to preserve the integrity and character of the residential/agriculture community. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the contact of any communicative materials, or to deny access by adults to adult uses and/or business.
- B) No adult use shall be established except upon the receipt of a Special Use and Site Plan approval from the Town of Gaines Planning Board in accordance with the provisions herein. All adult uses shall only be allowed only in the "C" district and an Adult use and/or business shall conform to the following requirements:
  - 1) An adult use and/or business shall not be located within a five hundred (500) foot radius of any property currently in residential use.

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- 2) No adult use and/or business shall be located within a seven hundred and fifty (750) foot radius of another adult use and or/business.
- 3) No adult use shall be located within a thousand (1,000) foot radius of any house of worship, school, day care center, park or playground, civic facility, or historic resource.
- 4) No more than one adult use and/or business shall be located on any lot.
- 5) No adult use and/or business shall be located in any business that is used in whole or part for residential uses.
- 6) All building openings, including doors and windows shall be located, covered or screened in such a manner as to prevent a view into the establishment from any public street, residence, sidewalk and/or parking area.
- 7) As a condition of approval of any adult use and/or business, there shall be a restriction that there shall be no outdoor, sign, display or advertising of any kind other than one identification sign limited to only the name of the establishment. Such signage and/or outdoor display shall be subject to site plan review by the Town of Gaines Planning Board in conjunction with the Special Use application and shall conform to all signage requirements of Town of Gaines Zoning Ordinance.
- 8) No loudspeakers or sound equipment shall be used by adult uses and/or business that can be heard by the public from outside the establishment.
- 9) Adult uses and/or business featuring live entertainment shall prohibit the patron from touching the performer in any way, while performing and/or in any state of nudity.
- 10) Adult use and/or business shall comply with all New York State Health codes and Building Codes.
- 11) Any violations of the Town of Gaines Adult Use and/or Business Zoning Ordinance shall cause the Special Use Permit to be immediately revoked and said owner of the adult use and/or business would be prohibited from reapplying for a new permit in the Town of Gaines.

**SECTION 728- WIND ENERGY FACILITIES**

**728 SECTION 1: Section 728, entitled “Wind Energy Facilities” is added to the Town Code of the Town of Gaines to read in its entirety as follows:**

**Article I**

**728.A Title.**

This Local Law may be cited as the “Wind Energy Facility Law of the Town of Gaines, New York.”

**728.B Purpose.**

The Town Board of the Town of Gaines adopts this chapter to promote the effective and efficient use of the Town’s wind energy resource through wind energy conversion systems (WECS), without harming public health and safety, and to avoid jeopardizing the welfare of the residents.

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### **728.C Authority.**

The Town Board of the Town of Gaines enacts this Local Law under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6), and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267.
5. New York Town Law, Article 16 (Zoning).
6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
7. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

### **728.D Findings.**

A. The Town Board of the Town of Gaines finds and declares that:

1. While wind energy is a potential abundant, renewable and nonpolluting energy resource, and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources, but the potential benefits must be balanced against potential impacts.
2. The generation of electricity from properly sited small wind turbines can be a cost effective mechanism for reducing on-site electric costs, with a minimum of environmental impacts.
3. Regulation of the siting and installation of wind turbines is necessary for protecting the health, safety, and welfare of neighboring property owners and the general public.
4. Large-scale multiple-tower Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, noise, lighting, and shadow flicker effects.
5. There are numerous sites in the Town of Gaines which would be significantly impaired if the viewshed included utility-scale wind turbines. This is particularly true in Gaines compared to other communities because the flat nature of the landscape significantly increases the viewshed in which a large structure will be seen.

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6. The Erie Canal runs through the Town and just below its southern border. The Canal is an important historic, cultural, and economic asset. The Canal is a National Heritage Corridor. Clear viewsheds are essential to full enjoyment of the Canal by its users. Allowing utility scale wind turbines in the Town would harm the Canal, reduce its use, and therefore harm the community.
7. The internationally known Cobblestone Historical District is located in Gaines. This District is a National Historic Landmark designated by the U.S. Department of the Interior in 1993. It is the only NHL listing in Orleans County. Full appreciation of this resource requires that the setting remain the rural landscape in which the cobblestone houses and buildings were built. Construction of utility-scale wind turbines in the Town is inconsistent with preserving the District.
8. There are multiple historic and active cemeteries in the Town. These resources would be negatively impacted by the noise, shadow flicker, and visual imposition of utility-scale wind turbines in the Town.
9. Installation of large-scale multiple-tower Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road Sites, and harm farmlands through improper construction methods.
10. The Town of Gaines does not have the low density of residences typically found in wind farm host communities. Residential density is spread out evenly along Route 104 from
11. east to west, and all Route 98 from north to south. The pattern of residentially zoned land is a checkerboard-type pattern with residential properties intermingled with agricultural properties. The location of residences and land designated for residential development throughout the community is inconsistent with the development of utility-scale wind turbines in the Town.
12. There are significant resources in adjoining towns that would be harmed by the construction of utility-scale wind turbines in the Town. South of the Town the Mount Albion Cemetery, which is on the National Register, has a memorial with a view shed across all of Gaines. The enjoyment of the view from the tower would be severely harmed by the inclusion of a large, industrial-scale wind generating facility across the landscape of the Town.
13. North of the Town are areas of significant recreational activity that would be impaired by the noise and visual impact - including shadow flicker - of utility-scale wind turbines.
14. Large-scale multiple-tower Wind Energy Facilities may present risks to the property values of adjoining property owners.
15. Large-scale Wind Energy Facilities may be significant sources of noise, which, if unregulated, can negatively impact adjoining properties, particularly in areas of low ambient noise levels.
16. Construction of large-scale multiple-tower Wind Energy Facilities can create traffic problems and damage local roads.

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17. If improperly Sited, large-scale multiple-tower Wind Energy Facilities can interfere with various types of communications.
18. Sufficient areas exist in the County and region for the placement of any needed utility-scale wind turbines. The Towns of Ridgeway, Shelby and Murray all have laws allowing large wind farms. Numerous areas throughout the region have better access to the electric grid and stronger wind resources than Gaines. Hundreds of megawatts of wind energy generating facilities are being constructed throughout the region in areas where the facilities do not present the same intrusion on the landscape, and therefore have fewer impacts.
19. There is an airport in Gaines which would be negatively impacted by the placement of multiple tall turbines in the area.

### **728.E Permits Required.**

- a) No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Gaines except in compliance with this Chapter.
- b) No WECS other than a Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Gaines. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Gaines, except in conjunction with and as part of an application for a Small WECS.
- c) No Small WECS shall be constructed, reconstructed, modified, or operated in the Town of Gaines except pursuant to a Special Use Permit issued pursuant to this Chapter.
- d) This Local Law shall apply to all areas of the Town of Gaines except within the Village of Albion.
- e) E. Exemptions. No permit or other approval shall be required under this Chapter for WECS utilized solely for agricultural operations in a state or county agricultural district, as long as the facility is set back at least one and a half times its Total Height from a property line, and does not exceed 120 feet in height. Towers over 120 feet in Total Height utilized solely for agricultural operations in a state or county agricultural district shall apply for a site plan in accordance with this Local Law, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.
- f) Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), shall occur without prior approval of the Town, which approval shall be granted upon (1) receipt of proof of the ability of the successor to meet all requirements of this Local Law and (2) written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.

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- g) Notwithstanding the requirements of this Section, replacement in kind or modification of a Small WECS may occur without Town Board approval when (1) there will no increase in Total Height; (2) no change in the location of the Small WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the Small WECS.

**728.F Definitions.**

See section 210 of this Ordinance for definitions that pertain to “Wind Energy Facilities.

**728.G Applicability.**

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.
2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.
3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.

C. Wind Energy Facilities are allowed as accessory uses. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

**Article II SMALL WIND ENERGY CONVERSION SYSTEMS**

**728.H Purpose and Intent.**

The purpose of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

**728.I Permitted Areas.**

Small WECS may be permitted upon issuance of a Special Use Permit (1) on any parcel meeting the standards of this Chapter in the Countryside and Open Space Zones, or (2) in any zoning district on a Site of at least 5 acres.

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### **728.J Applications.**

A. Applications for Small WECS special use permits shall include:

1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent, as well as an original signature of the applicant authorizing the agent to represent the applicant, is required.
2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

### **728.K Development Standards.**

All small wind energy systems shall comply with the following standards. Additionally such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application, where the aggregate size of their lots is at least one acre.
2. Only one Small WECS (plus, where authorized, a temporary wind measurement tower) per legal lot shall be allowed. Where there are multiple applicants, their joint lots shall be treated as one lot for purposes of this limitation.
3. Small WECS shall be used primarily to reduce the on-site consumption of utility-provided electricity.

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4. Tower heights shall be limited as follows:
  - a. 65 feet or less on parcels between one and five acres.
  - b. 80 feet or less on parcels of five or more acres.
  - c. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 10 KW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). Facilities shall not exceed the ridgeline level, where the ridgeline is defined as the average height of the summer-time vegetation on the parcel.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie- ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Town Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner
12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
  - a. Tower-climbing apparatus located no closer than 12 feet from the ground.
  - b. A locked anti-climb device installed on the tower.
  - c. A locked, protective fence at least six feet in height that encloses the tower.

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13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.
14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.
15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.
17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

**728.L Standards.**

A Small Wind Energy System shall comply with the following standards:

1. **Setback requirements.** A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.
2. **Noise.** Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that the statistical sound pressure level generated by a Small WECS shall not exceed  $L_{10} - 45$  dBA measured at the nearest off-Site dwelling existing at the time of approval (including structure under construction at said time), nor more than 6 dBA greater than either the nighttime or daytime pre-application background ambient noise level measured in leaf-off conditions for a period of no less than 24 hours.

**728.M Abandonment of Use.**

A. Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property within 24 additional months at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town of Gaines.

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B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

**Article III MISCELLANEOUS**

**728.N Variances.**

A. The Zoning Board of Appeals in accordance with its normal procedures may grant variances for Small WECS, but in no event shall the Zoning Board of Appeals grant a variance allowing a larger WECS than permitted by this Chapter, or a WECS primarily designed to generate electricity for off-site use, or any large-scale multiple-tower wind facilities.

B. If a court of competent jurisdiction (1) orders the Zoning Board of Appeals to consider a use variance for any Wind Energy Facility other than a Small WECS, and such use variance is granted, or (2) the prohibition on any Wind Energy Facility other than a Small WECS is invalidated, no Wind Energy Facility shall be allowed except upon issuance of a Special Use Permit issued by the Town Board after a public hearing, which Permit shall require a Decommissioning Plan and removal bond, site plan approval by the Planning Board pursuant to Article X of the Zoning Ordinance, a Public Improvement Bond to protect public roads, and shall comply with the following minimum setbacks:

- a) The statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 45$  dBA measured at the nearest off-Site dwelling existing at the time of approval (including structure under construction at said time), nor more than 6 dBA greater than either the nighttime or daytime pre-application background ambient noise level measured in leaf-off conditions for a period of no less than 24 hours. If the ambient sound pressure level exceeds 45 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- b) 1,500 feet from the nearest Site boundary property line.
- c) 1,500 feet from the nearest public road.
- d) 2,500 feet from the nearest off-Site residence existing at the time of approval, measured from the exterior of such residence.
- e) One and a half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities.
- f) 250 feet from federal or state-identified wetlands, to protect bird and bat populations. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

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**728.O FEES**

A. Non-refundable Application Fees shall be as follows:

1. WECS Special Use Permit: \$150.

B. The fees established by this section may be changed by Town Board resolution, adopted after a duly-noticed public hearing.

**728.P TAX EXEMPTIONS**

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

**728.Q ENFORCEMENT: PENALTIES AND REMEDIES FOR VIOLATIONS**

A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Chapter.

B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy facility in violation of this Chapter or in noncompliance with the terms and conditions of any permit issued pursuant to this Chapter, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

D. The penalties established by this section may be changed by Town Board resolution, adopted after a duly-noticed public hearing.

**728 SECTION 2: SEVERABILITY**

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**728 SECTION 3: EFFECTIVE DATE**

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

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**SECTION 730- METEOROLOGICAL (MET) TOWERS**

- A. Purpose: The purpose of these supplemental regulations is to promote health, safety and the general welfare of the residents of the Town of Gaines; to provide standards for the safe provision of Meteorological (MET) Towers consistent with applicable federal and state regulations, to minimize the total number of Meteorological (MET) Towers located in the Town of Gaines to a maximum of four (4) at any one time; and to minimize adverse visual effects from Meteorological (MET) Towers by requiring careful siting, visual impact assessment, and appropriate landscaping. The Special Use Permit for the Meteorological (MET) Tower shall be for two (2) years and may be renewed for one (1) year, if the applicant can demonstrate the need for extra time to collect the wind energy data. Special Use Permits for Meteorological (MET) Tower(s) are non-transferable. Meteorological (MET) Tower shall be removed by the applicant at the end of two (2) years or at the end of the extension time granted by the Town of Gaines. See the current "Town of Gaines" fee schedule for appropriate fees.
- B. General Criteria: No Special Use Permit or renewal thereof or modification of a current Special Use Permit relating to Meteorological (MET) Towers shall be authorized by the Planning Board unless it finds that such Meteorological (MET) Tower:
1. Is necessary for the temporary collection of Wind Energy data;
  2. Conforms with all applicable Town of Gaines, New York State and Federal Regulations;
  3. Is designed and constructed in a manner which minimizes visual impact to the extent practical;
  4. Complies with all other requirements of this Ordinance, unless expressly superseded herein;
  5. Are permitted only in the RA district and not permitted in the C or CH district.
  6. The applicant must provide alternate sites for location of a Meteorological (MET) Tower within their proposed test area and that the location is the most appropriate site among those available within the test area for the placement of a Meteorological (MET) Tower.
  7. All necessary fees (Special Use Permit fees, Town of Gaines Engineer fees, Administrative fees and Performance Bond) have been paid to the Town of Gaines by the applicant prior to the issuance of Special Use Permit.
  8. The applicant agrees to share the results of the "Wind Energy" collection data with the Town of Gaines.
  9. The issuance of a "Special Use Permit" to an applicant for a Meteorological (MET) Tower shall count as part of the 4 allowed Meteorological (MET) Towers to be located in the Town of Gaines. Once the "Special Use Permit" has been granted to an applicant for construction of a Meteorological (MET) Tower(s), the applicant has twelve months to construct and erect the Meteorological (MET) Tower(s). If the Meteorological (MET) Tower(s) are not constructed within twelve (12) months, the "Special Use Permit" issued by the Town of Gaines shall become null and void and the applicant would have to reapply for a new permit.

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### C. Dimensional Standards

1. A fall zone around any tower constructed, as part of a Meteorological (MET) Tower must have a radius at least equal to the height of the tower and any antennae(s) attached upon its zenith. The entire fall zone may not include public roads and must be located on 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 Meteorological (MET) Tower. If the Meteorological (MET) Tower is attached to an existing structure, relief may be granted by specific permission of the Town of Gaines Planning Board on a case-by-case basis.
2. All Meteorological (MET) Towers shall be located on a single parcel.
3. All Meteorological (MET) Towers shall comply with setback standards of the underlying zoning district. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. A lot leased or owned for the purpose of construction of a tower as part of a Meteorological (MET) Tower shall not result in the creation of a non-conforming lot that would continue beyond the time needed for the Meteorological (MET) Tower. In the absence of required frontage, an access way for service vehicles, either through easement, lease or ownership, shall be in accord with paragraph "G" herein.
4. Essential services such as "water, electric, gas, sewer, etc." shall be placed underground to the proposed site.
5. The height of a Meteorological (MET) Tower (199 feet or less) shall be exempt from requiring an "Area Variance". Any Meteorological (MET) Tower 200 feet or higher, will require an "Area Variance".

### D. Lighting and Marking

1. Meteorological (MET) Towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA).
2. Notwithstanding the preceding paragraph 1, an applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the Town of Gaines Planning Board, such a requirement would be of direct benefit to public safety.
3. Meteorological (MET) Towers shall comply with all FAA regulations as it applies to airports regarding distance/location from airport, lighting and height.

### E. Appearance and Buffering

1. The use of any portion of a Meteorological (MET) Tower for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited. Tower space may not be leased out to any other vendors.
2. The facility shall have the least practical visual effect on the environment, as determined by the Town of Gaines Planning Board. Any tower that is not subjected to FAA marking, pursuant to paragraphs D.1. and D.2. Herein, shall otherwise:

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- a) 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 Town of Gaines Planning Board, or;
  - b) Be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the Meteorological (MET) Tower to perform its designed function.
3. Accessory structures, if needed, shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
  4. The Town of Gaines Planning Board will require a State Environmental Quality Review (SEQR) Full (Type 1 Action) EAF (Environmental Assessment Form) for proposed Meteorological (MET) Towers. A Visual Environmental Assessment Form (Visual EAF) will be required as an addendum to the Full EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF. Historic buildings and/or districts shall be part of the SEQR and both the applicant and the Town of Gaines Planning Board shall address any Visual and Historic impacts.
  5. The Town of Gaines Planning Board shall require, where needed, that the Meteorological (MET) Towers have appropriate buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer 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.
  6. Equipment or vehicles not used in direct support, renovations, additions or repair of any Meteorological (MET) Towers shall not be stored or parked on the Facility site.

### F. Access and Parking

1. Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways constructed solely for the Meteorological (MET) Tower must be at least twenty (20), but no more than thirty (30) ft. wide and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
2. The road surface (driveways) shall be centered within access ways and shall not comprise more than 60% of the width of the access way.
3. Parking areas shall be sufficient to accommodate the greatest number of service vehicles expected on the premises at any one time.
4. Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out onto a public thoroughfare.

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### G. Security

1. Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by chain-link fencing at least six (6) ft. in height, the top foot of which may, at the discretion of the Town of Gaines Planning Board in deference to the character of the neighborhood, be comprised of three-strands of barbed wire to discourage unauthorized access to the site. Flags and/or colored tape shall be placed at all four corners of fencing.
2. Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance 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.
3. There shall be no permanent climbing pegs within fifteen (15) feet of the ground of any tower.
4. A locked gate at the junction of the access way and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into the public right-of-way.

### H. Engineering and Maintenance

1. Site plans for all Meteorological (MET) Towers must bear the seal of a professional engineer licensed to practice in the State of New York. Every facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and American National Standards Institute (ANSI).
2. Every Meteorological (MET) Tower shall be inspected at least every second year for structural integrity by a New York State licensed engineer, if the Special Use permit is to be extended beyond two years. A copy of the inspection report shall be submitted to the Town of Gaines municipal code enforcement officer.
3. The municipality, at the expense of the applicant, may employ its own consulting assistance for site plan review to review the findings and conclusions of safety analysis, visual analysis, or structural inspection, provided by the applicant.

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**I. Removal**

1. At the time of submittal of the application of a Special Use permit for a Meteorological (MET) Tower, the applicant shall submit an agreement to remove the tower and all equipment on the tower, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures after two years or the end of any extension granted by the Town of Gaines. The applicant also agrees to remove any towers(s) dedicated solely for use as a Meteorological (MET) Tower, if such Meteorological (MET) Tower becomes technologically obsolete or ceases to perform its originally intended function for more than twelve (12) consecutive months. Upon removal of said Facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.
2. At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the Meteorological (MET) Tower and property restoration, with the municipality as the assignee, in an amount approved by the Town of Gaines Planning Board, but not less than fifty thousand (\$50,000) dollars.
3. At times of renewal or modification of the Special Use Permit, the Town of Gaines Planning Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the Meteorological (MET) Tower and property restoration.

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**ADMINISTRATION AND ENFORCEMENT**

**SECTION 800- ENFORCEMENT**

The duty of administering and enforcing the provisions of the Ordinance is hereby conferred upon the Zoning Enforcement Officer. He shall be appointed by the Town Board and shall receive such compensations the Town Board shall determine.

**SECTION 801- DUTIES AND PROCEDURES OF THE ZONING ENFORCEMENT OFFICER**

- a) **Administer the Zoning Law:** The Zoning Enforcement Officer shall review all applications for building permits and, if the requirements of this Ordinance are met, he shall issue a permit. If the applicant's plans do not meet the requirements of the Ordinance, the Zoning Enforcement Officer must deny the permit.
- b) **Referral to the Zoning Board of Appeals:** An applicant after he has been denied a building permit may appeal the decision of the Zoning Board of Appeals for an interpretation or a variance. Should an appeal be requested, the Zoning Enforcement Officer shall apprise the Secretary of the Zoning Board of Appeals of the request and forward all necessary supporting information to the Zoning Board of Appeals.
- c) **Referral to Town Planning Board:** Any application for a special permit, change of zoning district or use that requires Site Plan Review shall be forwarded by the Zoning Enforcement Officer to the Secretary of the Town Planning Board along with all supporting information.
- d) **Cite Zoning Violations:** For any plans, constructions, building or use of premises found to be in violation of the provisions of this Ordinance, the Zoning Enforcement Officer shall order the responsible party, in writing, to remedy the situation. In the event that the violation persists, the Zoning Enforcement Officer shall have the authority to resort to whatever legal action may be necessary to remedy the violation.
- e) **Report to Town Board:** The Zoning Enforcement Officer shall submit a monthly report to the Town Board.
- f) **Public Record:** The Zoning Enforcement Officer shall file all permit applications with Town Clerk.

**SECTION 811- APPOINTMENT OF A PLANNING BOARD**

The Town Board authorizes the appointment of a five (or seven) member Planning Board as more fully described in Town Law Section 271. At least one member of the Planning Board shall be a person engaged in agricultural pursuits as defined in Town Law Section 271(2). Terms of all members of the Planning Board shall be staggered, as the law requires, with a term expiring each year. Terms shall be five (5) years for a five (5) member Planning Board and seven (7) years for a seven (7) member Planning Board.

**SECTION 812- OFFICERS, RULES AND EXPENSES**

- a) The Planning Board shall conduct an organizational meeting at the first meeting of the Planning Board in each calendar year. In the event the Town Board failed to appoint a Chairman and Vice Chairman of the Planning Board at its organizational meeting, the Planning Board may thereafter, elect a Chairman and Vice Chairman from its members for the ensuing year. The Planning Board shall not have right to appoint its own

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Chairman or Vice Chairman if the Town Board has expressed its intent to make the appointment at a later date or to table the appointment. In such case, the Planning Board may appoint a temporary Chairman and Vice Chairman to serve until such time as the Town Board appoints the Chairman and Vice Chairman.

- b) The Planning Board may adopt rules or bylaws for the regulation of its operation.
- c) The Town Board shall provide an appropriation to the Planning Board to cover necessary expenses including the means for the Planning Board to maintain a record of its meetings and public hearings.
- d) A vacancy shall occur on the Planning Board if one of the following occurs:
  - 1. A Planning Board member's term expires and the Town Board fails to fill the vacancy thereby create, or
  - 2. A Planning Board member is absent from more than four (4) scheduled meetings in one calendar year and has not submitted a request in advance to be excused, or
  - 3. A Planning Board member has removed for cause by the Town Board. Failure to complete the mandatory training requirements of the State of New York in accordance with the Town of Gaines training policy shall be grounds for removal, or
  - 4. Death or resignation of a Planning Board member. Or
  - 5. A Planning Board member is no longer a resident of the Town of Gaines.

**SECTION 813- FUNCTIONS OF THE PLANNING BOARD**

The Planning Board shall have the following functions:

- a) Prepare and amend as necessary a comprehensive land development plan for the Town.
- b) Review and comment upon all proposed zoning amendments.
- c) Conduct Site Plan Review in appropriate cases, as authorized by Town Law Section 274-a and as prescribed in Article X of this Ordinance.
- d) Review applications for, and grant or deny, special permits, as authorized by Article IX.
- e) Render assistance to the Zoning Board of Appeals at the latter's request.
- f) Research and report any matter referred to it by the Town Board.
- g) Make such investigations, maps, reports, and recommendations in any matter related to planning and development as seems desirable, provided that the expenditures of the Board do not exceed appropriations.
- h) Review all applications for Subdivisions for compliance with the Town of Gaines Subdivision Regulations.

**SECTION 821- APPOINTMENT OF ZONING BOARD OF APPEALS**

Pursuant to Section 267 of the Town Law, there shall be a Zoning Board of Appeals consisting of five members holding staggered five year terms. The members of the Zoning Board of Appeals shall be appointed by the Town Board. The terms of all members of the Zoning Board of Appeals shall be staggered, as the law requires, with one term expiring each year. Terms shall be five (5) years for a five (5) member Zoning Board.

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**SECTION 822- OFFICERS, RULES AND EXPENSES**

- a) The Zoning Board of Appeals shall conduct an organizational meeting at the first meeting of the Zoning Board of Appeals in each calendar year. In the event the Town Board failed to appoint a Chairman and Vice Chairman of the Zoning Board of Appeals at its organizational meeting, the Zoning Board of Appeals may thereafter, elect a Chairman and Vice Chairman from its members for the ensuing year. The Zoning Board of Appeals shall not have right to appoint its own Chairman or Vice Chairman if the Town Board has expressed its intent to make the appointment at a later date or to table the appointment. In such case, the Zoning Board of Appeals may appoint a temporary Chairman and Vice Chairman to serve until such time as the Town Board appoints the Chairman and Vice Chairman.
- b) The zoning Board of Appeals may adopt rules or bylaws for the regulation of its operations.
- c) The Town Board shall provide an appropriation to the Zoning Board of Appeals to cover necessary expenses including the means for the Zoning Board of Appeals to maintain a record of its meetings and public hearings.
- d) All decisions of the Zoning Board of Appeals shall be by majority vote of the membership thereof (three), except in those instances of a County Planning Board disapproval recommendation (see Section 845 (b)), in which case a majority plus one vote is required.
- e) A vacancy shall occur on the Zoning Board of Appeals if one of the following occurs:
  - 1. A Zoning Board member's term expires and the Town Board fails to fill the vacancy thereby create, or
  - 2. A Zoning Board member is absent from more than four (4) scheduled meetings in one calendar year and has not submitted a request in advance to be excused, or
  - 3. A Zoning Board member has removed for cause by the Town Board. Failure to complete the mandatory training requirements of the State of New York in accordance with the Town of Gaines training policy shall be grounds for removal, or
  - 4. Death or resignation of a Zoning Board member. Or
  - 5. A Zoning Board member is no longer a resident of the Town of Gaines.

**SECTION 823- FUNCTIONS OF THE ZONING BOARD OF APPEALS**

- a) **Interpretation:** Upon an appeal from a decision of the Zoning Enforcement Officer, the Zoning Board of appeals shall decide any question involving the interpretation of any provision of this Ordinance.
- b) **Appeals for Variances:** Upon the denial of a building permit by the Zoning Enforcement Officer, the Zoning Board of Appeals shall hear any application for a variance, a more fully described in subsequent sections of this Ordinance.

**SECTION 830- APPEALS FOR VARIANCES THROUGH THE ZONING BOARD OF APPEALS**

All applications for variances shall be made to the Zoning Board of Appeals after denial of a building permit by the Zoning Enforcement Officer.

# **TOWN OF GAINES ZONING ORDINANCE**

## **ARTICLE VIII**

### **SECTION 831- VARIANCE POLICY**

As a general rule, a variance will only be granted to those applicants seeking an area or dimensional variance. Use variances, since they allow activities other wise prohibited in the particular zoning district, will be carefully reviewed, and will be granted only in exceptional circumstances.

### **SECTION 832- GRANTING AREA OR DIMENSIONAL VARIANCES**

- a) Area variances may be granted where setback, frontage, lot size, density or yard requirements of this Ordinance cannot reasonably be met. The Zoning Board of Appeals, before it may grant an area variance, must determine that strict application of the zoning ordinance would result in "practical difficulty" to the applicant. In determining whether "practical difficulty" exists, the Zoning Board of Appeals shall consider each of the following questions, fully setting forth in its findings its conclusion with respect to each question:
  - (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.
  - (2) Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
  - (3) Whether the requested variance is substantial.
  - (4) Whether the proposed variance will 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 (that it was will not necessarily preclude the granting of the area variance).
- b) The following factors shall not be considered by the Zoning Board of Appeals in determining whether "practical difficulty" exists:
  - (1) The mere inconvenience of the applicant;
  - (2) The fact that denying the application for the variance would preclude the applicant from erecting a second or subsequent structure;
  - (3) The fact that denying the application for the variance would preclude the applicant from erecting a structure as large as he would like;
  - (4) The fact that the proposed improvement would merely improve the efficiency of an existing business or yield a greater profit.

### **SECTION 833- GRANTING USE VARIANCES**

- a) The Zoning Board of Appeals may grant a use variance only if it is conclusively determined that an unnecessary hardship exists.
- b) "Unnecessary Hardship" will not be found to exist unless each of the following is established:
  - (1) That the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
  - (2) That the hardship is unique, and does not apply to a substantial portion of the district or neighborhood; and
  - (3) That the variance will not alter the essential character of the neighborhood; and
  - (4) That the hardship is not self-created.

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**SECTION 834- PROCEDURES FOR GRANTING A VARIANCE**

- a) All applications for variances shall be in writing on forms prescribed by the Zoning Board of Appeals. Application forms are available in the Town Clerk's office.
- b) Every application shall refer to the specific provisions of the Ordinance and shall establish the reason(s) why the variance should be granted.
- c) Upon receipt of the completed application, the Zoning Board of Appeals shall:
  - (1) Refer the application to the County Planning Board, pursuant to Section 239-m of the General Municipal Law, if the circumstances so warrant;
  - (2) Schedule a public hearing;
  - (3) Publish notice of the public hearing and mail the applicant a copy of the notice, as more fully set forth in Section 835 hereof;
  - (4) Determine whether an Environmental Impact Statement should be required.
- d) Within 30 days after the public hearing, the Zoning Board of Appeals shall render a decision and apprise the applicant of the same. If the matter was initially referred to the County Planning Board, a copy of the decision must also be sent to the County Planning Board in accordance with Section 846 hereof.

**SECTION 835- PROCEDURE FOR APPEALS**

- a) The Zoning Board of Appeals shall hear and decide appeals from and review any requirement, order, decision or determination made by the Zoning Enforcement Officer. The appeal shall be made to the Zoning Board of Appeals, and shall refer to the specific provision of the ordinance involved and the interpretation that is claimed.
- b) Within 30 days of its receipt of an appeal (60 days if referral to the County Planning Board is required), the Zoning Board of Appeals shall hold a public hearing on the appeal.
- c) At least 10 days in advance of the date established for the public hearing, the Zoning Board of Appeals shall appraise the appellant of the time and date of the hearing by mailing written notice thereof to the appellant at the address stated in the application for appeal. In addition, at least 10 days prior to the scheduled hearing date; the Zoning Board of appeals shall cause notice of the public hearing to be published in the official newspaper of the Town.

**SECTION 836- MEETINGS OF THE BOARD**

- a) The Zoning Board of Appeals shall hold meetings at the call of the Chairman, or at the request of three or more members.
- b) The presence of three members shall constitute a quorum for the conduct of business before the Board.
- c) The concurring vote of three of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Enforcement Officer or to decide in favor of the appellant any matter upon which it is required to pass under the terms of this Ordinance or to effect any variation of this Ordinance.
- d) All votes of the Board shall be taken by roll call.
- e) In accordance with Section 809 of the General Municipal Law, any member of the Board having a conflict of interest shall abstain from any discussion or voting on that matter.

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- f) The Board may from time to time as deems necessary consult the Town Attorney for guidance or for an interpretation of the provisions of this Ordinance or any other applicable law, rule or regulation. At the request of the Chairman of the Board, the Town Attorney shall attend the meetings of the Board.
- g) The Chairman may also require that the Zoning Enforcement Officer attend meetings of the Board to present relevant information pertaining to any matter before the Board.
- h) The Board shall keep minutes of all its meetings. The Chairman shall designate one of the other members of the Board to act as secretary thereof for a one year term.
- i) The Board shall make a factual record of all stages of its proceedings, including the reading of the case, the public hearing, the deliberations of the Board, and the vote and decisions of the Board. Such factual record shall be taken by either stenographic or recorded means. The record need not be a verbatim transcript of the proceedings but it shall accurately reflect what transpired during the course of the proceedings and may be in narrative form.

**SECTION 840- REQUIRED REFERRALS TO THE COUNTY PLANNING BOARD**

Under certain circumstances a local zoning action must be referred to the County Planning Board prior to action by the local board. Any application for a special permit, variance, site plan approval or change in the zoning map which affect real property lying within a distance of 500 feet from the boundary of:

- a) any county;
- b) any town;
- c) any village;
- d) any existing or proposed county or state park;
- e) any right-of-way of any county or state road or parkway;
- f) any stream or canal owned by the county;
- g) any existing or proposed county or state owned land on which a public building or institution is situated; or
- h) any farm operation within an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, must first be referred to the County Planning Board which shall then have 30 days from its receipt of the application to submit a written recommendation to the local board. By mutual agreement, this 30 day period may be extended for good cause shown. Upon failure of the County Board to submit its recommendation within the 30 day period, or such longer period as may have been agreed upon, it shall be deemed to have approved the application for such special permit, variance, site plan approval or zoning change, and the local board may take final action without such recommendation.

**SECTION 845- EFFECT OF COUNTY PLANNING BOARD REVIEW**

- a) If the County Planning Board approves a referral, the local board may sustain the recommendation to the county board by a simple majority vote.
- b) If the County Planning Board disapproves a referral or recommends modification thereof, the local board shall not act contrary to such disapproval of recommendation except by a vote of a majority plus one of all members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.

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**SECTION 846- REPORT ON FINAL LOCAL ACTION**

Within seven days after final action by the local board, it shall file a report of the final action it has taken with the County Planning Board.

**SECTION 847- TERMINATION OF VARIANCES**

- a) A use variance may be terminated if an applicant fails to comply with conditions under which the variance was issued.
- b) b) An area variance will be null and void if said structure is destroyed and a new structure can be erected to comply with Zoning Ordinance current regulations. The Zoning Enforcement Officer shall make such determination as to whether an area variance shall continue on the new structure or the new structure should be built to comply with the Zoning Ordinance. The Zoning Enforcement Officer shall file a report of his determination with the Zoning Board of Appeals and the Town Clerk.

# TOWN OF GAINES ZONING ORDINANCE

## ARTICLE IX SPECIAL PERMITS

### SECTION 900- PURPOSE

It is the intent of this Ordinance to utilize special permits to regulate the impact of certain uses upon areas where they would be incompatible unless conditioned in manner suitable to those particular locations. Special permits bring needed flexibility and individuality to the otherwise rigid controls of zoning regulations

### SECTION 901- ADMINISTRATION

Pursuant to Section 274-a of the Town Law, the Town Planning Board shall administer and review the granting of special permits.

### SECTION 902- PROCEDURE

The following is the procedure to be followed by the Town Planning Board in reviewing applications for and granting or denying special permits:

- a) All applications for special use permits shall be in writing on forms prescribed by the Town Planning Board. The applicant shall submit the completed application, together with an approved site plan containing the information set forth in Section 1004 of this Ordinance to the Zoning Enforcement Officer. No application will be accepted for consideration unless accompanied by an approved site plan.
- b) Within 10 days of his receipt of the completed application and the accompanying approved site plan, the Zoning Enforcement Officer shall forward it to the Town Planning Board.
- c) At its next regular or special meeting, the Town Planning Board shall fix a date, not to exceed 45 days from its receipt of the completed application, for a public hearing as to whether or not a special use permit should be issued to the applicant. If a referral to the County Planning Board is required prior to final action by the Town Planning Board, the 45 day period alluded to above shall be extended to 60 days.
- d) The Town Planning Board shall send a notice of the public hearing to the applicant by regular mail at the address specified on the application, at least 10 days prior to the date set for public hearing and, in addition, shall cause a notice of the public hearing to be published in the official newspaper of the Town at least 10 days in advance of the date set for the public hearing. The notice shall specify the time and place of the hearing, the name of the applicant, the location of and a description of the property involved, and the nature of the special use for which approval is being sought.
- e) At the hearing, any resident of the Town desiring to be heard in favor of or in opposition to the application will be afforded an opportunity to be heard. The Town Planning Board shall make a factual record of the public hearing and of all other proceedings in connection with the application for the special permit.
- f) Within 45 days after the public hearing, the Town Planning Board shall render a decision, either approving, approving with conditions, or denying the application for the special use permit, unless such 45 day period has been extended by the mutual consent of the applicant and the Town Planning Board. The decision shall be in writing and shall contain the reasons for the decision. The decision shall thereafter be immediately filed in the office of the Town Clerk and a copy thereof mailed to the applicant at the address stated in the application.

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- g) Any person aggrieved by the decision of the Town Planning Board may apply to the Supreme Court for review, in accordance with the provisions of Section 274-a of the Town Law.

**SECTION 903- FINDINGS**

- a) The Town Planning Board may grant a special permit for the special permit uses in Article V and VII of this Ordinance, provided that all requirements and conditions set forth in those Articles are complied with. The duration of a Special Use Permit shall be for two (2) years, with automatic renewal thereafter every two (2) years so long as all conditions of the Special Use Permit are in compliance and no modifications to the equipment and/or property have been made that will impact the conditions of the Special Use Permit.
- b) The Town Planning Board shall make written findings for each special permit decision stating the reasoning behind the decision, the basis for the decision, and the evidence relied upon to reach the decision. Compliance with the requirements of Article VII shall be substantiated by the record.

**SECTION 904- TERMINATION OF SPECIAL USE PERMITS**

A Special Use Permit shall be terminated when the following conditions occur:

- a) The property is sold.
- b) The applicant fails to comply with the conditions under which the permit was issued.

# **TOWN OF GAINES ZONING ORDINANCE**

## **ARTICLE X SITE PLAN REVIEW**

### **SECTION 1000- PURPOSE**

The intent of this section is to set forth additional standards applying to certain land uses and activities. The nature of these uses and activities requires special consideration of their impacts upon surrounding properties, the environment, the character of the community, and the ability of the Town to accommodate development consistent with the objectives of this Ordinance.

### **SECTION 1001- APPLICATIONS**

- a) Special Use Permits: All applications for special use permits shall be accompanied by an approved site plan. No special use permit shall be issued until the structure or site is in compliance with requirements of this Article and all other applicable provisions of this Ordinance.
- b) Buildings 4,000 square feet or larger: All applications for building permits for buildings 4,000 square feet or larger shall be accompanied by an approved site plan. No building permits shall be issued until the proposed plans, specifications or site plan are in accordance with the requirements of this Article and all other applicable provisions of this Ordinance.
- c) A full site plan review shall be completed by the Town of Gaines Planning Board on any new special use permit applications, variance applications, permitted use/or building permit. The Town of Gaines Planning Board, in its sole and absolute discretion, shall have the right to waive site plan review on any special use permit application, variance application, permitted use/or building permit which, in determination, will not adversely effect the environment, surrounding properties, future development and/or character of the community.

### **SECTION 1002- PREAPPLICATION CONFERENCE**

A pre-application conference may be held between the Planning Board and applicant to review the basic site design concept and to generally determine the information to be required on the site plan.

### **SECTION 1003- APPLICATION FOR SITE PLAN APPROVAL**

1. Minor Site Plan Review: An application for a minor site plan approval shall be made in writing to the Zoning Enforcement Officer and/or Town Clerk, who shall transmit it to the Town Planning Board. The application/site plan shall contain the following information:
  - a) Title block showing the drawing title, date, name and address of applicant and person responsible for preparation of such drawing;
  - b) North arrow, bar scale (a scale of not less than 1" = 100' shall be used) and date;
  - c) Boundaries of the property plotted to scale, including any proposed access ways and easements;
  - d) Existing watercourses and bodies of water, including state and federal-jurisdictional wetlands;
  - e) Existing and proposed contour lines (in one foot intervals) for the entire site;
  - f) Existing and proposed grading and drainage, including any soil erosion and sediment control measures that will be used during construction;

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- g) Existing and proposed location, use and height of all buildings and site improvements including culverts, drains, retaining walls and fences.
  - h) Existing and proposed driveways, parking areas (including Handicap parking, if required), gates and bollards at points of entry and exit;
  - i) Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site;
  - j) Existing or proposed outdoor storage, if any;
  - k) Existing or proposed method of sewage disposal and location of the facilities on site plan;
  - l) Existing and proposed electrical utilities (above ground and underground) located on site plan.
  - m) Existing residential and non-residential structures located off-site and within five hundred (500) feet of the site boundaries;
  - n) Identification and location of water source, existing or proposed; If well, show location;
  - o) Location, size and design and construction materials of all existing or proposed signs;
  - p) Location and proposed development of all buffer areas, including existing and proposed vegetative cover;
  - q) Location and design of outdoor lighting facilities, both existing and proposed;
  - r) General landscaping plan.
  - s) Environmental Impact Statement (SEQR), minor site plan review generally requires a Type 2 action (short form), however, after planning board review, a Type 1 action maybe required (long form);
  - t) Provision for Pedestrian access, if necessary;
  - u) Location of fire lanes and hydrants, if required;
  - v) Designation of the amount of building area proposed for retail sales or similar commercial activity;
  - w) Other elements integral to proposed development considered necessary by the Planning Board and/or “Town of Gaines Engineer of Record”, maybe required on the site plan.
2. Major Site Plan Review: includes all the above requirements for a “minor site plan review”, plus the following requirements:
- a) Five (5) copies of survey map prepared by a licensed Professional Engineer or licensed Land Surveyor and Five (5) copies of construction drawings prepared by a Professional Engineer. All drawings must be signed and stamped by the Professional preparing them.
  - b) Review by the “Town of Gaines Engineer of Record” of all the Applicant’s engineer drawings and survey maps, which may require the applicant drawings and/surveys to be updated. The cost of this review by the “Town of Gaines Engineer of Record” and any updating of engineer and/or survey drawings will be at the applicant’s expense.
  - c) Pre-construction, construction and completion of the project may require on-site review and approval by the “Town of Gaines Engineer of Record”. The cost of the above reviews by the “Town of Gaines Engineer of Record” will be borne by the Applicant.
  - d) Environmental Impact Statement (SEQR) Type 1 action (long form), may also require a “Visual EAF” review, impact on Historical Corridors, endangered species, impact

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on bats, impact on migratory birds, impact wetlands and/or streams, impact on agricultural districts and/or farms, impacts on wildlife, impacts on sound level and other pertinent subjects.

- e) If project is for erection of Towers and/or Wind Turbines, the site plan needs to contain a circle drawn around each tower to represent its fall zone perimeter. The Planning Board may also require analysis on “Shadow Flicker”, “Sound Pressure” and “Electromagnetic Interference”.
- 3. Other documentation required with both “Minor and Major” site plans:
  - a) Manufacturer Product Information for equipment being installed.
  - b) Detailed project description, which should include days and hours of operation.
  - c) Construction schedule
  - d) Evidence of Property Ownership or Intent to Purchase or Lease.
  - e) List of Adjacent Property Owners, which should include names, addresses, mailing addresses and tax map numbers within five hundred (500) feet of Applicant’s boundary lines.
  - f) Tax Map, showing location of Applicant’s parcel and surrounding parcels, public and private roads within 500 feet of Applicant’s parcel.

**Note: The Applicant should meet with the Town of Gaines Planning Board for pre-application meeting to go over what will be required on the site plan. Not every item listed under “Minor and Major” site plan may be needed on the Applicant’s site plan. It will depend on the scope, size and intensity of the project that will determine what will be required on the site plan.**

### SECTION 1004- PLANNING BOARD REVIEW OF SITE PLAN

- a) Within 30 days of its receipt of an application for site plan approval, the Planning Board shall review the site plan, considering the factors enumerated in paragraph (b) below. If satisfied that the site plan contains the information required by Section 1003 hereof and complies with all other applicable provisions of this Ordinance, the Planning Board shall either approve the site plan, or approve it subject to specified modifications. If the site plan does not contain the information required by Section 1003 hereof or other wise fails to comply with the requirements of this Ordinance, the Planning Board shall disapprove the site plan. Within ten days after rendering its decision. The Planning Board shall mail a copy of the decision to the applicant.
- b) In reviewing the application for site plan approval, the Planning Board shall consider the following:
  - 1. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
  - 2. Adequacy and arrangement of pedestrian traffic access and circulation, walkways structures, control of intersections with vehicular traffic and overall pedestrian convenience.
  - 3. Location, arrangement, appearance and sufficiency of off- street parking and loading.
  - 4. Location, arrangement, size and design and general site compatibility of buildings, lighting and signs.
  - 5. Adequacy of storm water and drainage facilities.

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6. Adequacy of water supply and sewage disposal facilities.
  7. Adequacy, type and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
  8. In the case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation.
  9. Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
  10. Protection of solar access on adjacent or neighboring properties.
  11. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
  12. Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- c) In determining whether or not to grant site plan approval, the Planning Board may from time to time, as it deems necessary or desirable, consult with the town building inspector, fire commissioners, highway department, county planning department and other local county officials, 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.

**SECTION 1005- SUBDIVISION REVIEW**

Separate regulations have been adopted for minor and major Subdivisions, which require Site Plan approval. The Planning Board shall review all applications for subdivisions for compliance with the Town of Gaines Development Regulations (adopted February 12, 2002). A copy of the Town of Gaines Development Regulations is available, upon request, from the Town Clerk for a fee.