

RECEIVED

DEC 29 2005

TOWN OF EXETER

LAND USE ORDINANCE

OTSEGO COUNTY
PLANNING DEPT.

ARTICLE 1 ENACTMENT, TITLE AND PURPOSE

Section 1.1 Enactment

The Town Board of the Town of Exeter in the County of Otsego, on this 11th day of July, 1989, under the authority of Section 261 of Article 16 of Chapter 62 of the Consolidated Laws of the State of New York, hereby ordains and enacts the following regulations.

Section 1.2 Title

This ordinance shall be known as the Town of Exeter Land Use Ordinance.

Section 1.3 Purposes in View

This ordinance is designed to lessen congestion in the streets; to secure safety from fire, flood, and other dangers; to promote health and general welfare; to prevent overcrowding of land; to avoid undue concentration of population; and to facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements. This ordinance is made with reasonable consideration of the character of the various districts, and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the town.

Section 1.4 Application of Regulations

Except as hereinafter provided, no building structure or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved, or altered unless in conformity with the regulations herein specified.

ARTICLE 2 DEFINITIONS

Section 2.1 Meaning of Words

Except where specifically defined by this article, all words used in this ordinance shall carry their customary meanings. Words uses in the present tense include the future, and the plural includes the singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the words "plot" and "parcel"; the term "shall" is always mandatory; and the word "used" or "occupied" as applied to any land or building shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied".

Section 2.2 Definitions

Accessory Building: A detached building housing an accessory use.

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.

Airport: Any portion of land specifically designed and continually used for the landing and taking off of aircraft.

Alterations: As applied to a building or structure, means a change or rearrangement in the structural parts or in the existing facilities, other than repairs or an enlargement, whether by extending on a side or by increasing height, or the moving from one location or position to another.

Animal Hospital: Structure for the care and treatment of animals.

Architectural Value: A sum total of style, integrity or originality, antiquity and craftsmanship as they related to structures or buildings.

Area Regulations: The regulation of building size, setbacks or yards, parking and loading requirements and similar regulations, but excluding performance standards.

Arrangement: The placement of materials into a harmonious order or into a correct or suitable sequence, relationship or adjustment.

Auto Body Shop: The use of a parcel of land or portion of any parcel of land whether inside or outside a building for the replacement, repair or painting of all or a portion of auto body or bodies.

Auto Showroom: A building for the display and sale of new and second-hand motor vehicles as defined in the Vehicle and Traffic Laws of the State of New York.

Auto-Wrecking Yard: The use of any parcel of land or portion of any parcel for the dismantling, cutting, demolition and burning of automobiles and storage of the same prior to and after completion of said processes.

Basement: That floor of a building which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building. Cellars are included in this definition.

Boarding House: A dwelling in which rooms, with or without board, are offered for rent. Rooming houses and adult homes are included in this definition.

Breweries: A building for the enclosed process of making alcoholic beverages, bottling, packaging and delivery, including the storage of plant owned vehicles.

Building (Noun): Any structure over 200 square feet which is permanently affixed to the land and is covered by a roof supported by columns or by walls and intended for shelter, housing or enclosure of person, animals or chattels.

Building (Verb): Any action upon a building, structure, or portion thereof which involves, and is limited to the following: construct, erect, relocate, extend, remove, demolish or structurally change.

Building Coverage: That portion of a parcel occupied by a building as measured by the projection of the outermost walls to ground level. Building coverage is customarily expressed as a percentage of total parcel area.

Building, Front Line of: The line of that face of the building nearest the front line of the lot. This face shall include bay windows, covered porches whether closed or unclosed, or any projections thereof, which are over fifty (50) square feet in floor area.

Building, Height of: The vertical distance from the mean finished grade at the front line of a building to the horizontal projection of the highest structural part of a building.

Building, Principal: A building in which the principal use of the lot, on which it is located, is conducted.

Camp: Any parcel or parcels of land or water on which are located two or more cabins, tents, travel trailers, houseboats or other accommodations of a design or character suitable for seasonal or temporary recreational oriented occupancy regardless of whether such accommodations are actually occupied on a seasonal basis or otherwise (Boy Scout, Girl Scout, Children's Camps, etc.).

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

Car Lot: A parcel of land for public selling or offering for sale of two or more vehicles at any one time.

Center Line of Road: A line midway between and parallel to two property lines along any public highway 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.

Channel: A natural or artificial watercourse of perceptible extent with a definite bed and banks to confine and conduct continuously or periodically flowing water.

Commercial Use: Businesses intended for the sale of retail goods or personal services; department store; restaurant; secondhand shop; tavern; but excludes gas station, garage, carwash, utility and agriculture.

Commercial Laundry: A building or part of building, not otherwise defined, and used for the cleaning of clothing or household goods for profit.

Common Open Space: An area reserved for use by patrons, customers, residents, or the general public, suitably landscaped and exclusive of building coverage, parking areas or driveways.

Community Centers: A public or private building or structure for community use with no commercial activities being conducted therein.

Condominium: See definition of Dwelling, Multiple.

Day Camp: Land and facilities thereon designed to provide for the daytime care and instruction of children on a seasonal basis.

Developer: Shall mean the legal owner or owners of all of the land proposed to be included in a development proposal. The holder of an option or contract to purchase, a lessee having a remaining term of not less than twenty years, or other person having an enforceable proprietary interest in such land, shall be deemed to be a developer for the purposes of the law.

Dog Kennel: A structure or land used for harboring, sheltering or boarding four or more dogs, over six months of age.

Dump: A lot or part thereof used primarily for the storage or disposal by

abandonment, dumping, burying or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or part of vehicles.

Dwelling: A building designed or used exclusively as the living quarters of one or more families. For the purpose of this ordinance this definition shall not include mobile homes.

Electrical Distribution Substation: A place with or without a building where equipment is assembled or placed and designed to receive energy from a high voltage distribution supply system, so as to convert it to a form suitable for local distribution and to distribute the energy to feeders through switching equipment designed to protect the service from the effects of faults.

External Features: The architectural style and general arrangement of such portion of the exterior of a structure as it is visible from a public way.

Family: One or more persons occupying a dwelling unit and living as a single housekeeping unit.

Farm: Any parcel of land which is in excess of ten (10) acres and used principally for the raising of agricultural products or the keeping of poultry, fowl, livestock, or domestic animals, including necessary farm structures and the storage of farm equipment.

Farming, Farm Use or Occupancy: Any activity customarily carried on upon a farm, such as cultivation of land and animal husbandry.

Farm Pond: As distinguished from swimming pool - any standing body of water used for the purposes of watering livestock, fish pond or wild life marsh.

Floor Area: The sum of the gross horizontal area of the several floors in any building including the basement of a building and its accessory buildings on the same lot, and including the area of roofed porches, roofed terraces, elevator shafts and stairwells (at each floor), attics and floor space used for mechanical equipment (where there is structural head room of seven feet six inches or more). All dimensions shall be measured before exterior faces of walls.

Floor Area Ratio: The total aggregate floor area of all buildings on a lot, divided by the area of such lot.

Funeral Parlor: A building used for preparation and ceremonies connected with the burial and/or cremation of the dead.

Garage, Commercial: Any garage operated for gain, and which is used for storage, repair, sale, greasing, washing, servicing, adjusting, or equipping of motor vehicles and/or for the retail sale of fuel for motor vehicles. Gasoline stations are included in this definition.

Garage, Private: An enclosed space for the storage of one or more motor vehicles and within which space no business activity or industry connected directly or indirectly with motor vehicles is conducted.

Garage Sales: The offering for sale of personal goods at the premises of any property. This definition shall also include, but not be limited to, the following: lawn, porch, barn.

Grade-Mean Finished: The mean finished grade is the average grade level of the ground measured at the front wall of the building.

Highway Right-of-Way: That line which measures the right-of-way of any road and which is established by the town, county or state agency having jurisdiction over the road.

Home Occupation: An occupation or profession customarily conducted entirely within a dwelling which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The office of a physician, dentist, lawyer, architect, engineer, realtor, insurance agent or other professionally engaged in the purchase and/or sale of commercial goods shall be deemed to be home occupations; and the occupations of seamstress, tailor, child care, barber, beautician, tutoring, cabinet making, furniture

repair, florist, the giving of music or dance instruction limited to six pupils at one time and similar occupations shall be deemed to home occupations. Occupations such as animal hospital or kennel, auto repair shop, vehicle sales, restaurant, tavern, store, funeral home, mortuary or other similar uses shall not be deemed home occupations. Furthermore:

1. No more than one-half of the floor area of the principal building shall be so used for said home occupation;
2. In the conduct of said activity, no more than one person outside of the family residing on the premises shall be employed;
3. In the conduct of such activity, there shall not be any exterior storage of materials or equipment;
4. No exterior sign or display shall be permitted except as provided by appropriate law of the Town of Exeter.

Home Owners Association: A contract agreed to by two or more owners of homes in any area that provides regulations for the operation and maintenance of commonly owned facilities and/or open space.

Hospital: Any building whose principal purpose is the diagnosis, treatment or care of human ailments or conditions. Primary care facilities, nursing homes, convalescent homes, clinics and like facilities are included in this definition.

Hotel: A building or any portion thereof, which contains living and sleeping accommodations for transient occupancy and has a common exterior entrance or entrances, and which may also include dining rooms, kitchens, serving rooms, ballrooms and other facilities and services intended primarily for the accommodation of the personal needs of its occupants.

Junk: Anything worn-out or fit to be discarded. Also, anything of inferior quality; something cheap or shoddy.

Junk Yard: Any parcel of land including buildings thereon, which is used primarily for the collecting, storage or sale of waste paper, rags, scrap metal or discarded material; or for collecting storage, dismantling or salvaging of machinery or vehicles not in running condition and the sale of parts therefrom. The deposit on a lot of two or more wrecked or broken down vehicles or the major parts thereof for three or more months will be deemed to make the lot a "junk yard".

Landscaping: The act of altering or changing the natural features of a plot of ground (usually around a building) as by adding lawns, trees, bushes, etc. This definition does not include within the term altering such things as maintenance or replacement.

Laundromat: A business premises equipped with individual clothes washing machines for the use of retail customers.

Laundry Collection Station: A building in which clothes and household goods are collected and returned and services are paid for while actual laundering may occur on separate premises.

Living Area: That area comprised of the enclosed occupied living accommodations within a residence, exclusive of basements, garages, and open porches.

- 1 -

Loading Space: An off-street space, area or berth, with an appropriate means of access to a street or way, intended for the temporary parking of a vehicle while loading or unloading merchandise or materials.

Lot: A parcel of land separately recorded in the Otsego County Clerk's Office, or separately depicted on the Town Real Property Assessment Maps. 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 space, shall be considered as a separate lot for the purpose of this ordinance.

Lot Line: The established division line between different parcels of property.

Lot, Corner: A double frontage lot where two or more sides are formed by intersecting street lines or their projections, and the interior angle of said lines is one hundred and thirty-five (135) degrees or less.

Lot, Depth: The mean horizontal distance between the front and rear lot lines measured along the median between the two (2) side lot lines.

Lot, Front Line: The lot line abutting a public street or highway right-of-way. On corner or double frontage lots, this shall be the smaller of the lot lines abutting such rights-of-way, or the line abutting the street upon which a majority of adjacent lots front, whichever is more appropriate.

Lot, Width: The mean horizontal distance measured at right angles to its depth along the front lot line.

Master Plan: The officially adopted plan of the Town of Exeter, New York.

Mining: The removal of top soil or extraction of petroleum products or natural gas and/or underground minerals such as ores, rock, sand, or gravel, whether by drilling, tunnelling or open pit methods.

Mobile Home:

1. Single-wide - A self-contained movable living unit capable of transportation on its own chassis and wheels on a public highway, and complying with State building codes for mobile homes. The removal of wheels or anchoring of a mobile home to a permanent foundation shall not remove it from this definition.
2. Double-wide - A multi-section HUD coded home, each section delivered to building site on their own chassis, with two complimentary sections. The sections are joined on-site to create a single living unit. The removal of wheels or anchoring of a double-wide to a permanent foundation shall not remove it from this definition.

Mobile Home Park: Any parcel of land, with or without improvements upon which two (2) or more mobile homes, used for dwelling purposes, are placed.

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

Motel: A building or series of buildings serving the same functions as a hotel, but providing separate outside entrances to individual or small groups of rooms. The term motel includes auto courts, motor courts, motor inns or lodges, and tourist cabins or

courts.

Motor Freight Station: An area or building used primarily for the maintenance and/or storage of trucks, tractor-trailer vehicles, and parts for tractor-trailer vehicles and industrial materials.

Non-Conforming Building: A building or structure existing at the time of enactment of this law or as a result of amendments thereto, which does not conform to the regulations of the district or zone in which it is situated.

Non-Conforming Use: A use of land existing at the time of enactment of this law or as a result of amendments thereto, which does not conform to the regulations of the district or zone in which it is situated.

Office Building: A building that is divided into offices, either single or suites, for the transaction of business other than for mercantile or manufacturing purposes where merchandise is on display and offered for sale. Offices used for a professional business or for public or semi-public activities in whole or part are included in this definition.

Ordinary Maintenance and Repair: An action involving painting, roof repair and other similar minor repairs, not including structural alterations or architectural details.

Parking Lot: Any space used for the storage of more than three (3) vehicles on a continuing basis, such space either being for hire or accessory to an existing building or use of land.

Parking Space, Off-Street: An off-street area or berth, with an appropriate means of vehicular access to a street, intended for the temporary storage of vehicles.

Plan: The design of a development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, private streets, ways and parking facilities. The phrase "provisions of the plan" when used in these regulations shall mean the written and graphic materials referred to in this definition.

Plat: A plan for developing a piece of undeveloped property.

Plot: See Parcel of Land definition.

Private Swimming Pool: A pool constructed on a parcel of land designed to be used by the occupants of the lot excluding public or club use.

Profession: A vocation, occupation or employment involving labor, skill, education, special knowledge and compensation for profit, but the labor and skill involved is predominantly mental or intellectual, rather than physical or manual.

Public Utility Use: A building, structure or lot used for or in connection with the transmission, distribution or regulation of water, sewer, gas, electric, telephone, or other public utility service.

Public & Semi-Public Use: Land use or buildings under the auspices of a governmental unit, public agency or those involving public benefit or advantage; hospitals, schools, parks and recreational facilities, cemeteries, passenger stations, libraries, fire stations, public utility installation, government offices or facilities philanthropic institutions, places of worship, community centers, day nurseries, and like u. are included in this definition.

Rear-Yard Depth: The distance between the rear lot line and the nearest point of a principal building.

Reconstruction: Reproducing by new construction the exact form and detail of a deteriorated or missing part.

Recreational Areas: Land or structures designed for recreation or any groups.

Residential District: Any zoning district within which a one family dwelling is permitted as a principal use.

Restaurant: A building or portion of a building wherein food or beverages are available for on-site consumption including drive-in food service.

Restoration: Rebuilding to approach as nearly as possible the original form by removing later work or replacing missing original work.

Retail Store: Any building or permanent structure or portion thereof in which one or more services or one or more articles or merchandise are sold at retail, including department stores. Retail outlets in which minor manufacturing or processing are incidental to the sale of goods or services on the same premises are included in this definition.

Road, Arterial: A street, road or highway designated as an arterial road on the Town Official Map, or constructed or proposed for construction, to arterial standards in compliance with the town subdivision regulations.

Road, Collector: A street, road or highway designated as a collector road on the Town Official Map, or constructed or proposed for construction, to collector standards in compliance with the town subdivision regulations.

Road, Local: A street, road or highway designated as a local road on the Town Official Map, or constructed or proposed for construction to local road standards in compliance with the town subdivision regulations.

Scale: Harmonious relationship of parts to one another.

Screening: Fences, bushes, or trees or other natural and/or artificial materials which partially or completely obscures the visual character of any given building or use of land.

Shopping Center: A group of two (2) or more commercial uses, located in the same or separate buildings on a single lot, which also contains all or part of the required off-street parking for such uses, with common points of ingress and egress.

Side Yard Width: The distance between the side line of the lot and the nearest point of a principal building.

Stable: A building or structure in which domestic livestock are housed.

Street: Any public way dedicated to public vehicular travel or otherwise acquired by a municipality for highway use purposes. Street shall be taken as synonymous with road or highway.

Streetline: Limit of street or highway right-of-way line. For the purpose of this law, streetline shall be the highway right-of-way line.

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

Swimming Pool: Any body of water or receptacle for water having a depth at any point greater than two (2) feet, used or intended to be used for swimming, and constructed, installed or maintained in or above the ground. A swimming pool shall be deemed a structure for all purposes under the provisions of this law.

Texture: The visual or tactile surface characteristic and appearance of materials.

Theater: A place of assembly for the showing of movies and the production of plays and special events.

Theater, Outdoor Drive-In: An open lot or part thereof with its appurtenant facilities, devoted primarily to the showing of movies or theatrical productions to patrons seated in automobiles or outdoor seats.

Town House: A two story single-family dwelling unit attached to another similar dwelling unit utilizing common open space and parking.

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

Warehouse: A building or portion thereof designed or used for the storage of merchandise, supplies, or other commodities.

Wholesale Establishment: A building or buildings used as a wholesale distribution center.

Yard: An open space on the same lot with a building, unoccupied and obstructed from the ground upward except as otherwise provided herein.

Yard, Front: The area lying between a road or street and the closest point of a principal building and extending from one side lot line to the other. The minimum front yard required by this ordinance shall be defined by a line parallel to a street or road at the specified distance established by the District Regulations from the centerline of the road.

Yard, Rear: The area lying between a rear lot line and the closes point of a principal building and extending from one side lot line to the other. The minimum rear yard required by this ordinance shall be defined by a line parallel to a rear lot line at the specified distance therefrom, established by the district regulations.

Yard, Side: The area lying between a side lot line and the closest point of a principal building and extending the full depth of the lot. The minimum side yard required by this ordinance shall be defined by a line parallel to each side lot line at the specified distance therefrom established by the district regulations.

ARTICLE 3 DISTRICTS

Section 3.1 Establishment of Districts and Map

- a. For the purpose described in Section 1.3 of this ordinance, the Town of Exeter is hereby divided into the following districts:

R-80 Two Acre Residence-Agriculture District

R-HD Residential Hamlet District
PDD Planned Development District
FPD Flood Protection District
RSD Recreational and Seasonal District
WPD Wetland Protection District

b. The boundaries of the land use districts are shown on the Official Town Land Use Map, a copy of which is attached and hereby made a part of this ordinance. The Land Use Map may from time to time be amended in the same manner as any amendment to this ordinance.

Section 3.2 Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of any of the aforementioned districts as shown on the Official Town Land Use Map, the following rules of interpretation shall be used:

a. Where district boundaries are indicated as approximately following the centerlines of roads and highways; railroads; public utility easements; water course; town boundaries; property lines; or lot lines, said boundaries shall be construed to be coincident with such lines or projections thereof.

b. Where district boundaries are indicated as being approximately parallel to any of the features described in Section 3.2a, said boundaries shall be construed as being parallel thereto and at such distance as are indicated on the Official Town Land Use Map or as shall be determined by the use of the scale.

c. Wherever any feature described in Section 3.2a is depicted on the Official Town Land Use Map but such depiction varies from the actual location observed in the field and indicated by a physical feature, monument or mark, such physical feature, monument or mark shall be considered as being the reference point in determining a district boundary.

ARTICLE 4 DISTRICT REGULATIONS

Section 4.1 R-80 Two Acre Residence-Agriculture District

The following regulations shall apply in all R-80 districts:

a. Permitted uses:

1. One family dwellings;
2. Two family dwellings;
3. Mobile homes;
4. Farms and agriculture uses, including temporary stands for the sale of agriculture products grown on the premises;
5. Public and quasi-public uses, places of worship, schools, parks and playgrounds, government facilities and public utility facilities;
6. Forest management areas;
7. Accessory uses of any permitted use;
8. Home occupations.

b. Uses permitted upon issuance of a special permit:

1. Places of outdoor public assembly or amusement in compliance with Town Ordinance No. 1;
2. Camps, campgrounds, including travel trailer parks;
3. Apartment dwellings for the exclusive occupancy of persons employed

by a permitted agricultural use on the same lot, or on adjoining lots in the same ownership, as the land in active agricultural use. The number of such apartment dwelling units permitted shall not exceed one for every two acres of land in active agricultural use;

4. Bed and Breakfast.

c. Lot area, yard and height regulations:

1. Minimum lot area - 2 acres;
2. Minimum frontage on public highway - 200 feet;
3. Minimum front yard setback - 75 feet;
4. Minimum side yard width - 50 feet;
5. Minimum rear yard depth - 50 feet;
6. Maximum building height - 35 feet.

d. Special regulations:

1. Building permits shall be required for all new construction.

Section 4.2 R-HD Residential Hamlet District

a. Permitted uses:

1. One family dwellings;
2. Two family dwellings;
3. Accessory uses;
4. Retail sale of merchandise wholly within a building unless displayed outdoors daily for twelve hours or less;
5. Barber shops, beauty parlors, laundromats, small repair shops;
6. Business and professional offices;
7. Banks, insurance, real estate, savings and loan offices;
8. Public offices, public service and public utility facilities;
9. Public or private schools;
10. Mixed occupancy structures containing dwelling units and commercial uses;
11. Churches and places of worship;
12. Home occupation.

b. Uses permitted upon issuance of a special permit:

1. Retail sale of gasoline for automotive use;
2. Automobile, truck and farm machinery sales and service facilities;
3. Funeral homes;
4. Bed and Breakfast;
5. Double wide mobile homes:

a) two halves A and B manufactured at the same time and place;

b) are set on permanent foundation or cellar of concrete with sidewalls of concrete or laid block or mortar and anchored so as to appear to be permanent or modular built structure.

c. Lot area, yard and height regulations:

1. Minimum lot area - 20,000 square feet;

2. Minimum frontage on public highway - 100 feet;
3. Minimum side yard width - 15 feet;
4. Minimum rear yard depth - 15 feet;
5. Maximum building height - 35 feet.

d. Special regulations:

1. Building permits shall be required for all new construction.

Section 4.3 PDD Planned Development District

The following regulations shall apply to all PDD districts:

a. Permitted uses:

1. Any use, or combination of uses otherwise permitted by this ordinance. Combination of uses shall be permitted only upon demonstration of compatibility in the form of screening buffer strips, and performance standards specified in this ordinance.

b. Lot area, yard and height regulations:

1. Minimum district area - 10 acres;
2. Minimum frontage on public street - 100 feet;
3. Minimum front yard setback - 75 feet;
4. Minimum setback from lot lines other than front lot line - 40 feet;
5. Maximum building height - 35 feet.

c. Special regulations:

1. All lands within a proposed PDD shall be held in single ownership or other form that assures development of the entire district in accordance with a single approved plan.
2. All lands within a proposed PDD shall be shown upon a plan which:
 - a) shows how various types of uses will be screened from one another upon the site;
 - b) show the relationship of proposed development to all adjacent development.
3. A community impact statement shall be prepared to accompany any such plan. This community impact statement shall contain:
 - a) an analysis of the cost of any direct public improvements related to site development;
 - b) a statement of anticipated town and special district tax revenue as a result of the project;
 - c) a statement of the anticipated impact of the proposed development upon public facilities such as highways, school parks, fire protection, water supply and sewage disposal, police services, sanitary landfills, and health care facilities;
 - d) an analysis of the anticipated economic impact of the proposed development upon local

employment, housing market residential and non-residential property and building values, including the rate of occupancy of existing residences and commercial or industrial structures.

4. Upon a finding that the proposed development will benefit the community as a whole, and it is consistent with community plans, the development plan may be approved. Development within the PDD district shall be limited to the type, size and location shown on the development plan. uses and structures not shown on the approved development plan shall be considered as being prohibited.
5. The approval of a use in one PDD district does not imply approval of such use in any other PDD district, nor does approval of a use or uses in one PDD district in any way limit the types of uses that may be permitted in future PDD districts.
6. Building permits shall be required for all new construction.
7. All land uses and structures shall be subject to all applicable general regulations of this ordinance.

Section 4.4 FDP Flood Protection District

The following regulations shall apply in all FDP districts in addition to the regulations of the underlying land use district:

- a. All buildings and structures shall be designed and anchored to prevent flotation, collapse, or lateral movement; shall use construction materials and utility equipment that are resistant to flood damage; and shall use construction methods and practices that will minimize flood damage.
- b. All public utility systems and facilities serving any building or structure shall be located, elevated, or constructed to minimize or eliminate flood damage; and adequate on-site drainage shall be provided to reduce exposure to floor hazard.
- c. No floor level, including a basement floor, in the residential structure shall be constructed below the water surface elevation level of a 100 year flood.
- d. In a non-residential structure, no floor level, including a basement floor, shall be constructed below the water surface elevation level of a 100 year flood; except that floor area, together with attendant utility and sanitary facilities, may be constructed below this level if flood-proofed as specified herein.
- e. Within a floodway designated by the Federal Insurance Administrator, no use, including landfill, or structure shall be permitted within any flood plain having special flood hazard, unless or until the person owning or developing such use or structure shall demonstrate that the proposed uses approved by the Town Planning Board under this section, will not increase the water surface elevation of a 100-year flood more than one (1) foot at any one point.
- f. Within a designated floodway, fill or encroachment that would impair it's ability to carry and discharge the waters resulting from a 100-year flood is prohibited, except where the effect on flood heights is fully offset by stream improvements.
- g. No building or structure shall be erected or altered in any designated Flood Protection District unless and until a site plan showing such proposed development is approved by both the Town Planning Board and NYS DEC and necessary permits therefore issued.
- h. Flood proofing measures as required in this section may include the following where

appropriate:

1. Anchorage to resist flotation and lateral movement;
2. Reinforcement of walls to resist water pressures;
3. Installment of watertight doors, bulkheads and shutters;
4. Use of paints, membranes or mortars to reduce seepage of water through walls;
5. Addition of mass or weight to resist flotation;
6. Installation of pumps to lower water levels in structures;
7. Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters;
8. Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors;
9. Elimination of gravity flow drains;
10. Construction to resist rupture or collapse caused by water pressure or floating debris;
11. Elevation of structures to or above the necessary flood protection elevation.

Section 4.5 RSD Recreational and Seasonal District

The following regulations shall apply in all RSD districts:

a. Permitted uses:

1. One family dwellings;
2. Accessory uses;
3. Mobile homes.

b. Uses permitted upon issuance of a special permit:

1. Limited products, sales and service.

c. Lot area, yard and height regulations, pertaining to all structures:

1. Minimum lot area - 20,000 square feet with a minimum frontage of 100 feet;
2. Minimum road or access route setback - 35 feet;
3. Minimum side yard width - 10 feet;
4. Minimum rear yard depth - 30 feet, unless there is a side yard clearance of 20 feet on one side of structure;
5. Maximum building height - 35 feet;

d. Special regulations:

1. Building permits shall be required for all new construction.

Section 4.6 WPD Wetlands Protection District

All activities in areas shown on Department of Environmental Conservation Wetlands Map of December 1987 shall be regulated according to the provision contained in Article 24 of the New York State Environmental Law. All written use shall apply to the 1975 Wetlands Act.

ARTICLE 5 GENERAL REGULATIONS APPLYING TO ALL DISTRICTS

Section 5.1 Prohibited Uses

Uses not specifically permitted under Article 4 of this ordinance

are prohibited, except that the Planning Board may find that a use is sufficiently similar to a permitted use as to be included within the definition of that use.

Section 5.2 Principal Buildings Per Lot

There shall be only one principal building per lot, except that where a sufficiently large parcel exists, several principal buildings may be established, provided each structure has an identifiable land area which satisfies the lot area and yard requirements of the district regulations applying to the district in which it is located.

Section 5.3 Exceptions to Lot Area, Height and Yard Regulations

a. Substandard Lots: Any lot recorded before the effective date of this ordinance, whose area, or frontage on a public street is less than that specified in this ordinance, may be considered as complying with such requirements and no variance shall be required, provided that:

1. Such lot does not adjoin another undersized lot in common ownership;
2. Such lot has a minimum area sufficient to provide for proper operation of a well and septic tank system, if such are required, and;
3. Minimum required side yard widths, or rear yard depths required for such lots shall be reduced to not less than one half those required in the district.

b. Height Exceptions: The height regulations within the district regulations shall not apply to the following types of structures:

1. Church spires, domes, belfries, towers or cupolas not used for human habitation;
2. Chimneys, sky lights, bulkheads and fire walls, stairwells, mechanical and elevator penthouses;
3. Water tanks, grain storage, barns and silos;
4. Ornamental or decorative parapet walls, cornices, weather vanes or other decorative roof structures, other than signs;
5. Antennae towers, siren towers, utility poles or towers.

c. Required Front Yard Setback: Whenever a lot lies within a developed area where structures are located closer to a public highway than permitted under the applicable district regulations, the required front yard setback may be considered as being the average front yard setback of such structures, subject to the following conditions:

1. There must be a minimum of four existing structures located along the same side of the highway and within 300 feet of the lot being considered for exemption for part of the front yard setback requirement;
2. It shall be demonstrated that a reduction of the required front yard setback will not adversely affect access to adjacent properties, increase hazards to

public safety, or be incompatible with the existing pattern of development;
3. It shall be demonstrated that compliance with the required front yard setback will cause an unreasonable restriction upon the development of said lot.

Section 5.4 Yards on Corner Lots

On a corner lot, yard abutting a street shall be considered a front yard, and the minimum front yard setback required by the district regulations shall be provided. The owner of such corner lot shall decide which of the remaining yards shall be the rear and side yards.

Section 5.5 Cluster Development

The Town Planning Board may modify applicable provisions of this Land Use Ordinance simultaneously with the approval of a subdivision plat or plats, however, such authorization shall be subject to the following conditions:

- a. The owner of the land being subdivided desiring this modification, shall notify the Planning Board of his intent when applying for subdivision approval.
- b. The Planning Board, before modifying requirements, shall find that such modification would be consistent with the intent of this authorization and in the board's judgement, beneficial to the interest of the town and the neighborhood in which the subdivision is located.
- c. The application of this procedure shall result in a permitted number of lots or dwellings, units which shall not exceed the number which in the boards' judgement could be permitted if the land were subdivided in conformance with the requirements applicable to the district in which the subdivision is to be located.
- d. If as a result of this procedure, lands are made available for common open space or public use, such lands shall be clearly indicated on the subdivision plat and subject to the requirements for maintenance, ownership or dedication set forth in the Town Subdivision Regulations.

Section 5.6 Parking and Loading Areas

a. For all uses and structures, off-street parking shall be required in accordance to the following standards:

1. Residential uses - two parking spaces for every dwelling unit;
2. Tourist homes, hotels, motels, hospitals and nursing home - one parking space for every guest room or patient bed;
3. Retail store - one parking space for every 200 square feet of floor area;
4. Wholesale trade, manufacturing warehouse or storage - one parking space for every 1,000 square feet of floor area;
5. Theaters, restaurants, eating and drinking places, churches and places of worship, and places of public assembly - one parking space for every four seats, or, in the absence of fixed seating, one space for every sixty (60) square feet of floor area exclusive of kitchens, stage, dance floor, waiting areas, or storage areas;
6. Offices, business and professional offices - one parking space for each 300 square feet of floor area;
7. Unspecified uses - one parking space for every 200 square feet of building area or one parking space for every 1,000 square feet of site area, whichever is greater, or as specified by the Planning Board during site plan review based upon the greatest number of employees and customers using the structure or use at any single time.

b. Required Loading: Off-street loading spaces shall be provided for all non-residential uses at a rate of one space for every receiving door or loading dock intended for use to load and unload cargo to or from a truck.

c. Required Paving: Parking and loading spaces, driveways and aisles serving or locating in a parking area containing eight (8) or fewer spaces shall be paved with at least a suitable base of compacted gravel. All other parking or loading space, driveway or aisle shall be paved to at least the standards of a local street. Whenever a driveway, aisle or loading space is intended for use by heavy trucks or equipment, such facilities shall be constructed to a standard sufficient to withstand damage from such use.

d. Size: All required parking space shall be at least ten (10) feet in width and twenty (20) feet in depth.
All required loading spaces shall be at least ten (10) feet in width and fifty-five (55) feet in depth.

e. Location: The location of any entrance or exit of a driveway, aisle, parking or loading area where it enters a public right-of-way shall be subject to approval by the Town Highway Superintendent, and a permit for same shall be obtained from him prior to construction.

Section 5.7 Temporary Uses

- a. Temporary uses may be allowed in any district upon issuance of a permit therefore by the Town Board.
- Said permit shall specify the location and type of use, signs to advertise such use, the hours of operation, and the dates between which such temporary use shall be permitted. Such temporary use permits shall not be issued to allow a use for over thirty (30) days, and shall only be issued under the following conditions:
1. An application for a temporary use permit is made by the owner of the property on which such use is to be located;
 2. A sketch of the proposed layout of such temporary use, including the approximate location of any buildings, structures, trailers, tents, enclosures, parking areas and signs, shall be submitted for review with the permit application, and the use of the site shall be restricted to that which is shown on the application and sketch;
 3. Adequate water and sewage disposal facilities shall be provided to accommodate the needs of persons involved in the temporary use. Sufficient information on the number of persons and duration of use shall be provided to the Town Board, who may request the advice and assistance of the New York State Department of Health in determining the number and type of such facilities that may be required.
- b. As a condition to granting a permit for a temporary use, the Town Board may require that a bond be provided by the owner or operator of such use, sufficient to clean and restore the site to a condition at least equal in quality to that which existed before the temporary use was established, should the owner or operator thereof fail to do so. Such cleaning and restoration may include removal of litter, garbage or other solid waste; replacement or stabilization of top soil; removal of debris; equipment or other moveable property; and replacement of ground vegetation.

Section 5.8 Signs

- a. In all districts, the following types of signs are specifically prohibited:
1. Signs so located so as to restrict vision and impair safety of employees, customers, pedestrians or motorists;
 2. Lighting devices or internally lit signs so placed or directed as to cause the illumination therefrom to produce a glare or reflection onto a public street or sidewalk, that constitutes a hazard or nuisance;
 3. Signs or sign structures exceeding 25 feet in height.
- b. All signs shall be erected or supported to withstand a wind of 70 miles per hour.
- c. Signs which constitute a hazard to public safety by reason of their location or physical condition may be removed by order of the Town Supervisor. If the hazard permits, the person to whom the permit for such sign was issued shall be notified prior to such removal.

Section 5.9 Junk Vehicles

- a. A maximum of two unlicensed, unoperatable vehicles per residence.
- b. Agricultural equipment is exempt.

Section 5.10 Refuge Disposal

- a. No dumping or burning of refuse generated outside the Town of Exeter shall be permitted inside the Town of Exeter.
- b. No incinerators of any type are permitted within the Town of Exeter.
- c. No dumping or storing of toxic or hazardous waste is permitted, as regulated by DEC.

ARTICLE 6 GENERAL REGULATIONS APPLYING TO SPECIFIC USES

Section 6.1 Storage of Flammable Liquids

Wherever any flammable liquid is stored above ground in tanks or other containers with a total capacity of greater than five hundred and fifty (550) gallons, such tanks or containers shall be located within earthen dikes having a capacity not less than twice the capacity of the tanks or containers surrounded. The edge of such dikes shall be located at least 100 feet from any property line.

Section 6.2 Junk Yards

All junk yards, dumps, wrecking yards or places for the collection of waste materials or inoperable equipment shall conform to the following requirements:

- a. All such yards, enclosures or areas used for such collection or storage shall be enclosed by a screen fence at least eight feet in height entirely surrounding such yard or area.
- b. Materials stored and collected shall not be stacked or piled to a height greater than the closest screen fence.
- c. Material shall not be collected or stored on a hillside of greater than 10 percent, a flood plain, or adjacent to any stream bed.

Section 6.3 Mobile Homes and Mobile Home Parks

- a. All mobile homes shall be provided with an adequate water supply and method of sewage disposal, as determined by the standards of the New York State Departments of Health and Environmental Conservation, or the Town Subdivision Regulations.
- b. All mobile home parks existing at the time of enactment of this ordinance shall be licensed regardless of conformance to the regulations contained herein, but no mobile home park shall be created or enlarged or licensed unless in conformance with this ordinance. Such license shall be issued for a period of three years, and shall be renewable for an unlimited number of additional three year periods. No license shall be issued until the Town Planning Board has approved a plan therefore showing compliance with the following regulations and no license shall be renewed unless the provision and conditions of such approved site plan are continuously satisfied:

1. All mobile home sites shall be accessible from a service roadway not less than twenty feet in width;
2. All mobile home sites shall be provided with permanent anchors sufficient to anchor a mobile home, and any mobile home placed on that site shall be so anchored;
3. All mobile home sites shall be so located so as to provide a minimum distance of at least twenty (20) feet between a mobile home located thereon and any part of any adjacent mobile home or service roadway;
4. Off-street parking shall be provided adjacent to every mobile home for use of the residents thereof, said parking to be provided in an amount, and subject to the restrictions and exemptions applicable to one family dwellings.
5. Every mobile home park shall provide a pond, tank or other suitable water storage of a capacity of at least thirty thousand (30,000) gallons plus two thousand (2,000) gallons for every mobile home in access of twenty (20), said facility to be provided with a dry hydrant of suitable construction approved by the Otsego County Fire Coordinator. Such hydrant shall be located within ten (10) feet of and be readily accessible from a service roadway. No mobile homes shall be located more than fifteen hundred (1,500) feet from a fire hydrant provided under this section.
6. Every mobile home site shall be provided with its own sewer, water, and electrical service, and any occupied mobile home located thereon shall be connected to such utilities.
7. All sewer and water facilities shall be approved by the New York State Health Department of Department of Environmental Conservation as required by state law.

Section 6.4 Non-Conforming Structures and Uses

a. Subject to the following conditions, any lawfully erected building or structure, existing at the time of enactment of this ordinance, may be continued although such building or structure does not conform to the provisions of this ordinance.

1. A non-conforming building may not be enlarged, extended or altered except in conformance with this ordinance, except that repairs or rebuilding may be permitted on any non-conforming lot to the same size of the existing building in the event of fire, wind or flood or demolishing of that building; but, if such building may be so placed to conform to any of the lot area, yard and height regulations, it must be so placed;

2. Any building or structure under construction at the time of enactment of this ordinance may be completed;

3. Any permitted use may occupy a non-conforming building or portion thereof.

Where the design or construction of a non-conforming building is such that it is unsuitable for any conforming use, the Board of Appeals may issue a special permit to allow the establishment or re-establishment of a non-conforming use in such structure provided such use is contained wholly within an enclosed structure and meets the performance standards of this ordinance.

b. Subject to the following conditions, any lawfully established use of any land, building or structure, existing at the time of enactment of this ordinance may be continued although such use does not conform to the provisions of this ordinance.

1. A non-conforming use shall not be enlarged or extended into adjoining land, building or structural areas;

2. Whenever a non-conforming use has been officially discontinued for a period of one year, such use shall not be re-established except in conformance with this ordinance;

3. Once changed to a conforming use, no building or land shall revert to a non-conforming use.

c. When a use, building or structure becomes non-conforming as a result of amendment to this ordinance or of the Land Use District Map made a part thereof, such use shall

be subject to the regulations and restrictions applicable to a non-conforming use.

ARTICLE 7 ADMINISTRATION AND ENFORCEMENT

Section 7.1 Administration and Enforcement

a. This ordinance shall be enforced by the Land Use Enforcement Officer, who shall be appointed by the Town Board. The Town Board shall fix the salary or compensation of such officer, and provide for the payment thereof.

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

1. To accept all applications required by this ordinance, and to transmit such applications to the secretaries of the Planning Board or Land Use Board of Appeals;
2. Where specifically authorized by this ordinance, to issue permits;
3. To serve as deputy Land Use Officer, to have the same duties and authority as that official in his/her absence;
4. To provide, upon request, copies of the Town Land Use Ordinance and Map, and any forms, rules and regulations used in administering this ordinance.

c. The Land Use enforcement officer is hereby given the following duties and authority:

1. To enter upon, examine or inspect any land, building or structure for the purposes of administering or enforcing this ordinance;
2. To receive complaints of violations of this ordinance, or to make complaints based upon his/her own examination, inspection or knowledge;
3. To act upon any and all complaints, and to serve a written notice of violation upon owner or occupant of the premises where there appears to exist a violation of any provision of this ordinance;
4. To perform any other administrative or enforcement duties specified in this ordinance, including but not limited to the issuance of permits, licenses or certificates, accepting or reviewing applications, plans, plats and carrying out any lawful order of the Town Planning Board or Land Use Board of Appeals.

Section 7.2 Permits, Certificates and Licenses

a. No building or structure shall be constructed, erected, altered, extended, or repaired unless a building permit is issued therefore by the Land Use Enforcement Officer, subject to the following conditions:

1. No building permit shall be required for any activity involving a cost of less than four thousand dollars (\$4,000) that does not involve the creation of a new dwelling unit, an enlargement of the usable floor area of an existing building or structure, or the creation of a new

building or structure having
a floor area greater than
three hundred (300) square
feet;

2. No building permit shall be required for customary maintenance of buildings and structures including, but not limited to, painting, siding and roofing structures;
3. Every building permit application shall include the following:

- a) the location, size, dimensions and land use district of the lot or lots on which the work is to be performed;
- b) a sketch or drawing showing the location of the proposed building or structure, including dimensions to all property lines, and to the nearest building within one hundred (100) feet of the proposed building or structure;
- c) a statement or drawing describing the proposed structure, including its height, floor area, use and any information necessary to determine off-street parking and loading area requirements;
- d) a statement or drawing showing all proposed parking and loading areas, driveways, anchors, or tiedowns, or required landscaped buffer areas;
- e) any other statements or drawings necessary to determine that the proposed work will comply with the various provisions of this ordinance.

b. No mobile home park shall be erected, established or occupied except after issuance of a mobile home park license by the Land Use Enforcement Officer.

c. The Land Use Enforcement Officer shall issue, 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 therefore, except where such application involves review by the Town Board, Board of Appeals or Planning Board under the provisions of this ordinance. Where such review is required, the Land Use 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 Land Use 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 any action as may be directed by such board within ten (10) days of such direction.

Section 7.3 Penalties for Violation

a. Violation of this ordinance is an offense punishable by a fine not exceeding fifty dollars (\$50). However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this ordinance shall be misdemeanors, and for such purpose shall apply to such violations. Each weeks' continued violation shall constitute a separate additional violation.

b. Where any building or structure is erected, constructed, converted, altered, used or maintained or land is used in violation of this ordinance, the Land Use Enforcement Officer, in addition to other remedies, may institute any appropriate action or proceedings to prevent erection, construction, conversion, alteration, use, maintenance or occupancy; and upon the failure or refusal of the Land Use Enforcement Officer to institute any such appropriate action or proceeding for a period of ten (10) days after a written request by a resident taxpayer of the town so as to proceed, any three (3) taxpayers of the town residing in the district where such a violation exists, who are jointly or severely aggrieved by such violation may institute such appropriate action or proceeding in like manner as the Land Use Enforcement Officer is authorized to do.

c. A complaint of violation of this ordinance may be made by any resident, property owner, or town official, including the Land Use Enforcement Officer.

d. Upon receipt of a complaint of violation, the Land Use Enforcement Officer shall investigate to determine the presence of a violation, and upon finding of violation, shall serve notice upon the owner or occupant thereof. Said notice shall include the items listed under Section 7.3c together with any observations made by the Land Use Enforcement Officer on the basis of his investigation.

Such notice shall also specify what 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 7.3a shall exist only after the date of required action specified in the notice to the owner or occupant passes without such specified action having taken place.

e. Notices required by this action shall be issued by the Land Use Enforcement Officer either by personal service to the owner or occupant, or by certified mail to the address of same shown on the tax roles of the town or contained in the statement of complaint.

Section 7.4 Fees

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

ARTICLE 8 BOARD OF APPEALS

Section 8.1 Establishment, Membership and Meetings

a. A Town Board of Appeals is hereby created, said Board of Appeals to consist of five (5) members for terms of five (5) years, except that the members of the board when first appointed, shall serve for terms as specified under Section 267 (1) of the Town Law.

The chairman and members of the Board of Appeals shall be appointed by resolution of the Town Board, which shall also have the power to remove any member for cause after a public hearing.

b. All meetings of the Town Board of Appeals shall be open to the public, and said board shall keep minutes of its proceedings, showing the vote of each member upon every question. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the board shall immediately be filed in the office of the Town Clerk and shall be a public record.

Section 8.2 Powers and Duties

a. Appeals: The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Land Use Enforcement Officer. The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the Land Use Enforcement Officer. Such appeal may be taken by any person aggrieved, or by any officer, or board of the town by filing with the Land Use Enforcement Officer and the Board of Appeals a notice of appeal, specifying the grounds thereof. The Land Use Enforcement Officer shall forthwith transmit to the board all papers constituting the record of the action being appealed. An appeal stays all proceedings in furtherance of the action being appealed, unless the Land Use Enforcement Officer certifies to the board that by reason of facts stated in such certificate, a stay would 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 or by a court of record. The board may reverse or affirm wholly or partially, or may modify the order, requirement, decision or determination as in its opinion ought to be made.

b. Variances: The board shall have the authority to vary the requirements of this ordinance subject to the following conditions:

1. An application for such variance shall be made to the Zoning Administrator for transmittal to the board, said application to contain the following items:

- a) the name, address and phone number of the applicant;
- b) the location and zoning district of the property for which the variance is sought;
- c) the existing use of said property including a description of any existing buildings;
- d) a citation to the provision of this ordinance for which variance is sought;
- e) a justification of the request for variance.

2. Use Variance - The board may vary the requirements of these regulations upon finding that there exists an unnecessary hardship. Such hardship is shown if each of the three following conditions exist:

- a) reasonable return - the applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a "dollars and cents" proof of the applicant's

inability to realize reasonable return; speculation or qualitative assessment is inadequate. Failure to realize the highest return is not considered a hardship;

b) uniqueness - the applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone AND that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district, a variance should not be granted. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance;

c) character - the applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the "spirit" of the ordinance or local law should be preserved.

3. Area Variance - The board may vary the requirements of these regulations upon finding that there exists a practical difficulty. Such difficulty is shown if each of the three following conditions exist:

a) significant economic injury - first, the applicant must demonstrate that the application of the zoning ordinance to his property causes significant economic injury;

b) related to police power - once the applicant has demonstrated economic injury, then the municipality must show that the regulation in question is reasonably related to a legitimate exercise of the police power;

c) reasonable return - third, if the applicant cannot show that the particular restriction isn't related to the public health, safety and general welfare (i.e., where the board finds that it is), the variance should be denied unless the applicant shows that the zoning restriction in question, as applied to his property, deprives him of all reasonable use of his property. If the applicant can show this, he should be granted the area variance.

4. In making a determination of practical difficulty, the appeals board may consider:

a) how substantial the variation is in relation to the requirement;

b) the potential effect of increased density on available municipal, county and state

facilities and services;

c) whether the variance will cause a substantial change in the character of the neighborhood;

d) whether the difficulty can feasibly be mitigated by some other method; or

e) whether the interests of justice will be served in granting the variance.

c. Special Permits: The Board of Appeals shall have the authority to issue special permits as provided in

the district regulations of this ordinance, upon finding the following:

1. That the proposed use is authorized under the land use district regulations as a permitted use, subject to issuance of a special permit therefore;
2. That the proposed use will not have any adverse impact upon the area in which it is to be located;
3. That the proposed use complies with all applicable provisions of this ordinance, or will so comply prior to the issuance of a certificate of occupancy;
4. That the proposed use is consistent with the comprehensive plan of the town;
5. That the proposed use will not cause excessive traffic, will not detract from the property value of any adjacent property, and can be adequately served by existing or proposed public facilities or utilities.

d. Applications: Applications for appeals, variances or special permits shall be made to the Land Use Enforcement Officer for transmittal to the board, and shall contain the following:

1. The name, address and phone number of the applicant;
2. The location and Land Use District of the property for which a variance or special permit is sought, or in reference to which an appeal is made;
3. The existing use of said property, including a description of any existing buildings;
4. Citation to the provision of this ordinance for which a variance is sought, or under which a special permit or appeal is applied for;
5. Justification of the request for variance or special permit or a description of the circumstances resulting in the appeal;
6. A statement of the relief sought.

e. In the exercise of its power and duties, the Board of Appeals, through its chairman or in his absence its acting chairman, 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 special permit under this section, the Board of Appeals may consider any other evidence necessary to show compliance to the intent and purpose of this ordinance.

g. The board, in granting any appeal, variance or special permit, may attach such conditions to said approval as in its determination are necessary to achieve the intent and purpose of this ordinance.

Section 8.3 Procedures and Referrals

a. All applications for action by the Town Land Use Board of Appeals shall be made to the Land Use 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 8.2a above shall be made within thirty (30) days of the action being appealed.

b. The Land Use 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 the official paper of a notice of such hearing at least five (5) days prior to the date thereof, and the board shall at least five (5) days before such hearing, mail notices thereof to the parties, and to any regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of said property. Where any variance or special permit application affects any real property lying within five hundred (500) feet of the boundary of any city, village or town or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing proposed county or state parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the county for which the county has established channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, 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. Action shall be taken upon any matter referred to the Otsego County Planning Board or said board shall have made a recommendation thereon to the Board of Appeals, or third

(30) days shall have elapsed since the date of referral.

c. The hearing of an appeal or application shall take place within sixty (60) days of the filing of the appeal or application.

d. 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 members, the Board of Appeals shall review at a rehearing, 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 be not be prejudiced thereby, the board may, upon concurring vote of all the 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 8.4 Judicial Review

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

b. Costs shall not be allowed against the Board of Appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

c. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

d. If, upon the hearing at a special term of the 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 or 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 partially, or may modify the decision brought up for review.

ARTICLE 9 MISCELLANEOUS PROVISIONS

Section 9.1 Amendments

- a. These regulations or the boundaries shown on the Land Use District Map may be amended, supplemented, changed, modified or repealed by ordinance adopted by the Town Board. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more, either of the area of land included in such proposed change, or of that immediately adjacent extending one hundred (100) feet therefrom or of that directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land, such amendment shall not become effective except by vote of at least three-fourths (3/4) of the members of the Town Board.
- b. No amendment, supplement, change or modification of these regulations or the boundaries shown on the Land Use District Map shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.
- c. At least ten (10) days notice of such public hearing shall be published in a paper of general circulation within the town and a written notice of any proposed change or amendment affecting property within the protective area of a housing project authorized under the public housing law, as such area is shown on the official Land Use Map of the town, or within five hundred (500) feet of the boundaries of a city, village, town, county, state park or parkways shall be given, in the case of a housing project to the housing authority erecting or owning the project and to the government providing financial aid or assistance thereto, in the case of any state park or parkway, to the regional state park commission; in the case of a city, village or town, to the clerk of such city, village or town; and, in the case of a county, to the clerk of the legislative board of said county, at least ten (10) days prior to the date of such public hearing. Such city, village or town or county 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.
- d. Any land use regulation or amendment thereof which would change the district classification of or the regulations applying to real property lying within a distance of five hundred (500) feet from the boundary of any city, village, or town, or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, or from the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, shall, before the Town Board takes final action on such matters, be referred to the Otsego County Planning Board. Within seven (7) days of final action by the Town Board on any recommendations by said County Planning Board, 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.

e. Every amendment to this Land Use Ordinance, 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.

A copy thereof, exclusive of any map incorporated therein, shall be published once in a newspaper having general circulation in the town and affidavits of the publication thereof shall be filed with the Town Clerk. Such amendment shall take effect ten (10) days after such publication, except that where a certified copy of such amendment is personally served on any person, the effective date shall be the date of such service, with respect to the serviced person.

Section 9.2 Referrals to Town Planning Board

a. All proposed amendments to this ordinance shall be referred to the Town Planning Board which shall recommend action thereon to the Town Board based upon its consideration of the Town Comprehensive Plan. The Town Planning Board shall report its recommendation on such referral to the Town Board within thirty (30) days of such referral.

b. Any application for variance or special permit shall be referred to the Town Planning Board whenever said application relates to any site plan under review by said board. The Town Planning Board may recommend action thereon to the Land Use Board of Appeals based upon its review of such site plan, and may make any approval of such site plan conditional upon approval by the Land Use Board of Appeals of all related variances or special permits.

Section 9.3 Interpretation and Conflict With Other Laws

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements adopted for the promotion of public health, morals, safety or general welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

Section 9.4 Separability

Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any provision thereof other than the part so decided to be unconstitutional or invalid.

Section 9.5 Adoption and Effective Date

This ordinance and accompanying map was adopted by the Exeter Town Board on the 11th day of July, 1989, as shown in the minutes of that date, and the effective date thereof is July 11, 1989.