

**Zoning Law**  
of the  
**Town of Fleming**

Cayuga County, NY

Adopted: December 22, 2008

*Revised: May 13, 2013*



**ZONING LAW**  
of the  
**Town of Fleming**

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**ARTICLE I**  
**Title, Intent and Definitions**

**1-1. Title**

This Local Law shall be known and cited as the "Zoning Law of the Town of Fleming".

**1-2. Intent**

Such Law is made to promote the health, safety, and general welfare of the community, and to lessen congestion in the streets, to secure safety from fire, flood, panic and other dangers, to provide adequate light and air, to prevent the overcrowding of land, to avoid concentration of population, to facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements, under and pursuant to Article 16 of the Town Law of the State of New York. The size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, the density of populations, and the use of buildings, structures and land for trade, industry, residence or other purposes are hereby restricted and regulated as hereinafter provided.

**1-3. Word usage; Definitions**

- A. Unless a contrary intention clearly appears, for the purpose of this Law, the following words and phrases shall have the meanings given in the following clauses.
- B. For the purpose of this Law words and terms used herein shall be interpreted as follows:
- (1) Words used in the present tense include the future.
  - (2) The singular includes the plural.
  - (3) "Person" includes a corporation, partnership, and association as well as the individual.
  - (4) Any use of gender-specific words (his, hers, him, her) shall imply both genders.
  - (5) The word "lot" includes the word "plot" or "parcel".
  - (6) The term "shall" is mandatory.
  - (7) The word "used" or "occupied" as applied to any land or building shall be construed to include the words intended, arranged or designed to be occupied.
- C. Any word or term not defined herein shall be used with a meaning of standard usage.

Accessory Building

A subordinate building located on the same lot as a principal building and clearly incidental and subordinate to the principal building. Any portion of a principal building devoted or intended to be devoted to an accessory use is not an accessory building.

### Accessory Use

A use located on the same lot with a principle use, and clearly incidental or subordinate to, and customary in connection with, the principle use.

### Adult

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

### Adult Oriented Business

Any business enterprise which includes any or all of the following:

- (1) Adult Arcade - Any business enterprise that offers or maintains one or more adult video viewing booths.
- (2) Adult Cabaret - Any business enterprise which regularly features or offers to the public, customers or members, performances by persons who appear nude or seminude or live performances that are characterized by their emphasis on the exposure, depiction or description of specified anatomical areas or the conduct or simulation of specified sexual activities.
- (3) Adult Movie Theater - Any business enterprise which regularly features or offers to the public the presentation of motion-picture films, movies or sound recordings which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities and which are presented to a common audience of more than five persons in an enclosed common area or are presented in a common area of more than 150 square feet.
- (4) Adult Retail Store- A business enterprise that meets any of the following tests:
  - a. Offers for sale or rental items from any two of the following categories: sexually oriented materials; lingerie; or leather goods which are marketed or presented in a context to suggest their use in connection with specified sexual activities;
  - b. Offers for sale sexually oriented toys and novelties, except a business enterprise which devotes less than 10% of its stock-in-trade and sales and display area to sexually oriented materials, with all sexually oriented toys and novelties separated from other sales and display areas by an opaque wall at least eight feet in height with a management-controlled system of access to ensure that only persons over the age of 18 years are allowed to enter the area;
  - c. Devotes more than 10% of its stock-in-trade or sales and display area to sexually oriented materials without having all sexually oriented materials separated from other sales and display areas by an opaque wall at least eight feet in height with a management-controlled system of access to ensure that only persons over the age of 18 years are allowed to enter the area;
  - d. Devotes more than 40% of its stock-in-trade or sales and display area to sexually oriented materials; or
  - e. Advertises or holds itself out in signage visible from the public right-of-way as "X...", "adult," "sex" or otherwise as an adult oriented business.
- (5) Adult Video Viewing Booth- Coin- or slug-operated, or electronically or mechanically controlled, still- or motion-picture machines, projectors or other image-producing devices



which present visual or audio material of any kind which is characterized by its emphasis on the description or depiction of specified anatomical areas or specified sexual activities and which are designed to be viewed by five or fewer persons per machine at any one time or are located in a room or booth of less than 150 square feet. No part of this definition shall be construed to permit more than one person to occupy an adult video viewing booth at any time.

### Agricultural Based Business

Any business that is designed to directly support a farm, farm operation, or multiple farms within the Town. Agricultural Based Businesses may include: Farm Markets, Farmers' Markets, Agritourism, and Direct Marketing businesses. All Agricultural Based Businesses must be consistent with New York State Department of Agriculture and Market rules and regulations.

### Agricultural Operations

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" and "timber processing" in accordance with the NYS Department of Agriculture and Markets. Such agricultural operations may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

### Alley

A narrow service street or passage between properties or buildings.

### 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 or position to another.

### Animal Unit

The equivalent of one thousand (1,000) pounds of farm animal.

### Apartment

A dwelling unit that consists of one room or multiple rooms connected together, consisting of a separate, independent housekeeping establishment for owner occupancy, rental or lease, and contains independent cooking, living, sanitary and sleeping facilities.

### Area

- (1) Lot Area: The total area contained within the property lines of an individual parcel of land, excluding any area within an existing street right-of-way.

- (2) Building Area: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of covered porches, terraces, and steps.
- (3) Floor Area: The sum of the areas of the several floors of a building, including areas used for human occupancy and basements, as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches and attics not used for human occupancy.

### Area Allocation

A voluntary program that landowners in the Town of Fleming Agricultural District can participate in to provide flexibility in land subdivision and development while protecting farmland and open space.

### Automobile or General Repair

Engine repair, bodywork, frame straightening, painting, upholstering, steam cleaning, electrical work, tune-ups and all other vehicle repair services not specifically listed.

### Basement

A story partly underground, but having one half or more of its height (measured from floor to ceiling) above the average level of the adjoining ground. A basement shall be counted as a story for the purpose of height measurement or determining square footage.

### Bed & Breakfast

An owner-occupied and –operated private residence, where limited overnight lodging (no more than four guest rooms) and breakfast are provided to guests for compensation.

### Berm

An earthen mound designed to provide visual interest, screen undesirable views and/or decrease noise.

### Boathouse

An accessory building for waterfront properties, specifically designed for the storage of watercraft and watercraft related equipment. Boathouses shall not be used for habitation.

### Buffer

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

### Building

A structure having a roof, which is used or intended to be used for the shelter or enclosure of persons, animals or property.

- (1) Accessory Building: A subordinate building located on the same lot as a principal building and clearly incidental and subordinate to the principal building. Any portion of a principal building devoted or intended to be devoted to an accessory use is not an accessory building.
- (2) Principal Building: A building in which the principle use of the lot is conducted, or is intended to be conducted.

### Building Area

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

### Building Height

A vertical distance measured from the mean elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck lines of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

### Building Coverage

The percentage of the plot or lot area that is covered by the building area.

### Building Permit

That permit issued by the Code Enforcement Officer for the construction, relocation or extension of buildings in compliance with the provisions of this Law.

### Bulk and Use Regulations

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

### Cabana

An accessory building, not to exceed 150 square feet of total floor space, designed to be a recreational support facility. A Cabana shall not be used for habitation.

### Cellar

A story partly underground and having more than one half of its height (measured from floor to ceiling) below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories or square footage.

### Cellular Towers

See "Telecommunications Tower"

### Campground

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

### Cemetery

Property used for the interring of the dead.

### Certificate of Occupancy

A certificate issued by the Zoning Officer signifying that a parcel of land is being used in a lawful manner with respect to the provisions of this Law.

### Child Care Facility

A place other than an occupied residence providing or designed to provide day care for children on a regularly scheduled basis for more than three but less than 24 hours per day.

### Club Membership

An organization catering exclusively to members and their guests for recreational, athletic or social purposes which are not conducted primarily for gain, providing that there are not any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

### Clustering Techniques

An alternative method for the layout, configuration and design of lots, buildings and structures, roads, utilities and other infrastructure, parks and landscaping in order to permanently preserve and protect any natural, scenic or environmentally sensitive areas identified by the Town.

### Commercial Antenna

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

### Commercial Garage

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

### Commercial Dog Kennel

A lot or parcel of land where four or more adult dogs are kept, whether by owners of the dogs or by persons providing facilities and care, whether or not for compensation, but not including a small animal hospital, clinic or pet shop. An adult dog is one of either sex, altered or unaltered, that has reached the age of four months.

### Comprehensive Plan

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

### Condominium

A building or group of buildings, in which single-dwelling residential units or commercial offices are owned individually while the structure, common areas and facilities are owned jointly by all the owners on a proportional basis.

### Conservation Easement

A legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property. In accordance with Article 49 of NYS Environmental Conservation Law, the easement spells out the rights the landowner retains and the restrictions on use of the property. Each of these rights and restrictions is negotiated between the landowner and the conservation organization holding the easement.

### Convenience Store

A retail sales business that specializes in providing household and personal care products as well as foods. "Convenience stores" may also provide for any or all of the following as an accessory use:

- (1) The rental of video tapes, provided that an adult-oriented business is specifically prohibited;
- (2) The preparation and sales of delicatessen sandwiches and foods, provided that no patron seating is provided; and
- (3) The use of no more than two (2) amusement devices such as pinball machines, video games or other similar devices.

"Convenience stores" shall not include the dispensing of gasoline or other motor vehicle fuels unless appropriate approvals for a service station have been obtained.

### Coverage

The amount of surface occupied by imperious surfaces, such as buildings, asphalt driveways or parking areas.

### Curb Level

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

### Deciduous

A plant with foliage that is shed annually.

### Deed or Tract Restrictions

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

### Density Standards

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

### Developable Land

Land that can be feasibly developed on a given lot and excludes land that is substantially developed or subject to development constraints set forth by any State, Federal, County, or local regulations or adopted environmental studies. At a minimum, the developable land shall exclude areas containing Federal and State wetlands and their buffer zones, Federal floodplains and floodways, Federal or State Historic sites and any associated buffers, and steep slopes and waterways are their buffer zones, as regulated under this Law.

### Development Rights

Represents a landowner's right to build a single unit based upon the Area Allocation Method.

### Dock

A structure, either immobile or floating, which provides access for watercraft, and which allows them to tie-up for a limited amount of time.

### Dwelling

A building designed for use exclusively for one or more housing units.

- (1) One Family Dwelling: A building having only one dwelling unit from ground to roof, independent outside access, and open space on all sides.
- (2) Two-Family Dwelling: A building designed for or occupied exclusively by two families living independently of each other in separate units.

- (3) Multiple-Family Dwelling: A building used or designed as a residence for three or more families living independently of each other in separate units.

Easement

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

Emergency Shelter

An accessory building, dwelling, underground area, or other facility designed to provide safety during a storm or other natural or man-made emergency. Such shelter is not intended for permanent habitation.

Evergreen

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

Family

A group of related individuals or a group of no more than four (4) unrelated individuals living together as a single household in a dwelling unit.

Farm

A parcel of land that is not less than ten (10) acres and/or is located within a NYS Agricultural District, pursuant to Article 25-AA of NYS Agriculture and Markets Law, and is used for agriculture.

Farming Operation

The land and on-farm buildings, equipment, and practices which contribute to the production, preparation and marketing of agricultural products that include, but are not limited to field crops, produce, fruits, horticultural specialties, maple sap, Christmas trees, aquaculture products, and woody biomass. The raising or harboring of livestock, wool- or fur-bearing animals as a commercial enterprise shall not be included in farming operations. Such farming operations may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

Farm Pond

Any artificially constructed body of water which is used to enhance the agricultural process, or for fire protection, conservation of water supply, or for flooding or drainage control.

Farm Stand

A structure or vehicle, whose principal use is the seasonal display and sale of agricultural and value added products.

- (1) Agricultural product: Any agricultural or aquacultural product of the soil or water, including but not limited to fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, and fruit juice.
- (2) Value added: The increase in the fair market value of an agricultural product resulting from the processing of such product.

### Fence

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

### Flammable Liquids

Any liquid which gives off flammable vapors, as determined by the flash point from an open-cup tester as used for test of burning oils, at or below a temperature of eighty (80) degrees Fahrenheit, is flammable.

### Floating (Overlay) Zone

An additional layer of regulations related to a specific constraint that supercedes the restrictions of the underlying zoning district.

### Floodplains

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

### Floor Area Ratio

The ratio between total site area and total floor area permitted in any district. The floor area of the building considered for the computation of floor area ratio shall be restricted to those levels above the surface of the ground and shall not include any basement or garage spaces under the surface. Garage facilities above the surface shall be included in the computations. Where the ground level changes a full story height or more along a building facade, the floor area of such story shall be prorated in proportion to the average story height above grade. Total site area shall be the entire site within the property lines of any development.

### Floor Area, Total

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

### Forest or Woodland

All areas of five or more contiguous acres of woods or sensitive areas of less than five acres.



### Garden

Planted fruit, vegetables, flowers and trees grown for personal consumption and use. This is considered an accessory use.

### Gasoline Station

Any building, land area or other premises, or portion thereof, used or intended to be used for retail dispensing or sales of motor vehicle fuels, motor vehicle lubricants, coolants, motor vehicle single-bay washes and/or incidental repair and replacement of parts.

### GLA (Gross Leasable Area)

Is the total floor area designed for the tenants' occupancy and exclusive use (including but not limited to basements, kitchens, restrooms, storage rooms, private corridors, stairways, mezzanines and upper floors), expressed in square feet and measured from the centerline of interior walls or other interior tenant partitions and from outside wall faces. GLA does not include public or common areas (i.e., public restrooms, corridors, stairwells, elevators, lobbies or mall areas), nor does it include mechanical rooms, equipment and/or machine rooms or mechanical chases.

### Governing Board

The Town Board of Fleming.

### Greenhouse

A building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants.

### Green Space

The percentage of the lot area not covered by impervious buildings, structures or materials. Green space includes open space, lawn and landscaped areas.

### Healthcare Institution

Hospital, medical center, sanitarium rest home, nursing home, convalescent home and any other place for the diagnosis, treatment or other medical care of human ailments.

### Home Occupation

An activity customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit and clearly incidental and secondary to the residential use of the dwelling. In particular, this may include, but is not limited to, an art studio, professional office of a physician, dentist, lawyer, engineer, architect, writer, accountant, realtor, beauty parlor or barbershop, dressmaker or tailor shop, musician, laundering, home cooking, appliance or other small time repair, training or tutoring of not more than four (4) persons at any one (1) time. Among the uses that shall not be interpreted as "home

occupation” shall include, but not be limited to, animal hospital, commercial stables, kennels and restaurants.

### Homeowners Association

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

### Hotel

A commercial dwelling containing 15 or more rooming units in which lodging is provided and offered to the public for compensation.

### Impervious Surface

The horizontal area of ground covered by a surface through which water cannot infiltrate, such as building roofs, asphalt or concrete surfaces and landscape pavers.

### Inn

A commercial dwelling containing more than four rooming units in which lodging is provided and offered to the public for compensation.

### Junkyards

Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intent or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts there from, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric, or otherwise, for the purpose of disposing of the same or for any other purpose: such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together equal in bulk to two or more such vehicles provided, however the term junkyard shall not be construed to mean an establishment having facilities to process iron, steel or nonferrous scrap whose principal produce is scrap iron, steel or nonferrous scrap for sale for remelting purposes.

### Letter of Credit

A security which may be accepted as a guaranty of a requirement that certain improvements be made before the Code Enforcement Officer issues a Certificate of Occupancy, including escrow agreements and other similar collateral and surety agreements acceptable in form and amount to the Municipal Attorney and Municipal Engineer and approved by the governing board.

### Landscaped Area

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

### Livestock

Any domesticated animal, such as cattle, chickens, horses, emus, ostrich, rheas, kiwis, donkeys, mules, burros, sheep, hogs, goats, or farmed deer or buffalo.

### Lot

A parcel of land, used or set aside, available for use as the site of one or more buildings and buildings accessory thereto or for any other purpose, in one ownership and not divided by a street, nor including any land within the right-of-way of a public or private street upon which said lot abuts, even if the ownership to such way is the owner of the lot. A lot for the purpose of this Law may or may not coincide with a lot of record.

- (1) Corner Lot: A parcel of land at the junction of and fronting on two or more intersecting streets.
- (2) Through Lot: An interior lot having frontage on two parallel or approximately parallel streets.
- (3) Depth of Lot: The mean distance from the street line of the lot to its opposite rear line measured in the general direction of the sidelines of the lot.
- (4) Lot Width: The width of the lot between side lot lines at the front building line as prescribed by the front yard regulations.
- (5) Flag Lot: A type of lot (commonly flag-shaped in configuration) in which street frontage is provided by a strip of land which is narrow in relation to the remainder of the lot and which extends from the main body of the lot to the street. A lot which does not physically front on or abut a street, but which has access to a street by means of an easement over other property, shall be deemed to be included in this definition. The portion of the lot that provides access to the interior portion of the lot shall not be less than twenty (20) feet in width shall not be considered buildable and shall not be used in the calculation of the minimum lot area requirements for the zoning district. The interior portion of the lot shall meet the minimum lot area requirements for the zoning district.

### Lot Line

Any boundary line of a lot.

### Manufactured Home

A structure, built in the controlled environment of a manufacturing plant and transported in one or more sections on a permanent chassis, designed to be used as a dwelling with or without a permanent

foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The structure, when transported in whole, shall be eight body feet or more in width or forty body feet or more in length, or 320 square feet or more when erected on site.

#### Mean High Water Mark

The elevation shall be 717.13 vertical feet above sea level using the United States Geological Survey datum.

#### Micro-relay Station

See “Telecommunications Facility.”

#### Minimum Front Setback

The least required horizontal distance between the front lot line and the principle building measured at the shortest point.

#### Minimum Rear Setback

The least required horizontal distance between the rear lot line and the principal building measured at the closest point.

#### Minimum Side Setback

The least required horizontal distance between the side lot line and the principal building measured at the closest point.

#### Mixed Use Building

A development or redevelopment that allows for a mixture of residential and commercial uses in a single structure or lot.

#### Mobile Home

As used in this Law, the term mobile home is defined by the N.Y.S. Residential Code, Appendix E Section AE201 as follows: A movable or portable dwelling unit that was built prior to June 15, 1976 and that was designed and constructed to be towed on its own chassis comprising frame and wheels; connected to utilities; and designed and constructed without a permanent foundation for year round living, excluding travel trailers.

#### Mobile Home Park

A parcel of land under single ownership where two or more mobile homes or manufactured homes that are less than twenty (20) feet in width are located.

## Motel

A building or group of buildings in which lodging is provided for compensation for primarily automobile transients and which has individual entrances from the outside of the building for at least 25% of the dwelling or rooming units located therein. The term “motel” shall also include tourist courts, motor lodges and similar uses.

## Motor Vehicle

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

## Neighborhood

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

## Nonconforming Lot, Structure, or Use

- (1) Nonconforming Structure or Lot: A structure or lot that does not conform to a dimensional regulation prescribed by this Law for the district in which it is located or to regulations for signs, off-street parking, off-street loading or accessory buildings, but which structure or lot was in existence at the effective date of this Law and was lawful at the time it was established.
- (2) Nonconforming Use: A use of a building or lot that does not conform to a use regulation prescribed by this Law for the district in which it is located, but which was in existence at the effective date of this Law and was lawful at the time it was established.

## Outdoor Stove

Any device, appliance, equipment apparatus or structure that is designed, intended and/or used to provide heat and/or hot water to any associated structure but is not located within that structure. This term includes, but not limited to, devices referred to as outdoor furnaces and outdoor boilers. The structure operates by burning wood or solid fuels including, but not limited to, paper pellets and agricultural products. Items prohibited from burning in outdoor stoves includes: unclean wood, *i.e.* wood covered with paint or coatings or pressure treated lumber; unseasoned wood; garbage; tires; yard waste; petroleum; paints or paint thinners; household or laboratory chemicals; coal; glossy and colored paper; construction and demolition debris; plywood, particleboard, fiberboard and oriented strand board; manure; animal carcasses; and asphalt products.

## Park or Recreational Area

A space designed and used for active or passive participatory athletic and general recreation activities.

## Parking

For the purposes of this ordinance, the act of depositing a registered motor vehicle at a location after it has been driven to that location under its own power, pending the return of the same or another driver and any accompanying passengers. This term shall include any trailers remaining attached to the

vehicle or to motor vehicles, registered or unregistered, including trailers, which are drawn or towed to a location, detached, and left at that location.

### Parking Area

Off-street parking areas and loading and unloading areas required by Article XI.

### Parkway

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

### Personal Service Establishments

Places primarily providing services oriented to personal needs, such as barber and beauty shops, shoe repair shops, household appliance repair shops, dry cleaning and laundry pickups, shoe shine parlors, and other similar establishments. Retail sales shall be allowed as incidental use in personal service establishments.

### Pier

A floating or fixed platform, including associated pilings and similar features, that extends over water from the shoreline. The following types of piers have the meaning indicated:

- (1) Commercial Pier: a pier used for commercial purposes that is not located in a residential zoning district.
- (2) Community Pier: a pier for watercraft that is established and operated for the benefit of a recorded residential riparian subdivision.
- (3) Private Pier: a pier for watercraft that extends from a privately owned residential lot.
- (4) Recreational Pier: a pier used by residents of a recorded residential riparian subdivision and their guests for crabbing, fishing, sunning, swimming, and similar activities, but not for watercraft or boating activities of any kind.

### Place of Worship

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

### Planning Board

The officially established Planning Board for the Town of Fleming.

### Plat

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

### Pond

An artificially formed body of water that is constructed by the removal or relocation of soil and used for ornamental/landscaping purposes, but does not include a swimming pool, farm pond, or stormwater detention/retention facility. The depths of ponds are shallow enough that light can penetrate to the bottom surface throughout.

### Pool

An artificially created swimming facility used for recreational activities on a residential, agricultural, or commercial lot. A pool is an accessory use and may be open to the public in commercial uses only.

### Property Line

See also "lot lines."

### Private Club or Lodge

A nonprofit social organization whose premises are restricted for its members and their guests.

### Professional Office

An establishment that provides personal, financial, legal, medical and technical services, assistance, advice and the like to individual consumers.

### Public and Semi-Public Uses

This definition is intended to include, but not be limited to, any one (1) or more of the following uses, including grounds and accessory buildings necessary for their use:

- (1) Cemeteries and associated uses.
- (2) Churches, places of worship, parish houses and convents.
- (3) Public or semi-public parks, playgrounds, and recreational areas when authorized or operated by a governmental authority, school or religious institution.
- (4) Nursery schools, elementary schools, high schools, colleges, or universities.
- (5) Public libraries and museums.
- (6) Not-for-profit fire, ambulance and public safety buildings.
- (7) Administrative office buildings and related facilities operated by public agencies.
- (8) Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes for adults, or homes for the aged as the same are defined under the Public Health Law or the social Services Law of the State of New York, provided that they are duly licensed by the State of New York.
- (9) Not-for-profit membership corporation or club established for cultural, social, or recreational purposes.
- (10) Childcare facilities approved by the New York State Department of Social Services.

### Public Utilities

Any facility or related equipment, including but not limited to all lines, pipes, transformers, poles, etc., performing an essential public service and subject to special governmental regulation. Nonessential components of public utility operations, such as general storage and maintenance facilities, are excluded from this definition.

### Restaurant

An establishment where food is prepared and available to the general public for a determined compensation, seating is provided primarily for consumption within a structure or area on the premises and where the consumption of food in motor vehicles on the premises is neither encouraged nor permitted.

### Small Retail Shops

A business less than 5,000 square feet in gross floor area that sells goods, articles or consumer services individually or in small quantities directly to the consumer.

### Large Retail Shop

A business more than 5,000 square feet in gross floor area that sells goods, articles or consumer services directly to the consumer.

### Riding Academy

A facility which maintains two or more horses and offers services of boarding, training, sales, and/or instruction for a fee.

### Right-of-Way

Land set aside for use as a street, alley or other means of travel.

### Roomer, Boarder, or Lodger

A person occupying any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes, and paying compensation for lodging or board and lodging by pre-arrangement for a week or more at a time to an owner or operator. Any person occupying such room or rooms and paying such compensation without pre-arrangement or for less than a week at a time shall be classified for purposes of this Law not as a roomer, boarder, or lodger but as a guest of a commercial lodging establishment (motel, hotel, tourist home).



## Screen

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

## Seasonal Residence

Summer or winter cabins, cottages, hunting cabins, farm tenant housing and similar housing designed, intended and/or used for seasonal, non-permanent residential use.

## Sensitive Areas

Areas that include steep slopes and/or unique wildlife habitat.

## Sexually Oriented Books and Videos

Books, magazines, pamphlets, pictures, drawings, photographs, video tapes, digital video disks, motion-picture films or sound recordings, or printed, visual and audio material of any kind, which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities.

## Sexually Oriented Materials

All sexually oriented toys and novelties and sexually oriented books and videos.

## Sexually Oriented Toys and Novelties

Instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs, except medical devices approved by the Food and Drug Administration.

## Sewer

- (1) Public Sewer: A "public sewer" is any municipal or privately owned sewer system in which sewage is collected from buildings and piped to an approved sewage disposal plant or central septic tank disposal system. It may also be referred to as "off-lot" or "off-site" sewer.
- (2) Private Sewer: An "on-lot" septic tank disposal system generally providing for disposal of effluent for only one (1) building on a single lot.

## Shade Tree

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

### Shopping Center

A grouping of commercial establishments that provides a wide range of retail goods and services. Such centers typically range in size from 100,000 to 450,000 square feet.

### Shrub

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

### Shoreline

That line at which land adjoins the waters of lakes, ponds, rivers and streams within the Town at high water, as determined by the Mean High Water Mark.

### Site Plan Review

See Article XV.

### Sign

Sign shall mean and include any permanent or temporary structure or part thereof, or any device attached, painted or represented directly or indirectly on a structure, window or outdoor surface that shall display or include any letter, word, insignia, flag or representation used as, or which is in the nature of, an advertisement, announcement, visual communication, direction or is designed to attract the eye or bring the subject to the attention of the public.

- (1) On-Premises Sign: A sign that directs attention to a person, business, profession, home occupation or activity conducted on the same lot. A "for sale" or "for rent" sign relating to the lot on which it is displayed shall be deemed an "on-premises" sign.
- (2) Off-Premises Sign: A sign that directs attention to a person, business, profession, product, home occupation or activity not conducted on the same lot.

### Special Use Permit

A permit provided by the Town Board for a use requiring review, for uses that are not permitted in a district as-of-right but are listed as requiring a special use permit. See Article VIII.

### Steep Slope

Grade change of fifteen (15) percent or more.

### Story

The portion of a building enclosed between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between any floor and the ceiling next above it.

### Street

A public or private way used or intended to be used for passage or travel by vehicles.

### Street Line

The dividing line between the street and the lot. The street line shall be the same as the legal right-of-way provided that where a future right-of-way width for a road or street has been established that width shall determine the location of the street line.

### Structure

A combination of materials assembled, constructed or erected at a fixed location including a building, the use of which requires location on the ground or attachment to something having location on the ground.

### Telecommunications Facility

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

### Telecommunications Tower

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

### Temporary Use

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

### Tenant

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

### Tool or Storage Shed

An enclosed building used for storage purposes and not intended for habitation.

### Town Center Development

The establishment of a traditional, walkable node of mixed use development accessible and bounded by residential neighborhoods, with the primary function of servicing local population and creating distinctive neighborhood centers.

### Travel Trailer

A vehicle or portable structure built on a chassis and designed as a temporary dwelling for travel, recreation, vacation, and other short-term uses, and which may or may not have sanitary facilities.

### Use

Any activity, occupation, business or operation carried on or intended to be carried on, in a building or other structure or on a tract of land.

- (1) Use, Accessory: A use located on the same lot with a principal use, and clearly incidental or subordinate to, and customary in connection with, the principal use.
- (2) Use, Principal: The main use on a lot.

### Veterinary Services

Animal medical care services provided by a licensed Doctor of Veterinary Medicine (DVM).

### Variance

- (1) Area Variance: The authorization by the Zoning Board of Appeals for the use of land in a manner, which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.
- (2) Use Variance: The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not otherwise allowed or is prohibited by the applicable zoning regulations.

### Wind Farm

The use of land for the purpose of energy production from wind with the use of wind power generation facilities.

### Wind Power Generation Facility

A system of components which converts the kinetic energy of the wind into electrical or mechanical power and which comprises all necessary components to provide electricity or mechanical power for residential, agricultural, commercial, industrial, utility or governmental use.

### Yard

An open space unobstructed from the ground up, on the same lot with a structure, extending along a lot line or street line and inward to the structure. The size of a required yard shall be measured as the shortest distance between the structure and a lot line or street line.

- (1) Yard, Front: A yard between a structure and a street line and extending the entire length of the street line. In the case of a corner lot, the yards extending along all streets are front yards. In the case of a lot other than a corner lot that fronts on more than one street, the yards extending along all streets are front yards.
- (2) Yard, Rear: A yard between a structure and a rear lot line and extending the entire length of the rear lot line.
- (3) Yard, Side: A yard between a structure and a side lot line, extending from the front yard to the rear yard. In the case of lot a having no street frontage or a lot of odd shape, any yard that is not a front yard or a rear yard shall be considered a side yard.

### Zoning Board

The officially established Zoning Board of Appeals of the Town of Fleming.

### Zoning District

The classification of lands as established in this Law.

### Zoning Officer

The Code Enforcement Officer and any other Town official designated to administer and enforce the provisions of this Law through the granting of zoning permits in accordance with the provisions of this Law.

### Zoning Permit

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

**ARTICLE II**  
**Administration**

**2-1. Duties of the Zoning Officer**

The provisions of this Law shall be administered and enforced by the Zoning Officer who shall be appointed by the Town Board. It shall be the duty of the Zoning Officer and he shall have the power to:

- A. Receive and examine applications for Zoning/Building Permits and to refer applications to the Planning Board for review and recommendation, when deemed advisable.
- B. Issue Zoning/Building Permits after approval and certification of occupancy when there is compliance with the provisions of this Law and with other Town local laws provided, however, that the issuance of a Zoning/Building Permit shall not be deemed a waiver of the requirements of any other Town Law of local law.
- C. Receive applications for special use permits and Planned Development Districts and forward these applications to the Town Board for action thereon.
- D. Following refusal of a permit, to receive applications for appeals from alleged error of the Zoning Office and for variances and forward these applications within three (3) days to the Board of Appeals for action thereon.
- E. Conduct inspections and surveys to determine compliance or noncompliance with the terms of this Law on a monthly basis.
- F. Issue stop, cease and desist orders, and order in writing correction of all conditions found to be in violation of the provisions of this Law. Such written orders shall be served personally or by certified mail upon persons, firms or corporations deemed by the Zoning Officer to be violating the terms of this Law
- G. With the approval of the Town Board, or when directed by them, institute in the name of the Town, any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation, so as to prevent the occupancy of or use of any building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.
- H. Revoke by order, a zoning permit issued under a mistake of fact or contrary to the Law or to the provisions of this Law.
- I. Maintain a map showing the correct zoning classification of all land.
- J. Upon the request of the Town Board, the Planning Board or the Board of Appeals, present to such bodies facts, records or reports which they may request to assist them in making decisions.

## 2-2. Certificates and Permits

### A. Zoning Permits

- (1) No structure shall be erected, constructed extended or moved, and no land or building changed in use, until a Zoning Permit has been secured from the Zoning Officer. Upon completion of changes in use or construction, reconstruction, extension or moving of structures, the applicant shall notify the Zoning Officer of such completion.
- (2) No permit shall be considered as complete or as permanently effective until the Zoning Officer has noted on the permit that the work or occupancy and use has been inspected and approved as being in conformity with the provisions of this Law.
- (3) Zoning permits shall not be required for: general maintenance work, painting, clearing woodlands, building ponds, farming operations, raising animals, constructing fences, terraces, steps or other similar features, landscaping. However, all such activities shall conform to the requirements of this Law.
- (4) Zoning permits shall be issued with a two (2) year life, provided, however, that if the work is not commenced within six (6) months after the issuance of the Zoning Permit, the permit shall automatically expire and a new permit shall be required before such work or change in uses commences.

### B. Special Provisions for Issuance of Zoning Permits in Areas Designated as Flood Hazard Areas

- (1) The Zoning Officer, when reviewing applications for Zoning Permits in these areas of any district, including plans and specifications for the proposed construction, shall in addition to the regular duties, review all Zoning Permit applications to determine if the proposed construction is consistent with the need to minimize flood damage.
- (2) The Zoning Officer shall review all Zoning Permit applications to determine if the site of the proposed construction is reasonably safe from flooding and to make recommendations, to either the applicant or the Planning Board, regarding construction in all locations that have flood hazards.
- (3) The Zoning officer, in reviewing all applications for construction in flood hazard locations within the Town, shall require that any such proposed construction shall comply with FEMA regulations to mitigate flood damage. (44 CFR 60.3)

### C. Certification of Occupancy

No land shall be used or occupied and no building hereafter erected, installed, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Code Enforcement Officer stating that the buildings or proposed use thereof complies with the provisions of this Law and other Laws of the Town of Fleming.

## **2-3. Application requirements**

### **A. Zoning Permits**

- (1) All applications for Zoning Permits shall be made in writing by the owner, tenant, vendee under contract of sale, or authorized agent on a form supplied by the Town, and shall be filed with the Zoning Officer. The application shall:
  - a. Include a statement as to the proposed use of the building or land.
  - b. Include a site layout drawn to scale showing the location, dimensions and height of proposed buildings, structure, or uses and any existing buildings in relation to property and street lines.
  - c. Include the number, location and design of parking spaces and loading spaces if applicable.
  - d. Include the size, dimensions, location and methods of illumination for signs, if applicable.
  - e. Include any additional plans and information reasonably necessary for the Zoning Officer to ascertain whether the proposed use, change in use, erection, alteration or addition complies with the provisions of this Law.
- (2) An application for a zoning permit for any new use or construction which will involve the on-site disposal of sewage or waste, or a change in use or an alteration which will result in an increased volume of sewage or waste to be disposed of on the site, or which will require a new or modified water supply, shall not be issued or reviewed until any requisite State or County approval(s) has been issued.

## **2-4. Issuance of permits**

Zoning Permits shall be granted or refused by the Zoning Officer within fifteen (15) days after a complete written application has been filed with the Zoning Officer except as provided elsewhere in this Law. Upon completion of the activity authorized by any Zoning Permit, the holder of such permit shall notify the Zoning Officer of such completion. All applications with accompanying plans and documents shall become, and be preserved, as a public record, subject to the disposition of the Town Board.

## **2-5. Application fees**

- A. The applicant, at the time of application for a Zoning Permit, shall pay to the appropriate Town official the fee for said permit as established by the Town Board. The Town Board may, from time to time, amend the fee schedule. Fees shall be established by the Town Board by resolution.
- B. Expert Fee Reimbursement: Pursuant to the Town of Fleming Zoning Law, it is the duty of the Town Board to establish fees for various forms of variances, planned development districts, special districts



and subdivisions. Professional Review Fees for engineering, attorney, architecture and other professional needs shall be established by the Town Board and shall be reasonable and necessitated by special circumstances relating to an individual application. The Town Clerk shall be designated the receiver of these fees.

### **ARTICLE III Boards**

#### **3-1. Establishment, membership and procedures of Zoning Board of Appeals**

##### **A. Establishment**

In order that the objectives of this Law may be more fully and equitably achieved and a means for competent interpretation of this Law provided, there is, established a Zoning Board of Appeals for the Town.

##### **B. Membership, Terms of Office**

The Zoning Board of Appeals shall consist of five (5) members and one (1) alternate appointed by the Town Board for overlapping five (5) year terms with at least one (1) term expiring each year.

##### **C. Procedures, Meetings, Records and Decisions**

- (1) Procedures: The Town Board shall appoint a chairperson for the Zoning Board of Appeals. The Zoning Board of Appeals shall appoint a secretary and shall prescribe rules in accordance with the provisions of the State Statutes and this Law for the conduct of its affairs.
- (2) Meetings: Meetings shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals shall specify in its rules of procedure.
- (3) Records and Decisions: Minutes shall be recorded of all proceedings which shall contain evidence and data relevant to every case considered together with the votes of the members and final disposition of each case. Every decision of the Zoning Board of Appeals shall bear the signature of a majority of the members of the Zoning Board of Appeals on the original thereof. All decisions of the Zoning Board of Appeals shall be permanently filed with the official Town records. The Zoning Board of Appeals shall notify the Town Board, Planning Board and the Zoning Officer of all decisions and resolutions.

##### **D. Removal of Zoning Board Members**

The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause or for non-compliance with the minimum requirements set forth below.

- (1) Each board member shall be required to comply with the following minimum requirements. At the discretion of the remaining members or the Town Board, failure to comply with this requirement is grounds for recommending removal from the Board.
  - a. Training. Each Board member is required to complete a minimum of four (4) hours of training per calendar year in accordance with NYS Town Law §267-7a.

- b. Attendance. Each Board member shall be required to attend a set number or percentage of scheduled meetings as established by the Town Board by local law or ordinance.

#### E. Notice of Hearings.

Upon filing with the Zoning Board of Appeals of an application for a zoning variance, or appeal from alleged error of the Zoning Officer the Board shall fix a reasonable time and place for a public hearing thereon and give notice as required by State Law. (See NYS Town Law Section 267a)

### **3-2. Powers and duties of the Zoning Board of Appeals**

#### A. Appeals From Alleged Error of Zoning Officer.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination, including any order requiring an alleged violator to stop, cease, and desist made by the Zoning Officer in enforcement of this Law.

#### B. Variances

- (1) Use variances: The Zoning Board of Appeals, on appeal from the decision or determination of the Zoning Officer, shall have the power to grant Use Variances. In order to grant the Use Variance the applicant has the burden to prove that their application meets each of the below required criteria pursuant to Town Law 267-b.
  - a. No such use variance shall be granted by a board of appeals without a showing by the applicant, that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. In addition, the alleged hardship relating to the property in question must be unique, and not apply to a substantial portion of the district or neighborhood.
  - b. That the requested use variance, if granted, will not alter the essential character of the neighborhood.
  - c. That the alleged hardship has not been self-created.
  - d. The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (2) Area variances: The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the zoning officer, to grant area variances. In order to grant the

area variance the applicant has the burden to prove that their application meets the required criteria.

- a. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:
  - b. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
  - c. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
  - d. Whether the requested area variance is substantial.
  - e. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
  - f. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.
  - g. The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (3) Imposition of conditions: The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

### **3-3. Appeals**

#### **A. Who May Appeal**

Appeals to the Board of Appeals may be taken by any person or Town Official aggrieved or affected by any provision of this Law or by any decision including any order to stop, cease, and desist issued by the Zoning Officer in enforcing the provisions of this Law.

#### **B. Rules and Procedures for Filing Appeals and Applications**

- (1) General rules and procedures for appeals and applications:
  - a. Any appeal shall be made by filing the same with the Zoning Officer within sixty (60) days after the date of the Zoning Officer's disapproval of the application.

- b. All appeals and applications made to the Board shall be in writing and using standard forms prescribed by the Board.
  - c. All appeals and applications shall refer to the specific provisions of this Law.
  - d. All appeals and applications shall set forth names and addresses of all adjoining owners including those across public roads from the subject property.
- (2) Appeals from Alleged Error: Appeals from alleged error of the Zoning Officer shall specify the alleged error, the Section or Sections of this Law to which it pertains, and the interpretation thereof that is claimed.
- (3) Variance Appeals: Appeals for variance from the strict application of this Law shall include the Zoning Permit application denied by the Zoning Officer together with a statement and with any supporting evidence regarding the requirements listed in 1-10B.
- (4) Special Use Permit Applications: Applications for special use permits shall include a Zoning Permit application with all information required therein and a statement along with any supporting evidence regarding the merits of the proposed use at the proposed location and how the proposal complies with the general specific requirements of this Law.

### C. Appeal to Court

Any person or persons, jointly or severally aggrieved by a decision of the Board of Appeals or any officer, department, Board or Bureau of the Town, may apply to the Supreme Court for review by a proceeding under Article seventy-eight (78) of the Civil Practice Law and rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk.

### D. Appeals Fee.

Appeals and applications before the Board of Appeals shall be accompanied by a payment to the Town in accordance with a Fee Schedule, provided at the Town Clerk's office, adopted by resolution of the Town Board.

## **3-4. Establishment, membership and procedures of the Planning Board**

### A. Establishment

In accordance with NYS Town Law §271, a Planning Board is established in the Town of Fleming in order to provide review and recommendations to the Town Board and Zoning Board of Appeals for the orderly development of the Town in accordance with the regulations contained herein.

### B. Membership, Terms of Office

The Planning Board shall consist of five (5) members and one (1) alternate appointed by the Town Board for overlapping five (5) year terms with at least one (1) term expiring each year.

### C. Procedures, Meetings, and Records and Review/Decisions

- (1) Procedures: The Town Board shall appoint a chairperson for the Planning Board. The Board shall appoint a secretary and shall prescribe rules in accordance with the provisions of the State Statutes and this Law for the conduct of its affairs.
- (2) Meetings: Meetings shall be held at the call of the chairperson and at such other times as the Planning Board shall specify in its rules of procedure.
- (3) Records and Review/Decisions: Minutes shall be recorded of all proceedings which the Planning Board undertakes and shall contain the data relevant to every review as well as the final recommendations to be given to the Town Board or Zoning Board of Appeals and any decisions made. All recommendations and decisions of the Planning Board shall be permanently filed with the official Town records. The Planning Board shall notify the Town Board, Zoning Board of Appeals and the Zoning Officer of all decisions and/or recommendations.

### D. Removal of Planning Board Members

The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause or for non-compliance with the minimum requirements set forth below.

- (1) Each board member shall be required to comply with the following minimum requirements. At the discretion of the remaining members or the Town Board, failure to comply with this requirement is grounds for recommending removal from the Board.
  - a. Training. Each Board member is required to complete a minimum of four (4) hours of training per calendar year in accordance with NYS Town Law §267-7a.
  - b. Attendance. Each Board member shall be required to attend a set number or percentage of scheduled meetings as established by the Town Board by local law or ordinance.

### E. Notice of Hearings.

Upon filing with the Zoning Board of Appeals of an application for a zoning variance, or appeal from alleged error of the Zoning Officer the Board shall fix a reasonable time and place for a public hearing thereon and give notice as required by State Law. (See NYS Town Law Section 267a)

## **3-5. Powers and Duties of the Planning Board**

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

- (1) Subdivision plats. The Planning Board may approve preliminary and final minor subdivision plats showing lots, blocks or sites, as specified in Article XIV. Major subdivisions, both preliminary and final, shall be reviewed by the Planning Board and the Board shall forward their final recommendations on the plat to the Town Board for their final decision.
- (2) Site Plan. Any uses permitted by right, as outlined in Article VI, that require site plan review shall be reviewed by the Planning Board. The Planning Board shall make the final decision

on the site plan. Any uses which require a site plan and special use permit shall have the site plan reviewed by the Planning Board. The Planning Board shall review and provide recommendations to the Town Board for their final decision on the site plan and permit.

- (3) Special Use Permits. The Planning Board shall review the special use permit and provide recommendations to the Town Board for their final decision in accordance with Article VIII.

### **3-6. Amendments**

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

Every such proposed amendment or change, whether initiated by the Town Board or by petition shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for. The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as follows:

- (1) By publishing a notice of the time and place of the hearing at least ten (10) days, but not more than thirty (30) days, prior to the date of such hearing in a paper of general circulation in the Town.
- (2) A written notice of any proposed change or amendment affecting property within the protectively zoned area of a housing project authorized under the Public Housing law, as such area is shown on an approved zoning map filed with the Zoning Office, shall be given to the housing authority erecting or owning the project and to the government providing financial aid for assistance thereto at least ten (10) days prior to the date of such hearing.
- (3) A written notice of any proposed change or amendment affecting property within five hundred (500) feet of the boundaries of any state park or parkway shall be given in the regional State Park Commission having jurisdiction over such State park or parkway no less than ten (10) days prior to the date of such public hearing.
- (4) A written notice of any proposed change of amendment affecting property within five hundred (500) feet of the boundaries of any city, village, town or county, shall be given to the clerk of such municipality and to the clerk of the County Legislature at least ten (10) days, but not more than thirty (30) days, prior to the date of such hearing.
- (5) In case, however, of a protest against such change signed by the owners of twenty percent (20%) or more of the area of land included in such proposed change or of that immediately adjacent extending one hundred (100) feet therefrom or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least four (4) members of the Town Board.

### **3-7. County Planning Board Zoning Referral and Review**

As required under New York State General Municipal Law, certain variances, special use permits and amendments shall be referred to the County Planning Board by the Zoning Board of Appeals or the Town Board for review and recommendations.

## **ARTICLE IV**

### **Violations**

#### **4-1. Enforcement and Remedies**

In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used in violation of this Law or of any other local law, Law or other regulation made under authority conferred thereby, 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 or use, 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; and upon the failure or refusal of the proper local officer, board or body of the town to institute any such appropriate action or proceeding for a period of ten (10) days after written request by a resident taxpayer of the town so to proceed, any three taxpayers of the town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such local officer, board or body of the town is authorized to do.

#### **4-2. Fines and Penalties**

A. For any and every violation of the provisions of this Law.

- (1) The owner, general agent, contractor, lessee, or tenant of any part of a building or premises in which part such violations have been committed or other exist; and
- (2) The owner, general agent, contractor, lessee, or tenant of any part of a building or premises in which part such violations have been committed or shall exist; and
- (3) The general agent, architect, builder, contractor, or any other person who knowingly commits, takes part, or assists in any such violation or who maintains any buildings or premises in which any such violation shall exist, shall be liable on conviction thereof to a fine or penalty not to exceed three hundred and fifty dollars (\$350.00) or by imprisonment for a period not exceeding six (6) months or by both such fine and imprisonment. Each week's continued violation shall constitute a separate additional violation.

B. Whenever a violation of this Law occurs, any person may file a complaint in regard thereto. All such complaints must be writing and shall be filed with the Zoning Officer who shall properly record such complaint and immediately investigate and report thereon to the Town Board.

#### **4-3. Severability**

It is hereby declared to be the legislative intent that:

- A. Should the courts declare any provision of this law to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this law shall continue to be separately and fully effective.



- B. Should the court find the application of any provision or provisions of this Law to any lot, building or other structure, or tract of land, to be invalid or ineffective, in whole or in part, the effect of such decision shall be limited to the person, property or situation immediately involved in the controversy, and the application of any such provision to other person, property or situations shall not be affected.

#### **4-4. Repealer**

The Law adopted May 18, 1988 and entitled Zoning Law of the Town of Fleming and all supplements and amendments thereto, are hereby repealed. Provided, however, if the present Law is held to be ineffective or invalid by reason or some irregularity in or impediment to its passage, this repealer shall also be ineffective, it being the legislative intention that if the present enactment shall be ineffective as aforesaid, then and that event the Law entitled Zoning Law of the Town of Fleming together with its supplements and amendments, would necessarily remain in full force and effect.

#### **4-5. Effective Date**

The effective date of this Law shall be December 22, 2008.

Be it enacted this 22nd day of December, 2008 by the Town of Fleming of Cayuga County, New York to be effective immediately.

**ERRATA - Wherever in this enactment words other than "Zoning Law" have been used and referring to this enactment, those words shall mean "Zoning Law".**

## **ARTICLE V Districts**

### **5-1. Districts Established**

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

- (A) Agricultural District
- (R-1) Residential Transitional District
- (R-2) Residential District
- (L) Lakeshore District
- (WD) Waterfront Development
- (C) Commercial District
- (H) Hamlet District
- (PDD) Planned Development District

### **5-2. Official Zoning District Map**

Said districts are bounded as shown on a map entitled "Town of Fleming Zoning Map" certified by the Town Clerk, which accompanies and which, with all explanatory matter thereon, is hereby made a part of this Law. (Appendix, Page A-8)

### **5-3. Interpretation of District Boundaries**

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

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines, or highway right-of-way lines, such center lines, street lines or highway lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of street, or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance there from as shall be determined by the use of the scale shown on the zoning map.
- D. In case of further uncertainty as to the true location of a zoning district boundary line in a particular instance, the Zoning Board of Appeals shall determine the location of such boundary.

## **5-4. Regulations**

### **A. Applicability of Regulations**

Except as provided by law or in this Law, in each district no building, structure or land shall be used or occupied except for the purposes permitted in Article VI.

### **B. Uses Are Subject to Other Regulations**

Uses permitted by right or by special use permit shall be subject in addition to use regulations, to such regulations of yard, lot size, lot width, building area, provisions for off-street parking and loading, and to such other provisions as are specified in other Articles hereof.

### **C. Prohibited Uses and Uses Subject to Planned Development District (PDD) Procedures and Requirements**

Any uses not expressly stated and permitted in Article VI are prohibited in the Town of Fleming except as provided in §6-8 Planned Development District. Industrial Uses, Mobile Home Parks, Golf Courses, and Shopping Centers are regulated under §6-8.

**ARTICLE VI**  
**Zoning District Regulations**

**6-1. Agricultural District (A)**

A. Intent. One of the primary land uses in the Town of Fleming, Cayuga County, is agriculture or agriculture related industries. In an effort to retain viable tracts of farmland, restore the economic stability of the agriculture economy in the Town and County, and retain the rural landscape and quality of life related to farming, the Town of Fleming has identified a local municipal agricultural district, in accordance with Article 25AA of the Agriculture and Markets Law of New York State and the Fleming Comprehensive Plan of 2001, that is separate, but supportive, of the County Agricultural District boundaries. Therefore, the Agricultural District has been established to:

- (1) Reserve areas within the Town that have prime agricultural or state significant soils;
- (2) Provide for agricultural uses and uses compatible with or supportive of agriculture within the district;
- (3) Avoid conflicts between agricultural and non-agricultural uses by limiting the type and amount of non-agricultural uses within the district;
- (4) Direct non-agricultural development away from prime agricultural soils, state significant soils, and farm operations; and
- (5) Retain tracts of land of sufficient size to encourage viable farming operations.

B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.

- (1) Agricultural operations
- (2) Farming Operation
- (3) One-family Dwelling
- (4) Public Utilities
- (5) Recreational Facility owned and operated by town or other governmental agency
- (6) Farm Stands
- (7) Accessory Uses
- (8) Accessory Structures and Buildings
- (9) Keeping or Raising of Livestock

C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X, and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.

- (1) Automobile and General Repair
- (2) Commercial Garage

- (3) Fire Station
- (4) Child Care Facility, including preschool
- (5) Clear Cutting Woodlands
- (6) Cemetery
- (7) Private Club or Lodge
- (8) Restaurant
- (9) Two-family Dwelling
- (10) Wind Power Generation Facility
- (11) Park or Recreation area owned or operated by a not-for-profit
- (12) Veterinary Services
- (13) Agricultural Based Business
- (14) Commercial Antenna, Micro-relay Station, etc.
- (15) Bed and Breakfast
- (16) Places of Worship
- (17) Telecommunications Facility or Tower
- (18) Riding Academy
- (19) School
- (20) Greenhouse
- (21) Conversion – one-family to two-family dwelling
- (22) Home Occupation
- (23) Ponds
- (24) Commercial Dog Kennel
- (25) Emergency Dwelling

D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-1 in the Appendix.

E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-1 in the Appendix.

F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-1 in the Appendix.

G. Height. See the Town of Fleming Bulk and Use Table, Page A-1 in the Appendix.

H. Area Allocation Method.

- (1) Purpose: The Town of Fleming, in an effort to protect the welfare of active farmers, has adopted an Area Allocation Method as part of this code. This voluntary specialized approach to land subdivision will allow the landowner to have a number of development rights based upon the number of acres of land owned. This method will allow landowners to provide residential building lots, smaller than the minimum lot size, for income or family member use while at the same time protecting active blocks of farmland.
- (2) Applicability: The Area Allocation Method is applicable to all landowners within the Town designated Agricultural District.
- (3) Understanding: A landowner who desires to subdivide a parcel for the specific purpose of providing a lot for a new residential unit will have the option to participate in the Area Allocation Method. **This method assigns one development right per allowable**

**density requirement as identified in the Agricultural District Bulk and Use Table, Page A-1. Therefore, one development right is provided per 10 acres.** The building parcels can be subdivided from any parcel of developable land, as defined in §1-3, owned by the landowner adhering to the Agricultural District Bulk and Use Table, Page A-1, the Town Site Plan Review Process, Article XV, Subdivision Regulations, Article XIV and any County and State regulations. If the active farmer participates in the Area Allocation Method, each development right used will account for the development rights for the associated 10-acre minimum lot size requirement, producing a conservation easement on the associated land that restricts future residential or commercial development. A conservation easement is designed to insure that the use of the land will remain conducive to agriculture in the future. The conservation easement will be agreed upon by the Town and farm owner through the Site Plan Review Process. The farm owner will retain the right to use the lands within the conservation easement for agricultural purposes.

- (4) Example: The following hypothetical situation is provided for informative purposes only.

Landowner A owns 100 acres of land in the Town of Fleming Agricultural District. The current minimum lot size in the Agricultural District is 10 acres. Therefore, Landowner A can subdivide ten 10-acre lots. However, the landowner desires the right to continue farming the majority of the property and does not want to create large lot style estates. Landowner A decides to participate in the Area Allocation Method provided in the Town of Fleming Zoning Ordinance. The landowner decides to produce ten two-acre lots, as allowed by the Area Allocation Method, and places them with direct frontage on the road in order to reduce costs for access, reduce potential nuisance complaints and allow for sewer and water service if available in the future.

Landowner A brings a proposed Subdivision and Site Plan to the Town Planning Board for review. The Planning Board determines the proposed subdivision and site plan is in accordance with the spirit and provisions of the Area Allocation Method. Landowner A identifies the conservation easement boundary, 80 acres of the remaining 100-acre tract in question, as required by the Area Allocation Method. The Planning Board agrees that Landowner A has identified the appropriate conservation easement boundary. The Planning Board ensures the required State Environmental Quality Review process has been fulfilled, votes on the project and accepts the proposed Subdivision and Site Plan. The conservation easement is accepted and entered into public record.

- (5) Review Process. The Town Planning Board will review all Area Allocation Method requests as part of the Subdivision Review Process outlined in Article XIV.
- (6) Residential lots created using the area allocation method specified above shall conform to the bulk and use tables for the Residential (R-2) District.
- (7) Pre-Existing Residential Structure Exception: Where a parcel in the Agricultural District contains a residential structure constructed prior to January 1, 2013, the

residential structure may be subdivided from the remainder parcel without applying the Area Allocation method under the following conditions:

- a. The minimum area of the parcel containing the residential structure must be at least 1.5 acres; and
- b. The parcel containing the residential structure shall now and henceforth conform to the bulk and use tables for the Residential (R-2) District.

## 6-2. Residential Transitional District (R-1)

- A. Intent. The purpose of the R-1 Residential Transitional District is to provide a range of residential development at a density consistent with existing residential development in the vicinity. The district provides a gradual transition between adjacent city neighborhoods and the rural development patterns found elsewhere in the town. Low-intensity and neighborhood-scale business may be permitted in existing buildings or new, mixed-use buildings at a residential and pedestrian scale. The intensity to which permitted uses may be built is regulated by the building type, which corresponds to the use.
- B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.
- (1) One-Family Dwelling
  - (2) Two-Family Dwelling
  - (3) Public Utilities
  - (4) Recreational Facility owned and operated by town or other governmental agency
  - (5) Farm Stand
  - (6) Accessory Structures and Buildings
  - (7) Accessory Uses
- C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X, and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.
- (1) School
  - (2) Home Occupation
  - (3) Emergency Dwelling
  - (4) Library
  - (5) Multi-Family Dwelling
  - (6) Nursing Home
  - (7) Personal Service Establishments
  - (8) Bank and Financial Institutions
  - (9) Professional Offices
  - (10) Places of Worship
  - (11) Bed and Breakfast
  - (12) Child Care Facility, including preschool
  - (13) Fire Station
  - (14) Healthcare Institutions
  - (15) Mixed-use Building
  - (16) Park or Recreation area owned or operated by a not-for-profit
  - (17) Small Retail Shops



- (18) Undertaking or Funeral Parlor
- (19) Tool or Storage Shed
- (20) Restaurants

- D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-2 in the Appendix.
- E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-2 in the Appendix.
- F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-2 in the Appendix.
- G. Height. See the Town of Fleming Bulk and Use Table, Page A-2 in the Appendix.

### **6-3. Residential District (R-2)**

- A. Intent. The Residential District provides for primarily one-family large lot development outside of the primary village and hamlet areas. Low-intensity business activity is permitted with a special use permit at residential scale, according to locational criteria.
- B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.
- (1) One-Family Dwelling
  - (2) Public Utilities
  - (3) Farm Stands
  - (4) Accessory Uses
  - (5) Accessory Structures and Buildings
- C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X, and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.
- (1) Greenhouse
  - (2) Emergency Dwelling
  - (3) Home Occupation
  - (4) Keeping or Raising of Livestock (not associated with an agricultural operation)
  - (5) Recreational facility owned and operated by a town or other governmental agency
  - (6) Places of Worship
  - (7) Agricultural Based Business
  - (8) Child Care Facility, including preschool
  - (9) Fire Station
  - (10) Healthcare Institutions
  - (11) Bed and Breakfast
  - (12) Ponds
  - (13) Library
  - (14) Park or Recreation area owned or operated by a not-for-profit
- D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-3 in the Appendix.
- E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-3 in the Appendix.
- F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-3 in the Appendix.
- G. Height. See the Town of Fleming Bulk and Use Table, Page A-3 in the Appendix.

H. Additional Regulations. In areas where water and sewer services are available, the applicant may choose to decrease the minimum lot size for single-family dwellings specified in §6-3.E to the following under the regulations for incentive zoning, §7-22.

- (1) 44,000 square feet minimum lot – A minimum of forty-five percent (45%) of the developable land on the property shall be set aside for open space. This open space shall be placed within a conservation easement to the Town to be utilized as open space or continued agricultural use. Although contiguous open space is recommended, noncontiguous open space is permitted.
- (2) 32,000 square feet minimum lot – A minimum of sixty-five percent (65%) of the developable land on the property shall be set aside for open space. This open space shall be placed within a conservation easement to the Town to be utilized as open space or continued agricultural use. Although contiguous open space is recommended, noncontiguous open space is permitted.

#### **6-4. Lakeshore District (L)**

- A. Intent. The intent of the Lakeshore District is to protect and maintain a quality waterfront within the Town. The waterfront in the Lakeshore District is a valuable resource for the community, particular attention should be paid to building architecture, building and lot size, maintenance, and location so that the development patterns and uses enhance the quality of this resource.
- B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.
- (1) One-Family Dwelling
  - (2) Public Utilities
  - (3) Farm Stand
  - (4) Accessory Structures and Buildings
  - (5) Accessory Uses
- C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X, and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.
- (1) Bed and Breakfast
  - (2) Child Care Facility, including preschool
  - (3) Fire Station
  - (4) Home Occupations
  - (5) Park or Recreation area owned or operated by a not-for-profit
  - (6) Emergency Dwelling
- D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-4 in the Appendix.
- E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-4 in the Appendix.
- F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-4 in the Appendix.
- G. Height. See the Town of Fleming Bulk and Use Table, Page A-4 in the Appendix.
- H. Additional Regulations.
- (1) The lakeside lot line will be considered the front lot line for all properties in the Lakeshore District.

- (2) Lots that are within the Owasco Lake Watershed Overlay shall comply with the development regulations specified in §6-9.

#### **6-5. Waterfront Development District (WD)**

- A. Intent. The intent of the waterfront development district is to promote public recreation and access in and around the lake while allowing limited, small scale commercial uses. These uses shall be directly related to or dependent upon the Lake and have low or no negative impacts on the Lake's water quality or public access. The design, location, building and lot size, and maintenance should be reviewed so that development and any proposed uses enhance the quality of the Lake.
- B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.
  - (1) Parks and Recreation
  - (2) Farm Stand
  - (3) Accessory Structures and Buildings
  - (4) Accessory Uses
- C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X, and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.
  - (1) Restaurants
  - (2) Bars or Taverns
  - (3) Small Retail Shops
- D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-5 in the Appendix.
- E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-5 in the Appendix.
- F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-5 in the Appendix.
- G. Height. See the Town of Fleming Bulk and Use Table, Page A-5 in the Appendix.
- H. Additional Regulations For All Uses In the Waterfront Development District (WD)
  - (1) Lots that are within the Owasco Lake Watershed Overlay shall comply with the development regulations specified in §6-9.

## 6-6. Commercial District (C)

A. Intent. The intent of the Commercial District is to implement the vision of the Fleming Comprehensive Plan. Within the Commercial District, particular attention should be paid to façade treatments and signage, pedestrian circulation and, if applicable, building location and vehicle circulation so that the development pattern remains intact.

B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.

- (1) Professional Offices
- (2) Personal Service Establishments
- (3) Veterinary Services
- (4) Bed and Breakfast
- (5) Farm Stands
- (6) Bank and Financial Institutions
- (7) Agricultural Based Business
- (8) Parking for Fee
- (9) Small Retail Shops
- (10) Large Retail Shops
- (11) Restaurants
- (12) Accessory Uses
- (13) Commercial Antenna, Micro-Relay Station, etc
- (14) Public Utilities

C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X, and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.

- (1) Private Club
- (2) Emergency Dwelling
- (3) Hotel/Inn/Motel
- (4) Telecommunications Facility or Tower
- (5) Undertaking and Funeral Parlors
- (6) Accessory Structures and Buildings
- (7) Commercial Dog Kennel
- (8) Automobile and General Repair
- (9) Adult Oriented Business
- (10) Greenhouse
- (11) Gas Stations/Convenience store
- (12) Child Care Facility, including preschool

(13) Fire Station

(14) Healthcare Institutions

- D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-6 in the Appendix.
- E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-6 in the Appendix.
- F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-6 in the Appendix.
- G. Height. See the Town of Fleming Bulk and Use Table, Page A-6 in the Appendix.

## 6-7. Hamlet District (H)

- A. Intent. The Hamlet District is intended to provide opportunities for revitalization, reuse, and infill development in Fleming's traditional hamlets. A broad array of uses are expected in a pattern which integrates shops, restaurants, services, work places, civic, education, and religious facilities, and higher density housing in a compact, pedestrian-oriented environment. The Hamlet District is designed to enhance, restore and preserve the traditional neighborhood character of the hamlet areas within the Town of Fleming. The district is zoned to accommodate the higher overall intensity of development in a traditional neighborhood context.
- B. Permitted uses. Permitted uses shall be as follows, subject to the requirements specified in this section, in the Town of Fleming's Design Criteria and Construction Specifications for Land Development, and elsewhere in these regulations, especially site plan approval in accordance with Article XV, landscaping in accordance with Article X, overall development in accordance with Article VII and, if applicable, subdivision approval in accordance with Article XIV.
- (1) One-family Dwelling
  - (2) Two-family Dwelling
  - (3) Accessory Structures and Buildings
  - (4) Accessory Uses
  - (5) Farm Stand
  - (6) Public Utilities
  - (7) Recreational Facility owned and operated by town or other governmental agency
- C. Special use permit. Uses permitted with a special use permit from the Town Board, subject to the requirements of §8-1. Such uses are subject to the general development standards for specific uses found in Article VIII, to site plan approval in accordance with Article XV, to landscaping requirements in accordance with Article X and to other standards as may be required under Site Plan Review by the Town Board to assure development and operation of the use without a detrimental impact on adjacent uses.
- (1) Agricultural Based Business
  - (2) Fire Station
  - (3) Mobile Home
  - (4) Conversion – one-family to two-family dwelling
  - (5) Bed and Breakfast
  - (6) Home Occupation
  - (7) Multi-Family Dwelling
  - (8) Nursing Home
  - (9) Library
  - (10) School
  - (11) Bank and Financial Institutions
  - (12) Personal Service Establishment
  - (13) Small Retail Shops
  - (14) Undertaking and Funeral Parlors
  - (15) Inn/Hotel/Motel
  - (16) Park or Recreation area owned or operated by a not-for-profit



- (17) Places of Worship
- (18) Professional Offices
- (19) Cemetery
- (20) Gas Station/Convenience Store
- (21) Greenhouse
- (22) Healthcare Institutions
- (23) Restaurant

- D. Lot Size. See the Town of Fleming Bulk and Use Table, Page A-7 in the Appendix.
- E. Lot Coverage. See the Town of Fleming Bulk and Use Table, Page A-7 in the Appendix.
- F. Minimum Setback. See the Town of Fleming Bulk and Use Table, Page A-7 in the Appendix.
- G. Height. See the Town of Fleming Bulk and Use Table, Page A-7 in the Appendix.

## **6-8. Planned Development District (PDD)**

- A. Purpose. In a Planned Development District (PDD), parcels and buildings may be used to accommodate a wide range of development and/or redevelopment regardless of the underlying zoning district(s), as authorized by the Town Board in the creation of a PDD. The purpose of the PDD is to provide flexible land use and design regulations through the use of performance criteria and land impact considerations, so that developments incorporating individual building sites, common property, singular land use, and/or mixed land uses may be planned and developed as a unit. Where deemed appropriate, the Town Board may consider a proposed planned development through an approval process requiring a zoning district change from the original district to PDD, in which the approved plat and a complete set of use and dimensional regulations become the basis for continuing land use controls.
- B. Objectives. In order to carry out the purpose of this article, a PDD shall achieve at least the following objectives:
- (1) Work as a concentrated whole unit, being self-contained and uncondusive to expansion outside its boundaries at a future date, unless such expansion when added to the original PDD can act with it to create a larger self-contained unit.
  - (2) Provide open space as an integral part of the plan.
  - (3) Provide convenient location of commercial and service areas.
  - (4) Preserve trees, outstanding natural topography and geologic features and prevent soil erosion and ground and surface water pollution.
  - (5) Make creative use of land and related physical development that allows an orderly transition of land from rural to more urban uses.
  - (6) Make efficient use of land resulting in smaller networks of utilities and streets and thereby lowering costs for construction, maintenance and housing.
  - (7) Provide a development pattern in harmony with the objectives of the Town's Comprehensive Plan and with the County's Land-Use Plan.
  - (8) Provide a more desirable environment for dwelling, working and/or recreation than would be possible through the strict application of the preset regulations for the underlying district as determined in this Law.
- C. General Requirements
- (1) Minimum Area: Under normal circumstances, the minimum area requirement for a PDD shall be ten (10) contiguous acres of land, unseparated by existing streets, highways or other properties. Minimum area requirements for mobile home parks, shopping centers and golf courses are found in §6-8.E, (1), (2), and (3) respectively. Where the applicant can

demonstrate that the characteristics of his land holdings will meet the objectives of this article, projects with less acreage may be considered or as otherwise specified.

- (2) **Ownership:** The tract of land for the project shall be owned or under lease option to purchase by the applicant who may be a single person, corporation, or a group of individuals or corporations. An application shall be filed by the owner or jointly by the owners of all property included in a project. In the case of multiple ownerships, the approved plan shall be binding on all owners.
- (3) **Location:** The PDD shall be applicable to any area of the Town of Fleming where the applicant can demonstrate that the characteristics of his holdings will meet the objectives of this article and the spirit of this Law. A proposed location for a PDD must have demonstrated compatibility with the surrounding land uses, neighborhood character, and traffic pattern, capacity and volume.
- (4) **Permitted Uses:** The use of land and buildings in a PDD may be for any lawful purpose as authorized by the Town Board in accordance with the procedures of this article; the following general uses, or combinations thereof, may be considered.
  - a. **Residential Uses:** Residences may be in a variety of types, in developing a balanced community. The use of a variety of housing types and densities shall be deemed most in keeping with the objectives of this article; the applicant shall demonstrate that the broadest economic market as possible is being reached.
  - b. **Commercial, Service & Other Non-residential Uses in Primarily Residential PDD:** These uses may be permitted (or required) where such uses are scaled primarily to serve the residents of the residential PDD. Consideration shall be given to the project, as it exists in its larger setting in determining the appropriateness of such uses. In no case shall more than twenty-five percent (25%) of the gross site area be permitted for commercial uses, services or non-residential uses other than open space and nonprofit recreation.
  - c. **Commercial Uses:** If designed and organized toward the purpose and objectives of this article, a PDD with commercial uses as the major land use may be approved. All proposed shopping centers and golf courses in the Town shall be subject to approval through the PDD procedures. (See §6-8.E)
  - d. **Industrial Uses:** If designed and organized toward the purposes and objectives of this article, a PDD with industrial uses as the major land use may be approved. All proposed industrial developments for the Town of Fleming shall be subject to approval through the PDD procedures. Industrial uses shall not be permitted in combinations with any residential uses.
- (5) **Intensity of Land Use:** Relatively high land use intensity or dwelling unit density may be permitted if it is demonstrated that a good overall dwelling, working and/or recreation environment is thereby produced. In determining the suitability of land use intensity or dwelling unit density proposed for a PDD, each case shall be considered separately. Proposed

land use intensity ratings and/or dwelling unit densities shall be completely documented by all facts, opinions and judgments used to justify the selection of the intensity rate or unit density.

- (6) Common Property: Common property in a PDD is a parcel or parcels of land together with the improvements thereon, the use and enjoyment of which is shared by the owners and occupants of the individual building sites. When common property exists (and such may be required), the ownership of such common property may be either public or private; when common property exists in private ownership, satisfactory arrangements shall be made for the improvement, operation and maintenance of such common property and facilities thereon, including but not limited to private streets, drives, service and parking areas, open space and recreation areas.

D. Application Procedures for PDD Approval. For full approval of a proposed PDD the applicant shall:

- (1) Secure a zoning district change from the Town Board for the subject property from its present district to Planned Development District, which process shall be that of amending the Zoning Law and Map to include the proposed PDD plan and all the related specifications including the use and dimensional regulations specific thereto.
- (2) After the zoning district change, it shall be required that the subdivision and platting of all lands in the proposed PDD be subject to §6-8.E of this Law.
- (3) Before construction and occupancy of buildings or land, the proper permit shall be secured by the applicant in accordance with §2-2.C of this Law.

When any PDD is proposed, before any permit for erection of a permanent building in such PDD shall be granted, and before any subdivision plat or any part thereof may be filed in the Cayuga County Clerk's Office, the applicant or his authorized agent shall apply for and secure approval of such PDD in accordance with the following specific procedures.

- (1) Pre-application Discussion Stage: Prior to formal application, the applicant may present the proposed PDD to the Town Planning Board in rough sketch and written descriptive form to get the initial opinions concerning the suitability of the concepts and general elements of the development, and to make sure the required procedures for the PDD application are fully understood by the applicant. In this stage it is advised that most of the items in §6-8.D be addressed at least in rough form by the applicant.
- (2) Application for PDD Zoning: A complete application for the establishment of a PDD shall be made to the Town Board in plan (drawn to scale) and written application on forms provided by the Zoning Officer. Prior to Town Board action, to insure that the proposed PDD is within the intent of the comprehensive planning activities of the Town, the Town Board shall immediately after receiving the complete application refer it, for the purpose of review and recommendations, to the Town Planning Board which shall have thirty (30) days from its next regularly scheduled meeting within which to review and comment on the PDD application. As applicable in accordance with Sections 239-1 and -m of Article 12-B of the New York State General Municipal Law, the Town Board shall refer the PDD application for formal

review and recommendations to the Cayuga County Planning Board which shall have thirty (30) days or an agreed-upon longer period from its next regularly scheduled meeting within which to submit its report. If either planning board does not report to the Town Board within the specified time period, their inaction shall be construed as having no recommendations.

- (3) Acceptability of a PDD proposal shall be based upon the Town Board's judgment concerning the overall quality of the PDD proposal, and the extent of its impact upon the Town and its citizens, and their or other's properties. In order for the Town Board adequately to evaluate the PDD proposal, the application (in its plan and written form) shall address the following areas, and the information shall be furnished therein in a complete manner.
- a. Project Particulars: Shall include the name and location of the project, name(s) and address(es) of the owner(s), a legal description of the property, and the names of owners of abutting properties.
  - b. Type of Development: The type of development shall be fully described, including at least the following information.
    - (i) Residential: Total acreage of residential area and each residential portion of the development; total number of dwelling units and number in each residential portion; percentage and numbers of dwelling units by type (single family, garden apartment, town houses, etc.); dwelling unit density per gross site acreage; estimated population of the development and estimated number of school-age children.
    - (ii) Commercial: Total acreage of commercial area; gross leasable floor area in square feet; land use intensity rating; general description of commercial types and their general requirements for receiving and delivering goods.
    - (iii) Industrial: The total acreage of industrial area; land use intensity rating; types of industry and industrial process involved; source, type, general quantities and method of shipment for raw materials; general quantities and method of shipment for products; types of wastes and residuals.
  - c. Staging of Development: Description on plan and in written form(s) of the planned staging of the project (and such staging may be required.)
  - d. Natural Site: A description of each natural site shall be included with at least the following information: soil characteristics and limitations; extent of and treatment intended for the site's vegetative cover (especially trees); topographical features (on topographic map); existing and proposed site drainage; foreseeable needs of the site for construction precautions; existing conditions of and the projected effects upon the ground and surface waters of the site and community; possible air pollution hazards.
  - e. Site Planning and Design Considerations: Descriptions and illustrations of the following; site ingress and egress; parking; on-site pedestrian and vehicular circulation; general landscaping treatment; general location and arrangement of buildings and other structures; locations of all facilities; and general visual description.

- f. **Transportation and Traffic:** Descriptions of at least the following; existing streets serving the area; the level of service provided by existing streets in terms of traffic count and street traffic capacities; expected modifications for existing street systems required by project; estimated daily automobile trips generated by the residential and other uses; availability of public transportation to site; design considerations for preventing on-site and area traffic congestion.
  - g. **General Market Information:** Describe the need for the proposed Land uses in their proposed locations and their proposed quantities; and the intended market structures for the residential units (prices and rents, describe whether low-income, middle-income, luxury, etc.).
  - h. **Projected Fiscal Impacts on Town:** Calculations of projected Town revenues and costs to be expected by the Town as a result of the proposed development.
  - i. **Utilities and Related Services:** Describe the following and detail their intended locations on the plan(s); the method and projected quantities of waste water (sewage) from the development; demand and source of supply for water; level of service needed and available for fire protection; demands for and availability of gas and electricity; projected quantities of and method of disposal for solid wastes. In addition, a description of the potential impact to the local school district(s) shall be furnished.
  - j. **General Effects of Development on Neighborhood and Community Appearance and Land Use:** Description of effects on the appearance and relationship of project to predominant character and land use in area (compatibility).
  - k. **Relationship of Proposed PDD to Official Town and County Development Policies:** Information on how the proposed PDD relates to local and area wide goals and policies as stated in plans and regulations.
  - l. **Development, Operation and Maintenance of Open Space and Common Properties:** A general statement concerning the responsibility for these and proposed methods for their implementation.
  - m. **Developer Competence:** Evidence in the applicant's behalf to demonstrate his competence to carry out plan and his awareness of the scope of the project, physical and financial.
  - n. **Other:** Any other such information as the Town Board deems to be reasonably pertinent to the adequate consideration and evaluation of the proposed project.
- (4) **Public Hearing:** Upon receipt of the Planning Board's recommendations or once the specified review period expires, whichever occurs first, the Town Board shall, within forty-five (45) days, schedule and conduct a public hearing for the purpose of considering the change in zoning district to PDD for the applicants plan in accordance with the procedures required under Section 265 of the New York State Town Law.

(5) Town Board Action: Within forty-five (45) days after a public hearing the Town Board shall render its decision on the PDD application. If the Town Board grants the PDD zoning, the Zoning Map shall be so noted, and the Law shall be amended so as to define the legal boundaries of the PDD, but such action shall only grant permission for development of the specific proposed land uses in accordance with the use and dimensional specifications, plans and related materials filed with the Town Board and related to the specific PDD; such specifications, plans and related materials to include, if deemed necessary by the Town Board to protect the public health, safety and welfare of the Town, any conditions and requirements for the applicant to meet. The approved plan and the related attachments shall be deemed an amendment to this Law and shall serve as continuing land use controls for the specific Planned Development District; the first such zoned PDD shall be designated "PDD-1", with subsequent unrelated Planned Development Districts to be numbered in continuing sequence.

(6) Annual Review of PDD: The Zoning Code Officer shall review the PDD annually in order to determine the amount and quality of the progress made by the developer toward fulfilling the specifications and plans and any attached conditions, and make a report to the Town Board. Based upon the progress made by the developer, the Town Board may reconsider the PDD and further amend the Law in relation to it, if progress is not to the satisfaction of the Town Board or not in keeping with the staging approved by the Town Board. If no progress is made on the site of the PDD within the first year after approval, the Town Board may consider changing the zoning of the property to the original or other district. Little or no progress on the PDD site by the developer does not guarantee the Town Board will take action to change zoning, especially if the developer demonstrates to the satisfaction of the Town Board that he is acting in continuing good faith and, where applicable, the preliminary plat plans are in preparation.

E. Design Standards and Specific Requirements. The following uses shall be permitted in the Town of Fleming only in accordance with the procedures of this article; and in addition to the other provisions of this article, the following requirements shall apply to the specific planned developments.

(1) Mobile Home Park is subject to the following provisions:

- a. All residential structures installed in mobile home parks shall be constructed and installed in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code. The minimum area of any residential structure within a mobile home park, measured on the outside, shall be seven hundred and twenty (720) square feet.
- b. The minimum area of a mobile home park shall be ten (10) acres.
- c. Each lot in a mobile home park shall have a minimum area of six thousand (6,000) square feet, and minimum width of forty-five (45) feet.
- d. A mobile home park shall have buffer strips along the margins of the side and rear property lines; such buffer strips shall be at least six (6) feet in thickness and consist of inter-locking trees and foliage acceptable to the Town Planning Board.

- e. A mobile home park designed to accommodate twenty-five (25) or more residences shall provide at least one recreation area of at least eight percent (8%) of the gross site of the mobile home park.
- f. A mobile home park shall provide an area of common open space. An area of at least ten thousand (10,000) square feet of open space shall be required for a ten (10) acre mobile home park. Open space area may be included as part of the recreation area, and both shall be located centrally when possible and shall be free of traffic hazards.
- g. No residential structure or portion thereof shall be placed closer than twenty (20) feet to any other residential structure or portion thereof.
- h. A residential structure, park office, or any other structure shall not be located closer than thirty (30) feet from the street right-of-way or other property line.
- i. Storage space within a permanent, enclosed structure shall be provided in an amount equal to at least one hundred (100) square feet for each building lot in the mobile home park.
- j. Parking shall be provided in accordance with Article XI.
- k. Suitable landscaping, including at least lawns, plantings and trees, shall be installed and maintained in a mobile home park.
- l. Each mobile home park shall be provided with at least two (2) points of ingress/egress to the adjacent public street.
- m. Water supply, source and quality, and the treatment and disposal of sewage for a mobile home park, shall comply with all the regulations of the Cayuga County Health Department and approval shall be secured from such health department before final Town Board approval shall be considered.
- n. An opaque enclosure must be provided for outside solid waste storage.

(2) Shopping Center is subject to the following provisions:

- a. The minimum lot size for such use shall be ten (10) acres.
- b. Off-street parking shall be provided in accordance with Article XI.
- c. A shopping center shall have its frontage on a state or county road, and ingress and egress for the site shall be designed so as not to constrict the flow of traffic on the public road.
- d. Parking, loading, and service areas shall be located entirely within the confines of the lot, shall be physically separated from public streets by buffer strips against unchanneled motor vehicular ingress.



- e. All access ways to a public street, according to access management standards, shall be located not less than two hundred (200) feet for a 30 mph area and four hundred ninety five (495) feet for a 55 mph area, from the intersection of any street line.
- f. All buildings shall be arranged in a group or in groups, and the distance at the closest point between any two (2) buildings or groups of attached buildings, shall be not less than fifteen (15) feet.
- g. Along any adjoining lot line, a buffer strip shall be provided which shall not be less than twenty-five (25) feet in thickness and shall be planted with at least grass, shrubs and trees (to attain an average height of at least twelve (12) feet) along the entire length of the lot line to serve as a barrier to visibility, air-borne particles, glare and noise. Such screen planting shall be located within at least the exterior ten (10) feet of the buffer strip.
- h. All parking, loading, access and service areas shall be adequately illuminated at night. Such lighting, including sign lighting, shall be arranged so as to protect the highway and adjoining property from direct glare of hazardous interference of any kind.
- i. All utility lines servicing a shopping center shall be placed underground.

(3) Golf course and/or country club are subject to the following provisions:

- a. Minimum lot size shall be forty (40) acres.
- b. All buildings shall be not less than one hundred (100) feet from any lot line.
- c. Such use shall not be permitted in the Lakeshore District (L), and shall be permitted in a Residential District (R-1 or R-2) only when planned as a part of a residential development.

## 6-9. Owasco Lake Watershed Overlay

- A. Intent. The purpose of this section is to protect and improve the quality of Owasco Lake, its shoreline, groundwater resources, and surrounding watershed for the residents of the Town through appropriate land use and design regulations. As an overlay district, the permitted uses in the underlying district are allowed unless specified within these regulations.
- B. Overlay District Extent.
- (1) As indicated on the Zoning Map, the overlay district is delineated by the Owasco Lake Watershed boundary. Where the exact boundaries of the Overlay District are in doubt or dispute, the burden of proof shall be upon the owner of the land in question to show where the extent of the watershed boundary falls. The Town may engage a geologist, hydrologist, or other qualified professional to determine the location and extent of the watershed, and may charge the applicant for all or part of the investigative costs, pursuant to §15-10.
- C. General Regulations.
- (1) New development or construction occurring within the Watershed Overlay District after the effective date of these regulations shall be required to adhere to the regulations contained within.
  - (2) Uses that store, use, or dispose of hazardous materials, as defined under current Federal and State regulations, shall be prohibited from the Watershed Overlay District. Non-commercial storage of petroleum products (fuel oil, gasoline, kerosene, etc.) shall include adequate provisions for insuring that leaks are prevented, and that any leak, rupture, or spill will be contained and not introduced into a lake or any other water body.
  - (3) Agricultural operations and farming operations shall comply with Agricultural Management practices Catalogue for Non-point Source Pollution Prevention and Water Quality Protection in New York (1992) as published and amended by the Bureau of Water, Department of Environmental Conservation (DEC).
  - (4) All areas where animal waste is stored or accumulated shall be designed in accordance with local and State laws governing surface water runoff.
  - (5) Manure from agricultural operations shall not be field spread within 75 feet of the mean high water mark of any water body unless it is plowed underground the same day it is spread.
  - (6) The use of pesticides and fertilizers on any non-agriculturally used property shall not occur within 25 feet of the mean high water mark of any water body. Commercial storage of pesticides or fertilizers must be located more than 75 feet from the mean high water mark of any water body.
  - (7) A plan to control erosion, sediment, and stormwater during construction shall be submitted at the time of permit application for all uses within the Watershed Overlay District. The plan shall be drafted in accordance with the New York State Stormwater Management Design Manual from the NYS Department of Environmental Conservation (NYS DEC) and shall be implemented as a precursor to any development on the property.
  - (8) Post construction runoff rates shall not exceed pre-construction runoff as determined by a design professional to the Town's satisfaction.
  - (9) No pollutant of any kind shall be discharged, deposited or allowed to flow into lake or watercourse or on or beneath the surface of the ground or watershed within 500 feet of the lake.

- (10) Individual septic systems shall not be shared by more than one property. Package plants are not considered an individual septic system for the purposes of these regulations.
- (11) Agricultural operations and farming operations that are enrolled in the Agricultural Environmental Management Program through the NYS Soil and Water Conservation Committee and have completed and are implementing a Tier 3 Agricultural Environmental Management Program Plan, and who follow best management practices, shall be exempt from these regulations.

D. Design Regulations.

- (1) The total amount of impervious surface on any lot within the District shall not exceed 15 percent of lot size, except impervious surface on lots located within the Lakeshore District shall not exceed 25 percent of lot size.
- (2) All impervious surfaces, including driveways, dwellings, and accessory buildings shall be located at least 50 feet from the mean high water mark of any water body. The space between the structure and water's edge shall at a minimum be grassed, naturally landscaped, or treed to the Town's satisfaction. Walkways or patios may be allowed within the 50 foot zone provided they are porous or permeable, but shall be no closer than 25 feet from the mean high water mark of water to maintain soil stability.
- (3) Notwithstanding the provision for walkways or patios in §6-9.D(2) above, development in proximity to waterbodies shall maintain a 50 foot naturally vegetated buffer zone between the mean high water mark and any development, including septic systems. This buffer zone shall not be disturbed during or after construction activities. Selective thinning of some vegetation (no more than 25 percent of the existing) may be allowed under the following circumstances:
  - a. Improve views on the property;
  - b. Control animal or insect population;
  - c. Health, safety, and welfare of the property owners; or
  - d. Access to shoreline.
- (4) Docks and other berthing facilities shall be fastened to the shoreline in such a manner as to minimize disturbance to the existing shoreline and surrounding land. There shall be no regrading, recontouring, or similar modification of the existing shoreline and surrounding land. Boathouses and other similar facilities shall be designed in accordance with §8-4.

**ARTICLE VII**  
**Regulations Applicable to All Zoning Districts**

**7-1. Lot Area or Yards Required**

The lot or yard areas required for any new building or use shall not include any part of a lot that is required by any other building or use to comply with the requirements of this Law. No lot shall be so altered that the area of the lot or the dimensions of yards or other open spaces are smaller than herein prescribed.

**7-2. Principal Residential Use and Structure/Spacing of Residential Buildings on a Lot**

- A. Where a permitted residential building is to be located on the same lot with another permitted residential building, each such building shall be located in such a way that all required front, side and rear yards, and required lot area can be adequately met.
- B. Where an existing garage, stable or similar detached structure on the rear of a lot with a permitted main building, is to be converted to a detached dwelling for residential occupancy, the provisions of paragraph (a) above shall apply. The Board of Appeals, however, may modify the yard dimensions between such buildings intended to remain under the same ownership and management where it is demonstrated that there will not be decrease in the standard of light, air, and amenity as a result.
- C. Only one principal residential use and one principal residential structure is allowed per lot.

**7-3. Exceptions of Minimum Lot Sizes and Lot Widths**

- A. The provisions of the Bulk and Use Tables shall not prevent the construction of a one-family dwelling, provided the yard requirements are observed on any lot which was lawful when created, provided the yard requirements then specified are observed, and which prior to the effective date of this Law was in separate ownership duly recorded by plan or deed.
- B. Exemption of lots shown on approved subdivision plats shall be made in accordance with the provision of Section 265-a of the New York State Town Law.

**7-4. Traffic Visibility Across Corners (clear sight triangle)**

- A. On any corner lot, no wall, fence or other structure shall be erected or altered or no hedge, tree, shrub or other growth except agricultural crops shall be maintained which may cause danger to traffic on public street by obscuring the view. Visual obstructions shall be limited to a height of not more than two (2) feet above street level within the triangular area bounded by the street lines and a straight line drawn between points on each such street line twenty-five (25) feet from the intersection of said street lines.
- B. Where a private access way intersects a public street, visual obstructions shall be limited to a height of not more than two (2) feet above street level within the triangular area bounded by the street line, the edge of the private access way, and a straight line drawn between points on both the street line and the edge of the access way ten (10) feet from the intersection of said lines.

#### **7-5. Essential Services**

The erection, construction, alteration or maintenance by public utilities or town or other governmental agencies of underground or overhead gas, electrical or water transmission or distribution systems, communication systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith shall be allowed as reasonably necessary for the furnishing of adequate service by such public utilities or town or other governmental agencies or for the public health or safety or general welfare, but not including buildings.

#### **7-6. Fences, Terraces, etc. and Projections in Required Yards**

Subject to §7-3 the provisions of the Bulk and Use Tables shall not apply to fences, terraces, steps, uncovered porches or other similar features not over three (3) feet high above the floor level of the ground story. Arbors, open trellis, flagpoles, recreation and drying yard equipment are exempt from the Bulk and Use Regulations.

#### **7-7. Exception to Required Front Yards for Certain Accessory Uses**

Subject to §7-3, the front yard requirements of the Bulk and Use Tables shall not apply to accessory signs, off-street parking facilities and farm stands.

#### **7-8. Front and Side Yards of Corner Lots**

On a corner lot the street side yard shall equal the required front yard for lots facing that street.

#### **7-9. Access to Improved Streets**

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

#### **7-10. Lots in More than one District**

In cases where lots are located in more than one district, all the uses, buildings and facilities, yards, open space, off-street parking and required landscaping must be contained within the district in which the use is permitted.

#### **7-11. Creation of a New Lot**

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

## **7-12. Building Height Regulations**

Maximum height regulations shall not apply to farm buildings, church spires, chimneys, antennae, or other structures built above the roof and not devoted to human occupancy.

## **7-13. Building Width Regulations**

Minimum building width for any residential structures outside a Mobile Home Park is twenty (20) feet, regardless of construction. Minimum building width for residential structures within a Mobile Home Park is fourteen (14) feet regardless of construction.

## **7-14. Building Age Regulations**

No residential structure greater than ten (10) years old may be placed on a lot within the Town of Fleming, except for the relocation of a state or nationally registered historic landmark structure.

## **7-15. Minimum Habitable Floor Area**

Every dwelling unit, not located within a Mobile Home Park, shall have a minimum habitable floor area of eleven hundred (1,100) square feet. Habitable floor area shall not include area contained in cellars, attics or garages.

The minimum area of any residential structure within a mobile home park, measured on the outside, shall be seven hundred and twenty (720) square feet.

## **7-16. Accessory Structures and Uses**

### **A. Structures**

- (1) Accessory structures attached to the principal building, except for fences (see §7-6), shall comply in all respects with the requirements of this law applicable to the principal building.
- (2) Accessory structures that are not attached to a principal structure may be erected in accordance with the following restrictions:
  - a. Accessory structures and uses are not permitted in front yards with the exception of signs, off-street parking facilities and farm stands.
  - b. Structures and buildings less than 144 square feet in area (including but not limited to tool and storage sheds and gazebos) do not require a building or zoning permit unless the total aggregate limit of unattached accessory structures and buildings on the lot will exceed 144 square feet. In any event, all such structures and buildings must comply with minimum setback requirements for the applicable zoning district as set forth under “Accessory Structures and Buildings” in the Bulk and Use Table.
  - c. No unattached accessory structure shall be located nearer to the principal structure than ten (10) feet.

- d. The height of an unattached accessory structure shall not exceed thirty-five (35) feet from the peak of the structure to the highest point on the ground on the side nearest the street.
- e. The total area of the unattached structure shall not exceed twenty percent (20%) of the floor area of the principal structure. *Structures built in zones A, C, R-1, R-2, L and H are exempt from this standard if the lot size is kept or maintained at one (1) acre.*
- f. An unattached accessory structure shall not be a building, structure, or other assemblage of materials designed for, or customarily used as, a principal structure allowed under this law; nor shall an unattached accessory structure be a vehicle or a container primarily intended for commercial storage or transportation of goods, animals or people. *Structures built in zones A and C are exempt from this standard.*

(3) Fences are not accessory structures; however the height of any fence shall not exceed six (6) feet.

(4) Docks are permitted as accessory structures on ponds and the lakeshore; they are subject to Army Corp of Engineer regulations, NYSDEC regulations for Protection of Waters Permit Standards, and any other Town regulations.

- a. Sewer and water lines shall not be extended to accessory structures in the Lakeshore District. Sanitary pumping facilities require a special use permit.

B. Uses – Accessory uses are those customarily incidental and subordinate to the use of the principal building, and no permit shall be required unless specifically required elsewhere in this law.

### **7-17. Stream Corridor, Lakeshore, and Floodplain Protection**

A. Purpose and Intent. The purpose of these regulations are to protect and preserve areas adjacent to waterbodies in the Town of Fleming from development that may cause ecological harm, create a public health or safety issue, or degrade the quality of the water and surrounding riparian areas (those areas adjacent to a waterbody).

B. Delineation of Protection Boundaries

- (1) Stream Corridor(s). In addition to any other streams identified by the Town or any other State or Federal Agency, the regulations and standards set forth within shall apply to the following streams: Veness Brook, Crane Brook, & Yawger Creek. The protection area for a stream corridor, whether permanent or seasonal/intermittent stream, shall be those areas within fifty (50) feet of the top of the embankment of a stream or the mean high water mark, whichever is greater.
- (2) Floodplain. The protection area for a floodplain shall be the area designated on the most current Federal Insurance Rate Map (FIRM) produced by the Federal Emergency Management Agency (FEMA).

- (3) Lakeshore. The protection area for the lakeshore shall be the area within fifty (50) feet of the mean high water mark.

#### C. Applicability & Review

- (1) Any applicant who proposes to undertake an activity that requires a permit from the Town of Fleming shall be required to adequately demonstrate that the proposed activity shall in no way, at present or at any time in the future have an adverse impact on stream corridors, floodplain, or the lakeshore. Adverse impacts include, but are not limited to, water quality, watercourse flood carrying capacities, sedimentation rates, surface water runoff, soil stability, or fish and wildlife habitats.

#### D. Development Standards

- (1) Stream Corridor(s). These development standards shall be measured from edge of the protection boundary as specified in §7-17.B(1).
  - a. No development shall be allowed within the protection boundaries, except for the construction of fences, bridges, or fishing parking areas. Fishing parking areas shall be made of a permeable surface and maintain at a minimum a ten (10) foot grass buffer between the edge of parking and the top of embankment of the stream.
  - b. A buffer strip of at least fifty (50) feet shall separate all new development, except for those previously listed, from the protection boundary of a stream. Wherever possible, the buffer strip shall retain the natural vegetation, including any groundcover, shrubs, brush, or trees to minimize erosion, maintain bank stability, and provide natural water filtration of runoff.
  - c. Development adjacent to the protection boundary shall be designed and constructed in accordance with erosion and stormwater control standards and best management practices identified in NYS DEC's "Stream Corridor Management Manual."
  - d. A site plan shall be required for review for any development or construction activities adjacent to those streams specified in §7-17.B(1).
- (2) Floodplain. Any development proposed within a floodplain shall be designed and constructed with the National Flood Insurance Program and any local laws of the Town of Fleming.
- (3) Lakeshore. Refer to the Owasco Lake Watershed Overlay district, §6-9.

#### E. Additional Standards for all areas

- (1) Roads, trails, and walking paths along waterbodies shall be sited and constructed so they are not a source of runoff and sedimentation. A buffer strip of at a minimum of five (5) feet shall separate the road, trail, or path shall be utilized and shall consist of native vegetation. Roads, trails, or paths shall be constructed of permeable materials to the greatest extent feasible.
- (2) Site preparation, including the stripping of vegetative cover or grading, shall be undertaken so that the amount of time that disturbed ground surfaces are exposed to the energy of rainfall and runoff water is limited. Disturbed soils shall be stabilized and revegetated within seven (7) days of disturbance. During the interim period, erosion protection measures, including but not limited to vegetation, retention ponds, recharge basins, berming, silt traps and mulching, shall be used to ensure that sedimentation is minimized and mitigated.



- (3) All fill shall be compacted at a final angle of repose which provides stability for the material, minimizes erosion and prevents settlement.
- (4) New structures shall be designed and constructed in accordance with erosion control standards and storm water control standards contained in the Best Management Practices for Storm Water Management Guidelines for New Development, as found in Chapter 6 of the New York State Department of Environmental Conservation's Stream Corridor Management Manual.

## **7-18. Steep Slopes Protection**

- A. Purpose. The purpose of these steep slopes regulations is to minimize the impacts of any construction or development activities on steep slopes in the Town of Fleming by regulating activities in such areas and by requiring review and site plan approval prior to project commencement. The regulations are designed to minimize the disturbance or removal of existing vegetation, prevent increased erosion and stormwater runoff, maintain established drainage systems, locate development where it is less likely to cause future slope failures and to retain, as much as possible, the natural character of these areas.
- B. Delineation of Protection Boundaries. The protection boundaries for steep slopes shall include all areas of fifteen percent (15%) or greater slopes, and all areas within fifty (50) feet of the toe or top of such slopes. The Planning Board may consult other information, including but not limited to the Soil Survey Map of Cayuga County, topographic maps produced by the United State Geological Survey, filed surveys and other appropriate sources, in order to more accurately locate and delineate steep slope protection boundaries.
- C. General Standards
  - (1) No development or construction activities shall occur within the protection boundary specified in §7-18.B, except under the following circumstances:
    - a. There is no reasonable alternative for the proposed regulated activity on that portion of the site not containing steep slopes. A report shall be submitted by a licensed geotechnical or soil engineer indicating that the slope maybe developed safely and outlining what advanced engineering practices will be utilized for safe development.
    - b. Construction activities or earthwork is required in order to prevent further soil erosion or potential landslides from occurring which may occur and are not from the result of development on the same parcel or property.
  - (2) The activities specified above shall comply with the following standards:
    - a. The stable angle of repose of soil classes found on the site shall be used to determine the proper placement of structures and other development-related facilities within the plateau area. Site-specific calculations of the stable angle of repose for the site shall be determined by a professional soil scientist or engineer using the soil classes and nomenclature contained in the Soil Survey of Cayuga County and obtained for the site by borings, as well as high-intensity soil survey data provided by the applicant.
    - b. The stability of soils will be maintained or increased to adequately support any construction thereon or to support any landscaping, agricultural or similar activities.

This shall be documented by soil bearing data provided by a qualified testing laboratory or engineer and paid for by the developer/applicant.

- c. No proposed activity will cause erosion or slipping of soil or cause sedimentation to be discharged into any stream, brook, tributary, wetlands or into Owasco Lake.
  - d. Plant life located on the slopes outside the minimum area that need to be disturbed for carrying on approved activities shall not be destroyed. Plants or other acceptable ground cover shall be reestablished in disturbed areas immediately upon completion of development activity so as to prevent any of the harmful effects set forth above to maintain the natural scenic characteristics of any steep slope.
- (3) Trails, walking paths, roads, and other means of access may be allowed, provided a site plan is submitted for review and access down steep slopes shall be provided with ramps slopes no greater than one to six (1:6) and side slopes not greater than one to three (1:3) if not terraced or otherwise structurally stabilized. Disturbed non-roadway areas shall be stabilized and adequately drained.
- (4) Specific Standards – Construction of erosion protection structures shall be permitted according to the following standards:
- a. All erosion protection structures shall be designed and constructed according to generally accepted engineering principles found in publications entitled “Stormwater Management Guidelines for New Development” and Best Management Practices for Stormwater Runoff Management” as found in Chapter 6 of the New York State Department of Environmental Conservation Stream Corridor Management Manual.
  - b. A long-term maintenance program shall be included in any application for construction, modification or restoration of an erosion protection structure, until ground cover has been reestablished. Such program shall include specifications for normal maintenance of degradable materials and the periodic removal of materials.
  - c. The construction, modification or restoration of erosion protection structures shall not be likely to cause any measurable increase in erosion at the development site or other locations and prevent adverse effects to natural protective features, existing erosion protection structures and natural resources such as significant fish and wildlife habitats.
  - d. Temporary erosion controls, i.e., straw bales, siltation fences, hydro seeding and mulching, shall be provided for all disturbed areas, shall be installed before work begins and shall be maintained until restoration is complete. The site plan shall identify the locations and methods for erosion/siltation controls.
  - e. A construction and erosion control schedule should be required from the applicant as part of the permit application. All disturbed steep slope areas shall be regarded and stabilized as soon as possible, but in less than ten (10) days.

- f. Drainage of stormwater shall not cause erosion or siltation, contribute to slope failures, pollute groundwater or cause damage to, or flooding of, property. Drainage systems shall be designed and located to ensure slope stability.
  - g. Any grading, excavating or other soil disturbance conducted on a steep slope shall not direct surface water runoff over the receding (downhill) edge during construction.
  - h. Removal of existing mature trees from steep slope areas will be permitted only where absolutely necessary to allow the subject construction. All trees larger than three (3) inches in diameter to be removed shall be shown on the site plan.
- (5) Prior to receiving any approval or imposing any conditions of approval, the applicant for a development permit shall have the burden of demonstrating that the proposed regulated activity will be conducted in accordance with the standards and requirements of this section, as well as any additional requirements which may be imposed by the Town Planning Board.

### **7-19. Dumping of Waste Material**

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

### **7-20. Junkyards Prohibited**

Junkyards are prohibited everywhere in the Town.

### **7-21. Owasco Lake Access**

The following restrictions are intended to provide for controlled development and use of the Owasco Lakeshore area in a manner which protects the character and quality of the Town's surface water and shoreline resources; and, to prevent the overcrowding and overuse of the Lakeshore area and water resources which may result in nuisance conditions, degradation of property values, user conflicts and undesirable impacts on the public health, safety and general welfare. Lakefront access standards shall meet the following conditions:

- A. Required Lake Frontage. Each single-family dwelling, dwelling unit, cottage, condominium unit, apartment unit or other dwelling, or lot claiming Lakefront access rights is required to have Lake frontage equaling the minimum lot width required in the Lakeshore District.
- B. Application of Lake Frontage Requirement. The required Lake frontage shall apply to all lots and parcels on or abutting Owasco Lake in all zoning districts, regardless of whether access to the Lake is claimed by common-fee ownership, easement, park, single-fee ownership, condominium arrangement, association, license, lease (including ground lease), Planned Development District or other such means.
- C. Lakefront Access via Easement, Private Park, etc. (so-called "Keyhole Development"). No easement, private park, common area, lot or property abutting or adjoining Owasco Lake shall be used to permit access to the Lake for more than one (1) single-family dwelling, dwelling unit, cottage, condominium unit, apartment unit, or other such dwelling, dwelling unit, residence or other such or similar use.

- D. Lot Compliance. A separate waterfront lot shall not be created unless said lot meets the minimum lot width and area standards of the underlying zoning district.
- E. Lakefront Access by Clubs. Access to Owasco Lake by clubs and their membership shall be subject to the Special Use Permit provisions in Article VIII.

**7-22. Incentive Zoning**

- A. Intent. The purpose of the incentive zoning provision is to offer incentives to applicants who provide amenities that assist Town of Fleming in implementing specific physical, environmental or cultural policies of the Comprehensive Plan.
- B. Applicability. Incentives may be offered to applicants in any district who offer an acceptable amenity to the community in exchange for the incentive.
- C. Allowable amenities. The selection of land or other amenities within a parcel to be considered for incentive zoning shall be made by the applicant and subject to the recommendation of the Planning Board and final approval by the Town Board. The following amenities may be accepted by the governing board:
  - (1) Permanent conservation of natural areas or agricultural lands.
  - (2) Provision of passive/active open space.
  - (3) Continued agricultural use of areas with prime agricultural soils.
  - (4) Infrastructure improvements.
  - (5) Provision of trail linkages.
  - (6) Preservation of scenic views, as identified by the Town.
  - (7) Provision of cross access easement or shared access.
  - (8) Design and construction of United States Green Building Council (USBGC) Leadership and Excellence in Environmental Design (LEED) certified, or other similarly designed, buildings and sites.
- D. Allowable incentives. The following incentives may be granted by the Town Board to the applicant on a specific site:
  - (1) Increases in dwelling unit density. Such density shall be limited to areas where public water and sewers are available. Specific density requirements for the Residential (R-2) district are outlined in §6-3.
  - (2) Increases in lot coverage.
  - (3) Changes in setback or height standards.
  - (4) Expedited review times.
  - (5) Reduced permit fees.
  - (6) Other benefits as deemed appropriate by the Town Board.
- E. Criteria and procedure for approval. Applications for incentives in exchange for amenities shall be submitted to the governing board of the municipality in which the property is located. In order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be proposed by the applicant:

- (1) The proposed amenity.
- (2) The value of the proposed amenity.
- (3) A narrative which:
  - a. Describes the benefits to be provided to the community by the proposed amenity. The proposed amenity shall be located on developable land as defined in §1-3.
    - (i) Provides preliminary indication that there are adequate sanitary sewers, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located in order to accommodate additional demands, if any.
    - (ii) Explains how the proposed amenity promotes implementation of physical, environmental or cultural policies articulated in approved plans.
    - (iii) Describes the requested incentive and its value.
  - b. The Planning Board will review the proposal and provide a recommendation to the Town Board with its evaluation of the adequacy with which the amenity(s)/incentive(s) fit the site and how they relate to adjacent uses and structures. The Planning Board's review shall be limited to the planning, design and layout considerations involved with project review or such other issues as may be specifically referred by the Town Board.
  - c. The Town Board will review the Planning Board's recommendation(s). The Town Board will notify the applicant as to whether it is willing to further consider the proposal and hold a public hearing thereon.
  - d. All applicable requirements of the State Environmental Quality Review Act (SEQRA) shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sanitary sewer, water, transportation, waste disposal and fire protection facilities to:
    - (i) Serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal.
    - (ii) Serve the onsite amenity and incentive, given the development scenario described in Subsection 4(i) above.
  - e. Following the hearing and in addition to compliance with all SEQRA requirements, the Town Board shall, before taking action, refer the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other boards and officials for review and comment. In order to approve an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to act on an application for site plan or subdivision approval pursuant to applicable regulations.

- f. Following preliminary plan approval and subject to meeting all conditions imposed on the preliminary plan, including all documentation required by the Town Attorney and Town Board on the amenity, the applicant may submit a final plan for review and approval.

F. Cash payment in lieu of amenity. If the Town Board finds that a community benefit is not suitable on-site or cannot be reasonably provided, the Town Board may accept a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to acceptance of funds. Cash payments in lieu of amenities are not to be used to pay general and ordinary governmental operating expenses.

### **7-23. Performance Standards**

#### **A. Applicability.**

(1) Planning Board action. All uses subject to the requirements of this section may be established and maintained if their operation is approved by the Planning Board as being in conformance with the standards and regulations limiting dangerous and objectionable elements, such as dust, smoke, odor, fumes, noise or vibration. In approving the site plan, the Planning Board shall decide whether the proposed use will conform to these applicable performance standards or any additional performance standards required by state or federal laws or which are generally recognized performance standards for a given industry.

a. Use subject to the performance standards procedures.

(i) All uses subject to site plan review must comply with these performance standards.

B. In addition, if the Zoning Officer has reasonable grounds to believe that any other existing or proposed use violates any of the performance standards, such proposed use may be required to certify compliance with these performance standards or such existing use may be cited for violation of these regulations.

C. Agricultural uses within state certified, county managed Agricultural Districts may not be subject the performance standards outlined in this Law.

#### **D. Performance standards procedures.**

(1) The Zoning Officer as part of the sketch plan conference shall tentatively identify whether a proposed use will be required to certify compliance with any of the performance standards listed in this section. Certification may require signing a written statement or presentation of construction detail and a description of the specifications for the mechanisms and techniques to be used in restricting the emissions of any dangerous and objectionable elements. The applicant shall also file with such plans and specifications an affidavit acknowledging understanding and stating agreement to conform to the same at all times. Any information which is designated by the applicant as a trade secret and submitted herewith will be treated as confidential under provisions of the New York State Freedom of

Information Law. During the course of Site Plan Review, the Planning Board will determine if the applicant's proposal falls within the performance standards.

(2) Vibration.

- a. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or beyond the lot lines, nor shall any vibrations produced exceed 0.002g peak at up to a frequency of 50 cycles per second, measured at or beyond the lot lines using either seismic or electronic vibration measuring equipment.
- b. Vibrations occurring at higher than a frequency of fifty (50) cycles per second or a periodic vibration shall not induce accelerations exceeding 0.001 g. single impulse periodic vibrations occurring at an average interval greater than five minutes shall not induce accelerations exceeding 0.01 g.

(3) Noise.

- a. The maximum decibel level radiated by any use or facility at any lot lines shall not exceed the values in the designated octave bands given in Table 1. The sound-pressure level shall be measured with a second-level meter and associated octave-band analyzer conforming to standards prescribed by the American Standards Association. (American Standard Sound-Level Meters for Measurement of Noise and Other Sound, Z24.3-1944, American Standards Association, Inc., New York, and American Standard Specifications for an Octave-Bank Filter Set for the Analysis of Noise and Other Sound, Z24.10-1953, American Standards Association, Inc., New York, New York, shall be used.)

<b>Table I</b>	
<b>Frequency Band (cycles per second)</b>	<b>Maximum Permitted Sound-Pressure Level (decibels)</b>
0 to 75	69
75 to 150	60
150 to 300	56
300 to 600	51
600 to 1,200	42
1,200 to 2,400	40
2,400 to 4,800	38
4,800 to 10,000	35

- b. Where any use adjoins a residential or transitional district at any point at the district boundary, the maximum permitted decibel levels in all octave bands shall be reduced by six decibels from the maximum levels set forth in Table I.

- (4) Smoke. The density emission of smoke or any other discharge into the atmosphere during normal operations shall not exceed visible gray smoke of a shade equal to or darker than No. 2 on the standard Ringelmann Chart. (A Ringelmann Chart is a chart published by the

United States Bureau of Mines, which shows graduated shades of gray for use in estimating the light-obscuring capacity of smoke). These provisions applicable to visible gray smoke shall also apply to visible smoke of a different color but with an apparent equivalent capacity.

- (5) Odor. Recurrently generated offensive odors shall not be perceptible by a person of ordinary sensitivity, without instruments, at any point of any boundary line of the lot or lots on which the use or structure is located. Odors from approved temporary construction activities and vehicles that leave the lot (such as trucks, trains, airplanes and helicopters) are excluded. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained if the primary safeguard system should fail. Odors shall be within the limit of any Federal or State standards.
- (6) Fly ash, dust, fumes, vapors, gases and other forms of air pollution. No emission shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling at any point beyond the boundaries of the lot. The concentration of such emission on or beyond any lot line shall not exceed 0.1 the maximum allowable concentration set forth in §12-29 of the Board of Standards and Appeals of the New York State Department of Labor, effective October 1, 1956, and any subsequent standards.
- (7) Electromagnetic radiation. It shall be unlawful to operate or cause to be operated any planned or intentional source of electromagnetic radiation which does not comply with the current regulations of the Federal Communications Commission regarding such sources or electromagnetic radiation, except that, for all governmental regulations regarding such sources of electromagnetic radiation of the Interdepartment Radio Advisory Committee shall take precedence over the regulations of the Federal Communications Commission. Further, said operation in compliance with the Federal regulations shall be unlawful if such radiation causes an abnormal degradation in performances of other electromagnetic radiators or electromagnetic receptors of quality and pro-per design because of proximity, primary field, blanketing, spurious reradiation, harmonic content or modulation of energy conducted by power or telephone lines. The determination of abnormal degradation in performance and of quality and proper design shall be made in accordance with good engineering practices, as defined in the latest principles and standards of the American Institute of Radio Engineers and the Electronic Industries Association. In case of any conflict between the latest standards and principles of the above groups, the following precedence in interpretation of the standards and principles shall apply: American Institute of Electrical Engineers; Institute of Radio Engineers; and Electronic Industries Association.
- (8) Radioactive radiation. No activities shall be permitted which emit dangerous radioactivity at any point beyond the property lines. The handling of such radioactive materials, the discharge of such materials into the air and water and the disposal of radioactive wastes shall be in conformance with the regulations of the Nuclear Regulatory Commission, as set forth in Title 10, Chapter 1, Part 20, as amended, and all applicable regulations of the State of New York.



- (9) Heat. Heat emitted at any or all points shall not at any time cause a temperature increase on any adjacent property in excess of 5°F., whether such change is in the air or on the ground, in a natural stream or lake or in any structure on such adjacent property.
- (10) Glare.
- a. Direct glare. No such direct glare shall be permitted, with the exception that parking areas and walkways may be illuminated by luminaries so hooded or shielded that the maximum angle of the cone of direct illumination shall be 60° drawn perpendicular to the ground, and with the exception that such angle may be increased to 90° if the luminary is less than four feet above ground.
  - b. Indirect glare. Indirect glare shall not exceed that value which is produced by an illumination of the reflecting surface, not to exceed 0.3 footcandle (maximum) and 0.1 footcandle (average). Deliberately induced sky-reflected glare, as by casting a beam upward for advertising purposes, is specifically prohibited.
- (11) Liquid or solid waste. No discharge shall be permitted at any point into a public sewer, stream or other waterbody, on or beneath a watershed or into the ground, except in accordance with applicable State and local regulations, of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements. There shall be no accumulation of solid wastes conducive to the breeding of rodents or insects.
- (12) Storm Water. For all developments disturbing more than one acre, New York State Department of Environmental Conservation (NYSDEC) requires that Municipalities receive a copy of the Storm Water Pollution Prevention Plan (SWPPP) prior to plan approval. Owner is required to comply with the NYSDEC's "SPEDES General Permit for Storm Water Discharge from Construction Activity" Permit # GP-0-08-001, or as amended.

**ARTICLE VIII**  
**Regulations Applicable to Special Use Permits**

**8-1. Special Use Permits**

A. Procedure.

- (1) The Town Board of Fleming shall hear and decide upon applications for special use permits for any of the uses for which this Law requires the obtaining of a special use permit from the Board.
- (2) An Applicant shall have the burden of proof in establishing a right to a special use permit.
- (3) General Requirements and Standards Applicable to all special use permits. The Town Board shall grant a special use permit when it finds adequate evidence that any proposed use submitted for a special use permit will meet all of the following general requirements as well as any specific requirements and standards listed for the proposed use under this Article. The Board shall among other things require that any proposed use and location be:
  - a. In the best interests of the Town, the convenience of the community, the public welfare, and that it be a substantial improvement to property in the immediate vicinity.
  - b. Suitable for the property in question, and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
  - c. In conformance with all applicable requirements of this Law.
  - d. Suitable in terms of effects on street or highway traffic and safety with adequate access arrangements to protect major streets from undue congestion and hazard.
- (4) In granting a special use permit, the Town Board may impose conditions regarding layout, circulation and performance as it deems necessary to insure that any proposed development will secure substantially the objectives of this Law. These conditions may include but are not limited to the following:
  - a. Increasing the required lot size or yard dimension.
  - b. Limiting the height, size or location of buildings.
  - c. Controlling the location and number of vehicle access points.
  - d. Increasing the number of required off-street parking spaces.
  - e. Limiting the number, size, location and lighting of signs.

- f. Requiring fencing, screening, landscaping or other facilities to protect adjacent or nearby property.
- g. Designating sites for open space.

#### B. Review by Planning Board on Application for Special Use Permits

The Town Board shall forward to the Planning Board and request an advisory review and opinion on all applications for special use permits. The Planning Board must submit comments summarizing its advisory opinion at least five (5) days before the date of the public hearing held by the Town Board. If comments are not submitted to the Town Board within the established timeframe, the Town Board will interpret that as approval from the Planning Board.

#### C. Annual Review of Special Use Permits

Each special use permit issued by the Town Board may be subject to review on an annual basis by the Zoning Code Officer in order to determine the permit holder's compliance with Article VIII of the Zoning Code and with any permit conditions imposed by the Town Board. The review may be prompted upon the initiative of the Zoning Code Officer or upon the written request of a Town official or member of the public. The Zoning Code Officer shall make a report of any such review to the Town Board; if compliance has not been achieved or if violations exist, the Town Board may take such steps as it deems necessary and appropriate to compel compliance, including but not limited to amending the special use permit conditions, authorizing enforcement proceedings and/or revoking the permit.

### **8-2. Adult Oriented Business**

In order to prevent the negative secondary effects of adult entertainment establishments, the following restrictions apply:

- A. No adult-oriented business shall be permitted in a building any part of which is used for residential purposes, including non-conforming residential uses.
- B. No more than one adult oriented business shall be permitted in any building, or on any lot.
- C. No minor (under the age of 18) shall be permitted onto the premises of any adult oriented business.
- D. The exterior of the adult oriented business structure shall be consistent with the character of the surrounding structures and shall not detract from the appearance of the neighborhood.
- E. An adult oriented business shall not be located within five hundred (500) linear feet from any building used for: residential purposes, a group care facility, a child care center, a regular place of religious worship, a public or private school, a public or semi-public building, a medical center, a community center, or another adult oriented business. Distance shall be measured from closest lot lines.
- F. An adult oriented business shall not be located or operated within five hundred (500) linear feet of the property line of a public park, recreational facility, health facility, or trail.

G. All adult oriented business shall be conducted within enclosed buildings.

### **8-3. Automobile and General Repair**

A. Location: No station, or parts thereof, shall be located within two hundred (200) feet, measured along contiguous street frontages, of any place of residence or public assembly such as, but not limited to churches, schools, theaters, auditoriums, parks and playgrounds.

B. Size: No more than two (2) service bays shall be permitted in the C District unless the following circumstance exists:

- (1) One (1) service bay and may be added for each thirty (30) feet of frontage additional to the minimum required herein, provided such additional frontage has a depth at least equal to that of the other portion of the lot, if located in a "C" district.

C. Lot Coverage: Lot coverage for such station shall not be more than 40% of the site.

D. Minimum Yard Requirements:

- (1) All structures shall be setback from the street line a distance of not less than forty (40) feet.
- (2) No portable signs or other devices shall be located within the setback area required in the preceding paragraph (d)-1, except as otherwise provided in Article XII.
- (3) Side and rear yards of not less than two hundred (200) feet shall be provided along all other property lines. Such yards shall be provided with an opaque fence of not less than four (4) feet, nor more than six (6) feet in height placed along the property line, or provided with an all-year, solid, evergreen hedge of not less than four (4) feet in height planted along the property line and a ten (10) foot wide landscaped strip adjacent to such residential area.

E. Non-roofed areas:

- (1) Non-roofed areas where vehicles are stored or staged shall be designed to prevent leakage or drainage of any automotive fluids into the ground or surface water.
- (2) All landscaped areas shall be adequately protected by a raised curb of not more than six (6) inches in height, or a bumper guard of not more than eighteen (18) inches in height.
- (3) Curbs shall be provided along the edge of all areas accessible to motor vehicles to prevent the encroachment of vehicles or any portion thereof, upon adjacent property, or the street right-of-way.

F. Ingress and Egress:

- (1) Facilities shall be located a minimum of forty (40) feet from the intersection of right-of-way lines of any road.

G. Lighting:

- (1) All lighting shall be located such as to prevent the direct rays from shining upon adjacent properties.
- (2) All flickering, pulsating, or flashing lights and exposed neon lights are specifically prohibited.

H. All automotive parts, tools, equipment, dismantled vehicles, and similar related materials shall be stored within a building.

**8-4. Boathouses**

A. General Requirements.

A boathouse may be constructed by a property owner only if a Zoning Permit and a has been issued by the Zoning Officer, and provided that the boathouse complies with this Ordinance and the requirements of all other local, state and federal regulations.

B. Erosion Control Plan. Implementation of an approved erosion control plan is required.

C. New Construction Requirements.

(1) Setbacks.

- a. Shall be located no closer than 25 feet from any side property boundary, unless the property owner receives written permission from the adjacent property owner. A copy of the letter shall be forwarded to the Zoning Office to be kept on file.

(2) Size, Number, Configuration and Placement.

- a. New boathouses shall not exceed a maximum footprint (excluding overhangs) of 100 square feet.
- b. New boathouses at licensed resorts shall be permitted provided that the cumulative maximum footprint (excluding overhangs) for all new and existing boathouses does not exceed 300 square feet.
- c. The footprint of a boathouse shall be of rectangular or square configuration. Boathouses shall be constructed with solid walls.
- d. Boathouses shall be constructed on natural slopes of 20 percent (1 rise: 5 run) or less. Artificial alteration of slopes to conform to the 20 percent (1 rise: 5 run) requirement is not permitted.
- e. Vegetation removal shall be minimized when locating any new boathouse.
- f. A boathouse shall not be placed where it would obstruct the view of the water way from adjacent properties, unless the property owner receives written permission from the adjacent property owner. A copy of the letter shall be forwarded to the Zoning Office to

be kept on file.

(3) Height and Roof Requirements.

- a. The overall height of a boathouse shall not exceed twelve feet.
- b. Overhangs for roofs shall not exceed 18 inches.
- c. The roof slope shall not be less than 4:12 (rise: run) nor greater than 6:12 (rise: run)

D. Boathouse Use, Restrictions and Prohibitions.

- (1) The use of any new or existing boathouse for any purpose other than storage of watercraft and related equipment is prohibited.
- (2) Boathouses shall not be used in any way for human habitation.
- (3) Boathouses shall not contain any plumbing or kitchen facilities.

E. Limitation of Boathouse Numbers.

Only one (1) boathouse is permitted per lot with the exception of resort developments. Up to three boathouses are permitted in resort developments.

**8-5. Commercial Dog Kennel**

- A. Minimum lot size shall be five (5) acres.
- B. No wholly or partly non-residential structure housing dog kennel or veterinary hospital shall be closer than two hundred fifty (250) feet to any property line.
- C. Kennels shall be designed in a manner that provides indoor shelter and outdoor runs. Outdoor runs shall be enclosed by a fence no less than five (5) feet in height.
- D. In addition to the fencing required for the individual kennel runs, the area surrounding the kennels or collection of kennels shall be enclosed by a fence no less than five (5) feet in height.

**8-6. Conversions**

- A. The lot area per family should not be reduced to less than that required for the district in which the lot is situated.
- B. The yard, building area, and other applicable requirements for the district shall not be reduced to less than that required for the district in which the lot is situated.
- C. No structural alteration of the building exterior shall be made except as may be necessary for purposes of safety.

## **8-7. Emergency Dwellings**

In the event that the dwelling is rendered uninhabitable by fire, flood, or by a similar natural or manmade disaster, the Zoning Board of Appeals may authorize the placement of an emergency dwelling upon the lot where said damaged dwelling is located. An emergency dwelling shall be a safe and healthful dwelling unit that meets all applicable building, fire, health or other codes. The ZBA may waive such terms of this law so as to allow the placement and use of such a structure upon the same lot as the damaged dwelling, for occupancy during the period that the damaged dwelling is being repaired or replaced. Such emergency dwelling shall be removed within ten (10) days of the issuance of the Certificate of Occupancy for the repaired or replaced dwelling.

- A. An emergency dwelling is permitted only to meet a documented emergency need.
- B. The maximum length of time such an emergency dwelling may be on a lot is one (1) year. An extension of (1) year making a total time period of two (2) years from the initial permit may be granted by the ZBA in cases of documented hardship. The hardship must result from circumstances beyond the control of the applicant that prevent the applicant from complying with the requirements of this Section. An extension may be granted only once.
- C. An emergency dwelling must have running water and must be connected to a totally enclosed septic system, or public sewer.

## **8-8. Farm Stands**

A farm stand shall be permitted as a seasonal accessory use related to an agricultural activity occurring on either a farm or a non-farm parcel, subject to the following regulations:

- A. The farm stand will be setback a minimum of twenty (20) feet from any street line.
- B. A vehicle not exceeding six thousand (6,000) pounds net weight may be considered a permitted farm stand. However, a vehicle, or any part thereof, customarily known as a tractor/trailer or any containerized storage unit shall not be permitted.
- C. Non-Farm Parcels: The total floor area of the stand shall not exceed one hundred fifty (150) square feet. The farm stand shall be solely for the seasonal display and sale of agricultural and value added products grown or produced on the premises.
- D. Farm Parcels: The total floor area of the stand shall not exceed four hundred (400) square feet. Farms may seek relief from this requirement through an area variance. The applicant may demonstrate a need for an area variance for additional space based upon the needs of existing farm operations. (See §3-2.B) The farm stand shall be solely for the seasonal display and sale of agricultural and value added products grown or produced on parcels owned or leased by the farm in conjunction with farm operations or from other farms. However, they may not resell any products previously bought at wholesale or retail establishments.

## 8-9. Gas Station and Convenience Store

- A. Location: No station, or parts thereof, shall be located within two hundred (200) feet, measured along contiguous street frontages, of any place of residence or public assembly such as, but not limited to churches, schools, theaters, auditoriums, parks and playgrounds.
- B. Size: No more than four (4) gas pumps shall be permitted in the C District unless the following circumstances exist:
- (1) One (1) pump island may be added for each thirty (30) feet of frontage additional to the minimum required herein, provided such additional frontage has a depth at least equal to that of the other portion of the lot, if located in a "C" district.
- C. Lot Coverage. Lot coverage for such station shall not be more than 40% of the site.
- D. Minimum Yard Requirements
- (1) All structures, except for underground storage tanks, shall be setback from the street line a distance of not less than forty (40) feet.
  - (2) No portable signs or other devices shall be located within the setback area required in the preceding paragraph (d)-1, except as otherwise provided in Article XII.
  - (3) Side and rear yards of not less than two hundred (200) feet shall be provided along all other property lines. Such yards shall be provided with an opaque fence of not less than four (4) feet, nor more than six (6) feet in height placed along the property line, or provided with an all-year, solid, evergreen hedge of not less than four (4) feet in height planted along the property line and a ten (10) foot wide landscaped strip adjacent to such residential area.
  - (4) Gasoline Pump Islands shall be located not less than twenty-five (25) feet from the street right-of-way lines and not less than thirty (30) feet from all other property lines.
- E. Open Area
- (1) All open area shall be landscaped, where required, or paved with an impervious, all-weather, dustless material, provided, however, all such paved area shall be provided with a storm drainage system to conduct surface run-off into the nearest drainage system.
  - (2) All landscaped areas shall be adequately protected by a raised curb of not more than six (6) inches in height, or a bumper guard of not more than eighteen (18) inches in height.
  - (3) Curbs shall be provided along the edge of all areas accessible to motor vehicles to prevent the encroachment of vehicles or any portion thereof, upon adjacent property, or the street right-of-way.
- F. Ingress and Egress. Ingress and egress points for Gasoline Service Facilities shall be located a minimum of forty (40) feet from the intersection of right-of-way lines of any road.



## G. Lighting

- (1) All lighting shall be located such as to prevent the direct rays from shining upon adjacent properties.
- (2) All flickering, pulsating, or flashing lights and exposed neon lights are specifically prohibited.

H. All automotive parts, dismantled vehicles, and similar related articles shall be stored within a building.

I. Additions of Improvements to Existing Gasoline Service Stations Additions or improvements to any existing gasoline service station may be permitted upon compliance with the procedures established for the location of new stations, provided such additions or improvements comply with the requirements of this Article.

## 8-10. Greenhouses

Greenhouses measuring no more than one hundred forty-four (144) square feet are permitted. Greenhouses larger than one hundred forty-four (144) square feet are governed by the following:

- A. Said greenhouse shall be substantially in character with surrounding residences.
- B. No principal or accessory structure, for commercial use only, shall be located closer than thirty (30) feet to any side or rear property line.
- C. A buffer strip consisting of interlocking trees and foliage shall be provided on all side and rear property lines.

## 8-11. Filling and Excavating

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

## **8-12. Home Occupations**

- A. A home occupation shall be carried on wholly indoors and within the principal building or within an accessory structure on the same parcel.
- B. There shall be no use of show windows, displays, or advertising visible outside the premises to attract customers or clients other than signs as permitted.
- C. There shall be no exterior storage of materials.
- D. No external alterations, additions, or changes to the structure shall be permitted in order to accommodate or facilitate a home occupation, if the alterations would alter the residential character of the building.
- E. No articles shall be sold or offered for sale except such as may be produced on the premises, or as may be delivered to consumers.
- F. No repetitive servicing by truck for supplies and material shall be required as a result of the home occupation.
- G. A home occupation shall be carried on only by members of the immediate family residing in the dwelling unit plus not more than one (1) additional employee.
- H. The floor area devoted to a home occupation shall not be more than twenty-five (25) percent of the ground floor area of the principal residential structure or five hundred (500) square feet, whichever is less.
- I. In particular, a home occupation includes, but is not limited to the following: art studio; professional office of a physician, dentist, lawyer, engineer, architect, writer, or accountant; beauty parlor or barber shop; the repair of appliances or other small items; and the teaching of not more than four (4) pupils simultaneously.
- J. Among the uses that shall not be interpreted to be a home occupation are the following: animal hospital, commercial stables and kennels, and restaurant.
- K. The off-street parking area shall be able to accommodate a minimum of three (3) parked cars.
- L. A business intent form must be on file with the Clerk and it must be reviewed and approved by the Zoning Code Officer.

## **8-13. Inns, Hotels, and Motels**

- A. The minimum lot size shall be three (3) acres.
- B. Shall have frontage on a State or County road.

## **8-14. Outdoor Storage of Materials and Equipment**

A. No material of any kind shall be stored outdoors in any zoning district, except a one- or two-family lot, unless:

- (1) Allowed as part of an approved site plan;
- (2) Used in the construction or alteration of a structure on the same lot or in the same development and stored for not more than one year or not more than 60 days after completion of construction, whichever is less; or
- (3) Such outdoor storage is limited to machinery, equipment or supplies essential to the operation of a farm or storage of any products grown on the premises of a farm or nursery.
- (4) Law Section 25AA, the property located in a state certified, county managed Agricultural District and the storage is expressly allowed by New York State Agricultural and Markets Law.
  - a. No more than one unregistered, unlicensed motor vehicle is allowed to be stored outside on any lot except in accordance with §8-3, Automobile and General Repair.
  - b. No front yard shall be used for any open storage or other storage of boats, motor homes, camping trailers, utilities trailers or other similar equipment.
  - c. All enclosed storage shall be within structures, which meet the requirements of the New York State Uniform Fire Prevention and Building Code. Storage of and in mobile homes not connected to public utilities or tractor-trailer bodies is not allowed in any district.
  - d. No outdoor storage shall occur within 100 feet of a residential or lakeshore district. Outdoor storage shall provide a combination of distance and appropriately dense plantings or setback from residential or transitional uses or districts.
  - e. The outdoor storage of motorized watercraft and watercraft designed to be propelled by a motor that do not display current registration stickers or any type of watercraft that is not seaworthy shall be prohibited. No seaworthy, motorized watercraft or watercraft designed to be propelled by a motor shall be stored outdoors on any residential or vacant property unless said watercraft is registered to the owner of the property or to the tenant or tenants who reside thereon.
- (5) Allowed as part of the operation of an approved junkyard.

## **8-15. Ponds**

A pond or any artificial body of water over a depth of two feet must be set back a minimum of 100 feet from all property lines and existing septic systems. Warning signs or other visual indicators may be required as determined by the Planning Board or Town Board.

### **8-16. Multifamily Dwellings**

- A. Driveways for ingress and egress shall be as required by the Town of Fleming.
- B. The minimum distance between buildings in a multifamily development shall be 25 feet. No multifamily dwelling or required recreation area shall be closer to a preexisting single family or two-family dwelling than fifty (50) feet.
- C. Parking areas may be located in any yard other than the front yard, but no closer than 20 feet from any property line and shall comply with all other regulations of the district in which the use is located.
- D. Every multifamily dwelling building in a development shall have minimum setback of 20 feet from all interior roads, driveways and parking areas.
- E. Each multifamily dwelling development shall provide a recreation area or areas furnished with suitable equipment at a standard of 100 square feet for each dwelling unit with minimum of 400 square feet per area.
- F. Multifamily dwellings must be served by public water and sanitary sewers.
- G. Development applications for multifamily dwelling units shall be subject to Site Plan Review by the Planning Board in accordance with Article XV.
- H. No multifamily building shall contain more than eight dwelling units.

### **8-17. Keeping and Raising of Livestock**

The keeping and raising of livestock, except as part of an agricultural operation located in a County-adopted Agricultural District, shall be subject to the following standards:

- A. Structures for the keeping or raising of livestock, small animals or poultry shall be located no closer than one hundred (100) feet to any side, rear or front property line.
- B. Such use shall not be detrimental or injurious to the character of the neighborhood or any principle use located therein.
- C. Said area shall be completely fenced and enclosed housing must be provided for the animals.
- D. Maximum limit of two (2) animal housing units per acre of the fenced area.

### **8-18. Riding Academy**

- A. Minimum lot size shall be ten (10) acres.
- B. No stable shall be less than two hundred (200) feet from any lot line.

- C. A fence shall shield any refuse disposal.

### **8-19. Schools**

Religious, sectarian and non-sectarian, denominational, private or public schools not conducted as a private gainful business must follow these additional regulations:

- A. Lot size must be a minimum of five (5) acres.
- B. Must have a minimum one hundred (100) feet from all property lines
- C. All local health and fire codes must be conformed to.

### **8-20. Swimming Pools**

A single private outdoor swimming pool per principal building is permitted as an accessory use provided that such swimming pool is for the private use of the residents of the dwelling and/or for their guests and provided that the edge of the pool is not located closer than twenty (20) feet to any property line and does not occupy more than 10 percent (10%) of the lot area. In-ground pools must have a four (4) foot high fence completely surrounding the area of the swimming pool with a self-closing gate. Decks to above ground pools must have retractable steps.

- A. Maintenance. Every swimming pool presently constructed or installed or hereinafter constructed or installed shall be maintained at all times in such manner as never to constitute a nuisance, hazard or menace to the public health or safety. The water contained in swimming pools shall, at all times, be properly chlorinated and the quality maintained so as to be suitable for human bathing and swimming. At no time shall the water contained in swimming pools or, if the swimming pools have been drained, shall rain water or water from some other source be permitted to accumulate or pond in the swimming pool such that the water becomes stagnant and could harbor mosquito larvae or other vector. Any such hazard that may exist or develop in or in consequence of or in connection with any swimming pool shall be forth with abated by the person in possession, owning or having jurisdiction over such swimming pool upon receipt of notice from the Town Zoning Officer.
- B. Abandonment. No swimming pool shall be abandoned or its use permanently discontinued unless, if the swimming pool is an in-ground pool, the owner of the property fills the swimming pool with clean soil and restores the surface of the ground to its original grade or, if the pool is an above-ground pool, demolishes the swimming pool, removes the demolition debris for the property and restores the land on which the swimming pool was located to its original condition within thirty day (30) of abandoning or permanently discontinuing use of the swimming pool. In the event the person in possession, owning or having jurisdiction over a swimming pool does not abate a swimming pool hazard or hazards within ten (10) days of receipt of the notice from the Town Zoning Officer or permits a swimming pool hazard to recur more than three (3) times during any one (1) calendar year, the swimming pool shall be deemed to be abandoned.
- C. Enforcement. In the event the owner of the property on which a swimming pool has been abandoned or its use permanently discontinued shall fail to fill such swimming pool with clean soil, if the pool is an in-ground pool; or to demolish the swimming pool and remove the debris, if the pool is an above-ground swimming pool within thirty (30) day after receipt of written notice given

by the Zoning Officer, the Town may, in addition to all other available remedies, proceed to fill and/or demolish such swimming pools and the expense of so doing shall become lien against such property and shall be collected in the same manner as taxes levied against said property.

**8-21. Temporary Uses and Structures**

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

**8-22. Travel Trailers**

Except as permitted by §8-21, Temporary Uses and Structures, no person shall use or occupy any travel trailer, tent trailer, tent or motor home for living or sleeping quarters within Fleming for more than 45 days per calendar year, unless such use is carried on within a campground.

**8-23. Wind Power Generation Facilities**

A special use permit may be granted by the Town Board for a wind power generation facility if the following conditions are met:

- A. The distance from all lot lines to any tower support base of the wind power generation facility shall be determined according to the following wind power generation facility setback table. Intermediate rotor size distances shall be interpolated. The Town Board may grant a reduction in the specific setback table distance when it finds that such reduction shall not adversely affect surrounding property and is consistent with the intent of this title to promote the public health, safety, and general welfare.

<b>Wind Power Generation Facility Setback Table</b>	
<b>Rotor Diameter (in feet )</b>	<b>Setback Distance (in feet)</b>
<b>5</b>	<b>100</b>
<b>10</b>	<b>165</b>
<b>15</b>	<b>220</b>
<b>20</b>	<b>270</b>
<b>25</b>	<b>310</b>
<b>30</b>	<b>340</b>
<b>35</b>	<b>365</b>
<b>40</b>	<b>385</b>

- B. The distance from any tower support base of a wind power generation facility to any tower support base of another wind power generation facility under other ownership shall be a minimum of five rotor distances figured by the size of the largest rotor. The Town Board may grant a reduction in this requirement if it finds that such reduction does not adversely affect the operation of either facility.
- C. The wind power generation facility operation shall not cause interference to the radio and television reception on adjoining property.
- D. To limit climbing access to the wind power generation facility tower, a fence six feet high with a locking portal shall be placed around the facility's tower base or the tower climbing apparatus shall be limited to no lower than twelve feet from the ground, or the facility's tower may be mounted on a roof top.
- E. Data pertaining to the machine's safety and stability shall be filed with the application. Such data shall include safety results from tests facilities.
- F. The applicant shall provide covenants, easements, or similar documentation from the abutting owners providing access to wind sufficient for its adequate operation, unless adequate accessibility to the wind is provided on the site.
- G. The wind power generation facility, if interconnected to a utility system, shall meet the requirements for interconnection and operation as set forth in the electric utility's then current service regulations applicable to wind power generation facilities.

**ARTICLE IX**  
**Nonconforming Uses, Buildings and Lots**

**9-1. Continuation**

The lawful use of any structure or land existing at the effective time of this local law may be continued although such use does not conform to the provisions of the Law except as otherwise provided in this Article.

**9-2. Alteration or Extension**

- A. A use of land or structure which does not conform to the regulations of this Law shall not be altered, reconstructed, extended or enlarged, except in accordance with the following provisions:
- (1) Such alteration or extension shall be permitted only upon the same lot as in existence at the date the use became nonconforming.
  - (2) Any increase in volume, area or extent of the nonconforming use shall not exceed an aggregate of more than twenty-five (25) percent during the life of the nonconformity.
  - (3) For the purposes of this section "Volume" does not mean volume of business but rather an increase of cubic volume within a structure.

**9-3. Restoration**

No structure damaged by fire or other causes to the extent of more than seventy-five (75) percent of its fair market value shall be repaired, reconstructed or used except in conformity with the regulations of this Law. A structure with damage to the extent of seventy-five (75) percent or less of the fair market value may be reconstructed, repaired or used for the same nonconforming use subject to the following provisions:

- A. The reconstructed structure shall not exceed the height, area or volume of the damaged structure except as provided by §9-2.
- B. Reconstruction shall begin within six (6) months from the date of damage and shall be carried on without interruption.

**9-4. Substantial Abandonment**

Whenever a nonconforming use has been discontinued for twelve (12) consecutive months, such use shall not thereafter be reestablished and any future use shall be in conformance with the provisions of this Local Law.



## **9-5. Changes**

Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to another nonconforming use only under the following conditions:

- A. Such change shall be permitted only by special use permit, under the provisions of §8-1.
- B. The applicant shall show that the nonconforming use cannot reasonably be changed to a permitted use in the district where such nonconforming use is located.
- C. The applicant shall show that the proposed change will be less objectionable in external effects than the existing nonconforming use with respect to:
  - (1) Traffic generation and congestion including truck, passenger car and pedestrian traffic.
  - (2) Noise, smoke, dust, noxious matter, heat, glare, vibration.
  - (3) Storage and waste disposal.
  - (4) Appearance.

## **9-6. Displacement**

No non-conforming use shall be extended to displace a conforming use.

## **9-7. District Changes**

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

## **9-8. Zoning Permit Required**

Zoning permits shall be issued by the Zoning Officer for all lawful nonconforming uses existing at the effective date of this Law. The zoning permit shall include a statement that the use is nonconforming and shall list the specific conditions under which said use may continue. It shall be signed by both the Zoning Officer and the Owner.

**ARTICLE X**  
**Landscaping, Screening and Buffer Regulations**

**10-1. Intent.**

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

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

**10-2. Applicability**

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

- A. Building permits for construction of new one-family or two-family dwellings in major subdivisions shall require preservation of existing vegetation or planting to provide two shade trees of two-inch caliper for each dwelling. Such tree(s) shall be located outside the public right-of-way in the front yard.
- B. Major residential subdivisions shall be required to submit landscaping plans in accordance with §10-4 of this article indicating appropriate landscaping of entrances, common open spaces and recreation areas and perimeter buffer areas.
- C. Development activities requiring site plan approval shall submit, as part of such approval, a landscaping plan in accordance with §10-4 of this article.

### **10-3. General Requirements**

- A. Existing site vegetation and unique site features, such as stonewalls, shall be incorporated into landscaping plans to the maximum extent feasible. Existing healthy trees which are retained shall be credited against the requirements of these regulations in accordance with their size and location.
- B. Issuance of a Certificate of Occupancy shall require completion of lot grading, seeding and required landscaping or posting of a performance guaranty acceptable to the Zoning Officer if the applicant cannot perform the work due to seasonal impracticalities.
- C. All required landscaping shall be of healthy stock, planted according to accepted horticultural practices. Landscaping plans shall clearly indicate who is responsible for plant maintenance during the first 12 months after planting, and a performance guaranty shall be posted for assuring replacement in kinds of plants, which die or become diseased with in that time.
- D. All required landscaping shall be maintained in healthy condition. Failure to maintain such landscaping or to replace dead or diseased landscaping required by this article shall constitute a violation of these regulations.
- E. All plant material adjacent to parking areas, loading areas and driveways shall be protected by barriers, curbs or other means by damage from vehicles or from stormwater runoff.
- F. Where existing conditions make compliance with these regulations not feasible, the Planning Board, at its discretion, may approve planters, plant boxes or pots containing trees, shrubs and/or flowers to comply with the intent of these regulations.
- G. In cases where the edge of pavement within a public right-of-way does not coincide with the front lot line, the property owner shall landscape the area between the front lot line and the edge of the street pavement.
- H. Trees for screening shall be of species and stock that will provide a visual screen from the ground up, at least 5 feet in height.

### **10-4. Landscaping Plan**

- A. Based on the scale and location of the project the Zoning Officer or Planning Board shall determine whether the landscaping plan must be prepared by a licensed landscape architect, landscape designer or other professional. All landscaping plans shall contain the following information:
  - (1) A title block with the name of the project, then name of the person preparing the plan, a scale, North arrow and date.
  - (2) All existing significant plant materials on the site.
  - (3) Existing and proposed structures.
  - (4) Topographical contours at two-foot intervals.

- (5) Parking areas.
  - (6) Access aisles.
  - (7) Drainage patterns.
  - (8) Location, size and description of all landscape materials existing and proposed, including all trees and shrubs, and shall identify those existing plant materials that are to be removed.
  - (9) Other information as may be required by the Zoning Officer and/or the Planning Board.
- B. Alternative landscaping plans may be submitted, provided that they meet the purpose and intent of these regulations.

**ARTICLE XI**  
**Off-street Parking and Loading Regulations**

**11-1. Intent**

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

**11-2. Applicability**

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

**11-3. Location of Required Spaces**

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

- A. For one-family detached, semi-detached, two-family, and attached dwelling units, off-street parking shall be provided on the same lot with the building it serves.
- B. For multifamily dwellings, required off-street parking shall be located as close to the use as possible, given site conditions, and in no case more than 200 feet from the building it is required to serve.
- C. Access drives to any commercial or industrial district through any residential or transitional district shall not be considered to be a permitted use.
- D. The location, dimensions and signage of handicapped parking shall meet the requirements of the New York State Uniform Fire Prevention and Building Code.

**11-4. Required off-street Parking and Loading Spaces**

- A. Parking Space: The following off-street parking provisions constitute the minimum space required for the following buildings and uses hereafter erected, converted or otherwise established in any district.

- (1) One Family Detached Dwelling and Two Family Dwelling: Two (2) off-street parking spaces for each dwelling unit.

- (2) Multiple Family Dwelling and Residential Structures in a Mobile Home Park: One and one half (1-1/2) parking spaces for each dwelling unit.
- (3) Bed & Breakfast, Inns, Motel, Hotel: One (1) off-street parking space for each rental room or suite, plus one (1) additional space for every five (5) rental room or suite for employees.
- (4) Eating or Drinking Establishment: Two (2) off-street parking spaces for each fifty (50) square feet of floor area.
- (5) Church, Library and Fire Station: One (1) off-street parking space for every four (4) seats of the listed maximum occupancy of the property, plus three (3) additional spaces for employees.
- (6) Retail and Office Uses: One (1) off-street parking space for each hundred (100) square feet of gross floor area.
- (7) Healthcare Institutions, Nursing Homes, Group Homes: One (1) off-street parking space for every two hundred (200) square feet of floor space.
- (8) Home Occupation: Three (3) off-street parking spaces in addition to the requirement for dwelling.
- (9) Agricultural Drive-In Stand: One off-street parking space for each one hundred (100) square feet of area occupied by the stand, but in no case fewer than three (3) such spaces.
- (10) Loading and Unloading Space: Off-street loading and unloading space, sufficient to accommodate the maximum demand generated by the use of the lot, shall be provided on any lot on which a building for commercial use is hereafter erected or substantially altered. All off-street loading and unloading spaces shall have an all-weather surface to provide safe and convenient access and use during all seasons.

### **11-5. Exceptions**

At the discretion of the Planning Board, uses within 500 feet of a municipal parking lot or designated on-street parking may be wholly or partially exempt from off-street parking requirements. Such uses may be required to make a cash payment in lieu of providing off-street parking with such moneys dedicated to expansion or improvement of public parking facilities within the same commercial district.

### **11-6. Alternate Parking**

- A. The collective provision of off-street parking areas for two or more buildings or uses located on adjacent lots is permitted. Unless it has been demonstrated that joint use is appropriate in accordance with Subsection C below, the total of such off-street parking facilities shall not be less than the sum required for the various buildings or uses computed separately. Furthermore, the land upon which the collective facilities are located must be owned or leased by one or more of the collective users.

- B. Off-site parking. Off-site parking meeting the location requirements of §11-3 may be used to meet the requirements of this article. Such off-site parking shall be subject to deed, lease or contract restrictions acceptable to the Municipal Attorney binding the owner, heirs or assigns to maintain the required number of spaces available throughout the life of such use.
- C. Joint use. The off-street parking requirement of two or more use, structures or parcels of land may be shown by the owners or operators of the uses, structures or parcels that their operations and parking needs do not overlap at any point in time. If the uses, structures or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract or other appropriate written document to establish the joint use.

#### **11-7. Nonconforming parking and loading**

Neither building or lot alterations nor change of use shall be allowed which would increase the degree of nonconformity with the off-street parking and loading regulations of this article.

#### **11-8. Design standards for off-street parking**

- A. All parking facilities provided under this article shall be located off the public right-of-way and shall contain an area of at least two hundred (200) square feet per automobile parking space exclusive of access ways, aisles and maneuvering space. Each space shall have an all-weather surface, which may consist of gravel, crushed stone, concrete or black top.
- B. Driveways and parking areas for nonresidential uses except home occupations shall include, within the property lines, turning areas so constructed and surfaced that a vehicle entering or leaving the property is not required to back onto the street.
- C. All illumination on parking lots shall be shielded so as not to produce a strong dazzling light upon abutting properties.
- D. The size of standard perpendicular off-street parking spaces shall be a minimum of nine feet wide by 20 feet long.
- E. Off-street parking areas shall include landscaping in accordance with Article X.
- F. Where parking spaces abut sidewalks, landscaped areas, lighting fixtures or fences, appropriate car stops shall be installed to prevent encroachment on or damage to such features.
- G. All off-street parking areas of more than 20 spaces shall provide a snow-storage area independent of required parking and loading areas.
- H. No driveway to an off-street parking area shall be located closer than 50 feet to the intersection of any two streets or within 20 feet of any side lot line, provided that sufficient distance will always remain for all required radii for said driveway. The distances from the driveway to the intersection shall be measured by extending the curblines of the intersecting street until it intersects the curblines, extending if necessary of the driveway in question.

- I. Driveways shall be designed to provide for the safe and efficient movement of traffic between the roadway and the site, to eliminate the potential for stacking of vehicles along the public right-of-way and to minimize interference with pedestrians and vehicles using the site and the public right-of-way.
- J. Curb cuts for ingress and egress onto existing roadways shall be a maximum of 20 feet for residential uses and 35 feet for non-residential uses. The location and distance between curb cuts and to intersections shall be in accordance with NYS Department of Transportation design standards.

**11-9. Design standards for loading facilities**

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



## **ARTICLE XII**

### **Sign Regulations**

#### **12-1. Intent**

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

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

#### **12-2. Sign area**

- A. The area of a sign shall be constructed to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display itself.
- B. The area of a sign painted upon or applied to a building shall be considered to include all lettering, wording and accompanying designs or symbols together with any backing associated with the sign.
- C. Where the sign consists of individual letters or symbols attached to or painted on a surface, buildings walls or window, the area shall be considered to be that of the smallest rectangle or other shape that encompasses all of the letters and symbols.
- D. In computing square foot area of a double-face sign, each side shall be considered a separate sign.

#### **12-3. Permit requirement for signs**

All on-premises signs over ten (10) square feet in area and all off-premises signs, except official traffic signs and other official governmental signs, regardless of size shall require the issuance of a zoning permit before erection or replacement. All signs must comply with all of the regulations contained herein, irrespective of whether a permit is required.

#### **12-4. General sign regulations**

The following requirements shall apply to all signs.

- A. No sign shall have visible moving or moveable parts or flashing, animated or intermittent illumination.
- B. No sign shall project more than twelve (12) inches out from the wall to which it is attached. Signs not exceeding two (2) square feet in area may be placed perpendicular to a building face if attached to and below a canopy projection from said building.
- C. No sign shall be located within ten (10) feet of any side property line.
- D. No sign shall be located within any street lines except official traffic signs and other official governmental signs.
- E. Signs shall not project above the height limit permitted in any district in which they are located.
- F. All signs except temporary signs shall be constructed of durable material and kept in good condition and repair.
- G. Nonconforming signs, once removed, shall be replaced only with conforming signs; however, nonconforming signs may be repainted or repaired provided such repair does not increase the dimensions of the sign.

#### **12-5. On-premise signs**

- A. Signs attached to a building and to be viewed from without, provided the total area of all such signs placed on any one building shall not exceed one (1) square foot in area for each one (1) lineal foot of front building wall.
- B. One (1) free standing sign for each street frontage of a lot is permitted provided that the total area of such sign shall not exceed one (1) square foot for each lineal foot of lot frontage.
- C. Two (2) special temporary promotional devices, signs or displays such as banners and pennants are permitted at one time, but they must be removed the day after the event.
- D. Official traffic signs and other official federal, state, county or town government signs are permitted in the right-of-way.
- E. Signs displaying the name and address of the occupant of a dwelling, provided that the area of any such sign shall not exceed three (3) square feet per side and not more than one (1) such sign may be erected for each dwelling unit, unless such property fronts on more than one street, in which case one (1) such sign may be erected on each street frontage.
- F. Identification sign for housing development or apartment house provided that the area of any such sign shall not exceed twenty-five (25) square feet per side and not more than one (1) such sign shall be erected for any one (1) project, unless such project fronts on more than one (1) street, in which case one (1) sign may be erected on each street frontage.

- G. Signs advertising the sale of farm products, nursery products or livestock produced or raised on the premises, provided that the area of any such sign shall not exceed ten (10) square feet per side and not more than two (2) such signs may be placed on property held in single and separate ownership unless such property fronts on more than one street, in which case two (2) such signs may be erected on each street frontage.
- H. Signs denoting membership in agricultural associations, cooperatives or indicating specialization in a particular breed of cattle, hogs etc., or in particular hybrids or strains of plants. Such signs may also include the name of the farm of the owner.
- I. Bulletin or announcement board of schools, churches, hospitals, recreation areas and other principal uses and buildings other than dwellings, provided that the area of any such sign shall not exceed twenty-five (25) square feet per side and not more than one (1) such sign shall be placed on property held in single and separate ownership unless such property fronts on more than one (1) street, in which case one (1) such sign may be erected on each street frontage.
- J. Identification signs for schools, churches, hospitals, recreation areas, and other principal uses and building other than dwellings provided that such sign is attached to part of the building structure to which it relates and further provided that not more than one (1) such sign shall be placed on property held in single and separate ownership unless such property fronts of more than one (1) street, in which case one (1) such sign may be erected on each street frontage.
- K. Signs advertising the sale or rental of property, provided that the area of any such sign shall not exceed six (6) square feet per side and not more than one (1) such sign shall be placed on property held in single and separate ownership unless such property fronts on more than one street, in which case one (1) such sign may be erected on each street frontage. Such signs shall be removed immediately upon final settlement or renting a property.
- L. Temporary contractors, developers, architects or builders signs provided that the area of any such sign shall not exceed ten (10) square feet per side. Such signs shall be removed immediately upon completion of the work.
- M. Trespassing signs, signs indicating the private nature of a road, driveway, or premises, signs controlling fishing or hunting on the premises provided that the area of any such sign shall not exceed four (4) square feet per side.
- N. Temporary signs announcing a campaign, drive or event of a civic, philanthropic, education or religious organization, and temporary political/election signs. Such signs shall not exceed ten (10) square feet per side in area, shall be posted no more than forty-five (45) days before the campaign, drive or event and shall be removed within seven (7) days upon its completion. If the sign is not removed within seven (7) days, the sign will be removed by the Town and the costs incurred will be paid by the owner of the sign.
- O. Memorial signs or tablets shall not exceed twenty (20) square feet.

## **12-6. Off-premise signs**

- A. Off-premise signs, which are used for directing patrons, members or audience to service clubs, churches or other non-profit organizations, may be erected subject to the following requirements:
- (1) A sign shall indicate only the name of the organization and the direction to the facility.
  - (2) Only one (1) such sign may be erected prior to each intersection turning movement necessary to reach such facility.
  - (3) Signs shall not exceed four (4) square feet in area for each organization represented, except for cooperative displays by more than one (1) organization, in which case the maximum size shall be twenty-five (25) square feet.
- B. Signs directing patrons, members or audience to temporary exhibits, shows or events are subject to the following requirements:
- (1) No such sign shall exceed ten (10) square feet in area.
  - (2) Signs shall be removed within seven (7) days after the date of the exhibit, show or event.
  - (3) No permit shall be issued for the erection of such signs until a deposit shall be made with the Town Clerk in accordance with a fee schedule adopted by the Town Board to guarantee removal within the time prescribed. Failure to remove such signs within the time prescribed shall result in forfeiture of the deposit.
  - (4) No such sign shall be posted earlier than one month before the occurrence of the event to which it relates.
- C. Official traffic signs and other official federal, state, county or town government signs.
- D. Temporary signs announcing a campaign, drive or event of a civic, philanthropic, education or religious organization, and temporary political/election signs. Such signs shall not exceed ten (10) square feet per side in area, shall be posted no more than forty-five (45) days before the campaign, drive or event and shall be removed within seven (7) days upon its completion. If the sign is not removed within seven (7) days, the sign will be removed by the Town and the costs incurred will be paid by the owner of the sign.

## **12-7. Off-premise signs in A & C districts**

- A. Off-premise advertising signs shall be permitted in A & C District subject to the following requirements:
- (1) No such sign shall be located within one hundred (100) feet of a public street or road right-of-way.

- (2) No more than one (1) such sign may be placed on any one property held in single and separate ownership, unless such property has frontage on more than one road, in which case one (1) sign may be placed on each road frontage.
- (3) The area of any such sign shall not exceed one hundred (100) square feet, and the height shall not exceed ten (10) feet.

B. Off-premises signs, which are used for directing persons to principal uses in the Town, may be erected in the A & C District in accordance with the following requirements:

- (1) A sign shall indicate only the name and direction of the principal use.
- (2) Only one (1) such sign may be erected prior to each intersection turning movement necessary to reach such principal use and not more than fifty (50) feet from such intersection.
- (3) No more than two (2) directional signs shall be erected in the Town for any one principal use.
- (4) Signs shall not exceed fifteen (15) square feet in area.
- (5) Signs shall be no closer than fifteen (15) feet to a side lot line and shall not be located within the street line.
- (6) Signs shall not exceed ten (10) feet in height.

## **ARTICLE XIII**

### **Telecommunications Facilities**

#### **13-1. Intent**

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

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

#### **13-2. Applicability**

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

#### **13-3. General requirements**

Each application for a proposed facility shall be accompanied by a State Environmental Quality Review (SEQR) and a long Environmental Assessment Form (EAF). If the location is on a parcel identified in the Lakeshore District, any potential impacts to views to the lake must be included in the assessment.

A. No application will be considered for either new facilities or modified facilities unless the telecommunication facility meets the following criteria:

- (1) Is necessary to meet current or reasonable expected demands for services.
- (2) Conforms with all federal and state laws and all applicable rules or regulations promulgated by the Federal Communications Commission (the FCC), Federal Aviation Commission (the FAA), or any other federal agencies having jurisdiction.
- (3) Is considered a public utility in the State of New York.
- (4) Is sited, designed and constructed in a manner that minimizes both visual impacts to the extent practical and adverse impacts upon migratory birds and other wildlife.
- (5) Complies with all other requirements of this Law, unless expressly superseded here in.
- (6) Is the most appropriate site among those available within the technically feasible area for the location of a telecommunication facility.
- (7) When including the construction of a tower, such tower is designed to accommodate future shared use by at least two (2) other telecommunication service providers. Any subsequent locations of telecommunication equipment by other service providers on specifically designated 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, any additional equipment will require a special use permit review.

#### **13-4. Co-location**

The shared use of existing telecommunications facilities or other structures shall be preferred to the constructions of new facilities. Any application, renewal or modification thereof shall include proof that reasonable efforts have been made to collocate within an existing structure. The application shall include an adequate inventory report specifying existing telecommunications facility sites. The inventory report shall contain and evaluation of opportunities for shared use as an alternative to the proposed location.

A. The applicant must demonstrate that the proposed telecommunications facility cannot be accommodated on existing telecommunications facility sites in the inventory due to one (1) or more of the following reasons:

- (1) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or their structure, considering existing and reasonable anticipated future use for those facilities and structures.
- (2) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonable prevented.

- (3) Existing or approved telecommunications facilities or other structures do not have space and cannot be modified to provide space on which proposed equipment can be placed so it can function effectively and reasonable.
- (4) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities and structures.
- (5) The owner of the existing telecommunications facility or other structure refused to allow such co-location.

### **13-5. Dimensional Standards**

- A. A fall zone around any tower constructed as part of a telecommunications facility must have a radius at least equal to the height of the tower and any attached antennas. The entire fall zone may not include public roads and must be located on the property either owned or leased by the applicant or for which the application has obtained an easement, and may not, except as set forth below, contain any structure other than those associated with the telecommunications facility.
- B. All telecommunications facilities shall comply with the setback, frontage, minimum lot size, requirements of Article VI. To the extent there is a conflict, the more restrictive provision will govern. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone.
- C. The front, side, and rear yard requirements in which a telecommunications facility is erected shall apply not only to the tower, but also to all tower parts including guy wires and anchors and to any accessory buildings.

### **13-6. Lighting and marking**

Towers shall not be artificially lighted and marked beyond the requirements of the FAA. An applicant may be permitted to add FAA-style lighting and marking, even if not required by FAA, if in the judgment of the Planning Board, such a requirement would be of direct benefit to public safety and would not unduly adversely affect residents of any surrounding property.

### **13-7. Appearance and buffering**

- A. The use of any portion of a telecommunication facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons are prohibited.
- B. The facility shall have the least practical visual effect on the environment as determined by the Planning Board. Any tower that is not subject to FAA marking as set forth above shall otherwise:
  - (1) Have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board, or 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.



- (2) Accessory structures shall maximize the use of buildings materials, colors, and textures designed to blend in with normal surroundings.
- (3) Equipment or vehicles not used in direct support, renovations, additions or repair of any telecommunication facility shall not be stored or parked on the Facility site.
- (4) Existing on-site vegetation shall be preserved to the maximum extent possible. Clear-cutting of all trees in a single continuous area exceeding ten thousand (10,000) feet shall be prohibited.
- (5) Screening: Deciduous or evergreen tree planting shall be required to screen portions of the tower from near by residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public or private property, including streets, at least one row of native evergreen shrubs or trees forming a continuous hedge at least ten (10) feet in height at a time of planting to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include height of berm.

### **13-8. Access and parking**

- A. Access ways shall make maximum use of existing public or private roads to the extent practicable. New access ways constructed solely for Telecommunication Facilities must be at least twenty (20), but no more than sixty (60) feet wide and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- B. Parking areas shall be sufficient to accommodate the usual number of service vehicles expected on the premises at any one time. Space off of public highways shall be provided (not necessarily in parking areas) to accommodate the greatest number of service vehicles expected on the premises, at any one time.
- C. Driveways or parking areas shall provide adequate interior turn-around, such that service vehicles will not have to back out into a public thoroughfare.

### **13-9. Security**

- A. Towers, anchor points of guyed towers, and accessory structures shall be each surrounded by fencing at eight (8) feet in height, the top foot of which may, at the discretion of the Planning Board in the deference to the character of the neighborhood, be comprised of the three-strands of barbed wire to discourage unauthorized access to the site. The Planning Board may waive the requirement of fencing if, in its discretion, it determines that other forms of security are adequate, or that, by reason of location or occupancy, security will not be significantly compromised by the omission, or reduction in size, of the otherwise required fencing.

- B. Motion-activated or staff-activated security fencing 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 perimeters has been entered.
- C. There shall be no permanent climbing pegs within fifteen (15) feet of the ground of any tower.
- D. A locked gate at the junctions 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.
- E. There shall be a security alarm system, which is linked to either a local caretaker, or a local police agency.

### **13-10. Engineering and Maintenance**

- A. All plans for Telecommunications Facilities must bear the seal of a professional engineer licensed to practice on 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 the American National Standards Institute (ANSI).
- B. Every Facility shall be inspected at least every fifth year for structural integrity by a New York State licensed engineer. A copy of the inspection report shall be submitted by the owner/operator to the Planning Board and Building Zoning Officer. Any unsafe condition revealed by such report shall be corrected within ten days of notification of same to the record of the landowner on which the facility is constructed. The time period for correction may, on application of the landowner or the owner of the facility, be extended by the Zoning Board of Appeals if it is impracticable to complete the correction within said ten (10) days and if there is no imminent danger to life, limb or other person's property. If the unsafe condition is not corrected within the applicable time period, or if the required inspection is not provided to the Town, the special approval for construction of the facility may, after a hearing by the Zoning Board of Appeals on at least ten (10) days prior notice to the landowner of record given by certified mail, return receipt requested, or other equally effective manner of providing notice, be revoked by such Board. Revocation may occur only if the Board finds either that the required inspection has not been provided or that there is an unsafe condition that poses a risk to bodily injury or significant property damage. Upon such revocation, the facility shall be removed or dismantled to the point of removing all unsafe conditions.
- C. A safety analysis by a qualified professional must accompany any special use permit or special use permit application, renewal thereof or modification, for the purpose of certifying that general public electromagnetic exposure does not exceed standards set by the FCC or any permit granted by the FCC.
- D. The municipality, at the expense of the applicant, may employ its own consulting assistance to examine the application and related documentation and make recommendations as to whether the criteria for granting the special approval have been met, including whether the applicant's conclusions regarding need, co-location, safety analysis, visual analysis, and structural inspection, are valid and supported by generally accepted and reliable engineering and technical data and standards.

### **13-11. Removal**

- A. At the time of application submission for a special approval for a telecommunication facility, the applicant shall submit an agreement to remove, within ninety (90) days, all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(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 six (6) 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 lands.
- B. 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 Board, but not less than forty thousand dollars (\$40,000).
- C. At times of modification or removal of the special approval, the Town 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.

**ARTICLE XIV**  
**Subdivision of Land**

**14-1. Authority for Plat Approval; Compliance with Policy.**

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

**14-2. Definitions.**

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

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

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

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

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

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

**MAJOR SUBDIVISION** – Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five (5) or more lots or any sized subdivision requiring a new street or extension of municipal facilities.

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

**MINOR SUBDIVISION** – Any subdivision which contains not more than four (4) lots fronting on an existing street; does not include any new street or road; does not require the extension of municipal facilities; does not adversely affect adjacent properties; and is not in conflict with any provision of the Comprehensive Plan and Official Zoning Map of the Town of Fleming, or these regulations.

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

**PRELIMINARY PLAT** – A drawing or drawings, clearly marked ‘preliminary plat,’ showing the significant features of a proposed subdivision, as specified in §14-8 of this Law, submitted to the Planning Board for the purposes of consideration prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

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

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

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

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

**SUBDIVISION** – The legal division of any tract of land into two (2) or more lots, plots, sites or other divisions of land for the purpose, whether immediate or future, of transfer of ownership, lease or building development, and shall include resubdivision.

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

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

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

### **14-3. Applicability.**

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

### **14-4. Pre-application Sketch Plan Conference.**

Prior to the application for approval of a subdivision plat for either a major or minor subdivision, the subdivider is encouraged to have a sketch plan conference with the Zoning Officer. The purpose of the sketch plan conference shall be to present to the Zoning Officer, for initial review, discussion and comment, a design concept or plan for the development of a parcel or parcels within the Town of Fleming. During the conference, the applicant and the Zoning Officer shall review and discuss the basic subdivision design concept and generally determine the information to be required and provided on the sketch subdivision plat.

### **14-5. Sketch Plan Submission Requirements.**

- A. Prior to submitting an application for approval of a subdivision plat, for either a major or a minor subdivision, the subdivider shall submit a sketch plan for informal review by the Planning Board. The sketch plan shall contain the following information:
- (1) The general location of the site with respect to existing or proposed streets and rights-of-way, permanent open space, as well as buildings and other facilities.
  - (2) Specific identification of all properties, subdivisions, streets and easements within 200 feet of the parcel.
  - (3) General identification of all existing utilities in the area.
  - (4) Identification of internal streets or traffic circulation pattern, if any, of the proposed development, including pedestrian-ways.
  - (5) The location of all existing and proposed structures on the site, and designated uses for each.
  - (6) Identification of existing zoning classification(s) of the property and all adjacent properties, and any restrictions on land use of the site.

- (7) Identification of existing natural features on the site or within 200 feet of the site or at the discretion of the Zoning Officer or subject to other state or federal regulations which may restrict development.
- (8) A map of site topography at no more than two-foot contour intervals or at the discretion of the Planning Board. If general site grades exceed 5% or portions of the site are susceptible to erosion, flooding or ponding, a soils overlay and topographic map showing contour intervals of not more than one foot of elevation shall be provided.

B. The Planning Board shall determine whether the sketch plan meets the purposes of this article. The Planning Board shall also determine whether the proposed subdivision is a minor subdivision or a major subdivision for the purposes of this article. The Planning Board shall inform the subdivider of the necessary action to take in meeting the requirements of this article.

#### **14-6. Procedures for Review of Major and Minor Subdivision Plats.**

##### **A. Application.**

- (1) Prior to subdividing land in the Town of Fleming, the subdivider shall submit an application for approval of a subdivision plat to the Zoning Officer.
- (2) The Zoning Officer shall determine, if the Planning Board has not previously done so, whether the proposed subdivision is a major or minor subdivision for the purposes of this Law. If the determination requires interpretation, the Zoning Officer shall request the Planning Board to make the determination at its next regular meeting.
- (3) If the proposed subdivision is determined to be a minor subdivision, the subdivider shall submit a final plat for a minor subdivision, in conformance with the requirements listed in §14-7 of this article, and §276 and §277 of the New York State Town Law.
- (4) If the proposed subdivision is determined to be a major subdivision, the subdivider shall, prior to filing a final plat for a major subdivision, submit a preliminary plat for a major subdivision, in conformance with the requirements listed in §14-8 of this article, and §276 and §277 of the New York State Town Law.

B. Number of copies. The subdivider shall submit a minimum of five copies of the plat unless otherwise specified by the Planning Board or Zoning Officer.

- (1) Study proposed subdivision. The Board shall study the practicability of the proposed subdivision, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to water supply, sewage disposal, drainage, natural resources, lot sizes and arrangements, the future development of the adjoining lands as yet unsubdivided and the requirements of the Comprehensive Plan, and the Official Zoning Map and regulations. Where applicable, the Planning Board shall also consider the arrangement, location and width of streets and driveways or access roads as well as other circulation elements with regard to their relation to the topography of the land, safety and efficiency, and the adequacy of municipal facilities proposed to serve the subdivision. Planning Board review of subdivision plats shall also comply with SEQRA.

- (2) Public hearing. A public hearing shall be held by the Planning board within 62 days from the submission of a complete subdivision plat for approval or within 62 days after the filing of the notice of completion of a draft environmental impact statement, if required. Said hearing shall be advertised at least once in a newspaper of general circulation at least five days before such hearing or 14 days prior if the hearing is under the SEQRA. Further, the Planning Board is authorized, upon written application, to waive the public hearing for any of the following conditions:
- a. Subdivision of land into lots of 10 or more acres which have been and will continue to be used for agriculture and on which no residential dwelling shall be built.
  - b. Minor subdivisions which do not require public improvements.
  - c. Slight changes in lot lines for a filed subdivision. Such lot-line changes must not alter substantially the lot dimensions or overall subdivision design nor significantly affect drainage, water supply, natural resources or traffic circulation.

#### **14-7. Final Minor Subdivision Plat Approval.**

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



- (6) All existing restrictions on the use of land, including easements and covenants.
- (7) The location of any wells and septic systems within 100 feet of any property boundary.
- (8) Boundaries and designation of any flood hazard zones located on the property.
- (9) The zoning district, including exact boundary lines of the district, if more than one district, and any proposed changes in the zoning district lines and/or the text of this Law, Zoning, applicable to the area to be subdivided.
- (10) The location of existing property lines, easements, structures and natural features within 200 feet of the proposed subdivision or at the discretion of the Zoning Officer. Natural features shall include, but are not limited to, natural forests, steep slopes, floodplains, scenic views, stream corridors and wetlands, subject to state or federal regulations which may restrict development.
- (11) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearing and distances, made and certified by a licensed land surveyor.
- (12) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the Cayuga County Department of Health, and a note to this effect shall be stated on the plat.
- (13) The proposed subdivision name and the names of the municipality and county in which it is located.
- (14) The date, North point, map scale, name and address of the record owner and subdivider.
- (15) A storm water pollution prevention plan (SWPPP) in accordance with the most current version of the New York State Stormwater Management Design Manual. As determined by a design professional, and to the Town's satisfaction, post-construction runoff rates shall not exceed pre-construction runoff rates.
- (16) The plat to be filed with the County Clerk shall be printed and produced in accordance with the standards established by the County Clerk.

D. The following documents shall also be submitted:

- (1) All forms and information necessary for compliance with New York State Quality Review Act (SEQRA).
- (2) An agricultural data statement if the proposed subdivision is in or within 500 feet of a farm operation in a county agricultural district.
- (3) Result of soil percolation and groundwater availability tests if deemed necessary by the Planning Board.

E. Action on final plat for minor subdivision. The Planning board shall, within 62 days from the date of the public hearing, conditionally approve, disapprove or grant final approval and authorize the signing of such plat. The grounds for refusal shall be stated in the records of the Planning Board. Such plat shall not be approved unless previously signed by all other applicable municipal and/or utility officials.

#### **14-8. Preliminary Major Subdivision Plat Approval.**

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

- (10) The location of existing property lines, easements, structures and natural features within 200 feet of the proposed subdivision or at the discretion of the Zoning Officer. Natural features shall include but are not limited to natural forests, steep slopes, floodplains, scenic views, stream corridors and wetlands subject to state or federal regulations which may restrict development.
  - (11) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by monuments as approved by the Municipal Engineer and shall be referenced and shown on the plat.
  - (12) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the Cayuga County Department of Health and all other applicable public utilities, and a note to this effect shall be stated on the plat.
  - (13) The proposed subdivision name and the names of the municipality and county in which it is located.
  - (14) The date, North point, map scale, name and address of the record owner and subdivider.
  - (15) The plat to be filed with the County Clerk shall be printed and produced in accordance with the standards established by the County Clerk.
  - (16) All parcels of land proposed to be dedicated to public use and the conditions of such dedication, including maintenance easements.
  - (17) The location of existing and proposed sewers, water mains, culverts and drains on the property, with pipe sizes, grades and direction of flow.
  - (18) Contours with intervals of two feet or less as required by the board, including elevations on existing roads and the approximate grading plan if natural contours are to be changed more than two feet.
  - (19) Location of proposed permanent open space.
  - (20) A storm water pollution prevention plan (SWPPP) in accordance with the most current version of the New York State Stormwater Management Design Manual. As determined by a design professional, and to the Town's satisfaction, post-construction runoff rates shall not exceed pre-construction runoff rates.
- D. Applications involving improvements intended for public dedication shall include plan and detail sheets for the required improvements. The form and design criteria and construction specifications of the relevant municipality and other public utility agencies.
- (1) The width and location of any streets or public ways or places shown on the Official Zoning Map or the Comprehensive Plan, within the area to be subdivided, and the width, location, grades and street profiles of all streets or public ways proposed by the subdivider.

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

E. The following documents shall be submitted for approval:

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

F. Action on preliminary plat for major subdivision. Within 62 days after the date of the public hearing, the Town Board shall approve, with or without modifications, or disapprove such preliminary plat. The grounds of a modification, if any, as it deems necessary for submission of

the plat in final form. A copy of the resolution, including any conditions or modifications necessary for final plat approval shall also be mailed to the subdivder or duly authorized agent.

#### **14-9. Final Major Subdivision Plat Approval.**

- A. Application and fee.
  - (1) Within six months of the approval of the preliminary plat, the subdivider shall file with the Planning Board an application for approval of the subdivision plat in final form.
  - (2) All applications shall be accompanied by a fee established by resolution of the Town Board.
  - (3) If the final plat is not submitted within six months of the approval of the preliminary plat, the Town Board may revoke the approval of the preliminary plat.
- B. Number of copies. The subdivider shall submit to the Zoning Officer a copy of the application and three copies of the plat, plus the original and one true copy of all offers of cession, covenants and agreements and two prints of all construction drawings. These documents shall be submitted at least 10 days prior to the regularly scheduled meeting of the Town Board.
- C. Endorsement of state and county agencies. Applications for approval of plans for sewer and water facilities will be filed by the subdivider with all the necessary Town, Village, County, and State agencies. Endorsement and approval by the Cayuga County Department of Health shall be secured by the subdivider before official submission of the final subdivision plat.
- D. The following documents shall be submitted for approval: The plat to be filed with the County Clerk shall be printed and produced in accordance with the standards established by the County Clerk. The plat shall be drawn at the same scale required for the preliminary plat and oriented with the North point at the top of the map. When more than one sheet of the same size shall be filed, an index sheet of the same sized shall be filed, showing to scale the entire subdivision with lot and block numbers clearly legible. The plat will show:
  - (1) The proposed subdivision name or identifying title and the name of the municipality and county in which the subdivision is located, the name and address of the record owner and subdivider and the name, license number and seal of the licensed land surveyor.
  - (2) Street lines, pedestrian ways, lots, reservations, easements and areas to be dedicated to public use.
  - (3) Sufficient data acceptable to the Municipal Engineer to determine readily the location, bearing and length of every street line, lot line and boundary line and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.
  - (4) The plat shall also clearly label those public open spaces which are to be dedicated to the municipality and those spaces title to which is reserved by the developer. For any of the

latter, there shall be submitted with the subdivision plat copies of agreement or the provisions for such maintenance.

- (5) All offers of cessation and covenants governing the maintenance of unceded open space shall bear the certificate of approval of the Municipal Attorney as to their legal sufficiency.
  - (6) Lots and blocks within a subdivision shall be numbered and lettered in alphabetical order in accordance with the prevailing municipal practice.
  - (7) Permanent reference monuments shall be shown and shall be constructed in accordance with specifications of the Municipal Engineer. They shall be placed as required by the Municipal Engineer and their location noted and referenced upon the plat.
  - (8) All lot corner markers shall be permanently located satisfactorily to the Municipal Engineer and shall be at least 5/8 inch (if metal) in diameter and at least 24 inches in length and located in the ground at existing grade.
  - (9) Monuments of a type approved by the Municipal Engineer shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and at all street intersections, angle points in street intersections, angle points in street lines, points of curves and such intermediate points as shall be required by the Municipal Engineer.
  - (10) Street names must be indicated on the plat and shall have been approved by the Cayuga County 911 Coordinator to ensure that they do not duplicate nor resemble phonetically existing street names within the emergency service area.
- E. Construction drawings, including plans, profiles and typical cross section, as required, showing the proposed location, size and type of streets, sidewalks, streetlighting standards, street trees, curbs, water mains, sanitary sewers and storm drains, facilities, shall be submitted as part of the plat.
- F. Public hearing. If a final plat, as submitted, is not in substantial agreement with the approved preliminary plat, the plat shall be subject to a public hearing as required by Town Law §276.
- G. Action on proposed subdivision plat. The Town Board shall, by resolution, grant final approval, conditionally approve with or without modifications, or disapprove the subdivision plat. The action shall be taken within 62 days of its receipt by the Town Clerk if no hearing is required to be held or, in the event a hearing is held, within 62 days after the date of such hearing or within such other time specified by state or town law. If the subdivision is conditionally approved, the Town Clerk shall, when completed, authorize the signing of the final plat. Signing of the final plat for recording also requires the completion of required improvements or posting of an irrevocable letter of credit as outlined in §14-10.

#### **14-10. Required Improvements.**

- A. Improvements and letter of credit. Before the Planning Board or Town Board grants final approval of the subdivision plat, the subdivider shall follow the procedure set forth in either Subsection (1) or (2) below.

- (1) Letter of credit. A letter of credit shall be submitted for construction and improvements shall be approved as to form by the Municipal Attorney and as to amount by the Municipal Engineer. The member of the Planning Board designated to sign plats shall not sign a plat until a letter of credit, if required, has been received by the Zoning Officer and approved by the Town Board.
  - (2) Installation of required improvements. The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Municipal Engineer and a map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. If the subdivider completes all required improvements prior to final subdivision approval, then said map shall be submitted prior to endorsement of the plat by the appropriate Town/Planning Board officer. However, if the subdivider elects to provide a bond or certified check for all required improvements as specified in Subsection A(a), such bond shall not be released until such map is submitted.
- B. Modification of design improvements. If, at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the Municipal Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the subdivider shall submit the proposed modifications in a form acceptable to the Municipal Engineer. The Municipal Engineer may approve, upon agreement by the previously delegated member of the Town/Planning Board, that the proposed modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Municipal Engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regularly scheduled meeting.
  - C. Inspection of improvements. At least five (5) days prior to commencing construction of required improvements, the subdivider shall notify the Zoning Officer, in writing, of the proposed construction schedule. It is the applicant's responsibility to schedule and coordinate required inspections and to assure that all specifications and requirements are met and to assure the satisfactory completion of improvements and utilities required by the Planning Board.
  - D. Proper installation of improvements. If the Municipal Engineer or Zoning Officer shall find, upon inspection of the improvements performed before the expiration date of the letter of credit, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the subdivider, he/she shall so report to the Town Board, Zoning Officer and Planning Board. The Town Board shall then notify the subdivider and, if necessary, take all necessary steps to preserve the municipality's right under the letter of credit. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat.

#### **14-11. Filing of Approved Subdivision Plats.**

- A. Final approval and filing. Upon completion of the requirements in §14-9 and §14-10 above and notation to that effect upon the subdivision plat, it shall be deemed to have final approval and shall

be properly signed by the appropriate officer of the Town/Planning Board (Chairperson or Acting Chairperson) and shall be filed by the applicant in the office of the County Clerk. Any subdivision not so filed or recorded within 62 days of the date upon which such plat is approved shall become null and void.

- B. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless said plat is first resubmitted to the Planning Board and such Board approves any modifications. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

#### **14-12. Acceptance of Public Streets and Recreation Areas.**

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

#### **14-13. Variances and Waivers**

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



**ARTICLE XV**  
**Site Plan Review and Approval**

**15-1. Intent**

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

**15-2. Applicability**

Prior to the issuance of a building permit, special use permit, variance or other discretionary approval required from the Town Board or Zoning Board of Appeals for construction, alteration or change of use in any district, except for a one-family or two-family dwelling and related accessory uses, or a nonintensive agricultural operation permitted by right, the Zoning Officer shall require the preparation of a site plan. For special use permits which require a site plan, the Zoning Officer shall refer the site plan to the Planning Board for its review and recommendation prior to a decision by the Town Board. Uses permitted by right that require a site plan shall be reviewed and decided upon by the Planning Board. Approvals shall be in accordance with the standards and procedures set forth in this Article.

**15-3. Sketch Plan Conference**

- A. Applicants shall meet with the Zoning Officer and/or the Planning Board to review the basic site design concept and determine the information to be required on the preliminary site plan. The purpose of the sketch plan conference is to discuss with the applicant the project's conformity with the Fleming Comprehensive Plan, to determine whether the activity is subject to the performance standards of §7-23, and to advise the applicant of other issues or concerns. The sketch plan conference provides an opportunity to indicate whether the proposal, in its major features, is acceptable or whether it should be modified before expenditures for more detail plans are made.
- B. Required data. Information to be included on the sketch plan is as follows:
- (1) An area map showing the parcel under consideration for Site Plan Review and all parcels, structures, subdivisions, streets, driveways, easements and permanent open space within 200 feet of the boundaries thereof or at the discretion of the Zoning Officer.
  - (2) A map of site topography at no more than five-foot contour intervals or at the discretion of the Zoning Officer shall be provided. If general site grades exceed 5% or if portions of the site have susceptibility to erosion, flooding or ponding, a soils overlay and topographic map showing contour intervals of not more than two feet of elevation should also be provided.
  - (3) General identification of all existing natural features and utilities on the site and in the area.
  - (4) The location of all existing and proposed structures on the site and designated uses for each.

- (5) Identification of existing zoning classification(s) of the property and all adjacent properties and any restrictions on land use of the site.

#### **15-4. Preliminary Site Plan Application**

- A. Application for preliminary site plan approval. An application for preliminary site plan approval shall be made in writing to the Zoning Officer and shall be accompanied by information drawn from the following checklist, as determined necessary by the Zoning Officer at the sketch plan conference. All site plan information and building designs shall be prepared by a licensed architect or engineer.
- B. Preliminary site plan checklist. Additional design standards and directions regarding the items to be shown on specific plan sheets may be found in the administrative checklist available from the Zoning Officer. The preliminary site plan shall include:
  - (1) Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
  - (2) North arrow, graphic scale and date.
  - (3) Boundaries of the property, plotted to scale.
  - (4) The location of existing property lines, easements, structures, streets, driveways and natural features within 200 feet of the proposed site or at the discretion of the Town Board. Natural features subject to other state or federal regulations which may restrict development.
  - (5) Grading and drainage plan, showing existing and proposed contours. The drainage plan shall also clearly explain the methodology used to project stormwater quantities and the resultant peak flow conditions.
  - (6) Location, proposed use, hours of operation and height of all buildings. Summary of the amount of square footage devoted to each use requiring off-street parking or loading.
  - (7) Number, location, design and construction materials of all parking and loading areas, showing access and egress. Location of reserved parking areas as required by the off-street parking regulations of Article XI, §11-3.
  - (8) Provision for pedestrian access.
  - (9) Size, type, location and screening of all facilities used for recycling and disposal of solid waste.
  - (10) Location, dimensions and vehicle capacity of drive-in facilities and related queuing lanes.
  - (11) Building elevation(s) showing building massing, window and door spacing and treatments and other architectural features; and indication of building materials suitable to evaluate architectural compatibility.

- (12) Location, purpose and holder of all proposed easements or dedications for utilities, recreation, conservation or other purpose.
- (13) Location, size, screening and type of material for any proposed outdoor storage.
- (14) Location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences.
- (15) Description of the type and quantity of sewage expected, the method of sewage disposal and the location, design and construction materials of such facilities.
- (16) Description of the type and quantity of water supply needed, the method of securing water supply, and the location, design and construction materials of such facilities.
- (17) Location of fire and other emergency zones, including the location of fire hydrants.
- (18) Location, design and construction material of all energy-distribution facilities, including electrical, gas and wind power and solar energy and other public utility facilities, such as cable or phone service.
- (19) Location, size, design and construction materials of all proposed signs.
- (20) Location of proposed buffer areas, including existing vegetative cover.
- (21) Location, type, height, brightness and control of outdoor lighting facilities.
- (22) Size, location and use of recreation areas for multifamily dwellings as required by §8-16.
- (23) Identification of permanent open space or other amenities provided in conjunction with cluster or incentive zoning provisions.
- (24) A table summarizing each building footprint, total size in square feet and number of stories; the number of dwelling units and the amount of square feet devoted to each use type; size, in square feet or acres, of access, parking and circulation areas and the number of loading, queuing and parking spaces; size in square feet of landscaped and natural open space; and size in square feet and text of all signs.
- (25) A landscaping plan and planting schedule in accordance with Article X.
- (26) Other elements integral to the proposed development as considered necessary by the Planning Board, to include showing railroads or any other type of transportation facilities not specified.
- (27) All forms and information pursuant to New York State Environmental Quality Review Act (SEQRA).

- (28) An agricultural data statement if the proposed use is located on or within 500 feet of a farm operation in a county agricultural district.
- (29) For all developments disturbing more than one acre, New York State Department of Environmental Conservation (NYSDEC) requires that Municipalities receive a copy of the Storm Water Pollution Prevention Plan (SWPPP) prior to plan approval. The owner is required to comply with the NYSDEC's "SPEDES General Permit for Storm Water Discharge from Construction Activity" Permit # G-P-02-01.
- (30) The reviewing board shall look and take into consideration any other special or unique environmental circumstances or conditions that may exist on the site, including, but not limited to, unique animal habitats, water features, woodlots, hedgerows, prime agricultural soils, soil erodibility, and steep slopes. See Article VII.

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

#### **15-5. Planning Board Review of Preliminary Site Plan**

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

A. General considerations as to:

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

- (8) Suitability of proposed hours of operation.
  - (9) Protection of adjacent or neighboring properties against noise, glare, unsightliness or other similar nuisances.
  - (10) Adequacy of community services, including fire, ambulance and police protection, and on-site provisions for emergency services, including fire lanes and other emergency zones, fire hydrants and water pressure.
  - (11) Adequacy and unobtrusiveness of public utility distribution facilities, including those for gas, electricity, cable television and phone service. In general, all such utility distribution facilities shall be required to be located underground.
  - (12) Making provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof.
  - (13) Conformance with the Fleming Comprehensive Plan and other planning studies.
  - (14) Conformance with density, lot size, height, yard and lot coverage and all other requirements of district regulations.
- B. Applicant to attend Planning Board meeting. Applicant and/or duly authorized representative shall attend the meeting of the Planning Board where the plat is reviewed.
  - C. Site plans shall also conform to the performance standards of §7-23.
  - D. Consultation with other Planning agencies. The Planning Board may consult with the Town Board, Zoning Officer, Fire Commissioners and other appropriate local and county officials and departments and its designated private consultants, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
  - E. Public hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the members of the Planning Board, such public hearing shall be conducted within 62 days of the receipt of the application for preliminary site plan approval and shall be advertised in a newspaper of general circulation in the Town of Fleming at least ten (10), but not more than thirty (30) days before the public hearing.
  - F. Recommendation to Town Board. Within thirty (30) days of the close of the public hearing, the Planning Board shall forward their final, written recommendations to the Town Board for their final action on the preliminary site plan for special use permits.

**15-6. Town Board Action on Preliminary Site Plan**

- A. Within 62 days after public hearing or within 62 days after the application was filed if no hearing was held, the Town Board shall act on the application for preliminary site plan approval. The Town Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, disapproved or approved with modifications.

- B. The Town Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, and conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Town Board's statement will contain the reasons for such findings. In such a case, the Town Board may recommend further study of the site plan and resubmission to the Town Board after it has been revised or redesigned.

#### **15-7. Final site Plan Approval Procedure**

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

#### **15-8. Referral to County Planning Board**

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

#### **15-9. Town Board Action on Final Site Plan**

- A. Within 62 days of receipt of the application for final site plan approval, the Town Board shall notify the Zoning Officer, in writing, of its decision. The Town Board shall file its decision with the Town Clerk within five days of the final Town Board decision.

- B. Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due and letter of credit if required, the Town Board shall endorse its approval on a copy of the final site plan. A copy of the approved final site plan shall be filed with the Zoning Officer and may be provided to the applicant.
- C. Upon disapproval of a final site plan, the Town Board shall so inform the Zoning Officer, and the Zoning Officer shall deny a building permit to the applicant. The Town Board shall also notify the applicant in writing of its decision and its reasons for disapproval. The Town Board shall file its decision with the Town Clerk within five days of the final Town Board decision.

#### **15-10. Reimbursable Costs**

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

#### **15-11. Letter of Credit**

No Certificate of Occupancy shall be issued until all improvements shown on the site plan are installed or an irrevocable letter of credit has been posted for improvements not yet completed. The letter of credit shall be approved as to form by the Municipal Attorney and as to amount by the Municipal Engineer. The member of the Town Board designated to sign site plans shall not sign until a letter of credit, if required, has been received by the Zoning Officer and approved by the Town Board.

#### **15-12. Inspection of Improvements**

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

#### **15-13. Integration of Procedures**

Whenever the particular circumstances of a proposed development require compliance with either the special use permit procedure pursuant to §8-1 of this Law, or the requirements for the Subdivision of Land in Article XIV, the Town Board shall attempt to integrate, as appropriate, Site Plan Review as required by this section with the procedural and submission requirements for such other compliance.





Bulk and Use Table

Zone District	Permitted Uses	Min. Lot Size (sq.ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements <sup>1</sup>			Min. Green Space (%)	Max. Allowable Coverage (%) <sup>1</sup>	Max. Building Height (ft.)	
				Front (ft.)	Side (ft.)	Rear (ft.)				
A - Agricultural	Agricultural Operations	10 acres	225	40	25	30	85	15	35	
	Farming Operation	10 acres	225	40	25	30	85	15	35	
	One-family Dwelling	10 acres	225	40	25	30	85	15	35	
	Public Utilities	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Recreational Facility owned and operated by town or other governmental agency	10 acres	225	40	25	30	85	15	35	
	Farm Stands	10 acres	225	20	25	30	85	15	35	
	Accessory Uses	10 acres	225	40	25	30	85	15	35	
	Accessory Structures and Buildings	10 acres	225	40	25	30	85	15	35	
	<b>Uses Requiring a Special Use Permit</b>									
	Automobile and General Repair	10 acres	225	40	25	30	85	15	35	
	Commercial Garage	10 acres	225	40	25	30	85	15	35	
	Fire Station	10 acres	225	40	25	30	85	15	35	
	Child Care Facility, including preschool	10 acres	225	40	25	30	85	15	35	
	Clear Cutting Woodlands	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Cemetery	10 acres	225	40	25	30	85	15	35	
	Private Club or Lodge	10 acres	225	40	25	30	85	15	35	
	Restaurant	10 acres	225	40	25	30	85	15	35	
	Two-family Dwelling	10 acres	225	40	25	30	85	15	35	
	Wind Power Generation Facility	10 acres	225	40	25	30	85	15	N/A	
	Park or Recreation area owned or operated by a not-for-profit	10 acres	225	40	25	30	85	15	35	
	Veterinary Services	10 acres	225	40	25	30	85	15	35	
	Agricultural Based Business	10 acres	225	40	25	30	85	15	35	
	Commercial Antenna, Micro-relay Station, etc.	40,000	225	50 (min.)	10	60	70	30	50	
	Bed and Breakfast	10 acres	225	40	25	30	85	15	35	
	Places of Worship	10 acres	225	40	25	30	85	15	35	
	Telecommunication Facility or Tower	40,000	225	100	30	100	85	15	N/A	
	Riding Academy	10 acres	225	200	200	200	85	15	35	
	School	10 acres	225	40	25	30	85	15	35	
	Greenhouse	10 acres	225	40	30	30	85	15	35	
	Conversion - one-family to two-family dwelling	10 acres	225	40	25	30	85	15	35	
	Home Occupation	10 acres	225	40	25	30	85	15	35	
Ponds	N/A	225	40	25	30	85	15	35		
Commercial Dog Kennel	10 acres	225	250	250	250	85	15	35		
Emergency Dwelling	10 acres	225	40	25	30	85	15	35		

Notes: 1. If a lot is located within the Owasco Watershed Overlay, according to the Zoning Map, the setback and lot coverage requirements shall conform to §6-9.

Bulk and Use Table

Zone District	Permitted Uses	Min. Lot Size (sq. ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements <sup>1</sup>			Min. Green Space (%) <sup>1</sup>	Max. Allowable Coverage (%) <sup>1</sup>	Max. Building Height (ft.)	
				Front (ft.)	Side (ft.)	Rear (ft.)				
R-1 - Residential Transitional	One-family Dwelling	22,000	100	30	10	25	75	25	35	
	Two-family Dwelling	22,000	100	30	10	25	75	25	35	
	Public Utilities	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Recreational Facility owned and operated by a town or other governmental agency	22,000	100	30	10	25	75	25	35	
	Farm Stand	22,000	100	20	10	25	75	25	35	
	Accessory Structures and Buildings	22,000	100	30	10	25	75	25	35	
	Accessory Uses	22,000	100	30	10	25	75	25	35	
	<b>Uses Requiring a Special Use Permit</b>									
	School	22,000	100	30	10	25	75	25	35	
	Home Occupation	22,000	100	30	10	25	75	25	35	
	Emergency Dwelling	22,000	100	30	10	25	75	25	35	
	Library	22,000	100	30	10	25	75	25	35	
	Multi-family Dwelling	22,000	100	30	10	25	75	25	35	
	Nursing Homes	22,000	100	30	10	25	75	25	35	
	Personal Service Establishment	22,000	100	30	10	25	75	25	35	
	Bank and Financial Institutions	22,000	100	30	10	25	75	25	35	
	Professional Offices	22,000	100	30	10	25	75	25	35	
	Places of Worship	22,000	100	30	10	25	75	25	35	
	Bed and Breakfast	22,000	100	30	10	25	75	25	35	
	Child Care Facilities, including preschool	22,000	100	30	10	25	75	25	35	
	Fire Station	22,000	100	30	10	25	75	25	35	
	Healthcare Institutions	22,000	100	30	10	25	75	25	35	
	Mixed-use Building	22,000	100	30	10	25	75	25	35	
	Park or Recreation Area owned and operated by a not-for-profit	22,000	100	30	10	25	75	25	35	
	Small Retail Shop	22,000	100	30	10	25	75	25	35	
	Undertaking and Funeral Parlors	22,000	100	30	10	25	75	25	35	
	Restaurants	22,000	100	30	10	25	75	25	35	

Notes: 1. If a lot is located within the Owasco Watershed Overlay, according to the Zoning Map, the setback and lot coverage requirements shall conform to §6-9.

Bulk and Use Table

Zone District	Permitted Uses	Min. Lot Size (sq.ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements <sup>3</sup>			Min. Green Space (%) <sup>3</sup>	Max. Allowable Coverage (%) <sup>2,3</sup>	Max. Building Height (ft.)	
				Front (ft.)	Side (ft.)	Rear (ft.)				
R-2 - Residential	One-family Dwelling	76,000 <sup>1</sup>	175 <sup>2</sup>	40	25	30	75	25	35	
	Public Utilities	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Farm Stands	76,000	175	20	25	30	75	25	35	
	Accessory Uses	76,000	175	40	25	30	75	25	35	
	Accessory Structures and Buildings	76,000	175	40	25	30	75	25	35	
	<b>Uses Requiring a Special Use Permit</b>									
	Greenhouse	76,000	175	40	25	30	75	25	35	
	Emergency Dwelling	76,000	175	40	25	30	75	25	35	
	Home Occupation	76,000	175	40	25	30	75	25	35	
	Keeping or Raising of Livestock	76,000	175	40	25	30	75	25	35	
	Recreational facility owned and operated by a town or other governmental agency	76,000	175	40	25	30	75	25	35	
	Places of Worship	76,000	175	40	25	30	75	25	35	
	Agricultural Based Business	76,000	175	40	25	30	75	25	35	
	Child Care Facilities, including preschool	76,000	175	40	25	30	75	25	35	
	Fire Station	76,000	175	40	25	30	75	25	35	
	Healthcare Institutions	76,000	175	40	25	30	75	25	35	
	Bed and Breakfast	76,000	175	40	25	30	75	25	35	
Ponds	76,000	175	40	25	30	75	25	35		
Library	76,000	175	40	25	30	75	25	35		
Park or Recreational Area owned and operated by a not-for-profit	76,000	175	40	25	30	75	25	35		

- Notes:** 1. The applicant may choose to decrease the minimum lot size for single-family dwellings per the incentive zoning regulations found in §6-3 and §7-22.  
2. For lots using incentive zoning in accordance with Note #1 above, the minimum lot width shall be 125 feet and side setback shall be 15 feet.  
3. If a lot is located within the Owasco Watershed Overlay, according to the Zoning Map, the setback and lot coverage requirements shall conform to §6-9.

**Bulk and Use Table**

Zone District	Permitted Uses	Min. Lot Size (sq.ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements			Min. Green Space (%)	Max. Allowable Coverage (%)	Max. Building Height (ft.)	
				Front (ft.) <sup>1</sup>	Side (ft.)	Rear (ft.)				
L - Lakeshore	One-Family Dwelling	22,000	80	50	20	30	75	25	35	
	Public Utilities	N/A	c	50	20	30	N/A	N/A	N/A	
	Farm Stand	22,000	80	20	20	30	75	25	35	
	Accessory Structure and Buildings	22,000	80	50	20	30	75	25	35	
	Accessory Uses	22,000	80	50	20	30	75	25	35	
	<b>Uses Requiring a Special Use Permit</b>									
	Bed and Breakfast	22,000	80	50	20	30	75	25	35	
	Child Care Facilities, including preschool	22,000	80	50	20	30	75	25	35	
	Fire Station	22,000	80	50	20	30	75	25	35	
	Home Occupations	22,000	80	50	20	30	75	25	35	
	Park or Recreation Area owned and operated by a not-for-profit	22,000	80	50	20	30	75	25	35	
	Emergency Dwelling	22,000	80	50	20	30	75	25	35	

- Notes:** 1. The lakeside lot line will be considered the front lot line for properties between the Lake and a roadway (West Lake Road, Buck Point Road, Poplar Cove, McClelland Drive, Holland Sand Beach Drive, Owasco Terrace & Petre Drive). Otherwise the lot line adjacent to the primary roadway shall be the front lot line.
2. The district only includes those parcels that are directly adjacent to Owasco Lake north of Buck Point Road and parcels that are within 300 feet of the centerline of West Lake Road south of Buck Point Road. (See Zoning Map for details)

**Bulk and Use Table**

Zone District	Permitted Uses	Min. Lot Size (sq.ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements			Min. Green Space (%)	Max. Allowable Coverage (%) <sup>1</sup>	Max. Building Height (ft.)
				Front (ft.) <sup>1</sup>	Side (ft.)	Rear (ft.)			
WD - Waterfront Development	Parks and Recreation	22,000	80	20	20	30	75	25	35
	Farm Stands	22,000	80	20	20	30	75	25	35
	Accessory Structures and Buildings	22,000	80	20	20	30	75	25	35
	Accessory Uses	22,000	80	20	20	30	75	25	35
	<b>Uses Requiring a Special Use Permit</b>								
	Restaurant	22,000	80	20	20	30	75	25	35
	Bar or Tavern	22,000	80	20	20	30	75	25	35
Small Retail Shops	22,000	80	20	20	30	75	25	35	

Notes: 1. If a lot is located within the Owasco Watershed Overlay, according to the Zoning Map, the setback and lot coverage requirements shall conform to §6-9.

Bulk and Use Table

Zone District	Permitted Uses	Min. Lot Size (sq.ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements			Min. Green Space (%)	Max. Allowable Coverage (%)	Max. Building Height (ft.)	
				Front (ft.)	Side (ft.)	Rear (ft.)				
C - Commercial	Professional Offices	44,000	125	40	10	30	25	75	35	
	Personal Service Establishments	44,000	125	40	10	30	25	75	35	
	Veterinary Services	44,000	125	40	10	30	25	75	35	
	Bed and Breakfast	44,000	125	40	10	30	25	75	35	
	Farm Stands	44,000	125	20	10	30	25	75	35	
	Bank and Financial Institutions	44,000	125	40	10	30	25	75	35	
	Agricultural Based Business	44,000	125	40	10	30	25	75	35	
	Parking for Fee	44,000	125	40	10	30	25	75	35	
	Small Retail Shops	44,000	125	40	10	30	25	75	35	
	Large Retail Shops	44,000	125	40	10	30	25	75	35	
	Restaurants	44,000	125	40	10	30	25	75	35	
	Accessory Use	44,000	125	40	10	30	25	75	35	
	Commercial Antenna, Micro-rely Station, etc	44,000	125	40	10	30	25	75	35	
	Public Utilities	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	<b>Uses Requiring a Special Use Permit</b>									
		Private Club	44,000	125	40	10	30	25	75	35
		Emergency Dwelling	44,000	125	40	10	30	25	75	35
		Hotel/Inn/Motel	44,000	125	40	10	30	25	75	35
		Telecommunication Facility or Tower	40,000	100	100	30	100	70	30	N/A
		Undertaking and Funeral Parlors	44,000	125	40	10	30	25	75	35
		Accessory Structures and Buildings	44,000	125	40	10	30	25	75	35
		Commercial Dog Kennel	44,000	125	40	10	30	25	75	35
		Automobile and General Repair	44,000	125	40	10	30	25	75	35
		Adult Oriented Business	44,000	125	40	10	30	25	75	35
		Greenhouse	44,000	125	40	10	30	25	75	35
		Gas Stations/Convenience store	44,000	125	40	10	30	25	75	35
		Child Care Facilities, including preschool	44,000	125	40	10	30	25	75	35
	Fire Station	44,000	125	40	10	30	25	75	35	
	Healthcare Institutions	44,000	125	40	10	30	25	75	35	

**Bulk and Use Table**

Zone District	Permitted Uses	Min. Lot Size (sq.ft.)	Min. Lot Width (ft.)	Minimum Setback Requirements			Min. Green Space (%)	Max. Allowable Coverage (%)	Max. Building Height (ft.)	
				Front (ft.)	Side (ft.)	Rear (ft.)				
H - Hamlet District	One-family Dwelling	22,000	125	30	10	25	75	25	35	
	Two-family Dwelling	22,000	125	30	10	25	75	25	35	
	Accessory Structures and Buildings	22,000	125	30	10	25	75	25	35	
	Accessory Uses	22,000	125	30	10	25	75	25	35	
	Farm Stands	22,000	125	20	10	25	75	25	35	
	Public Utilities	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
	Recreational Facility owned and Operated by a town or other governmental agency	22,000	125	30	10	25	75	25	35	
	<b>Uses Requiring a Special Use Permit</b>									
	Agricultural Based Business	22,000	125	30	10	25	75	25	35	
	Fire Station	22,000	125	30	10	25	75	25	35	
	Mobile Home	22,000	125	30	10	25	75	25	35	
	Conversion - One-family to two-family dwelling	22,000	125	30	10	25	75	25	35	
	Bed and Breakfast	22,000	125	30	10	25	75	25	35	
	Home Occupation	22,000	125	30	10	25	75	25	35	
	Multi-family Dwelling	22,000	125	30	10	25	75	25	35	
	Nursing Home	22,000	125	30	10	25	75	25	35	
	Library	22,000	125	30	10	25	75	25	35	
	School	22,000	125	30	10	25	75	25	35	
	Bank and Financial Institutions	22,000	125	30	10	25	75	25	35	
	Personal Service Establishment	22,000	125	30	10	25	75	25	35	
	Small Retail Shops	22,000	125	30	10	25	75	25	35	
	Undertaking and Funeral Parlors	22,000	125	30	10	25	75	25	35	
	Inn/Hotel/Motel	22,000	125	30	10	25	75	25	35	
	Park or Recreation area owned and operated by a not-for-profit	22,000	125	30	10	25	75	25	35	
	Places of Worship	22,000	125	30	10	25	75	25	35	
	Professional Offices	22,000	125	30	10	25	75	25	35	
	Cemetery	22,000	125	30	10	25	75	25	35	
	Gas Station/Convenience Store	22,000	125	30	10	25	75	25	35	
	Greenhouse	22,000	125	30	10	25	75	25	35	
	Restaurant	22,000	125	30	10	25	75	25	35	
Healthcare Institution	22,000	125	30	10	25	75	25	35		














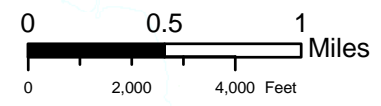
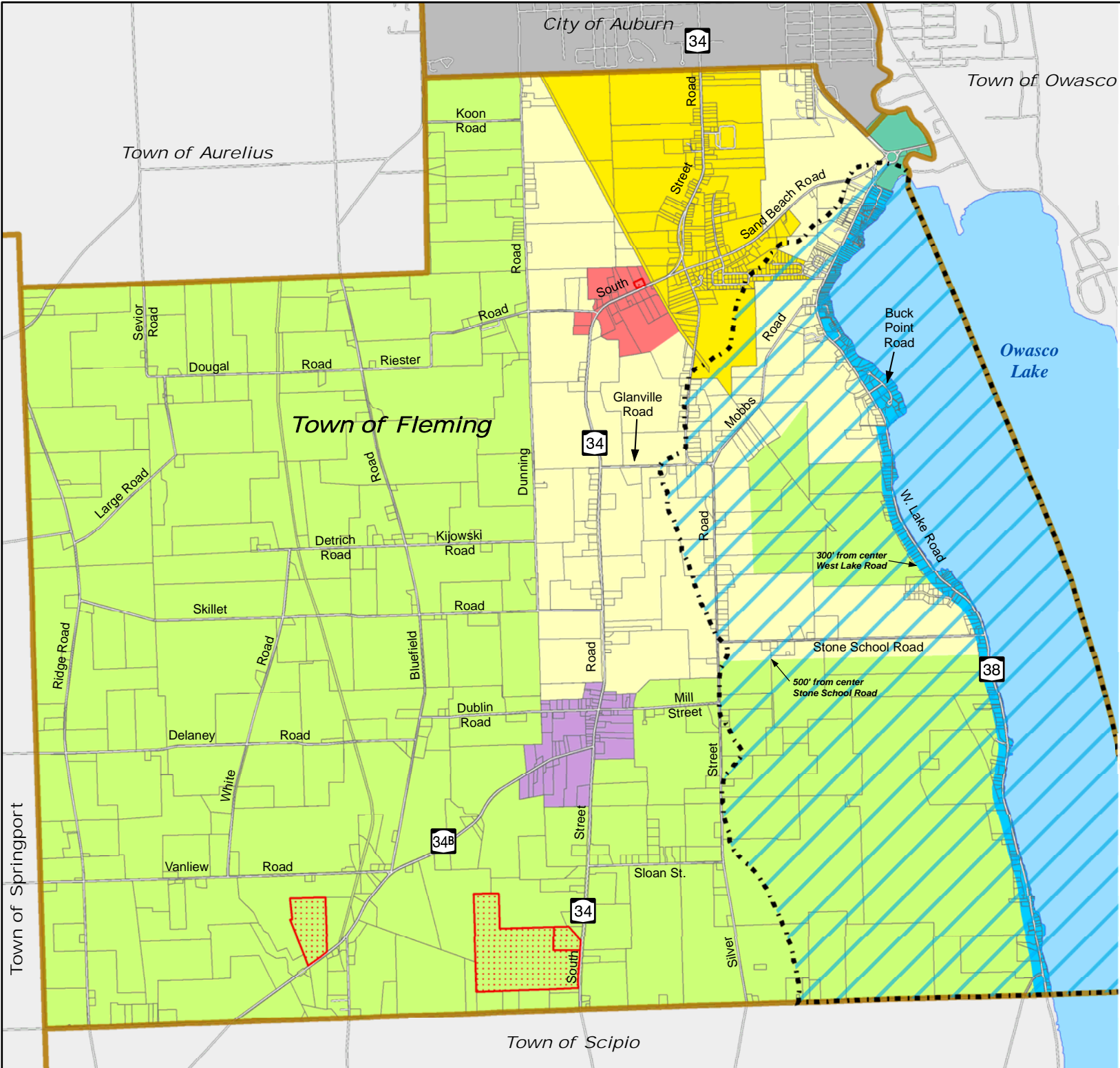


# Town of Fleming

## Zoning Districts

**Legend**

-  Municipal Boundaries
-  Parcels
-  Agriculture (A)
-  Commercial (C)
-  Hamlet (H)
-  Lakeshore (L)
-  Residential Transitional (R-1)
-  Residential (R-2)
-  Waterfront Development (WD)
-  Owasco Watershed Overlay
-  Planned Development




**Clark Patterson Lee**  
DESIGN PROFESSIONALS

Map Prepared: December 2008



Prepared by:  
The Town of Fleming and



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