

**TOWN OF DECATUR  
OTSEGO COUNTY  
STATE OF NEW YORK**

*Town of Decatur Zoning Laws  
Local Law No. 1-1999  
April 12, 1999*

ZONING FOR THE TOWN OF DECATUR, OTSEGO COUNTY, NEW YORK.

<u>TABLE OF CONTENTS</u>	<u>PAGE NO.</u>
<u>ARTICLE ENACTMENT, TITLE AND PURPOSE</u>	
SECTION 1.1 Enactment	3
SECTION 1.2 Title	3
SECTION 1.3 Purposes in View	3
SECTION 1.4 Application of Regulations	3
<u>ARTICLE 2 DEFINITIONS</u>	
SECTION 2.1 Meaning of Words	4
SECTION 2.2 Definitions	4
<u>ARTICLE 3 DISTRICTS</u>	
SECTION 3.1 Establishment of Districts and Map	5
SECTION 3.2 Interpretation of District Boundaries	5
<u>ARTICLE 4 DISTRICT REGULATIONS</u>	
SECTION 4.1 R-80 Two Acre Residential-Agriculture District	5
SECTION 4.2 R-HD Residential Hamlet District	6
SECTION 4.3 PDD-Planned Development District	6
SECTION 4.4 FPD-Flood Protection District	7
<u>ARTICLE 5 GENERAL REGULATIONS APPLYING TO ALL DISTRICTS</u>	
SECTION 5.1 Prohibited Uses	8
SECTION 5.2 Principal Buildings Per Lot	8
SECTION 5.3 Exceptions to Lot area, Height and Yard Regulations	8
SECTION 5.4 Yards on Corner Lots	9
SECTION 5.5 Cluster Development	9
SECTION 5.6 Parking and Loading Areas	10
SECTION 5.7 Temporary Uses	10
SECTION 5.8 Signs	11
SECTION 5.9 Satellite Dish Antennas	11
<u>ARTICLE 6 GENERAL REGULATIONS APPLYING TO SPECIFIC USES</u>	
SECTION 6.1 Storage of Flammable Liquids	12
SECTION 6.2 Junk Yards	12
SECTION 6.3 Mobile Homes and Mobile Home Parks	16
SECTION 6.4 Non-Conforming Structures and Uses	19
<u>SECTION 7 ADMINISTRATION AND ENFORCEMENT</u>	
SECTION 7.1 Administration and Enforcement officer	20
SECTION 7.2 Permits, Certificates and Licenses	20
SECTION 7.3 Penalties for Violation	21
SECTION 7.4 Fees	22

**ARTICLE 8 BOARD OF APPEALS**

SECTION 8.1 Establishment, Membership, Meetings	22
SECTION 8.2 Powers and Duties	22
SECTION 8.3 Procedures and Referrals	24
SECTION 8.4 Judicial Review	24

**ARTICLE 9 MISCELLANEOUS PROVISIONS**

SECTION 9.1 Amendments	25
SECTION 9.2 Referrals to Town Planning Board	26
SECTION 9.3 Interpretation and conflict with Other Laws	26
SECTION 9.4 Separability	26

**ARTICLE 10 GARBAGE - RUBBISH - REFUSE & SEWAGE**

SECTION 10.1 Raw and Toxic Waste	26
SECTION 11 Damage Buildings	28

**ZONING FOR THE TOWN OF DECATUR, OTSEGO COUNTY, NEW YORK**

**ARTICLE I ENACTMENT, TITLE, AND PURPOSE**

**SECTION 1.1 ENACTMENT**

The Town Board of the Town of Decatur, in the County of Otsego on the 15th day of December, 1975 under the authority of Section 261 of Article 16 of Chapter 62 of the Consolidated laws of the State of New York having adopted a Zoning Law for said Town and it is hereby being amended, supplemented, changed and modified pursuant to Section 265 of Article 16 of the aforesaid Town Law. Any inconsistencies, discrepancies, and contradictions in the prior Zoning law with the amendments, changes and modifications herein shall be superseded and replaced by the items, terms and regulations set forth herein.

**SECTION 1.2 TITLE**

This local law shall be known as the Town of Decatur Zoning Law.

**SECTION 1.3 PURPOSE IN VIEW**

This local law 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 local law 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 providing no building structure of land shall hereafter be used or occupied and no building or structure of 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 local law shall carry their customary meanings. Words used 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" or "parcel"; the term "shall" is always mandatory; and shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupy".

### SECTION 2.2 DEFINITIONS

- a. **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.
- b. **Building:** Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.
- c. **Center Line of Road:** A line midway between the parallel to two property lines along any public highway right-of way. When ever such property lines cannot be determined, such line shall be considered as being midway between parallel to the paved or improved surface of the road.
- d. **Dwelling:** A building designed or used exclusively as the living quarters of one or more families.
- e. **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 local law.
- f. **Mobile Home:** A self contained movable living unit capable of transportation on its own wheels on a public highway, and complying with the State building code for mobile homes. The removal of wheels or anchoring of a mobile home to permanent foundation shall not remove it from this definition.
- g. **Structure:** Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.
- h. **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.
- i. **Yard, Front:** The area lying between a road or street on the closest point of a principal building and extending from one side lot line to the other. The minimum front yard required by this local law shall be defined by a line parallel to a street or road at the specific distance established by the District Regulations from the centerline of the road.
- j. **Yard, Rear:** The area lying between a rear lot line and the closest point of a principal building and extending from one side lot line to the other. The minimum rear yard required by this local law shall be defined by a line paralleled to a rear lot line at the specified distance therefrom, established by the district regulations.
- k. **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 local law 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 ZONING DISTRICTS AND MAP**

a. For the purpose described in Section 1.3 of this Local Law, the Town of Decatur 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

b. The Boundaries of the zoning districts are shown on the Official Town Zoning Map, a copy of which is attached and hereby made a part of this Local law. The zoning map may from time to time be amended in the same manner as any amendment to this Local Law.

### **SECTION 3.2 INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

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

- a. Where district boundaries are indicated as approximately following the centerlines of roads or 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 distances as are indicated on the Official Town Zoning Map or shall be determined by the use of the scale.
- c. Wherever any feature described in Section 3.2a is depicted on the Official Town Zoning 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 ZONING 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 agricultural uses, including temporary stands for the sale of agricultural 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 to any permitted use
  - 8. Home occupations

- b. Uses permitted upon issuance of a Special Permit:
1. Places of outdoor public assembly or amusement
  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 areas of land in active agricultural use.

c. Lot Area: Yard and Height Regulations.

1. Minimum lot area -2 acres.
2. Minimum frontage on a public highway - 200 feet.
3. Minimum public highway setback - 75 feet.
4. Minimum side yard width - 25 feet
5. Minimum rear yard depth - 50 feet
6. Maximum building height - 35 feet
7. maximum structure height, antenna towers, siren towers, utility poles or towers - 55 feet (structures over 50 feet high must check Federal Regulations)

d. Special Regulations

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

**SECTION 4.2 R-HD RESIDENTIAL HAMLET ZONING DISTRICT**

a. Permitted Uses:

1. One family dwellings
2. Two family dwellings
3. Accessory uses
4. Retail sale of merchandise wholly within a building
5. Barber shops, beauty parlors, Laundromat, shoe repair shop
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 use
11. Churches and places of worship

b. Uses permitted upon issuance of a special permit:

1. Small appliance repair shops
2. Retail sale involving outdoor storage or display of items to be sold
3. Retail sale of gasoline for automotive use
4. Automobile, truck and farm machinery sales and services
5. Funeral homes

**SECTION 4.3 PDD-Planned Development District**

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 single approved plan.

By vote of the Decatur Town Board on April 8, 08, the following is being inserted under

**Section 4.2 R-HD RESIDENTIAL HAMLET ZONING DISTRICT:**

**(C) LOT AREA, YARD AND HEIGHT REGULATIONS**

- 1) Minimum lot area: 5,000 square feet or 3,000 square feet per dwelling unit plus 3 sq. feet for every sq. ft. of floor area of non-residential uses other than accessory uses whichever is greater.
- 2) Minimum frontage on a public street- 50 feet.
- 3) Minimum public highway setback- 35 feet.
- 4) Minimum side yard width- 10 feet.
- 5) Minimum rear yard depth- 30 feet.
- 6) Maximum building height- 35 feet.

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) shows the relationship of proposed development to all adjacent development.
3. A community impact statement shall be prepared to accompany 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 is consistent with community plans, the development plan may be approved. Development within the PDD shall be limited to the type, size and location shown on the development plans. 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 does not imply approval of such use in any other PDD, nor does approval of a use or uses in one PDD in any way limit the types of uses that may be permitted in future Planned Development 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 local law.
8. Planned Development Zoning Districts will not be shown on the Town Zoning District map until they have been approved by both the Town Planning Board and the Town Board. Applications for specific Planned Development Zoning Districts must be reviewed by the Town Planning Board whose recommendations are then submitted to the Town Board. Final approval of a Planned Development District must be in the form of an amendment to the Town Zoning Local Law by the Town Board.

#### **SECTION 4.4 FPD FLOOD PROTECTION ZONING DISTRICT**

The Following regulations shall apply in all FPD in addition to the regulations of the underlying zoning 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 flood hazard.
- c. No floor level, including a basement floor, in a residential structure shall be constructed below the water surface elevation level of a 100 year floor.
- 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 use or structure, when combined with all other existing uses or 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 on (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 the Town Planning Board and a building permit 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, membrances 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 water 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 about the necessary flood protection elevation.

## **ARTICLE 5 GENERAL REGULATIONS APPLYING TO ALL DISTRICTS**

### **SECTION 5.1 PROHIBITED USES**

Uses not specifically permitted under Article 4 of this local law 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, providing 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 local law, whose area, or frontage on a public street is less than that specified in this local law, 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 or cupolas not used for human habitation.
2. Chimneys, sky lights, bulkheads and fire walls, stairwell, mechanical and elevator penthouses.
3. Water tanks, grain storage, barns, silos.
4. Ornamental or decorative parapet walls, cornices, weather vanes or other decorative roof structures other than signs.

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 from part of the front yard setback requirement;
2. It shall be demonstrated that a reduction of the required public highway 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 public highway setback will cause an unreasonable restriction upon the development of said lot.

#### **SECTION 5.4 YARDS ON CORNER LOT**

On a corner lot, yard abutting a street shall be considered a front yard, and the minimum public highway setback required by the district regulations shall be provided.

#### **SECTION 5.5 CLUSTER DEVELOPMENT**

The Town Planning Board may modify applicable provisions of this zoning local law simultaneously with the approval of a subdivision plot or plots, 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 interests 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 Board's 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 plot 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) One parking space required for every licensed vehicle, with a minimum of two parking spaces for every dwelling unit.
  - (2) Tourist homes, hotels, motels, hospitals and nursing homes one parking space for every guest room or patient bad.
  - (3) Retail sales - one parking space for every 200 square foot on 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 space.
  - (7) Unspecified uses - one parking space for every 200 square feet of building 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 or unload cargo to and from a truck.
- c. Required Paving: parking and loading spaces, driveways and aisles serving or located in a parking area containing eight (8) or fewer spaces shall be paved with at least a suitable base of compact 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 spaces 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 used 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 located.

- (2) A sketch of the proposed layout of such temporary use including the approximate location of any buildings, structures, trailers, tents, enclosures, parking area, 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 the 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 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 cover vegetation.

### **SECTION 5.8 SIGNS**

- a. In all districts the following types of signs are specifically prohibited:
  - (1) Signs so located 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 illuminate by or containing flashing intermittent rotating or moving lights or devices.
  - (4) Signs or sign structures exceeding 25 feet in height.
  - (5) Signs offering products or services not available on the premises upon which the sign is located.
- 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 SATELLITE DISH ANTENNAS AND TOWERS R80 DISTRICT BUILDING PERMIT REQUIRED**

- a. Placement of satellite dish must comply with the standard setback of 75 feet. Persons not able to comply with this section of the ordinance must apply to the Zoning Board for a variance.
- b. All satellite dishes, whether permanent or temporarily mounted shall be subject to these regulations, unless located on the property for no more than ten (10) days.
- c. Maximum height limitation not to exceed 15 feet, unless attached to a building. A satellite dish attached to a building may not exceed 10 feet above the roofline.
- d. Satellite dishes which constitute a hazard to public safety by reason of their location or physical condition, may be removed by the order of the Town Supervisor. If the hazard persists, the person to whom the permit for said satellite dish was issued, shall be notified prior to such removal. Any cost incurred by such necessary removal of said satellite dish, shall be the responsibility of the property owner.
- e. Except for existing towers. No other towers will be permitted within the boundaries of the Town of Decatur.

**ARTICLE 6 GENERAL REGULATIONS APPLYING TO SPECIFIC USES**

**SECTION 6.1 STORAGE OF FLAMMABLE LIQUIDS**

- a. Whenever 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 lines.
- b. If any person intends to bury any type of tank containing flammable fluids, it is recommended that you check with the County Department of Environmental Conservation before doing so.

**JUNKYARD 6.2**

**GENERAL REFERENCES**

Zoning -- See Chl. 67.

**Sec. 6-2. Legislative intent.**

By the adoption of this chapter, the Town Board of the Town of Decatur declares its intent in so doing to be to regulate, control and license the activities or businesses known as auto graveyards, junkyards, secondhand parts collection areas, the processing of used metals for resale and the dumping, storage and disposal of waste, secondhand or used materials of whatever composition. Said Town Board hereby declares that such activities or businesses can constitute a hazard to property and persons and a public nuisance. Such materials may be highly flammable and sometimes explosive. Gasoline tanks on old autos often contain in some quantity combustible gasoline; the engine and other parts of such autos are frequently covered with grease and oil, which is also flammable. The tires, plastic seats, tops and other elements of such autos are also flammable. Batteries and other elements of such autos can contain acids and other matter potentially harmful to humans. These autos frequently contain sharp metal or glass edges or points upon which a human could receive serious cuts and abrasions. These autos can constitute attractive nuisances to children and certain adults. The presence of such junkyards even in areas zoned for business or industry is unsightly and tends to detract from the value of surrounding land and property unless such areas are properly maintained and operated.

**Sec. 6-2A. Definitions.**

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

AUTO- Passenger auto, truck, tractor-truck, trailer, bus, motorcycle or other vehicle, however propelled, as well as tractors, bulldozers, machinery and equipment. To include used - unserviceable Mobil homes and trailers & boats.

PERSONS -- An individual, an association, a partnership, a corporation, a club.

**Sec. 6-2B. License required.**

- 1. No person shall engage in or conduct on real property within the Town of Decatur either for himself or for and on behalf of any other person directly or indirectly as agent, employee or otherwise, any activity or business, either for profit or otherwise, at wholesale or retail, which involves the collection, storage, burning, dumping, disassembling, dismantling, salvaging, sorting or otherwise handling or arranging for sale, resale, storage or disposal or otherwise of bodies, engines or parts of autos or of any other secondhand or used property of whatever material it is composed or any waste material, whether composed of

wood, paper, cloth, cardboard, plastics, metals, stone, cement or otherwise, without first obtaining a license therefor as hereinafter provided.

2. For the a purpose of this chapter, any person storing or depositing, or causing or permitting to be stored or deposited, on real property in the Town of Decatur two (2) or more autos not properly registered with the Department of motor Vehicles in accordance with the Vehicle and Traffic Law of the State of New York, or one (1) or more dismantled autos, shall be deemed to be conducting an activity described in Subsection 1 of this section and shall be required to obtain a license therefor as provided therein; provided, however, for the purposes of this subsection, the term "auto" shall exclude tractors used exclusively for agricultural purposes, self-propelled combines, self-propelled corn and hay harvesting machines and self-propelled Caterpillar or crawler-type equipment being operated on contract site. Nothing herein shall be construed to prohibit the parking of an unregistered or partially dismantled auto in a private garage.

#### Sec. 6-2C Application for license; processing.

Each applicant for a license hereunder shall execute under oath an application therefor to be supplied to him by the Town Clerk, which shall contain the following information:

- (1) That the applicant is over twenty-one (21) years of age.
- (2) That he is a citizen of the United States.
- (3) Whether he has every been convicted of a felony and such other facts or evidence as is deemed necessary to establish that he is a person fit and capable of properly conducting the activity or business for which the license is sought.
- (4) A description of the exact type of business he intends to conduct and the nature of the materials he intends to handle.
- (5) The Number of employees he intends to engage.
- (6) The name and address of the owner or owners of the land and the nature of the right of occupancy of the applicant to the use of such land.
- (7) At the time of making the application, the applicant shall submit to and file with the Town Clerk a map or plan of the real property upon which he intends to conduct the activity or business for which he is making application for a license hereunder, with the area of such real property which it is proposed to use for such purpose, the location of the fence required hereunder indicated thereon, as well as the location of any buildings on such land and the location of any streets or highways abutting or passing through such land and the location of any water, sewer or gas mains or laterals available thereto, as well as the general drainage pattern of such land.
- (8) In the application the applicant shall agree that if granted the license applied for he will conduct the activity or business pursuant to the regulations hereinafter set forth, and that upon his failure to do so such license may be revoked forthwith.

(9) A person presently engaged in or conducting an activity or business such as described herein on real property within the Town of Decatur must apply for a license therefore within thirty (30) days of the adoption of this chapter. If the place where he conducts such activity or business presently complies with the requirements a person must meet to secure a license in the first instance, he shall be issued a license therefor if he meets the other requirements contained herein. If the place where he conducts such activity or business does not presently comply with the requirements a person must meet to secure a license in the first instance, he may be granted a temporary license for one (1) year, during which year he must arrange the place where he conducts such activity or business so that it does then comply with the requirements a person must meet to secure a license in the first instance. If at the end of such year such person has not so arranged his place of activity or business, he shall forthwith cease and desist engaging in or conducting the same and shall remove from such place any autos, parts or other materials of the nature described herein.

(10) If the person conducting such activity or business is not the sole owner thereof, he shall state such fact at the time he applies for his temporary license, and the Town Clerk at the time of issuing such temporary license shall send the owners or each of them a notice of the issuance of such temporary license to such person, together with a copy of this chapter.

(11) The application and the plan shall be submitted to the ZEO Inspector, who shall examine the same and make such investigations and inspections as are necessary to determine if the information contained in the application and plan is correct and if there is compliance with this chapter and other ordinances of the town. The ZEO Inspector shall either approve or disapprove the application and plan, and endorsement on said application and plan shall be made accordingly. Upon receipt of the endorsed application and plan, the Town clerk shall issue or refuse the license in accordance with the endorsements and any additional pertinent information which he may have.

#### **Sec. 6-2D License Regulations.**

1. The fee for the license is hereby fixed in the sum of one hundred dollars (\$100.), which sum covers not only the cost of issuing the license itself but also the cost of making the necessary inspections of the premises to ascertain compliance with the regulations hereinafter prescribed.
2. Such license shall be placed and at all times displayed in a conspicuous place at the licensee's place of activity or business for which it is issued.
3. Such license shall be effective from the date of its issuance until the 31st day of December of the year of such issuance, after which a new application for license must be made yearly if licensee desires to continue such activity or business.
4. Such license is personal with the licensee. It does not go with the title of the land nor may it be sold, assigned, transferred or disposed of.
5. Such license may be revoked by the Town Board after a public hearing thereon at which the licensee shall have an opportunity to be heard. upon the revocation of a license, the Town Board may require the removal of autos, parts

and materials left on the premises as above provided in the case of an applicant for a temporary license who fails to qualify for a license.

6. In the event that an applicant for a license as provided herein shall have previously been duly issued a valid and effective junk dealer's license by the Supervisor of this town pursuant to the provisions of Article 6 of the New York State General Business Law, then such applicant shall be entitled to and allowed a credit against the above provided license fee in the amount of five dollars.

#### 6-2E. General regulations.

1. The licensee must personally manage or be responsible for the management of the activity or business for which the license is granted.
2. The licensee must maintain an office and a sufficient number of employees on the premises to assure the proper and safe conduct of such activity or business, to minimize the fire hazard therefrom and to prevent improper trespass thereon by children and others.
3. The licensee must erect and maintain 8' foot, privacy wire fence of close mesh or one made of wood or of other material adequate to prohibit the entrance of children and others into the area of the activity or business and to contain within such fence the materials dealt in by the licensee, and if such area abuts a residential area or public street or highway, such fence shall be twenty-five (25) feet from the boundary line thereof. All the materials dealt in by the licensee shall be kept within such fence at all times.
4. Inside and adjacent to and contiguous with such fence, a strip of land at least ten (10) feet in width shall be kept free of all dry grass or other growth or other combustible material so as to provide a fire lane or line around the whole area where the activity or business of the licensee is being conducted.
5. The autos, parts and materials dealt in by the licensee shall be disassembled or dismantled by means other than by burning. They shall be piled or arranged in neat rows so as to permit easy, clear passage through the area.
6. There shall be maintained at each such place of activity or business for which a license is issued at least one (1) fire extinguisher of approved design and capacity for each forty thousand (40,000) square feet of area. Each such fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and available.
7. When the area is not supervised by the licensee or his employees, the fence shall be locked at a secure gate in a secure manner.
8. Suitable sanitary facilities shall be available, connected to approved public sewers or septic tanks, for the use and convenience of the employees of the licensee as well as the general public visiting the area.
9. The area of the licensee's activity or business shall not be used as a dump area nor as a place for the burning and disposal of junk or trash.

10. Materials shall not be stored on a hillside of greater than 10%, a flood plain, or adjacent to any stream or bed.

11. The town constable, the Town Clerk or the Town board or any of its representatives shall be granted access to the area of the activity or business of the licensee at all reasonable hours to inspect the same for compliance herewith.

12. All other junk as described in Sec. 6-2 not licensed will be removed from said property no less than 90 days from the passage of this ordinance.

#### **6-2F. Penalties for offenses.**

1. The owner or licensee of any such place of business who commits or permits any acts which are an offense against any of the provisions of this chapter shall be deemed to have committed a violation and also shall be liable for any such violation or the penalty therefor. Each day such offense shall continue or be permitted to exist shall constitute a separate violation.

2. For every offense against any provision of this chapter, the person committing the same shall be subject to a fine of not more than two hundred fifty dollars (\$250.) or imprisonment not exceeding fifteen (15) days, or both such fine and imprisonment.

3. conviction for any above-mentioned offense shall constitute and effect an immediate forfeiture of the license.

4. Any person committing an offense against this chapter shall also be subject to a civil penalty enforceable and collectible by the town in the amount of one hundred dollars (\$100.) for each such offense. Such penalty shall be collectible by and in the name of the town for each day that such offense shall continue.

5. In addition to the above-provided penalties and punishment, the Town board may also maintain an action or proceeding in the name of the town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of such chapter.

### **\* MANUFACTURED OR MOBILE HOMES**

#### **Sec. 6.3A. House Trailers, Camp Trailers, Motor Homes.**

This chapter shall be know as the Mobile Home Ordinance of the Town of Decatur.

#### **Sec. 6.3B. Purpose.**

It is the purpose of this chapter to regulate Mobile Homes, Manufactured Homes, house Trailers, Camp Trailers and motor homes in parks, camps or private lots.

#### **Sec. 6.3C. Definitions.**

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

Z.E.O. Zoning Enforcement Officer of the Town of Decatur, Otsego County, N.Y.

Unit Site. Any Acreage, Lot, Site or Plot.

Dept. of Health. The Otsego County Dept. of Health.

✓ Mobile Home. Any dwelling unit or residence on wheels, skids, rollers, flatbed trailer or other trailer. Designed to be used for human habitations or for carrying persons or property. The terms Mobile Homes, House Trailer, Manufactured Home, Camper, Motor Home or Doublewide are intended to be used entirely interchangeably in this chapter.

Planning Board. The Planning Board of the Town of Decatur, Otsego County, N.Y.

Town Clerk. The Town Clerk of the Town of Decatur, Otsego County, N.Y.

Trailer Park. Any lot, piece or parcel of ground whereon two or more mobile homes are located or parked as used in this chapter the terms "Trailer Camp" "Trailer Park" and "Mobile Home Park" are entirely interchangeable and mean one and the same thing.

Zoning Board of Appeals. The Zoning Board of Appeals of the Town of Decatur, Otsego County, N.Y.

Zoning Ordinance. The Zoning Ordinance of the Town of Decatur, Otsego County, N.Y.

Sec. 6.3D. General Regulations.

1. It shall be unlawful for any person, club, firm or corporation to establish, maintain, operate or conduct a Trailer Park within the Town of Decatur unless licensed.
2. It shall be unlawful to use any mobile home for anything other than its original intent, i.e., storage unit, barn, work shop or office.
- ✓ 3. No mobile home may be parked or permanently affixed to real property or unit site unless on a concrete slab foundation not less than 6" thick with reinforcing wire within, constructed on bed of 1 1/2" to 3/4" stone or gravel at least 4" thick. There shall be installed within the slab proper anchoring fixtures to tie down a mobile home. The slab must be not less than one foot more in width and length of the width and length of the mobile home.

4. It shall be unlawful to affix to any unit site within the Town of Decatur any mobile home more than five (5) years old unless permanently affixed to the site prior to the date of these ordinance.

5. Nothing within this chapter is intended to forbid the parking of any recreational vehicle on ones property when not in use.

Sec. 6.3E.

1. Mobile homes containing less than 500 square feet of floor area shall be anchored by means of at least four (4) frame ties and at least two (2) over-the-top ties, each tie to be securely anchored to the foundation sufficiently to withstand a 4,800 pound force without failure.

2. Mobile homes containing 500 square feet of floor area, or more, shall be anchored by means of at least five (5) frame ties and at least three (3) over-the top ties, each tie to be securely anchored to the foundation to withstand a 4,800 pound force without failure.

3. Ties shall consist of at least 1 1/4 inch by .035" galvanized steel strap. Frame ties shall connect the steel beam supporting the structure to the anchors. Over-the top ties shall be anchored on both sides of the unit.

4. Whenever a mobile home has been constructed with concealed tie down straps or frame connections, such straps or connections may be used, however, they must be of the same number and strength as otherwise required by this section.

5. All mobile home parks existing at the time of enactment of this local law 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 local law. Such license shall be issued for a period of three years, and is 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 provisions and conditions of such approved site plans are continuously satisfied:

Sec. 6-3F.

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 as provided under Section 6.3 D (3), and any mobile home placed on that site shall be so anchored.

3. All mobile home sites shall be so located also as to provide a minimum distance of at least fifty (50) feet between a mobile homes 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 for every mobile home in access of twenty (2); 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 or Department of Environmental Conservation as required by state law.

**Sec. 6-3G Price of License.**

Town of Decatur - Mobile Home Park Licensing Fee:

1. Licenses for Mobile Home Parks are to be issued by the Zoning enforcement Officer.
2. Licenses to cost \$500.00 for every ten (10) units, and an additional \$100.00 for each additional unit thereafter.
3. License Fee is renewable every three (3) years.
4. Trailer Park is to be inspected by the Zoning Enforcement Office prior to renewal, and must continue to meet Town of Decatur specifications for Mobile Home Parks.

**Sec. 6-3H. Penalties for offenses.**

Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding two hundred fifty dollars (\$250.) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

**Sec. 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 local law, may be continued although such building or structure does not conform to the provisions of this local law.
  1. A non-conforming building may not be enlarged, extended, or altered except in conformance with this local law, except that repairs not exceeding seventy-five (75) percent or replacement cost value of the building or structure shall be permitted where such repairs are necessitated by fire, wind, flood or other causes.
  2. 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 local law.
- b. Subject to the following considerations, any lawfully established use of any land, building, or structure, existing at the time of enactment of this local law, may be continued although such use does not conform to the provisions of this local law.
  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 discontinued for a period of one year, such use shall not be re-established, except in conformance with this local law.

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 local law or of the zoning 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 OFFICER**

- a. This local law shall be enforced by the Zoning 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 local law and to transmit such applications to the secretary of the Planning Board and the Zoning Enforcement Officer.
  2. Where specifically authorized by this local law, to issue permits.
  3. To serve as deputy zoning enforcement officer, to have the same duties and authority as that official in his absence.
  4. 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 plots, and carrying out any lawful order of the Town Planning Board or Zoning Board of Appeals.

### **SECTION 7.2 PERMITS, CERTIFICATES AND LICENSES**

No building or structure shall be constructed, erected, extended or moved unless a building permit is issued therefore by the Zoning Enforcement Officer, subject to the following conditions:

- A. Every building permit application shall include the following:
  1. The location, size, dimensions and zoning district of the lots on which the work is to be performed.
  2. 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.
  3. 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.
  4. A statement or drawing showing all proposed parking and loading areas, driveways, anchors, or tiedowns, or required landscaped buffer areas.
  5. Any other statements or drawings necessary to determine that the proposed work will comply with the various provisions of this local law.
- B. No building or structure shall be occupied except after a Certificate of Occupancy has been issued, therefore, by the County Code Enforcement Officer, if the County so requires, subject to the following conditions:

1. The use conforms to all applicable provisions of this local law, and
2. The building or structure to be occupied conforms to that proposed on any approved building permit application or site plan, together with any recorded conditions made in the approval of such permit or plan: or
3. The use or, building or structure to be occupied by the use, does not conform to all the applicable provisions of this local law, but is a bona fide non-conforming use as defined and regulated under Section 6.4 of this local law.

C. The Zoning Enforcement Officer shall issue, subject to conditions, or refuse to issue any requested permit, certificate of license within ten (10) days of his 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 local law. Where such review is required, the Zoning 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 Zoning 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.

### SECTION 7.3 PENALTIES FOR VIOLATION

- a. Violation of this local law is an offense punishable by a fine not exceeding two hundred fifty (250.00) dollars or imprisonment for a period not to exceed six (6) months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors 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 local law, the Zoning 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 Zoning Enforcement Officer to institute any such appropriate action or proceeding for a period of ten (10) days after written request by a resident taxpayer of the Town so to proceed, any three taxpayers who are jointly or severely aggrieved by such violation may institute such appropriate action or proceeding in like manner as the Zoning Enforcement Officer is authorized to do.
- c. A complaint of violation of this local law may be made by any resident, property owner, or town official, including the Zoning Enforcement Officer.
- d. Upon receipt of a complaint of violation, the Zoning Enforcement Officer shall investigate to determine the presence of a violation, and upon finding a violation shall serve notice upon the owner or occupant thereof. Said notice shall include the items listed under Section 7.3.c together with any observations made by the Zoning 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 7.3.a shall exist only if 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 section shall be issued by the Zoning 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.

**SECTION 7.4 FEES**

- a. The application for any permits, certificate, license or any review by the Town Planning Board or Zoning Board of Appeals, shall be accompanied by a fee, an amount specified from time to time by resolution of the Town Board.
- b. Anyone requesting a copy of Local law and Zoning of the Town of Decatur who is not requesting a building permit, certificate, or license, will be required to pay a five dollar (\$5.00) fee for a copy of said zoning laws and regulations.

**ARTICLE 8 BOARD OF APPEALS**

**SECTION 8.1 ESTABLISHMENT, MEMBERSHIP, MEETINGS**

- a. A Town Board of Appeals is hereby created, said Board of Appeals to consist of five members appointed for terms of five 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 Zoning 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 Zoning Enforcement Officer. Such appeal may be taken by any person aggrieved, or by any officer, or board of the Town, by filing with the Zoning Enforcement Officer and the Board of Appeals a notice of appeal, specifying the ground thereof. The Zoning 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 Zoning 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 proceeding shall not be stayed otherwise 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 being appealed and make such order, requirement, decision or determination as in its opinion ought to be made.
- b. Variances: The board may vary the requirements of these regulations upon finding the following:
  - 1. That strict application of these regulations would impose an unreasonable hardship upon the applicant. Such hardship shall not be the result of any action by the applicant, and failure to realize financial gain from the use or sale of property shall not be considered an unreasonable hardship in the absence of other hardships.
  - 2. That the requested variance is consistent with the intent of the comprehensive plan and will not result in creation of a hardship upon neighboring property owners. Variance of the use regulations of the Zoning district regulations is hereby declared not to be consistent with the plan.
  - 3. That the requested variance will not adversely affect public safety or welfare.

4. That the requested variance is for the relief of unique circumstances, and that the hardship being relieved is not shared by all properties alike in the immediate vicinity of the property and the zoning district.
5. That the variance requested is the minimum necessary to grant relief.

In granting variance, the board in its resolution shall specify its findings, and the fact that all of the conditions specified in Section 8.2.b are satisfied. When a variance is sought to the yard, setback, or lot area requirements of the district regulations, a finding that strict application of these regulations would result in practical difficulty in the use of the land, may be substituted for the finding of hardship.

c. Special Permits: The Board of Appeals shall have the authority to issue special permits, as provided in the district regulations of this local law upon finding the following:

1. That the proposed use is authorized under the zoning district regulations as a permitted use subject to issuance of a special permit therefore.
2. That the proposed use will not have an adverse impact upon the area in which it is to be located.
3. That the proposed use complies with all applicable provisions of this local law, 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 Zoning 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 zoning 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 local law 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 circumstance 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 local law.

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 local law.

### **SECTION 8.3 PROCEDURES AND REFERRALS**

a. All applications for action by the Town Zoning Board of appeals shall be made to the Zoning 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 shall be made within thirty (30) days of the action being appealed.

b. The Zoning 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 the date thereof, and the Board shall at least five (5) days before such a 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 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, 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 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 the members, the Board of Appeals shall review at a re-hearing, any order, decision or determination of the Board not previously reviewed. Upon such re-hearing, and provided it shall appear that the rights vested prior thereto in person 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 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 forty-five (45) 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 persons, 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 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within (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 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 9 MISCELLANEOUS PROVISIONS**

### **SECTION 9.1 AMENDMENTS**

- a. These regulations or the boundaries shown on the zoning district map, may be amended, supplemented, changed, modified or repealed by local law adopted by the Town Board. In case, however of a protest against such change, signed by the owners of twenty percent (20%) or more, eighty percent (80%) 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 a 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 zoning district map shall become effective until after a public hearing in relation thereto, at which time parties of 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 protectively zoned area of a housing project authorized under the public housing law, as such area is shown on the official zoning map of the Town, or within five hundred (500) feet of the boundaries of any city, village, town, county, state park or parkways, shall be given in the case of a housing project to the housing authority erecting it 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, 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 zoning 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 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 file a report of the final action it had taken with said County Planning Board. If the County Planning Board disapproves any such proposal, or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of the majority plus one of all the members thereof and after adopting a majority a resolution fully setting forth the reasons for such contrary action.
- e. Every amendment to this zoning 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. A copy of 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 then (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 THE TOWN PLANNING BOARD

a. All proposed amendments to this local law 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 recommendations 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 Zoning Board of Appeals based upon its review of such site plan, and make any approval of such site plan conditional upon approval by the Zoning 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 local law shall be held to be minimum requirements, adopted for the promotion of public health, morals, safety and general welfare. Whenever the requirements of this local law are at variance with the requirements of any other lawfully adopted rules, regulations or local laws, the most restrictive or that imposing the higher standards, shall govern.

### SECTION 9.4 SEPARABILITY

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

## GARBAGE, RUBBISH AND REFUSE

### ARTICLE 10

#### SECTION 10.1 Definitions.

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

**GARBAGE.** -- Includes waste food, papers, dead fish or animals or parts thereof, waste fruit or vegetable matter or organic waste of any kind, discarded building material or any other matter of flammable composition or capable of fermentation or decay. Raw Sewerage, toxic waste, insecticides or pesticides.

**PERSON** -- Includes an individual, society, club, firm, partnership, corporation or association of persons, and the singular number shall include the plural number.

**RUBBISH** -- Includes waste metal, tin cans, ashes, tires, cinders, glass of all kinds, pottery and any and all kinds and types of discarded substances of a solid nature and of an incombustible composition. To include washers, dryers, stoves and other discarded metals.

**SECTION 10.2 Transfer Station**

From time to time the Town Board, by directions to the transfer station custodian or custodians, may require, by posting written notice at the transfer station, a separation of recyclable from garbage in delivery and deposit of the same at any town transfer station.

**SECTION 10.3 Restrictions.**

- A. No person shall deliver or deposit either rubbish or garbage at the site described herein or at any other future town transfer station except within such hours as the Town board may from time to time set for such delivery and deposit; notice of such times of dumping will be by reasonable written notice clearly posted by signs at the transfer station herein described or at any future transfer station.
- B. The herein-described town transfer station and any future town transfer station is intended for use limited solely to persons residing within the Town of Decatur or to persons paying real property taxes assessed upon the most recent tax rolls of the tow.
- C. No person shall deliver or deposit garbage or rubbish in the herein-described town transfer station or in any future town transfer station if he has obtained such garbage or rubbish outside the Town of Decatur.
- D. The use of the site under this chapter is conditional upon payment of fees which shall be fixed from time to time by the Town Board by resolution.

**Sec. 10.4 General regulations.**

- A. No person shall throw, place or deposit garbage or rubbish within the lines of any street, road or highway or other public place, playground, park or municipal property within the Town of Decatur.
- B. No person shall operate or maintain, or allow or consent to be maintained, upon any land owned, rented, leased or any dump or dumping ground wherein commercially collected garbage or rubbish is dumped or deposited, as herein defined, or maintain a private dump or dumping ground wherein garbage or rubbish is collected or stored.
- C. No person shall consent, allow, permit upon any land owned, rented or leased the dumping of any raw waste, sewage or toxic waste.
- D. No person shall ignite or burn garbage or rubbish in an unattended fire at any place within the Town of Decatur. An "unattended fire" shall mean a fire not confined in a basket, rack or container of nonflammable material or an open fire not attended constantly by a person of suitable age and discretion.
- E. No person shall at any time burn any rubbish or garbage, including leaves or grass, on any road or street in the Town of Decatur which has been paved or surfaced with a bituminous or other flammable material.

F. Disposal of dead animals must be done through rendering services, or individual owners must bury said animal under three (3) feet of earth within forty-eight (48) hours. Any resident found to be guilty of violating this ordinance will be punished according to the law. Any dead animal found on a residents property, not belonging to said resident, must be reported to the Town Highway Superintendent or Town Supervisor, to be disposed of by the Town Highway Department.

G. Toxic Waste: Dumping of toxic waste is prohibited under any condition. Anyone caught or found to be dumping toxic waste will be prosecuted to the full extent of the law - this is a misdemeanor. Trucks hauling toxic or radioactive waste on the roads or highway in the Town of Decatur, if no other route can be used, must obtain a permit and an escort will be provided. The permit will be provided by the Zoning Enforcement Officer.

#### **Section 10.5 Penalties for offenses.**

Any person committing an offense against any provision of this chapter shall be guilty of a violation punishable by a fine not exceeding two hundred fifty dollars (\$250.) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

#### **Article 11 - Damaged Building**

**Section 11.1** Damaged buildings constitute a health and safety hazard to the public.

A. Any building which is damaged by fire or other accidental cause, or by flood, wind, lightning, deterioration or other natural cause to the extent that it is no longer used for its regular or former purpose, shall be repaired, rebuilt, or leveled within six (6) months after the damage is sustained. A special permit may be granted for an extension period not to exceed six (6) more months (one year total).

B. Life threatening situations, as determined by the Town of Decatur Zoning Officer shall be corrected within forty-eight (48) hours after damage occurs. Fences, signs and/or barricades shall be placed as needed to prevent entrance and provide warning of unsafe conditions.

C. If a violation exists which requires immediate action to avoid a direct hazard or imminent danger to the health, safety or welfare of occupants of a building or to other persons, the Zoning Officer or other appointed official may order such violation immediately remedied, or may take direct action on unsafe conditions. Any costs incurred by such action shall be paid for by the owner, occupant or person responsible for the violation. The Zoning Officer or other designee shall keep on file an accurate account of the items of expense and the date of execution of the action taken.

#### **D. Procedure**

- (1) The zoning Officer or other persons appointed by the Town Board, upon receiving a report of a damaged structure shall promptly inspect the same and report to the Town Board whether it is in an unsafe or dangerous condition and furnish any pertinent information.
- (2) The Town Board shall direct the Town clerk to serve notice on the owner of the property; or on an executor, legal representative, agent, lessee, or any other person having a vested or contingent interest in the same; either personally or by registered mail, addressed t the last known address as shown by the records in the office of the County Clerk. Such notice shall contain a description of the premises, a statement of the particulars in which the structure is unsafe and an order requiring the same to be made safe and secure or

removed. If such service is made by registered mail, a copy thereof must be posted on the premises. Such notice shall state the time within which the person served shall repair and secure or remove the structure.

- (3) A copy of such notice shall be filed in the Schoharie County Clerk's office in the same manner as a Notice of Pendency pursuant to Article 65 of the Civil Practices Law Rules. Such notice shall be effective for a period of one year from date of filing and may be vacated upon order of a Judge of a court of record or upon consent of the Town Attorney.
- (4) The Town Board shall in the Notice of Repair or Demolish provide for a time and place of a hearing before the Town Board at which time such persons having an interest in the property may be heard concerning the damaged structure.
- (5) In the event of refusal to comply, the Town Board shall have said damaged structure removed or razed and assess all expenses incurred by the Town against the land on which said structure is located.

#### E. Penalties For Offenses

1) For every offense against any provision of this chapter, the person committing the same shall be subject to a fine of not more than two hundred fifty dollars (\$250.) or imprisonment not exceeding fifteen (15) days, or both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.