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With Mark-Ups

VILLAGE OF BERGEN ZONING LAW UPDATE

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ARTICLE 1

INTRODUCTORY PROVISIONS

§ 1-1 ENACTING & SUPERSEDING CLAUSE

Pursuant to the authority conferred by Article 2 of Municipal Home Rule Law and Article 7 of the Village Law of the State of New York, the Village Board of the Village of Bergen hereby adopts and enacts this Local Law. This Local Law shall supersede and repeal all prior zoning laws and zoning ordinances of the Village of Bergen. This Local Law shall take effect immediately upon filing as required by law.

§ 1-2 TITLE

This Zoning Law shall be known as the "Zoning Law of the Village of Bergen." For convenience, it is also referred to as the "zoning code."

§ 1-3 PURPOSES

- A. The purpose of this Zoning Law and zoning districts as outlined on the zoning map are to provide for orderly growth and development, to lessen congestion in streets, to secure safety from fire, flood and other dangers, to provide adequate light and air, to prevent overcrowding, to avoid undue concentration of population, to conserve, enhance and perpetuate special historic sites, places and buildings, to facilitate the adequate provision of transportation, water, waste water, schools, parks and other public requirements, and to promote the health, safety, morals and general welfare of the public.
- B. The Zoning Law has been made with reasonable consideration, among other things, to the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land.

§ 1-4 APPLICABILITY

- A.** No building shall be erected, constructed, moved, altered, rebuilt or enlarged, nor shall any land, water or building be used, designed or arranged to be used for any purpose except in conformity with this Zoning Law, with the exception of the performance of necessary repairs which do not involve material alteration of structural features, and/or plumbing, electrical or heating/ventilation systems. Such necessary repairs shall include, for example, repairing siding and roofing materials. No building, structure or premises shall be used, and no building or other structure shall be erected which is intended, arranged or designed to be used for any trade, industry, business or purpose of any kind, that is noxious or offensive by reason of the emission of odor, dust, refuse matter, garbage, smoke, fumes, gas, noise or vibration, or that is dangerous to the comfort, peace, enjoyment, health or safety of the community, or tends to its disturbance, inconvenience, discomfort or annoyance.
- B.** In interpreting and applying this Zoning Law, the requirements contained herein are declared to be the minimum requirements for the protection and promotion of the public health, safety, morals and general welfare. This Zoning Law shall not be deemed to affect in any manner whatsoever any easements, covenants or other agreements between parties provided, however, that where this Zoning Law imposes a greater restriction upon the use of buildings or land, or upon the creation, erection, construction, establishment, moving, alterations or enlargement of buildings than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, or covenants, or agreements, then the provisions of this Zoning Law shall prevail.

§ 1-5 VALIDITY

If any clause, sentence, paragraph, section or part of this Zoning Law shall be adjudged by any court to be invalid, or void, such judgement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-6 TRANSITIONAL PROVISIONS

- A. Applications Prior to Effective Date.** Accepted applications that were submitted after the adoption date, but prior to the effective date of this Zoning Law, as determined by NYS Secretary of State filing procedures, shall be reviewed wholly under the terms of this Zoning Law.

B. Permits Granted Prior to Effective Date.

1. Any building, development or structure for which a building permit was issued before the effective date of this Zoning Law may be completed in conformance with the issued building permit and other applicable permits and conditions.
2. If building is not commenced and diligently pursued within the time allowed under the original permit or any extension granted, then the building, development or structure must be constructed, completed and occupied only in strict compliance with the standards of this zoning law.

C. Continuance of Violations.

1. Any violation of the previous zoning law will continue to be a violation under this zoning law and be subject to penalties and enforcement under NYS Village Law.
2. If the use, development, construction or other activity that was a violation under the previous law complies with the express terms of this zoning law, enforcement action will cease, except to the extent of collecting penalties for violations that occurred before the effective date of this Zoning Law.
3. The adoption of this zoning law does not affect nor prevent any pending or future prosecution of, or action to abate violations of the previous law that occurred before the effective date of this Zoning Law.

D. Continuing Nonconformities. Any nonconformity under the previous zoning law will also be nonconformity under this zoning law, as long as the situation that resulted in the nonconforming status under the previous regulation continues to exist. If, however, a nonconforming situation under previous zoning regulations becomes conforming because of the adoption of this zoning law, or any subsequent amendment to it, then the situation will no longer be considered a nonconformity.

§ 1-7 CONFLICT WITH OTHER REGULATIONS

- A.** In their interpretation and application, the provisions of this Zoning Law, shall be held to be the minimum requirements adopted for the promotion of the public health, community values, safety or other general welfare. Whenever the requirements of this Zoning Law are at variance with the requirements of any other applicable law, ordinance, regulation or private agreement, the most restrictive, or that imposing the higher standards, shall govern.
- B.** This zoning law is not intended to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this zoning law impose a greater restriction than imposed by a private agreement, the provisions of this zoning law will control.

- C. No provision of this Zoning Law shall be construed to repeal, modify or constitute an alternative to the New York State Uniform Fire Prevention and Building Code (hereafter referred to as the Uniform Code) or its successor, whichever, is the effective code at the time in question. Village residents and other individuals using these zoning regulations should make sure they refer to the Uniform Code in order to determine its' applicability to their specific project.

ARTICLE 2

RESIDENTIAL DISTRICTS

§ 2-1 DISTRICTS ESTABLISHED

The residential districts of the Village of Bergen are listed in the following table. When this zoning law refers to residential or “R” zoning districts it is referring to one of the following:

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Traditional Village Residential</i>	TVR
<i>Low Density Residential</i>	LDR

§ 2-2 PURPOSE STATEMENTS

A. Low Density Residential (LDR) District.

1. The purpose of the LDR District is to support the vision and policies contained within the Village of Bergen Comprehensive Plan with respect to the preservation and enhancement of its more recently established neighborhoods (built post-WWII). Located further from the Village’s center, these neighborhoods are generally comprised of single-family homes situated on lots over 15,000 square feet in area and 80 feet in width. The intent of this District is to protect the larger-lot, lower density development pattern of these neighborhoods and provide future opportunities for investment of a similar use and scale.
2. Future development and investment in the LDR District should be consistent with the low-density residential character while also providing visual and physical connections to existing neighborhoods and activity centers.

B. Traditional Village Residential (TVR) District.

1. The purpose of the TVR District is to protect and enhance the oldest neighborhoods within the Village of Bergen in accordance with the vision and goals of the Village’s Comprehensive Plan. These neighborhoods were generally established from the late 1880s to early 1900s, and mainly consist of single-family dwellings with scattered two- and three-family residences on lots under 15,000

square feet in area and 80 feet in width. These medium density neighborhoods have developed organically over time and follow a traditional grid-like settlement pattern, with unobstructed front yards, garages set back from the street, and homes fronting the street with connections to public sidewalks.

2. The regulations and applicability of the TVR District are intended to accommodate development and investment that reflects the traditional character of these neighborhoods, while providing additional housing opportunities for residents of all ages, incomes, and lifestyles. Future development proposals should relate to the Village's existing neighborhoods in scale and form and continue the traditional settlement pattern, defined by high-quality architectural design and pedestrian-scaled streetscapes (providing sidewalks, street lighting, street trees, etc.).

§ 2-3 USE LISTS

Uses are allowed in residential districts in accordance with the following table.

- A. Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning law.
- B. Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Section 12 (Special Use Permits).
- C. Uses not listed and those identified with a "-" are expressly prohibited.

	LDR	TVR	ADDITIONAL REGULATIONS
RESIDENTIAL			
<i>Single- or Two-Family Dwelling</i>	P	P	-
<i>Multi-Family Dwelling, Up to 4 Units</i>	-	SP	§ 5-14
<i>Multi-Family Dwelling, 5 to 12 Units</i>	-	SP	§ 5-14
<i>Bed and Breakfast</i>	SP	SP	§ 5-7
<i>Home Occupation</i>	P	P	§ 5-13
<i>Hospice, Nursing Home, or Assisted Living</i>	-	SP	-
OTHER			
<i>Funeral Home</i>	SP	SP	-
<i>Municipal Structure or Use</i>	P	P	-
<i>Community or Service Club</i>	-	SP	-
<i>Place of Worship</i>	P	P	-
<i>Public Park or Playground</i>	P	P	-
<i>School, Public or Private</i>	P	P	-
<i>Wind Energy Systems, Primary or Accessory</i>	-	-	-

Table Continued on Next Page

	LDR	TVR	ADDITIONAL REGULATIONS
ACCESSORY			
Accessory Use or Structure	P	P	§ 5-4
Accessory Dwelling Unit	SP	SP	§ 5-3
Outside Fuel Burning Devices	-	-	-
Temporary Storage Unit	P	P	§ 5-19

§ 2-4 DIMENSIONAL REQUIREMENTS

	LDR	TVR
MINIMUM LOT SIZE		
Single or Two- Family Dwelling	15,000 sf	8,000 sf
Multi-Family Dwelling	-	2,000 sf / unit ¹
Nonresidential Use	25,000 sf	15,000 sf
MINIMUM LOT WIDTH		
Residential Use	80 ft	40 ft
Nonresidential Use	100 ft	60 ft
MINIMUM FRONT SETBACK		
Primary Use or Structure	20 ft ²	10 ft ²
MINIMUM SIDE SETBACK		
Primary Use or Structure	10 ft	7 ft
Accessory Use or Structure	5 ft	3 ft
MINIMUM REAR SETBACK		
Primary Use or Structure	40 ft	35 ft
Accessory Use or Structure	5 ft	3 ft

- NOTES: (1) The notation "sf/unit" indicates square feet per dwelling unit.
 (2) Or a minimum setback consistent with that of existing developed lots adjacent to the property in question.

§ 2-5 BULK REQUIREMENTS

	LDR	TVR
MAXIMUM BUILDING HEIGHT		
Primary Structure	35 ft	35 ft
Accessory Structure	15 ft ¹	15 ft ¹
MAXIMUM LOT COVERAGE		
Gross Impervious Surface	30%	35%

- NOTES: (1) No accessory structure may exceed the height of the primary structure on the lot.

ARTICLE 3

COMMERCIAL DISTRICTS

§ 3-1 DISTRICTS ESTABLISHED

The commercial districts of the Village of Bergen are listed in the following table. When this zoning law refers to commercial or “C” zoning districts it is referring to one of the following:

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>General Commercial</i>	GC
<i>Neighborhood Commercial</i>	NC
<i>Village Center Commercial</i>	VCC

§ 3-2 PURPOSE STATEMENTS

- A. General Commercial (GC) District.** The purpose of the GC District is to support the vision and goals of the Village's Comprehensive Plan to foster the redevelopment of Bergen's southern gateway from an auto-oriented, suburban plaza to a vibrant, attractive mixed-use activity center. This may include a wide variety of residential, commercial, and enterprise uses that serve the daily needs of local residents, the traveling public, and greater Bergen community. In order to accomplish this, the GC District regulates the location, design, and use of structures and land to redefine the streetscape in a manner that promotes the traditional character, walkability, and human-scale of the Village, while still accommodating larger-scale commercial uses and regional vehicular traffic.

- B. Neighborhood Commercial (NC) District.** The purpose of the NC District is to facilitate increased economic development opportunity in Village neighborhoods in accordance with Bergen's Comprehensive Plan. NC District areas are generally located in close proximity to established neighborhoods where access to goods and services may be desirable to serve the local population. In addition to residential uses, this District is intended to also permit business operations of limited scale and intensity that will not negatively impact the quality of life for residents of the immediate and adjacent area. New nonresidential construction and/or the conversion of structures

originally built for residential purposes is allowable, provided the residential character and walkability of the neighborhood is maintained.

C. Village Center Commercial (VCC) District. The purpose of the VCC District is to maintain implement the recommendations of the Village's comprehensive plan to preserve and enhance Bergen's downtown core as the community's social, commercial, and civic center. The intent of the VCC District is to preserve the historic character of downtown and provide for future redevelopment and investment that enhance local economic opportunity and desirability. Historically, the Lake Avenue corridor at Rochester Street has been defined by a high-level of architectural integrity and a walkable streetscape. The design and location of building frontages relate to the public realm in a manner that shapes a welcoming, pedestrian-friendly environment. The VCC District allows for flexibility in the location, design, and use of structures and land to foster a dense, mixed-use environment that offers a wide variety of goods, services, and amenities. Future development and investment in the VCC District shall be consistent with and positively contribute to its traditional character and viability as the social, economic, and cultural heart of Bergen.

§ 3-3 USE LISTS

Uses are allowed in commercial districts in accordance with the following table.

- A.** Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning law.
- B.** Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 12 (Special Use Permits).
- C.** Uses not listed and those identified with a "-" are expressly prohibited.

	GC	NC	VCC	ADDITIONAL REGULATIONS
RESIDENTIAL				
<i>Single- or Two-Family Dwelling</i>	-	P	P	-
<i>Multi-Family Dwelling, Up to 5 Units</i>	SP	SP	P	§ 5-14
<i>Multi-Family Dwelling, 6 to 12 Units</i>	SP	-	P	§ 5-14
<i>Multi-Family Dwelling, Over 12 Units</i>	SP	-	SP	§ 5-14
<i>Bed and Breakfast</i>	-	SP	P	§ 5-7
<i>Home Occupation</i>	P	P	P	§ 5-13
<i>Upper Floor Dwelling Unit or Loft</i>	P	P	P	-
COMMERCIAL				
<i>Animal Grooming Shop</i>	P	SP ¹	P	-
<i>Animal Hospital or Veterinary Clinic</i>	SP	SP	-	§ 5-6

Table Continued on Next Page

	GC	NC	VCC	ADDITIONAL REGULATIONS
Artisan Manufacturing	P	SP	SP	-
Car Wash	SP	-	-	§ 5-8
Dance, Art, Music, or Photo Studio	P	P ¹	P	-
Day Care Center, Child or Adult	P	P	P	§ 5-9
Financial Institution	P	P ¹	P	-
Funeral Home or Parlor	P	SP	-	-
Gas Station	SP	-	-	§ 5-12
Gym or Fitness Club	P	P ¹	P	-
Hotel or Inn	P	-	P	-
Laundromat or Dry Cleaner	SP	SP ¹	SP	-
Office, Administrative or Professional	P	P	P	-
Office or Clinic, Medical	P	SP	SP	-
Personal Service Shop or Spa	P	P ¹	P	-
Recreation or Entertainment Facility, Indoor	P	SP	P	-
Recreation or Entertainment Facility, Outdoor	SP	-	-	§ 5-16
Repair or Service of Personal Items	P	P ¹	P	-
Restaurant or Tavern/Bar	P	SP	P	§ 5-17
Retail Store	P	SP	P	-
Vehicle Sales, Service, or Repair Shop	SP	-	-	§ 5-21
Winery, Brewery or Distillery	P	SP	SP	§ 5-20
OTHER				
Municipal Structure or Use	P	P	P	-
Community or Service Club	P	P	P	-
Place of Worship	P	P	P	-
Public Utility	P	P	P	-
Public Park or Playground	P	P	P	-
School, Public or Private	P	P	P	-
Wind Energy Systems, Primary or Accessory	-	-	-	-
Telecommunications Equipment	SP	SP	SP	§ 5-18
Mix of Uses in a Single Structure or Lot	See Most Restricted Use			
Permitted Uses Over 2,500 Square Feet	SP	SP	SP	-
ACCESSORY				
Accessory Use or Structure	P	P	P	§ 5-4
Accessory Dwelling Unit	-	SP	-	§ 5-3
Drive-Through Facility	SP	SP	-	§ 5-10
Outdoor Assembly or Seating Area	SP	SP	SP	§ 5-15
Outdoor Sales, Display, or Storage Area	SP	-	SP	§ 5-15

NOTES: (1) Provided the use occupies a gross floor area of no more than 2,500 square feet.

§ 3-4 DIMENSIONAL REQUIREMENTS

	GC	NC	VCC
MINIMUM LOT SIZE			
<i>Single- or Two-Family Dwelling</i>	-	8,000 sf	5,000 sf
<i>Multi-Family Dwelling</i>	2,000 sf / unit ¹	2,000 sf / unit ¹	2,000 sf / unit ¹
<i>Nonresidential Use</i>	20,000 sf	15,000 sf	SPR ²
MINIMUM LOT WIDTH			
	80 ft	60 ft	SPR ²
FRONT SETBACK			
<i>Minimum</i>	20 ft	15 ft	0 ft
<i>Maximum</i>	50 ft	30 ft	10 ft
MINIMUM SIDE SETBACK			
<i>Primary Use or Structure</i>	10 / 15 ft ³	5 / 10 ft ³	SPR ²
<i>Accessory Use or Structure</i>	5 ft	5 ft	SPR ²
MINIMUM REAR SETBACK			
<i>Primary Use or Structure</i>	30 / 40 ft ³	30 / 40 ft ³	SPR ²
<i>Accessory Use or Structure</i>	5 ft	5 ft	SPR ²

- NOTES: (1) The notation "sf/unit" indicates square feet per dwelling unit.
 (2) SPR indicates requirement to be determined in site plan review.
 (3) The larger requirement shall apply to nonresidential uses where adjacent to a residential use or district.

§ 3-5 BULK REQUIREMENTS

	GC	NC	VCC
MAXIMUM BUILDING HEIGHT			
<i>Primary Structure</i>	40 ft	35 ft	50 ft
<i>Accessory Structure</i>	15 ft ¹	12 ft ¹	20 ft ¹
MINIMUM BUILDING HEIGHT			
<i>Primary Structure</i>	30 ft	-	30 ft
MAXIMUM BUILDING FOOTPRINT			
<i>Per Individual Building Section</i>	10,000 sf ²	5,000 sf ²	7,500 sf ²
MAXIMUM LOT COVERAGE			
<i>Gross Impervious Surface</i>	50%	35%	80%

- NOTES: (1) No accessory structure may exceed the height of the primary structure on the lot.
 (2) An individual building section shall be considered a structure built to stand alone and/or connect to adjacent structures such as a wing or addition adjoined via a fire wall, breezeway, or other structural element providing for the articulation of the primary structure(s) to appear as a smaller scale.

ARTICLE 4

INDUSTRIAL DISTRICTS

§ 4-1 DISTRICTS ESTABLISHED

The industrial districts of the Village of Bergen are listed in the following table. When this zoning law refers to industrial or “I” zoning districts it is referring to one of the following:

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Mixed Use - Light Industrial</i>	MU-LI
<i>General Industrial</i>	GI

§ 4-2 PURPOSE & INTENT

- A. **Mixed Use – Light Industrial (MU-LI) District.** The purpose of the MU-LI District is to implement the recommendations of the Village’s Comprehensive Plan and provide for increased economic development and local employment opportunities in neighborhoods along the Village’s rail corridor. The intent of the MU-LI District is to permit the continuation and protection of residential uses in combination with small-scale, low-impact commercial and industrial uses that do not negatively impact the quality of life of nearby residents. The development or adaptive reuse of structures is allowed provided the proposed structure and use is compatible with the scale, form, and level of intensity of nearby existing structures and uses.

- B. **General Industrial.** The purpose of the GI District is to provide for the continued viability of large-scale and higher intensity industrial operations in accordance with the vision and goals of the Village’s Comprehensive Plan. This district is strategically located along the Village’s rail corridor, in close proximity to adequate utilities and transportation facilities, while maintaining a reasonable buffer from adjacent neighborhoods and natural features. Uses within the GI District should generally be conducted within an enclosed structure and employ building, site, and operational design practices that mitigate the potential negative impacts of excessive dust, smoke, gas, fume, odor, noise, glare, vibration or other nuisance to adjacent buildings or land.

§ 4-3 USE LISTS

Uses are allowed in industrial districts in accordance with the following table.

- A. Uses identified with a “P” are permitted as-of-right, subject to compliance with all other applicable standards of this zoning law.
- B. Uses identified with a “SP” may be allowed if reviewed and approved in accordance with Article 12 (Special Use Permits).
- C. Uses not listed and those identified with a “-” are expressly prohibited.

	MU-LI	GI	ADDITIONAL REGULATIONS
RESIDENTIAL			
Single- or Two-Family Dwelling	P	-	-
Multi-Family Dwelling, Up to 5 Units	P	-	§ 5-14
Home Occupation	P	-	§ 5-13
Upper Floor Dwelling Unit or Loft	P	-	-
COMMERCIAL			
Adult Use	-	SP	§ 5-5
Animal Hospital or Veterinary Clinic	SP	SP	§ 5-6
Dance, Art, Music, or Photo Studio	P	SP	-
Day Care Center, Child or Adult	P	-	§ 5-9
Gym or Fitness Club	SP	SP	-
Office, Administrative or Professional	P	SP	-
Office or Clinic, Medical	P	SP	-
Personal Service Shop or Spa	P	SP	-
Recreation or Entertainment Facility, Indoor	SP	SP	-
Recreation or Entertainment Facility, Outdoor	-	SP	§ 5-16
Repair or Service of Personal Items	P	SP	-
Restaurant or Tavern/Bar	SP	SP	§ 5-17
Retail Store	SP	SP	-
Winery, Brewery or Distillery	SP	SP	§ 5-20
INDUSTRIAL			
Manufacturing, Processing, or Fabrication Facility	P	P	-
Research and Development Facility, Laboratory	P	P	-
Packaging or Assembly of Products	P	P	-
Printing or Publishing Operations	P	P	-
Industrial Equipment Sales, Service, or Repair	P	P	-
Warehouse, Storage Facility	P	P	-

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	MU-LI	GI	ADDITIONAL REGULATIONS
OTHER			
Municipal Structure or Use	P	P	-
Community or Service Club	P	-	-
Place of Worship	P	SP	-
Public Park or Playground	P	-	-
School, Public or Private	P	-	-
Wind Energy System, Primary or Accessory	-	-	-
Telecommunications Equipment	SP	SP	§ 5-18
Mix of Uses in a Single Structure or Lot	See Most Restricted Use		
ACCESSORY			
Accessory Use or Structure	P	P	§ 5-4
Drive-Through Facility	SP	SP	§ 5-10
Outdoor Assembly or Seating Area	SP	SP	§ 5-15
Outdoor Sales, Display, or Storage Area	SP	P	§ 5-15

§ 4-4 DIMENSIONAL REQUIREMENTS

	MU-LI	GI
MINIMUM LOT SIZE		
Single- or Two-Family Dwelling	8,000 sf	-
Multi-Family Dwelling	2,000 sf / unit ¹	-
Nonresidential Use	20,000 sf	40,000 sf
MINIMUM LOT WIDTH		
Residential Use	60 ft	-
Nonresidential Use	100 ft	200 ft
MINIMUM FRONT SETBACK		
	20 ft	40 ft
MINIMUM SIDE SETBACK		
Primary Use or Structure	10 / 15 ft ²	30 / 50 ft ²
Accessory Use or Structure	5 ft	20 ft
MINIMUM REAR SETBACK		
Primary Use or Structure	30 / 40 ft ²	30 / 50 ft ²
Accessory Use or Structure	5 ft	5 ft

NOTES: (1) The notation "sf / unit" indicates square feet per dwelling unit.
 (2) The larger requirement shall apply to nonresidential uses where adjacent to a residential use or district.

§ 4-5 BULK REQUIREMENTS

	MU-LI	GI
MAXIMUM BUILDING HEIGHT		
<i>Primary Structure</i>	35 ft	45 ft
<i>Accessory Structure</i>	15 ft ¹	20 ft ¹
MAXIMUM BUILDING FOOTPRINT		
<i>Per Individual Building Section</i>	5,000 sf ²	-
MAXIMUM LOT COVERAGE		
<i>Gross Impervious Surface</i>	40%	40%
MINIMUM OPEN SPACE		
<i>Share of Lot</i>	-	35%

- NOTES:** (1) No accessory structure may exceed the height of the primary structure on the lot.
 (2) An individual building section shall be considered a structure built to stand alone and/or connect to adjacent structures such as a wing or addition adjoined via a fire wall, breezeway, or other structural element providing for the articulation of the primary structure(s) to appear as a smaller scale.

ARTICLE 5

ADDITIONAL DISTRICT & USE REGULATIONS

§ 5-1 PURPOSE & INTENT

- A. Purpose.** This Article provides additional regulations for uses that are generally considered to have a higher potential for incompatibility with residential or low impact commercial uses without proper mitigation measures. The purpose of the regulations contained herein is to promote the health, safety, and general welfare of the public, while also protecting property values and the character of the immediate neighborhood and Village of Bergen community.
- B. Intent.** These regulations are intended to mitigate the potentially undesirable impacts of certain uses, which by reason of nature or manner of operation, are or may become hazardous, obnoxious, or offensive owing to excessive and undue increases in the production and presence of odors, dust, smoke, fumes, noise, vibrations, refuse matter, vehicular traffic, or human activity.

§ 5-2 APPLICABILITY

- A.** The following requirements are applicable to all uses, permitted (P) and specially permitted (SP), as noted in the use tables of Articles 2, 3, and 4.
- B.** Specially permitted uses must obtain a special use permit and site plan review approval in accordance with Articles 11 and 12.
- C.** Permitted uses do not require a special use permit. However, uses permitted as-of-right must obtain site plan review approval in accordance with Article 11 and conform to the additional use requirements of this Article, where applicable.
- D.** Should the additional use regulations of this Article conflict with other requirements of this local law, the regulations contained herein shall take precedence.
- E.** No authorization for a special use permit or building permit shall be granted for any use listed in this Section unless it is determined that the proposed use also meets the additional regulations required in this Section.

§ 5-3 ACCESSORY DWELLING UNITS

A. Purpose. The purpose of regulating accessory dwelling units is to:

1. Create new housing units while respecting the design and scale of the Village's single-family residential development pattern;
2. Increase the housing stock of existing neighborhoods in a manner that is less intense than multi-family dwelling alternatives;
3. Provide a broader range of affordable housing options that respond to changing family and household needs; and
4. Offer a means for residents, particularly seniors, single parents, and families with grown children, to remain in their homes and neighborhoods while also obtaining extra income, security, companionship, and/or services.

B. General Requirements.

1. An accessory dwelling unit (ADU) may be allowable as an accessory use to a single-family dwelling. There shall be no more than one ADU per primary use.
2. ADUs may be allowed within a principal structure or accessory structure, attached or detached.

~~In no case shall an ADU be more than 25% of the gross floor area of the principle dwelling unit.~~

3. Where located within or attached to the primary structure, the ADU entrance shall be located on the side or rear façade of the principal structure.
4. Where located within a detached accessory structure, the ADU shall be:
 - a) Located in the rear or side yard; and
 - b) Observe all required building, lot, and dimensional requirements of the zoning district within which it is located.
5. An ADU shall be a complete, separate housekeeping unit containing both a legal kitchen and bath and must meet NYS Uniform Building and Fire Prevention Code requirements. No ADU shall include more than two bedrooms.
6. No ADU shall be permitted if an existing approved driveway cannot accommodate at least one off-street parking space, in addition to the parking spaces required for the primary use.

7. The construction, modification, addition, or demolition of an ADU shall not discernably alter the single-family residential character of the lot or structure located thereon.

C. Owner-Occupancy Requirements.

1. At least one of the dwelling units is required to be occupied by the property owner and maintained as their primary residence.
2. The property owner shall sign a written statement before a notary public affirming that the property is their primary residence. Such statement shall be submitted to the CEO. Upon sale of the property, a new owner shall be required to sign and submit a new written statement within 30 days of the close of sale.
3. The individual sale of any ADU apart from the principal use is strictly prohibited.

§ 5-4 ACCESSORY USES & STRUCTURES

Accessory structures and uses are permitted in any zoning district in connection with any principal use lawfully existing within such district as noted in the use tables of Articles 2, 3, and 4. All accessory uses and structures shall be in conformance with this Section.

A. General Requirements. All accessory structures and uses shall:

1. Not be established or constructed until the primary use or structure is constructed.
2. Be clearly incidental and subordinate to the principal structure or use by height, area, extent, and purpose.
3. Not be located in any required front yard area.
4. Be in conformance with the height and setback restrictions of the applicable zoning district and shall not cause the rate of overall lot coverage to exceed the maximum rate permitted.
5. Be finished with materials and/or siding that is consistent and compatible with the existing character of the principal structure and surrounding residential neighborhood.
6. Maintain a separation of at least 10 feet from any dwelling unit and at least five feet from any other accessory structure, including accessory structures on an abutting lot.
7. Not obstruct, block, or force the enclosure of any structural opening (windows, doors, etc.), open porch, deck, or terrace, or required vehicular or pedestrian access way.

B. Residential Accessory Uses and Structures. The following shall be considered permissible residential accessory uses or structures for the purposes of this local law.

1. Decks, patios, or terraces.
2. Carports and garages. Carports shall not be permitted as temporary structures.
3. Enclosed storage structures, such as sheds.
4. Fences and walls subject to the provisions of Section 5-11.
5. ~~Playgrounds or playhouses.~~
6. In-ground and above ground pools. All swimming pools, attached decks and associated equipment shall be located behind the principal building and set back from any lot line a minimum distance of 15 feet. Pools shall be fenced and protected by an appropriate gate as set forth in the New York State Uniform Fire Prevention and Building Code.
7. Noncommercial nurseries or greenhouses.
8. Fire escapes or other such structures intended to maintain the health, safety, and welfare of residents within the dwelling and the general public.
9. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
10. Personal or home electric vehicle charging stations.
11. Solar energy systems, provided all equipment is located on the roof of the structure and does not exceed maximum building height requirements. Solar energy systems located on the ground are prohibited.
12. Radio and television antennas.
13. Other uses and structures which the CEO deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

C. Nonresidential Accessory Uses and Structures. The following shall be considered permissible nonresidential accessory uses or structures for the purposes of this local law.

1. Decks, patios, and terraces when associated with an approved outdoor seating or assembly area.
2. Detached garages, when located behind the front building line of the primary structure.
3. Enclosed storage structures, such as sheds.

4. Fences or walls subject to the provisions of Section 5-11.
5. Fire escapes or other such structures intended to maintain the health, safety, and welfare of residents within the dwelling and the general public.
6. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
7. Solar energy systems, provided all equipment is located on the roof of the structure and does not exceed maximum building height requirements. Solar energy systems located on the ground are prohibited.
8. Walkup service windows facing any public right-of-way when accessory to a permitted retail sales and service use. Pedestrian safety, access, and connectivity shall be addressed through site plan review.
9. Off-street parking and loading areas, including electric vehicle charging stations, provided all applicable parking and loading requirements of this local law are met.
10. Other uses and structures which the CEO deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

§ 5-5 ADULT USES

A. Purpose. ~~The Village of Bergen conducted a study of the potential secondary effects posed by adult uses. This study, along with similar studies, has~~ Studies have shown buildings and establishments operated as adult uses pose secondary effects that have a detrimental and harmful impact to the health, safety, morals, and general welfare of a community. In order to promote the health, safety, morals, and general welfare of the residents of the Village of Bergen, this Section is intended to control those secondary effects of adult uses by restricting adult uses to nonresidential areas of the Village and otherwise regulating their operation.

B. Restrictions.

1. Adult bookstores, adult cabarets, adult entertainment cabarets, adult motion-picture theaters, adult motels, massage establishments, body-rub establishments and peep shows or any other adult use governed by these provisions shall be allowable only for properties located in the General Industrial District.
2. No more than one of the uses governed by these provisions shall be permitted on any single lot in the Village of Bergen.
3. None of the uses governed by these provisions shall be allowed:

- a) Within 100 feet of the boundary of any residential zoning district.
 - b) Within 1,000 feet of the property line of a pre-existing public or private school, hospital, synagogue, church or other religious institution, day-care center, youth center, park or playground, public library or areas where minors congregate.
 - c) Within 100 feet of the property line of another lot containing an adult use.
4. All adult uses, adult bookstores, adult cabarets, adult entertainment cabarets, adult motion-picture theaters, massage establishments, body-rub establishments and peep shows, shall be conducted in an enclosed building. Regardless of location or distance, no one who is passing by an enclosed building having a use governed by these provisions shall be able to see any specified anatomical area or any specified sexual activity by virtue of any act or display which depicts or shows said area or activity. This requirement shall apply to any display, decoration, sign, window or other opening.

§ 5-6 ANIMAL HOSPITALS & VETERINARY CLINICS

- A. All services shall be provided within a completely enclosed building, with the exception of outdoor animal exercise, play, or containment areas subject to site plan review approval.
- B. Adjacent properties shall be adequately protected from noise, odors, and unsightly appearances as determined appropriate by the reviewing body in site plan review.
- C. All buildings, structures, accessory use areas, and outdoor animal exercise, play, or containment areas, except off-street parking areas, shall be located at least 50 feet from any property line abutting a residential use or district.
- D. Screening for outdoor animal exercise, play, or containment areas may be required along lot lines bordering residential uses or districts at the reviewing body's discretion.
- E. A waste management plan shall be required to ensure proper upkeep of the site and disposal of animal excrement and waste.

§ 5-7 BED & BREAKFAST (B&B)

- A. A B&B may be permitted in a primary or accessory structure.
- B. The owner and/or operator of the B&B shall live full-time on the premises.
- C. No more than two nonresidents of the premises, who are expected to report to the property for work, shall be engaged as an employee of the operation.

- D. A B&B shall have a maximum of four guest rooms with no more than two guest rooms sharing a single bath and no more than eight adult guests at one time. For the purpose of this Section, “adult” means any person over the age of 18.
- E. Off-street parking shall be provided in accordance with this local law and may not be located in the front yard. The required location and screening of said parking spaces shall be determined in site plan review.
- F. There shall be no change in the outside appearance of the building or premises that detracts from the residential character of the residence or from the residential character of the neighborhood, or other visible evidence of the conduct of such B&B other than an approved sign.

§ 5-8 CAR WASHES

A. Lot Requirements.

1. Lot sizes shall be at least 20,000 square feet.
2. Lot frontage shall be at least 100 feet.
3. There shall be no more than two access driveways provided from any street. Maximum width of each access driveway shall be 30 feet.

B. General Requirements.

1. A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments of such area shall be determined through site plan review.
2. The site area traveled by vehicles shall be hard surfaced with pervious or impervious paving material that does not release dust or debris. The use of permeable paving material is encouraged, where determined there is no significant negative environmental impact.
3. Lanes or parking areas for vehicles waiting for service shall be provided on site and shall not occur on a public street or highway.
4. Premises shall not be used for the sale, rent or display of automobiles, trailers, mobile homes, boats or other vehicles.
5. All chemicals and cleaning agents to be used must be approved by the Village for the purposes of protecting the Village's Wastewater Treatment Plant.
6. Where a drive-through is proposed as part of a car wash operation, the provisions of §5-10 shall also apply.

§ 5-9 DAY CARE CENTERS & NURSERY SCHOOLS

- A. No day care or nursery school shall be permitted without completion of the proper license and/or registration requirements, where required by NYS or Genesee County Law.
- B. In a nonresidential district, all buildings, structures and areas of organized activity, such as play areas, swimming pools, etc., shall maintain a setback of at least 10 feet from all property lines.
- C. In a residential district, all buildings, structures and areas of organized activity, such as play areas, swimming pools, etc., are prohibited in the front yard. Such uses shall maintain a setback of at least 15 feet from side and rear property lines.
- D. Outdoor floodlighting or public-address systems are prohibited.
- E. Landscaping and screening shall be provided as deemed appropriate by the reviewing body when subject to site plan review.
- F. Day cares and nursery schools may be conducted as a home occupation, provided the conditions of this Section and Section 5-13 are met.

§ 5-10 DRIVE-THROUGHS

- A. No drive-through facility shall be located on a lot directly adjacent to a property used for residential purposes without the submission of a traffic study by the applicant and approved landscaping and screening plan.
- B. Vehicular stacking lanes, service areas, or windows shall not be located in the front yard. All stacking and exit lanes shall be designed so that they do not interfere with off-street parking areas or vehicular and pedestrian circulation on the site. Such lanes shall be designed to reduce the impacts of traffic congestion on adjacent property and public streets.
- C. A vehicular stacking lane shall be provided on-site in a manner that does not impede on-site or off-site traffic movements. The stacking lane shall be delineated from other internal areas through the use of pavement markings that are identifiable during all seasons.
- D. Drive-through facilities, including any protective canopies, signage, stacking lanes, or other associated elements, shall meet the setback requirements for the property. Such facilities shall be screened as determined appropriate during site plan review.
- E. Only one access drive, or two one-way access drives, shall be permitted per street frontage.

- F. All impervious surfaces, including curbing, shall maintain a setback of at least 10 feet from any property line. Such setback areas shall be landscaped to the satisfaction of the reviewing body in site plan review.
- G. The applicant may be required to submit a traffic study demonstrating the impact of traffic generated by the proposed drive-through restaurant as part of site plan review. No drive-through shall be permitted that is anticipated to be a significant detriment to the community or to the local road network. The applicant must demonstrate that the proposed use will not alter levels of service or utilize available traffic capacity to such an extent that it cannot be adequately mitigated or otherwise create unsafe on-site or off-site traffic conditions.

§ 5-11 FENCES

The installation or replacement of a fence within the Village shall require the issuance of a permit by the CEO. A permit shall be issued provided such fence is in compliance with the following:

A. All Fencing.

1. All fencing must be installed, or replaced, in conformance with the NYS Uniform Code.
2. It shall be the responsibility of the property owner to ensure all fencing is located upon their own property and not on adjoining property or directly upon a property line.
3. No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.
4. Fences shall be installed so that the "good side" or "outside" faces the neighbor's property.
5. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e. grass, weeds) around a fence is regularly mowed. Failure on the part of a property owner to maintain his/her fence in accordance with these provisions shall constitute a violation of this Zoning Law.

B. Fencing-Front Yard.

1. Fencing located in the front yard shall not exceed three feet in height for closed fencing, or four feet in height for open fencing. For the purposes of this Section open fencing shall refer to fencing which is at least 75% open. Fencing which is less than 75% open shall be considered closed fencing.

2. Chain link fencing shall be prohibited within the front yard area.
 3. Plantings and bushes used in lieu of a man made fence as set forth above (i.e., a hedge) shall not exceed three feet in height.
- C. Fencing - Side and Rear Yards.** Fencing located in side or rear yards shall not exceed six feet in height.

§ 5-12 GASOLINE STATIONS

- A.** A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments of such area shall be determined through site plan review.
- B.** Entrance or exit driveways shall be located at least five feet from any side or rear property line. Such driveways shall be so laid out as to avoid the necessity of any vehicle backing across any right-of-way.
- C.** No part of any filling pump, lift, or other service appliance shall be erected within 50 linear feet of a property line of any residential district or use.
- D.** No fuel pump shall be located closer than 20 feet to any side lot line nor closer than 35 feet to any street line, measured from the outside edge of the fuel island.
- E.** Minor vehicle repair or service may be permitted provided all activities are conducted within a completely enclosed building.
- F.** The storage and/or display of vehicles for sale or for rent shall be prohibited.

§ 5-13 HOME OCCUPATION

- A. Purpose.** The purpose of the regulating home occupations is to provide residents with the opportunity to conduct professional office, service, or low-impact retail uses from their home, while still preserving the value and character of the neighborhood.
- B. Permitted Occupations.** Permitted home occupations include lawyers, accountants, authors, engineers, architects, consultants, realtors, insurance agents/brokers, counselors, artists, photographers, tailors, repairpersons, beauticians, barbers, counselors, teachers, tutors, music or art instructors, seeing no more than two pupils or clients at a time, or other such vocations which the CEO deems appropriate by virtue of similarity in nature, activity, and/or extent.
- C. Prohibited Occupations.** Prohibited home occupations include those that would generate adverse impacts to or are incompatible with the existing character of a

residential neighborhood. These uses include, but are not limited to, medical or emergency services, animal care services, and vehicle sales, service, or repair.

D. Retail Operations. A home business with on-site retail sales may be allowable by special use permit only and shall also be subject to site plan review. This shall exclude single and/or temporary sales events, less than 72 hours in duration, such as garages sales or estate sales.

E. General Regulations.

1. The home occupation must be clearly incidental and secondary to the use of the residential dwelling and shall conform to all requirements of the NYS Uniform Building and Fire Prevention Code.
2. The residential character of the lot and structures located thereon shall be preserved. Structural alterations or additions of a nonresidential nature shall be prohibited.
3. The home occupation shall be owned and operated by a full-time resident of the dwelling.
4. All home occupation related activities shall occur wholly within an enclosed structure.
5. No more than one employee shall be permitted that is a nonresident of the dwelling.
6. There shall be no exterior display or storage of materials, good, supplies, or equipment related to the home occupation, except for permitted display or storage for home retail businesses.
7. No home occupation shall produce odors, noises, dust, vibrations, glare, or any other nuisance not typically found in a residential neighborhood.
8. Deliveries to home occupations shall be permitted by two-axle vehicles only.

§ 5-14 MULTI-FAMILY DWELLINGS

A. By Conversion. The conversion of an existing single- or two-family dwelling to three or more units shall be required to comply with the following:

1. All dwelling units and structures resulting from conversion shall comply with the standards set forth in the NYS Uniform Code. Said standards shall take precedence to this local law, should there be a conflict.

2. No dwelling unit conversion shall be permitted in a structure with less than 1,200 square feet of gross floor area. No dwelling unit conversion shall be permitted which results in more than five bedrooms.
3. Any alterations made to the exterior of the building due to the unit conversion shall be completed in such a way to preserve the single- or two-family residential character.
4. No dwelling unit conversion shall be permitted unless the dwelling, following such conversion, can comply with all off-street parking requirements. Landscaping and screening of off-street parking areas shall be provided as determined necessary in site plan review.
5. Conversions of dwellings that decrease the number of units or combine units shall be required to ensure the discontinued dwelling unit is permanently and fully integrated into a legal dwelling unit with unimpeded access throughout the legal unit.

B. New Construction. Newly constructed multi-family dwellings shall be in conformance with the following regulations and design standards:

1. When adjacent to an existing residential neighborhood building designs are required to take the form of single- or two-family dwellings in a manner that is visually compatible with the architectural detailing of the Village's traditional residential character.
2. Buildings shall not have uninterrupted or undefined continuous wall or roof planes in excess of 50 feet. Varied roof heights, projecting bays, gables, recesses, and porches shall be used to visually divide larger building facades to produce a scale that is compatible with and complimentary to adjacent residential development.
3. Detached garages shall be located in the side or rear yard only. All garages, attached and detached, shall be set back at least 10 feet from the front building line of the primary structure.
4. Buildings shall be laid out so that the primary entrances face the street. Each entrance shall be connected by sidewalk to the Village's public sidewalk system, where applicable.
5. Accessory structures, such as clubhouses, pools, pool buildings, storage buildings, and trash enclosures, shall be located in a manner that does not disturb or encroach upon the public realm of the site (pedestrian walkways, roadways, etc.).
6. Off-street parking areas shall be located in the side or rear yard only and shall maintain a minimum setback of 10 feet from all property lines and 10 feet from the front building line.

7. Developments of 10 or more units shall provide recreational open space at a standard of 500 square feet per dwelling unit. Each recreation area shall be developed with both passive and active recreation facilities, including the installation of appropriate playground or leisure equipment. Where compliance with this requirement is infeasible due to lot size or other physical restriction, the reviewing body may waive or modify the minimum open space area to be provided.
8. Developments shall be adequately landscaped and screened as determined in site plan review.

§ 5-15 OUTDOOR ASSEMBLY, SEATING, SALES, DISPLAY & STORAGE AREAS

Outdoor assembly, seating, sales, display, and storage areas are allowable as a nonresidential accessory use, provided all areas are in conformance with the following additional requirements. These standards shall not apply to any residential accessory use.

A. General Requirements.

1. No area shall be located within a residential district or within any public right-of-way, unless otherwise permitted by this Zoning Law.
2. No area shall block windows, entrances, exits, pedestrian or vehicular access, sidewalks, fire lanes, or other travel lanes.
3. No area shall exceed 15% of the gross floor area of the primary use.

B. Assembly, Seating, Sales, and Display Area Requirements.

1. Such areas may be allowable in the public right-of-way with Village Board approval. Site plan approval shall also be required to ensure such area does not impede pedestrian or vehicular traffic and otherwise has no negative impact to the health, safety, and general welfare of the public.
2. All areas shall be located adjacent to the wall of the primary structure and shall not extend more than 20 feet from said wall or beyond any public right-of-way or property line, unless otherwise approved through site plan review.
3. No area shall be used for storage purposes.
4. Seating and all items for sales or display shall be removed, enclosed, screened, and/or secured during non-business hours.

C. Storage Area Requirements.

1. No area shall be permitted in any front yard or within any public right-of-way.

- 2. All areas shall be fully screened from public view and from adjacent residential uses or districts.
- 3. No area shall be located within 50 linear feet of the property line of any adjacent residential use or district.

§ 5-16 RECREATION OR ENTERTAINMENT FACILITY, OUTDOOR

- A. Permanent, enclosed bathroom facilities for the general public shall be provided on site.
- B. No outdoor recreation or entertainment facilities shall be located closer than 200 feet to the property line of any adjacent residential use or district.
- C. Hours of operation shall be posted on-site. All outdoor facilities shall be secured and closed to the public outside of operating hours.
- D. A waste management plan shall be required to ensure proper upkeep of the site and disposal of trash, litter, animal waste, and other refuse.

§ 5-17 RESTAURANT OR TAVERN/BAR

- A. When adjacent to residential uses or districts, such uses shall be buffered to minimize visual and auditory impacts in a method approved during site plan review. Such buffering may include but is not limited to landscaping, screening, and fencing.
- B. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance of the regulations therein. A complete copy of any application filed with and license issued by the NYS Liquor Authority shall be provided with any application required under this local law.
- C. Uses where the sale of food is the primary source of revenue shall be considered restaurants. Restaurants must have a full kitchen and menu as required by the NYS Liquor Authority when the sale of beer, wine, and/or liquor is provided.
- D. A waste management plan shall be required to provide for proper upkeep of the site and disposal of refuse. All refuse containers shall be located in the rear yard and maintain a setback of at least five feet from all property lines.
- E. Where the provision of on-site refuse containers is infeasible, a shared waste management agreement may be established between adjacent uses. Under no circumstance shall any shared refuse container be located outside of a 250 foot radius of a use.

§ 5-18 TELECOMMUNICATIONS EQUIPMENT

- A. Legislative Intent.** The Village of Bergen recognizes the increased demand for wireless communications-transmitting facilities and the public and private demand for the services that they provide. Often, these facilities require the construction and maintenance of communication facilities, towers and accessory support structures. The bulk and visual impact of such installations creates aesthetic problems making it appropriate to have some special conditions as to the size and placement thereof. The intent of this Section is to protect the Village of Bergen's interest in maintaining its small village residential character by properly siting towers and related facilities in a manner consistent with sound land use planning while also allowing wireless providers to competitively meet their technological and service objectives.
- B. Site Plan Review Required.** The erection, modification, or alteration of telecommunication facilities shall require site plan approval in accordance with the provisions of Article 11.
- C. Exemptions.** The following are exempt from the application of this Section:
1. The repair and maintenance of existing telecommunications towers, antennas or accessory facilities or structures.
 2. Antennas used solely for residential household television and radio reception.
 3. Lawful or approved telecommunications facilities uses existing prior to the effective date of this Section; provided, however, that any alteration, modification or expansion of such uses shall require compliance with this Section.
- D. Application Requirements.** In addition to the requirements of special use permit and site plan applications, applications for telecommunications facilities shall include:
1. The location of the proposed telecommunications facility, together with guy wires and guy anchors, if applicable.
 2. A side elevation or sketch of the telecommunications tower showing the proposed antennas.
 3. The location of all structures, trees exceeding four inches in diameter, measured at a height of four feet off the ground, and other significant and/or unusual features on the property and on any adjacent property within 20 feet of the property lines.
 4. The location, nature and extent of any proposed fencing, landscaping and/or screening.
 5. The location and nature of proposed utility easements and access driveways, if applicable.

6. A grid map of all of the owner/applicant's existing telecommunications tower site areas in the Village of Bergen and any contiguous town and of any areas proposed or projected by the owner/applicant for installations for a period of two years.
7. Documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any land or vegetation clearing required.
8. All information prepared by the manufacturer of the tower and antenna, including, but not limited to, the following:
 - a) Make and model of tower to be erected.
 - b) Manufacturer's design data for installation instructions and construction plans.
 - c) Applicant's proposed tower maintenance and inspection procedures.
 - d) Applicant's proposed tower maintenance and inspection schedules.
 - e) Applicant's maintenance and inspection records system.
 - f) Anticlimb devices for the tower and any guy wires.
9. A structural analysis and certification from a qualified licensed engineer certifying that the proposed tower meets or exceeds all applicable federal, state, and industrial structural design and safety standards and requirements, including but not limited to any such standards and requirements as relate to loads, windshear and ice. Such certification shall also demonstrate that any icefall or debris from tower failure will be contained on the site.
10. The reviewing body may require that the site plan include a completed visual environmental assessment form (visual EAF) and a landscaping plan addressing other standards listed within this Section with particular attention to visibility from key viewpoints within and outside of the municipality as identified in the visual EAF. A more detailed visual analysis based on the results of the visual EAF may also be required.

E. Government Services.

1. An applicant shall make adequate provisions to permit the shared use of telecommunications facilities for the collocation of antennas and other communication devices and equipment by the Village of Bergen or any other municipal, law enforcement and/or emergency services agency.
2. These municipal and/or emergency entities shall have use of a telecommunications tower without charge, provided that the devices and equipment which are collocated do not interfere with the use and operation of an

applicant's then-existing devices and equipment and do not result in the design load capability of the tower being exceeded.

F. Colocation.

1. At all times, shared use of existing telecommunications towers shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antennas on preexisting structures shall be considered. An applicant shall be required to present an adequate report inventorying existing towers and other structures within reasonable distance of the proposed site and outlining opportunities for collocated facilities and use of other preexisting structures as an alternative to a new construction.
2. An applicant proposing colocation shall be required to submit documentation indicating the agreement or consent to such shared use by the existing telecommunications facility owner. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening and other changes, including real property acquisition or leases required to accommodate colocation.
3. In the case of proposed new telecommunications towers, the applicant shall be required to submit a documentation demonstrating good faith efforts to secure colocation from owners of existing telecommunications towers as well as documenting capacity for future shared use of the proposed tower. Copies of written requests and responses shall be provided.
4. In the interest of minimizing the number of telecommunications towers in the Village of Bergen, the reviewing body may require, as a condition of approval, that the applicant for construction of a telecommunications facility indicate in writing its commitment to permit colocation on said facility by other personal communication system (PCS) or telecommunications system companies in accordance with the following:
 - a) Said applicant/owner will design any telecommunications tower which may be a part of said application to be placed, erected or constructed with sufficient base, height and carrying capacity to accommodate future colocation.
 - b) Such colocation shall not involve the installation or construction of any additional tower structure.
 - c) The placement, installation, operation or use of any antennas, devices or equipment which is collocated, shall not interfere with the placement, maintenance, operation or use of the applicant's then-existing devices and equipment.

- d) The applicant may require that any entity requesting to collocate pay all of the costs associated with any installation or construction, which may be required for such collocation (including the cost, if any, of reinforcing or replacing the then-existing tower or monopole) and pay its pro rata share of the operation and maintenance of the site and facilities used in common.
 - e) Collocation shall not result in the design load capacity of the tower or monopole being exceeded. Prior to placement, installation or construction of any antennas, devices or equipment, the applicant may require the company wishing to so collocate provide an engineering study, acceptable to the Village of Bergen and the applicant, showing that such collocation will not result in the design load capacity of the tower or monopole being exceeded.
 - f) The applicant may require that the company requesting to collocate provide evidence of adequate liability insurance coverage.
 - g) The company wishing to collocate shall execute and file with the Village of Bergen an agreement to be bound by all the terms and conditions of the applicant's site plan application and specifically those provisions relating to termination of use and restoration of the site.
5. The reviewing body may waive the collocation requirement if it is determined that accommodation of future collocation is not feasible or imposes an unnecessary burden, based upon:
- a) The number of Federal Communications Commission licenses available for the area in the foreseeable future.
 - b) The kind of telecommunications facility proposed.
 - c) The number of existing and potential Federal Communications Commission licensees without antenna tower spaces.
 - d) The number and location of available spaces at other existing and approved telecommunications facilities.
 - e) Potential adverse visual impacts by a telecommunications facility which has been designed to accommodate collocation.
- G. Height.** The maximum height for telecommunications towers permitted under this Section, whether freestanding or erected on or attached to an existing structure (such as a water tower or silo), and including any antennas, extensions or other devices extending above the structure of the tower measured from the ground surface immediately surrounding the location of the tower or the structure on which it is located, shall not exceed 150 feet.
- H. Setbacks.** Telecommunications facilities shall comply with all existing setbacks within the affected zone. Additional setbacks may be required by the reviewing body to

substantially contain on-site icefall or debris from tower failure and/or to preserve privacy of adjoining residential or public property. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities. All towers and antennas shall maintain a minimum setback equal to the height of the tower (and any antenna or other fixtures affixed to the top of the tower) plus 25 feet unless sufficient engineering detail shall be provided to warrant a lesser setback.

- I. Aesthetics.** In order to minimize any adverse aesthetic effect on neighboring properties to the extent possible, the reviewing body may impose reasonable conditions on the applicant, including the following:
1. Telecommunications facilities shall be designed, located and screened or buffered in a manner which provides, to the maximum extent possible, compatibility with surrounding land uses.
 2. Use of a monopole or guyed tower (if sufficient land is available to the applicant) instead of a freestanding tower.
 3. The use of camouflage technology in order to hide, disguise or otherwise obscure or minimize the view of an antenna or tower.
 - a) Towers should be designed and sited so as to avoid, whenever possible, application of Federal Aviation Administration (FAA) lighting and painting requirements. Towers shall not be artificially lighted except as required by the FAA. Towers shall be painted a galvanized finish or matte gray above the surrounding tree line and painted gray, green or black below the surrounding tree line unless other standards are required by the FAA.
 - b) No telecommunication facility shall contain any sign or advertising device except those containing health, safety or general welfare messages intended for the protection of the public.
 - c) Accessory facilities and structures shall maximize use of building materials, colors and textures designed to blend with natural surroundings.
 - d) All utility lines shall be underground from the roadside utility connection to the communication facility or tower base accessory structures.
- J. Existing Vegetation.** Existing on-site trees and vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval.
- K. Screening.** Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications facility from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetation screening shall be required. For all telecommunication facilities, at least one row of native evergreen

shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities or structures. 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 the height of any berm.

L. Access and Safety.

1. The site plan shall detail the means of access to the telecommunications facility and all security or safety fencing proposed. Such detail shall include, but not limited to, gate location, roadway or driveway location and design, height and type of fencing and security measures, if any, for the site. Proper gating or other measures of securing the access road or driveway so as to eliminate nuisance usage must be considered and may be required as a condition of approval.
2. In order to ensure adequate emergency and service access to a telecommunications facility, an access road or driveway, two parking spaces and a turnaround area, outside of any fencing, shall be provided on the premises. An access road or driveway exceeding 150 feet in length will require delineators be placed every 50 feet as well as proof that as designed the access road or driveway will be capable of supporting, at a minimum, a 20-ton load. To the maximum extent practicable, existing roads or driveways shall be used for access. In order to ensure minimal visual disturbance and reduce soil erosion potential, construction of an access road or driveway shall, at all times, minimize ground disturbance and vegetation cutting, and grades shall closely follow natural contours.

M. Fencing. All telecommunications facilities, including any guy anchors, if applicable, shall be enclosed by a fence not less than eight feet in height or otherwise sufficiently protected from trespassing or vandalism as approved by the reviewing body.

N. Structural Safety. Any tower shall be designed, erected and maintained in such manner that it meets or exceeds all applicable federal, state and industry structural design and safety standards and requirements, including but not limited to any such standards and requirements as relate to loads, windshear and ice. Any icefall or debris from tower failure shall be contained on the site. At intervals of not more than once in any three-year period, the reviewing body may make written request to the applicant that it provide a structural analysis and certification from a qualified licensed engineer certifying that the tower, as constructed and maintained, complies with the foregoing requirements or, in the event that it does not comply, specifying the repairs or maintenance recommended in order to result in compliance. If any repairs or maintenance is recommended, then such analysis and report shall be accompanied by a letter from the tower owner or operator setting forth a reasonable schedule for the performance of such repairs or maintenance. Upon completion of such repairs or maintenance, certification shall be submitted from a qualified licensed engineer

certifying that such repairs or maintenance have been satisfactorily performed and that the tower is in compliance with the foregoing requirements.

- O. Radio Frequency Effects.** Radio emissions from any telecommunications facility shall conform to applicable Federal Communications Commission (FCC) regulations on emissions, and telecommunications facilities shall be operated only at FCC designated frequencies and power levels.
- P. Insurance.** Prior to the issuance of any building permit, and on a yearly basis thereafter, the owner or operator shall submit evidence that liability and property damage insurance is in effect covering any injury or damage which may result from tower failure or any other condition or hazard relating to the construction or maintenance of the tower.
- Q. Lease Agreements.** In the event that an applicant intends to site any telecommunications facility pursuant to a lease or occupancy or use agreement of any type, a copy of such lease or agreement shall be submitted with the application. Copies of any modification, renewal, extension or termination of such lease or agreement shall be submitted within 30 days of execution.
- R. Maintenance.** The applicant shall submit, as part of its application, a detailed cost analysis and estimate of annual costs associated with the maintenance of any proposed telecommunications facility, access road or driveway and all other improvements as depicted upon the site plan. Such estimates shall be reviewed by the Village Engineer, and upon establishment of the annual costs of such maintenance, the applicant shall post a letter of credit or other financial security acceptable to the reviewing body so as to assure the performance of such annual maintenance services.
- S. Removal.**
1. Prior to issuance of a building permit and based upon the recommendation of the reviewing body, the owner and/or operator of any telecommunications facility shall provide the Village with a letter of credit or other financial security for removal and site restoration acceptable to the Village Board. The estimate shall be prepared by the applicant's licensed engineer, verified by the Village Engineer (or engineer hired by the Village to evaluate the application, if different from the Village Engineer) and approved as to form by the Village Attorney.
 2. In the event that a telecommunications facility is no longer used for the purpose specified in the application, or the telecommunications facility ceases operations or permit approval is canceled or terminated for a period of 90 calendar days, the applicant or its successor shall remove any tower, antenna and/or other accessory facility or structure, as well as site improvements (such as but not limited to fences), except for the driveway, and shall restore the property to substantially the same condition as existed prior to the installation and/or construction of the facility within 30 calendar days of receipt of a written notice from the CEO.

- T. Security Required.** Failure of the applicant to continuously maintain in full force and effect required letters of credit or other financial security shall automatically terminate all permits or approvals granted with respect to such site or sites and shall constitute a violation of the provisions of this Section.

§ 5-19 TEMPORARY STORAGE STRUCTURE

A. Purpose. The Section has been adopted to ensure that placement of temporary storage units does not negatively impact the character and aesthetics of the Village, as well as to promote the health, safety, and welfare of the general public.

B. Applicability. This Section applies to only properties within residential districts. The placement and use of temporary storage structures within commercial and industrial districts are exempt.

C. Registration.

1. Registration shall occur prior to the initial delivery of temporary storage unit.
2. The registration form shall contain:
 - a) The name of the registrant to whom the enclosed temporary storage unit is supplied;
 - b) The registrant's property status: owner, renter, lessee, etc.;
 - c) The address at which the enclosed temporary storage unit will be placed;
 - d) The delivery date and removal date;
 - e) The active Building Permit number, if applicable;
 - f) A sketch depicting the location and the placement of the enclosed temporary storage unit on the lot; and
 - g) Signature of the parcel owner or other legal occupant with the written permission of the parcel owner.
3. Only the property owner may register a unit. A renter, lessee, or other legal resident may register a unit if they have the written permission of the property owner.
4. There shall be no fee incurred for the registration of a temporary storage unit.

D. Placement of Units.

1. Units shall only be placed in the driveway, or if access exists, at the side or rear of the lot. The unit may not be placed in unpaved front yard space.

2. Units shall be set back at least five feet from any lot line and five feet from any structure, where practicable.
3. Approval from the CEO shall be required if the location of a unit meets either of these conditions:
 - a) There is no driveway; or
 - b) The location is on a corner lot.
4. Placement shall not limit visibility of vehicles, pedestrians, or bicyclists.

E. Number of Units, Size, and Enclosure.

1. Only one enclosed temporary storage unit or commercial grade dumpster may be placed upon any lot at one time.
2. Units shall not have a footprint exceeding 250 square feet or a height of more than eight feet.
3. Dumpsters and/or storage units used for construction projects with an approved building permit shall not be limited in number or size, or required to be fully enclosed, provided they are removed within seven days of project completion.

F. Duration. The temporary storage unit shall be located at such address for a maximum of 30 consecutive days, including the days of delivery and removal. The registration may be extended an additional 30 days upon request to and approval by the CEO.

G. Maximum Number of Registrations. Each lot is limited to a maximum of four registrations per calendar year. A minimum of 15 days shall elapse between the end of one registration and the beginning of another.

H. Maintenance. The registrant shall be responsible for ensuring that the enclosed temporary storage unit is maintained in good condition, free from evidence of deterioration, weathering, discoloration, graffiti, rust, ripping, tearing, or other holes or breaks at all times.

I. Prohibited Materials and Uses. The storage of solid waste, chemical substances, and illegal or hazardous material is prohibited.

J. Inspection. Upon reasonable notice to the registrant, the CEO may inspect the contents of any enclosed temporary storage unit at any reasonable time to ensure that it is not being used in a manner prohibited by this Section.

§ 5-20 WINERIES, BREWERIES & DISTILLERIES

- A. When adjacent to residential uses or districts, such uses shall be buffered to minimize visual and auditory impacts in a method approved during site plan review. Such buffering may include but is not limited to landscaping, screening, and fencing.
- B. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance of the regulations therein. A complete copy of any application filed with and license issued by the NYS Liquor Authority shall be provided with any application as required by this local law.
- C. Bars and tasting rooms of breweries and distilleries shall include a minimum food preparation area and menu that satisfies the NYS Liquor Authority's minimum food requirement.

§ 5-21 VEHICLE SALES, SERVICE, OR REPAIR SHOP

- A. A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments of such area shall be determined through site plan review.
- B. Entrance or exit driveways shall be located at least five feet from any side or rear property line. Such driveways shall be so laid out as to avoid the necessity of any vehicle backing across any right-of-way.
- C. No part of any filling pump, lift, or other service appliance shall be erected within 50 linear feet of a property line of any residential district or use.
- D. No fuel pump shall be located closer than 20 feet to any side lot line nor closer than 35 feet to any street line, measured from the outside edge of the fuel island.
- E. All automobile parts and dismantled vehicles are to be stored within a building, and no repair work or automobile maintenance is to be performed outside a building.
- F. No automotive use area shall be used for auto wrecking or for the storage of wrecked, partially dismantled or junked vehicles or equipment or motor vehicles which do not qualify for New York State vehicle registration.

ARTICLE 6

PLANNED UNIT DEVELOPMENT (PUD) DISTRICTS

§ 6-1 LEGISLATIVE AUTHORITY

In addition to any other powers and authority to plan and regulate by zoning, the Village of Bergen hereby enacts requirements for the review of planned residential development plans and the establishment and simultaneous mapping of Planned Unit Development (PUD) Districts pursuant to the provisions of this local law.

§ 6-2 PURPOSE & INTENT

A. Purpose. The purpose of the Planned Unit Development (PUD) District is to:

1. Permit greater flexibility, more creative and imaginative design and utilization of innovative land development techniques while promoting more economical and efficient use of land, buildings, circulation systems and utilities;
2. Provide for both individual building sites and common property which are planned and developed as a unit;
3. Provide harmonious land uses which offer a high level of amenities;
4. Permit a variety of residential types and supporting, compatible nonresidential uses; and
5. Preserve natural and notable unique qualities of the site during the development process.

B. Intent. This Article recognizes that while standard zoning and subdivision functions are appropriate for the regulation of land use in areas of neighborhoods that are already substantially developed, these controls represent a type of pre-regulation, regulatory rigidity and uniformity which does not permit the land development potential of a Planned Unit Development (PUD). The intent of the PUD process is to provide flexibility

in the Village's regulation of residential development in order to achieve the following objectives:

1. Residential development will be in harmony with the general purpose, goals and objectives of the Village Comprehensive Plan and this local law.
2. Residential development will comply with all applicable regulations of this local law except as modified by the authority of this Article.
3. Residential development will not have a substantial or undue adverse effect upon adjacent property, utility facilities, traffic conditions and other matters affecting the public health, safety and general welfare.
4. Residential development will be constructed, arranged and operated so as to not interfere with the development and use of neighboring property in accordance with the applicable district regulations.
5. Residential development will be served adequately by essential public facilities and services, such as but not limited to sanitary sewers, public water supply, stormwater drainage facilities, highway capacity, municipal electric, and other services essential to residential uses.
6. Residential development shall provide an effective and unified treatment of the development possibilities on the project site making appropriate provisions for the preservation of open space, trees, streams, wetlands, natural topography and geological features and the prevention of soil erosion.

§ 6-3 GENERAL REQUIREMENTS

- A. **Minimum Area.** A PUD shall contain an area of not less than 2 contiguous acres. No land shall be designated for a PUD if it is too small, too narrow in width, too irregular in shape or with topography too excessive to be planned and developed in a manner consistent with the purpose and objectives of this Article. The reviewing body may recommend the waiver of this minimum if the proposed development is found to be in accordance with the Village Comprehensive Plan.
- B. **Ownership.** The tract of land for a PUD may be owned, leased or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner, or jointly by owners, of all property included in a project. In the case of multiple ownership, the approved PUD plan is binding on all owners.
- C. **Location.** The PUD District shall be applicable to any zoning district or parts of zoning districts where the applicant can demonstrate that the characteristics of their holdings and plan will meet the objectives of this Article.

- D. Eligibility.** To be eligible for the establishment of a PUD District under this Article, applicants must demonstrate the proposed project meets or exceeds one or more of the following criteria:
1. The project proposes a use and development pattern that is compatible with the surrounding context but is otherwise not permitted by this zoning law. In determining compatibility, development characteristics to be considered include, traffic generation, noise, scale, density, intensity of use, community character and design, and impacts on existing infrastructure and public services.
 2. The project preserves natural resources, historic resources, and/or general community assets to a greater degree than would be possible under the standard provisions of this zoning law.
- E. Relief of Conventional Zoning.**
1. For projects deemed eligible, the reviewing body may waive Village zoning regulations that would ordinarily apply to a property where the applicant demonstrates relief from said regulations is necessary to meet the purposes described herein.
 2. It is not the intent of this Article to arbitrarily dispense with underlying zoning regulations, but rather to grant the minimum relief necessary to achieve the objectives of this Article.
- F. Approval Required.** No building permit may be issued for any planned development until approval of a PUD District application is obtained in accordance with Article 13.

§ 6-4 LOT & USE CONSIDERATIONS

A. Permitted Uses.

1. Residential uses may be of any variety of types. In developing a balanced community, the use of a variety of housing types and densities shall be deemed in keeping with the objectives of this Article and the vision and goals of the Village Comprehensive Plan.
2. Commercial service, office, and retail uses may be permitted where such uses are intended to primarily serve the planned development area. The scale and intensity of such uses, as well as all proposed building designs, shall be compatible with the context of the neighborhood.
3. Public and semi-public uses may be permitted such as passive and active recreational areas, community centers, or civic gathering spaces.
4. Accessory residential uses as identified by this local law may also be permitted.

5. The mixing of uses is encouraged, and may be permitted as deemed appropriate by the reviewing body.
- B. Permitted Lot Sizes.** No lot shall be less than 5,000 square feet in area and 40 feet in width.
- C. Building & Site Design Standards.** All proposed PUD plans must be developed in accordance with the development standards contained within Article 7 (Off-Street Parking, Loading & Accessibility), Article 8 (Landscaping & Screening), and Article 9 (Nonresidential Design).
- D. Traffic & Circulation.** All proposed public roads shall meet the design and construction specifications set forth by the Village. Special consideration should be given to pedestrian movement from the standpoint of safety, convenience and amenity. Sidewalks, curbs and gutters should be considered in the design of the overall circulation system and may be required by the reviewing body if deemed necessary for the continuation of the Village's multi-modal transportation network.
- E. Common Open Space Requirements.**
1. The reviewing body may require that the applicant reserve natural areas, open spaces, or environmentally sensitive or significant areas and/or require the development of a park, playground, or other recreational use as part of a proposed PUD District.
 2. Designation and use of such open space and parkland shall be based upon the review board's consideration of the following factors:
 - a) The need to protect for public use areas historically used by the public such as parks and trails;
 - b) The avoidance of siting structures in hazardous areas, wetlands, floodplains, or on steep slopes;
 - c) The protection of sensitive habitats and woodlots; and
 - d) The desirability of protecting scenic areas of the site.
 3. Common open space in a PUD may be one or more sites for use in common by all of the occupants within the project area or by the residents of the Village as a whole, depending upon dedication of such sites. All common open space should be preserved and maintained for the intended purpose through one or more of the following methods:
 - a) Public dedication.
 - b) Establishment of a Home Owners Association.

- c) Retention of responsibilities, control and maintenance by the developer.

§ 6-5 INSTALLATION & INSPECTION

- A.** The installation or improvements of any development shall be subject to observation and inspection at all stages by representatives of the Village of Bergen. Free access shall be accorded by the developer and requested information shall be promptly submitted. All costs of observation, including testing of materials, shall be paid for solely by the developer. A sufficient sum shall be provided by the developer in either a letter of credit or cash.
- B.** The Village Board may require the applicant to furnish a letter of credit, performance bond, maintenance bond, or cash for the faithful performance of the plan and specifications as finally approved.
- C.** The guarantee for the installation of the required improvements shall be in the amount fixed by the Village Board and approved as to form, sufficiently and manner of execution.
- D.** The guarantee shall be issued in favor of the Village of Bergen and shall assure the complete installation of the required improvements within such period, not longer than three years. The Village Board, with the consent of all parties in the development of the PUD, may extend such period upon written application of the developer filed with the appropriate Village Official or designee prior to the date of expiration or upon its own motion at any time prior to a declaration of default by the Village Board.

ARTICLE 7

OFF-STREET PARKING, LOADING, DRIVEWAYS & ACCESSIBILITY

§ 7-1 PURPOSE & INTENT

The purpose and intent of the requirements in this Article is to:

- A. Ensure that any parking area or facility is designed to provide proper circulation, reduce hazards to pedestrians, and protect the users of adjacent properties from nuisances caused by the noise, fumes, and glare of headlights which may result from the operation of vehicles;
- B. Ensure there are adequate amounts of parking and loading facilities to serve the use(s) and users of the property; and
- C. Encourage alternative parking designs and modes of transportation to reduce dependence on single-occupancy vehicular trips and improve efficiency during travel.
- D. Ensure safe, well-planned multi-modal access can be made to all commercial and residential properties within the Village while minimizing potential vehicular and pedestrian conflicts.
- E. Reduce storm water run-off and its negative impacts to the environment through implementation of appropriate drainage structures and use of impervious surfaces
- F. Improve the Village's resiliency to significant weather events through the implementation of green infrastructure and adherence to sustainable design principles.

§ 7-2 APPLICABILITY

- A. The term "vehicle," as used in this Article, shall include, but not be limited to automobiles, motorcycles, trucks, recreational vehicles, campers and trailers, including recreational and boat trailers.
- B. Off-street parking and loading spaces shall be provided and kept available as an accessory use to all permitted and specially permitted uses of buildings, structures, and lots.
- C. Areas that may be considered as off-street parking space include any private garage, carport or other area available for parking other than a street, entrance or exit lane, vehicle, pedestrian, or bicycle accessway, or driveway. A private driveway may be used for single-, two-, or multi-family dwellings up to four units in accordance with Section 7-9.
- D. The provision and maintenance of private off-street parking areas is a continuing obligation of the property owner.

§ 7-3 OFF-STREET PARKING MINIMUMS

A. Determination of Requirements.

- 1. The requirement for a single use (e.g. a retail store) shall be determined directly from this Section. The requirements for a combination of uses made up of multiple permitted or specially permitted uses (e.g. a retail store with an office building) shall be determined by establishing the requirement for each single use and adding them together, unless otherwise provided for in this Article.
- 2. If the use is not specifically listed in the schedule of such requirements, the requirement shall be the same as the most similar listed use, as determined by the CEO.
- 3. Any use requiring $\frac{1}{2}$ or more of a parking space shall require the full space.
- 4. The maximum number of parking spaces allowable for any use is not to exceed 125% of the minimum requirement, unless otherwise approved as part of site plan review.
- 5. The minimum parking requirement may be reduced as part of site plan review if the applicant can make permanent arrangements for shared parking with other uses or can otherwise prove that the parking standards are excessive for the use.

6. The minimum parking requirement may be increased as part of site plan review if it is deemed necessary to protect the health, safety, and general welfare of the public.
- B. Village Center Commercial (VCC) District.** There shall be no minimum parking requirements for uses within the VCC District.
- C. All Other Districts.** Off-street parking spaces shall be provided in all districts, except the VCC District, in accordance with the following table.

LAND USE	MINIMUM SPACES
RESIDENTIAL	
<i>Single- or Two-Family Dwelling</i>	2 per dwelling unit
<i>Multi-Family Dwelling</i>	1.5 per dwelling unit
<i>Accessory or Upper Floor Dwelling Unit</i>	1 per dwelling unit
<i>Bed & Breakfast</i>	1 per room
<i>Home Occupation</i>	As required for dwelling, but no more than 2 additional shall be allowed
<i>Home Occupation, with Retail</i>	Determined by Site Plan Review
<i>Nursing Home or Adult Care Facility</i>	0.5 per bed + 0.5 per employee ¹
COMMERCIAL	
<i>Retail, Office, Service Operation</i>	3 per 1,000 square feet ²
<i>Lodging</i>	1 per room
<i>Recreation Facility, Indoor or Outdoor</i>	3 per 1,000 square feet ²
INDUSTRIAL	
<i>All Uses</i>	1 per employee ¹
OTHER	
<i>Hospital</i>	0.5 per bed + 1 per employee ¹
<i>Licensed Daycare Facility</i>	1 per classroom + 1 per employee ¹
<i>Public Use / Place of Public Assembly</i>	0.5 per occupant, based on max occupancy
<i>School, Public or Private</i>	1 per classroom + 1 per employee ¹
<i>School, Occupational or Skill Training</i>	1 per 3 students + 1 per employee ¹

- NOTES:** (1) Based on the maximum shift.
 (2) As measured by the gross floor area of the proposed use.

§ 7-4 OFF-STREET LOADING MINIMUMS

- A. Loading Space Required.** Whenever the normal operation of any development requires that goods, merchandise, or equipment be routinely delivered to or shipped from that development, an off-street loading area must

be provided in accordance with this Article to accommodate the delivery or shipment operations in order to avoid undue interference with the public use of streets or alleys.

- B. Minimum Size and Number of Spaces.** Loading spaces shall be provided for uses in accordance with the following:
1. Each use requiring routine deliveries by commercial vehicles shall provide at least one off-street loading space.
 2. Loading spaces shall be at least 12 feet wide and 25 feet long.
 3. The minimum clearance height for loading spaces shall be 14 feet. The related drive aisle or accessway shall have the same minimum clearance height.
- C. Small Lots and Uses.** For small lots where the designation of an off-street loading space is infeasible due to access and/or site constraints, an alternate loading plan utilizing off-street parking spaces, drive aisles, or public parking areas may be approved as part of site plan review.

§ 7-5 DESIGN REQUIREMENTS

Off-street parking and loading spaces shall conform to the following design requirements:

- A. Location.**
1. Off-street parking and loading spaces are prohibited in the front yard in all residential districts, the Village Center Commercial District, and the Neighborhood Commercial District.
 2. Vehicles sales uses may locate off-street parking spaces in the front yard, provided there is a minimum five foot landscaped buffer between the parking lot and front lot line.
 3. Single-, two-, and multi-family dwellings up to four units, may provide off-street parking in the front yard area in any district, provided such parking is located on an approved, designated driveway. The parking of vehicles on driveways shall not block Village sidewalks.
 4. No vehicle shall be permitted to be parked on front yard grass or dirt areas of any lot in any district.
 5. Off-street parking areas located in the side yard shall comply with the following standards, unless otherwise waived as part of site plan review.

- a) The overall width of the parking area frontage along the front property line shall not exceed 30% of the lot frontage, not including sidewalks or landscaped areas.
 - b) The parking area shall be no closer to the front lot line than the building frontage of any adjoining building.
 - c) The parking area shall be screened from the public right-of-way by fencing or landscaping measuring at least three, but no more than six feet in height. Such screening shall be no less than 50% opaque to a height of at least three feet.
6. All off-street parking and loading spaces shall be on the same lot as the use they are intended to serve unless otherwise specified in this Article.
 7. Off-street parking and loading spaces shall maintain setbacks from the side or rear property lines of any adjacent residential use or district as noted below.
 - a) Parking Spaces – 10 feet MIN
 - b) Loading Spaces – 30 feet MIN
- B. Materials & Paving.** The following shall apply only to parking and loading areas for nonresidential uses and multi-family dwellings over four units.
1. All spaces shall be hard surfaced with dustless material and shall be maintained in smooth and well-graded condition. Such surface shall be permanent and capable of being kept free of snow, dust, and dirt and must be permanently marked.
 2. The use of pervious pavement material is strongly encouraged.
 3. All spaces shall be clearly marked with painted strips of at least four inches in width.
 4. All off-street parking areas must include a dedicated area independent of required parking and loading spaces for the placing and storage of snow.
- C. Lighting.** All lighting used to illuminate off-street parking or loading areas shall be dark sky compliant. Lighting shall be so arranged and shielded that it will not project light rays directly upon any adjoining property in a residential district.

D. Construction.

1. All spaces and their access driveways shall be graded so as to provide for the proper mitigation of storm water and runoff. Centerline gradients of aisles shall not exceed 8%.
2. All new or reconstructed off-street parking areas must conform to Americans with Disabilities Act standards.

E. Dimensions.

1. Off-street parking space dimensions shall be in conformance with the table below.

ANGLE OF PARKING SPACE	MIN WIDTH	MIN LENGTH
90 Degree	9 ft	18 ft
60 Degree	9 ft	18 ft
45 Degree	8 ft	18 ft
180 Degree (Parallel)	8 ft	22 ft

2. Aisles intended for the maneuvering of vehicles within parking areas shall be no more than 24 feet in width.

§ 7-6 ALTERNATIVE PARKING ARRANGEMENTS

The following alternative arrangements may be utilized to satisfy off-street parking requirements with site plan review approval.

- A. On-Street and Municipally Owned Parking.** On-street and municipally owned parking spaces may be used to satisfy up to 20% of the requirements for off-street parking provided such spaces are no more than 1,000 feet from the use.
- B. Parking Demand Analysis.** The number of off-street parking spaces required for any use may be adjusted with the completion of a parking demand analysis by the applicant. When parking will be shared with other functions, the parking demand analysis may be used to determine the sharing factor. Such analysis shall include, at a minimum:
 1. An estimate of the number of spaces needed to accommodate the proposed use;
 2. A summary and map of the proposed location and/or configuration of spaces (on site, public lots, on street, etc.);

3. A market study and/or other supporting information and rationale behind the requested number of parking spaces; and
4. An analysis of existing parking conditions in the surrounding area, to include a radius of at least 1,000 feet.

C. Joint and Shared Parking Facilities.

1. Joint and shared off-street parking areas that extend across property lines are encouraged as parking can be more efficiently organized in larger areas than in smaller areas, resulting in more parking capacity with less land devoted to parking.
2. Joint off-street parking areas by two or more buildings or uses located on the same lot or adjacent lots is permitted, provided that the total of such facilities shall not be less than the sum required of the various buildings or uses computed separately.
3. Shared off-street parking areas for two or more uses that are located on the same lot or adjacent lots is permitted, provided they have differing peak parking demands or operating hours and the number of spaces provided is at least that of the use with the greater minimum parking requirement.
4. All joint and shared parking areas shall conform to the following:
 - a) The land upon which the shared or joint parking spaces are located shall be owned or leased by one or more of the collective users.
 - b) The parking area is located within 1,000 feet of the building(s) or use(s) it is intended to serve.
 - c) A Shared or Joint Parking Agreement is executed documenting the uses and property owners and must be reflected in a deed, lease, contract, easement or other appropriate legal document.
 - d) A Maintenance Agreement is executed documenting the responsibility of each user in the maintenance and upkeep of said parking facilities.

§ 7-7

BICYCLE & PEDESTRIAN ACCOMMODATIONS

- A. The provision of bicycle parking is encouraged with all multi-family and nonresidential development at a rate of at least 10% of vehicle parking requirements.

- B. Off-street parking areas of five or more spaces shall include clearly identified pedestrian connections from the parking spaces to the main building entrance and public sidewalk, where applicable.

§ 7-8 ACCESS MANAGEMENT & DRIVEWAYS

- A. Access from streets to parking areas shall be clearly defined. In order to minimize the number of curb cuts, shared access drives and the development of rear service lanes for access to parking and loading areas are encouraged.
- B. All parking spaces, except those required for single-, two-, or multi-family dwellings up to four units, shall have access to a public street or alley in such a manner that any vehicle leaving or entering the parking area from or into a public street or alley shall be traveling in a forward motion.
- C. The Village Engineer or their designee shall review all access roads and driveways. The Village may engage the services of other engineers, planners, or other professionals to assist in such review all costs at the expense of the applicant.
- D. No driveway providing access to an off-street parking area shall be located closer than 60 feet to the intersection of public streets, unless otherwise approved as part of site plan review.
- E. The minimum width of an access driveway shall be determined by the table below.

LAND USE	REQUIRED WIDTH (FEET)	
<i>Single- or Two-Family</i>	10 MIN	20 MAX
<i>Single- or Two-Family, Shared Driveway</i>	11 MIN	24 MAX
<i>Multi-Family, Up to 4 Units</i>	10 MIN	20 MAX
<i>Multi-Family, Over 4 Units</i>	12 MIN	24 MAX
<i>Other – One Way Access</i>	12 MIN	24 MAX
<i>Other – Two Way Access</i>	18 MIN	30 MAX

§ 7-9 DRIVEWAY PERMIT

- A. **Permit Required.** The development of new driveways, driveway expansions, or paving/concrete an existing driveway in any residential district shall require the issuance of a driveway permit by the Village’s CEO, unless otherwise approved as part of site plan review.

- B. Application Requirements.** Driveway permit applications shall be submitted to the CEO on forms provided by the Village designee and shall be accompanied by the following:
1. A to-scale drawing of the parcel indicating the location and dimensions of the proposed driveway;
 2. A current survey map may be required;
 3. A stormwater management and drainage plan, unless the driveway or driveway expansion is to consist of permeable paving materials; and
 4. Any other materials deemed necessary by the CEO to conduct an adequate review of the site and proposed driveway or driveway expansion.
- C. Requirements for Approval.** Driveway permit applications must meet the following minimum requirements to be considered for approval:
1. The driveway shall be at least one foot away from side and rear property lines. This shall not apply to:
 - a) Driveways that are intended to cross property lines for shared use. Such driveways shall also be subject to the conditions of Subsection D, Shared Driveways.
 - b) Existing driveways that do not meet the setback requirement. However, no driveway shall be permitted to further extend within the required setback area.
 2. The driveway shall not cause the parcel's total lot coverage to exceed the maximum amount permitted for the zoning district in which the parcel is located (see Bulk Requirements Tables under Articles 2, 3, and 4).
 3. The driveway width must be in conformance with the minimums and maximums of this Article.
 4. The paving or material of said driveway shall not obscure or in any way alter existing public sidewalks, nor shall the paving or material for the driveway cover existing sidewalks.
 5. The driveway shall be hard surfaced, paved, or otherwise comprised of a dustless material such as gravel or stone. Dirt driveways are prohibited.
- D. Shared Driveways.** All driveways situated so as to provide access to two or more parcels shall require the following in order to receive a driveway permit.

1. The land upon which the driveway is located shall be owned or leased by one or more of the intended users.
 2. A Shared Access Agreement is executed documenting the agreed rights of use and access between all parties. Such agreement shall also be reflected in a deed, lease, contract, easement or other appropriate legal document tied to the property(s) in question.
 3. A Maintenance Agreement is executed documenting the responsibility of each user in the maintenance and upkeep of said driveway.
- E. U-Shaped Driveways.** Connected or U-shaped driveways may be permitted under the following conditions:
1. The lot has at least 50 feet of continuous frontage along the street.
 2. Each driveway is at least 10, but no more than 18 feet in width at the street frontage.
 3. There are no more than two curbcuts providing access to the lot.
 4. A minimum of 18 feet is provided between curbcuts.

§ 7-10 LARGE VEHICLES PARKED IN RESIDENTIAL DISTRICTS

Commercial and recreational vehicles may be parked or stored on residential property in residential districts in accordance with the following.

A. Commercial Vehicles.

1. A commercial vehicle shall mean any vehicle exceeding a gross vehicle weight of 11,001 pounds when empty or 25 feet in length. This shall not include pick-up trucks, vans, box-trucks, or other vehicles used for business or commercial purposes, provided such vehicles do not exceed the above length or weight limits.
2. Such vehicle shall be parked behind the front building line or inside a garage out of public view. Where conformance with this provision is infeasible due to physical constraints created by existing property conditions such as lot width, lot depth, building location, building size, and/or driveway access, the vehicle shall be parked as far back as possible from the nearest street or sidewalk edge to maintain visibility for vehicular traffic and pedestrians.

B. Recreational Vehicles.

1. No more than two recreational ~~or accessory~~ vehicles ~~or combination thereof~~ may be parked on a residential property at any one time.
2. Recreational vehicles stored in a residential district, shall be owned by a full-time resident of the property on which it is located. For the purposes of this section: "stored" shall mean parked for a period of more than seven days; and "full-time resident" shall be a person who lives upon the property at least six months in a 12-month period.
3. Such vehicles, if required to be registered and/or inspected in order to be operated upon the roads or waterways of the state, shall be registered and/or have a valid inspection certificate or, if not required to be registered and/or inspected to be operated upon the roads or waterways of the state, shall be in operable condition.
4. Such vehicles shall be parked behind the front building line or inside an enclosed storage structure. Where conformance with this provision is infeasible due to physical constraints created by existing property conditions such as lot width, lot depth, building location, building size, and/or driveway access, the vehicle shall be parked as far back as possible from the nearest street or sidewalk edge to maintain visibility for vehicular traffic and pedestrians.
5. All vehicles shall maintain a setback of at least five feet from all lot lines if more than six feet in height. Where such requirement cannot be met, the vehicle shall be parked the greatest distance possible from the lot line.
6. The use of landscaping or fencing at least six feet in height is encouraged at side and rear property lines to screen vehicles from view of adjacent residential properties.

ARTICLE 8

LANDSCAPING & SCREENING

§ 8-1 PURPOSE & INTENT

- A.** The Village of Bergen recognizes the value of trees and landscaping and that the preservation and enhancement of these resources is necessary to protect the health, safety and welfare of Village residents. Landscaping is considered an integral part of site design, offering shade and habitat, impeding soil erosion, providing water absorption and retention to inhibit excess runoff and flooding, enhancing air quality, offering a natural barrier to noise and enhancing property values and providing scenic beauty.
- B.** The purpose of this Article is to:
- 1.** Establish minimum standards and criteria for landscaping for multi-family and nonresidential development in the Village, including parking areas.
 - 2.** To dissuade the unnecessary clearing and disturbing of land to preserve the natural and existing growth of flora.
 - 3.** To ensure the replacement of removed flora, or to establish new flora, that is indigenous to the Western New York region.
 - 4.** Reduce the effects of wind and air turbulence, noise and the glare of lights.
 - 5.** Provide unpaved areas for the absorption of stormwater runoff and prevent soil erosion and avoid the blighted appearance of parking areas.
 - 6.** Conserve and stabilize property values, preserve a healthful environment, and facilitate the creation of a convenient, attractive and harmonious community environment.

§ 8-2 APPLICABILITY

All nonresidential and multi-family development that is otherwise subject to site plan review shall meet the requirements of this Article.

§ 8-3 LANDSCAPE PLAN REQUIREMENTS

- A.** A landscape plan shall be submitted and approved as a part of the site plan review process. The reviewing body may require such plan to be prepared, signed, and stamped by a professional, NYS licensed or registered landscape architect, certified nurseryman or landscape designer.
- B.** The landscape plan shall be drawn to scale, including dimensions and distances, and shall clearly delineate:
 - 1. Existing and proposed structures and uses,
 - 2. Parking areas and access aisles,
 - 3. Refuse disposal areas/dumpsters,
 - 4. Outdoor storage areas,
 - 5. Drainage patterns, and
 - 6. Provisions for visual and noise screening.
- C.** The landscape plan shall delineate the location and description of all existing and proposed trees, shrubs and plantings. To insure proper protection of plantings and planted areas, landscape materials to be used on the site shall be identified in a planting schedule to be included on the landscape plan with the following information:
 - 1. Type,
 - 2. Common and botanical names,
 - 3. Size,
 - 4. Quantity, and
 - 5. Pit or bed treatment.
- D.** The landscape plan shall include all existing plant materials that are to be removed from the site and such other information as may be required during site plan review.

- E. Landscape plans should include a variety of trees, shrubs, and ornamental planting (annuals and perennials) as part of the site design. The mixing of trees and shrubs helps to avoid a uniform, unnatural appearance, and to protect against extreme loss due to disease or infestation.
- F. Upon approval of the landscape plan by the Village, the property owner agrees to install and perpetually maintain the approved landscape design and materials for the duration of the approved use.
- G. All landscaped areas approved by the Village shall be preserved according to the landscape plan, or as amended. Flora that dies shall be replaced within the next planting season with materials of a similar nature.

§ 8-4 APPROPRIATE PLANT MATERIAL

- A. Plant and landscape materials shall be compatible with soil conditions on site and the regional climate. Native plant species are encouraged.
- B. All grasses, trees, and plant material shall be in accordance with those appropriate for the Plant Hardiness Zone of the Village of Bergen as defined by the United States Department of Agriculture.
- C. Under no circumstance shall any site include plant material that is considered by the NYSDEC to be a prohibited and regulated invasive species per NYS Law 6 CRR-NY V C 575.

§ 8-5 GENERAL STANDARDS & CRITERIA

- A. A minimum ground cover of not less than 25% of the total lot area shall be landscaped with an appropriate balance of trees, conifers, shrubs, ornamental plantings and lawn area to create a naturalized appearance on the site.
- B. The arrangement and spatial location of landscaped areas shall be designed as an integral part of the site development and disbursed throughout the site, and not just located around the perimeter.
- C. Existing vegetation and trees (of all sizes and stages of maturity) shall be maintained, wherever possible.
- D. Plastic or other artificial plantings or vegetation are not permitted.
- E. Landscape plantings should be designed to stage blooms and have color throughout the growing season.

- F. Indigenous species shall be utilized to the greatest extent possible, as noted on the species list.
- G. Provisions for snow removal and snow storage must not adversely impact landscaped areas. Any area damaged as the result of snow removal or storage activities must be fully restored in accordance with the approved landscaping plan within the next planting season.
- H. Ornamental lighting and street furnishing may be incorporated within landscaped areas as part of site plan review.

§ 8-6 **LAWN AREA**

- A. Grass areas shall be planted in a species well adapted to localized growing conditions in Genesee County, New York. Grass areas may be sodded, plugged, sprigged, hydro-mulched, or seeded except that solid sod shall be used in swales or other areas subject to erosion.
- B. In areas where other than solid sod or grass seed is used, over-seeding shall be sown for immediate effect and protection until coverage is otherwise achieved.
- C. Grass areas shall be procured from new of the year seed crops, free of foreign material or weed seeds.
- D. Replacement or over-seeding mixes shall match or compliment the original installation.
- E. Grass areas shall also provide continuous, uniform, and consistent coverage.

§ 8-7 **BUILDING FOUNDATION LANDSCAPING**

- A. A mix of landscape plantings shall be installed around all building foundations.
- B. Plant material shall be placed intermittently against long expanses of buildings walls, fences, and other barriers to soften the effect and to help break-up walls with little to no architectural detail.
- C. Ornamental plant material, such as flowering trees and shrubs, perennials, and ground covers are encouraged.
- D. Plantings should decrease in size and increase in detail, color, and variety near entryways into buildings.

§ 8-8 OFF-STREET PARKING LANDSCAPING & SCREENING

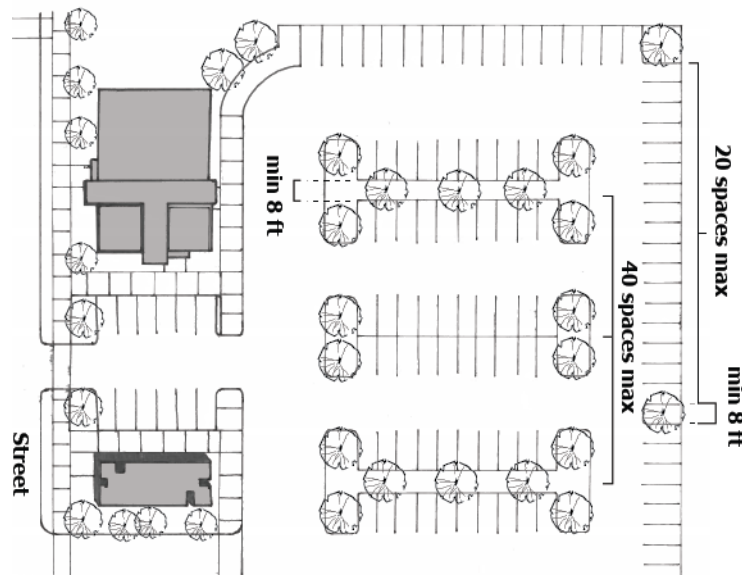
A. Screening.

1. Parking shall not be located within 10 feet of any residential district or use, except where a solid screening wall or fence at least six feet in height is placed on the lot line with vehicle stops or a bumper to ensure the integrity of the fence, in which case no setback shall be required. Parking lot stops shall consist of durable material, such as concrete, masonry, metal or rubber. Wooden stops are prohibited.
2. Where parking is located 10 feet from a residential district or use, the perimeter shall be landscaped with ground cover, low shrubs or flowering plants, and shade trees shall be planted at intervals of not more than 25 feet.
3. Parking areas must also be screened along lot lines bordering institutional or residential uses. Such screening shall consist of a landscaped area at least six feet wide, densely planted with a mixture of trees and shrubs to create an effective visual barrier. All trees shall be a minimum of two-inch caliper (trunk diameter) when planted.

B. Landscaping (See Figure 8.1).

1. Parking lots containing 20 or more spaces are encouraged to be planted with at least one tree per 10 spaces. Each tree should be located within a landscaped island or median. Large and medium shade trees (no less than eight feet in height at maturity) are recommended. Due to heat and drought stress and vision clearances, ornamental and evergreen trees are not recommended in parking areas.
2. The dimensions of all islands and medians proposed should be a minimum of eight feet wide at the shortest side to protect plant materials and ensure proper growth. Landscaped islands should be protected with concrete curbing.
3. Each median or island should include at least one tree. Low shrubs and ground covers will be required in the remainder of the landscaped area. Effective use of earth berms and existing topography is also encouraged as a component of the landscaping plan.
4. Landscaped islands should be utilized in parking areas to separate parking stalls into groupings of not more than 20 spaces between islands.
5. Parking lots should be broken up into "rooms" of no more than 40 spaces, separated by landscaped islands or pedestrian accessways or sidewalks.

FIGURE 8.1 PARKING LOT LANDSCAPING



- C. In instances where healthy plant material exists on a site prior to its development, the above-mentioned standards may be modified to allow credit for such plant material, provided it is determined through site plan review that such an adjustment is in keeping with and will preserve the intent of these standards.

§ 8-9 DUMPSTER SCREENING

- A. **Applicability.** This section shall apply to all dumpsters, trash containers, refuse receptacles, or garbage cans associated with a commercial, industrial, or multi-family use over four units. This shall exclude temporary dumpsters necessary for any approved construction project.
- B. **Requirements.**
1. All dumpsters shall be located out of and/or screened from public view.
 2. Dumpster enclosures must be equal to or taller than the dumpster being screened.

§ 8-10 MECHANICAL EQUIPMENT SCREENING

- A. **Applicability.** This section applies to all exterior mechanical equipment, including, but not limited to, electrical boxes or heating, ventilation, and air

conditioning systems, associated with a commercial, industrial, or multi-family use over four units.

B. Requirements.

1. All mechanical equipment shall be located out of and/or screened from public view.
2. Mechanical equipment located at ground level must be effectively screened with vegetation, low berms, or others measures that are equal to or taller than the equipment being screened.
3. Mechanical equipment that is located on the rooftop shall be effectively screened with parapet walls, decorative fencing and/or gables to eliminate views.

§ 8-11 SCREENING OF NONRESIDENTIAL USES FROM RESIDENTIAL

A. Applicability. The following requirements shall apply to any circumstance where a nonresidential use or multi-family dwelling up to four units abuts a residential use or district.

B. Requirements. In all such cases, a landscaped buffer of at least five feet in width shall be provided. Such buffer shall include one or any combination of the following screening methods as approved in site plan review:

1. A landscaped earthen berm a minimum of two feet high plus plantings a minimum of two feet high (a total of four feet high).
2. A decorative concrete or masonry wall.
3. A wood, wrought iron, tubular steel, or similar fence compatible with the character of the area in which the fence is to be placed. Fences or walls used to meet screening requirements shall display a finished face toward adjacent streets and properties.
4. A compact hedge or other live vegetative barrier.

§ 8-12 MAINTENANCE

A. Applicability. The requirements of this section shall be applicable to all uses, except single-, two-, and multi-family dwellings up to four units.

B. Requirements.

1. The property owner, or their designated agent, shall be responsible for the proper care and maintenance and replacement, if necessary, of all landscape materials in a healthy and growing condition.
2. Maintenance shall include, but not be limited to; watering, weeding, mowing (including trimming at the base of fencing), fertilizing, mulching, proper pruning, and removal and replacement of dead or diseased trees and shrubs on a regular basis.
3. All landscaping and plant material that is missing, dead, decaying, or injured as of September 30th shall be replaced by June 30th of the following year at the property owner's expense. The replacement shall be of the same species and size unless otherwise approved through site plan review.
4. Irrigation systems shall be designed to minimize spray on buildings, neighboring properties, roads or sidewalks; maintained in proper operating condition and conserve water to the greatest extent feasible through proper watering techniques.

- C. Inspection.** Improper maintenance shall be determined through periodic inspection by the CEO. The CEO may require a review and status report of plantings by a professional landscaper, arborist, or engineer. All reasonable costs for review and determination shall be at the property owner's expense.

ARTICLE 9

NONRESIDENTIAL DESIGN

§ 9-1 PURPOSE & INTENT

- A. Purpose.** The purpose of this Article is to further define and enhance the community character, design, and identity of the Village of Bergen. These standards are intended to ensure future investment includes high-quality building and site design treatments consistent with the preferred aesthetic and character of the Village, as outlined in the Village's Comprehensive Plan. Furthermore, the provision of these standards and guidelines is intended to inspire innovation and distinctive design solutions when undertaking changes, modifications, or adaptive reuse of buildings and properties, as well as direct the style of new or infill development.
- B. Intent.** The application of these design standards and guidelines should seek to achieve the following objectives:
1. Improve Bergen's quality of life and promote the Village as a place where people are attracted to work, shop and socialize;
 2. Improve the aesthetic and visual quality of the Village's commercial areas to create attractive, vibrant activity centers for residents and visitors;
 3. Promote a sense of design continuity that appropriately relates development and redevelopment to the historic character of the community;
 4. Utilize elements, details, styles and architectural features for buildings, sites, and public spaces that complement the surrounding area and maintain a sense of place;
 5. Reflect the traditional development character and settlement pattern of the Village; and
 6. Encourage the utilization of sustainable development practices, including, but not limited to buildings consistent with the goals of the Leadership in Energy and Environmental Design (LEED) program.

§ 9-2 APPLICABILITY

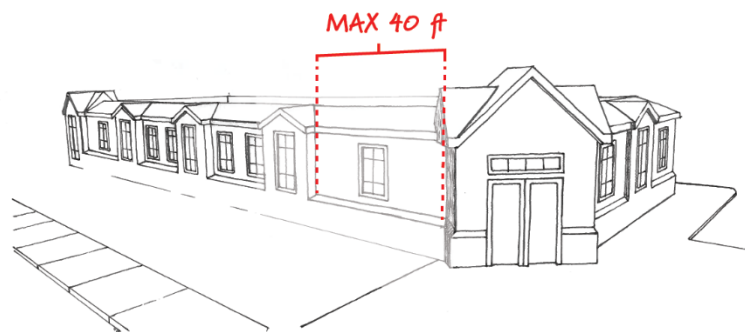
- A. Structures Subject to Regulation.** These design standards shall apply to all existing, altered, or newly constructed nonresidential, mixed-use, and multi-family structures within the Village of Bergen.
- B. Site Plan Review.** All exterior, environmental changes proposed for nonresidential, mixed-use, or multi-family structures shall be subject to site plan review and approval as required by Article 11 of this Zoning Law.
- C. Historic Structures.** For this purpose of this Article, the term “historic structure” shall refer to all properties, local landmarks, and contributing structures recognized by the State and/or National Registers of Historic Places.
- D. New Construction.** These guidelines are not intended to promote any specific historic architectural style. However, new construction is required to follow these standards and should be compatible with existing contributing architectural features and historic structures.
- E. Property Owner Assistance.** Owners of existing buildings should consult with the appropriate Village Official or designee and/or all applicable review bodies for assistance in following these design guidelines prior to making exterior repairs, renovations, restorations, and alterations to their buildings or obtaining a building permit.

§ 9-3 BUILDING PLACEMENT & ORIENTATION

- A. Placement and Orientation Context.** Placement refers to how a building is situated on the lot. Orientation refers to the location of a building's main axis, or primary façade. Building placement and orientation is a crucial part of the interface of private building facades with public thoroughfares, which shape a compact, walkable public realm.
- B. Massing and Form Context.** Massing and form refer to the volume and shape of a building. Buildings should provide visual interest that engages pedestrians and others to promote activity and business vitality. Wherever possible, new development should enhance the visual quality of the site on which it is located, as well as the character of the surrounding area. Buildings should relate to the street in a manner that positively contributes to the pedestrian realm. Buildings shall be oriented parallel with adjacent buildings and the street line.
- C. General Design Requirements.**
 - 1. Buildings situated at street corners should “wrap” the corner by continuing certain facade design elements (such as the cornice or horizontal accent bands) on all street elevations (see Figure 9.1).

2. All primary facades and main entrances should face the primary street and should be easily identifiable and pedestrian-scaled.
3. Buildings should be taller than they are wide.
4. A single, large, dominant building mass shall be avoided. No facade shall have a blank, uninterrupted length exceeding 40 feet without including architectural features such as columns, pilasters, piers, or changes in plane, in texture or masonry pattern, storefronts and entry treatments, or equivalent design element that subdivides the wall into pedestrian-scaled proportions (see Figure 9.1).

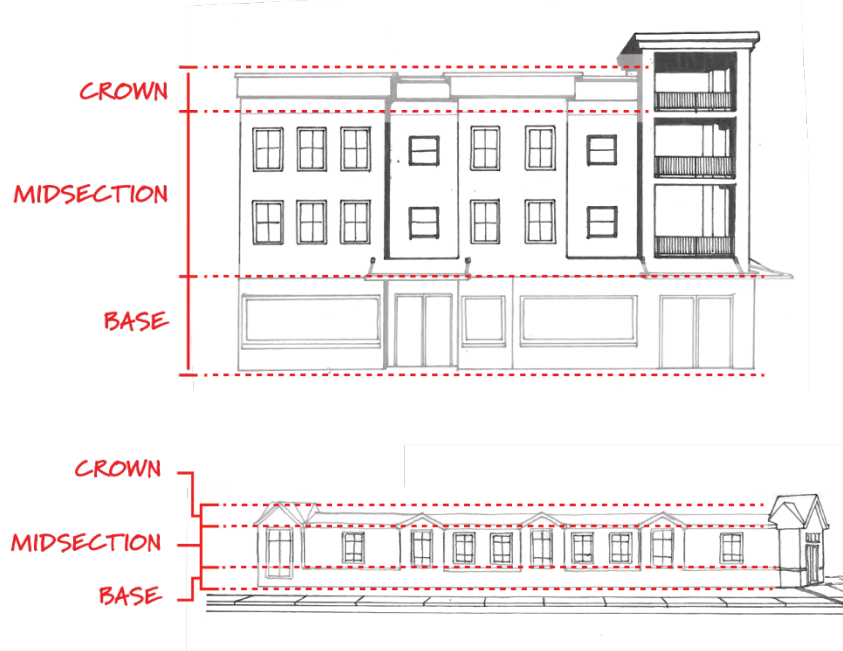
FIGURE 9.1 BUILDING ORIENTATION & MASSING



5. Buildings designed to advertise or promote a uniform corporate image in a manner that may render the building undesirable or unable to reasonably accommodate future uses shall be prohibited.
6. All buildings shall exhibit a clearly defined base, mid-section, and crown. This can be accomplished using a combination of architectural details, materials, textures,

and colors (see Figure 9.2). Buildings which are "squat" in proportion or which have very strong horizontal elements that dominate the facade are discouraged.

FIGURE 9.2 TRIPARTITE (3-PART) FAÇADE DESIGN



§ 9-4 FAÇADE COMPOSITION & FENESTRATION

A. Façade Composition Context. A building façade serves as the interface between the public realm and the interior space of the building and should be compatible with the character and context of the surrounding area. Proper façade composition creates visual interest and adds character to a façade, providing visibility into the building interior, particularly for retail uses, contributing to the pedestrian, bicyclist, and motorist experience throughout the Village. The arrangement of facade elements should be so designed to create a recognizable and consistent composition.

B. Fenestration Context. Fenestration refers to the area of the façade or building exterior covered with openings, in particular windows and doors, how transparent the enclosing glass in the openings is, and how the openings are arranged and/or relate to each other with respect to size, depth, location, etc.

C. General Façade Design.

1. Buildings that are located on a street corner are considered to have two primary facades.
2. The rhythm of openings of a primary facade shall observe the size, location, and proportion of fenestration elements of adjacent historic structures, where applicable.

- The use of depth is encouraged to highlight facade openings such as windows to create a three-dimensional relief which produces shadows. Windows should not be mounted flush to the exterior of the facade.

D. Windows and Doors.

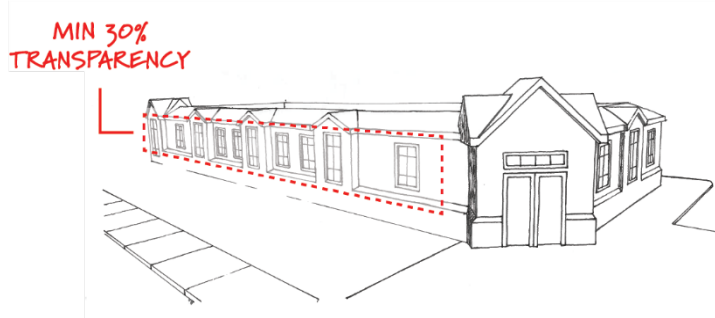
- The first-floor levels of a facade shall provide the highest amount of façade openings and articulation.
- All primary facades shall observe the following minimum transparency requirements (see Figures 9.3 & 9.4)

BUILDING / USE	MINIMUM TRANSPARENCY
FIRST FLOOR (Area between Two and Eight Feet above Ground Level)	
Commercial/Mixed Use Building	50% of wall area (VCC District) 30% of wall area (Other Districts)
Industrial Building	20% of wall area
Public/Semi-Public Building	30% of wall area
Multi-Family Building	30% of wall area
UPPER FLOORS	
All Buildings/Uses (except industrial)	30% of wall area

FIGURE 9.3 COMMERCIAL/MIXED USE BUILDING (VCC DISTRICT)



FIGURE 9.4 COMMERCIAL BUILDING (OTHER DISTRICTS)



3. Awning or transom windows are required of new construction within the VCC District.
4. The use of opaque, mirrored, or tinted glass with less than 50% light transmittance is prohibited. If screening is necessary, interior blinds or curtains are encouraged.
5. Doors that are comprised of an area of at least 30% transparent glass shall be used for building entrances on the primary facade. Opaque doors may be used for doorways providing access to upper floors.

E. Storefronts and Entrances.

1. Primary entrances shall face the street and be so located to afford direct access from the sidewalk, where applicable. Entrances for upper floors shall be distinguished from entrances for first floor uses.
2. Corner buildings may have two separate entry points or a single-entry point at the corner.
3. Storefront construction should be recessed enough at the point of entry to allow the door to swing out without obstructing the sidewalk, where applicable.

F. Awnings and Canopies.

1. Awnings or canopies may be permitted over entrances, storefronts, large first-floor windows, and upper-floor windows.
2. Awnings and canopies shall be designed to fit the window, door, or storefront openings that they are intended to cover. Placement should not conceal architectural features.
3. Awnings should be made of low-sheen fabrics with a traditional appearance such as canvas or acrylic. The use of rigid, reflective, neon, and translucent materials or colors is prohibited. Wood, metal, plastic, fiberglass, aluminum, stock metal, rounded or dome-like awnings are prohibited.

4. Awnings and canopies shall not be backlit or internally illuminated.
5. Awnings may be retractable or fixed and shall be capable of withstanding both high winds and winter snow loads.
6. Street-level awnings shall be mounted so that its valance is no less than seven feet above grade.
7. Awnings and canopies shall not project more than seven feet from the building façade.

§ 9-5 ROOF STYLES & TREATMENTS

- A. Roofline Context.** A roofline is an architectural element, such as a cornice, parapet or change in material, which creates a distinction between the top of the building and the lower floors.
- B. Roof Design.**
1. All structures shall have a visible roofline.
 2. Rooflines shall be designed in proportion to the overall height and width of the building and, where applicable, shall relate to nearby historic structures.
 3. Rooflines should include an ornamental cornice. The use of ornamental brackets is encouraged.
 4. Eaves should include design detail to add visual interest.
 5. Mechanical equipment that is located on the rooftop shall be effectively screened with parapet walls, decorative fencing and/or gables to eliminate views.
- C. Roof Treatments.** The use of alternative energy materials and systems, such as solar panels or shingles, is encouraged. Their installation shall be incorporated into the design of the building so as not to detract from the architectural style and detailing. Where feasible, alternative energy equipment shall be located so as not to be visible from the public right-of-way.

§ 9-6 MATERIALS & COLOR

A. General Requirements.

1. Building facades shall be constructed of durable materials such as brick, stone masonry, or fiber cement (panels, siding and trim boards) or finishing wood.

2. No more than three building materials or colors should be used on any one facade of a building. A single material or color should be used as the dominant theme in the facade, with secondary materials and colors used to highlight and accent the design.
3. Changes in materials shall occur at inside corners. Material changes at the outside corners or in a plane shall be prohibited, unless otherwise approved by the reviewing body.
4. Building materials, textures, and colors should be compatible with adjacent historic structures, where applicable, so as not to detract from existing historic character.

B. Prohibited Materials.

1. The use of stucco, vinyl, fiberglass, plastic panels, sheet metal, clear-coated aluminum, stainless steel, mirrored glass, concrete block, or smooth concrete is prohibited in the VCC District.
2. Finishes that are intended or designed to reflect light and glare are not permitted in any district.

C. Modern Materials. The use of other modern and non-traditional materials or textures within the VCC District may be permitted with approval by the reviewing body.

D. Historic Masonry Treatments.

1. Masonry on existing historic structures that has not previously been painted shall not be painted unless deterioration has progressed so far that a protective surface coating is needed. In such cases, a breathable masonry paint or stain shall be used.
2. Masonry that has previously been painted shall be repainted with a breathable masonry paint or restored to unpainted masonry.
3. If paint is to be removed from masonry surfaces, the gentlest effective paint removal method available shall be employed so as to avoid damage to historic masonry and mortar. Sandblasting and similar methods should never be employed.

§ 9-7 EXTERIOR LIGHTING

A. Design of Fixtures.

1. Fixtures shall be fully shielded, pointing downward, to minimize skyglow, glare, and light trespass. The use of lighting fixtures compliant with International Dark Sky Association standards is highly encouraged.

2. Pole-mounted fixtures shall not be mounted higher than 18 feet above grade.
3. Spotlights or other types of artificial lighting used to illuminate building faces shall be top mounted fixtures which project downward only onto the surface itself.
4. Canopy lights shall be recessed within their housing so as to focus their illumination directly downward.

B. Intensity of Illumination.

1. All lighting fixtures shall be shielded and directed so as not to cast an illumination of more than two foot-candles on adjacent nonresidential properties or more than one-tenth (0.1) foot-candle on adjacent residential properties.
2. Exterior lighting should be illuminated only when needed, such as during business hours or in areas requiring illumination for security purposes.
3. Fixtures shall be no brighter than necessary to illuminate the site and/or area intended. Bulb types should be selected to reduce blue light emissions, which may be hazardous to human health and wildlife.
4. Lighting shall be white or amber in color. No lighting shall have a color temperature exceeding 3000 Kelvins.

§ 9-8 REHABILITATION & REUSE OF HISTORIC STRUCTURES

The following additional regulations shall apply to the rehabilitation and reuse of existing historic structures, unless it is so determined by the reviewing body that the restoration of any such structure to its historic state would be inconsistent with the purpose and intent of this Article.

A. Preservation of Character.

1. Each property shall be recognized as a product of its own time. Alterations that seek to create a false sense of historical development are discouraged.
2. Changes to a building that have taken place over time are evidence of its history and development. Those changes that have acquired significance in their own right shall be recognized and preserved.
3. Where architectural or site features are determined to contribute to the character of the property or the district, proposed alterations or additions shall be designed to minimize the impact on those features.
4. New additions, exterior alterations, or new construction shall not destroy historic materials or general features that characterize the property. The new work shall be

compatible with the massing, size, scale and architectural features of the property and the surrounding neighborhood, to protect the integrity of the property.

5. Additions or alterations to structures shall be constructed in such a manner that, if removed in the future, the essential form and integrity of the structure and the site would be unimpaired.
6. Design elements on historic structures shall not be altered or covered in a manner that would adversely impact the façade and architectural character of the structure.

B. General Repair and Replacement.

1. Existing historic structure architectural elements and features shall be retained to the greatest extent practicable. Removal of historic elements must be approved by the reviewing body.
2. Existing historic materials shall only be replaced when it is demonstrated they are deteriorated beyond repair. Repair or replacement shall be done so in kind by either reusing historic materials or duplicating the existing in form, profile, and texture.
3. In the event that historic structure architectural elements or features have previously been removed or altered from their historic state, subsequent efforts to repair or replace these elements shall be done to return the structure to its historic specifications as closely as possible.

C. Preservation, Repair, and Replacement of Openings.

1. Original window, storefront, and door openings shall not be reduced in size or covered. Transoms must be retained and uncovered during applicable building renovations.
2. Original window, storefront, and door openings that have been covered or filled in on a building façade shall be restored during applicable building renovations.
3. Replacement windows shall fill the original size of each opening and be of similar style (ex. double hung) and shall utilize true divided lights or simulated divided lights when matching the original mullion and/or muntin configuration. The use of interior-only grids or grids between the panes of glass is prohibited.
4. Lowered ceilings shall have a soffit at each window that allows retention of the full window height.

§ 9-9 DESIGN TRANSITIONS BETWEEN NONRESIDENTIAL & RESIDENTIAL

- A. Applicability.** All nonresidential uses and multi-family dwellings shall employ similar building and site design standards to ensure compatibility with adjacent residential development. These requirements shall be in addition to the design standards and guidelines of this Article and requirements set forth by this Zoning Law for landscaping, screening, and buffering of uses.
- B. Requirements.** To the maximum extent practicable, nonresidential and multi-family development shall use all of the following techniques when developed adjacent to a residential use.
1. Similar building setback;
 2. Similar building height;
 3. Similar roof form; and
 4. Similar exterior materials.
- C. Waiver of Requirements.** During site plan review, the reviewing body may waive the requirements of this section if it is determined that the application of such criteria is not necessary to protect the character and quality of life of the neighborhood as well as public health, safety, and welfare.

ARTICLE 10

GENERAL REVIEW & APPLICATION PROCEDURES

§ 10-1 APPLICABILITY

- A. Review Required.** Any person seeking to erect, construct, enlarge, alter, improve, demolish a building or structure; or establish, operate, convert, or change the nature of the use or occupancy of any building or structure within the Village of Bergen shall first be required to submit a development plan application and secure all necessary approvals and permits as required by this Zoning Law.
- B. Application Form.** Applications must be submitted in a form and in such numbers as outlined herein. Checklists of application submittal and review requirements may be made available within the Village Office.
- C. Review Body.** For the purposes of this Zoning Law the terms “reviewing body” or “review body,” shall refer to the Village board, commission, committee, official, or other designated decision-making body that is charged with review and/or approval authority as authorized under this Zoning Law and by NYS Law. This may include, but is not limited to the CEO, Village Board of Trustees, Planning Board, and Zoning Board of Appeals.
- D. Properties in Violation Prohibited.**
1. No applications that include a building, structure, property, or use that is in violation of this Zoning Law, other laws of the Village of Bergen, or NYS laws, rules, and/or regulations shall be accepted or processed.
 2. Applications which, in whole or in part, include a proposal to rectify violations on such property may be considered in accordance with this Zoning Law.

§ 10-2 PRELIMINARY SKETCH PLAN MEETING

- A. Purpose.** The purpose of a preliminary sketch plan meeting is to provide the applicant with the opportunity to seek nonbinding, advisory direction from the Village in order to

better prepare the applicant and project application for the development review process.

- B. Conference Recommended.** It is recommended that applicants request a preliminary sketch plan meeting prior to entering the formal application review process to discuss the nature of the proposed application and to determine the best course of action for submittal. Meetings may be held with the CEO and/or the appropriate application review body during a scheduled public meeting.
- C. Advisory Opinion.** In no way shall any comments or feedback provided by the Village during a preliminary sketch plan meeting be construed as an indication of decision or be legally binding in any way.
- D. Application Material.** Materials presented during the preliminary sketch plan meeting may be incomplete and/or conceptual in design. A formal, complete application is required to be considered for approval prior to action.

§ 10-3 GENERAL APPLICATION PROCEDURES

A. Submittal.

1. Applications shall be submitted to the Village Clerk, CEO, or other duly designated Village Official.
2. Only the property owner or their agent, with legally binding and written permission of the owner, may file an application. Where there are multiple land owners, a written consent agreement among all land owners must be included.
3. At least 10 hard copies, no larger than 11 by 17 inches, and one electronic copy of the application materials shall be provided. This shall include at least two stamped copies of site plans, where required, measuring 24 by 36 inches.
4. In order to be considered, applications must be submitted at least 10 days prior to the meeting at which the applicant wishes to be considered.
5. Supplemental materials and amendments to applications already under review are due at least 10 days prior to the meeting of the reviewing body.

B. Acceptance and Processing.

1. The Village designee shall indicate that an application is considered accepted and ready for processing only if it is submitted in the required number and form, includes all required materials, and is accompanied by the required fee.
2. The acceptance of an application by the Village designee shall in no way be interpreted as a determination of the completeness, adequacy, or accuracy of

application materials, but rather serve as an acknowledgement to the receipt of required application materials. The Village designee may consult with other Village departments, officials, boards, committees, or consultants to confirm the relevant application materials required have been submitted.

3. If an application is determined to be inadequate, the Village designee will provide paper or electronic written notice to the applicant, along with an explanation of all known deficiencies that prevent competent review.
4. No further processing of inadequate applications will occur. When the deficiencies are corrected, the application will be placed in the next available processing cycle. If the deficiencies are not corrected within 62 days, the application will be considered withdrawn.

C. Application Fee. All applications shall be accompanied by the required fee as established by the Fee Schedule set and approved by the Village Board. Failure to submit said fee shall deem an application unacceptable, regardless of the status of submittal on all other required materials.

D. Applicant Responsibilities. The applicant and/or their agent is expected to attend all meetings at which the application is to be discussed. In all cases, the burden is on the applicant to show that their application complies with the Village of Bergen local laws and regulations, and any other applicable NYS laws, rules, and regulations.

§ 10-4 REVIEW BODY ACTION

A. Public Hearing. Where required by this Zoning Law, the reviewing body shall hold at least one public hearing for applications under their review prior to the issuance of a decision.

B. State Environmental Quality Review (SEQR). Where required by NYS Law, the review body shall complete all required documentation and procedures in accordance with the State Environmental Quality Review Act (SEQRA).

C. Issuance of Decision.

1. Within 62 days following the close of the public hearing the reviewing body shall issue a decision to approve, approve with conditions or modifications, or deny the proposed application.
2. Prior to issuing a decision on an accepted application, the reviewing body shall determine by resolution the application to be complete, noting any waived or additional application requirements.

3. Where County referral is required, no decision shall be issued by the reviewing body until the referral process is complete and the Village has received the County's decision and recommendation.
- D. Written Findings.** Decisions shall contain written findings explaining the rationale for the decisions considering the standards contained in this Zoning Law. A copy of the decision shall be promptly filed in the Village Clerk's Office and sent to the applicant.
- E. Waiving Application Requirements.** The reviewing body is authorized to waive or modify, in whole or in part, required application material if one or more of the following is determined by the review body chairperson that:
1. Any such material, or part thereof, is found not to be requisite in the interest of the public health, safety, or general welfare;
 2. Any such material is inappropriate or unrelated to the application;
 3. Any such material is deemed unnecessary for an adequate, informed review.
- F. Additional Application Requirements.** The reviewing body may require the applicant to provide additional material necessary for a complete, adequate, and informed review. Such additional material shall be deemed necessary by a majority vote of the reviewing body.

§ 10-5 REFERRALS

- A. Internal Referral.** The reviewing body may refer any application to another Village board, committee, department, or official for review, comment, and advisement. Within 30 days of referral the receiving body shall submit its recommendation in writing with a summary of findings to the reviewing body.
- B. Professional Referral.** The reviewing body may seek the opinion of any engineering, architectural, historical, planning, technical, environmental, legal consultant or attorney, or other expert or professional to aid in the review of an application. Reimbursement of any costs incurred by the Village may be required in accordance with Section 16-6.
- C. County Referral.** The Village shall refer all required materials to Genesee County pursuant to NYS GML 239-m; and in accordance with any planning referral agreements between the Village and County. A proposed action is subject to review if the real property is within 500 feet of the following:
1. The boundary of any city, village or town.
 2. The boundary of any existing or proposed county or state park or any other recreation area.

3. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road, or highway.
4. The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
5. The existing or proposed boundary of any county or state owned land on which a public building or institution is situated.
6. The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of Agriculture & Markets Law (this shall not apply to the granting of area variances).

§ 10-6 EXPIRATION, REVOCATION OF APPROVAL OR PERMIT

- A. Expiration.** With the exception of variance applications, the approval of an application shall expire if one of any of the following occur:
1. The approved use(s) cease operation for more than 12 consecutive months for any reason;
 2. The applicant fails to obtain necessary building permits or certificates of occupancy within one year of the approval date;
 3. The applicant fails to comply with the conditions of approval within one year of the date of issuance or completion of construction, where applicable;
 4. The applicant fails to initiate construction or operation of use within one year of the approval date;
 5. The applicant fails to complete construction; or
 6. The applicant fails to renew a time limited permit prior to the stated time period ending.
- B. Extensions.** The reviewing body may grant an extension for any condition in Subsection A upon written request by the applicant. The applicant shall include in such request the desired time period for the extension and the reasoning for requesting the extension. A fee may be required to process extension requests. The time period of such extension shall be determined by the reviewing body.
- C. Revocation.** The CEO may revoke approval and/or related permit(s) if the applicant violates the conditions of the approval or engages in any construction, alteration, or operation not authorized by the approval and/or related permit(s).

§ 10-7 PUBLIC HEARINGS & NOTICES

A. Public Hearings.

1. The reviewing body shall schedule, notice, and conduct a public hearing for applications as required by this Zoning Law and NYS Law.
2. The reviewing body may review multiple applications (e.g. special use permit and site plan review) for a single property or use concurrently and may conduct concurrent or joint public hearings, if desired.

B. Public Notices.

1. All notices of public hearings shall be made in accordance with the Village of Bergen Notice Schedule. Said public notice schedule shall be set by resolution of the Village Board.
2. Public notice shall include mailed notices, media notices and posted notices in accordance with this Zoning Law and NYS Law.

C. Media Notices. The Village Clerk or designee shall cause publication of a notice in the Village's official newspaper and official website.

D. Mailed Notices. Written notices, where required by NYS Law, shall be provided by mail to the following:

1. Owners of all real property, as shown on the current tax map, located within 500 feet of the property that is the subject of the hearing.
2. The Clerks of adjoining municipalities whose boundaries are located within 500 feet of the property that is the subject of the hearing.
3. The Genesee County Clerk where the hearing concerns property adjacent to an existing county road or proposed road shown on the official county map, adjoining other county land, or situated within 500 feet of a municipal boundary.
4. The State Commission of Transportation, where the hearing concerns property within 500 feet of a state highway.

E. Posted Notices.

1. For all public hearings, a notice shall be posted in a location plainly visible within the Village Office.
2. The applicant shall obtain a sign of public notice from the Village and ensure its placement on the property in question in a manner that is plainly visible to passersby.

3. It shall be the responsibility of the applicant to erect the notice in accordance with the time and place requirements defined in the Village of Bergen Notice Schedule.
 4. Up to two signs shall be provided to the applicant without charge, with each additional sign provided at such cost set in the Village of Bergen Fee Schedule.
 5. Upon close of the public hearing, all signs shall be returned.
- F. Public Notice Expenses.** All costs for a public hearing, including, but not limited to, the legal ad(s), required mail notifications, and posting of signs shall be included in the public hearing fee provided in the Village's Fee Schedule.

ARTICLE 11

SITE PLAN REVIEW

§ 11-1 PURPOSE

The intent of the site plan review process is to preserve and enhance the physical form of the Village, achieve compatibility with adjacent development, mitigate potentially negative impacts on traffic, parking, drainage and similar environmental concerns, improve the overall visual and aesthetic quality of the Village, and increase the capability of the Zoning Code to adapt to a variety of unique circumstances.

§ 11-2 APPLICABILITY

- A. **Review Required.** Prior to the issuance of a building permit, site plan approval shall be obtained as noted herein.

ACTION	EXEMPT	MINOR	MAJOR
CONSTRUCTION / EXPANSION / ALTERATION			
Primary Use or Structure			
Single- or Two-Family Dwelling	●		
Multi-Family or Nonresidential Use, Up to 1,000 sf		●	
Multi-Family or Nonresidential Use, Over 1,000 sf			●
Accessory Use or Structure ^{1, 2}			
Single- or Two-Family Use, Up to 250 sf	●		
Single- or Two- Family Use, Over 250 sf		●	
Multi-Family or Nonresidential Use		●	
Accessory Dwelling Unit		●	
Landscaping, Exterior Lighting, Mechanical Equipment, or Stormwater/Green Infrastructure			
Single- or Two-Family Dwelling	●		
Multi-Family or Nonresidential Use		●	
Off-Street Parking / Loading Area			
10 Spaces or Less		●	
Over 10 Spaces			●

table continued on next page

ACTION	EXEMPT	MINOR	MAJOR
CONSTRUCTION / EXPANSION / ALTERATION			
Driveway			
Joint, Shared, or U-Shaped Residential Driveway		●	
Within Existing Curbcut	●		
Requiring New or Altered Curbcut			●
Solar Energy System (Accessory Use or Structure)		●	
Parks or Playgrounds (Public Use)		●	
Pools or Playgrounds (Residential Use)	●		
Telecommunications Equipment			●
OTHER ACTIONS			
Ordinary Repair, Maintenance, or Replacement In-Kind	●		
Interior Alteration	●		
Change of Use		●	
Amendment to Approved Site Plan		●	
Planned Unit Development District (Articles 6 & 13)			●
Demolition of Structure(s) in VCC District (over 250 sf)			●
Action Involving Utility Infrastructure		●	

NOTES: (1) Accessory use or structure includes decks, patios, porches, garages, sheds, etc. For full list see Section 5-4 (Additional District & Use Regulations).
 (2) Fences and walls shall be exempt from site plan review, provided such fence or wall conforms to the requirements of Section 5-11.

§ 11-3 REVIEW PROCEDURES

- A. Authorized Review Body.** Minor and major site plan applications shall be reviewed and decided upon by the Planning Board.
- B. Coordinated Special Use Permit Review.** Where a special use permit is also required, the application requirements of Article 12 shall also apply. Where applicable, duplicate application materials may be combined to satisfy submittal requirements. In the event that the special use permit is denied, the site plan decision shall be null and void.
- C. Public Hearings.**
 - 1. A public hearing shall be required for all major site plan applications.
 - 2. The Planning Board may hold a public hearing on minor site plan applications, if deemed necessary.
- D. Referrals.** All referrals shall be made in accordance with §10-5.

§ 11-4 APPLICATION REQUIREMENTS

- A. Minor Site Plan Application Materials.** A minor site plan application shall include the following materials, as deemed applicable by the reviewing body. The reviewing body may require some or all application materials be prepared by competent, duly licensed professionals.
1. Application form, including the name, address, and signature of the applicant, property owner, and developer.
 2. Description or narrative of all proposed uses and structures.
 3. A site plan showing the following:
 - a) The location of all properties, their ownership, uses thereon, subdivisions, streets, easements, and adjacent buildings within 100 feet of the property in question.
 - b) The location and use of all existing and proposed structures on the property in question, including all building and lot dimensions.
 - c) The location and proposed impacts to environmental features, including, but not limited to, open spaces, woodlands, watercourses, steep slopes, wetlands, floodplains, and watersheds.
 - d) The location and dimensions of existing and proposed landscaping, screening, walls, and fences, including information regarding the type of materials.
 - e) The location and dimensions of existing and proposed public and private streets, off-street parking areas, access drives, driveways, sidewalks, ramps, curbs, and paths.
 - f) The location of all existing and proposed topography as revealed by contours or key elevations, including final site grading.
 - g) A waste and trash management plan including the type, size, location, appearance, and operation of permanent trash receptacles.
 - h) The type, size, location, appearance, and operation of all outdoor mechanical equipment.
 - i) The location, height, intensity, bulb type, and light color of all exterior lighting fixtures.
 - j) The location, height, size, material, and design of all existing and proposed signs.
 - k) The location all new or modified downspouts or stormwater systems, including the configuration of a system for stormwater drainage or green infrastructure.

- l) The location of existing and proposed utility systems including sewage or septic, water supply, telephone, cable, electric, internet, and fiber.
 - 4. Exterior building elevations (existing and proposed) for all sides showing the location and size of all windows, doors, trim, architectural details and indicating the type of all materials to be used.
 - 5. Plans for disposal of construction and demolition waste, either on-site or at an approved disposal facility.
 - 6. Plans to prevent the pollution of surface or ground water, erosion of soil both during and after construction, excessive runoff, excessive raising or lowering of the water table, and flooding of other properties, as applicable.
 - 7. Identification of any state or county permits required for the project and record of application for and approval status of such permits.
 - 8. A schedule for completion of each construction phase, where applicable.
 - 9. All NYS SEQR documentation as required by law.
- B. Major Site Plan Application Materials.** An application for major site plan review shall include the following materials, as applicable. Such materials shall be prepared by competent, duly licensed professionals duly, unless otherwise permitted by the reviewing body.
- 1. All required minor site plan application materials.
 - 2. A site plan showing the location of all properties, their ownership, uses thereon, subdivisions, streets, easements, and adjacent buildings within 500 feet of the property in question.
 - 3. A certified land survey.
 - 4. Soil logs, test well, percolation test results, and/or stormwater runoff calculations.
 - 5. A natural resource inventory and/or tree survey.
 - 6. A detailed traffic study.

§ 11-5 REVIEW CRITERIA

The Planning Board shall review the site plan and supporting data taking into consideration the following:

- A. Conformance with the Village's Comprehensive Plan and other adopted plans and studies, where applicable, and conformance with the requirements of this Zoning Law.

- B.** Compatibility of proposed uses to adjacent uses, considering building and site orientation, design, and transitional treatments.
- C.** Quality of building design and materials and compatibility with the desired character of the district and/or neighborhood.
- D.** Adequacy and arrangement of vehicular traffic and circulation, including intersections, road widths, traffic controls, traffic-calming measures, and accessibility to fire and emergency vehicles.
- E.** Adequacy and arrangement of pedestrian and bicyclist access and circulation, including separation from vehicular traffic and connections provided internally and externally to the site.
- F.** Adequacy of off-street parking, loading, and vehicular access management provisions.
- G.** Adequacy of landscaping and screening provisions.
- H.** Adequacy of outdoor lighting while preventing light trespass onto adjacent properties.
- I.** Preservation and protection of natural site features and open spaces.
- J.** Adequacy of stormwater, drainage and erosion management plans.
- K.** Adequacy of municipal facilities to serve the proposal including, but not limited to, streets, electric service, water supply and wastewater treatment systems, storm water control systems, and fire protection.
- L.** Adequacy of proposed waste and trash management plan.
- M.** Adequacy of snow storage and/or proposed snow removal plan.
- N.** Encouragement of the most appropriate use of land and utilization of the site.
- O.** Potential for adverse effects to the functioning, economic stability, prosperity, and health, safety, or general welfare of nearby property owners and the community.

ARTICLE 12

SPECIAL USE PERMITS

§ 12-1 PURPOSE

- A. Special uses are generally considered to be uses that have a higher potential for incompatibility with adjacent uses. By requiring the individual review of special use permit applications, the Planning Board helps to determine the level of compatibility of a use in its proposed location.
- B. Uses requiring a special use permit are those which are compatible with the general spirit of the Zoning Law if certain standards and conditions are met. Each such use is listed in this Zoning Law as a use permitted within a zoning district upon the issuance of a special use permit.
- C. All provisions of this Zoning Law shall be followed and the Planning Board must find that the proposed implementation of such use is not inconsistent with the public welfare. A special use permit may be subject to conditions and safeguards imposed by the public welfare.
- D. The CEO may inspect the use of the property in question annually, or at any time, to insure compliance with conditions which have been imposed by the Planning Board in issuing such special use permit and other applicable provisions of this Zoning Law.
- E. The CEO may also inspect the property in question at any time due to any change in use or ownership.

§ 12-2 APPLICABILITY

- A. **Permit Required.** Prior to the issuance of a building permit, a special use permit shall be obtained for all uses as noted in the district tables of Articles 2, 3, and 4.
- B. **Additional Use Regulations.** In addition to the general district and development requirements, specially permitted uses shall also conform to the requirements of Article 5, where applicable.

§ 12-3 REVIEW PROCEDURE

- A. **Authorized Review Body.** Special use permit applications shall be reviewed and decided upon by the Planning Board.
- B. **Coordinated Site Plan Review.** Where site plan review is also required, the application requirements of Article 11 shall also apply. Where applicable, duplicate application materials may be combined to satisfy submittal requirements. In the event that the special use permit is denied, the site plan decision shall be null and void.
- C. **Public Hearing.** A public hearing shall be held by the Planning Board for all special use permit applications.
- D. **Referrals.** All referrals shall be made in accordance with §10-5.

§ 12-4 APPLICATION REQUIREMENTS

A special use permit application shall include the following, as applicable:

- A. An application form.
- B. A site plan denoting the location of the subject property and all structures thereon, as well as all property, uses, and structures within 300 feet of the proposed use.
- C. A description of the proposed use and nature of its operation, including:
 - 1. A business plan, vision, or model, and/or summary of products, goods, and services to be sold or provided;
 - 2. The proposed hours of operation;
 - 3. The number of employees at maximum shift;
 - 4. The maximum seat capacity;
 - 5. The timing and manner of any and all anticipated deliveries;
 - 6. A recycling and waste management plan; and
 - 7. The nature and type of all mechanical equipment provided and/or required.
- D. An interior floor plan, including, but not limited to, the arrangement of seats, kitchen and/or bar size and location, storage areas, bathroom facilities, and location of machines or other mechanical equipment.
- E. A narrative describing how the proposed use will satisfy the special use permit review criteria.

- F. All SEQR Documentation as required by NYS Law.

§ 12-5 REVIEW CRITERIA

- A. General Criteria.** In reaching a decision, the Planning Board shall consider and shall determine, either from its own knowledge and investigation or from testimony or other information submitted to it, written findings on whether or not the proposed use:
1. Will be generally consistent with the goals of the Village Comprehensive Plan;
 2. Will meet all relevant standards, guidelines, and requirements set forth in this Zoning Law, including any applicable requirements of Article 5 (Additional District and Use Regulations);
 3. Will be an economically viable use of the property and/or will not cause there to be any significant decrease in the future economic viability of the property;
 4. Will be compatible with existing uses adjacent to and near the property;
 5. Will provide adequate measures (such as landscaping and screening) to mitigate potential adverse impacts on surrounding property and preserve or enhance the traditional character of the Village;
 6. Will not have an undue burden or effect on the orderly development and character of the neighborhood or upon the development and conduct of other lawful uses in the vicinity;
 7. Will not be a nuisance to adjacent residents and property in terms of the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, traffic, crowds, parking of automobiles, unsightliness, contamination or other similar conditions;
 8. Will not cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water, or degradation of water quality;
 9. Will not destroy or adversely impact significant historic and/or cultural resource sites; and
 10. Will not otherwise be detrimental to the convenience and general health, safety, or welfare of the public.
- B. Standard for Review.** Failure to meet one or more of the above criteria may result in denial of an application.

ARTICLE 13

PLANNED UNIT DEVELOPMENT (PUD) DISTRICTS

§ 13-1 PURPOSE

- A. Purpose.** The preservation of the distinctive environmental, and aesthetic character of the Village of Bergen is directly related to the economic vitality of the Village business districts, stability of property values, and the quality of life for Bergen residents. Occasionally on larger projects, conventional use, space, dimensional, and bulk requirements contained in the underlying zoning may not be the best standards to ensure new development achieves the goals states above. It is the purpose of this Article to provide flexible performance standards for zoning districts identified as having the potential for redevelopment and new development, and which are identified in this Article.
- B. Intent.** The application of the PUD District review process in intended to achieve more creative land use and a higher quality of planning and a higher quality of site planning and design than can be accomplished through conventional zoning regulations.

§ 13-2 APPLICABILITY

- A. PUD Approval Required.** Whenever any PUD is proposed, before any building permits are granted and before any subdivision plat or any part thereof may be filed, the developer or his authorized agent shall apply for and secure approval of such PUD in accordance with this Article.
- B. Eligibility.** To be eligible for the establishment of a PUD District under this Article, applicants must demonstrate the proposed project meets or exceeds two or more of the following criteria:
1. The property under consideration is at least 2 acres in contiguous land area.
 2. The project proposes an overall density and/or intensity of use which would not be permitted or required by the underlying zoning while also preserving more open land or providing more amenities to the community.

3. The project proposes a use that is compatible with the surrounding context but is otherwise not permitted by the underlying zoning.

C. Relief from Conventional Zoning.

1. For projects deemed eligible, the reviewing body may waive zoning regulations that would ordinarily apply to a property where the applicant demonstrates relief from said regulations is necessary to meet the purposes described herein.
2. This Article is not intended to arbitrarily dispense with underlying zoning regulations, rather grant the minimum relief necessary to achieve the objectives of this Article.

§ 13-3 REVIEW PROCEDURES

- A. **Planning Board Review and Recommendation.** The Planning Board shall conduct a review of the PUD application, site plan, and related documents and provide a recommendation of decision to the Village Board.
- B. **Village Board Review and Decision.** Upon receipt of a recommendation from the Planning Board, the Village Board shall review and decide upon such application as an amendment, in accordance with Article 14. If the Village Board approves the PUD application, the zoning map and text shall be amended and filed accordingly.
- C. **Public Hearings.** A public hearing shall be held by the Village Board for all PUD applications.
- D. **Referrals.** All referrals shall be made in accordance with §10-5.

§ 13-4 APPLICATION REQUIREMENTS

- A. **Site Plan.** All PUD applications shall include the required major site plan review application materials as noted in Article 11.
- B. **PUD District.** PUD applications shall also include:
 1. Documentation that the applicant's particular mix of land uses meets current community demands and the Village's Comprehensive Plan.
 2. Description of the manner in which any areas that are not to become publicly owned are to be maintained, including open space, streets, lighting and others, according to the proposals.
 3. A description of any covenants, grants of easements or other restrictions proposed to be imposed upon the use of the land, buildings or structures, including proposed easements for public utilities.

4. Profiles of proposed streets at suitable vertical scale showing finished grades in relation to existing ground elevation.

§ 13-5 REVIEW CRITERIA

- A. **Site Plan Review.** The review of a PUD site plan shall be based upon the site plan review criteria outline in Article 11.
- B. **Zoning Amendment.** The Planning Board's review and Village Board's decision on PUD applications shall be based upon the amendment review criteria outlined in Article 14.

§ 13-6 APPROVAL NOT GUARANTEED

The fact that an application complies with all of the specific requirements set forth herein shall not be deemed to indicate the proposed development would result in a more efficient and desirable development than could be accomplished by the use of conventional zoning categories or than would result in compatibility with the surrounding development; nor shall such compliance, by itself, be sufficient to require the approval of the site plan or the granting of the zoning amendment to create a PUD District.

ARTICLE 14

AMENDMENTS, APPEALS & VARIANCES

§ 14-1 ZONING AMENDMENTS (RE-ZONINGS)

- A. Authority to File.** Amendments to the zoning text or zoning map (re-zonings) may be initiated by the Village Board, recommendation of the Planning Board, or petition presented to the Village Board in accordance with NYS Village Law.
- B. Planning Board Review and Recommendation.** The Planning Board shall conduct a review of amendment applications and provide a recommendation of decision to the Village Board.
- C. Village Board Review and Decision.** Upon receipt of a recommendation from the Planning Board, the Village Board shall review and decide upon the application. If the Village Board approves the amendment the text and/or map shall be amended after publication as required by NYS Law.
- D. Public Hearing.** A public hearing shall be held by The Village Board for all proposed amendments.
- E. Referrals.** All referrals shall be made in accordance with §10-5.
- F. Review Criteria.** In reviewing and making decisions on zoning amendments the Planning Board and Village Board must consider the following criteria:
1. Whether the proposed amendment corrects an error or inconsistency in the zoning law or meets the challenge of a changing condition;
 2. Whether the proposed amendment is in substantial conformance with the adopted plans and policies of the municipality;
 3. Whether the proposed amendment is in the best interests of the municipality as a whole;

4. Whether public facilities (infrastructure) and services will be adequate to serve development allowed by any requested re-zoning;
5. Whether any re-zoning will substantially harm the public health, safety or general welfare or the value of nearby properties;
6. Whether any re-zoning is compatible with the zoning and use of adjacent property;
7. Whether the property in question is suitable for the uses and development to which it has been restricted under the existing zoning regulations; and
8. Whether the gain, if any, to the public health, safety and general welfare due to denial of the application outweighs that of the hardship imposed upon the landowner, if any, as a result of denial of the application.

§ 14-2 APPEALS & VARIANCES

The rules, regulations, and procedures of NYS Village Law §§ 7-712, 7-712-a, and 7-712-b (Zoning Board of Appeals) shall apply to all applications for variances, appeals, and interpretations considered under this Zoning Law. The following requirements are provided for ease of reference. In the case of amendment(s) to §7-712, the state rule shall supersede the regulations of this Section.

- A. Authorized Review Body.** The Zoning Board of Appeals (ZBA) shall have the power to review and decide upon appeal, variance, and interpretation applications.
- B. Public Hearings.** A public hearing shall be held by the ZBA for all appeal and variance applications.
- C. Referrals.** All referrals shall be made in accordance with §10-5.
- D. Use Variance Criteria.** The ZBA shall not grant a use variance without the applicant having shown that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located the following conditions exist:
 1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 3. The requested use variance, if granted, will not alter the essential character of the neighborhood; and

4. That the alleged hardship has not been self-created.

E. Area Variance Criteria. In making its determination, the ZBA 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 ZBA shall consider the following:

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

F. Minimum Variance Allowable. The ZBA, in the granting of variances, shall grant the minimum variance that it shall deem necessary and adequate to address the 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.

ARTICLE 15

REVIEW BODIES

§ 15-1 VILLAGE BOARD OF TRUSTEES

- A. Authorization.** For the purpose of promoting the health, safety, morals, or the general welfare of the community, the Village of Bergen Board of Trustees is hereby empowered by NYS Village Law to regulate and administer the provisions of this Zoning Law.
- B. Staff Appointments and Confirmations.** A clerk, or other Village employee appointed by the Mayor, will serve at the pleasure of the reviewing body (e.g. Planning Board or Zoning Board of Appeals). Such appointed persons shall also be confirmed by the Village Board.
- C. Final Decision Authority.** Pursuant to this Zoning Law and NYS Village Law, the Village Board is hereby authorized and empowered with final decision authority for the following:
1. Zoning Amendments; and
 2. Planned Unit Development Districts.
- D. Additional Powers.** The Village Board shall hold all additional powers and duties provided by the laws, rules, and regulations of New York State and the rules, regulations, and local laws of the Village of Bergen.

§ 15-2 PLANNING BOARD

- A. Establishment.** The Planning Board is established under the provisions of NYS Village Law and by this Article.
- B. Membership and Terms.**
1. The Planning Board shall consist of five (5) members and two (2) alternate member(s) appointed and confirmed in accordance with NYS Village Law.
 2. Removal of members, alternates, and vacancies shall be addressed as provided for in the NYS Village Law.

- C. Power and Duties.** Pursuant to this Zoning Law and NYS Village Law, the Planning Board is hereby authorized and empowered to perform the following:
1. Review Authority. The Planning Board shall be responsible for reviewing and making recommendations regarding the following:
 - a) Zoning Amendments; and
 - b) Planned Unit Development Districts.
 2. Final Authority. The Planning Board shall be responsible for final action regarding the following:
 - a) Site Plan Review;
 - b) Special Use Permits; and
 - c) Sign permits in accordance with the Village of Bergen Sign Law.
 3. General Authority. The Planning Board may exercise additional powers as directed by the Village Board and as may be described elsewhere in this local law and as permitted by NYS Village Law.

§ 15-3 ZONING BOARD OF APPEALS

- A. Establishment.** The Zoning Board of Appeals (ZBA) is established under the provisions of NYS Village Law, and by this Article.
- B. Membership and Terms.**
1. The ZBA shall consist of five (5) regular members and two (2) alternate member(s) appointed and confirmed in accordance with NYS Village Law.
 2. Removal of members, alternates, and vacancies shall be addressed as provided for in the NYS Village Law.
- C. Powers and Duties.** The ZBA shall have all the powers and duties prescribed by NYS Village Law, and by this Article.
1. Final Authority. The ZBA shall be responsible for final action regarding the following:
 - a) Variances and Appeals; and
 - b) Interpretation of any provision of this Zoning Law.
 2. General Authority. The ZBA may exercise additional powers as directed by the Village Board and as may be described elsewhere in this local law and as permitted by NYS Village Law.

ARTICLE 16

CODE ENFORCEMENT

§ 16-1 CODE ENFORCEMENT OFFICIAL

- A. Appointment.** The Code Enforcement Official (CEO) shall be appointed by the Village Board and receive compensation as the Village Board shall determine.
- B. Powers and Duties.** The duty of administering and enforcing the provisions of this Zoning Law is hereby conferred upon the CEO. The CEO shall have further duties as may be assigned by the Village Board pursuant to this Zoning Law or otherwise. Standard powers and duties of the CEO shall include:
1. Issuance of Permits. The CEO is hereby empowered to issue all permits and certificates as provided for by this Zoning Law.
 2. Violations and Written Orders. Where the CEO, in the course of his/her duties, determines that any plans, buildings or premises are in violation of the provisions of this Zoning Law, they shall order the responsible party in writing to remedy such conditions.
 3. Revocation. On the serving of notice and failure to comply with the time limits specified in such notice by the CEO to the owner in any violation of any of the provisions of this Zoning Law, any approval or permit previously issued for such buildings or use shall be held null and void. A new approval or permit shall be required for any further use of such building or premises.
 4. Inspection. It shall be the duty of the CEO, or their duly authorized assistants, to cause any plans, buildings or premises to be examined or inspected to determine that they are not in violation of the provisions of this Zoning Law.
 5. Records. The CEO shall maintain a permanent record of all matters considered and all action taken under this Zoning Law.
- C. Stop Work Orders.**
1. Whenever the CEO has reasonable grounds to believe that work on any building, structure, or premises, irrespective of the zoning area, is being prosecuted in violation of the provisions of the Village laws, building codes, ordinances, rules or

regulations, or not in conformity with the provisions of an application, plans, or specifications on the basis of which a building permit was issued or in an unsafe and dangerous manner, notification shall be given to the owner of the property or the owner's agent to suspend all work. The CEO, Village Clerk, and Mayor are authorized to provide such notification.

2. Any person, corporation, or agency issued a stop work order shall forthwith stop such work and suspend all building activities until the stop order has been rescinded.
3. The order and notice shall be in writing and shall state the conditions under which the work may be resumed.
4. The order and notice may be served upon a person or corporation to which it is directed whether by delivering it personally or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by certified mail to the permittee or their designee.

D. Right of Entry. The CEO and all duly authorized assistants shall be entitled to enter any building or premises (which includes the internal premises such as basement, etc.) for the purpose of inspection, observation, measurement, testing and records examination in performing his/her duties set forth in this Zoning Law, and for the further purpose of ascertaining whether the provisions of this Zoning Law are being met and all requirements are being complied with.

§ 16-2 BUILDING PERMITS

- A. Permit Required.** No person, firm or corporation shall commence the erection, enlargement, alteration, improvement, conversion or change in the nature of the use or occupancy of any building or structure, or cause the same to be done, or perform any other work for which a building permit is required by the NYS Uniform Code without first obtaining a separate building permit from the CEO for each such building or structure.
- B. Permit Exception.** No building permit shall be required for the performance of ordinary repairs which are not structural in nature or any other activity for which a building permit is not required by the NYS Uniform Code.
- C. Application.** An application for a building permit shall be on forms supplied by the CEO or Village designee. Materials submitted shall include, but are not limited to:
 1. A signature of property owner(s);
 2. An agreement to comply with this Zoning Law and all other laws, rules, and regulations that may be applicable; and

3. Plans and specifications prepared by a duly licensed architect or professional engineer, including a seal and signature, as required by the CEO.
- D. Revocation.** The CEO may revoke a building permit theretofore issued and approved in the following instances:
1. There is found to be a false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based.
 2. The work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications.
 3. The permittee fails or refuses to comply with the stop order issued by the CEO or other Village authority.
- E. Location of Permit.** The building permit shall be located in a place readily visible to the public during construction activities.
- F. Licensed Professional Review.**
1. In connection with the work for which a building permit is required for any structure, other than a residential structure as is permitted in a residential district, no building permit shall be issued unless there are the seal and signature of a duly licensed architect or professional engineer on the plans and specifications on file in the Village Office.
 2. During construction, it shall be the responsibility of said architect or professional engineer or designee to make periodic visits to the construction site to familiarize himself with the progress and quality of the construction and to determine, in general, if the construction is proceeding in accordance with the drawings, specifications and plans which have been submitted to the Village and constitute a basis for the issuance of the building permit.
 3. Said architect or professional engineer shall file reports with the CEO or designee at regular intervals indicating the times of such visits and the status of the construction and shall, in particular, contain notice to the CEO or designee of any defects or discrepancies affecting structural, fire, health or safety which said architect or professional engineer may observe. It is understood that any such defects or discrepancies shall be corrected by the permittee, and the architect or professional engineer shall advise the CEO or designee when such discrepancies have been corrected.

§ 16-3 DEMOLITION PERMITS

- A. Permit Required.** A person, firm, or corporation shall not demolish an existing building or structure having a gross floor or base area of 250 square feet or more within the

Village of Bergen without first obtaining a demolition permit from the CEO or Village designee pursuant to this Zoning Law.

- B. Application.** An application for a demolition permit shall be on forms supplied by the CEO, shall include an agreement to comply with this Zoning Law and all other laws, rules, and regulations that may be applicable, and shall be signed by the owner.
- C. VCC District Demolition Review.** No demolition permit may be issued for property within the Village Central Commercial (VCC) District without first obtaining site plan approval for a new development plan as required by Article 11.
- D. Validity.** A demolition permit shall be valid for a period of 30 days from the date of issue. Failure to undertake demolition activity within this time shall require the issuance of a new demolition permit.
- E. Unsafe Structures.** In the event that a structure or series of structures is found to be structurally unsound and/or unsafe by the CEO, this Section shall not preclude any immediate demolition or repair action determined to be necessary under such finding.

§ 16-4 CERTIFICATES OF OCCUPANCY

- A. Certificate Required.** No building or land shall be used or changed in use wholly or in part nor shall any land be used or occupied until a certificate of occupancy has been issued by the CEO.
- B. Affidavit.** An affidavit may be required prior to the issuance of a certificate of occupancy at the discretion of the CEO. Such affidavit shall:
 1. Be submitted by a registered architect and/or licensed professional engineer who filed the original plans and/or specifications or who supervised the construction of the work, or the superintendent of construction who supervised the work and who is qualified to superintend the work.
 2. State that the professional has examined the approved plans and specifications of the structure and that the structure has been erected in accordance with the approved plans and specifications and, as erected, complies with the provisions of the NYS Uniform Fire Prevention and Building Code and all other laws governing building construction in the Village of Bergen.

§ 16-5 VIOLATION, PENALTIES & FINES

- A. Violations.** It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, equip, use or occupy any land, building or structure or part thereof in a manner not permitted by this zoning law.

B. Notice of Violation.

1. Any person violating any provision of this Zoning Law shall be served by the CEO with a written Notice of Violation and Correction Order stating the nature of the violation found to exist, the remedy ordered and providing a time limit for the satisfactory correction thereof.
2. Unless a different time limit is provided by this Zoning Law for the correction of any violation, which alternate time limit shall prevail, said Notice of Violation and Correction Order shall provide a time limit of thirty (30) days for the satisfactory correction of the violation.
3. The Notice of Violation shall further inform the violator of his/her right to appeal the CEO's interpretation to the ZBA.
4. Service of the Notice of Violation/Correction Order shall be sufficient if directed to the owner, operator or occupant of a residence, commercial or industrial facility, as the case may be, violating this Zoning Law.
5. Service of said Notice of Violation/Correction Order shall be made personally upon the alleged violator, if said violator can be found with due diligence; otherwise, service of said Notice of Violation/Correction Order shall be sufficient if:
 - a) Service is completed by delivering the same to a person of suitable age or discretion at the actual residence, commercial or industrial facility at which said violation is occurring and by mailing the Notice to the person to be served at his/her last known residence or business address
 - b) Where service cannot otherwise be made with due diligence, by affixing said Notice of Violation/Correction Order to the door of the residence, commercial or industrial facility at which said violation is occurring and by mailing said Notice to such person at his/her last known residence or place of business.
6. It shall be unlawful for any person to fail to comply with a written Notice of Violation/Correction Order of the CEO within the time fixed for compliance therewith.

C. Penalties and Fines.

1. Any violation of Zoning Law is hereby declared to be an offense, punishable by the following penalties:
 - a) A fine not exceeding 350 dollars ~~or imprisonment not to exceed 15 days, or both~~ for a conviction of a first offense;
 - b) A fine not less than 350 dollars nor more than 700 dollars ~~or imprisonment not to exceed 15 days, or both~~, for conviction of a second offense both of which were committed within a period of five years; and

- c) A fine not less than 700 dollars nor more than 1,000 dollars ~~or imprisonment for a period not to exceed 15 days, or both~~, upon conviction for a third or subsequent offense all of which were committed with a period of five years.
2. ~~For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this Zoning Law shall be deemed misdemeanors and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations.~~ Each month's continued violation shall constitute a separate additional violation.
3. The CEO may, with permission of the Village Board, institute court action to enforce the provisions of this Zoning Law, or may refer the matter to the Village Board for its action.
4. Any person violating any provision of this Zoning Law shall be liable to the Village for any and all losses, damages and expenses incurred by the Village or for which the Village may be held liable as a result of said violation. The Village or CEO shall have the right to obtain reimbursement for any loss, damage or expense incurred by it as a result of any violation of this Zoning Law including, but not limited to, attorney's fees and court costs incurred as a result of any legal proceedings brought hereunder.
5. Nothing contained in this Zoning Law shall prevent the Village or CEO, either alone or in conjunction with the foregoing penalties, from maintaining an action or proceeding in the name of the Village or CEO in any court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provision of this Zoning Law.

§ 16-6 CONSULTANT FEES

- A. The Village Board, ZBA, Planning Board, CEO, and Village Clerk or designee, in the review of applications as provided for in this Zoning Law, may refer any such application presented to them to such engineering, architectural, historical, planning, technical, environmental, landscaping, or legal consultant, or attorney, as shall be reasonably necessary to enable them to review such application as required by law. The amount of the fee shall be determined by the respective board, in the case of the Village Clerk or CEO such determination should be made by the Village Board, and the professional consultant at the time the application is made. Each of the consultants shall estimate their fees based on the services to be rendered on behalf of the Village from a review of the application, including such documents, maps, plans, specifications, drawings and the like as may be a part of the same.
- B. The consultant will be retained pursuant to the procurement policy of the Village. The applicant shall make an escrow deposit with the Village, equal to the amount of the fees so determined. This escrow deposit shall be utilized to pay the cost of the special

consultant's fees involved. The applicant's application shall not be deemed complete until such time as said escrow deposit has been made. If during the course of the review the need for further specialist consultation is deemed reasonably necessary by the Board, the same cost estimate and escrow deposit procedure shall be followed.

- C. Upon completion of said review and within a period of 45 days thereafter, the Village Board shall adopt a resolution specifying whether the escrow deposit amount specified was sufficient, excessive or insufficient. In the event that the Board should determine that said amount is excessive, then the balance shall be returned to the applicant within 60 days. In the event that the Board should determine that the escrow deposit was insufficient, it shall so specify and the applicant shall be required to make payment of such additional amount within 60 days.

ARTICLE 17

DEFINITIONS

§ 17-1 MEANING & INTENT

The language of the zoning law must be read literally. Regulations are no more or less strict than stated. Words defined in this Article shall have the specific meaning assigned, unless the context expressly indicates another meaning. Words that are not defined in this Zoning Law shall have the relevant meaning given in the latest edition of Merriam-Webster's Unabridged Dictionary.

§ 17-2 TENSES & USAGE

For the purpose of this Zoning Law, certain terms and tenses used herein shall be interpreted or defined as follows:

- A. Words used in the singular include the plural. The reverse is also true.
- B. Words used in the present tense include the future tense. The reverse is also true.
- C. The words "must," "will," "shall" and "may not" are mandatory.
- D. The word "may" is permissive, and "should" is advisory, not mandatory or required.
- E. The word "occupied" shall include "designed, arranged, or intended to be occupied."
- F. The word "used" shall include the words "arranged," "designed" or "intended to be used."
- G. The word "person" shall mean a person, firm or corporation or the plural of those words.
- H. The word "lot" shall include the word "plot" or "parcel."
- I. The word "buildings" includes the word "structure."

- J. When used with numbers, “up to X,” “not more than X” and “a maximum of X” all include X.

§ 17-3 CONJUNCTIONS

Unless the context otherwise clearly indicates, conjunctions have the following meanings:

- A. “And” indicates that all connected items or provisions apply; and
- B. “Or” indicates that the connected items or provisions may apply singularly or in combination.

§ 17-4 FRACTIONS

The following rules apply to fractional number unless otherwise expressly stated.

- A. **Minimum Requirements.** When a regulation is expressed in terms of a minimum requirement, any fractional result of 0.5 or more must be rounded up to the next consecutive whole number. For example, if a minimum requirement calling for one tree to be provided for every 30 linear feet of frontage is applied to a 50-foot dimension, the resulting fraction of 1.67 is rounded up to two required trees.
- B. **Maximum Limits.** When a regulation is expressed in terms of maximum limits, any fractional result will be rounded down to the next lower whole number. For example, if a maximum limit of one dwelling unit for every 5,000 square feet is applied to a 12,500 square foot lot, the resulting fraction of 2.5 is rounded down to 2 (allowed dwelling units).

§ 17-5 CURRENT VERSIONS & CITATIONS

All references to other village, county, state, or federal regulations in the zoning law refer to the most current version and citation for those regulations, unless expressly indicated otherwise. When the referenced regulations have been repealed and not replaced by other regulations, zoning law requirements for compliance are no longer in effect.

§ 17-6 DEFINITIONS

The following definitions shall be used in interpreting this Zoning Law:

AA

ACCESSORY:

The term applied to a building, structure, or use (except for accessory dwelling unit) that:

1. Is customarily incidental and subordinate to and serves a principal building or use;
2. Is subordinate in area, extent, or purpose to the principal building or use served;
3. Contributes to the comfort, convenience, or necessity of occupants of the principal building or use; and
4. Is located on the same parcel as the principal building or use.

ACCESSORY DWELLING UNIT:

A second subordinate dwelling unit that is:

1. Contained with the existing primary single-family dwelling unit;
2. An addition to the existing primary single-family dwelling unit;
3. An adaptive reuse of an existing attached or detached accessory structure such as a barn, carriage house, or garage on the same parcel as the primary dwelling unit; or
4. Designed into new construction of a single-family dwelling unit.

ADULT ESTABLISHMENT:

A commercial establishment including but not limited to adult book store, adult eating or drinking establishment, adult theater, adult motel, adult massage establishment, nude model studio or other adult commercial establishment, or any combination thereof, as defined below:

1. An adult bookstore is a bookstore which has as a "substantial portion" (equal to or greater than 25%) of its stock-in-trade and/or floor area as hereinafter defined any one or more of the following:
 - a) Books, magazines, periodicals or other printed matter which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical area"; or,
 - b) Photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon

the depiction or description of "specified sexual activities" or "specified anatomical areas."

2. An adult eating or drinking establishment is an eating or drinking establishment which regularly features any one or more of the following:
 - a) Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities"; or,
 - b) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas", and
 - c) Employees who as part of their employment, regularly expose to patrons "specified anatomical areas", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
3. An adult theater is a theater which regularly features one or more of the following:
 - a) Films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas"; or,
 - b) Live performances which are characterized by an emphasis upon the depiction or description of "specified anatomical areas" or "specified sexual activities", and which is not customarily opened to the general public during such features because it excludes minors by reason of age.
 - c) An adult theater shall include commercial establishments where such materials or performances are viewed from individual enclosures.
4. An adult massage establishment is any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath, duly licensed massage therapist, or duly licensed physical therapist; or barber shops or beauty parlors in which massages are administered only to the scalp, face, neck and shoulders. This definition shall also exclude health clubs which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, and which do

not receive their primary source of revenue through the administration of massages.

5. A nude model studio is any place where a person who appears in a state of nudity or displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration, other than as part of a course of instruction offered by an educational institution established pursuant to the Laws of New York State.
6. Any other adult commercial establishment is a facility - other than an adult bookstore, adult eating or drinking establishment, adult theater, commercial studio, or business or trade school - which features employees who as part of their employment, regularly expose to patrons "specified anatomical areas" and which is not customarily open to the general public during such features because it excludes minors by reason of age.

ALLEY:

Narrow supplementary thoroughfare for the public use of vehicles or pedestrians, affording access to abutting property.

ALTERATION:

Structural change, rearrangement, change of location, addition to, or deletion from a building, other than repair and modification in building equipment systems (i.e., heating, cooling, electrical, etc.).

ANIMAL:

Shall include every living creature except a human being.

1. **Farm Animal:** Means any ungulate, poultry, species of cattle, sheep, swine, goats, llamas, horses or fur-bearing animals as defined in Section 11-1907 of the environmental conservation law, which are raised for commercial or subsistence purposes. Fur-bearing animal shall not include dogs or cats.
2. **Companion Animal or Pet:** Means any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. "Pet" or "companion animal" shall not include a "farm animal" as defined in this Zoning Law.

ANIMAL GROOMING SHOP:

A commercial operation that provides grooming services for companion animals and pets that customarily reside and are cared for within a residential dwelling.

APPLICANT:

A property owner or agent of a property owner who has filed an application for a land development activity as defined herein.

APPROVAL:

Favorable decision to an application that indicates acceptance and the terms of the application, as written or modified, are satisfactory. Includes both approval and approval with conditions.

ARCHITECTURAL FEATURE:

Any portion of the outer surface of a structure, including the kind, color and texture of the building material, the type and style of all windows, doors, lights, awnings, canopies, roof shape and materials, and other fixtures appurtenant to a structure. Also referred to as, "architectural detail."

AWNING:

A roof-like protective cover of canvas or other flexible material over a door, entrance, window or outdoor service area that projects from the facade of a structure.

ARTISAN MANUFACTURING:

A building used by artists and artisans as a studio or production space of handmade goods. The space may also be used for the sale and display of these goods.

ASSISTED LIVING:

A multiunit residence building (or buildings) designed for and restricted to the housing of persons, each of whom is at least 55 years of age, and in which personal and health-related services (such as congregate meals, housekeeping, homemaking, transportation, social activities, personal care and supervision) are provided to residents. An assisted-living facility must be licensed by the NYS Department of Health as an "adult home" or as a provider of "enriched housing" services or dementia care.

BB

BED AND BREAKFAST:

An owner-occupied single-family dwelling and/or associated accessory structure(s) in which a room or rooms are rented on a nightly basis for periods of less than two weeks. Meals may or may not be provided.

BLOCK:

The length of a street between two intersections or between an intersection and its termination.

BREWERY:

An enclosed building for the manufacture, processing, bottling, and packaging of malt liquors, such as beer, ale, or ciders, but not to include distilled liquors, and duly

licensed by the NYS Liquor Authority. For the purposes of this Zoning Law, this shall include operations which include tasting rooms.

BUILDING:

A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals or property.

BUILDING FOOTPRINT:

The area measured from the exterior of the foundation walls, exclusive of attached garages, porches, terraces, breezeways and cellars.

BUILDING HEIGHT:

The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof.

BUILDING LINE, FRONT:

A line parallel to the front lot line, drawn through that point or projection of a building face which is closest to the front lot line; provided, however, that where side lot lines are not perpendicular to the front lot line, then the front building line shall be the shortest line drawn through that point or projection of a building face which is closest to the front lot line and perpendicular to either side lot line. The building face shall include any portion of the building or structure, enclosed or unenclosed, except steps.

BUILDING LINE, REAR

A line parallel to the rear lot line, drawn through that point or projection of a building face which is closest to the rear lot line; provided, however, that where side lot lines are not perpendicular to the rear lot line, then the rear building line shall be the shortest line drawn through that point or projection of a building face which is closest to the rear lot line and perpendicular to either side lot line. The building face shall include any portion of the building or structure that is enclosed. On a through lot, the rear building line shall be determined on the opposite side of the principal building from the street where the property is addressed.

BUILDING LINE, SIDE:

A line along the edge of a building face which is closest to the side lot line that extends to the front lot line and rear lot line and is generally parallel to the side lot line.

BUILDING PERMIT:

A permit issued by the Code Enforcement Official, stating that plans for the proposed construction of a building are in conformance with the New York State Uniform Fire Prevention and Building Code (or its successor, whichever is the effective code at the time in question) and this Zoning Law, as applicable.

BULK:

The size and scale of buildings and non-building uses and the physical relationship of their size and scale in relation to the lot on which they are located. Bulk requirements include, but are not limited to, building height, building footprint, and lot coverage.

CC

CERTIFICATE OF COMPLIANCE:

A certificate issued by the zoning officer upon completion of construction, alteration or change in occupancy or use of a building or land. Said certificate shall acknowledge compliance with all the requirements of this Zoning Law only and such adjustment thereto granted by the Board of Appeals and/or the Planning Board.

CERTIFICATE OF OCCUPANCY:

A certificate issued by the Code Enforcement Official upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

CHARACTER:

The atmosphere or physical environment that is created by the combination of land use and buildings within an area. "Character" is established and influenced by land use types and intensity, traffic generation and also by the location, size and design of structures as well as the interrelationship of all these features.

CODE ENFORCEMENT OFFICIAL:

The Code Enforcement Official of the Village of Bergen, New York, as designated by this Zoning Law.

COMMERCIAL USE:

An occupation, employment, enterprise or establishment that is conducted for profit by the owner, lessee or licensee. This shall include but not be limited to retail, wholesale, business, administrative and other activities.

COMMUNITY CENTER:

Any meeting hall, place of assembly, museum, art gallery or library, not operated primarily for profit.

COMMUNITY OR SERVICE CLUB:

The premises and buildings used by a local, international, national or state organization or by a bona fide local civic association catering exclusively to members and their guests primarily for a patriotic, fraternal, benevolent, social, educational, religious or political purpose. The club shall not be used in whole or in part for the conduct of any business or enterprise for profit, but this shall not be construed as preventing the utilization of a club for benefits or performances for a recognized charity, nor for the meeting of other organizations or for educational and cultural purposes.

COMPATIBLE:

1. Having a pleasing or congruent arrangement of elements in the design and/or appearance between two or more attributes of a structure;
2. Having a pleasing or congruent arrangement of elements in the design and/or appearance between two or more structures;
3. Having a pleasing or congruent arrangement of elements in the design and/or appearance between two or more attributes of a neighborhood; and/or
4. Having a pleasing or congruent arrangement of elements in the use or function between two or more attributes of a neighborhood or area.

CORNICE:

Any horizontal decorative molding that crowns a building, such as the top edge of a façade or over an external door or window.

COVERAGE:

That percentage of the lot area covered by the combined area of all buildings or structures on the lot.

CREMATORIUM:

An enclosed or semi-enclosed facility wherein human remains are cremated in a cremation retort.

DD

DAY-CARE CENTER:

Daytime care or instruction of three or more children or adults away from their own homes for more than three but less than 24 hours per day, by an individual, association, corporation, institution or agency, whether or not for compensation or reward. Such centers shall be duly licensed by NYS Law.

DEVELOPER:

A person who undertakes land development activities.

DEVELOPMENT:

Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, utilities, mining, dredging, filling, grading, paving, excavation, or drilling operations, which would lead to increased flood damage, excluding normal maintenance to farm roads.

DISPOSAL:

The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste, radioactive, hazardous waste, or wastewater into or on any land or water so that such solid waste, radioactive material, hazardous waste, or wastewater will remain on the land or water and will not be removed.

DISTILLERY:

An enclosed building for the manufacture, processing, bottling, and packaging of distilled liquors, such as vodka, gin, whiskey, or tequila, duly licensed by the NYS Liquor Authority. For the purposes of this Zoning Law, that shall include operations that may include tasting rooms.

DRIVE-THROUGH FACILITY:

A window or other such structure wherein the sale of goods or delivery of services is provided directly to patrons while seated in motor vehicles located on the premises.

DWELLING:

A detached building designed or used exclusively as living quarters for one (1) or more families; the term shall not be deemed to include motel, boarding or rooming house, mobile home, recreation vehicle, tourist home or tent.

1. **Single-Family:** A building containing one dwelling unit and designed or used exclusively for occupancy by one family.
2. **Two-Family:** A building containing two dwelling units and designed or used exclusively for occupancy for two families living independently of each other; or two single-family dwellings having a party wall in common.
3. **Multi-Family:** A building or portion thereof containing three or more dwelling units and designed or used for occupancy by three or more families living independently of each other.

DWELLING UNIT:

One or more rooms designed for occupancy by one family for cooking, living and sleeping purposes.

DWELLING UNIT, UPPER FLOOR:

A dwelling unit located within a mixed-use, multi-story building on any floor other than the ground floor.

EE

ENCLOSED:

When relating to a structure, a combination of any materials, whether portable or fixed, having all sides thereof and a roof thereof completely enclosed, with the exception of doors and windows.

FF

FAÇADE:

The face of a building.

FAÇADE, PRIMARY OR FRONT:

The principal face of a building that looks onto a street, right-of-way, or open space. Buildings on corner lots shall be considered to have two primary or front facades.

FAMILY:

One or more persons who live together in one dwelling unit and maintain a common household. May consist of a single person or of two or more persons, whether or not related by blood, marriage or adoption. May also include domestic servants and gratuitous guests.

FLOOR AREA OF A BUILDING:

The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding basement or cellar floor areas and not devoted to habitable use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

FRONTAGE:

The extent of a building or a lot along one public street as defined herein.

FUNERAL HOME:

A building or part thereof used for human funeral services. Such building may contain space and facilities for embalming and the performance of other services used in the preparation of the dead for burial, the performance of autopsies and other surgical procedures, the storage of caskets, funeral urns and other related funeral supplies, and the storage of funeral vehicles. Cremation services are explicitly prohibited as a part of this use.

GG

GARAGE:

An accessory building or portion of a main building used for the storage of self-propelled vehicles used by the occupants of the premises, including space for not more than one passenger vehicle used by others.

GASOLINE STATION:

Any building or land or any part thereof used for sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubricating, washing or servicing vehicles, but not including painting or body repairs.

GYM OR FITNESS CLUB:

An establishment providing indoor recreation or instruction to patrons for health, exercise, or educational purposes.

HH

HAZARDOUS MATERIAL SUBSTANCE:

Any substance listed as a hazardous substance in a 6 NYCRR Part 597, List of Hazardous Substances, or a mixture thereof.

HOME OCCUPATION:

An accessory and customary non-residential use conducted within or administered from a portion of a dwelling or its permitted accessory building that only include uses that are clearly incidental and secondary to the principal residential use and is otherwise compliant with the applicable regulations of this Zoning Law.

Single sales events such as garage sales, yard sales, and other similar sales are not considered a home occupation for the purposes of this Zoning Law.

HOSPICE:

A residence building (or buildings) in which housing and supportive programming for terminally ill persons and their families is provided in accordance with the NYS Department of Health.

HOSPITAL:

Hospital, sanitarium, clinic, rest home, nursing home, convalescent home, home for aged, and any place for diagnosis and treatment of human ailments, except a doctor's office.

HOSPITAL, ANIMAL:

An establishment for the medical and/or surgical care of sick or injured animals.

HOTEL OR INN:

A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room may be provided within the building or in an accessory building.

II

IMPERVIOUS SURFACE:

Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.). The total of such area shall be utilized in the calculation of lot coverage.

JJ

KK

KENNEL:

A commercial operation designed for the keeping of three or more dogs or cats over six months old, may also include the harboring of other companion animals or pets.

LL

LANDSCAPING:

The use of natural plant materials including, but not limited to, ground covers, shrubs, and trees. Landscaping also involves the placement, preservation and maintenance of said plant materials in conjunction with associated improvements such as fences, walls, lighting, earth mounding and structures (principal or accessory).

LANDSCAPED AREA:

The area required or permitted under this Zoning Law to be devoted to landscaping and environmental improvement, which may include existing and new vegetation, planting beds and berms.

LIGHT INDUSTRIAL:

The processing, fabrication, assembly or packaging of previously prepared or refined materials.

LOADING AREA:

An off-street area containing one or more spaces for the purposes of temporarily parking trucks or delivery vehicles, with passageways and driveways appurtenant thereto, as required by this Zoning Law.

LOADING SPACE:

An off-street space used for the temporary location of one truck or delivery vehicle, not including access driveway(s).

LOT:

A parcel of land occupied or capable of being occupied by one building or a group of buildings, and the accessory buildings or uses customarily incident thereto, including such open spaces as are required by this Zoning Law, but not including any portion between the center line of a street and the street line.

LOT, CORNER:

A lot at the junction of and fronting on two or more intersecting streets.

LOT LINES:

The property line bounding the lot. Where any property line parallels a street and is not coincident with the street line, the street line shall be construed as the property line for the purpose of complying with the area and setback regulations of this Zoning Law.

1. **Front.** The street right-of-way line at the front of the lot. On a corner lot there shall be two front lot lines.
2. **Rear.** The lot line opposite to the front lot line.
3. **Side.** Any lot line not a rear lot line nor a front lot line shall be deemed a side lot line.

LOT SIZE:

The total horizontal area included within lot lines.

LOT WIDTH:

The dimension measured from side lot line to side lot line along a line parallel to the street line at the required minimum front yard depth.

MM

MIXED USE:

A building, structure, or lot occupied by two or more uses of varying land use classifications, such as residential and commercial. Mixed use buildings, structures, or lots shall be considered nonresidential for the purposes of this Zoning Law.

MOBILE HOME:

A structure, whether occupied or not, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. For the purpose of this Zoning Law, an unoccupied mobile home shall be considered the same as an occupied unit.

MOBILE HOME PARK:

A parcel which has been improved for the rental or lease of two (2) or more lots and the provision of services for mobile homes for nontransient residential use.

MOTOR VEHICLE:

Every vehicle operated or driven which is propelled by power other than muscular power, except:

1. Electrically driven mobility devices operated or driven by a person with a disability.
2. Vehicles which run on rails or tracks.
3. Snowmobiles.
4. All-terrain vehicles.

MUNICIPAL STRUCTURE OR USE:

A building, structure, lot, or other property occupied by a municipal authority, such as a local governmental agency.

NN

NONCONFORMING:

Any lawful use of land, premises, or buildings or building or structures which do not conform to the regulations of this Zoning Law for the district in which such use or building is located, either at the effective date of this Zoning Law or as a result of subsequent amendments thereto.

NONRESIDENTIAL USE OR STRUCTURE:

A building, lot, or structure containing no dwelling units and designated or intended for commercial, public, institutional, or other such use. Multi-family dwellings and mixed use buildings or structures shall be considered nonresidential uses for the purposes of this Zoning Law.

NURSING HOME:

An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

**OFFICE, ADMINISTRATIVE OR PROFESSIONAL:**

The use of a building or structure for the operation of day-to-day activities that are related to record keeping, billing, personnel, and logistics, within an organization. This shall also include the workplace of any person who earns their living from a specified professional activity, such as an accountant, engineer, architect, or financial planner. This shall not include medical professionals.

OFFICE OR CLINIC, MEDICAL:

A facility for the diagnosis and/or treatment of outpatients by medical professionals. This may include a group practice in which several physicians or medical professionals work cooperatively. Medical professionals include, but are not limited to, dermatologists, doctors, dentists, or psychiatrists.

OPEN SPACE:

An area that is intended to provide light and air and is designated for either environmental, scenic or recreational purposes. Open space shall not be deemed to include driveways, parking lots or other surfaces designed or intended for vehicular travel, as well as detention or retention ponds. In no event shall any area of a developable lot nor any part of an existing or future road or right-of-way be counted as constituting open space.

OUTDOOR FUEL BURNING DEVICE:

A solid fuel burning device designed and intended for installation outside of the primary building on a lot, and used to produce heat for transfer to the primary or accessory building(s) on such lot.

OUTDOOR ASSEMBLY OR SEATING AREA:

The use of an adjacent, outside area by a commercial establishment, such as a restaurant or tavern, in which the same activities which occur within the establishment may be enjoyed by patrons.

OUTDOOR SALES OR DISPLAY:

The placement of goods in an area outside the principal structure for advertising, display, or sale purposes as an ancillary and temporary use to a permanent commercial use located inside an adjacent building.

OUTDOOR STORAGE:

The placement of goods in an area outside the principal structure for storage purposes as an ancillary and temporary use to a permanent nonresidential use located inside an adjacent building.

OWNER:

An individual, firm, association, syndicate, partnership, or corporation having sufficient proprietary interest to seek development of land.

PP

PARKING AREA OR LOT:

An off-street area containing one or more parking spaces, with passageways and driveways appurtenant thereto, as required by this Zoning Law.

PARKING SPACE:

An off-street space used for the temporary location of one licensed motor vehicle, not including access driveway(s).

PEDESTRIAN-ORIENTED:

Refers to a pedestrian-friendly design policy providing clear, comfortable pedestrian access to residential and nonresidential areas as well as providing for the construction of buildings, sites, and amenities to be human-scaled, purposefully engaging and accommodating pedestrians.

PERSON:

Any person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

PERSONAL SERVICE SHOP OR SPA:

Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

PHASING:

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

PLACE OF WORSHIP:

A structure, building, or place in which worship, ceremonies, rituals, and education pertaining to a particular system of beliefs are held.

PLANNING BOARD:

The Planning Board of the Village of Bergen, New York, as established by this Zoning Law.

PUBLIC RIGHT-OF-WAY:

Existing land owned by the Village of Bergen, New York, or other government entity, for use as a street or other public purpose.

RR

RECREATION OR ENTERTAINMENT FACILITY, INDOOR:

An establishment providing for recreational or entertainment activities in a completely enclosed structure. Accessory uses may be permitted to include the

preparation and serving of food and/or the sale of equipment related to the enclosed recreational uses. Included in this definition shall be indoor arcades, movies, pools, courts, or other facilities where patrons are engaged in and/or spectating sport or game activities.

RECREATION OR ENTERTAINMENT FACILITY, OUTDOOR:

An establishment providing for recreational or entertainment activities in an open or partially enclosed structure. Accessory uses may be permitted to include the preparation and serving of food and/or the sale of equipment related to the recreational uses. Included in this definition shall be outdoor pools, fields, courts, or other such facilities where patrons are engaged in and/or spectating sport or game activities.

RECREATIONAL VEHICLE:

A unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own power or is mounted on or drawn by a motor vehicle. The basic entities are:

1. **Travel Trailer:** A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motor vehicle.
2. **Camp Trailer:** A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by a motor vehicle.
3. **Truck Camper:** A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck. Truck campers are of two basic types:
 - a) Slide-in camper: A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck.
 - b) Chassis-mount camper: A portable unit designed to be affixed to a truck chassis.
4. **Motor Home:** A vehicular unit built on a self-propelled motor vehicle chassis.

RESIDENTIAL DEVELOPMENT:

Means a newly constructed or redeveloped project containing at least 15 residential units, including single-family dwellings, mobile homes, manufactured homes, two-family dwellings, or multi-family dwellings; or a subdivision of land for the purpose of constructing 15 or more residential dwelling units.

RESIDENTIAL USE OR STRUCTURE:

A building, lot, structure, or structure(s) containing a dwelling unit or grouping of dwelling units designated or intended for the housing of individuals and families, not including any commercial, industrial, public, or institutional use. Multi-family dwellings

and the inclusion of dwelling units in a mixed use building or structure shall be considered a nonresidential use for the purposes of this Zoning Law.

REPAIR OR SERVICE OF PERSONAL ITEMS:

An establishment where personal goods, apparel, electronics, or other household items are restored to a sound or functioning state.

RETAIL STORE:

An establishment selling commodities or goods directly to the public, but not including such services as business and professional offices, meeting rooms for social clubs and personal service establishments. The term "retail store" shall also not include an establishment where alcoholic beverages are sold to the public for consumption on the premises in connection with the operation of a restaurant, tavern, or brewpub.

RESTAURANT:

A building or portion thereof where food and beverages, whether or not alcoholic, are sold to the public for consumption on the premises. A building or portion thereof where food and beverages, whether or not alcoholic, are sold to the public for consumption on the premises, shall not be deemed a restaurant if the sale of such food and beverages is merely incidental to the main business being conducted at such building. A restaurant may be either a full-service restaurant or a quick-service restaurant.

RETAIL STORE/SERVICE:

An establishment selling commodities or goods directly to the public, but not including such services as business and professional offices, meeting rooms for social clubs and personal service establishments. The term "retail store" shall also not include an establishment where alcoholic beverages are sold to the public for consumption on the premises in connection with the operation of a restaurant, tavern, or brewpub. Retail store/service shall not be interpreted to include the following: drive-up service, freestanding retail stand, gasoline station, gasoline station-market, motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

REVIEW BODY OR REVIEWING BODY

The Village board, commission, committee, official, or other designated decision-making body that is charged with review and/or approval authority as authorized under this Zoning Law and by NYS Law. This may include, but is not limited to the CEO, Village Board of Trustees, Planning Board, and Zoning Board of Appeals.

SS

SCHOOL, PUBLIC OR PRIVATE:

Parochial, private and public school, college, university and accessory uses operated in compliance with the Education Law of the State of New York and recognized by

the appropriate educational authorities; and shall exclude commercially operated schools of beauty, culture, business, dancing, driving, music and similar establishment.

SCREENING:

The method by which a view of one site from another adjacent site is shielded, concealed or hidden. "Screening" techniques include fences, walls, hedges, berms or other features.

SETBACK:

The horizontal distance between a lot line and the nearest part of any building or structure on the lot.

SEQR(A):

Referring to environmental review as required by the New York State Environmental Quality Review Act.

STORAGE FACILITY OR WAREHOUSE:

A building or group of buildings divided into separate units or compartments used to meet the temporary storage needs of businesses and residential users. A warehouse operated for a specific commercial or industrial establishment shall not be considered a self-storage facility.

SITE PLAN:

A rendering, drawing or sketch prepared to specifications containing necessary elements, as set forth in this Zoning Law, which shows the arrangement, lay-out and design of the proposed use of a single parcel of land as shown on such plan. Plats showing lot, blocks or sites which are subject to review under Section 7-728 of NYS Village Law and/or any local laws of the Village of Bergen regulating the division of property shall not be subject to review as site plans under this Zoning Law unless a zoning application is submitted.

SPECIAL USE PERMIT:

An authorization of a particular land use which is permitted in this Zoning Law subject to requirements imposed by such permitted use to assure that the proposed use is in harmony with this Zoning Law and will not adversely affect the neighborhood if such requirements are met.

STORMWATER:

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT:

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORY:

That portion of a building 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. A basement shall be counted as a story for the purpose of height measurement, if the ceiling is more than five feet above the average adjoining ground level or if it is used for business or dwelling purposes. A half story is a story under a sloping roof having a ceiling height of seven feet or more for not more than one-half the floor area of the uppermost full story in the building.

STREET:

Public way for vehicular traffic which affords principal means of access to abutting properties.

STREET LINE:

Right-of-way line of a street as dedicated by a deed of record. If no such deed exists, then by any other record establishing such right-of-way line of a street.

STRUCTURE:

A combination of materials to form a construction for use, occupancy or ornamentation, including, but not limited to, buildings, solar collector, mobile homes, towers, wind energy conversion systems (WECS), antennas, satellite dishes, or gas or liquid storage tanks, that are principally above ground.

STUDIO (DANCE, MUSIC, ART, OR PHOTO):

A workroom or collection of rooms intended to be used by the public for the purpose of teaching, practicing, crafting, or creating various art forms, including dancing, painting, drawing, pottery, photography, woodworking, filmmaking, or other such activities.

SWIMMING POOL:

A structure intended for bathing, swimming or diving purposes, made of concrete, masonry, metal or other impervious materials, provided with a recirculating and/or controlled water supply of more than 100 gallons and with a depth of greater than two (2) feet.

TT

TAVERN:

An establishment where beverages, beer, wine, and/or liquor are sold to the public for consumption on the premises. Such a use shall include a minimum food preparation area and menu that satisfies the NYS Liquor Authority's minimum food requirement, where applicable. Also referred to as a "bar."

TELECOMMUNICATIONS:

The transmission and reception of audio, video, data and other information by wire, radio, light and other electronic or electromagnetic systems.

TELECOMMUNICATIONS EQUIPMENT:

Includes telecommunication towers, accessory facilities or structures and/or antennas and any buildings and/or equipment used in connection with the provision of cellular telephone service, personal communication services (PCS's), paging services, radio and television services and similar broadcast services.

TELECOMMUNICATIONS TOWER:

Any structure, including but not limited to a pole, or other such structure, whether attached to a building, guyed or freestanding, designed and/or used for the support of any device for the transmission and/or reception of radio frequency signals, including but not limited to broadcast, shortwave, citizen's band, FM or television or microwave and/or for the support of any wind-driven device, whether used for energy conservation or not.

TEMPORARY STORAGE UNIT:

Any container, storage unit, box-like container or portable structure which resembles and functions in the same way as a traditional shipping container is a temporary portable storage unit and not a structure, even when affixed to a permanent foundation. A commercial grade dumpster shall also be considered a temporary storage unit for the purposes of this Zoning Law. Large bags used for bulk removal of waste are excluded from this definition.

TEMPORARY USE:

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

TRAILER:

Any vehicle which may be towed and used for carrying or storing goods, equipment, machinery, construction materials, snowmobiles, boats, all-terrain vehicles (ATV), motor vehicles or as a site office.

UU

U-SHAPED DRIVEWAY:

A legal driveway with two curbcuts on the same lot, in the form of a loop or other design providing continuous vehicular access from the street between the curbcuts.

USE:

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

USE, PRINCIPAL OR PRIMARY:

The dominant purpose, by area, scale, and/or intensity of use, for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

USE, PERMITTED:

Any use of a building, structure, lot or part thereof which this Zoning Law provides for in a particular district as a matter of right.

USE, PROHIBITED:

A use of a building, structure, lot or part thereof which is not listed as a permitted, specially permitted, or accessory use.

USE, SPECIALLY PERMITTED:

A particular land use which is permitted within a given zoning district, subject to conditions imposed to assure that the proposed use is in harmony with the requirements of this Zoning Law and will not adversely affect the neighborhood or vicinity if such conditions are met.

UTILITY, PUBLIC:

Any person, firm, corporation or governmental subdivision, duly authorized to furnish to the public, under public regulation, electricity, gas, water, sanitary sewers, storm sewers, steam, telephone, telegraph or cable television.

VV

VARIANCE, AREA:

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

VARIANCE, USE:

The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Law.

VEHICLE SERVICE OR REPAIR SHOP:

A commercial establishment offering vehicle repair or maintenance services, such as adjustments, painting, replacement of parts, or other parts thereof.

VEHICLE SALES:

A commercial establishment offering new or used vehicles for sale, rental, or lease, including personal vehicles, commercial vehicles, or other registered automobiles.

VETERINARY CLINIC:

A facility for the provision of medical care including treatment of illnesses and/or injury of domestic household pets. Boarding of animals is limited to short-term care incidental to their treatment.

VILLAGE BOARD:

The Board of Trustees of the Village of Bergen, New York.

VILLAGE LAW:

The duly adopted laws and regulations of the Village of Bergen, New York.

WW

WINERY:

An enclosed building for the manufacture, processing, bottling, and packaging of wine as defined by and duly licensed by the NYS Liquor Authority. For the purposes of this Zoning Law, this shall include operations which include tasting rooms.

YY

YARD:

An unoccupied space on a lot that remains open to the sky.

YARD, FRONT:

That area of a lot extending across the entire front of a lot bounded by the street line and the front building line and between the two side lot lines.

YARD, REAR:

That area of a lot extending across the entire rear of a lot bounded by the rear lot line and the rear building line and between the two side lot lines.

YARD, SIDE:

The area between a side building line and its related side lot line and between the front yard and the rear yard.

ZZ

ZONING BOARD OF APPEALS:

The Zoning Board of Appeals of the Village of Bergen, New York, as established by this Zoning Law.