

## Appendix A – Zoning

### Article IXA            W-MU Waterfront Mixed Use District (§ 215-70 - § 215-70.5)

[Added 9-9-1996 by L.L. No. 8-1996

Editor's Note: This local law also provided for the repeal of former §§ 215-70, Purpose of Waterfront District; 215-70.1, Performance standards use permit required in Waterfront District; 215-70.2, Waiver of the performance standards use permit in Waterfront District; and 215-70.3, Design standards for Waterfront District. See now Arts. IXA through IXF for provisions relating to specific waterfront districts; amended 11-24-2003 by L.L. No. 6-2003]

#### § 215-70 Purpose and intent

The purpose and intent of the W-MU Waterfront Mixed Use District shall be as follows:

- A. To promote and accommodate the development of a mix of uses which are designed to recognize the unique and irreplaceable character of the Niagara River shoreline. The uses should be designed to promote public access and use of the river shoreline while protecting and utilizing the unique features and vistas throughout the district.
- B. To provide for appropriate development in this area, which is to the west of River Road and includes many properties already being used for or designated for use as parkland or public space. Permitted development should be sensitive to the size of the properties and to any environmental conditions that may limit the amount of development the site can accommodate.
- C. To allow and encourage small commercial uses that complement the area's recreational, tourism, and parkland facilities while being sensitive to the physical and environmental limitations, such as limited space, floodplains and wetlands, characterizing much of the land within this district.
- D. To encourage flexibility in design and use of sites within the shoreline area while preserving the unique environmental features and maintaining or reviving the aesthetic qualities of the waterfront area. The flexibility of design will be accomplished by establishing minimal dimensional requirements for principal uses combined with site plan review and design standards which will ensure development which is compatible with the goals of the Local Waterfront Revitalization Program and the Waterfront Land Use Plan and any other relevant planning documents.

#### § 215-70.1 Permitted uses

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII:

- A. Public and private parklands, trails, docks, fishing facilities, boat-launching facilities and picnic areas.
- B. Marinas and yacht clubs.
- C. Boatyard and boat storage facilities.
- D. Commercial excursion and charter fishing boat facilities.
- E. Visitor center, exhibit and interpretive facilities.
- F. A motel, hotel or hotel complex.
- G. Retail stores, restaurants and other water-enhanced uses, at a scale to be determined by the Town Planning Board, which are appropriate for the location of the site and surrounding land uses.
  - (1) Individual uses shall not exceed 5,000 square feet in total retail sales area.
  - (2) For stores and shops proposed to be connected in a plaza, the total structure or plaza shall not have a combined size in excess of 15,000 square feet.

**§ 215-70.2 Specially permitted uses**

Only the following uses shall be permitted with a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Combinations of permitted uses, based upon the determination of the Town Building Department, in consultation with the Town Planning Board, that such combinations are allowed for the waterfront area.
- B. Development of water-dependent facilities, such as docks or pipelines for the transfer of materials between land and river, as an accessory to industrial development elsewhere.
- C. Other uses not specifically listed above but which, based on a determination by the Town Board, in consultation with the Town Planning Board, are deemed appropriate for the waterfront area, are similar in nature to the other permitted uses or are compatible with the purpose and intent of this district.

**§ 215-70.3 Accessory uses**

Customary accessory structures incidental to primary permitted or specially permitted uses are allowed, subject to site plan approval by the Town Building Department, with comments from the Town Planning Board.

**§ 215-70.4 Dimensional requirements**

- A. Minimum lot size. The required lot size for permitted uses shall be established by the Town Building Department in consultation with the Town Planning Board during the site plan review and approval process. The required minimum lot size shall be based on the amount of land necessary to adequately accommodate the proposed principal use as well as all parking, loading, landscaping, open space, setbacks, public access and traffic access. The required minimum lot

size shall also be based on the relative intensity of the proposed use, the need to protect or buffer the proposed use and the need to protect or buffer the use from scenic views or vistas.

- B. Setback requirements. Setbacks from buildings or structures for all other buildings and structures on the lot and from property lines for all principal structures and accessory uses shall be determined by the Town Building Department in consultation with the Town Planning Board during site plan review and approval and shall be based on the following guidelines:
- (1) Principal buildings, parking areas and accessory structures, excluding such facilities as docks, piers, wharves, boat ramps and other water-dependent related structures, shall be set back a minimum of 50 feet from the adjacent high-water mark of the Niagara River.
  - (2) Principal buildings, parking areas and accessory structures shall be set back a minimum of 35 feet from any property line, public pathway (closest edge) or road right-of-way, except for River Road where a fifty-foot setback must be maintained.
  - (3) Setbacks shall be established with due consideration of provisions of fire protection services and adequate access for emergency equipment within and around the site and abutting sites.
  - (4) Setbacks shall be established with due consideration of the protection and preservation of the unique nature and character of the shoreline area, scenic views and vistas and the specific goals of this district.
- C. Maximum building and other structure heights.
- (1) Maximum building heights for all permitted principal uses shall not exceed 35 feet. The Town Building Department shall also have the power to establish maximum principal structure heights of less than 35 feet in such cases where a visual analysis of the site prepared and submitted by the applicant and reviewed by the Town Building Department demonstrates that such height limitation is required to protect the scenic view or vistas or to maintain the overall aesthetic quality of the waterfront area.
  - (2) Accessory structures shall not exceed a maximum height of 20 feet unless otherwise specified or regulated in this chapter. These structures may be limited in their height dependent on a visual analysis as discussed above.
- D. Maximum lot coverage. The total overall ground coverage of all principal and accessory buildings and structures, parking areas and other impervious surfaces on any lot shall not exceed 65% of the total lot area. The remainder shall be open green space and/or landscaped areas.

**§ 215-70.5 Additional design standards and requirements**

The following additional design standards and requirements shall apply throughout the district. In addition, all development shall also conform to the requirements of the River Road Overlay (§ 215-70.26). Where a conflict may exist between these requirements and the Overlay requirements, the Overlay requirements shall be used.

A. Landscaping, screening and buffering.

- (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings and shall give definition to street edges and provide screening. They shall not, however, impede public views of the river.
- (2) Significant existing vegetation shall be preserved, where practical, in any required waterfront or public access setback or buffer area. The applicant shall incorporate existing trees and other significant vegetation into the overall site plan to the extent feasible.
- (3) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
- (4) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.

B. Fencing. The use of fencing is discouraged within this district. Where used, the fencing shall be limited to four feet in height and shall be designed to not visually screen views of the river. For purposes of outside storage of materials directly associated with the commercial enterprise on said lot, fencing of a limited area is permitted.

C. View protection.

- (1) The site shall be developed in such a way as to maximize view opportunities at the river's edge and view corridors throughout the development. Site layout and design shall consider view corridors from the Riverwalk and any adjacent public open space. Important views should be protected and enhanced to the maximum extent practicable. To ensure visual access to the water, at least 25% of the shoreline shall be contained within view corridors. The total width of the view corridor shall be measured by dividing

the total width of the view corridors by the total shoreline in a single development parcel.

- (2) The Town Building Department, at its discretion or at the suggestion of the Town Planning Board, may require the applicant to provide information which will allow an adequate review of the potential impact of the development on the scenic resources of the area. Information that may be requested may include:
  - (a) Photographs of all existing scenic vistas at the site.
  - (b) Schematic plans and sections showing clearly the impact that development will have on the scenic vistas.
  - (c) Elevations or perspective sketches showing the proposed development and its impact on views to the river from surrounding public open space and/or public rights-of-way.
  - (d) Based on the findings of the visual assessment, the Town Building Department may limit the height or length of any proposed structure and may recommend changes in the arrangements of buildings if in its determination the proposed limitations or changes will protect or enhance the visual character.

D. Parking.

- (1) All permitted uses shall comply with the regulations outlined in Article XIII of this chapter and in the River Road Overlay for the standards for design of parking areas.

Editor's Note: See Article IXE, River Road Overlay District.

Where these requirements differ, the provisions of the Overlay shall supersede provisions of Article XIII.

- (2) To encourage pedestrian activity and accessibility, the Town Building Department may reduce minimum off-street parking requirements, taking into account the proposed use, pedestrian accessibility and other reasonable indications that the amount of parking is adequate to meet estimated parking needs.
- (3) Employee parking facilities shall not be located within any setback areas. Parking areas for visitors, customers or clients may be located within a setback area, provided that at least 50% of the area is landscaped. A landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.
- (4) All parking areas shall be paved with concrete or blacktop paving, paving brick or other comparable hard surface approved by the Town Building Department and shall be properly drained.

- (5) Parking areas shall not exceed 10,000 square feet of uninterrupted paving. Landscaped islands or medians or divider strips shall be placed within rows of parking spaces so that no row of parking exceeds 15 spaces without being interrupted by landscaping.
- E. Utilities and communication facilities. It is the strong intent that all utility and communication facilities shall be installed underground where feasible, unless extenuating circumstances are found. Installation shall be in the manner prescribed by the regulations of the government agency or utility company having jurisdiction. Where facilities are provided, they shall be planned to anticipate future utility needs and shall be sited to reduce future capital costs.
- F. Signage. All signage proposed for permitted uses within this district shall comply with the signage regulations of Article XXII of this chapter and the following conditions:
- (1) All graphics and signs shall be designed as an integral part of the whole for the entire development proposed for a given property within the district.
  - (2) Billboards, freestanding pole signs, portable ground signs and roof signs are not permitted.
  - (3) A single ground identification sign or directory sign may be constructed a minimum of 10 feet from the front lot line; it shall not exceed eight feet in height and have up to two faces with a maximum area of each face of 60 square feet. The combined total face area for ground and wall-mounted signs shall not exceed 300 square feet on a single property.
  - (4) All signs visible from River Road shall be compatible with any public signage established by the Town for the waterfront region.
  - (5) Signs shall have the minimum of information necessary in order to avoid clutter and confusion. Whenever feasible, signs should be combined into a single sign in order to minimize clutter.
- G. Docking facility and marina design standards shall be governed by all applicable federal and state standards and regulations.
- H. Storage of materials.
- (1) Required service areas, required loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrian ways or public open space. Service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public or private pedestrian areas or public open space, they shall be completely screened with opaque materials.

- (2) Outside storage that is located within 150 feet of the district boundary shall not exceed eight feet in height. Elsewhere in the district, outside storage shall be limited to 12 feet in height. These height limits shall not apply to external boat storage, as allowed under Subsection H(3), below.
- (3) External boat storage of a single boat on a cradle shall be allowed at the discretion of the Building Department.

I. Lighting.

- (1) All lighting shall be located and designed as an integral part of the entire project of which it is a part and shall consider the architectural and landscape context of the site.
- (2) Lighting shall be provided for visibility, security and as an accent to architectural and/or landscape features.
- (3) Pedestrian-scale lighting shall be provided along major pedestrian paths and along the Niagara River edge.
- (4) Lighting fixtures shall be used that appear and function as a compatible whole, including the designs of building-mounted lighting.
- (5) Lighting shall be located and designed to minimize glare and reflection on adjacent properties and shall not interfere with the use of neighboring premises.
- (6) Lighting fixtures shall be used that direct light downwards in order to minimize interference with roadways and public use.
- (7) All wiring for lighting shall be installed underground.

J. Circulation. On-site circulation shall be designed to minimize conflicts between vehicles and pedestrians.

- (1) Common driveways and interconnection of parking areas should be provided where practical in order to efficiently serve adjacent related or complementary uses, to minimize the number of road cuts and to concentrate and control turning movements onto River Road and internal feeder roads and trails crossings.
- (2) All bike and walking paths shall be clearly identified with striping and/or signage as necessary within parking areas, driveway crossings and public roadway crossings.
- (3) Sidewalks or paths shall be placed parallel to all major roadways or driveways or shall form an interconnected network within a property or group of properties. Whenever practicable, pathways shall be connected to the existing local or regional pathway system.

**Article IXB           WB Waterfront Business District (§  
215-70.6 - § 215-70.11A)**

[Added 9-9-1996 by L.L. No. 8-1996; amended 11-24-2003 by L.L. No. 6-2003]

**§ 215-70.6 Purpose and intent**

The purpose and intent of the Waterfront Business District shall be as follows:

- A. In accordance with the Town of Tonawanda Waterfront Land Use Plan and the Local Waterfront Revitalization Program (LWRP), to provide for a planned district that will promote and accommodate the development of business uses which are designed to recognize the unique and irreplaceable character of the Niagara shoreline region. The uses will take advantage of views of the area, and provide a buffer between the waterfront public uses, the City of Tonawanda and the light industrial areas of the Town.
- B. To encourage flexibility in design and use of sites within the shoreline area while preserving the unique environmental features and maintaining or reviving the aesthetic qualities of the waterfront area. The flexibility of design will be accomplished by establishing minimal dimensional requirements for principal uses combined with site plan review and design standards which will ensure development which is compatible with the goals of the Town of Tonawanda.
- C. To promote the most desirable use of land and direction of building development in accordance with the Town's vision and LWRP which protects the character of the waterfront region and the established patterns in adjacent development, thereby maintaining land values and protecting and improving the Town's tax revenue.

**§ 215-70.7 Permitted uses**

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII:

- A. Public and private parklands, trails and recreation areas.
- B. Business and professional offices.
- C. General laboratories for testing and research.
- D. Research and development.
- E. Assembly of component parts.

**§ 215-70.8 Specially permitted uses**

Only the following uses shall be permitted with a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Retail, restaurant and lodging.



- B. In-service training schools for employees, provided that such use is incidental to one of the principal uses.
- C. Nursery schools or day-care centers to primarily serve employees in the district.
- D. Warehousing and distribution facilities representing less than 50% of the square footage of the total leasable area of the facility. Such specially permitted use must be accessory to the primary allowable use.
- E. Any other commercial use which is determined by the Town Board, in consultation with the Town Planning Board, to be similar to other permitted or specially permitted uses, and which is compatible with the purpose and intent of this district.

**§ 215-70.9 Accessory uses**

Customary accessory structures incidental to primary permitted or specially permitted uses are allowed, subject to site plan approval by the Town Building Department, with comments from the Town Planning Board.

**§ 215-70.10 Dimensional requirements**

The dimensional requirements in the WB District shall be as follows:

- A. Minimum lot size and frontage. The required minimum lot size and frontage shall be based on the amount of land necessary to adequately accommodate the proposed principal use as well as all parking, loading, landscaping, open space, setbacks, public access and traffic access.
- B. Front yard setback: minimum of 50 feet, measured from the nearest street right-of-way.
- C. Side yard setback: minimum of 25 feet.
- D. Maximum lot coverage: The total overall coverage of all principal and accessory buildings and structures, parking areas and other paved or service areas on any lot shall not exceed 65% of the total lot area. The remainder shall be open green space and/or landscaped areas.
- E. Height restriction: The maximum building height shall not exceed 50 feet.

**§ 215-70.11 Additional design standards and requirements**

The following additional design standards and requirements shall apply throughout the district. In addition, all development within 500 feet of River Road shall conform to the requirements of the River Road Overlay.

- A. Two Mile Creek and Rattlesnake Creek Buffers.

A minimum of 50 feet on either side of Rattlesnake Creek, Two Mile Creek or their tributaries shall be maintained in its natural state or as landscaped open space. The setback distance shall

be measured from the average adjacent high-water line of the water body. The applicant is encouraged to protect the natural drainage elements within the project area and to provide a means of public access along any drainage element or within the fifty-foot buffer area where it is appropriate or desired to integrate the preservation of the drainage features into the open space element of the project design and accommodate trails.

B. Landscaping, screening and buffering.

- (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings, and may give definition to street edges and provide screening. They shall not, however, impede public views of the river.
- (2) Significant existing vegetation shall be preserved, where practical, in any required waterfront or public access setback or buffer area. The applicant shall be encouraged to incorporate existing trees and other significant vegetation into the overall site plan to the extent feasible.
- (3) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. All plants, trees and shrubs shall be planted and maintained in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
- (4) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.
- (5) Tree planting spacing patterns of one tree for no less than every 30 linear feet of distance in a regular pattern along site edges adjoining principal business streets shall be required. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-8, entitled "Sight obstructions," which requires that shrubs and similar materials generally not be higher than three feet above adjacent street grade and that street trees have branches generally no lower than 12 feet above adjacent street grade in order that views not be obstructed for approaching or departing vehicles.
- (6) All trees shall be plant species having a minimum caliper of 2 1/2 inches measured two feet above ground level at the time of planting, an average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of

branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same so as to create the equivalent of a fifteen-foot crown. Shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two years after time of planting.

C. Parking.

- (1) Parking shall comply with Article XIII of this chapter for the number of parking spaces required and the standards for the design of parking areas. If the site is within the River Road Overlay District, the provisions of the Overlay shall supersede other parking requirements.
- (2) Employee parking facilities developed as structures or surface lots shall not be located within any setback areas or in the front of any building.
- (3) Employee parking areas shall be paved with a concrete or blacktop paving, paving brick or comparable hard surface approved by the Town Building Department, shall have curbing or bumper guards where needed and, except for driveways and other entrances, shall be properly drained and screened from view from the street.
- (4) Parking areas for visitors, customers or clients may be located within a setback area (required front or side yards), provided that at least 50% of the area is landscaped. Such parking areas must be paved with concrete or blacktop paving, paving brick or other comparable hard surface approved by the Town Building Department and shall be properly drained. A landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.
- (5) Parking areas shall not exceed 10,000 square feet in area unless interrupted by a minimum fifteen-foot-wide landscaped strip. Median requirements may be relaxed if the parking lot configuration is irregularly shaped.
- (6) No loading docks shall be permitted on any portion of a building which faces a street; provided, however, that if two or more building walls face a street or a public right-of-way, then loading docks may be permitted if adequate landscaped screening is provided.

D. Signage. Signage shall comply with Article XXII of this chapter.

E. Fencing.

- (1) The use of fencing is discouraged within this district, except as needed for the purposes of screening features such as storage areas, utility buildings and similar types of structures or installations.

- (2) No fence shall be erected within any setback area. Fences shall be limited to six feet in height.
- F. Storage of materials.
  - (1) Required service areas, required loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrian ways or public open space. To the extent possible, service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public or private pedestrian areas, public streets or public open space, they shall be completely screened with opaque materials.
  - (2) Outside storage that is located within 150 feet of the district boundary shall not exceed 12 feet in height. Elsewhere in the district outside storage shall be limited to 20 feet in height.
- G. Utilities and communications facilities. No utilities or communications facilities shall be installed above ground in front or side yards. Where feasible, all utility and communications facilities shall be installed underground, in a manner prescribed by the regulations of the government agency or utility company having jurisdiction. All facilities shall be planned so as to anticipate future needs and shall be sited and sized to reduce future capital costs.
- H. Access to the rear of these properties and to the surrounding properties must be considered in the design and layout of any proposed use.

**§ 215-70.11A Performance standards**

Uses in this district shall be no more intrusive in impacts than is typical for standard office uses.

**Article IXC            RHC Retail - Highway Commercial Use District (§  
215-70.12 - § 215-70.17)**

**§ 215-70.12 Purpose and intent**

The purpose and intent of the RHC Retail-Highway Commercial Use District shall be as follows:

- A. To allow and encourage the development of a highway service and retail shopping area near the Grand Island Bridge that accommodates the needs and services of the traveling public.
- B. To provide for highway-related uses in a manner that remains consistent with the Town's goals for the waterfront area, including the maintenance of significant viewsheds, the encouragement of increased public access, and the promotion of higher design standards and aesthetics in this area of the Town.

- C. To encourage the development of uses that are compatible with adjoining uses, including the waterfront area across River Road, and that promote accessibility for pedestrian and bicyclist travelers as well as vehicular traffic.

**§ 215-70.13 Permitted uses**

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII:

- A. Restaurants.
- B. Gasoline stations.
- C. Retail stores.
- D. Motels and hotels.

**§ 215-70.14 Specially permitted uses**

Only the following uses shall be permitted with issuance of a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Truck stops and travel plazas.
- B. Any other commercial or retail use which is determined by the Town Board, in consultation with the Town Planning Board, to be similar to other permitted or specially permitted uses, and which is compatible with the purpose and intent of this district.

**§ 215-70.15 Accessory uses**

Customary accessory structures incidental to primary permitted or specially permitted uses are allowed, subject to site plan approval by the Town Building Department, with comments from the Town Planning Board.

**§ 215-70.16 Dimensional requirements**

The dimensional requirements in the RHC District shall be as follows:

- A. Minimum lot size: none.
- B. Minimum lot frontage: 50 feet.
- C. Front yard setback: minimum of 50 feet, measured from the nearest street right-of-way.
- D. Side yard setback: minimum of 25 feet.
- E. Maximum lot coverage: 75%.
- F. Height restriction: The maximum building height shall not exceed 75 feet.

**§ 215-70.17 Additional design standards and requirements**

The following additional design standards and requirements shall apply throughout the district. In addition, all development within 500 feet of River Road shall conform to the requirements of the River Road Overlay.

- A. Landscaping. Due to the visibility of this district and the nature of the types of uses allowed, landscaping is an important component of design to screen, buffer and improve the aesthetics of development, which is likely to be dominated by large amounts of paving. The following landscaping standards shall apply:
- (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings, and shall give definition to street edges and provide screening. They shall not, however, impede public views of the river.
  - (2) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. All plants, trees and shrubs shall be planted and maintained in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
  - (3) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.
  - (4) Tree planting spacing patterns of one tree for no less than every 30 linear feet of distance in a regular pattern along site edges adjoining principal business streets shall be required. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-8, entitled "Sight obstructions," which requires that shrubs and similar materials generally not be higher than three feet above adjacent street grade and that street trees have branches generally no lower than 12 feet above adjacent street grade in order that views not be obstructed for approaching or departing vehicles.
  - (5) All trees shall be plant species having a minimum caliper of 2 1/2 inches measured two feet above ground level at the time of planting, an average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same so as to create the equivalent of a fifteen-foot crown. Shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two years after time of planting.

B. Parking.

- (1) Parking shall comply with Article XIII of this chapter for the number of parking spaces required and the standards for the design of parking areas. If located within the boundaries of the River Road Overlay, the provisions of the Overlay shall supersede other parking requirements.
- (2) Employee parking shall not be located within any setback areas or in the front of any building.
- (3) Parking areas for visitors, customers or clients may be located within a setback area, provided that at least 50% of the area is landscaped. A landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.
- (4) Parking areas shall not exceed 10,000 square feet of uninterrupted paving. Landscaped islands or medians or divider strips shall be placed within rows of parking spaces so that no row of parking exceeds 15 spaces without being interrupted by landscaping.

C. Signage. Signage shall comply with Article XXII of this chapter.

D. Fencing. No fences shall be permitted in the setback area. Fences shall be limited to six feet in height.

E. Storage of materials.

- (1) Required service areas, loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrianways or public open space, if feasible. To the extent possible, service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public pedestrian areas, public streets or public open space, they shall be completely screened with opaque materials.
- (2) Outside storage shall not exceed 12 feet in height.

F. Utilities and communications facilities. No utilities or communications facilities shall be installed above ground in front or side yards. Where feasible, all utility and communication facilities shall be installed underground, in a manner prescribed by the regulations of the government agency or utility company having jurisdiction. All facilities shall be planned so as to anticipate future needs and shall be sited and sized to reduce future capital costs.

G. Circulation. On-site circulation shall be designed to minimize conflicts between vehicles and pedestrians.

- (1) Common driveways and interconnection of parking areas shall be provided where practical in order to efficiently serve adjacent related or complementary uses, to minimize the number of road cuts and to concentrate and control turning movements onto to River Road.
- (2) All bike and walking paths shall be clearly identified with striping and/or signage as necessary within parking areas, driveway crossings and public roadway crossings.
- (3) Pedestrian and bike paths shall be provided to facilitate pedestrian access to developments. Wherever practicable, on-site pathways shall be connected to the existing local and regional pathway system.

## **Article IXD            WID Waterfront Industrial District (§ 215-70.18 - § 215-70.25)**

[Added 9-9-1996 by L.L. No. 8-1996; amended 11-24-2003 by L.L. No. 6-2003]

### **§ 215-70.18 Purpose and intent**

The purpose and intent of the WID Waterfront Industrial District shall be as follows:

- A. In accordance with the Town of Tonawanda Waterfront Land Use Plan, to provide for a planned district for industrial development of a manufacturing, processing and/or assembly nature, as well as wholesale and warehousing activities.
- B. To accommodate these types of uses while maintaining the character and integrity of the surrounding land uses and the waterfront region in general, and protecting them from unreasonable adverse impacts.
- C. To encourage water-dependent or water-enhanced industrial or commercial uses on lands located along the Niagara River.
- D. To promote uses that will provide job opportunities and strengthen the Town's tax base.
- E. To maintain appropriate design standards within the Tonawanda waterfront region.

### **§ 215-70.19 Permitted uses**

Only the following uses shall be permitted with site plan approval as set forth in Article XXIII. Only the following uses shall be permitted with site plan approval by the Town Building Department and after having received comments from the Town Planning Board according to the process set for in the site plan regulations:

- A. Public and private parklands and trails.
- B. Boat storage facility.



- C. Light industry.
- D. Assembly of component parts.
- E. Wholesale business and storage.
- F. Warehousing and storage of goods for distribution.
- G. Public utilities.
- H. Research facilities, including laboratories and testing facilities.
- I. Business offices or medical professional buildings.

**§ 215-70.20 Specially permitted uses**

Only the following uses shall be permitted with a special use permit as indicated in Article IXF and with site plan approval as set forth in Article XXIII:

- A. Service or repair of an industrial nature.
- B. Retail sales of merchandise and/or services.
- C. Nursery schools and day-care centers to primarily serve employees in the district.
- D. Commercial laundry plants; bottling plants.
- E. Any other commercial, industrial or warehousing use which is determined by the Town Board, in consultation with the Town Planning Board, to be similar to permitted or specially permitted uses, and which is compatible with the purpose and intent of this district.

**§ 215-70.21 Use restrictions**

- A. Residential dwelling units shall not be permitted, except for temporary quarters, such as for a plant watchman or caretaker, that do not constitute a primary residence.
- B. Junkyards, waste transfer or disposal, land mining and stockyards shall not be permitted.

**§ 215-70.22 Accessory uses**

The following uses are permitted as an accessory use to a permitted or specially permitted use, subject to site plan approval as set forth in Article XXIII.

- A. Storage structures subject to height screening conditions.
- B. Clinics, cafeterias and recreational facilities for the exclusive use of employees of the principal use.
- C. Garages, pump houses, water towers and storage tanks.
- D. Other customary accessory structures incidental to primary permitted or specially permitted uses.

**§ 215-70.23 Dimensional requirements**

The dimensional requirements in the WID Waterfront Industrial District shall be as follows:

- A. Minimum lot size: two acres.
- B. Minimum lot width at the front (frontage): 100 feet.
- C. Front yard setback: minimum of 50 feet, measured from the nearest street right-of-way line.
- D. Side yard setback: minimum of 25 feet.
- E. Lot coverage. Building coverage shall be limited to 40% of the lot area. Total coverage of the lot with impervious or paved surfaces shall be limited to 75%.
- F. Height restriction: The maximum building height shall not exceed 50 feet. The Town Building Department shall have the power to establish maximum heights of less than 50 feet for properties within the coastal zone boundary where such height limitation is required to preserve important views or maintain the overall aesthetic quality of the waterfront area.

**§ 215-70.24 Additional design requirements and standards**

The following additional design standards and requirements shall apply throughout the district. In addition, all development within the coastal zone (from the Niagara River to 500 feet inland of River Road) shall conform to the requirements of the River Road Overlay.

- A. Two Mile Creek and Rattlesnake Creek Buffers. A minimum of 50 feet on either side of Rattlesnake Creek, Two Mile Creek or its tributaries shall be maintained in its natural state or as landscaped open space. The setback distance shall be measured from the average high-water line of the water body. The applicant is encouraged to protect the natural drainage elements within the project area and to provide a means of public access along any drainage element or within the fifty-foot buffer area where it is appropriate or desired to integrate the preservation of the drainage features into the open-space element of the project design.
- B. Landscaping, screening and buffering.
  - (1) Landscaping shall be provided and maintained to enhance the general appearance of the development, supply a visual break of the built environment and give relief to otherwise developed interior portions of the site to harmonize with the proposed buildings and the surrounding areas. Appropriate shrubs, trees and plant materials shall be arranged in beds, rows, islands, berms and clusters as foundation and area plantings, and shall give definition to street edges and provide screening. They shall not, however, impede public views of the river.
  - (2) Significant existing vegetation shall be preserved, where practical, in any required waterfront or public access setback or buffer area. The applicant shall be encouraged to incorporate existing trees and other significant vegetation into the overall site plan to the extent feasible.

- (3) The applicant shall submit a landscape plan with the site plan. The landscape plan shall be prepared by a landscape architect or arborist and describe the plant species, their locations and size at planting and maturity. All plants, trees and shrubs shall be planted and maintained in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone.
  - (4) The landscape plan shall provide adequate landscaping or screening for all utility buildings, loading docks, refuse collection areas, cooling systems, storage areas and all other similar structures, installations and features.
  - (5) Tree planting spacing patterns of one tree for no less than every 30 linear feet of distance in a regular pattern along site edges adjoining principal business streets shall be required. Landscaping patterns along street right-of-way lines shall be consistent with the unobstructed view corridor standards established by § 215-8, entitled "Sight obstructions," which requires that shrubs and similar materials generally not be higher than three feet above adjacent street grade and that street trees have branches generally no lower than 12 feet above adjacent street grade in order that views not be obstructed for approaching or departing vehicles.
  - (6) All trees shall be plant species having a minimum caliper of 2 1/2 inches measured two feet above ground level at the time of planting, an average crown spread of greater than 15 feet at maturity and trunks which can be maintained in a clean condition, free of branches from grade to generally 12 feet above grade along principal street edges and 10 feet above grade elsewhere. Trees having an average mature spread of less than 15 feet may be substituted by grouping the same so as to create the equivalent of a fifteen-foot crown. Shrubs shall be a minimum of two feet in height when measured immediately after planting. Hedges, when measured, shall be planted and maintained so as to form a continuous visual screen within two years after time of planting.
- C. Parking. Parking shall comply with Article XIII of this chapter and meet the following additional standards:
- (1) All parking areas shall be paved with concrete or blacktop paving, paving brick or other comparable hard surface approved by the Town Building Department and shall be properly drained.
  - (2) Employee parking facilities developed as structures on surface lots shall not be located within any setback areas. Employee parking areas shall have bumper guards where needed and, except for driveways and other entrances, shall be properly screened from view from the street.
  - (3) Parking areas for visitors, customers or clients may be located within a setback area (required front or side yards), provided that at least 50% of the area is landscaped. A

landscaped buffer of at least five feet shall be provided between any parking area within the setback area and the property boundary.

- (4) Parking areas shall not exceed 10,000 square feet in area unless interrupted by a minimum fifteen-foot-wide landscaped strip. Median requirements may be relaxed if the parking lot configuration is irregularly shaped.
  - (5) No loading docks shall be permitted on any portion of a building which faces a street; provided, however, that if two or more building walls face a street or a public right-of-way, then loading docks may be permitted if adequate landscaped screening is provided.
- D. Signage. Signage shall comply with Article XXII of this chapter.
- E. Fencing. No fence shall be erected within any setback area. Fences shall be limited to six feet in height.
- F. Storage of materials.
- (1) Required service areas, required loading areas and outdoor storage areas shall be located so as to not be visible from public streets, public pedestrianways or public open space. To the extent possible, service, loading and storage facilities should be architecturally incorporated into the building or architecturally treated with walks, fencing and landscaping. Where these facilities are visible from public or private pedestrian areas, public streets or public open space, they shall be completely screened with opaque materials.
  - (2) Outside storage that is located within 150 feet of the district boundary shall not exceed 12 feet in height. Elsewhere in the district, outside storage shall be limited to 20 feet in height. These height limits shall not apply to external boat storage, as allowed under Subsection F(3), below.
  - (3) External boat storage of a single boat on a cradle shall be allowed at the discretion of the Building Department.
- G. Utilities and communications facilities. No utilities or communications facilities shall be installed above ground in front or side yards. All utility and communications facilities shall be installed so as to anticipate future needs and shall be sited and sized to reduce future capital costs.

**§ 215-70.25 Performance standards**

- A. General requirements.
- (1) All uses subject to the requirements of this section may be established and maintained if their operations are approved by the Town Building Department as being in conformance with the standards and regulations limiting dangerous and objectionable

elements, such as dust, smoke, odor, fumes, noise, or vibration. In approving the site plan, the Town Building Department shall decide whether the proposed use will conform to these applicable performance standards or to any additional performance standards required by state or federal laws or which are generally recognized performance standards for a given industry.

- (2) Uses subject to the performance standards procedure. Only manufacturing and research, experimental and testing laboratory uses and uses accessory thereto shall be subject to the performance standards procedure in obtaining a building permit. However, if the Code Enforcement Officer has reasonable grounds to believe that any other proposed use violates any of the performance standards, then the applicant shall comply with the performance standards procedure.

[Amended 3-26-2007 by L.L. No. 2-2007]

- (3) Enforcement provisions applicable to other uses. Initial and continued compliance with the performance standards is required of every use. Provisions for enforcement of continued compliance with performance standards shall be invoked by the Code Enforcement Officer against any uses if there is reasonable ground to believe that the performance standards are being violated by such use.

[Amended 3-26-2007 by L.L. No. 2-2007]

B. Performance standards procedure.

- (1) An application for a building permit or certificate of occupancy for a use subject to the performance standards procedure shall include a plan of the proposed construction and a description of the proposed machinery, operations and products and emission of any dangerous and objectionable elements. The applicant shall also file with any such plans and specifications an affidavit acknowledging his understanding of the applicable performance standards and stating his agreement to conform to the same at all times. During the course of site plan review, the Town Building Department will determine if the applicant's proposal falls within the performance standards.
- (2) Expert consultants.
  - (a) The Town may require a report by one or more expert consultants retained by the applicant to advise as to whether the proposed use will conform to the applicable performance standards. The applicant shall also submit a written report showing the manner in which the proposed use will comply with the performance standards.
  - (b) The continued effectiveness of the certificate of occupancy shall be conditioned on the continuous conformance of the applicant's completed buildings, installations and uses with the applicable performance standards.

C. Performance standards.

- (1) Fire and explosive hazards. All activities involving, and all storage of, flammable and explosive materials shall be protected at all times with adequate safety devices against the hazard of fire and explosion and adequate fire-fighting and fire-suppression equipment and devices standard in industry. Burning of waste materials in open fires is prohibited at any time. The relevant provisions of state and local laws and regulations shall also apply.
- (2) Vibration.
  - (a) No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or beyond the lot lines, nor shall any vibrations produced exceed 0.002g peak at up to a frequency of 50 cycles per second, measured at or beyond the lot lines using either seismic or electronic vibration-measuring equipment.
  - (b) Vibrations occurring at higher than a frequency of 50 cycles per second or a periodic vibration shall not induce accelerations exceeding 0.001g. Single-impulse periodic vibrations occurring at an average interval greater than five minutes shall not induce accelerations exceeding 0.01g measured at the lot line.
- (3) Noise. Noise levels at the proposed facility must be controlled to prevent sound levels beyond the property line exceeding the ambient sound levels as shown in Table I. If background sound levels, excluding any contributions from the proposed new facility, exceed the limits in Table I, then the operations at the proposed facility must not cause a sound level exceeding the background.

**Table I-Noise Level Limits<sup>22</sup>**

Receiving Land Use (decibels A)			
Time Period	Residential	Commercial	Industrial
7:00 a.m. to 11:00 p.m.	65	65	75
11:00 p.m. to 7:00 a.m.	50	65	75

- (4) Smoke. The density emission of smoke or any other discharge into the atmosphere during normal operations shall not exceed visible gray smoke of a shade equal to or darker than No. 2 on the standard Ringelmann Smoke Chart. (A Ringelmann Smoke Chart is a chart published by the United States Bureau of Mines, which shows graduated shades of gray for use in estimating the light-obscuring capacity of smoke.) These

<sup>22</sup> Sound levels will be measured as Leq energy equivalent. The "Leq" is defined as the equivalent steady state sound level that contains the same acoustic energy as the time-varying sound level during a one-hour period exceeded no more than 10% of the time. The noise levels must comply with measurements taken using a Type 1 general purpose sound level meter, Type 2 or corresponding special sound meters Type S1A or S2A. All sound-monitoring equipment shall comply with the latest version of the ANSI standards.

- provisions applicable to visible gray smoke shall also apply to visible smoke of a different color but with an apparent equivalent capacity.
- (5) Odor. No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable when diluted in the ratio of one volume of odorous air emitted to four volumes of clean air. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system so that control will be maintained if the primary safeguard system should fail.
- (6) Fly ash, dust, fumes, vapors, gases and other forms of air pollution. No emissions shall be permitted which can cause any damage to health, animals, vegetation or other forms of property or which can cause any excessive soiling at any point beyond the boundaries of the lot. The concentration of such emission on or beyond any lot line shall not exceed 0.1 of the maximum allowable concentration (Threshold Limit Values) set forth in the Industrial Code Rule No. 12, relating to the control of air contaminants, as regulated by the New York State Department of Labor, or any subsequent standards.
- (7) Electromagnetic interference.
- (a) No use, activity or process shall be conducted which produces electric and/or magnetic fields which adversely affect public health, safety, and welfare, including but not limited to interference with normal radio, telephone or television reception from off the premises where the activity is conducted.
- (b) It shall be unlawful to operate or cause to be operated any planned or intentional source of electromagnetic radiation that does not comply with the current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation. It shall be unlawful if such radiation causes an abnormal degradation in performance of other electromagnetic radiators or electromagnetic receptors of quality and proper design. The determination of abnormal degradation in performance and of quality and proper design shall be made in accordance with good engineering practices, as defined in the latest principles and standards of the American Institute of Electrical Engineers, the Institute of Radio Engineers and the Electronic Industries Association. In case of any conflict between the latest standards and principles of the above groups, the following precedence in interpretation of the standards and principles shall apply: American Institute of Electrical Engineers, the Institute of Radio Engineers and the Electronic Industries Association.
- (8) Radioactive materials. The handling of radioactive materials, the discharge of such materials into the air and water and the disposal of radioactive wastes shall be in conformance with all applicable federal and state regulations.

- (9) Heat. Heat emitted to any or all points shall not at any time cause a temperature increase on any adjacent property in excess of 5° F., whether such change is in the air, on the ground, in a natural stream or lake or in any structure on such adjacent property.
- (10) Glare.
- (a) Direct glare. No such direct glare shall be permitted, with the exception that parking areas and walkways may be illuminated by luminaries so hooded or shielded that the maximum angle of the cone of direct illumination shall be 60° drawn perpendicular to the ground. Such angle may be increased to 90° if the luminary is less than three feet above ground. The cone of illumination shall not extend beyond the property lines.
- (b) Indirect glare. Indirect glare shall not exceed that value which is produced by an illumination of the reflecting surface, not to exceed 0.3 footcandle (maximum) and 0.1 footcandle (average). Deliberately induced sky-reflected glare, as by casting a beam upward for advertising purposes, is specifically prohibited.
- (11) Liquid, solid, gaseous or hazardous waste. No discharge shall be permitted at any point into a public sewer or stream or into the ground, except in accord with standards approved by the State and County Departments of Health, New York State Department of Environmental Conservation and local ordinances, of any materials of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or offensive elements. There shall be no accumulation of solid wastes conducive to the breeding of rodents or insects.

## **Article IXE                      River Road Overlay District (§215-70.26 - § 215-70.30)**

[Added 11-24-2003 by L.L. No. 6-2003]

### **§ 215-70.26 Purpose and intent**

- A. In accordance with the goals and objectives of the Town of Tonawanda, the 2002 Waterfront Land Use Plan and the Town's Local Waterfront Revitalization Program, this overlay district is designed to better manage and accommodate business growth along the River Road corridor through the implementation of guidelines to regulate development and redevelopment. This overlay is also intended to encourage the development and redevelopment of uses that are in harmony with the surrounding area, improve the visual character of the area, protect adjoining environmental resources and enhance the character of the area as an important gateway to the Town of Tonawanda and its waterfront.



- B. This overlay will act to regulate the River Road corridor as a growing business district, with three distinct areas that possess unique characteristics, as follows:
- (1) The area situated generally between the City of Tonawanda and the northern property line of the Seaway landfill, herein referred to as the "business transitional area," should support uses that provide high quality commercial development. Development in this area should support the establishment of a gateway entrance from the City of Tonawanda and complement views of the Niagara River.
  - (2) The area situated generally between the northern boundary of the Seaway Landfill and the northern boundary of the parcel known as Niagara River World, herein referred to as the "Thruway impact area," is a mixed-use area comprised of commercial and industrial development and proposed parklands that is influenced by entrances and exits associated with the NYS Thruway system. These exits also serve as an important gateway to the Town's waterfront. While more intense uses are allowed in portions of this area, development should not degrade adjoining uses, particularly in areas characterized by parklands or important views.
  - (3) The area from the northern boundary of Niagara River World to the northern boundary of the Huntley Power Station property, herein referred to as the "light industrial corridor area," is characterized by a mix of heavy and light industrial uses and serves as a transition area to the heavily industrial area to the south.
- C. The River Road Overlay District regulations will supplement the underlying zoning requirements and provide for safe and orderly development within all three portions of the defined section of River Road. These overlay requirements are to be used in conjunction with the zoning regulations and other performance regulations in the code. Where conflicting requirements are encountered, the overlay requirements shall supersede any other regulations.

**§ 215-70.27 Boundary description**

This overlay district shall encompass the corridor of River Road, including the three areas outlined above, extending from the border between the Town and the City of Tonawanda to the northern boundary of the Huntley Power Station. The overlay district shall extend into all properties on the waterfront side of River Road to a depth of 500 feet from the western right-of-way of River Road or to the Niagara River, whichever is less. It shall also extend into all parcels on the inland side of River Road to a depth of 500 feet from the eastern right-of-way of River Road.

**§ 215-70.28 General objectives**

The special regulations contained herein, which govern all proposed development and redevelopment within the boundaries of the River Road Overlay District, shall be founded upon the following objectives.

- A. Business transitional area.

- (1) Being a transitional area between the Town and the City of Tonawanda, care shall be taken to minimize impacts to the city's resources.
- (2) The intent of this area of the overlay is to provide for a higher quality of development, focusing on a Class A office image and public parkland. All buildings that are visible from River Road should present a high-quality image. Architectural designs should complement land uses in the area, particularly Isle View Park, and provide for a positive image in the area. Appropriate facade designs and building materials that complement and improve the character of the area shall be required.
- (3) To promote more efficient traffic flow and traffic safety, every effort shall be made to provide shared means of ingress and egress to developed and developing properties. Where applicable, reference should be made to the New York State Department of Transportation Access Management Guidelines and regulations.
- (4) Landscaping, setback, signage and lighting standards shall be implemented to improve the visual quality of the area and buffer development and redevelopment from adjoining sensitive land uses. Emphasis should be placed on preserving existing vegetation and important natural resources to the extent feasible in site design. Designs shall take into consideration the views of the river, as well as the views from River Road.
- (5) The Town shall encourage and assist with economic development efforts, including promotion and marketing, in this area.

B. Thruway impact area.

- (1) This is an area of mixed-use developments, and attention should be given to the compatibility of proposed projects with adjoining uses when reviewing project proposals. While more intensive uses are allowed in this area, development should provide for a positive image.
- (2) This area services the traveling public. Access to the Thruway and the management of traffic on River Road are a primary concern. At the same time, provisions for pedestrian and bicyclist access should be accommodated in site design.
- (3) Architectural designs should complement surrounding land uses and provide for an improved and positive image of the area. Appropriate facade designs that complement and improve the character of the area shall be required. Views from River Road shall be of primary concern.
- (4) Landscaping and setback standards should be utilized to improve visual characteristics and buffer development and redevelopment from adjoining sensitive land uses.

C. Light industrial corridor area.

- (1) This is an area of mixed commercial, light industrial and heavier industrial uses, and redeveloping parcels. While heavier industrial uses may be allowed, it is important to minimize the visual impacts, particularly from River Road and from the Niagara River.
- (2) Water-dependent or water-enhanced uses are the preferred uses for property along the Niagara River.
- (3) Landscaping, building and setback standards should improve the visual quality of the area and buffer heavier industrial uses from River Road and from the Niagara River.
- (4) Emphasis shall be placed upon redevelopment of existing properties and the infill development of available vacant parcels.
- (5) As redevelopment takes place, emphasis should be placed on improving the aesthetics of the region, especially as it relates to the views from River Road and the Niagara River.

**§ 215-70.29 Permitted uses and accessory uses**

- A. The uses permitted in the River Road Overlay District shall be as prescribed in the underlying zoning. This overlay does not restrict or prohibit any use that is allowable in the applicable underlying zoning.
- B. The accessory uses permitted in the River Road Overlay District shall be the same as the accessory uses permitted in the underlying zoning districts, although there may be modified bulk requirements or additional performance standards for these accessory uses.

**§ 215-70.30 Site design standards and requirements**

- A. General (applies to all three areas).
  - (1) Proposed elevations, preliminary floor plans and perspective drawings shall be submitted at the time of site plan application. In addition, information shall be provided on proposed facade treatments and building materials.
  - (2) All existing trees larger than six inches in diameter as measured three feet above grade, groups of trees and other natural vegetation shall be incorporated into the landscape plan to provide natural buffering from adjacent properties. These features shall be preserved to the greatest extent feasible, especially along lot lines.
  - (3) For all areas, deciduous trees that are planted shall have a minimum caliper of three inches, measured two feet above grade. All planted coniferous trees shall have a minimum height of six feet above finished grade. Trees shall be planted along property frontage with a minimum of one deciduous tree for each 30 feet of frontage on River Road.

- (4) All required vegetative plantings shall be maintained in a healthy and productive condition and shall be routinely examined. Plant materials shall be replaced, as necessary or as directed by the Town. The Town Building Department shall enforce the upkeep of landscaped areas through periodic inspections in response to complaints.
- (5) Refuse storage (dumpster) locations shall be depicted on the plans and shall not be located near or adjacent to River Road and shall not be visible from the road. Where this is not feasible, such facilities shall be completely screened by opaque wooden, brick or masonry fences.
- (6) No outdoor speakers or other noise-producing devices shall be permitted.
- (7) If required, plans must include underground stormwater storage or, if it is to be located above ground, it must be located in the rear of the lot, if feasible. Aboveground stormwater storage (retention ponds) shall be screened with landscaping or other appropriate buffer.
- (8) Plans must indicate all access points to River Road. Consideration shall be given to the consolidation of access and removal of unnecessary roadway connections to River Road wherever feasible. All plans shall include provisions for pedestrians, and bicyclists, rollerbladers, and other nonvehicular traffic, and minimize vehicular crossings over the Riverwalk.
- (9) Plans shall show the location of the Riverwalk, other existing trails and parks in relation to proposed development. Connections to the Riverwalk and other trails and parks in the area are encouraged. Where appropriate, site plans shall be sent to Erie County for review to ensure no negative impacts to the Riverwalk.

B. Business transitional area.

- (1) Parking area lighting fixtures shall be reduced in intensity after 11:00 p.m. and shall be designed to illuminate the parking area only. Lighting plans shall be submitted and must include illumination footprints for review by the Town. Security lighting and other building lighting will be allowed to operate in accordance with Town requirements.
- (2) A landscaped area not less than five feet in width shall separate parking areas located on different parcels. Any amount over this will be credited to the parking interior landscaping requirement.
- (3) Each interior landscape island, median or divider area in parking lots shall be not less than 100 square feet in area and shall have an approved tree planted at the minimum ratio of one tree per 100 square feet of interior landscape island.
- (4) Spacing of curb cuts along River Road shall meet the requirements of the NYS DOT Access Management Guidelines. Site plan design must make every effort to provide for

shared access or cross-easement agreements to adjacent properties to minimize curb cuts and to control turning movements onto River Road and other collector streets.

- (5) On-site circulation shall take into consideration pedestrian and bicyclist traffic. Conflicts between vehicular and nonvehicular traffic shall be minimized through separated circulation paths where practicable. Clear identification of biking and walking paths through striping and/or signage shall be provided within parking areas and at driveways and road crossings.
- (6) All signage and lighting fixtures shall be of an appropriate size and scale, and aesthetically designed, so as to improve the overall quality of the area. No signage shall be permitted on any lot unless it is either attached to a building or placed in a location which has been approved through the site plan process. Signs attached to the sides of buildings may not project more than five feet above the roof. No roof signs, billboards or portable signs shall be allowed in the Overlay District.
- (7) Signage shall not include pylon signs or any form of flashing lights or animation. Signage shall be designed at ground level, typically not exceeding 12 feet in height, and should contain components such as brick.
- (8) Redevelopment of existing properties in this area must meet the standards of this district.
- (9) A concept sketch shall be presented to the Planning Board for its review, with a rendering of how the building will appear from River Road. Architectural guidelines are as follows:
  - (a) Diversity of architectural design, variation in building footprint, facade textures and treatments shall be encouraged to create a visually interesting design, but multiple buildings on the same site shall be designed to create a cohesive visual relationship between buildings.
  - (b) Buildings that are stylized in an attempt to use the building itself as advertising shall be discouraged, particularly where the proposed architecture is the prototypical corporate or franchise design style.
  - (c) The visibility of rooftop equipment should be minimized by grouping this equipment away from the public view from River Road.
  - (d) The sides of all buildings shall have an equivalent level of quality of materials, detailing and window placement. Abrupt ending of architectural details shall be avoided with no radical changes in details, features or materials.
  - (e) Buildings with long, uninterrupted blank walls shall be avoided, and shall not be permitted on facades that are visible from River Road.

- (f) Modulation (defined as a measured setback or offset in a building face) shall be incorporated to reduce overall bulk and mass of buildings.
  - (g) Building designs shall incorporate traditional building materials such as masonry, stone, brick, finish grade wood (such as clapboard or shingle) and other natural-appearing materials. All buildings shall have durable exterior finish materials that cover all exterior walls. The most stringent design standards shall apply to buildings in locations most visible from public spaces.
  - (h) Buildings colors should accent, blend with or complement the surrounding environment. Bright or brilliant colors should be reserved for trim and accents.
  - (i) Facades of buildings facing public open space or pedestrian/bicycle pathways shall include design features such as building entries, windows, arcades, overhangs, canopies and related elements that create visual interest.
- C. Thruway impact area.
- (1) Although the focus of this area is on the traveling public, the site elements relating to this transportation emphasis should be modulated to minimize negative impacts. For example, parking areas shall be landscaped. Warehousing/truck loading areas and similar types of support areas shall be located towards the rear of the properties and shall not be visible from River Road, if feasible. If the area is visible from River Road, it shall be completely screened by opaque materials.
  - (2) In areas where the underlying zoning district is G-I, the Town shall require a landscaping plan, prepared by a licensed landscape architect or arborist. The landscaping shall be in the form of appropriate shrub and tree plant materials arranged in rows or clusters and designed as buffers, screens or hedges, which give attractive definition to the street edges or other areas of the lot. All plants, trees and shrubs shall be planted in accordance with a planting schedule provided by the applicant and approved by the Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone. In areas where the underlying district is not G-I, the landscaping standards of the underlying district shall apply.
  - (3) Consideration should be given to the design, placement and height of lighting fixtures and signage. Such appurtenances shall be of an appropriate size and scale so as to reduce adverse effects and improve the character of the area.
  - (4) Signage, although important in this area, will not be in competition to see whose sign can be best seen from the highway. Pole-mounted signs over 15 feet in height shall be discouraged, and flashing lights will not be allowed.

- (5) A concept sketch shall be presented to the Planning Board for its review, with a rendering of how the building will appear from River Road. Architectural guidelines are as follows:
    - (a) Diversity of architectural design shall be encouraged, but multiple buildings on the same site shall be designed to create a cohesive visual relationship between buildings.
    - (b) Buildings that are stylized in an attempt to use the building itself as advertising shall be discouraged, particularly where the proposed architecture is the prototypical corporate or franchise design style.
    - (c) Large buildings should have height variations to give the appearance of distinct elements.
    - (d) Building designs shall incorporate traditional building materials such as masonry, stone, brick and other natural-appearing materials.
    - (e) Building colors should accent, blend with or complement the surrounding environment. Bright or brilliant colors should be reserved for trim and accents.
    - (f) For all office and light industrial buildings, the outside face of walls exposed to the street shall be finished with face brick, its equivalent or better. The outside faces of walls abutting such walls exposed to the public street shall be finished in the same material to a minimum depth of 15 feet.
  - (6) Each application shall include a traffic control plan, access management components, and a review of the guidelines as they relate to entrance roads, curb cuts and access management.
  - (7) Redevelopment projects, requiring site plan approval, shall include plans for renovating the facade and the sides of the building and to meet other architectural requirements of this section [see Subsection C (5)].
  - (8) Structures to be located on the river side of River Road shall be placed to minimize loss of views to the river.
- D. Light industrial corridor area.
- (1) In areas where the underlying zoning district is G-I, the Town shall require a landscape plan, prepared by a licensed landscape architect or arborist. The landscaping shall be in the form of appropriate shrub and tree plant materials arranged in rows or clusters and designed as buffers, screens or hedges, which give attractive definition to the street edges or other areas of the lot. All plants, trees and shrubs shall be planted in accordance with a planting schedule provided by the applicant and approved by the

Town. Landscape materials selected shall be appropriate to the growing conditions of this climatic zone. In areas where the underlying district is not G-I, the landscaping standards of the underlying district shall apply.

- (2) Consideration shall be given to the location, design and placement of all signage and lighting fixtures. Signage shall conform to the regulations set forth in Article XXII (Sign Ordinance) of this chapter.
- (3) Signage shall be unobtrusive and be compatible with Town standards. Freestanding signs shall not be installed on pylons or greater than eight feet in height. Signs attached on the building shall meet all Town standards.
- (4) Architectural standards:
  - (a) Diversity of architectural design shall be encouraged, but multiple buildings on the same site shall be designed to create a cohesive visual relationship between buildings.
  - (b) Buildings that are stylized in an attempt to use the building itself as advertising shall be discouraged, particularly where the proposed architecture is the prototypical corporate or franchise design style.
  - (c) Large buildings should have height variations to give the appearance of distinct elements.
  - (d) Building designs shall incorporate traditional building materials such as masonry, stone, brick and other natural-appearing materials.
  - (e) Building colors should accent, blend with or complement the surrounding environment. Bright or brilliant colors should be reserved for trim and accents.
  - (f) For all office and light industrial buildings, the outside face of walls exposed to the street shall be finished with face brick, its equivalent or better. The outside faces of walls abutting such walls exposed to the public street shall be finished in the same material to a minimum depth of 15 feet.

## **Article IXF                      Approval of Special Uses for Waterfront Districts (§ 215-70.31 - § 215-70.36)**

Editor's Note: Former Article IXE was renumbered as Article IXF 11-24-2003 by L.L. No. 6-2003.

[Added 9-9-1996 by L.L. No. 8-1996]

### **§ 215-70.31 Purpose and intent**



The purpose of special use approval is to allow the proper integration into the waterfront area of the Town, uses which may be suitable only under certain conditions and at appropriate locations. Because of their characteristics or the special characteristics of the area in which they are to be located, these uses require special consideration so that they may be properly located with respect to the objectives of this chapter and the Town of Tonawanda Waterfront Region Master Plan, and their effect on surrounding properties and the Niagara Waterfront.

**§ 215-70.32 Legislative authority; authorization for special uses**

This chapter is enacted pursuant to the authority granted to the Town Board of the Town of Tonawanda in Article 16 of the Town Law of the State of New York and § 10 of the Municipal Home Rule Law of the State of New York. This chapter now supersedes and modifies § 274-b of the Town Law of the State of New York in that the functions and duties conferred upon the Planning Board in § 274-b of the Town Law of the State of New York be performed by the Town Board of the Town of Tonawanda, and the Town Board of the Town of Tonawanda shall be deemed the Planning Board for such purposes. The special uses listed in this chapter may be permitted, enlarged or otherwise altered upon authorization by the Town Board in accordance with the standards and procedures set forth in this article. In permitting a special use in the Waterfront District or the modification of such use, the Town Board may impose those standards and requirements expressly specified by this chapter and any additional conditions which the Town Board considers necessary and reasonable to serve the best interests of the surrounding property and the waterfront area as a whole. These conditions may include, but are not limited to, size or controlling the location and number of vehicle access points, increasing the street width, limiting the number, size and location of signs, limiting the hours of operation and requiring fencing, screening and landscaping of other facilities to protect adjacent or nearby property. In the case of a use existing prior to the effective date of this chapter and classified in this chapter as a special use, any change in use or in lot area or an alteration of structure shall conform to the requirements dealing with special uses.

**§ 215-70.33 Applicability**

[Amended 3-26-2007 by L.L. No. 6-2007]

This article is applicable to the issuance of special use permits for all uses in the Waterfront Districts which require a special use permit.

**§ 215-70.34 Uses near residential districts**

In addition, in the case of any use located in or directly adjacent to a residential district:

- A. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to existing streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with said residential district or conflict with the normal traffic of the neighborhood.

- B. The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

**§ 215-70.35 Special use permits; procedure and information required**

- A. An applicant shall initiate the special use permit in a Waterfront District procedure by filing an application addressed to the Town Board and delivered to the Town Clerk which includes:
  - (1) A general description of the proposed use.
  - (2) A legal description of the property.
  - (3) A proposed current site plan showing the size and location of the lot, the location of all buildings and proposed facilities, including access drives, parking areas and all streets within 200 feet of the lot, as well as showing the property and all properties within a radius of 500 feet of the exterior boundaries thereof.
  - (4) Plans and elevations necessary to show the proposed development.
  - (5) Other drawings or information as requested by the Town Board or Town Planning Board.
  - (6) A written statement which demonstrates how the proposed project meets the required standards.
  - (7) A filing fee, the amount of which shall be fixed by the Town Board by resolution.
- B. Review of the site plan shall take place concurrently with review of the special use permit application.
- C. The Town Clerk shall refer the special use permit application to the Town Planning Board who shall determine its completeness. If further information is necessary, the application will be returned to the applicant together with a written notice specifying the additional information or documentation required.
- D. Immediately upon determining that an application is complete, the Town Planning Board shall refer a completed application to the Building Department for coordination with the site plan review process.
- E. The Building Department shall submit its written comments concerning the special permit application to the Town Board within 45 days of its receipt.
- F. The Planning Board shall review the special permit application and submit a written report, including its recommendations, to the Town Board within 45 days of receiving a completed application.

- G. Public hearing on special uses in the Waterfront District. Before a special use is permitted, the proposed use shall be subject to public notice and a public hearing conducted by the Town Board. Public notice of said hearing shall be published in a newspaper of general circulation in the Town at least five days prior to the date thereof. The public hearing shall be held within 62 days of acceptance of the complete permit application by the Town Planning Board.
- H. At least 10 days before such hearing, the Town Board shall mail notices thereof to the applicant and to the Erie County Department of Environment and Planning as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in Subdivision 1 of § 239-m of the General Municipal Law.
- I. Compliance with State Environmental Quality Review Act. The Town Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations. Any time periods specified herein shall be extended as required so as to enable the Town Board to comply with the requirements of the State Environmental Quality Review Act.
- J. The Town Board shall, within 62 days of the public hearing on the complete special use permit application, render a decision on the permit. The time period may be extended by the mutual consent of the applicant and the Town Board. The decision of the Town Board on the application after the holding of the public hearing shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.
- K. In the case where a special use has been approved, a building permit shall be issued after the granting of the special use permit, and then only in accordance with the terms and conditions of the permit.
- L. A special use in a Waterfront District permit shall become void one year after approval unless, by conditions of the use permit, greater or lesser time is specified as a condition of approval or unless, prior to expiration of one year, a building permit is issued. The permit shall be void if the use shall cease for more than six months for any reason.
- M. The Town Board, on its own motion, may revoke any special use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing. Written notice of such hearing shall be given to the holder of the special use permit. Such notice shall be given by regular mail and also by certified mail, return receipt requested, addressed to the address of the special use permit holder specified in the special use permit and mailed at least 10 days prior to the scheduled hearing. The foregoing shall not be the exclusive remedy, and it shall be unlawful for any person to violate any condition imposed by said permit. Prior to the revocation proceeding specified herein, the Town Board shall notify the holder of the special use permit, in writing, that he, she or it is not in compliance with the conditions specified in the permit and shall give the holder of the special use permit 60 days within which to comply. In cases where there is imminent danger to the public health, safety or

welfare, the Town Board may revoke the permit immediately. In such cases, the Town Building Department is authorized to issue an immediate order to stop work or operations.

- N. The Town Board may approve, disapprove or approve with modifications any special use permit. The Town Board approval may include recommendations for modifications that shall be included in the final site plan for the project if one is required or in the plans submitted during application for a building permit. Conformance with said modifications shall be considered a condition of approval. If the special use permit is disapproved, the Town Board shall provide written findings to the applicant listing the reasons for disapproval.

**§ 215-70.36 Standards governing special uses**

A special use in a Waterfront District shall comply with the standards of the district in which it is located and meet the following:

- A. In order to grant any special use, the Town Board shall find that the request is in harmony with the general purpose and intent of this chapter, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with the use and the size of the site with respect to streets giving access thereto.
- B. In order to grant any special use, the Town Board shall find that the establishment, maintenance or operation of the use applied for, under the circumstances of the particular case, will not be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.
- C. The proposal will not result in the destruction, loss or damage of any natural, scenic or significant historical resource.
- D. The proposal will not create excessive additional requirements of public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- E. The proposal will be served adequately by essential public facilities. such as highways, streets, police and fire protection, stormwater drainage, water and sewer and schools, or that the applicant for the proposed special use shall otherwise provide that these services be adequately obtained.
- F. The proposed structure or use will be constructed, arranged and operated so as not to dominate the immediate vicinity or to interfere with the development and use of neighboring property in accordance with the applicable district regulations.
- G. The proposed structure or use complies with all additional standards imposed on it by the particular provision of this chapter which authorizes such use.
- H. The proposal essentially conforms to the Town of Tonawanda Waterfront Region Master Plan.

**Article XXVI            Wind Energy Conversion Systems (WECS)**  
**[Added 11-20-2006 by L.L. No. 9-2006]**

**§ 215-169 Purpose**

The Town of Tonawanda has determined that a comprehensive local law regulating the development of WECS is necessary to protect the interests of the Town and its residents. The Town adopts this law to promote the effective and efficient use of the Town's wind energy resource through WECS, and to regulate the placement of such systems so that the public health, safety and welfare will not be jeopardized, and that the WECS will not have a significant adverse impact on the aesthetic qualities of the Town.

**§ 215-170 Definitions; applicability**

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

COMMERCIAL WIND ENERGY SYSTEM — A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity greater than 250 kilowatts, and a total height of more than 150 feet, and is intended to solely supply electrical power into a power grid for sale.

NONCOMMERCIAL WIND ENERGY SYSTEM — A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a rated capacity of not more than 250 kilowatts and a total height less than 150 feet.

TOWER — The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted.

TOTAL HEIGHT— (also MAXIMUM OVERALL HEIGHT) — The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.

TOWER HEIGHT — The height above grade of the uppermost fixed portion of the tower, excluding the length of any axial rotating turbine blades.

WIND ENERGY CONVERSION SYSTEMS (WECS) — One or more mechanical devices such as wind chargers, windmills or wind turbines which are designed and used to convert wind energy into a form of useful energy for use on site to reduce power costs for sale or redistribution to others. WECS include both commercial and noncommercial systems.

WIND ENERGY FACILITY — Any wind energy conversion system or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY SYSTEM — The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator,

nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities or other component used in the system.

WIND MEASUREMENT TOWER — A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

- B. Applicability. The requirements of this article shall apply to all wind energy facilities proposed, operated, modified, or constructed after the effective date of this article.

**§ 215-171 Permits required and allowable zoning districts**

- A. No wind energy facilities shall be constructed, reconstructed, modified, or operated in the Town of Tonawanda except in compliance with this article.
- B. No wind energy facilities shall be constructed, reconstructed, modified, or operated in the Town of Tonawanda except in the General Industrial District (G-I), Waterfront Mixed Use District (M-MU) or the Waterfront Industrial District (WID) without the issuance of a special use permit approved pursuant to this article, the completion of SEQR, and upon issuance of a building permit.
- C. No wind energy facilities shall be constructed, reconstructed, modified, or operated in any residential district (First Residential - A, Second Residential - B or Multifamily Dwelling - M-F), or commercial district (Restricted Business - C-1, General Commercial - CB, Performance Standards Use - P-S, Waterfront Business - WB, or Retail-Highway Commercial - RHC) in the Town of Tonawanda.
- D. No wind measurement tower shall be constructed in the Town of Tonawanda except in the allowable districts pursuant to a special use permit and this article.

**§ 215-172 Applications for wind energy facilities**

- A. Applications for a special use permit for WECS will follow the general process for the issuance of a special use permit as described in Article XIV of the Town Code and this article, and shall be made as follows:
  - (1) Applicants for a special use permit for wind energy conversion systems within the Town of Tonawanda shall submit the following information to the Town for its referral to a professional engineer or consultant and the Planning Board of the Town for review and recommendation to the Town Board:
    - (a) Name and address of the applicant.
    - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.

- (c) Visual environmental assessment form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the visual EAF (or by the Town of Tonawanda), existing tree lines and proposed elevations. The visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures.
- (d) A SEQR full environmental assessment form (EAF).
- (e) A site plan drawn in sufficient detail to show the following:
  - [1] Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
  - [2] Utility lines, both above and below ground, within a radius equal to the proposed tower height, including the blades.
  - [3] Property lot lines and the location and dimensions of all existing structures and uses on site within 1,000 feet of the wind energy conversion systems.
  - [4] Surrounding land use and all structures within 1,500 feet of the wind energy conversion systems.
  - [5] Dimensional representation of the various structural components of the tower construction including the base and footing.
  - [6] Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
  - [7] Existing topography.
  - [8] Proposed plan for grading and removal of natural vegetation.
  - [9] Proposed plan for restoration after construction according to Town of Tonawanda and New York State Department of Environmental Conservation guidelines.
  - [10] Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
  - [11] Plan for ingress and egress to the proposed project site including:
    - [a] A description of the access route from the nearest state-, county-, and/or Town-maintained roads to include:
    - [b] Road surface material stating the type and amount of surface cover.
    - [c] Width and length of access route.
    - [d] Dust control procedures.
    - [e] A road maintenance schedule or program.
    - [f] Review railroad accessibility for deliveries.

- [12] Detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material, equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in the field with name and phone number.
- [13] Tree removal. All groves of trees shall be located on the site plan at time of application. No grove or woodlots of trees shall be removed without approval of the Planning Board.
- (f) Turbine information. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
- (g) Turbine drawings. Photographs or detailed drawings of each wind turbine model including the tower and foundation.
- (h) Noise report. A noise report shall be furnished which shall include the following:
  - [1] A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
  - [2] A description and map of the noise-sensitive environment, including any noise-sensitive receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two miles of the proposed facilities.
  - [3] A survey and report prepared by a qualified engineer that analyzes the preexisting ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction, and analyses at affected sensitive receptors located within two miles of the proposed project site.
  - [4] A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers, and estimates of expected noise levels at sensitive receptor locations;
  - [5] A description and map of the cumulative noise impacts.
  - [6] A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with levels in this article.



- [7] Identification of any problem areas.
  - [8] Manufacturers' noise design and field testing data, both audible (dBA) and low frequency (deep bass vibration), for all proposed structures.
  - [9] A report that outlines issues and considerations for individuals that use hearing aids.
- (i) A geotechnical report shall be furnished which shall at a minimum include the following:
- [1] Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - [2] Foundation design criteria for all proposed structures.
  - [3] Slope stability analysis.
  - [4] Grading criteria for ground preparation, cuts and fills, soil compaction.
- (j) Ice throw calculations: A report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
- (k) Blade throw calculations: A report from a New York State professional engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
- (l) Catastrophic tower failure. A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).
- (m) FAA notification. A copy of written notification to the Federal Aviation Administration.
- (n) Utility notification. Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (o) Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (p) Floodplain. An application that includes any wind turbine which is located within a one-hundred-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report which shall address the potential for wind erosion, water erosion, sedimentation and flooding, and which shall propose mitigation measures for such impacts.

- (q) Other information. Such additional information as may be reasonably requested by the Technical Support Department, Code Enforcement Officer, Planning Board or Town Board.
- B. Special use permits issued for wind energy conversion systems shall be subject to the following conditions.
- (1) Setbacks: The applicant shall adhere to the following setbacks.
    - (a) From zoning districts:
      - [1] Residential lot setback:
        - [a] No commercial wind energy systems shall be allowed in any residential district.
        - [b] One thousand feet from any residential district boundary line (A, B, and MF).
        - [c] One thousand feet from any other municipal boundary lines.
    - (b) From structures:
      - [1] A minimum 1.5 times the total WECS height from any building located outside the applicant's property line.
      - [2] A minimum of 1,500 feet from any dwelling.
    - (c) From property lines (excluding residential zones):
      - [1] A minimum 1.5 times the total WECS height from any property line excluding adjoining lot lines of project participants.
    - (d) From public road and highways:
      - [1] A minimum 1.5 times the total WECS height from any public road and highway.
      - [2] Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the center line of such right-of-way.
    - (e) From aboveground transmission lines greater than 12 kilovolts: A minimum 1.5 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD Zones.
    - (f) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback.

- (2) Maximum overall height: The maximum overall height of any wind energy conversion system shall be 450 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
- (3) Signage. Signage limited: No advertising sign or logo shall be placed or painted on any commercial wind energy facility.
- (4) Color and finish.
  - (a) Color and finish: Wind turbines shall be painted a nonobtrusive (e.g., light environmental color such as white, gray, or beige) color that is nonreflective.
  - (b) Camouflage facilities: The design of commercial wind energy facility buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.
- (5) Lighting. Lighting plan required: The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
- (6) Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the wind energy conversion system.
- (7) Safety and security requirements. The applicant shall adhere to the following safety and security requirements:
  - (a) Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed-shutdown-disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
  - (b) Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
  - (c) Wiring. All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan

showing the locations of all overhead and underground electric utility lines, including substations for the project.

- (d) All transmission lines from wind energy conversion systems to on-site substations shall be underground. The Town Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Town Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
  - (e) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
  - (f) Climability. Wind turbine towers shall not be climbable up to 15 feet above ground level.
  - (g) Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
  - (h) Self-supporting structures. All structures shall be of monopole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.
  - (i) Signage. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state, and federal codes.
  - (j) Ice throw. Permit shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- (8) Noise requirements. The applicant shall adhere to the following noise requirements:
- (a) Compliance with noise regulations required. A WECS permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
  - (b) Noise study required. The applicant shall submit a noise study based on the requirements set out in Subsection B of this section. The Planning Board and Technical Support Department shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
    - [1] Low frequency noise.

- [2] Infrasonic noise.
  - [3] Pure tone.
  - [4] Repetitive/impulsive sound.
- (c) Noise setbacks. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
- (d) Audible noise standard. The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dBA for more than five minutes out of any one-hour time period or to exceed 50 dBA for any time period.
- (e) Operations, low frequency noise. A WECS facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (f) Noise complaint and investigation process required. The applicant shall submit a adequacy of the noise complaint and investigation process.
- (9) Fire hazard protection. The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following:
- (a) Fireproof or fire-resistant building materials.
  - (b) Buffers or fire-retardant landscaping.
  - (c) Availability of water.
  - (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment— without regular human occupancy.
  - (e) Provision of training and fire-fighting equipment for local fire protection personnel.
- (10) Impact on wildlife species and habitat. The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
- (a) Endangered or threatened species. Development and operation of a WECS facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Tonawanda Comprehensive Plan and/or the

studies and plans of the regional planning commissions based on criteria established by the federal or state regulatory agencies.

- (b) Migratory birds. Development and operation of a commercial wind energy facility shall be evaluated based on SEQRA findings.
- (11) Unsafe and inoperable wind energy facilities; site reclamation. The applicant shall adhere to the following:
- (a) Removal and site restoration. Unsafe WECS facilities, inoperable WECS facilities, and WECS facilities for which the permit has expired shall be removed by the owner at his expense. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible as per Subsection B(11)(b) of this section. A bond or other appropriate form of security shall be required to cover the cost of the removal and site restoration at the time of building permit application. The bond shall be payable to the Town of Tonawanda for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. Any fund established may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.
  - (b) Removal and site restoration plan required. The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Code Enforcement Officer and Technical Support Department for review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
  - (c) Public nuisance. Every unsafe WECS facility and every inoperable WECS facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable WECS facility shall not be considered a public nuisance, provided that the owner has modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.

- (d) Inoperable, defined. A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- (12) Interference with residential television, microwave and radio reception. The applicant must submit proof that the proposed construction of the wind energy conversion system will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (13) Interference with aviation navigational systems. The applicant shall adhere to the following:
  - (a) No interference with aviation facilities. No commercial wind energy facility shall be installed or operated in a manner that causes interference with the operation of any aviation facility.
  - (b) Compliance with FAA regulations. All commercial wind energy siting shall comply with Federal Aviation Administration (FAA) regulations.
  - (c) Locking mechanisms to limit radar interference required. All WECS facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or clutter. This provision does not apply while the WECS is "free-wheeling" during startup and shutdown. The Town Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or clutter will be caused by the WECS facility.
- (14) Erosion control. The applicant shall adhere to the following:
  - (a) Erosion control plan required. Before the Town of Tonawanda shall issue a grading or building permit for the WECS facility, the applicant shall submit an erosion control plan to the Technical Support Department for review and approval. The plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and to minimize erosion or sedimentation.
  - (b) If the proposed project disturbs over one acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the notice of intent (N.O.I.) and stormwater pollution prevention plan (SWPPP) as required by the General Permit must be filed with the Town of Tonawanda prior to construction. Per the General Permit, construction cannot begin until the required time period for NYS DEC review has passed.

- (15) Certification. The applicant shall provide the following certifications:
- (a) Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer licensed and registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Building and Construction Code that have been adopted in New York State.
  - (b) Certification of postconstruction. After completion of the wind energy conversion system, the applicant shall provide a postconstruction certification from a licensed professional engineer licensed and registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans.
  - (c) Certification of electrical system. The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
  - (d) Certification of rotor overspeed control. The rotor overspeed control system shall be certified in writing by a mechanical engineer licensed and registered in New York State. The engineer shall certify compliance with good engineering practices.
  - (e) Certification of project. Certificate of completion must be supplied by the applicant and approved by the Town of Tonawanda Code Enforcement Officer.

C. Monitoring requirements for wind energy conversion systems:

- (1) Right to enter premises for monitoring. Upon reasonable notice, Town of Tonawanda officials or their designated representatives may enter a lot on which a WECS facility permit has been granted for the purpose of monitoring compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
- (2) Avian/bat impact study plan. The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.



- (3) Periodic reporting required. The applicant shall agree to submit periodic monitoring reports to the Town. The report shall contain data on the operations and environmental impacts and shall be in the form prescribed by the Code Enforcement Officer.
- (4) Power production report required. The applicant shall agree to submit a quarterly power production report to the Town. The power production report shall cover the preceding calendar quarter and shall be in the form prescribed by the Technical Support Department and shall include actual power production in kilowatt hours for each WECS facility.
- (5) Inspections. Unless waived by the Town Board, wind turbines or poles over 150 feet in height shall be inspected annually by a New York State-licensed professional engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- (6) General complaint process.
  - (a) During construction, the Town of Tonawanda Code Enforcement Officer can issue a stop-work order at any time for any violations of the permit.
  - (b) Postconstruction. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Tonawanda Code Enforcement Officer, the permit holder/contact person shall have seven working days to reply to the Town in writing.

D. Application and development fees and costs:

- (1) Application fee. The applicant shall pay all costs associated with the Town of Tonawanda's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Tonawanda may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- (2) Development fees to be paid. A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a commercial wind energy system permit. Such fees must be related to the public need created by the wind energy

development. The purposes for which the permit fee may be used include, but are not limited to, providing roads required by the wind energy development, providing fire protection services, and establishing and operating a monitoring system.

- (3) Proof of insurance. Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.

E. Findings.

- (1) Findings necessary to grant a WECS facility permit. In order to grant a WECS facility permit, the Town of Tonawanda shall review the application, all filings by any other party, and conduct a public hearing. A commercial wind energy facility permit shall not be granted unless the Town of Tonawanda makes the following findings based on substantial evidence:

- (a) Consistent with the Comprehensive Plan. The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the Town of Tonawanda.
- (b) Will not unreasonably interfere with the orderly land use and development plans. The proposed WECS facility will not unreasonably interfere with the orderly land use and development plans of the Town of Tonawanda.
- (c) Benefits to the applicant and public will exceed any burdens. The benefits of the proposed WECS facility project to the applicant and the public will exceed any burdens.
- (d) Not detrimental to the public health, safety and general welfare of the community. The proposed WECS facility will not be detrimental to the public health, safety or general welfare of the community.
- (e) Complies with all required provisions of the Zoning Ordinance. The proposed WECS facility shall comply with all required provisions of the Zoning Ordinance, unless variances have been properly applied for and granted pursuant to Article XVI of Chapter 215 of the Code of the Town of Tonawanda.

- F. The Town Board may grant the special use permit, deny the special use permit, or grant the special use permit with written stated conditions. Denial of the special use permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the special use permit, the applicant shall obtain a building permit for each tower.

- G. WECS permits approved by the Town Board of the Town of Tonawanda shall be renewed annually. The permit holder shall make renewal application to the Code Enforcement Officer 60 days prior to expiration to allow for inspection and full compliance with all applicable laws and

regulations. The renewal application will include a fee as set by the Town Board. [Amended 3-26-2007 by L.L. No. 2-2007]

- H. The special use permit shall not be assignable or transferable.
- I. Amendments to special use permit. Any changes or alterations postconstruction to the WECS shall be done only by amendment to the special use permit and subject to all requirements of this article.
- J. The applicant licensee shall agree to indemnify and save the Town, its Town Board, officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents and/or employees arising from the construction, operation or maintenance of the WECS.
- K. The applicant shall certify to the Town that appropriate security will be in place to restrict access to the WECS and facilities following completion of construction.

**§ 215-173 Wind measurement towers**

The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer ("Met") towers, shall be permitted as a special use in the same zoning districts as the WECS.

- A. An application for a wind measurement tower shall include:
  - (1) Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  - (2) Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
  - (3) Address of each proposed tower site, including Tax Map section, block and lot number.
  - (4) Site plan.
  - (5) Decommissioning plan, including a security bond or cash for removal.
- B. The Town Board may attach such conditions as it deems appropriate to variance approvals as it deems necessary to minimize the impact of the variance.

**§ 215-174 Permit revocation**

- A. Testing fund. A special use permit shall contain a requirement that the application fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by residents. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this article and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate permit conditions, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- C. Notwithstanding any other abatement provision under this article, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: 1) order either remedial action within a particular time frame, or 2) order revocation of the wind energy permit or the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

**§ 215-175 Fees and costs**

All fees shall be approved by the Town Board by resolution. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

**§ 215-176 Enforcement; penalties and remedies for violations**

- A. Any person owning, controlling or managing any building, structure or land who shall undertake a WECS or wind measurement tower in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order of the Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense

and subjected to a fine of not more than \$250 or to imprisonment for a period of not more than six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250 for each violation, and each week said violation continues shall be deemed a separate violation.

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