

Town of Cherry Valley Land Use Law

Adopted as Local Law No. 3 of 2011



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Article 1. General Provisions

Section 1.01. Title

This Local Law shall be known and may be cited as "The Town of Cherry Valley Land Use Law," adopted as Local Law No. 3 of 2011. This Local Law shall be herein referred to as "the Land Use Law", or "this Local Law".

Section 1.02. Enactment and Authority

Be it enacted by the Town Board of the Town of Cherry Valley as follows: this Land Use Law is adopted and enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York, Articles 2 and 3, and pursuant to the Town Law of the State of New York, Article 16.

Section 1.03. Purposes

It is the purpose of this Land Use Law to implement the adopted Town of Cherry Valley Comprehensive Plan by regulating the use of land in order to provide for the orderly growth of the Town while retaining and enhancing its unique rural, historical, scenic and agricultural character, and to provide for a compatible degree of growth and development, subject to those standards necessary to maintain irreplaceable historical and natural features.

A further purpose of this Land Use Law is to promote the protection, order, conduct, health, safety and well-being of the residents of the Town of Cherry Valley and the lands which lie within the Town's borders.

A further purpose of this Land Use Law is to protect and enhance the Town's physical and visual environment and to protect and preserve the Town's valuable natural resources and rural character.

A further purpose of this Land Use Law is to respond to the legitimate concerns of the citizens about the potential for major portions of the Town and its citizens to be adversely impacted by "heavy industry" (as defined in this law) and gas, oil and natural gas solution and mining. This local law is established with specific consideration for:

- the preservation of the quality of life associated with the unique rural and historic character of the Town, and its agricultural and tourist economy;
- the unsuitability of the Town's public facilities and services including police, fire, emergency response, and roads to endure the adverse impacts of industrial and heavy industry uses;
- ensuring the protection of the Town's population from the adverse effects of high-impact industrial uses and heavy industry;
- the lack of facilities and services required to site and separate such uses from incompatible residential, agricultural and commercial uses;
- the conservation of property values within the Town; and

- the fact that some uses are incompatible with the goals of the Comprehensive Plan.

A further purpose of this Land Use Law is to uphold and implement the Town of Cherry Comprehensive Plan and to achieve the objectives of that Plan as discussed further in Section 1.04 below entitled “Community Development Objectives”.

Section 1.04. Community Development Objectives

The Comprehensive Plan directs the Town of Cherry Valley to proactively plan and act to preserve and protect the Town’s rural character and the quality of the Town’s environment including air, water, forests, and agricultural lands.

Regarding the directive for the Town to both plan and act, the Town has accomplished the planning part of that directive with the adoption of its Comprehensive Plan. The Comprehensive Plan represents Cherry Valley’s vision for its future growth and sets forth policy areas to achieve that overall vision.

The adoption of this Land Use Law accomplishes the action part of the directive in the Comprehensive Plan. This Land Use Law puts the Comprehensive Plan into action, and achieves the objectives of the plan through the reasonable regulation of land uses in the Town. The provisions of this Land Use Law have been formulated to be consistent with policy statements of the Comprehensive Plan and to achieve the purposes set forth in Section 1.03 above entitled “Purposes”.

More specifically, the provisions of this Land Use Law achieve the following objectives for the Town of Cherry Valley and its citizens::

Land Use

Accommodate suitably located and designed development and land uses while protecting and enhancing the quality of life, property values, and natural, scenic, and historic resources of Cherry Valley.

Critical Environmental Areas

Protect Critical Environmental Areas and resources including but not limited to wetlands, floodplains, steep slopes, and ground surface waters such as seeps, springs and streams critical to maintaining the health of groundwater resources in Cherry Valley.

Forestry

Sustain and enhance Cherry Valley’s forested land, and its value as an economic, recreational, and scenic resource.

Extractive Resources

Allow the extraction of mining of sand and gravel and quarried stone while addressing such issues as:

Failure to reclaim mining sites after extraction is completed.

Inadequate erosion and sedimentation controls during and following mining activities.

Inadequate ingress and egress from mining sites and damage to public roads

Cultural/Archeological & Historical Resources

Maintain the historic character of the Town, as defined by its archeological resources, historic buildings, structures and landscapes so as to be able to capitalize on these resources to promote Cherry Valley as a quality location for residential uses and economic development.

Aesthetic/Visual Resources

Prevent the loss of any specific resource including but not limited to Cherry Valley's unique topography, landscapes and vistas, all of which contribute to the rural quality and, visual character of the Town and so as to be able to capitalize on these resources to promote Cherry Valley as a quality location for residential uses and economic development.

Housing

Assure an adequate and affordable supply of housing for all income groups.

Economic Conditions

Revitalization of the Village and Town as a unique, historic community and to promote local economic conditions that will result in less poverty, higher incomes, and greater job opportunities.

Transportation

Provide a safe, efficient highway system for the traveling public, to ensure that all roads and bridges are constructed and maintained based on acceptable specifications and with minimum impact on the environment, the community, and adjacent property owners, and to prevent damage to roads and bridges from land uses that have intensive road-use such as, but not limited to heavy industrial uses and natural gas drilling operations.

Section 1.05. Right to Farm

No provision of this Local Law shall be interpreted, administered, or enforced in a manner that unreasonably restricts farm operations within a State Certified Agricultural District established pursuant to Article 25AA of the New York State Agricultural and Markets Law, unless it can be shown that the public health and safety are threatened. As part of the Site Plan or subdivision review process, the Planning Board may require an Agricultural Data Statement if the application is in or within 500 feet of a certified New York State Agricultural District.

Section 1.06. Applicability

This Land Use Law, and any future amendments to it, shall apply to any land use, land alteration, construction, or development of any kind in any area of the Town of Cherry Valley, excluding the incorporated area of the Village of Cherry Valley. Any existing building or land not in conformity with the provisions of the regulations herein prescribed shall be regarded as non-

conforming, but may be continued, extended, or changed pursuant to Article 8 of this Local Law with respect to non-conforming buildings, structures, or uses.

Article 2. Definitions

Section 2.01. Word Usage

For the purpose of the Land Use Law, words and terms used herein shall be interpreted as follows:

1. Words used in the present tense include the future.
2. The singular includes the plural.
3. The word “person” includes an individual; firm, partnership, corporation, company, association, or government entity including a trustee, a receiver, an assignee, or similar representative.
4. The word “lot” includes the word “plot” or “parcel”.
5. The word “shall” is mandatory; the word “may” is permissive.
6. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be occupied”.
7. The words “Board of Appeals” shall always mean the Board of Appeals for the Town of Cherry Valley.
8. The words “Code Enforcement Officer” shall refer to “Enforcement Officer” as defined in Article 7 Section 7.010 of the Cherry Valley Site Plan Law.

Section 2.02. Definitions

Accessory Use: A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of a building (e.g., home occupation).

Agricultural Data Statement - a written identification of farm operations within an agricultural district located within five hundred (500) feet of the boundary of property upon which a site plan review, use variance, or a subdivision is proposed as provided in Section 305-a of the Agricultural and Markets Law of the State of New York.

Agricultural Use: The use of a parcel of land for agricultural purposes including tilling the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, aquatic farming, harvesting of tree products and animal husbandry; also included are the necessary accessory uses and structures for packing, treating, and storing of products, produce and equipment, provided that the operation of any such accessory use shall be secondary to that of normal agricultural activities. Agricultural use includes on-site processing of meat from animals grown on-site, but does not include slaughter houses or meat processing from animals farmed off-site or kennels.

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

Animal Hospital: A business that performs medical treatment for animals and regularly houses them on the premises overnight and for extended periods.

Apartment House: A building used or intended to be used and occupied by three (3) or more families living independently of one another. (See Family)

Appliance Repair Shop: A shop where small appliances such as, but not limited to toasters, TV's, irons, radios, lawn mowers, VCR's and stereos, are fixed.

Bed and Breakfast: Owner occupied one-family dwelling used for providing overnight accommodations and a morning meal to not more than ten transient lodgers and containing not more than five bedrooms for such lodgers.

Birds Eye View: A view showing how a building is laid out on a parcel of land that depicts the extent of the building's eaves.

Board of Appeals: The official body whose principal duties are to hear appeals and, where appropriate, grant variances from the strict application of this land use law and otherwise act in accordance with the authority granted pursuant to Sections 267, 267-a and 267-b of the New York State Town Law. It shall also mean Cherry Valley Board of Appeals.

Building: Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattels.

Building Footprint: An aerial view of how a building is laid out on a parcel of land. Such an image only reflects a single story and depicts where the foundation meets the ground or the perimeter of the building's support piers and does not include attached decks, porches or raised walkways.

Business/Professional Office: Offices in which an occupation or vocation requiring advanced study in a specified field is practiced. Examples are: medical, law, engineering, surveying, insurance, and real estate offices.

Cabin: A structure that accommodates a maximum of six guests and is occupied for less than ninety (90) days by the same occupants. The structure may not exceed five hundred (500) square feet and may not exceed eighteen (18) feet in height.

Campground: A plot of ground upon which three or more campsites are located, established, or maintained for occupancy by camping units as temporary living quarters for recreation, education, or vacation purposes with occupancy not to exceed ninety (90) continuous days.

Storage for unoccupied mobile units is prohibited. Number of campsites will be determined by density per acre: one (1) campsite per two (2) acres.

Camping Unit: Any tent, cabin, trailer, lean-to, recreation vehicle, or similar structure established or maintained and operated in a campground as temporary living quarters for recreation, education, or vacation purposes.

Car Wash: A structure designed or intended primarily for the washing of automobiles and light duty trucks, including conveyor, drive through and self-service.

Center Line of Road: A line midway between and parallel to two (2) property lines along any public highway or right-of-way. Whenever such property lines cannot be determined, such line shall be considered as being midway between and parallel to the paved or improved surface of the road.

Clustering: A form of development for single family residential subdivisions that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision and the resultant land area is devoted to open space.

Commercial: Activity involve the sale of goods or services carried out for profit.

Commercial Storage Enclosed: A structure or set of structures containing separate storage spaces of varying sizes leased or rented on an individual basis. Such structures shall be constructed so that the sides of the structure(s) facing roads are comprised of less than 15% doorways and, if the structure is more than one hundred (100) feet long, its view from the road and from structure sides visible from adjoining properties should be sixty percent (60%) or more concealed by evergreen trees and shrubs and such structures should be compatible, in appearance, with the historical and agricultural buildings in the Town. Additionally, exterior lighting on such structures should be of shielded design adequate to provide safe access to doorways in periods of darkness with minimal illumination of surrounding areas.

Comprehensive Plan: A long-range plan intended to guide the growth and development of the Town of Cherry Valley which includes inventory and analysis leading to recommendations for the Town's land use, future economic development, agriculture, housing, recreation and open space, transportation, community facilities, and community design, all related to the Town's goals and objectives for these elements and adopted pursuant to New York State Town Law Section 272-a.

Construction: All building processes including site preparation, excavation, and building erection.

Convenience Store: Any retail establishment offering for sale pre-packaged food products, household items, newspapers and magazines and sandwiches and other freshly prepared foods, such as salads, for off-site consumption. Such establishments may also sell gas, diesel, and/or kerosene.

Copy-change Sign: A sign containing movable letters, numbers, words or symbols which can easily be changed or rearranged without repainting.

Coverage: All parts of a lot that have: 1) lost their vegetative or natural cover and/or 2) are covered by buildings, pavement, gravel, sand, concrete or some other unnatural surface or coverage.

Critical Environmental Area or Resources: Natural resources: Including but not limited to, wetlands, floodplains, steep slopes, and surface waters such as seeps, springs and streams and areas containing those resources.

Day Care Center: Licensed day care for more than 6 children; the maximum number of children served is set by the State in the day care license. Such a facility operates for more than 3 hours (per child) per day and the location (private home or day care center building) varies. Such a use is not a home occupation under this Local Law.

Deleterious substance: Any crude oil or natural gas drilling fluid and chemical, in any form, including but not limited to flowback and produced water, and processing wastes used in the exploration, drilling, production, processing, development, transportation, or refining of crude oil or natural gas.

DBH: Diameter at breast height (trees).

Drive-In Use: An establishment, which by design, physical facilities, service or by packaging procedure, encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

Driveway: An unmapped private access way originating at the edge of street bed (road) and continuing into the interior of four or fewer lots.

Dwelling: A building designed or used exclusively as the living quarters of one or more persons.

Dwelling, Two Family: A detached building designed or occupied exclusively by two families. (See Family)

Dwelling Unit: A building or portion thereof providing complete housekeeping facilities for one family.

Eating and/or Drinking Establishment: A parcel of land that includes facilities primarily used for the sale of prepared food or beverages for public consumption.

Educational Institution: An institution, either public or private, providing full-time day instruction and a course of study that meets the requirements of the New York State Education Law.

Environment - All external conditions and influences in an area including geology, water resources, air quality, plants and animals, agricultural resources, aesthetic resources, historic resources, open space resources, recreational, cultural, and municipal resources, road and transportation systems, visual character and community character.

Facade: The vertical front or main surface of a building and all surfaces of the structure parallel or nearly parallel to said surface. Such surfaces include, but are not limited to, solid walls, doors and windows, porches, billboards and roofs. (Normally, a building will have only one facade, which will be the wall facing the street and containing the front door.)

Family: Any number of individuals related by blood, marriage or adoption or not more than five (5) individuals who are not so related, living together as a single housekeeping unit, using rooms including kitchens and bathrooms in common.

Family Day Care: Licensed day care conducted in a private home for more than 3 hours per day (per child) with 3-6 children, not including the provider's children. Such a use is a home occupation under this Local Law.

Farm: See Agricultural Use.

Flood Plain: Any area liable to flood in a one hundred (100) year flood as determined by the FEMA.

Forest Management Practices: Management of natural vegetation for timber harvesting, firewood, wildlife habitat improvement and water quality.

Freestanding Sign: A sign not fixed to or mounted upon a building. This term, unless otherwise specified, shall be construed to refer to signs advertising goods, services or functions available on the premises where the sign is sited.

Frontage: That portion of a lot between the side lot lines that abuts a street (road).

Garage, Commercial: A building or premises used for the storage, repair, rental, sale or servicing of motor vehicles or for the sale of fuel for such vehicles.

Group Family Day Care: Licensed day care in a private home for more than 3 hours per day (per child) for 7-12 children, not including the provider's children. Such a use is not a home occupation under this Local Law.

Health Care Facility: A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, and home health care agency.

Heavy Industry – Any use or activity which generates significant volumes of smoke, odors, noise, or other polluting wastes and is not compatible with other uses in the district. Examples of “heavy industry” which are intended to be included in this definition are: chemical manufacturing; exploration for natural gas; extraction of natural gas; natural gas processing facilities (as defined elsewhere in this law) and/or compressor stations; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; coal processing; and steel manufacturing. It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to the activities identified in the examples.

Generic examples of uses not intended to be included in the definition of “heavy industry” are: milk processing plants; dairy farms; office and communications uses; garment factories; woodworking and cabinet shops; automobile repair shops; wineries and breweries; warehouses; equipment repair and maintenance facilities; helipads; parking lots and parking garages; light manufacturing or light industrial facilities (as defined elsewhere in this law); agriculture; and surface gravel and sand mining. It is expressly stated that the foregoing examples are not intended to be exhaustive shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

High-impact Industrial Use: An industrial use or operation that involves two or more of the following at any time during such use or operation. Sand and gravel or other surface mining, and agricultural operations shall not be considered a high-impact industrial use.

1. Storage of significant quantities of any deleterious substance, regardless of the type of storage container, method of storage or whether the storage is temporary or permanent.
2. A heavy industrial operation which is conducted at any and all times of the day and night.
3. The presence, production, collection, handling, manufacture, use, storage, transfer, or disposal of any deleterious substance.
4. The presence of a storage, holding, or parking facility or location capable of such use for more than 20 trucks, as defined in the Vehicle and Traffic Law with a gross vehicle weight rating of more than 34,000 pounds (truck and load combined), at the same time.
5. The per day use of more than twenty (20) one-way truck trips to or from the site during any given 24 hour period at any time during the duration of the use by trucks, as defined in the Vehicle and Traffic Law, with a gross vehicle weight rating of more than 34,000 pounds (truck and load combined).

High-Intensity Truck Traffic: The per day use of more than twenty (20) one-way truck trips to or from an industrial or heavy industrial use during any given 24 hour period at any time during the duration of the use by trucks, as defined in the Vehicle and Traffic Law, with a gross vehicle weight rating of more than 34,000 pounds (truck and load combined).

Home Occupation: An accessory use of a dwelling unit or accessory building for gainful employment which (i) is clearly incidental and subordinate to the use of the dwelling unit as a residence; (ii) does not alter or change the exterior character or appearance of the dwelling or area; (iii) results in no exterior storage; (iv) employs no more than two individuals not residing in the dwelling.

Hotel: A building or group of buildings providing individual sleeping accommodations complete with bathrooms for travelers. In a hotel, all lodging units open onto a main corridor or hallway in the building; the rooms do not open directly to the outside (such as in a motel).

Industrial Use: A commercial development activity, or production, assembly, or manufacturing operation requiring machinery and equipment.

Informational Sign: A sign which provides information without advertising or commercial intent. Examples include but are not limited to: enter/exit, no vacancy, open/closed, warning/danger, use side door, private, park here.

Institutional Uses: Any use of a parcel as a government facility, as a non-profit facility or as a public service facility (e.g., publicly owned school or hospital).

Junkyard: An area of land, with or without buildings, used for the storage, outside a completely enclosed building, of used and discarded materials, including but not limited to, waste paper, rags, metal, building materials, house furnishings, machinery, vehicles, or parts thereof, with or without the dismantling, processing, salvage, sale, or other use or disposition of the same. The deposit or storage on a lot of two or more unlicensed, wrecked, or disabled vehicles, or the major part thereof, shall be deemed to constitute a “junkyard”. (A disabled vehicle is a vehicle intended to be self-propelled that shall not be operable under its own power for any reason, or a vehicle that does not have a valid current registration plate or that has a certificate of inspection which is more than 60 days beyond the expirations date).

Kennels: A commercial establishment in which cats, dogs, or other domesticated animals are housed, groomed, bred, boarded, trained or sold, all for a fee or compensation.

Lake Shore: This shall be considered to be the boundary formed by the water's edge.

Light Assembly: The creation of a finished product from pre-manufactured pieces. Such work does not involve any chemical or mechanical processes commonly associated with manufacturing.

Light Manufacturing And Light Industrial Operations - A facility or use which does not employ more than twenty five (25) people, does not produce high volumes of polluting wastes, is compatible with other uses in its surrounding area or neighborhood, does not require heavy, noisy or otherwise objectionable machinery or transporting equipment, and in addition, meets one of the following descriptions:

1. Light Manufacturing. A use involving the manufacture of a product, subject to compliance with the any other applicable ordinances, laws or regulations, in one of the following categories:

- A. Food and beverage production, including but not limited to such uses as a dairy processing plant, bakery, and bottling plant.
- B. Apparel and other textile products.
- C. Furniture and fixtures.
- D. Printing and publishing.
- E. Electrical and electronic machinery and equipment.
- F. Metal fabrication.
- G. Mail order distribution center.
- H. Warehousing ancillary to the authorized use.

2. Light Industrial. A facility which manufactures, designs, assembles, or processes a product for wholesale or retail sale.

Lot: A parcel of land separately recorded in the Otsego County Clerk's Office or separately depicted on the Town Real Property Assessment Map. Whenever two or more principal buildings are located on a single lot, the area devoted to each principal building together with its accessory buildings and uses, yards and open spaces, shall be considered as a separate lot for the purpose of this Local Law.

Mineral Extraction: Operations extracting gravel, rock, stone, sand, fill, topsoil or minerals from the surface or below the ground for sale as an industrial or commercial operation, but does not include gas, oil, or natural gas solution mining, or the process of grading a lot preparatory to the construction of a building.

Mixed Occupancy: A building or structure with two or more different uses, such as, but not limited to, residential, office, manufacturing, retail, public or entertainment.

Mobile Home: A portable, factory-made dwelling unit, built on its own chassis, designed to be transported on its own wheels or those of another vehicle, and intended, when connected to all required utility systems, to be suitable for year-round occupancy. The term mobile home shall not be construed to include a modular home or a recreational vehicle.

Modular Home: A dwelling unit consisting of two or more major segments constructed off-site, which complies with the New York State Uniform Fire Prevention and Building Code, and designed to be transported to a site for permanent assembly and anchoring to a permanent foundation and to become a fixed part of the real estate.

Motel: A multiple unit dwelling, not over two stories in height, intended primarily for motorists, in which the exit from each dwelling unit or sleeping room is directly to the exterior. (Includes but is not limited to the terms motor court, motor hotel, tourist court.)

Motor Vehicle Repair Shop: A building or portion of a building arranged, intended or designed to be used for making repairs to motor vehicles and operated for profit.

Multiple Family Dwelling: A building containing a minimum of three (3) and no more than six (6) dwelling units for other than transient lodgers.

Natural Gas Exploration, Extraction, or Processing - The exploration for natural gas, the extraction of natural gas from the ground regardless of the extraction method used, and/or the processing of natural gas. This definition shall specifically include, but not be limited to, the extraction method commonly known as hydraulic fracturing. This definition shall also be construed to encompass and include any activity or use of land which facilitates or supports natural gas exploration, extraction, or processing. Examples of activities or uses of land expressly intended to be included in this definition are set forth below:

- Drilling and/or installation of a new gas well, regardless of well type;
- Development of a well operations site and associated structures and infrastructure;
- Mixing, storage, treatment, and/or disposal of chemicals, wastewater, proppant or other materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Parking, standing and/or storage of any type of vehicle, equipment, and/or materials used for, or in connection in any way with, the exploration for or extraction of natural gas;
- Installation and/or use of pipes, conduits or other material transport or gathering equipment or systems used for, or in connection in any way with, the exploration for or extraction of natural gas

It is expressly stated that the foregoing examples are not intended to be exhaustive and shall not be construed to limit the meaning, scope or application of this definition or to limit the application of this definition solely to those activities identified in the examples.

Non-Conforming Use – A use or activity that was lawful prior to the adoption of this Local Law but that fails by reason of such adoption to conform to the present requirements of the law.

Off-premises Sign: A sign advertising, or directing the view to, an establishment located on a parcel or lot other than the premises where said sign is found.

On-Street Parking: Parking on public and private highways including rights-of-way.

Open Space: One or more parcels of land normally not developed with structures or buildings, and that is the preserved portion of lands on a parcel. No open space shall be designated within 50 feet of the principal structure or dwelling.

Parking Lot (off-premise): A parking facility designed to serve a specific other use but which cannot be located on the same lot with the use it serves.

Place of Public Assembly: Land or buildings under the auspices of a governmental unit, public agency or involving public benefit or advantage. Hospitals, schools, parks, and recreational facilities, cemeteries, passenger stations, libraries, fire stations, public utility installations,

government offices or facilities, philanthropic institutions, places of worship, community centers, day care nurseries, and like uses are included in this definition.

Pond: A naturally or artificially banked body of water smaller than a lake, sometimes formed by damming a stream.

Principal Building: A dwelling; or a building of principal commercial use (i.e., a commercial use not defined as a home occupation).

Private Street (Road): A platted vehicular access way, built to Town requirements and filed as a common ownership agreement among the shareholders it serves.

Professional Planner: A person having training and expertise, that professionally practices land use planning, and that is certified by the American Institute of Certified Planners (AICP) or a licensed engineer.

Public Street (Road): Any vehicular access way that is existing State, County or Town inventoried roadway, shown upon an approved plat and accepted by the Town, approved by other official action, or shown on a plat duly filed and recorded by the County Clerk prior to appointment of a Town Planning Board.

Recreational Facilities: Facilities for indoor or outdoor recreation that are in keeping with the rural residential character of the Town. Such uses include riding academies, riding trails, golf courses, driving ranges, swimming clubs, cross-county ski trails, downhill ski facilities, tennis clubs, recreational snowmobile trails, sailing clubs, hiking trails, ice skating rinks, sportsmen's clubs, or similar activities that meet the special requirements listed for recreational facilities.

Recreational Vehicle: A vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and is primarily designed as temporary living accommodation for recreational camping and travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

Retail Trade: A store engaged in selling goods or merchandise to the general public, for personal or household consumption and rendering services incidental to the sale of such goods.

Road – A vehicular access way either currently designated as a Town, County or State Road, or any private platted access way, built to town requirements.

Sandwich Board: A freestanding portable sign consisting of two rigid boards connected by hinges. Each board shall be smaller than nine square feet.

School Age Child Care: Day care, licensed by the State, which operates before and after school and may operate on vacations and holidays. The number of children such a facility may have is set by the State registration and the location of the facility (private home versus day care center of school) varies. Such a use is not a home occupation under this Local Law.

Self-Storage Units: A structure containing individual and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.

Service Establishment: Establishments providing services or entertainment, as opposed to products, to the general public, including personal, business, repair, educational, and other personal convenience services, including, but not limited to, coin operated laundry, cleaning and garment services, photographic studios, beauty shops, barber shops, shoe repair, funeral services, clothing rental, reducing salons and tanning parlors.

Service Trade Establishment: Construction, building trades or maintenance businesses, provided that only storage, light fabrication involving no more than 2000sq. ft. of floor area or five employees and office functions are conducted on the premises, and that those aspects of the occupation which exceed a home occupation in intensity of use are conducted off the premises.

Service Station: An establishment available to the general public operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, fueling, or equipping of automobiles or other motor vehicles.

SEQRA: The provisions and requirements of Article 8 of the Environmental Conservation Law, known as the State Environmental Quality Review Act.

Setbacks: Designated distances from property lines and the edges of rights of way within which no building or structure may be erected.

Shopping Center: Two or more commercial establishments planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivered separated from customer access, aesthetic considerations and protection from the elements.

Sign: Any material, structure or device, composed wholly or partly of written or representational matter, which is located so as to be visible beyond the boundaries of the lot or parcel within which it is sited, and which displays any advertisement, slogan, announcement, name, trademark or insignia.

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

Site Plan Review: A review process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in this Local Law and as authorized by Town Law.

Slope of Site: the vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of stormwater runoff. Should the site be sufficiently large in the judgment of the Planning Board

and heterogeneous in character (difference of one or more slope factors), the site should be divided into different measurement units, with a gradient defined for each.

Story (or Floor): That portion of a building included between the surface of any floor and the surface of the floor next above it or if there is no floor above it then the space between the floor and the ceiling next above it and including those basements used for the principal use.

Stream: a natural and not man-made waterway depicted on the maps included in the Comprehensive Plan of the Town of Cherry Valley on file with the Town Clerk. A stream shall not include swales or drainage ditches. A stream classified as protected under Article 15 of the New York State Environmental Conservation Law shall be considered a “protected stream”.

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

Trailer: A movable living unit intended for temporary travel or vacation use with or without kitchen or sanitary facilities. Self-propelled recreational vehicles (RV's) or motor homes are included in the definition of trailer.

Variance: Permission to depart from the literal requirements of the land use law.

Variance, Area: A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district, or a departure from any provision of this Local Law except use.

Variance, Use: A variance granted for a use that is not permitted in the zoning district.

Wall Sign: A sign painted on, attached to, or part of an outside wall of a structure. Signs projecting from a building on a signboard, awning, etc., shall be considered wall signs. A sign painted on, attached to, or part of a window or door, or displayed from within so as to attract the notice of a person beyond the boundaries of the lot shall be considered a wall sign.

Wetland: Any bog, swamp, marsh, pond, stream or other watercourse listed as a wetland by the New York State Department of Environmental Conservation or any such watercourse in the Town.

Wildlife Management Practices: Management of natural wildlife and associated habitats with the intent of enhancing such.

Article 3. Land Use District and Regulations

Section 3.01. Agricultural/Rural Land Use District Establishment and Map

To fulfill the purposes of this Local Law, one land use district (Agricultural/Rural Residential) is hereby established and shown on the Land Use Map accompanying this Law. Such map is , entitled “Town of Cherry Valley Land Use Map” and shall be filed in the office of the Town

Clerk as the official land use map for the Town. The Town of Cherry Valley Land Use Map and all explanatory matter thereon are by this reference incorporated into this Local Law.

Section 3.02. Purpose of District

In addition to the overall purposes established for this Local Law, the following purposes define the spirit and intent of the Agricultural/Rural Land Use District:

1. To maintain and encourage the agricultural endeavors practiced in the rural areas of the Town;
2. To protect, enhance and encourage the preservation of open space, scenic views, wildlife habitat, and other natural resources including but not limited to wetlands, streams, seeps, floodplains, steep slopes, and surface and ground water supplies;
3. To provide the opportunity for residential development on properly serviced sites while maintaining the rural atmosphere and values of the community;
4. To maintain and protect rural residential and rural neighborhood qualities while recognizing the importance of meeting the residential housing needs of Town residents;
5. To provide and encourage a mixture of housing types and housing opportunities; and
6. To allow for continuance of forestry, and mineral extraction operations.

Section 3.03. Land Use District Maps

1. Amendments to the Land Use Map shall be made and posted in accordance with Article 10.01 (Amendments).
2. Uncertainty with Respect to Boundaries: Where uncertainty exists with respect to the boundaries of the district as indicated on the Land Use Map, the following rules shall apply:
 - a) Where district boundaries are indicated as approximately coinciding with the center lines of streets, highways, or streams, such center lines shall be so construed to be such boundaries.
 - b) Where district boundaries are indicated as approximately coincident with lot lines, such lot lines as of the date of approval of this Local Law shall be construed to be said boundaries; or where district boundaries are extensions of lot lines, or connect the intersection of lot lines, such lines shall be said to be district boundaries.
 - c) Where district boundaries are approximately parallel to center lines of streets or highways, such district boundaries shall be construed as being parallel to them and at such distance from them as indicated on the Official Land Use District Maps.

3. Parcels in Two or More Land Use Districts

- a) Whenever a single lot of two acres or less is located within two or more different land use districts, the boundary of the land use district or overlay within which the larger portion of the lot is located may be deemed to extend up to fifty (50) more feet into the smaller portion of the lot.
- b) Whenever a single lot greater than two (2) acres is located within two or more different land use districts, each portion of that lot shall be subject to all the regulations applicable to the district in which it is located.

Section 3.04 Clustering

1. Clustered subdivision development pursuant to the Town of Cherry Valley Subdivision Law, Section 4.8, may be voluntarily applied to any parcel of land anywhere in the Town of Cherry Valley. As defined in the Site Plan Law, Section 3.030, all applications presented to the Planning Board must include an environmental review pursuant to SEQRA Part 617. A major subdivision, as defined in the Subdivision Law, is subject to mandatory planning by a professional planner. All major subdivision requests to the Town of Cherry Valley Planning Board, after the presentation of an initial sketch plan, must be accompanied by a subdivision plan prepared by a professional planner. The professional planner must endeavor to create a subdivision plan that will meet the objectives of the Town of Cherry Valley Comprehensive Plan. The Planning Board must approve the prepared subdivision plan.
2. All procedures and requirements for establishment of a clustered or conservation subdivision shall be pursuant to the Town of Cherry Valley Land Subdivision Law.
3. The Planning Board is further authorized to vary or modify lot size, setbacks, and layout requirements in order to meet the objectives of this Section and of the Town of Cherry Valley Land Subdivision Law Section 4.8. When a clustered subdivision is proposed, the Planning Board's authority to vary or modify lot size, setback, and layout requirements may be used to impose conditions for the approval of any plat in order to ensure that the plat is consistent with Section 4.8 of the Town of Cherry Valley Land Subdivision Law.

Article 4. Land Use and Lot Dimension Standards

Section 4.01 Permitted Land Uses

1. Development shall be subject to the Land Subdivision and Site Plan laws of the Town of Cherry Valley. All land use activities within the Town shall require site plan review and approval before being undertaken, except the following:
 - a. Construction of one or two-family dwelling and ordinary accessory structures, and related land use activities.
 - b. Landscaping or grading which is not intended to be used in connection with a commercial or industrial land use reviewable under the provisions of the Site Plan Law.
 - c. Ordinary repair or maintenance or interior alterations to existing structures or uses.
 - d. Exterior alterations or additions to existing commercial structures which would not increase the square footage of the existing structure by more than twenty five percent (25%); and having a cost value of less than ten thousand (\$10,000.00) dollars. All additions to single family and two-family dwelling units shall be exempt from site plan review.
 - e. Structural and nonstructural agricultural or gardening uses not involving substantial timber cutting.
 - f. Signs under ten (10) square feet.
 - g. The sale of agricultural produce and temporary structures related to sale of agricultural produce.
 - h. Garage, lawn and porch sales not exceeding three consecutive days. If such sales take place more often than three (3) times in any calendar year, site plan approval will be required.
2. All agricultural, commercial and residential uses, except those uses that are expressly prohibited in this district shall be permitted provided all lot sizes, setbacks or other requirements of this Local Law are met.
3. Mineral extraction operations shall be permitted pursuant to the New York State Mined Land Reclamation Law and the Town of Cherry Valley Site Plan Law including such mining operations that extract less than one thousand (1000) tons or seven hundred and fifty (750) cubic yards of minerals per year.
4. A major subdivision, as defined in the Cherry Valley Land Subdivision Law is subject to mandatory planning by a professional planner. All major subdivision applications must be accompanied by a subdivision plan prepared by a professional planner. Upon submission a presentation of the initial sketch shall be made pursuant to Article 3.1 of the Cherry Valley Land Subdivision Law. The major subdivision shall be designed by the professional planner to create a lot layout that will be consistent with the objectives of the Town of Cherry Valley Comprehensive Plan. The Planning Board will only consider for approval the plan prepared by a professional planner.

5. Any person uncertain of the applicability of this Local Law to a given land use activity may apply in writing to the Board of Appeals for an interpretation of the law.

Section 4.02 Prohibited Uses

Beginning on the effective date of this Local Law, the following activities and/or uses shall be prohibited:

- i. Heavy industry and high-impact industrial uses as defined in this Local Law;
- ii. It shall also be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained any deleterious substance, anywhere within the Town.

Section 4.03 Lot Areas, Setbacks and Other Dimensions

1. Lots shall be of sufficient size to accommodate buildings and individual sanitary sewage disposal systems designed in accordance with the New York State Health Department Sanitary Code and shall require the approval of the Otsego County Department of Health.
2. Lots shall not be less than one (1) acre and shall have a minimum road frontage of at least two hundred (200) feet. All lots should be of sufficient width and depth to accommodate a residence with setbacks of at least twenty-five (25) feet from side and rear lot lines and seventy-five (75) feet from the street centerline.

Article 5. General Land Use Regulations

The provisions in this article apply to all uses in all districts of the Town.

Applications for approval for any use within the Town shall demonstrate that the proposed use is in conformance with the following Sections 5.01 through 5.10.

Section 5.01. Residential and Agricultural Area

Activities other than residential and agricultural functions may be permitted in the Agricultural/Residential land use area as long as these activities do not alter the essential residential or agricultural character of the neighborhood, as established in Section 1.04 (Community Development Objectives), by external changes obviously unrelated to residential or agricultural uses.

Section 5.02. Principal Building per Lot

1. There shall be only one principal building per lot, except that, where a sufficiently large parcel exists, additional principal buildings may be established provided each such

structure has an identifiable land area which satisfies the lot area, frontage, and setback requirements of the regulations of the district in which it is located.

2. No part of any yard or area required for one building or use shall be included as part of the yard or area similarly required for any other building or use.
3. Applications for a building permit shall show the outline of land associated with second or subsequent principal buildings, with the proposed location of such buildings.
4. The identified land area associated with each principal building shall be sufficient to provide independent water supply and sewage system in accordance with the requirements with the New York State Health Department Sanitary Code and shall require the approval of the Otsego County Department of Health.

Section 5.03. Mobile Homes Regulations.

1. Trailers for permanent residential use are not permitted.
2. Mobile home owners must apply for a general building permit before the mobile home can be moved to the property and used for living quarters.
3. Mobile home owners must satisfy all state health codes before the mobile home can be moved to the property.
4. The mobile home must be at least fifty (50) feet from the shoulder of the road and at least fifty (50) feet from the boundaries of the property on which it is to be set and at least fifty (50) feet from any existing living quarters on the same property.
5. The foundation for a mobile home shall be a six (6) inch minimum slab of reinforced concrete with at least a six (6) inch base of gravel under it. This foundation shall extend at least to the edge of the walls of the mobile home.
6. An approved metal, wood or other suitable rigid skirting or framing, properly ventilated and attached, shall enclose that area from the bottom of the floor line of the mobile home to the ground for any mobile home hereafter located in the Town, unless the mobile home is mounted on an enclosed foundation.
7. All mobile home units used as living residences that are currently firmly anchored or on a foundation and skirted shall be considered to be in conformance. The records of the Assessor of the Town of Cherry Valley shall be the final authority as whether or not the unit was on the premises and used as a living residence.
8. Any mobile home unit removed and replaced by another unit shall be required to meet the standards in paragraph 4 and 5 above.
9. All mobile homes currently occupied shall be required to conform to the ordinance within 1 year of the effective date of this Local Law.

10. The minimum lot size, road frontage, and setbacks for mobile homes shall be the same as required for other dwellings.

11. No mobile home older than ten (10) years may be placed on a lot within the Town of Cherry Valley.

Section 5.04. Uses with Nuisance Effect

In no case is a use permitted in any district that by reason of noise, dust, odor, appearance, deleterious substance, or other objectionable factor creates a nuisance hazard or other substantial adverse effect on the reasonable enjoyment of the surrounding property and/or the safety and health of the residents, unless otherwise allowed by law, including the Right To Farm Law of Section 1.05..

Heavy industrial uses and high-impact industrial uses prohibited by Section 4.01 of this Local Law, by their very nature, have the potential to produce deleterious substances and can create negative impacts on the environment and on people living in or near the areas in which they are located and are thus incompatible with the goals and policies embodied in the Comprehensive Plan. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industry.

Section 5.05. Dumping of Waste Material

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

Section 5.06. Lighting

All lighting shall be aimed, located, designed, fitted, and maintained so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property.

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

All exterior lights shall be downcast and shall not illuminate the sky. Caps or covers on such lights are required.

Section 5.07. Junk Yards

Junkyards are permitted with Site Plan review, subject to the following criteria:

1. The minimum lot size for a junkyard is twenty five (25) acres. No junkyard shall be permitted within a one thousand foot (1000 ft.) linear distance from a lake, watercourse, or wetland.

2. The outdoor area devoted to the storage of junk shall be completely surrounded with an eight foot (8 ft.) high fence, made of suitable opaque materials. The fence may not be made of vegetation or of any materials considered to be part of the junkyard that are intended to be concealed behind the fence. Such fence must be set back at least fifty feet (50 ft.) from all property lines. All wreckage, parts, work, or other activity involving the junkyard must take place within the closure.
3. The setback area between the fence and the lot lines shall be kept free of weeds and all scrub growth.
4. All wholly enclosed buildings used to store junk shall be set back at least fifty feet (50 ft.) from all property lines.
5. No material may be stored or stacked so that it is visible from adjoining properties or roads.
6. All Federal and State laws shall be satisfied.
7. All junk shall be stored or arranged so as to permit access by fire fighting equipment and to prevent the accumulation of water, and with no junk piled to a height greater than eight feet (8 ft.).
8. No oil, grease, tires, gasoline, or other similar material shall be burned at any time.
9. Any junkyard shall be maintained in such a manner as to cause no public or private nuisances, nor to cause any offensive or noxious sounds or odors, nor to cause the breeding or harboring of rats, flies, mosquitoes, or other vermin.
10. No junkyard shall be located on land with a slope in excess of five percent (5 %).

Section 5.08. Ponds

A man-made pond or any artificial body of water over a depth of two feet (2 ft.) must be set back a minimum of one hundred feet (100 ft.) from all property lines and existing septic systems.

Section 5.09. Landscaped Areas Between Certain Uses

Along any lot line between a residential and commercial or industrial use, a landscaped area shall be provided. Such landscaped area shall include screening, provided by fencing, beams, walls, non-deciduous trees or shrubs or by existing natural features or combinations thereof, as deemed necessary by the Town Planning Board to protect the character of adjoining residential areas. If vegetation provides the screening, the Planning Board may require a surety deposit to ensure the vegetation survives for 18 months.

Section 5.10 Development in Designated Flood Hazard Areas

All requirements, procedures, and standards of the Flood Damage Prevention Law (Local Law 3 of 1987) or subsequent amendments shall be met for all areas identified by the Federal Emergency Management Agency on Flood Insurance Rate Maps.

Article 6. Signs

Section 6.01. Purpose

The purpose of sign regulations are:

1. To encourage the effective use of signs as a means of communication in the Town.
2. To maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth.
3. To improve pedestrian and traffic safety.
4. To minimize the possible adverse effect of signs on nearby public and private property, and
5. To enable the fair and consistent enforcement of these sign restrictions.

Section 6.02. General Regulations

1. Sign Size:

All sizes specified in this Article shall be construed as limiting the physical sign structure, not the written or representational matter on the sign. The portion of a sign frame or support covered by or painted with any written or representational matter shall be counted as part of the permitted area of a sign. In those cases where a sign lacks obvious boundaries (for example, a painted logo on a wall without a painted boundary or background color to separate the sign visually from the rest of the wall, or a message spelled out in metal letters individually attached to a post), the sign area shall be computed by superimposing the smallest rectangle, circle, triangle, or combination thereof that will encompass the extreme limits of the images and messages.

The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from a single location.

Total area (in square feet) of all signs on a lot, excluding exempt and free standing signs, shall not exceed 32 feet. Signs exceeding 16 square feet in total area shall require Site Plan review.

2. Wall and Roof Signs:

One wall sign, in addition to exempt signs as necessary, shall be permitted on the facade of a building in which the activity associated with the sign is conducted. In any Commercial/Industrial district or overlay, two wall signs, in addition to exempt signs as necessary, shall be permitted on the facade of a building in which the activity associated with the sign is conducted.

Signs attached to or part of the roof of any structure are prohibited except that a vertical portion of a mansard roof shall be considered a wall. Signs attached to a wall shall not extend above the highest habitable portion of the building to which they are attached, or project more than six feet horizontally beyond the wall.

3. Freestanding Signs:

Freestanding signs, must be located on the lot where the goods, services or functions announced by the sign occur. Pre-existing freestanding signs that do not conform to the provisions of this Article may continue to be displayed, as long as the sign's message, illumination or physical structure is not changed. If a single use occurs on adjacent lots or on lots across the road from one another, only one lot may have a non-exempt freestanding sign.

Freestanding signs and their structural supports shall not exceed 15 feet in height. The height of a sign shall be measured from the top of the sign structure, including any illumination and supports, to the finished grade, exclusive of any mounding, berming or filling solely for the purpose of siting the sign.

Freestanding signs shall not be affixed to trees, telephone poles or electric poles. All parts of freestanding signs shall conform to the side-yard and rear-yard setbacks of the district in which they are located and shall be set back at least two feet from any right of way.

3. Removal of Signs:

All structural parts of signs no longer in use shall be removed within two years of end of use. If such signs are not removed by the end of the allowed time, the Town Board may provide for their removal and charge the removal costs to the property owner.

All signs advertising commercial activity that are not permitted under Section 6.02 and do not qualify as exempt signs and under section 6.04 may be removed by any town employee without notice to the sign owner.

Section 6.03. Procedures

Sign applications shall be made to the Town Planning Board on forms provided by the Town on the Town Web Site. Fee schedules, if any and duration of permits shall be set by resolution by the Town Board. Such fees and permit procedures may be amended, as the Town Board considers necessary.

Section 6.04. Exempt Signs

The following signs are exempt from the permit requirements of this Section. They may be freestanding or attached to a structure.

1. Signs two square feet or smaller identifying a residential structure or location.

2. Informational signs two square feet or smaller.
3. Flags, except those of a commercial nature.
4. Signs related to agriculture, displayed on the premises where the agricultural activity is conducted, provided that the principal use of the lot is residential or agricultural. Examples include, but are not limited to: advertisements promoting milk drinking, signs indicating the breed of animal or type of seed used on the farm, manufacturer's trademark on silos, signs advertising the sale of agricultural goods.
5. Restorations or re-creations of historic signs or markers on the lot where such sign stood before restoration.
6. "Posted" or "No trespassing" signs, or signs of similar meaning, one square foot or smaller.
7. Signs warning of a hazard or danger, three square feet or smaller.
8. Sandwich boards in non-residential and non-agricultural zoning districts, if displayed on the premises where the advertised goods or services are available, and if taken inside nightly at or before sundown. In addition, non-conforming business or commercial uses in the Agricultural/Rural Residential or Agricultural/Rural Residential districts may display sandwich board signs following these standards
9. "For sale" signs not larger than two square feet affixed to cars, boats, etc., provided the premises on which the vehicles are displayed are not used regularly for such sales.
10. Signs for garage sales, auctions, etc., provided the premises are not used regularly for such sales. Such signs shall be not larger than six square feet and shall not be displayed for more than fourteen (14) days.
11. One on-premises sign advertising real estate for sale or rent, not larger than six square feet in residential or agricultural zoning districts, or sixteen (16) square feet in other zoning districts. Such sign shall be removed no later than thirty (30) days after closing.
12. One sign, not larger than sixteen (16) square feet, listing the designer or builder on premises where construction, renovation or repair is in progress. Such sign shall be removed no later than thirty (30) days after completion of work.
13. Political posters, signs promoting a non-commercial cause or activity, or not-for-profit fund raising devices, not larger than six (6) square feet, in residential or agricultural land use districts, or thirty (32) square feet in other zoning districts. Such signs shall be removed no later than one week after the advertised activity ends.
14. Signs for which permits have been issued by the State of New York prior to 1995 and for which permits have been kept current under New York State rules and regulations.

15. Signs erected by the Town of Cherry Valley are exempt from the size and placement restrictions of this section.

If such signs described above are not removed by the end of the allowed time, the Town Board may provide for their removal and charge the cost to the advertising body.

Section 6.05. Nonconforming Signs

The structure, size or message of a sign shall not be replaced with a non-conforming sign.

A non-conforming sign may be temporarily removed for normal maintenance if said sign is restored to its original place and appearance within three months. A non-conforming sign removed for more than three months shall be brought into conformity before replacement.

Article 7. Home Occupations

Section 7.01. Application

Within the designated districts, home occupations are permitted subject to the following criteria:

1. The use shall be clearly incidental to the primary use of the premises as a dwelling for living purposes.
2. The home occupation shall not alter the appearance of the building as a dwelling unit or accessory building, or the residential character of the neighborhood.
3. The business activity shall not be conducted in a manner that would cause the building to differ from its residential character either by use of colors, materials, construction, lighting, or the emission of light, noise, sounds, odors, or vibration.
4. The home occupation shall not affect the safe and comfortable enjoyment of the individual property rights of the neighborhood in which it is located.
5. Members of the immediate family residing in the dwelling unit plus not more than two (2) employees shall conduct the home occupation in the building.
6. No more than one home occupation may be located in any premises.
7. There shall be no displays or advertising visible outside the premises to attract customers or clients other than a single sign as permitted by Article 6.
8. There shall be no outdoor storage of equipment or materials used in the home occupation.

9. The home occupation shall not generate traffic in greater volumes than would normally be expected in a residential neighborhood.
10. Tenants not engaged in the home occupation are permitted to reside in the dwelling.

Article 8. Non-Conforming Structures and Uses

Section 8.01. Application

No building or structure or part thereof shall be erected, moved, altered, or demolished unless in conformity with this Local Law. If there is doubt as to whether or not this article applies to a specific project, the Board of Appeals shall interpret the law and determine applicability.

Section 8.02. Continuation

Except as otherwise provided in this section, any use, building, or structure existing at the time of enactment of this Local Law may be continued, although it is not in conformity with the regulations specified in this Local Law.

Section 8.03. Adjoining Lots

Any non-conforming lot(s) that adjoins another lot which is held in common ownership shall be considered one lot for the purposes of this Local Law.

Section 8.04. Non-Conforming Uses

1. Discontinuance or Removal. A non-conforming use that is discontinued or removed for any reason other than fire, flood, or other natural disaster for a period of one (1) year or more shall not be re-established. A non-conforming use that is discontinued due to fire, flood, or other natural disaster for a period of two (2) years or more, commencing on the date of such natural disaster, shall not be re-established. Any subsequent use shall conform to this Local Law. The Planning Board is empowered to extend the two (2) year time period upon receipt of a written request from the owner at least thirty (30) days in advance of the expiration of this time period.
2. Changes. No non-conforming use shall be changed except to a conforming use. When so changed, the non-conforming use shall not be resumed. Pre-existing uses shall not be altered in such a way as to create a non-conforming use or to increase the degree of non-conformity.
3. Extension. No non-conforming use shall be enlarged or extended beyond the area occupied by such use on the effective date of this Local Law. A non-conforming use may be extended throughout any part of a building for such use if on the effective date of this Local Law a majority portion of the building was used for such non-conforming use.

Section 8.05. Non-Conforming Buildings or Structures

1. Alterations. A non-conforming building or structure shall not be enlarged, extended, or have exterior alterations beyond the limits of the original building or structure, unless such enlargement, extension, or alteration shall be in accordance with this Local Law.
2. Reconstruction. A non-conforming building may be reconstructed to its original dimensions, subject to Site Plan Review pursuant to the Site Plan Law of Cherry Valley. The purpose of Site Plan Review is to provide the Planning Board the opportunity to reduce the level of non-conformance of the building. In no case shall the level of non-conformance be increased. This section does not provide any modification of this Article as to discontinuance, removal, modification, or extension of a non-conforming use.

Section 8.06. Existing Natural Gas Drilling Leases and Wells.

New “Heavy Industry” uses, as defined elsewhere in this law, shall be prohibited in the Town of Cherry Valley beginning on the effective date of this Local Law. The definition of “Heavy Industry” in this law includes the exploration for natural gas; extraction of natural gas; natural gas processing facilities; exploration for crude oil; extraction of crude oil; oil refineries; coal mining; and coal processing. For the purposes of this provision of this Local Law, and solely for the ease of drafting and reading, all those uses and activities shall be referred to collectively as “gas, oil and coal extraction”.

Any leases of property for the purpose of allowing gas, oil or coal extraction, or any gas, oil or coal extraction operations which are being presently conducted on land in the Town as of the effective date of this law, shall be subject to the following:

A. Existing Leases:

1. Where a lease which allows gas, oil or coal extraction has been executed and where no substantive gas, oil or coal extraction activity has substantively commenced as of the effective date of this Local Law, then this Local Law shall apply in full effect and shall operate to prohibit all such activities. The existence of a lease under the circumstances described in this paragraph shall convey no vested right upon either party to the lease.

B. Existing Gas, Oil and Coal Extraction Operations

1. Where a lease which allows gas, oil, or coal extraction has been executed, and where substantive gas, oil or coal mining extraction activity is occurring as of the effective date of this law, and those activities are being conducted pursuant to valid permits issued by the New York State Department of Environmental Conservation or other regulating agencies, in that case the activity shall be considered a non-conforming use and shall be allowed to continue.
2. Upon the depletion of any gas or oil well or coal mine which is allowed to remain in operation pursuant to this provision, or upon any other termination of the gas, oil or coal

extraction activity for a period of more than one (1) year, the non-conforming use status of that activity shall terminate and the activity may not be renewed.

3. Further, no gas, oil or coal extraction activity allowed to remain in operation pursuant to this provision shall be permitted to expand after the effective date of this Local Law.

ARTICLE 9: ADMINISTRATION and ENFORCEMENT

Section 9.01 Enforcement Officer

This Local Law shall be enforced by the Enforcement Officer who shall be appointed by the Town Board.

A. The Town Clerk is hereby given the following duties and authority:

1. To accept applications required by this Local Law and to transmit such application to the Enforcement Officer, to Secretaries of the Planning Board or Board of Appeals as appropriate.
2. To provide, upon request, copies of the Town Land Use Local Law and map and any forms, rules and regulations used in administering this Local Law.
3. To maintain a file of all applications, permits and other official documents involved in the administration of this Local Law.

B. The Enforcement Officer is hereby given the following duties and authority:

1. In consultation with the Planning Board, to develop such forms, rules and regulations as deemed necessary for proper administration and enforcement of this Local Law. Said form, rules and regulations shall be reviewed and approved by the Town Board and shall be available for public view at the Town Clerk's Office.
2. To enter upon, examine or inspect, for the purpose of administering or enforcing this Local Law with reasonable arrangements with the owner, any land, building or structure which is the subject of an application under this Local Law. To make follow up visits after site plan approval to ensure adherence to the approval granted. A written report of each examination or inspection shall be kept on file in the Office of the Town Clerk.
3. To receive complaints of violations of this Local Law or to make complaints against the owner or occupant of the premises where there appears to exist a violation of any provision of this Local Law.
4. To act upon any and all complaints and to serve a written notice of violation upon the owner or occupant of the premises where there appears to exist a violation of any provision of this Local Law.

5. To accept applications required by this Local Law and to issue, subject to conditions, or refuse to issue any requested permit, certificate or license within ten (10) days of his/her receipt of the application thereto, except that where such application involves review by an official board under the provisions of this Local Law. All applications that require subdivision or site plan review will be forwarded to the Planning Board. All applications clearly in violation of the provision of this Local Law shall be rejected. Where conformity with the Local Law is uncertain the application shall be referred to the Planning Board for disposition under the Planning Board's site plan review authority. Where such review is required, the Enforcement Officer shall notify the applicant of such fact and of any necessary applications, statements, plans, or other documentation required for such review within ten (10) days of receipt of the original application. The Enforcement Officer shall notify the applicant of meetings at which his application will be acted upon by any reviewing board and said officer shall take such action as may be directed by such Board within ten (10) days of such direction.
6. To file with the Town Clerk copies of all applications received and permits issued.
7. To perform any other administrative or enforcement duties specified in this Local Law including but not limited to the issuance of permits, licenses or certificates, accepting or reviewing applications, plans, or plats, and carrying out any lawful order of the Town Planning Board, the Town Board, the Town Board of Appeals, or a Court having jurisdiction over this law.
8. Failure to comply with the standards set below, shall give the Enforcement Officer the legal authority to deny renewal of the permit or to revoke the permit if it is clearly in violation of the law and the owner refuses to comply with the standards of any issued permit.

Section 9.02 Fees

The application for any permit, certificate, license or any review by the Town Planning Board or Town Board or Board of Appeals shall be accompanied by a fee: an amount specified from time to time by resolution of the Town Board.

Section 9.03 Violations

- A. A violation of this Local Law is hereby declared to be an offense punishable by a fine to be determined by the Town Board. Violations of this law or of any of its provisions shall be considered an unclassified misdemeanor, Penal Law Section 55-10 (2). Failure to adhere to the site plan approved by the Planning Board and/or the special conditions required by the Planning Board shall be a violation of this law. It shall be a violation of this law to deviate in any way from any area variance or use variance granted by the Board of Appeals.
- B. Where land is used or where any building or structure is erected, constructed, converted, altered, used or maintained in violation of this Local Law, the Enforcement Officer, in addition to other remedies, may institute any appropriate action or proceedings to prevent erection, construction, conversion, alteration, use, maintenance or occupancy. These

remedies may include the revocation or suspension of a building permit, denial of new permits, issuance of a Stop Work Order, or Issuance of a Cease and Desist Order.

- C. A complaint of violation of this Local Law may be made by any resident, property owner, or Town Official, including the Enforcement Officer. Such complaint shall be filed orally, electronically or in writing with the Town Clerk and shall include the following information:
 - 1. The name, address and telephone number of the alleged violator if such information is available.
 - 2. A description of the nature of the alleged violation including a reference to the provision of this Local Law allegedly being violated.
 - 3. The dates and time of the alleged violation.
- D. All recorded complaints shall include follow-up. An immediate follow-up letter confirming that the complaint had been received and will be investigated shall be provided by the Enforcement Officer to the complainant.
- E. Upon receipt of a complaint of violation, the Enforcement Officer shall investigate to determine the presence of a violation and upon finding a violation shall issue to the landowner a notice including the items listed under Section 9.03 C together with any observations made by the Enforcement Officer on the basis of this investigation. Such notice shall also specify what corrective action is required by the owner or occupant of the property, and the date by which such action shall be taken. The term violation as used in Section 9.03 A shall exist only if the date of required action, as specified in the notice to the owner or occupant, passes without such specified corrective action having taken place.
- F. Notices required by this Section shall be issued by the Enforcement Officer either by personal service to the owner or occupant or by certified mail to the address of same shown on the tax rolls of the Town or contained in the statement of complaint.

ARTICLE 10: BOARD OF APPEALS

Section 10.01 Board of Appeals

The Board of Appeals of the Town of Cherry Valley shall hear and decide appeals from and review any order, requirement, decision or determination made by the Enforcement Officer. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Enforcement Officer. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the Town by filing with the Enforcement Officer and the Board of Appeals all papers constituting the record upon which the action appealed was taken. An appeal stays all

proceeding in furtherance of the action appealed unless the Enforcement Officer certifies to the Board, after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application. The Board of Appeals may reverse or affirm wholly or partially or may modify the order, requirement, decision or determination as in its opinion ought to be made in the circumstances.

Section 10.02 Procedures and Referrals

- A. All applications for action by the Board of Appeals shall be made to the Enforcement Officer on such forms as he may prescribe. Such applications may be made at any time except that an application for appeal under Section 10.01 above shall be made within sixty-two (62) days of the action being appealed.
- B. The Enforcement Officer shall transmit a copy of the application, together with any accompanying documents, to the Board of Appeals who shall schedule a hearing thereon. Public notice of said hearing shall be given by publication in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof and the Board shall deliver at least five (5) days before such hearing, mail notices thereof to the parties. Where any variance or permit application affects any real property lying within five hundred (500) feet from the boundary of any city, village or town or from any state, city, village or town property the Board of Appeals shall notify the Otsego County Planning Board of said application and submit copies of the application and any supporting documents thereto. No action shall be taken upon any matter referred to the Otsego County Planning Board until said Board shall have made a recommendation thereon to the Board of Appeals or thirty (30) days shall have elapsed since the date of referral.
- C. The hearing of an appeal or application shall take place within ninety (90) days of the filing of the appeal or application.
- D. Rehearing - Upon a motion initiated by any member and adopted by the unanimous vote of the members present, but not less than a majority of all the members, the Board of Appeals shall review at a rehearing, held upon notice given upon an original hearing, any order, decision, or determination of the Board not previously reviewed. Upon such rehearing, and provided it shall appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon concurring vote of all members present, reverse, modify or annul its original order, decision or determination.
- E. The Board of Appeals shall reach a decision on any application or appeal within sixty-two (62) days of the final hearing thereon. Such decisions shall be promptly filed in the office of the Town Clerk and shall be a public record. Within seven (7) days of such decision, notice thereof shall be transmitted to the Otsego County Planning Board whenever such decision related to an application referred to said County Planning Board.

Section 10.03 Variance Appeals:

It is the express intent of this section to ensure that the variance appeal process exists for the purpose of considering minor variations to the :Land Use Law which address unique circumstances.

The Board of Appeals shall have authority to vary the requirements of this Local Law subject to the following conditions:

- A. An application for such variance shall be made to the Enforcement Officer for transmittal to the Board, said application to contain the following items:
 1. the name, address and telephone number of the applicant;
 2. the location and land use district of the property for which the variance is sought;
 3. the existing use of said property including a description of any existing buildings;
 4. a citation to the provision of the Local Law for which the variance is sought;
 5. a justification of the request for variance.
- B. Area Variances: In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall consider:
 1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 2. whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 3. whether the requested area variance is substantial;
 4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- C. Use Variances: The Board of Appeals, on appeal from the decision or determination of the Enforcement Officer, shall have the power to grant use variances, as defined herein. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that land use regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that:

1. under applicable land use regulations the applicant is deprived of all economic use benefit from the property in question, which deprivation must be established by competent financial evidence;
 2. that the alleged hardship related to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 3. that the requested use variance, if granted, will not alter the essential character of the neighborhood, and
 4. that the alleged hardship has not been self-created.
- D. In granting a variance the Board, in its resolution, shall specify its findings and the fact that all of the conditions specified above are met.
- E. In the exercise of its power and duties, the Board of Appeals, through its chairperson, or in his/her absence, its acting chairperson, may compel the attendance of witnesses and may administer oaths prior to taking the testimony of any witness.
- F. In addition to the findings required before the granting of any variance or permit under this local law, the Board of Appeals may consider any other evidence necessary to show compliance to the intent and purpose of this Local Law.
- G. The Board, in granting any appeal, variance or permit may attach such conditions to said approval as, in its determination, are necessary to achieve the intent and purpose of this Local Law.

Section 10.04 Judicial Review

- A. Any person or persons aggrieved by any decision of the Board of Appeals or any officer, department, board or bureau of the Town may apply to the NYS Supreme Court for review by a proceeding under Article Seventy-Eight (78) of the New York Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk. The Court may take evidence or appoint a referee to take evidence as it may direct and report the same with his findings of fact and conclusions of laws if it shall appear that testimony is necessary for the proper disposition of the matter. The Court, at a Special Term, shall itself dispose of the case on the merits, determining all questions which may be presented for determinations.
- B. Costs shall not be allowed against the Board of Appeals unless it shall appear to the Court that it acted with gross negligence, in bad faith or with malice in making the decision being appealed.
- C. All issues in any proceeding under this Section shall have preference over all other civil actions and proceedings.

- D. If, upon the hearing of the NYS Supreme Court, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

ARTICLE 11: MISCELLANEOUS PROVISIONS

Section 11.01 Amendments

- A. No proposed amendment, supplement, change or modification of these regulations or the boundaries shown on the land use map shall be approved or disapproved until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.
- B. At least ten (10) days notice of such Public Hearing shall be published in a paper of general circulation within the Town. A written notice of any proposed change or amendment affecting a housing project authorized under the Public Housing Law, or within five hundred (500) feet of the boundaries of any city, village, town, or county or state, city, village town or county property shall be given the appropriate city, village, county, state bodies at least ten (10) days in advance. Such city, village, county, town or state shall have the right to appear and to be heard at such Public Hearing with respect to any such proposed change or amendment but shall not have the right to review by a court.
- C. Any land use regulation or amendment thereof which would change the classification of or the regulations applying to real property lying within distance of five hundred (500) feet from the boundary of any city, village, or town or from any county or state highway shall, before the Town Board takes final action on such matters, be referred to the Otsego County Planning Board. If the County Board disapproves any such proposal or recommends modification, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after adopting a resolution fully setting forth the reasons for such contrary action.
- D. Every amendment to this land use local law excluding any map incorporated therein, adopted pursuant to this section, shall be entered in the minutes of the Town Board; such minutes shall describe and refer to any map adopted in connection with such amendment. All map changes will be filed with the Town Clerk.

Section 11.02 Referral to Town Board of Appeals

Any application requiring a variance shall be referred to the Town Board of Appeals whenever said application relates to a site plan under review by the Planning Board. The Town Planning

Board may approve any such site plan, conditional upon approval of a variance by the Town Board of Appeals.

Section 11.03 Interpretation and Conflict with Other Laws

In this interpretation and application, the provisions of this Local Law shall be held to be minimum requirements, adopted for the promotion of public health, morals, safety, and general welfare.

The Land Use Law shall not interfere with, abrogate, or annul any easement, covenant, or other agreement between parties, except provided, however, that when the Land Use Law prohibits an activity or provides a greater restriction on the use of buildings or land or on the height of buildings, or requires larger open spaces, or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule, regulation, or by any easement, covenant, or agreement, the provisions of these Land Use Law shall control.

Where the requirements of another statute, law, ordinance, rule, or regulation conflict with this Land Use Law, the more restrictive provision shall control.

If any two or more provisions of the Land Use Law are found to be in conflict with one another, the strictest provision, or the one imposing the higher standard shall govern.

Section 11.04 Separability

If any specific part or provision or standard of this Local Law, or the application thereof to any person or circumstance, be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof.

Section 11.04 Interpretation; Conflict With Other Laws

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements adopted for the promotion of the public health, safety, and the general welfare. Whenever the requirements of this Local Law are inconsistent with the requirement of any other lawfully adopted rules, regulations, ordinances or local laws, the more restrictive provisions, or those imposing the higher standards, shall govern.

Section 11.05 Effective Date

This Local Law and the accompanying map shall take effect immediately upon their filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable

provisions of law, specifically, Article 3, Section 27 of the New York State Municipal Home Rule Law.