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# Chapter 116

## Zoning

**[HISTORY: Adopted by the Town Board of the Town of Aurora 3-13-2017 by L.L. No. 4-2017. Amendments noted where applicable.]**

### GENERAL REFERENCES

Conservation Advisory Council — See Ch. 5.

Planning Board — See Ch. 23.

Building permits — See Ch. 44.

Farming — See Ch. 62.

Fire prevention and building construction — See Ch. 65.

Flood damage prevention — See Ch. 68.

Junkyards — See Ch. 72.

Off-street parking — See Ch. 81.

Sewers — See Ch. 93.

Site plan review — See Ch. 95.

Stormwater management — See Ch. 96.

Subdivision of land — See Ch. 99.

Water — See Ch. 113.

Street acceptance — See Ch. A121.

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### Article I

#### General Provisions

##### § 116-1 Title.

This chapter shall be known as the "Zoning Code of the Town of Aurora, Erie County, and State of New York."

##### § 116-2 Purpose.

This chapter is made in accordance with a Comprehensive Plan and design found necessary by the Town

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Board of the Town of Aurora to lessen congestion; to secure safety from fire, panic and other dangers; to promote health and welfare; to provide adequate light, air and access; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate adequate transportation, water supply, sewerage, schools, parks and other public requirements; to prevent deterioration of the value of property; and to encourage the most appropriate use of land throughout the Town.

**§ 116-3 Word usage.**

Except where specifically defined herein, all words used in this chapter shall have their customary meanings. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural, and words in the plural number include the singular. The word "person" includes a firm, partnership or corporation as well as an individual. The word "used" shall be interpreted to include the term "designed or intended to be used." The term "shall" is always mandatory.

**§ 116-4 Definitions.**

A. The following words, terms and phrases used in this chapter are defined as follows:

**ACCESSORY BUILDING/STRUCTURE**

A building or structure, detached from or attached to a principal building on the same lot and whose use is customarily incidental and subordinate to the principal building, including but not limited to a garage, barn, shed, gazebo, deck, carport, or aboveground pool.

**ACCESSORY USE**

Use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use.

**ADDITION**

Extension or increase in area or height of a building or structure.

**AGRICULTURAL DISTRICT**

A district set up under Article 25-AA of the New York State Agriculture and Markets Law to conserve, protect and encourage development and improvement of agricultural lands.

**AGRICULTURE**

The use of land for agricultural purposes, including tilling of the soil, dairying, pasture, apiculture, arboriculture, aquaculture, horticulture, floriculture, viticulture, forestry, animal and poultry husbandry, and the necessary accessory uses for the packing or storing of products, provided that the operation of any such accessory uses shall be secondary to that of normal agricultural activities and conducted in accordance with the New York State Agriculture and Markets Law.

**ALTERATIONS**

As applied to a building or structure, a change or rearrangement in the structural parts or in the exit

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facilities or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

#### **ANTENNA**

A system of electrical conductors that transmit or receive radio or similar communication frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, data transmission, personal communication services and microwave communications.

#### **ASSISTED LIVING**

See "nursing home."

#### **BAR or TAVERN**

An establishment licensed under the laws of New York State for the sale of alcoholic beverages and their consumption on the premises, not to include a nightclub.

#### **BASEMENT**

That portion of a building that is partly or completely below grade. See the New York State Building Code: Story above grade.

#### **BED-AND-BREAKFAST**

An operator-occupied one-family dwelling within which is provided overnight accommodations for transient paying guests and which may include the serving of breakfast, and possibly other meals, to such guests.

#### **BOARDINGHOUSE**

See "rooming house."

#### **BREWERY**

An establishment where beer ale and other malt liquors are brewed.

#### **BUFFER AREA**

A unit of land, together with a specified type and amount of plantings thereon, and any structures or landforms which may be required between land uses to eliminate or minimize conflicts between them.

#### **BUILDABLE AREA**

The area of a lot remaining after the minimum yard and open space requirements of the Zoning Law have been met.

#### **BUILDING**

Any structure having a roof supported by columns or by walls and intended for the shelter, housing or

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enclosure of persons, animals or chattel.

**BUILDING FRONT LINE**

A line parallel to the front lot line transecting that point in the building face which is closest to the front lot line. This face includes porches but does not include steps.

**BUILDING LINE**

A line parallel to the street line at a distance therefrom equal to the depth of the front yard required for the zoning district in which the lot is located.

**BUILDING, HEIGHT OF**

The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the declline of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING, MUNICIPAL**

Any one or more of the following uses, including grounds necessary for their use, and accessory buildings/[structures](#):

- (1) Public libraries and museums.
- (2) Government buildings (Town, county, state or federal).

**BUILDING, PRINCIPAL**

A building in which is conducted the main or principal use of the lot on which said building is situated.

**BUSINESS**

An organization or enterprising entity engaged in commercial, industrial or professional activities, both for profit and nonprofit.

***C DISTRICT***

*A commercial district, includes C1, C2 and C3 unless otherwise specified.*

**CAMP TRAILER**

See "recreational vehicle."

**CAMPGROUND**

A parcel of land used or intended to be used, let or rented for occupancy by or of two or more recreational vehicles, tents or other recreational or temporary shelter or sleeping quarters of any kind.

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~~**CANNABIS RETAIL DISPENSARY**~~

~~**CANNABIS ON-SITE CONSUMPTION SITE**~~

**CELLAR**

See "basement."

**CEMETERY**

Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbarium, mausoleum and mortuary, when operated within the boundary of such lands and in accordance with the requirements of New York State law.

**CHILD-CARE CENTER**

A private establishment enrolling four or more children, where tuition, fees or other forms of compensation for the care of the children are charged and which is licensed or approved by New York State to operate as a "child-care center."

**CHURCH**

See "place of religious worship."

**CLUB**

An association of persons forming a membership organization with bona fide dues-paying members. The organization services and caters exclusively to its members and guests, and its premises and buildings are devoted to recreational, athletic, social, fraternal, civic, or cultural activities consistent with the purposes of the association.

**CODE ENFORCEMENT OFFICER**

*The official charged with the duty to enforce this chapter and other laws, ordinances, codes and regulations relating to buildings and property.*

**COMMERCIAL AMUSEMENT AND RECREATION FACILITIES**

Establishments engaged in providing entertainment or recreation for a fee or admission charge, including dance halls; bowling alleys; billiard and pool establishments; commercial sports arenas, rinks and racetracks; amusement parks; membership sports and recreation clubs; game parlors; and health clubs.

**COMMERCIAL GROSS FLOOR AREA**

The sum of the gross floor area of the several floors of a commercial building, including the area under roofed porches and roofed terraces. All dimensions shall be measured from the exterior faces of the

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exterior walls or exterior roof supports.

### **COMMERCIAL NURSERY**

An establishment where herbaceous plants and related lawn care, landscaping and gardening products are sold to retail customers.

### **DAY-CARE FACILITY**

Day care provided on a regular basis for more than three children or adults, away from their own homes, for more than three hours and fewer than 24 hours per day and as regulated by New York State Social Services Law § 390.

### **DEVELOPMENT**

Any project that increases the value of property that may include but not be limited to:

- (1) Installation of service connections to municipal services and/or public utilities.
- (2) Erection of a dwelling or principal building.

### **DISTILLERY**

A facility where fermented grain, fruit or vegetables are distilled into spirits or liqueurs.

### **DISTRICT or ZONING DISTRICT**

An area or section of the Town described on the Zoning District Map established by the Town in accordance with this chapter and within which uniform requirements regulate the use of land and structures and the height, bulk, density and setback of structures.

### **DRIVE-IN SERVICE/DRIVE-THROUGH SERVICE**

A facility where a product is sold or a service performed for customers while they are in or near their motor vehicles in off-street parking or service areas. The term includes drive-in banking, drive-in food service, fast-food service, gasoline station, auto wash and similar uses.

### **DWELLING**

A building or portion thereof designed, suitable for, and used for human habitation.

### **DWELLING GROUP**

Two or more separate dwellings on the same lot.

### **DWELLING UNIT**

A building or portion thereof containing kitchen, bathroom, dining, sleeping and related facilities

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necessary and/or incidental to human habitation, designed and intended as a self-contained household unit for a single individual or family.

**DWELLING, MULTIPLE-FAMILY**

A building or portion thereof containing three or more dwelling units or townhouses.

**DWELLING, SINGLE-FAMILY**

A detached building containing one dwelling unit only.

**DWELLING, TOWNHOUSE or ROWHOUSE**

Attached one-family dwellings of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls.

**DWELLING, TWO-FAMILY**

A detached building containing two dwelling units only.

**EAF**

See "environmental assessment form."

**ENFORCEMENT OFFICIAL**

See Code Enforcement Officer.

**ENVIRONMENTAL ASSESSMENT FORM (EAF)**

A form used by an agency to assist it in determining the environmental significance or nonsignificance of actions. An EAF is used in the implementation of SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

**FAMILY**

One or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

**FAMILY CARE FACILITY**

Living space in a private home in which a family or individual cares, on a twenty-four-hour basis, for up to three mentally or physically disabled children or adults.

**FARM**

Any parcel of land which is used for gain in the raising of agricultural products, livestock, poultry, and dairy products. It includes necessary farm structures and the storage of equipment used. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels.

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## **FLAG LOT**

See Chapter 99, Article VI, Open Development Area.

## **FLOOD INSURANCE RATE MAP (FIRM)**

The current official map on which the Federal Insurance Administration has delineated the areas of special flood hazard for the Town of Aurora, and incorporated herein by reference.

## **FLOODPLAIN MANAGEMENT**

The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness measures, flood control works and land use and development control measures.

## **FLOODWAY**

The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

## **FRANCHISE ARCHITECTURE**

[A building design that is trademarked or identified with a particular chain or corporation or is generic in nature.](#)

## **GARAGE, PRIVATE**

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

## **GARAGE, PUBLIC**

Any garage other than a private garage, available to the public and operated for gain and which is used for the storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.

## **GASOLINE STATION**

A drive-in service for the sale of motor fuel, diesel motor fuel, oil and motor vehicle accessories and which may include facilities for lubricating, washing or servicing vehicles, but not including painting or body repairs or the sale of new or used cars. The term includes "filling station" and "service station."

## **GROUP RESIDENCE**

A group of individuals occupying a single dwelling or dwelling unit as an integral component of a recognized program of physical or mental health rehabilitation, or other custodial supervision and care living arrangement operated by a nonprofit entity, with resident supervisory personnel. This term shall not include rooming houses, boardinghouses, nursing homes, dormitories, sorority houses, fraternity



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houses, or similar facilities.

### **GUN CLUB, SHOOTING RANGE or ARCHERY RANGE**

An outdoor facility, which may or may not include accessory buildings/[structures](#), used for the discharge of firearms at a fixed mark or target.

### **HABITABLE FLOOR**

Any floor usable for living purposes, including working, sleeping, eating, cooking or recreation.

### **HALF STORY**

A story under a sloping roof having a ceiling height of seven feet or more for not exceeding 1/2 the floor area of the uppermost full story in the building.

### **HOME OCCUPATION**

See District regulation, § **116-8**.

### **HOTEL**

A facility containing rooms rented to primarily transient guests, with parking space convenient to each room, in which guest units have no cooking facilities but in which meals and accessory services may be provided. The term includes "motel," "motor inn," "motor lodge," and similar designations.

### **IN-LAW APARTMENT**

An owner-occupied, single-family dwelling with a separate apartment within the dwelling and without a separate entrance that may include at least one kitchen, one bathroom and one bedroom, to be occupied solely by a relative of said property owner and not to be advertised as rental property or sold as a double or duplex.

### **INDUSTRY**

Storage, manufacture, preparation or repair of any article, substance or commodity.

### **KENNEL**

An establishment in which more than three dogs more than six months old are housed, groomed, bred, boarded, trained or sold.

### **LIVESTOCK**

Includes but is not limited to horses, cattle, hogs, fowl, poultry or furred animals.

### **LOT**

A parcel of land occupied or capable of being occupied by one building and the accessory buildings/[structures](#) or uses customarily incident to it, including such open spaces as are required by this

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chapter.

**LOT AREA**

The total area within the lot lines of a lot, excluding any street rights-of-way.

**LOT DEPTH**

The mean distance between the front and rear lot lines, measured in the general direction of the side lines of the lot.

**LOT FRONTAGE**

The length of the front lot line measured at the street right-of-way line.

**LOT LINE**

The line of record bounding a lot.

**LOT LINE, FRONT**

The lot of record, parallel to the street right-of-way.

**LOT LINE, REAR**

The lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, a line 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

**LOT LINE, SIDE**

Any lot line other than a front or rear lot line.

**LOT WIDTH**

A distance between the side lot lines of a lot and parallel to the front lot line of that lot measured at the minimum required building setback line.

**LOT, CORNER**

A lot or parcel of land abutting upon two of more streets at their intersections or upon two parts of the same street forming an interior angle of less than 135°.

**LOT, INTERIOR**

A lot other than a corner lot.

**LOT, MINIMUM AREA OF**

The smallest lot area established by this chapter on which a use or structure may be located in a

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particular district.

### **MANUFACTURED HOME**

A residential building constructed in an off-site manufacturing facility in accordance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) established June 16, 1976, and administered by HUD. Such use shall be regulated by Town of Aurora Zoning Code, Chapter **116**, §§ **116-36** and **116-37**.

### **MEAN HEIGHT**

The average of the roof eave height and the height of the highest point on a roof surface.

### **MOBILE HOME**

A residential dwelling that was fabricated in an off-site manufacturing facility, designed to be a permanent residence, built prior to the enactment of the Federal Manufactured Home Construction and Safety Standards (FMHCSS) on June 16, 1976. Such use shall be regulated by Town of Aurora Zoning Code, Chapter **116**, §§ **116-36** and **116-37**.

### **MOBILE HOME PARK**

An area of land occupied or designed for occupancy by two or more mobile homes or manufactured homes. Such term also includes the term "trailer camp" and "trailer park."

### **MODULAR HOME**

A structure intended for residential use and fabricated in an off-site manufacturing facility in accordance with the New York State Uniform Fire Prevention and Building Codes.

### **MOTEL**

See "hotel."

### **MOTOR VEHICLE**

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

- (1) Electronically driven mobility devices operated or driven by a person with a disability.
- (2) Vehicles that run on rails or tracks.
- (3) Snowmobiles.
- (4) All-terrain vehicles.
- (5) Self-propelled machines used for growing and harvesting of farm produce.

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- (6) Self-propelled caterpillars and crawler-type equipment operated on a ~~contract~~[construction](#) site.

### **MUNICIPAL OR PUBLIC UTILITY STRUCTURE**

A facility necessary for the installation, delivery, and/or maintenance of utility services in and for the Town of Aurora.

### **NIGHTCLUB**

A place of entertainment open at night for eating, drinking, dancing, etc., and usually having a floor show or live music.

### **NONCONFORMING BUILDING OR STRUCTURE**

A building or structure lawfully existing on the effective date of this chapter which does not conform to the district regulations for the dimensions and height of such building or structure or whose location results in nonconformity as to minimum yard dimensions or maximum lot coverage.

### **NONCONFORMING LOT**

A lot of record lawfully existing on the effective date of this chapter that does not meet the district regulations for minimum area or dimensions.

### **NONCONFORMING USE**

Lawful occupancy of a structure or land by a use that does not conform to the regulations of the district in which it is situated at the time of adoption of this chapter or any amendment thereto.

### **NONPROFIT**

A person, firm, partnership, trust, company, corporation, organization, institution and similar entities so designated as "nonprofit" or "not-for-profit" by virtue of charter or incorporation and certification by the Internal Revenue Service.

### **NURSERY SCHOOL**

A facility for daytime care or instruction for two or more children from two years through seven years old, operated on a regular basis.

### **NURSING HOME**

A premises on which is provided lodging, meals, and continuing nursing care for compensation to convalescent or chronically ill persons. The term "nursing home" shall include a convalescent home or rest home.

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## **OVERLAY DISTRICT**

A mapped zoning district that imposes a set of requirements in addition to those of the underlying districts.

## **PARK**

Any land and/or associated structures created and maintained by a municipality for the express use and enjoyment by the general public for recreational purposes.

## **PARKING AREA**

An area of land, excluding driveways thereto, which is out of the public right-of-way and is designated for and adequately improved for the parking and maneuvering of motor vehicles.

## **PARKING SPACE**

The area required for a motor vehicle and sufficient accessibility for the occupants of said vehicle as stipulated in this chapter.

## **PERMIT, BUILDING**

An approval required prior to any construction, addition, alteration, relocation or demolition as governed by the laws, ordinances and codes listed under § **44-1**.

## **PERMITTED USE**

A specific use noted in Article **III** of this chapter for which land, lots, buildings or structures may be used, occupied or maintained under this chapter as a matter of right.

## **PERSON**

A firm, partnership, trust, company, corporation, organization, institution and similar entities, as well as an individual acting as owner, lessee, agent or employee.

## **PLACE OF RELIGIOUS WORSHIP**

A specially designed building or structure or consecrated place where individuals or a group of people such as a congregation come to preform acts of devotion, veneration or religious study.

## **POULTRY**

Domestic fowls raised for meat or eggs; chickens, turkeys, ducks, geese, etc., collectively.

## **PREMISES**

A lot, plot or parcel of land, easement or public way, including any structures thereon.

## **PRINCIPAL STRUCTURE**

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The structure in which is conducted the main or principal use of the lot on which said structure is located. In any residence district, any dwelling shall be deemed the "principal structure" on the lot on which it is situated.

### **PROFESSIONAL OFFICE**

The office of a lawyer, doctor, dentist and any person performing any activity or service licensed pursuant to the provisions of the Education Law of the State of New York.

### **PROHIBITED USE**

Any use which is not listed as a permitted use, special permit use or permitted accessory use this chapter shall be considered a prohibited use hereunder in all zoning districts.

### **PUBLIC UTILITY STRUCTURE**

See "municipal or public utility structure."

### **R DISTRICT**

A residential district, includes R-1, R-2, R-3, and RR unless otherwise specified.

### **RECREATIONAL VEHICLE**

A mobile recreational unit, such as a travel trailer, pickup camper, converted bus, tent trailer, camper trailer or similar vehicle.

### **RESIDENTIAL FLOOR AREA**

All habitable space as defined by the Residential Code of New York State.

### **RESTAURANT**

A permanent building with table or counter and chair facilities used for the serving of meals to the public.

### **RIGHT-OF-WAY, PRIVATE**

A parcel of land which has a specific owner and some other party or the public at large has a legal right or easement to traverse that land.

### **RIGHT-OF-WAY, PUBLIC**

Land over which the public may travel subject to restrictions by the government with jurisdiction, whether or not said government has control of the land by ownership or easement.

### **ROOMER**

A person other than a member of a family or functional family unit who resides in a rooming house or boardinghouse on a temporary or seasonal basis. The term includes "lodger" and "boarder."

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### **ROOMING HOUSE or BOARDINGHOUSE**

A dwelling unit used for temporary or transient occupancy purposes by at least three, but not more than 12, individuals or not constituting a family or functional family unit who pay expenses by the room or based on a share of total expenses of the dwelling unit. The term does not include a motel, hotel, group residence, or short-term rental.

### **SEQRA**

The New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, and its implementing regulation in Title 6 of New York Codes, Rules and Regulations, Part 617.

### **SERVICE STATION**

See "gasoline station."

### **SETBACK**

The required minimum distance from the street right-of-way line or any other lot line that established the area within which a structure must be erected or placed. See "building line."

### **SHORT-TERM RENTAL**

*Owner-occupied residence where a dwelling unit or part thereof is rented for compensation for lodging by an individual(s) for periods of not less than one night and not more than thirty (30) consecutive days.*

### **SIGN**

Any structure or part thereof, or device attached thereto or painted or represented thereon, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as or which is in the nature of an announcement, direction, or advertisement. The word "sign" includes the word "billboard" but does not include the flag, pennant, or insignia of any nation, state, city or other political, educational, charitable, philanthropic, civic, professional, religious, or like campaign, drive, movement, or event.

### **SITE PLAN**

A drawing of the site, presenting information and accompanied by documentation as specified in Chapter 95.

### **SPECIAL USE**

A use which is authorized subject to requirements imposed by the Town Board or Zoning Board of Appeals to assure that the proposed use is in harmony with the law and will not adversely affect the neighborhood.

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**STABLE, PRIVATE**

A stable which is an accessory use for the family which resides on the premises and on or at which horses, ponies or similar types of animals are kept or fed, but not for remuneration, sale or hire.

**STABLE, PUBLIC**

A stable on or at which horses, ponies or similar types of animals are kept or fed for remuneration, hire or sale.

**STOCK-IN-TRADE**

Any merchandise (wares, goods, farm produce, etc.) purchased, made, or otherwise acquired for resale.

**STORAGE YARD**

An outdoor area where vehicles, equipment, merchandise, raw materials, or other items are accumulated or stored for an indefinite period of time.

**STORAGE, OUTDOOR**

Land used for the keeping of goods, wares or supplies on land outside of any building or structure. This shall not be construed as including the activities of junkyards or landfills, as referenced in the Town Code.

**STORY**

That part of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a "story" if the ceiling is more than five feet above the average adjoining ground level or if used for business or dwelling purposes.

**STREET**

A public or private thoroughfare which affords the principal means of access to abutting property. This term shall be synonymous with "road."

**STREET LINE**

The line which delineates the public right-of-way of a road or street, as established by the local, county or state agency having jurisdiction and as shown on the real property Tax Maps of the Town.

**STRUCTURAL ALTERATION**

Any change in the supporting members of a building or other structure, such as bearing walls, columns, beams or girders.

**STRUCTURE**



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Anything constructed or erected for occupancy or use.

### **SUBSTANTIAL ALTERATION**

Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial alteration" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

### **TOWNHOUSE**

A residential building consisting of a series of individually owned one-family units having a common party wall between each unit, with private outside entrances, separate front and rear yards and separate utilities and located on a separate recorded lot.

### **TRAVEL TRAILER**

See "recreational vehicle."

### **TRUCK CAMPER (slide-in or chassis mount)**

See "recreational vehicle."

### **USE**

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

### **USE, ACCESSORY**

A use, occupancy or tenancy which is customarily incidental and subordinate to the principal use, occupancy or tenancy and located on the same lot or premises.

### **USE, CHANGE OF**

A change in the nature of occupancy or use of any principal building or structure.

### **USE, PRINCIPAL**

The specific purpose for which land or a building is designed, arranged, or intended or for which it is or

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may be occupied or maintained.

### **USE, PROHIBITED**

Any use which is not listed as a permitted use, special permit use or permitted accessory use in this chapter shall be considered a prohibited use hereunder in all zoning districts.

### **USE, TEMPORARY**

One established for a fixed period of time with the intent to discontinue such use upon the expiration of such time. Such uses do not involve the construction or alteration of any permanent structure.

### **VARIANCE**

Permission to depart from the literal requirements of the Zoning Law.

### **VARIANCE, AREA**

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

### **VARIANCE, USE**

The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

### **VOLITILE MATERIALS**

Gasoline or any substance more vaporizable or flammable than gasoline.

### **WETLANDS**

Areas designated by the New York State Department of Environmental Conservation as wetlands and those adjacent land areas within 100 feet of the delineated wetland; federal wetlands regulated by the United States Army Corps of Engineers; and any locally protected wetlands.

### **WIND ENERGY CONVERSION SYSTEM (WECS)**

A machine that converts the kinetic energy in the wind into a usable form. Commonly known as a "wind turbine" or "windmill."

### **YARD**

An open space that lies between the principal or accessory building/[structure](#) and the nearest lot line. Such yard is unoccupied and unobstructed from the ground upward [by any structure or building](#), except as may be specifically provided in the zoning local law.

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**YARD, FRONT**

A space extending the full width of the lot between a principal building and the front lot line unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of such principal building.

**YARD, REAR**

An open space extending the full width of the lot between the principal building and the rear lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified, the depth of which shall be the least distance between the rear lot line and the rear of such principal building.

**YARD, SIDE**

A space extending from the front yard to the rear yard between the principal building and the side lot line, unoccupied and unobstructed from the ground upward except as hereinafter specified. The required width of side yards shall be measured horizontally from the nearest point in the side lot line to the nearest building.

**ZERO LOT LINE**

The location of a building on a lot in such a manner that one or more of the building's sides rest directly on a lot line.

- B. Other terms and phrases. Other terms and phrases not specifically defined in this section but defined in the New York State Uniform Fire Prevention and Building Code applicable to general building construction will have the meanings ascribed therein. All other words not specifically defined and used in this section shall carry their customary meanings.

**§ 116-5 Enumeration of districts.**

- A. The Town of Aurora is hereby divided into the following types of districts, hereinafter referred to as "zoning districts":

R1	Residence District
R2	Residence District
R3	Residence District
RR	Rural Residential District
A	Agricultural District
C1	Commercial District
C2	Commercial District
C3	Commercial District

- B. References to "any R District" shall be interpreted to mean any R1, R2, R3, or RR District.

- C. *References to "any C District" shall be interpreted to mean any C1, C2, or C3 District.*

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**§ 116-6 Zoning Map.**

- A. The zoning districts are shown on the Zoning Map which accompanies and which, with all explanatory matter thereon, is hereby made a part of this chapter.
- B. The Zoning Map and each subsequent amendment thereto shall be duly certified and filed by the Town Clerk.

**§ 116-7 District boundaries.**

The boundaries of each district are hereby established as shown on said Zoning Map and are intended to follow street and road lines, existing lot and property lines, creeks and other like natural dividing lines or extensions of such lines. Where a boundary line does not follow such a line, it shall be located on the map by appropriate descriptions and dimensions.

**§ 116-8 District regulations.**

**§ 116-8.1 R1 Single-Family Residential District.**

A. Permitted uses.

- (1) One single-family dwelling, with no other dwelling or principal building on the same lot.
- (2) Church or other place of worship or religious instruction: parish house, rectory; convent in connection with school, all subject to site plan review regulations of Chapter **95**, regardless of the building square footage.
- (3) Public or private school accredited by the New York State Education Department, all subject to site plan review regulations of Chapter **95**, regardless of the building square footage.
- (4) Public park or public playground maintained by the State of New York, County of Erie or Town of Aurora.
- (5) Home occupations. Any use which:
  - (a) Is carried on wholly within the enclosed walls of the dwelling unit or an accessory structure and does not use more than 25% of the total floor area of a dwelling unit or 500 square feet, whichever is the lesser.
  - (b) Is carried on only by a member or members of the family residing in the dwelling unit with no additional employees.
  - (c) Shall have no external evidence of such use. No stock, merchandise, equipment, or displays of any kind shall be visible outside the dwelling unit or accessory building/[structure](#).

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- (d) Is clearly incidental and secondary to the use of the dwelling for residential purposes.
  - (e) Does not create vehicular traffic, noise, dust, vibration, odor, glare, fumes or electrical interference that may create a nuisance to abutting properties or be detrimental to the residential character of the neighborhood.
  - (f) No external structural alterations which are not customary to a residential structure shall be allowed.
  - (g) The following uses and other uses similar in character shall not be considered to meet the intention of this definition: retail sales, vehicle engine repair, vehicle body work, veterinary hospital, dog kennel, bar or restaurant, or any use that is not permitted in Type 5 (wood frame) building construction under the New York State Uniform Fire Prevention and Building Code.
  - (6) Customary accessory uses, including but not limited to private residential garages or accessory buildings/[structures](#), and the further accessory uses in residences on Big Tree Road (Rt. 20A), Quaker Road (Rt. 20A), Olean Road (Rt. 16) and Buffalo Road (Rt.16) only: professional offices of lawyers, physicians and surgeons, dentists, building architects, public accountants, and professional engineers, located and conducted wholly within the dwelling and incidental to the primary residential use of such dwelling; and provided, further, that, except for household servants and yardmen, not more than one person shall be employed and only as assistant to the professional resident. Furthermore, in all cases where such professional offices are established, off-street automobile parking shall be provided for all residents, staff and customers of that professional.
  - (7) Group family day cares and family day-care homes as defined and regulated by New York State.-
  - (8) Bed-and-breakfast as defined by New York Building Code and subject to site plan review regulations of Chapter **95**, regardless of the building square footage.-
  - (9) Signs, limited in accordance with § **116-34A**.
- B. Maximum mean height.
- (1) For principal buildings: 2 1/2 stories, not to exceed 35 feet.
  - (2) For accessory buildings/[structures](#): not to exceed 15 feet.
- C. Building size.
- (1) Dwelling: not less than 1,200 square feet.
  - (2) Accessory building/[structure](#): footprint not to exceed 25% of the required rear yard.-

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D. Minimum lot size.

- (1) Frontage along or parallel to the street right-of-way: 125 feet.
- (2) Area: 32,670 square feet (3/4 of an acre, not including the right-of-way).
- (3) *Width: 125 feet*

E. Front yard depth or setback.

- (1) A minimum of 75 feet from the street right-of-way.
- (2) Where 20% or more of the lots in the same block on the same side of the street and within 1,000 feet of a proposed building are improved with buildings, the average setback of such existing buildings shall establish the minimum setback or building line. This provision shall not be interpreted to permit a front yard depth of less than 45 feet.
- (3) In the case of a corner lot, all buildings shall comply with the required front yard setbacks from the right-of-way of the primary street (street of property address). All such buildings shall be allowed a setback of 45 feet from the right-of-way of the secondary street.
- (4) No accessory building/[structure](#) shall be erected in the front yard.

F. Side yards.

- (1) Principal building: each side yard a minimum of 20 feet.
- (2) Accessory building/[structure](#): a distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

G. Depth of rear yard.

- (1) Principal building: a minimum of 50 feet, measured from the wall of the principal building closest to the rear property line.
- (2) Accessory building/[structure](#): A distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

**§ 116-8.2 R2 Residential District.**

A. Permitted uses.

- (1) Any use permitted and as regulated in the R1 District.

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- (2) Two-family dwellings, with no other dwelling or principal building on the same lot.
  - (3) A professional office as listed in § **116-8.1A(6)**, conducted in a dwelling by the resident thereof.
  - (4) The keeping of not more than three roomers or boarders.
- B. Maximum mean height.
- (1) For principal buildings: 2 1/2 stories, not to exceed 35 feet.
  - (2) For accessory buildings/[structures](#): not to exceed 15 feet.
- C. Building size.
- (1) Single-family dwelling: not less than 1,200 square feet.
  - (2) Two-family dwelling: not less than 1,800 square feet, with a minimum dwelling unit size of 500 square feet.
  - (3) Accessory building/[structure](#): footprint not to exceed 25% of the required rear yard.
- D. Minimum lot size.
- (1) Frontage along or parallel to the street right-of-way: 100 feet.
  - (2) Area: 32,670 square feet (3/4 of an acre not including the right-of-way).
  - (3) *Width: 100 feet*
- E. Front yard depth or setback.
- (1) A minimum of 50 feet from the street right-of-way.
  - (2) Where 20% or more of the lots in the same block on the same side of the street and within 1,000 feet of a proposed building are improved with buildings, the average setback of such existing buildings shall establish the minimum setback or building line. This provision shall not be interpreted to permit a front yard depth of less than 30 feet.
  - (3) In the case of a corner lot, all buildings shall comply with the required front yard setbacks from the right-of-way of the primary street (street of property address). All such buildings shall be allowed a setback of 45 feet from the right-of-way of the secondary street.

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(4) No accessory building/[structure](#) shall be erected in the front yard.

F. Side yards.

(1) Principal building: each side yard a minimum of 12 1/2 feet.

(2) ~~Accessory building/structure~~[Accessory building](#): a distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

G. Depth of rear yard.

(1) Principal building: a minimum of 40 feet measured from the wall of the principal building closest to the rear property line.

(2) Accessory building/[structure](#): a distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

### § 116-8.3 **R3 Residential District.**

A. Permitted uses.

(1) Any use permitted and as regulated in the R2 District.

(2) Multiple-family dwelling.

(3) Boarding- or rooming house.

B. Permitted uses when approved by the Town Board through a special use permit:

(1) Nonprofit institutions for charitable, religious, cultural or community social purposes, not including institutions for mental patients, correctional, or animal rescue purposes. All nonprofit institutions are subject to site plan review regulations of Chapter **95**, regardless of occupancy classification or the size of the building.

(2) Dwelling group consisting of two or more dwellings on the same lot.

(a) Each dwelling shall be situated on the lot in such a manner that in the event the property is split, each dwelling will meet the zoning requirements with regard to lot size and property line setbacks of the district in which the dwelling is located.

(b) Any inconsistencies with any zoning regulations will require Zoning Board of Appeals approval prior to any Town Board action.



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C. Maximum mean height.

- (1) For principal buildings: 2 1/2 stories, not to exceed 35 feet.
- (2) For accessory buildings/[structures](#): not to exceed 15 feet.

D. Building size.

- (1) Single-family dwelling: not less than 720 square feet.
- (2) Two-family dwelling: not less than 1,200 square feet, with a minimum dwelling unit size of 500 square feet.
- (3) Multiple-family dwelling: not less than 500 square feet per dwelling unit.
- (4) Accessory building/[structure](#): footprint not to exceed 25% of the required rear yard.

E. Minimum lot size.

- (1) Frontage along or parallel to the street right-of-way: 90 feet.
- (2) Area: 32,670 square feet (3/4 of an acre not including the right-of-way), plus an additional 4,000 square feet for each additional dwelling unit in excess of two.
- (3) *Width: 90 feet*

F. Front yard depth or setback.

- (1) A minimum of 50 feet from the street right-of-way.
- (2) Where 20% or more of the lots in the same block on the same side of the street and within 1,000 feet of a proposed building are improved with buildings, the average setback of such existing buildings shall establish the minimum setback or building line. This provision shall not be interpreted to permit a front yard depth of less than 30 feet.
- (3) In the case of a corner lot, all buildings shall comply with the required front yard setbacks from the right-of-way of the primary street (street of property address). All such buildings shall be allowed a setback of 30 feet from the right-of-way of the secondary street.
- (4) In the case of a multiple-family dwelling, there shall be no parking of vehicles in the area between the street line and any portion of a structure used for dwelling purposes.

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G. Side yards.

- (1) Principal building: each side yard a minimum of 12 1/2 feet.
- (2) Accessory building/[structure](#): A distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

H. Depth of rear yard.

- (1) Principal building: a minimum of 40 feet, measured from the wall of the main building closest to the rear property line.
- (2) Accessory building/[structure](#): a distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

§ 116-8.4 **RR Rural Residential.**

A. Permitted uses.

- (1) One single-family dwelling or one two-family dwelling with no other dwelling or principal building on the same lot.
- (2) Church or other place of worship or religious instruction: parish house, rectory; convent in connection with school, all subject to site plan review regulations of Chapter **95**, regardless of the building square footage.
- (3) Public or private school accredited by the New York State Education Department, all subject to site plan review regulations of Chapter **95**, regardless of the building square footage.
- (4) Public park or public playground maintained by the State of New York, County of Erie, or Town of Aurora.
- (5) Home occupations (as noted in § **116-8**).
- (6) Customary accessory uses, including but not limited to private residential garages or accessory buildings/[structures](#), and the further accessory uses in residences on Big Tree Road (Rt. 20A), Quaker Road (Rt. 20A), Olean Road (Rt. 16) and Buffalo Road (Rt. 16) only: professional offices of lawyers, physicians and surgeons, dentists, building architects, public accountants, and professional engineers, located and conducted wholly within the dwelling and incidental to the primary residential use of such dwelling; and provided, further, that, except for household servants and yardmen, not more than one person shall be employed and only as assistant to the professional resident. Furthermore in all cases where such professional offices are established, off-street automobile parking shall be provided for all

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residents, staff and customers of that professional.

- (7) Group family day cares and family day-care homes as defined and regulated by New York State.
- (8) Bed-and-breakfast as defined by New York Building Code and subject to site plan review regulations of Chapter **95**, regardless of the building square footage.
- (9) Signs, limited in accordance with § **116-34A**.
- (10) The keeping of domestic animals, subject to the following limitations:
  - (a) Six chickens or other poultry per acre, no roosters, confined to lot boundaries and housed in the rear yard at least 25 feet from any lot line.
  - (b) Not more than two of any other species of domestic animals.
  - [1] The keeping of large domestic animals, including but not limited to horses, goats, sheep, etc., shall have a minimum of one acre undeveloped land per animal.
  - [2] The keeping of pigs and cattle shall have at least two acres of undeveloped land per animal.
  - (c) The keeping of manure behind the residence and at a minimum of the 60 feet to the side and rear property lines.
- (11) Apiary limited to five hives.

These agricultural limitations shall only apply to lots improved with a residential structure. RR areas not improved with a residential structure shall be allowed full agricultural uses as stipulated in § **116-8.5** until such time that a residential structure is built on the lot.

B. Maximum mean height.

- (1) For principal buildings: 2 1/2 stories, not to exceed 35 feet.
- (2) For accessory buildings/[structures](#): not to exceed 15 feet.

C. Building size.

- (1) Dwelling: not less than 1,200 square feet.
- (2) Accessory building/[structure](#): footprint not to exceed 25% of the required rear yard.

D. Minimum lot size.

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- (1) Frontage along or parallel to the street right-of-way: 125 feet.
- (2) Area: 32,670 square feet (3/4 of an acre, not including the right-of-way).
- (3) *Width: 125 feet*
- (4) See § **116-25** for exceptions.

E. Front yard depth or setback.

- (1) A minimum of 75 feet from the street right-of-way.
- (2) Where 20% or more of the lots in the same block on the same side of the street and within 1,000 feet of a proposed building are improved with buildings, the average setback of such existing buildings shall establish the minimum setback or building line. This provision shall not be interpreted to permit a front yard depth of less than 45 feet.
- (3) In the case of a corner lot, all buildings shall comply with the required front yard setbacks from the right-of-way of the primary street (street of property address). All such buildings shall be allowed a setback of 45 feet from the right-of-way of the secondary street.
- (4) No accessory building/[structure](#) shall be erected in the front yard.

F. Side yards.

- (1) Principal building: each side yard a minimum of 20 feet.
- (2) Accessory building/[structure](#): a distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

G. Depth of rear yard.

- (1) Principal building: a minimum of 50 feet, measured from the wall of the principal building closest to the rear property line.
- (2) Accessory building/[structure](#): a distance equal to the mean height of the proposed accessory building/[structure](#), but not less than 10 feet.

#### § 116-8.5 A Agriculture.

A. Permitted uses.

- (1) Any use permitted and as regulated in the RR District.

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- (2) Two-family dwelling with no other dwelling or principal building on the same lot.
  - (3) **Agricultural, floricultural, and horticultural pursuits, including but not limited to dairies, general farms, horse farms, greenhouses, plant nurseries, produce farms, and the raising of bees, poultry and livestock, together with all customary buildings and structures necessary for the production and storage of the products of such pursuits.**
  - (4) Seasonal cottages, as defined by the Town Assessor, occupied less than six months a year and not constructed for year-round occupancy.
  - (5) Customary accessory uses and structures, including but not limited to seasonal roadside stands, for the sale of the products of such land, and signage as regulated in § **116-34B**.
- B. Permitted uses when approved by the Town Board through a special use permit:
- (1) Camp to be used by the general public.
  - (2) Farm equipment sales and display.
  - (3) Fur farm.
  - (4) Public stable, riding academy or horseback training facility.
  - (5) Private club, private recreation or camping area serving only club members and not conducting activities usually conducted for profit.
  - (6) Cemetery.
  - (7) Golf link.
  - (8) Dwelling group.
  - (9) Dog kennel: an establishment in which three or more dogs over four months in age are housed, groomed, bred, boarded, trained and/or sold, including dog rescue and adoption operations.
  - (10) Animal rescue.
  - (11) Public utility buildings and all associated structures.
  - (12) Quarries, clay, sand and gravel pits, subject to § **116-21** and § **116-35**.
  - (13) Veterinary hospitals or clinics.

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C. Maximum mean height.

- (1) For a principal nonfarm building: 2 1/2 stories, not to exceed 35 feet.
- (2) Two-story, not to exceed 20 feet for accessory buildings/[structures](#).
- (3) No height limit for farm structures, other than farm dwellings, if an agricultural exemption exists through the Town Tax Assessor, except as regulated by other applicable ordinances or codes.

D. Building size.

- (1) Single-family dwellings not less than 1,200 square feet.
- (2) Two-family dwellings not less than 1,800 square feet, with a minimum dwelling unit size of 500 square feet.
- (3) Multiple-family dwellings not less than 500 square feet per dwelling unit.

E. Minimum lot size.

- (1) Frontage along or parallel to the street right-of-way: 200 feet.
- (2) Area: three acres, not including the right-of-way.
- (3) In the case of a multiple-family dwelling, an additional 4,000 square feet for each dwelling unit in excess of one.
- (4) *Width: 200 feet.*
- (5) See § **116-25** for exceptions.

F. Front yard depth or setback.

- (1) A minimum of 75 feet from the street right-of-way.
- (2) No accessory building/[structure](#) shall be erected in the front yard.

G. Side yards.

- (1) Principal building: each side yard a minimum of 40 feet.
- (2) Accessory building/[structure](#): a distance equal to the mean height of the proposed accessory

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building/structure, but not less than 20 feet.

H. Depth of rear yards.

- (1) Principal building: a minimum of 100 feet, measured from the wall of the principal building closest to the rear property line.
- (2) Accessory building/structure: a distance equal to the mean height of the proposed accessory building/structure, but not less than 20 feet.

### **§ 116-8.6 Commercial Districts Generally.**

- A. *The purpose of establishing Commercial Districts and the following regulations is to establish certain areas in the Town where retail businesses, offices, and other commercial uses of land will be encouraged and to establish standards by which development in these areas will occur. Each applicant for land use and development shall comply with the Town of Aurora Commercial Design Standards to the maximum extent practicable in accordance with the purpose and intent of the Town Code.*
- B. *Intent: Pursuant to the recommendations in the Regional Comprehensive Plan of {2003}, these districts are designed to preserve community character, properly manage future growth and development, and provide for economic development. All commercial districts must preserve and enhance cultural and historic resources and promote architectural development styles consistent with the character of these resources. Concentration is around the Village of East Aurora in order to avoid sprawl. Limited commercial uses are envisioned ~~aged around~~ along Route 16 south of the Village of East Aurora up to Blakely Rd. ~~to complement the village center, and in commercial districts along Route 240, and which~~ should be consistent with the surrounding area.*
- C. *Objectives.*
  - (1) *Parking should be at the sides or rear of the buildings wherever feasible, and screened to maintain the residential character of the Town.*
  - (2) *Landscaping and setback standards should be utilized to improve visual characteristics and buffer development and redevelopment from adjoining sensitive land uses.*
  - (3) *Commercial development must complement the character of the surrounding area, and provide for an improved and positive image pursuant to the Town of Aurora Commercial Design Guidelines.*
  - (4) *Franchise architecture is not permitted.*
  - (5) *A landscape plan must be provided as part of the site plan application.*
  - (6) *Building frontages should be active, with ~~nonreflective~~ non-reflective, minimally tinted window openings at ~~ground~~ the first-floor level.*

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D. *Maximum mean height.*

- (1) *For principal buildings: 35 feet in height.*
- (2) *For accessory buildings/[structures](#): two stories, not to exceed 20 feet.*

E. *Building size.*

- (1) *Dwelling, single-family: not less than 1,200 square feet.*
- (2) *Dwelling, two-family: not less than 1,200 square feet with a minimum dwelling unit size of 500 square feet.*
- (3) *Dwelling, multiple-family: not less than 500 square feet per unit.*
- (4) *Accessory buildings/[structures](#) residential: The footprint of any single, accessory building/[structure](#) not to exceed 25% of the required rear yard [area](#).*
- (5) *Accessory buildings/[structures](#) ~~at~~[residential and commercial](#): The combined footprint of all accessory buildings/[structures](#) not to exceed 50% of the footprint of the principal building.*
- (6) *All other uses: as stipulated in the specific district, but in any event, no [individual](#) building/[structure](#) may exceed 30% of the lot area [excluding right-of-way](#).*

F. *Minimum lot size.*

- (1) *Frontage along all or parallel to the Right-Of-Way: 100 feet.*
- (2) *Area: 32,670 square feet (3/4 of an acre) for the principal building, not including the right of way.*
- (3) *Lot width: 100 feet.*

G. *Front yard depth or setback.*

- (1) *A minimum of 50 feet from the street right-of-way for buildings. A minimum of 20 feet of green space between the street right-of-way and any parking.*
- (2) *In the case of a corner lot, all buildings shall comply with the front yard setbacks from the right-of-way of the primary street (street of property address). All such buildings shall be allowed a setback of 30 feet from the right-of-way of the secondary street.*
- (3) *No accessory building/[structure](#) in the front yard.*

H. *Side yards.*

- (1) *Each side yard when used for residences: A distance equal to or greater than the mean height of the building but not less than 20 feet.*
- (2) *Each side yard when used for commercial buildings in a C-1 or C-2 District: A distance equal to or greater than the mean height of the building but not less than 30 feet.*
- (3) *Each side yard when used for commercial buildings in a C-3 District: A distance equal to or greater than the mean height of the building but not less than 40 feet.*



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- (4) *Each side yard when used for accessory buildings/structures: A distance equal to or greater than the mean height of the building but not less than 10 feet.*

I. *Depth of rear yard.*

- (1) *Each rear yard when used for residences: A distance equal to or greater than the mean height of the building but not less than 30 feet.*
- (2) *Each rear yard when used for commercial buildings in a C-1 or C-2 District: A distance equal to or greater than the mean height of the building but not less than 45 feet.*
- (3) *Each rear yard when used for commercial buildings in a C-3 District: A distance equal to or greater than the mean height of the building but not less than 60 feet.*
- (4) *Each rear yard when used for accessory buildings/structures: A distance equal to or greater than the mean height of the building but not less than 15 feet.*

J. *Maximum developed space. No more than 50% of the lot area of any lot may be used for structures and impermeable surfaces.*

K. *Additional special requirements for commercial uses.*

- (1) *Activity shall not create excessive noise, smoke, odor or vibration beyond the lot lines of the lot on which the use occurs. There shall be no emissions of dust, dirt, smoke, fly ash, noxious gases or other noxious substances which are likely to harm the health of persons, animals or plant life.*
- (2) *Special use permits are required for any drive-through facilities. Drive-through facilities are not permitted in C-1 Districts.*
- (3) *All rooftop HVAC units, communications equipment, or other rooftop equipment shall be screened from view at ground level by use of building and/or roof features compatible with the design of the building.*
- (4) *For lots that are developed with a single building, the building shall be oriented towards the street on which the building fronts. When a building fronts more than one street, the building shall be oriented towards the street on which adjacent buildings with similar uses front.*
- (5) *All landscaped areas shall be maintained and preserved consistent with the plan as originally approved or as amended by the Town Board.*
- (6) *In addition to the Town of Aurora Offstreet Parking Guidelines, all adequate space for standing, loading, and unloading shall be provided and permanently maintained.*

L. *Site plan review regulations of Chapter 95 are required for all commercial uses.*

M. *In the event of a discrepancy between the provisions in these C districts and any other part of this Code, the provisions in this C District apply.*

**§ 116-8.7 C-1 Commercial.**

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- A. *Purpose. The purpose of the C-1 Commercial District is to provide areas or centers for shopping and service-oriented uses that are easily accessible to the neighborhoods which they serve, which are not intended to draw customers from considerable distances, or which have low-volume traffic and no significant impacts so as to be minimally intrusive upon residential neighborhoods. These districts shall be limited both in size and in proximity to one another.*
- B. *Building size for commercial purposes.*
  - (1) *5,000 square feet maximum.*
- C. *Uses permitted by right:*
  - (1) *Packaging/ mailing services.*
  - (2) *Professional and clerical offices.*
  - (3) *Floral shops, arts and craft stores/studios, bookstores, sewing and knitting supplies, bicycle sales/repairs, newsstand, and tourism-related materials.*
  - (4) *Barbershop or beauty parlor, printing shop, tailor/dressmaker, shoe maker/repair, optician, decorator, photographer.*
  - (5) *Any use permitted and as regulated in the R-2 District.*
- D. *Uses by special use permit of the Town Board:*
  - (1) *Retail food store/grocery and sales, drugstore/pharmacy, hardware store, and other small local retail shops.*
  - (2) *Bank or other financial institution, laundromat/dry cleaner pickup station, medical and dental clinics, and other similar personal services.*
  - (3) *Restaurant, café, caterer, and other eating places.*
  - (4) *Nonprofits for charitable, religious, cultural or community social purposes, not including institutions for mental patients, correctional, or animal rescue purposes. All nonprofit institutions are subject to site plan review regulations of Chapter 95.*
  - (5) *Hotel, motel, and short-term rentals.*
  - (6) *Child day-care center and elder care center as defined and regulated by the State of New York.*
  - (7) *Clubhouses as defined in Section 116-4 and community center.*
  - (8) *Health or fitness center.*
  - (9) *Dental clinics not involving any overnight occupancy.*
  - (10) *Funeral home or undertaking facility with no crematorium.*
  - (11) *Pet shop, provided such shop does not have any outside pens or runs.*
  - (12) *Brewery, distillery provided there is no on-site consumption.*

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(13) *Other uses not specifically listed as permitted uses, but similar in nature and compatible with C1 uses.*

E. *Storage. No storage except in completely enclosed buildings.*

F. *Customary accessory uses, including but not limited to parking areas, require a special use permit when they are accessory to a use that requires a special use permit.*

### **§ 116-8.8 C-2 Commercial.**

A. *Purpose. The purpose of the C-2 Commercial District is to provide areas in the Town where business offices and businesses may be located which include activities that may draw clientele from all areas in the Town and from outside the Town. It is the intention to locate such areas where there is minimal impact on established residential neighborhoods, where the necessary infrastructure is available, and where transportation facilities can be provided. The uses in this district will typically involve more traffic and related noises than in the C-1 Commercial District.*

B. *Building size for commercial purposes.*

(1) *20,000 square feet maximum.*

C. *Uses permitted by right:*

(1) *Any use permitted by right in the C-1 District as regulated in Section 116-8.7.1. with a building size of no more than 10,000 square feet.*

D. *Uses by special use permit of the Town Board:*

(1) *Any use permitted by right in the C-1 District with a building size over 10,000 square feet up to 20,000 square feet maximum.*

(2) *Any use requiring a special use permit in the C-1 District.*

(3) *Shops for construction trade.*

(4) *Commercial amusement and recreation establishments such as sports facilities, indoor and outdoor theaters, bingo or dance halls and nightclubs.*

(5) *Automotive fuel filling station, automobile and truck repair, auto body repair, and agriculture equipment repair.*

(6) *Storage yards which shall be completely enclosed by a suitable fence and/or buffer at least six feet high and shall contain only the products of a business located on the same lot.*

(7) *Warehouse and storage-type services.*

(8) *A club, organization, or recreation area or building including camps and campsites serving the public*

(9) *Wholesale sales and incidental storage, provided that all goods shall be stored in fully enclosed structures in conformance with the bulk regulations for buildings.*

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- (10) *Lumber and building material and equipment sales and service.*
- (11) *New or used vehicle and equipment sales and rentals, including, but not limited to, farm equipment, snowmobiles, ATV's, trailers, motorbikes and the like.*
- (12) *Medical clinics not involving any overnight occupancy.*
- (13) *Motor vehicle washing facilities.*
- (14) *Office buildings for business and professional offices, including incidental clinics, cafeterias and recreational facilities for the exclusive use of company employees.*
- (15) *Pet shop, including those with outside pens or runs.*
- (16) *Veterinary office, clinic, or small animal hospital.*
- (17) *Brewery, distillery, including on-site consumption.*
- (18) *Bar, tavern.*
- (19) *Customary accessory uses, including but not limited to parking areas.*
- (20) *Other uses not specifically listed as permitted uses, but similar in nature and compatible with C2 uses.*

**§ 116-8.9 C-3 Commercial.**

- A. *Purpose. The purpose of the C-3 Commercial District is to provide areas in the Town where businesses, medium-sized retail, and industrial and manufacturing facilities may be located, which include activities that may draw clientele from all areas in the Town and from outside the Town. It is the intention to locate such areas where there is minimal impact on established residential neighborhoods, where the necessary infrastructure is available, and where transportation facilities can be provided. The uses in this district will typically involve more traffic and related noises than in the C-2 Commercial District.*
- B. *Building size for commercial purposes.*
  - (1) *30,000 square feet maximum.*
- C. *Uses permitted by right:*
  - (1) *Research, design, and development facilities utilizing office spaces, indoor scientific laboratories, and other similar indoor spaces.*
  - (2) *Customary accessory uses, including but not limited to parking areas.*
- D. *Uses by special use permit of the Town Board when conducted in an enclosed building:*
  - (1) *Any use permitted and as regulated in the C-2 District other than dwellings and other residential structures.*
  - (2) *Manufacturing, assembling, converting, altering, finishing, cleaning or any other*

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*processing or incidental storage of products or materials involving the use of only oil, gas or electricity for fuel and which operation, in the opinion of the Town Board, will not create any dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazard, noise or vibration, smoke, dust, odor or other form of air pollution, electromagnetic or other disturbance, glare or harmful discharge, storage or dispersal of liquid or solid wastes in a manner or amount so as to adversely affect the surrounding area.*

- (3) *Food preparation (e.g., baking, bottling, mixing, and milling).*
- (4) *Processing or canning of putrescible food products (e.g., meat, fish, or dairy products, fermented foods such as sauerkraut, vinegar, or the like).*
- (5) *Adult entertainment businesses as described in Article V of this chapter.*
- (6) *Junkyards.*
- (7) *Uses requiring an adult-use cannabis license.*
- (8) *Other uses not specifically listed as permitted uses, but similar in nature and compatible with C3 uses.*

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**§ 116-9 Compliance with district regulations required.**

- A. Except as hereinafter provided, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located.
- B. No building shall hereafter be erected or altered to a greater height, to accommodate or house a greater number of families, to have any yard or setback less in width or depth or to have lesser floor area, in the case of dwellings, than is specified herein for the district in which such building is located.

**§ 116-10 Applicability of yard and open space requirements.**

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building.

**§ 116-11 Lot reduction.**

No lot, yard, setback, parking area or other space shall be so reduced in area, dimension or capacity as to make said area, dimension or capacity less than the minimum required under this chapter. If already less than the minimum required under this chapter, said area, dimension or capacity shall not be further reduced.

**§ 116-12 Compliance with flood hazard regulations and stormwater regulations.**

- A. No building shall hereafter be erected or substantially altered in any area depicted as a floodway on the Flood Boundary - Floodway Map or as a special flood hazard area on the Flood Insurance Rate Map (FIRM), nor shall any land be used or developed, except in accordance with the regulations for control of special flood hazards.
- B. No land shall be disturbed except in accordance with the requirements of Chapter **96**, Stormwater Management, of the Code.

**§ 116-13 Prevalence of more restrictive standards.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety or the general welfare. Wherever the requirements of this chapter are at variance with the requirements of any other applicable law, ordinance, regulation or private agreement, the more restrictive or that imposing the higher standard shall govern.

**§ 116-14 Disclaimer of liability for flood damage.**

The degree of flood protection required pursuant to this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. The data or regulatory provisions herein are not, however, a warrant that other areas may not be subject to flooding nor that base flood elevations may not be exceeded, and the incorporation of these regulatory provisions shall not be construed to create liability, express or implied, on the part of the Town of Aurora or any departments or agencies thereof for any flood damages that result from reliance on this chapter or any administrative decision made thereunder.

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## Article II Supplementary Regulations

### § 116-15 Provisions deemed additional to district regulations; applicability.

The provisions of the district regulations shall be subject to additional requirements, limitations and exceptions in accordance with the following supplementary regulations. Unless otherwise specified, such supplementary regulations shall apply in all districts.

### § 116-16 Accessory uses.

A use specified in one district shall not be permitted as an accessory use in another district unless such use is also specified in such other district.

### § 116-17 Limitations on accessory uses in R Districts.

In any R District, the permitted accessory uses on any premises shall not:

- A. Occupy a total floor space exceeding 25% or 500 square feet of the floor area of the dwelling, whichever is lesser;
- B. Occupy more than 5% of the lot area;
- C. Include the establishment of any new access driveway to business or industrial premises;
- D. Include a private garage with vehicular entrance headroom more than nine feet high;
- E. Include the storage of volatile substances in quantities greater than 300 gallons on any lot; or
- F. Include any home occupation which is noxious or offensive by reason of dust, fumes, gas, noise, odor, refuse matter, smoke, vibration, unreasonable use of lights or nighttime operation.

### § 116-18 Accessory buildings/[structures](#) in R Districts.

A. In any R District, no accessory building/[structure](#) shall be erected or altered so as to be:

- (1) In any front yard.
  - (2) In any required side yard.
  - (3) Nearer than 10 feet to any dwelling unless attached thereto and considered part thereof for purposes of yard measurements.
- B. Accessory buildings/[structures](#) not over one story or 15 feet in height may occupy a total of not more than 25% of the required rear yard area on any lot in any R District.

### § 116-19 Keeping of dogs, fowl, and other animals in R-1, R-2 and R-3 Districts.

A. No bees, cattle, horses, goats, sheep, swine, mink, fox or other commercial fur-bearing animals,



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chickens, ducks, geese, pigeons or other fowl shall be kept, harbored or maintained in any R-1, R-2 or R-3 District. The Zoning Board of Appeals may grant temporary or permanent permission to keep chickens on such conditions as it may require.

- B. No more than three dogs over the age of four months shall be kept, harbored or maintained in any R, A or C District. The Zoning Board of Appeals may grant temporary or permanent permission to keep more than three dogs on such conditions as it may require.

**§ 116-20 Restriction of uses adjacent to R Districts.**

- A. Within 500 feet of the property line of another lot which is in any R District, no fur farm or commercial livestock feed lot shall be hereafter established or extended.
- B. Within 100 feet of the property line of any such lot, no farm materials or process shall be hereafter stored or maintained in such amount or manner as will be noxious or offensive to an unreasonable degree.
- C. Nothing herein shall be construed to prohibit all usual and incidental farm and diary operations and the processing of products, animals or fowl raised or produced on any farm by the owner or occupant thereof.

**§ 116-21 Excavations.**

- A. Clay, gravel, rock, sand, shale or other earth or natural mineral deposit shall not be excavated, quarried or otherwise removed from any premises, except for the purposes of construction thereon, and in no case within 100 feet of any street line or, unless to be used on contiguous property with the consent of the owner thereof, within 20 feet of any lot line of other premises.
- B. The Town Board may grant a special use permit for the stockpiling and sale of such materials upon written application of the owner, which application shall contain a detailed statement of the proposed work together with plans of such removal and of the restoration of the premises. Approval of any such application shall be conditioned on the following requirements:
  - (1) Nearby property owners and occupants shall be protected against unreasonable nuisances and hazards during the period of operations.
  - (2) All such excavations over five feet in depth shall be leveled on the bottom by refilling and shall be graded on all sides with a slope of not less than 1 1/2 feet horizontal for each one foot of vertical depth, or in lieu of sloping all sides of such excavations as herein provided, a permanent fence or barricade effectively prohibiting access to such excavation shall be erected and maintained on all sides thereto.
  - (3) The applicant shall agree to such further conditions as the Town Board may impose for public safety and the general welfare, including the filing of an acceptable bond or deposit to guarantee compliance.



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**§ 116-22 Effect of changes in street width or length on front yards and setbacks.**

Where a widening or extension of an existing street or highway right-of-way or the establishment of a new street or highway is indicated on the Zoning Map or on an Official Map adopted by the Town Board, any front yard or building setback required by this chapter shall be measured from such widened, extended or new right-of-way. Unless otherwise indicated on the map, any widened right-of-way shall be assumed to be centered on the former street or highway center line.

**§ 116-23 Exception to height limitations.**

The height limitations of this chapter shall not apply to chimneys, church spires and belfries, water tanks or necessary mechanical features not occupying more than 1/10 of the roof area. In any R or C District, a public or nonprofit institutional building may be erected to a height greater than that specified for the district, provided that each front, side and rear yard is increased one foot for each one foot of additional height.

**§ 116-24 Lot frontage on street.**

No dwelling shall be erected on any lot which does not have immediate frontage on an existing or platted street or highway as provided in § 280-a of the Town Law.

**§ 116-25 Lots in two districts.**

- A. Where a district boundary line divides a lot in single or joint ownership of record at the time such line is established, the regulations for the less-restricted portion of such lot shall extend not more than 50 feet into the more-restricted portion, provided that the lot has frontage on a street or highway in the less-restricted portion.
- B. A single lot having street frontage in the RR District and which lot extends into the A District shall follow the minimum lot size requirements and setback regulations for the RR District for the construction of a single-family or two-family dwelling in the A-zoned portion of the lot.

**§ 116-26 Effect on lots of record.**

The requirements of this chapter with respect to lot area and lot width shall not be construed to prevent the erection of a one-family dwelling on any lot of record in ownership separate from that of any adjacent lots at the effective date of this chapter, provided that the sanitation, yard and setback requirements are complied with.

**§ 116-27 Off-street parking.**

- A. General requirements.
  - (1) A parking space shall be a minimum of nine feet wide and 19 feet long and shall be served by a parking aisle which is no less than 24 feet wide for two-way traffic or 12 feet wide for one-way traffic.
  - (a) Fifteen percent of the required parking spaces may be formatted to serve compact cars. The minimum size of these spaces shall be seven feet wide and 14 feet long.
  - (2) An area containing one or more parking spaces shall have direct access to a public street or alley.

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- (3) Parking area design shall conform to parking area dimensions as set forth herein. All parking areas which require 20 or more parking spaces shall have a dust-free surface and be properly marked.
  - (4) All parking areas shall be property drained so as not to impact neighboring properties or rights-of-way.
  - (5) All parking areas shall be constructed to withstand the loads to be imposed.
  - (6) Outdoor lighting for off-street parking areas shall be designed to shield adjacent properties from glare.
  - (7) Off-street parking areas of all developments shall be designed so that sanitation, snow removal, emergency and other public service vehicles may serve such developments without restriction or obstruction.
  - (8) No off-street parking shall be located over an active or auxiliary septic tank or septic field.
  - (9) The size and number of handicapped parking spaces shall be as required by the approved New York State Building and Fire Prevention Code. Such number of spaces shall be included in the total number of required parking spaces.
  - (10) Shared access and parking arrangements with adjoining properties shall be reviewed and approved by the Town Board. Appropriate legal access agreements shall be provided by the property owner or developer. Such agreements shall be reviewed and approved by the Town Attorney prior to final approval by the Town Board.
  - (11) The Town Board may recommend that green space be substituted in lieu of the required parking area on a particular site plan.
- B. Existing parking areas.
- (1) Any existing off-street parking area may continue in use unimpaired.
    - (a) In the event that a facility and/or parking area is subject to site plan review and/or special use permit, the existing parking area shall not be enlarged, reduced, or have entrances and/or exits relocated without Town Board review and approval.
  - (2) It shall be the responsibility of the property owner to provide the total number of off-street parking spaces required by this chapter for any uses which are enlarged, erected or structurally altered after the effective date of this article. All required parking areas shall be completed and landscaped prior to occupancy of any structure.
- C. Minimum required spaces based on occupancy.

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- (1) All minimum required parking spaces based on occupancy and use of a property shall be as regulated by the Town of Aurora Parking Guideline.
- (2) Any use not specifically addressed or referred to in the Town of Aurora Parking Guideline shall be subject to parking requirements of the listed use that most closely matches the proposed use as determined by the Town of Aurora Code Enforcement Officer or his/her representative.

### **Town of Aurora Off-Street Parking Guideline**

<b>Type of Use</b>	<b>Number of Parking Spaces</b>
<b>Residential</b>	
Single-family dwelling	2
Two-family dwelling	4
Multiple-family dwelling	2 per dwelling unit
Senior housing	1 per dwelling unit
Boarding- or rooming house; bed-and-breakfast	1 per guest room plus spaces required for principal use
Home occupation	1 per 200 square feet of floor area used for the home occupation
<b>Business and Commercial</b>	
Retail stores and services	1 per 300 square feet of gross floor area
Banks	1 per 500 square feet of gross floor area plus 1 per employee for the largest shift; 5 queuing spaces per drive-through lane
Office, medical or dental; laboratory	4 per professional, plus 1 per employee for the largest shift
Office, general or professional	1 per 300 square feet of gross floor area
Hospital, nursing home, convalescent home	1 per employee for the largest shift, plus 1 for every six patient beds
Hotel, motel, inn	1 per guest room, plus 1 per employee for the largest shift. Additional spaces shall be required for any restaurant or other accessory use on the property
Restaurant (standard and fast-food); tavern	1 per three patron seats or 150 square feet of gross floor area, plus 1 per employee for the largest shift. Five off-street queuing spaces for each drive-through lane.
Funeral homes	1 per 150 square feet of gross floor area
Beauty parlor/barbershop	1.5 per patron service/treatment chair
Gas stations	4 per bay
Day-care center	1 parking space and 1 queuing space per 300 square feet of gross floor space

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### Town of Aurora Off-Street Parking Guideline

Type of Use	Number of Parking Spaces
Ice-skating rinks; roller-skating rinks	1 per 300 square feet of gross floor area
Health/fitness clubs; swimming clubs	1 per 150 square feet of area devoted to the activity
Storage and warehouse facilities	1 per 4,000 square feet of floor area devoted to storage
Industrial uses	1 per 4,000 square feet of floor area devoted to storage and/or stationary operating equipment
Outdoor storage	1 per 4,000 square feet of area devoted to outdoor storage, including used car lots; equipment rental; sales yards
<b>General Uses</b>	
Meeting halls, theaters or other places of public assembly not otherwise specified	1 per 4 seats or 60 square feet of seating area where fixed seating is not provided
Churches	1 per 4 seats
High schools and colleges	5 per classroom
Nursery and elementary schools	1 per employee plus one per classroom
Dance halls or dance studios	1 per 150 square feet of gross floor area
Bowling alleys	5 per bowling lane, plus 1 per employee for the largest shift
Tennis club	5 per court

#### § 116-28 Projections into yards.

The following structures shall be allowed within required yards:

- A. A wall or fence not over 3 1/2 feet high in any front yard or side-street side yard, subject to § **116-38**.
- B. A wall or fence not over seven feet high in any other yard.
- C. A retaining wall of any necessary height.
- D. Balconies, bay windows, chimneys and roof projections not exceeding three feet.
- E. Unenclosed porches projecting into any required side or rear yard not more than 1/4 the required width or depth of such yard.
- F. Steps not extending and not enclosed above the floor level of the first story.

#### § 116-29 Public water and sewers.

- A. If a public water supply is available, no new residence or other new principal building, except a farm structure, shall be constructed, erected, built, or used without connection with such water supply.

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- B. If a public sewer system is available, no new residence or other new principal building, except a farm structure, shall be constructed, erected, built, or used without connection with such public sewer system.

**§ 116-30 Effect on public utilities.**

The provisions of this chapter shall not be construed to limit or interfere with the construction or operation, for public utility purposes, of water and gas pipes, electric light and power transmission and distribution lines, communication lines, oil pipelines, sewers and incidental appurtenances or with any highway or railroad right-of-way existing or hereafter authorized by the Town of Aurora, County of Erie or State of New York. The above exceptions shall not be construed to permit service yards, repair garages or other service or storage structures or uses by said public utilities except as otherwise permitted by this chapter.

**§ 116-31 Sanitation facilities.**

The dumping of garbage or rubbish shall be permitted only in locations and under conditions approved by the Town Board and the Erie County Department of Health. Any new or modified facilities for the treatment, storage or disposal of sewage, including excreta, bath, sink and laundry wastes or trade wastes, shall be provided and installed in accordance with the rules, regulations and standards of the New York State and Erie County Departments of Health. Careful consideration shall be given to the location and construction of private water supplies to assure adequate protection of such supplies.

**§ 116-32 Shopping and industrial centers.**

- A. The owner of land in any zoning district except an R or A District may apply to the Town Board for a special use permit for the development and operation of a shopping center or an industrial center on such land, provided that:
- (1) The proposed site is not less than five acres in area.
  - (2) A survey map is submitted showing contours, other natural features and existing development on the proposed site and also on all adjacent premises.
  - (3) A proposed development plan is submitted showing all proposed buildings, drives, parking areas and other features.
  - (4) A stormwater pollution prevention plan (SWPPP) is submitted, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to **§ 96-4B** of the Code. A special permit shall not be granted unless the SWPPP and proposed plan conform to the performance and design criteria and standards in Chapter **96**, Stormwater Management, of the Code.
- B. The Town Board shall refer every such application, survey map and proposed plan to the Town Planning Board for its recommendation thereon. The Town Planning Board shall approve, approve with modifications or disapprove such application and shall report its decision to the Town Board, stating its reasons based on:

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- (1) The relation of the proposed project to any Town Comprehensive and/or Open Space Plan, now existing or hereafter adopted.
  - (2) The need for the proposed project, at the present time.
  - (3) The compatibility of the proposed project with adjoining land uses and with other proposed developments, having particular reference to its probable effect on the value of other land and to the adequacy of features intended to promote public safety and the general purposes of this chapter.
- C. The Town Board, on receipt of the Planning Board's recommendation, shall approve or disapprove the application or shall request the submittal of revised or more-detailed plans and specifications.
- D. If the application is approved, building and occupancy permits may be obtained, but only for the development and use authorized by the Town Board in accordance with the specifications and plans filed with and approved by the Town Board and with any further conditions imposed by the Town Board as to operation.

**§ 116-33 Use of flammable siding.**

In any district, no building shall be constructed, erected, built, altered or used which has its external side walls covered, in whole or in part, with exposed building paper, rolled roofing paper or other like flammable rolled or sheet material.

**§ 116-34 Signs.**

- A. In any R District, no sign shall be constructed, erected, built or used except:
- (1) Temporary signs pertaining to the lease or sale of a lot or building, not exceeding nine square feet in area, to be removed within 10 days after the property is leased or sold.
  - (2) Church or school bulletin boards not exceeding 20 square feet in area.
  - (3) Temporary signs not exceeding 20 square feet in area, related to a single activity or event, which may remain in place for a period of less than 30 days up to three nonconsecutive times a calendar year.
  - (4) A sign of not more than four square feet in area displaying a street number, name of occupant(s) and/or name by which the property is known.
  - (5) One builders' or contractors' sign, not exceeding 12 square feet in area, while construction is in progress. Such sign will be removed within 10 days after construction is substantially completed.
  - (6) Professional nameplates not exceeding two square feet in area indicating only the name, degrees and/or profession of the person(s) residing on the premises and permitted to practice their profession thereon.

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B. In any A District, no sign shall be constructed, erected, built or used except:

- (1) Signs permitted in R Districts.
- (2) Signs not more than 24 square feet in area which advertise the products of the farm on which they are located.
- (3) When approved by the Zoning Board of Appeals, a freestanding sign not to exceed 24 square feet in area advertising nonagricultural uses permitted in an agricultural zone.

C. In any C District, no sign shall be constructed, erected, built or used except:

- (1) Those signs permitted in R Districts.
- (2) A sign, not to exceed 32 square feet in area, attached to a building which advertises the business or products sold or manufactured on the premises, provided that no part of any such sign projects over any street line or more than five feet out from the wall or above the roof of the building to which it is attached.
- (3) One freestanding sign, not exceeding 32 square feet in area and no greater than six feet in height, which advertises the business or products sold or manufactured on the premises; additional freestanding signs (consistent with the above specifications) which are approved of by the Town of Aurora Zoning Board of Appeals.

D. Signs constructed, erected, built or used in any district:

- (1) Shall not consist of animated or moving parts.
- (2) May only be illuminated by light of constant color and intensity. No flashing, rotating or moving lights or strings of lights (excluding temporary Christmas or similar holiday lights) may be used.
- (3) May not be illuminated from within (i.e., interior illuminated) or illuminated by neon or similar devices of technology.
- (4) Political signs and banners. This chapter shall in no event be construed or employed to restrict the political process within the Town of Aurora. Such political signs shall not exceed four square feet, shall be located on private property, shall be placed no earlier than 30 days prior to the voting day, and shall be removed within two days thereafter.

E. Nonconforming signs existing prior to the enactment of this section, as amended, shall not be altered or enlarged except in compliance with this section.

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**§ 116-35 Topsoil stripping.**

- A. No stripping or removal of topsoil shall be made within 100 feet of any street line or within 10 feet of any property line of land in different ownership.
- B. No stripping or removal of topsoil shall be made in any case except that:
  - (1) The owner of lands may strip topsoil for use on the same or contiguous lands owned by him.
  - (2) The Town Board may grant permission for stripping and removal of topsoil on condition that the land so stripped of topsoil shall be leveled, graded and drained, that not less than five inches of topsoil shall remain on such land and that such land, during the months of April and May or September and October next following such stripping and removal of topsoil, shall be prepared into a loose, level seedbed, limed, fertilized and seeded by applying ground limestone at the rate of one ton per acre, 5-10-5 fertilizer at the rate of 600 pounds per acre, disked and worked into the soil and smoothed, and the following seed mixture sown thereon at the rate of 20 pounds per acre and rolled firmly:
    - (a) New York State broadleaf trefoil: seven pounds.
    - (b) Kentucky bluegrass: two pounds.
    - (c) Timothy: five pounds.
    - (d) Clover: six pounds.
- C. The Town Board may require the filing of an acceptable bond or deposit to guarantee compliance with this section.

**§ 116-36 Mobile homes; recreational vehicles.**

- A. Except as provided in § **116-37**, no habitable vehicle or mobile home shall be stored or used in any district as a temporary or permanent dwelling or for any trade or occupation, whether or not its wheels have been removed and whether or not it has been placed upon a foundation, except under the following conditions:
  - (1) It shall be more than 150 feet from each street line and on a lot owned in fee by the occupant of such vehicle or mobile home.
  - (2) Not more than one such vehicle or mobile home shall be located on any lot or parcel of land.
  - (3) Such vehicle or mobile home shall not be stored, used or occupied for more than one year.
  - (4) A permit therefor shall have been granted by the Code Enforcement Officer for not more than one year.



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The Board of Appeals may extend such period of occupancy and use for not more than six months on any single application therefor.

- B. None of the foregoing provisions shall be construed to prohibit storage of one recreation vehicle or travel or camping trailer on a lot upon which a dwelling has been lawfully erected or in an enclosed permanent building on such lot, provided that such trailer is owned by the occupant of such premises and, while so stored, is not used or occupied for sleeping or dwelling purposes and is not connected with electric, sewer, water or other utilities.
- C. Seasonal and off-seasonal storage.
  - (1) Seasonal property storage (April 15 through October 15).
    - (a) Prohibited storage of a recreational vehicle, camping, or travel trailer is as follows:
      - [1] Within 10 feet of any side yard lot line.
      - [2] Within 50 feet of the road right-of-way, excluding driveways.
      - [3] Within 10 feet of any rear yard lot line.
      - [4] Within 45 feet of any side street right-of-way on a corner lot.
    - (2) Off-seasonal storage (October 15 through April 15).
      - (a) Within a fully enclosed accessory structure.
      - (b) In the rear yard but not within 10 feet of any lot line.

**§ 116-37 Mobile home parks.**

No mobile home park shall be hereafter established, extended, enlarged or opened for use in any district, except that in any A District, the Town Board may authorize the establishment, extension, enlargement and use of mobile home parks subject to the following conditions:

- A. The development, maintenance and operation of such mobile home park shall comply with all applicable laws, ordinances and regulations.
- B. The mobile home park shall have been approved by the Erie County Health Department.
- C. Highway access shall have been approved by the Highway Superintendent or department having jurisdiction.

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- D. All electrical installations and equipment and fire-protection measures shall meet the requirements of the New York State Board of Fire Underwriters.
- E. Each mobile home or habitable vehicle shall be set back at least 150 feet from every street line.
- F. The individual parking space or plot upon which each mobile home shall be located shall be not less than 40 feet in its least horizontal dimension and not less than 3,200 square feet in area and shall be provided with individual water supply and sewer connections.
- G. A site plan showing all water, sewer and other utilities, the individual mobile home plots and all buildings, roads and other improvements in connection with the proposed mobile home park, prepared and signed by a New York State-licensed professional engineer, shall be submitted as part of the application for such mobile home park.
- H. A stormwater pollution prevention plan (SWPPP), if required for the proposed mobile home park development, extension, or enlargement under Chapter **96**, Stormwater Management, of the Code, shall be submitted as part of the application for such development, extension, or enlargement, together with the recommendation of the Stormwater Management Officer pursuant to § **96-4B** of the Code. If an SWPPP is submitted pursuant to this section, the application shall not be approved unless the SWPPP complies with the performance and design criteria and standards in Chapter **96**, Stormwater Management, of the Code.
- I. The Town Board shall have held a public hearing in regard to such application, on like notice to that specified in § **116-91** of this chapter for a hearing before the Board of Appeals, except that owners of all properties abutting on the lot or premises to be used for such mobile home park shall have been notified of such hearing in the manner specified in said § **116-91**.
- J. The application shall have been submitted by the Town Board to the Town Planning Board for its recommendations, and such recommendations shall have been reported to the Town Board, together with reasons, based on:
  - (1) The relation of the proposed mobile home park to any Town Comprehensive and/or Open Space Plan, now existing or hereafter adopted.
  - (2) The need for said mobile home park at the present time.
  - (3) The compatibility of said mobile home park with adjoining land uses and other proposed developments, with particular reference to its probable effect on land values, public health, public safety and the general purposes of this chapter.

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**§ 116-38 Visibility at intersections.**

No fence, wall, building or other structure, tree, shrub or other planting which obstructs sight lines at elevations between two feet and six feet above the roadway shall be placed or permitted to remain on any corner lot in the triangular area formed by intersecting street lines and a line connecting them at points 50 feet distant from their intersection.

**§ 116-39 Storage of volatile materials.**

All volatile materials shall be stored, kept and used only in containers and in the manner approved by the New York State Board of Fire Underwriters.

NEW: 116- Driveway culvert installation shall be approved prior to construction

Town Highway Superintendent shall approve the culvert type for Town roads and installation of culverts, excavation and backfill of pipe trenches shall be in accordance with the Standard Specifications and Details for Materials and Construction of the Town of Aurora on file in Town offices.

Erie County Highway Authority for all culverts installed on County Highways

### Article III Special Use Permit

**§ 116-40 General.**

Certain uses in the Aurora Town Code require a special use permit to be issued by the Aurora Town Board. No such uses shall be established, and no building permit therefor shall be issued, until such special use permit is granted as set forth in this chapter. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case. A special use permit shall be deemed to authorize only one special use.

**§ 116-41 Applications, plans and fees.**

A. Application for special use permit review and approval shall be made, in writing, on the appropriate forms provided by the Town and shall be filed with the Town Clerk. In certain circumstances, an application for special use permit review and approval shall be made in tandem with application to the Town Board for site plan review and approval for the proposed project. The applicant will first appear before the Town Board for review of the application. The Town Board may take one of the following actions:

- (1) Take no action.
- (2) Request that the applicant modify the application and resubmit.
- (3) Request that the applicant submit an application for site plan review to be made in tandem with the application for a special use permit.
- (4) Refer the application(s) for review to, and recommendation by, the Planning Board.

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- B. Each application shall be subject to the same information submission requirements and shall follow the review and approval process as outlined in this section.

§ 116-42 **Procedures.**

- A. After review by the Town Board and if forwarded to the Planning Board, the Town Planning Board shall review the application for special use permit based on the criteria and considerations listed below. Should the applicant, based on the findings of the Board, fail to meet any one of the criteria or requirements listed below, either because of the basic nature and design of the project or the lack of appropriate mitigating measures, the request for approval of the special use permit shall be recommended for denial. Should the applicant, based upon the findings of the Planning Board, meet all of the criteria or requirements listed above, either because of the basic nature and design of the project or the inclusion of appropriate mitigating measures, then the request for approval of a special use permit shall/may be recommended for approval. The Town Planning Board may also recommend approval of an application for a special use permit subject to appropriate measures that will ensure compliance with the criteria and requirements listed below. The applicant shall still require approval of the project's preliminary site plan, if applicable, from the Town Board pending final action on the application for special use permit by the Town Board. Procedures for the further review of the site plan application shall follow those particular requirements as outlined in Chapter **95**, Site Plan Review.
- B. The Town Board shall review the findings of the Town Planning Board and all of the plans and documents filed as part of the application. Based upon its review of the record, the Town Board may act to approve, approve with modification or deny the applicant's request for a special use permit. Failure to comply with the conditions of the special use permit shall be considered a violation of this chapter and shall result in the application of the appropriate penalties and/or fines as outlined in § **116-94** and the possible revocation of permits.

§ 116-43 **Standards.**

The Town Board may issue a special use permit only upon a finding that each and all of the following conditions are met:

- A. Uses permitted will be in general harmony with and promote the general purposes and intent of the most recent Comprehensive Plan of the Town, the most recent Open Space Plan and the Zoning Ordinance.
- B. Impact on district. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it, and the location of the site with respect to streets giving access to it shall be such that it will be in harmony with the appropriate and orderly development of the district in which it is located.
- C. Adjacent properties. The location, nature and height of buildings, walls and fences and the nature and extent of the landscaping of the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

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- D. Impacts on neighboring properties. Operation in connection with the special use shall not cause more severe impacts to nearby properties by reason of noise, fumes, odors, vibrations, flashing lights or other operational characteristics than would the operations of any permitted use not requiring a special use permit.
  - E. Impact on surrounding properties. The nature, duration, and intensity of the operations which are involved in connection with the proposed use will be in harmony with nearby uses and will not alter the essential character of the neighborhood or be detrimental to the residents thereof. The proposed special use provides sufficient landscaping and/or other forms of buffering to protect surrounding land uses.
  - F. Traffic. The use shall not cause undue traffic congestion or create a traffic hazard.
  - G. Parking. Parking areas shall be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.
  - H. Services. The use shall be appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar facilities.
  - I. SEQRA. All requirements of SEQRA shall be met.
  - J. Special uses shall also be subject to any and all applicable local, state or federal laws, codes, rules or regulations.
  - K. Additional standards or requirements that the Town Board may reasonably request.
- (1) The proposed use must be compatible with any of the other zoning laws of the Town of Aurora.
  - (2) The proposed use must not destroy or adversely impact significant historic and/or cultural resource sites.

**§ 116-44 Recording of special use permit.**

- A. Upon issuance of a special use permit, a copy of the permit form and a certified copy of the resolution shall be delivered to the applicant, who shall, with 30 days of such delivery, return the completed form to the Town Clerk for official signature. The special use permit so granted by the Town Board shall be recorded, or a memorandum of such permit signed by a Town official shall be recorded, by the applicant, in the office of the Clerk of the County of Erie. Such documents shall be in a form acceptable for filing and shall make reference to the liber and page of the deed granting ownership of the affected premises to the current owner.
- B. Proof of such filing shall be received by the Town of Aurora Town Clerk.

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- (1) A certificate of occupancy to the applicant will not be issued until proof of filing is received.
- (2) Failure to provide proof of filing within 10 days thereafter shall render void the special use permit so granted.

**§ 116-45 Review of special use permit.**

Upon reasonable notice to the applicant, the Code Enforcement Officer or his designee has the authority to conduct a site visit. The purpose of said site visit is to ensure that the use is being operated in accordance with this chapter and the conditions specified by the Town Board. If the Superintendent of Building or his designee determines that a violation of this chapter or of the special use permit conditions exists, the revocation procedures of § **116-48** of this chapter shall be invoked. Refusal to allow an inspection shall be considered grounds for revocation.

**§ 116-46 Expansion of special use permit.**

The nature, duration and intensity of the operations which are involved in or conducted in connection with any use for which a special use permit has been granted shall not be increased or expanded without the approval of the Town Board. Any expansion of a use which requires a special use permit shall be considered at a public hearing held in accordance with the application requirements and administrative procedures which have been adopted by the Town Board.

**§ 116-47 Expiration of special use permit.**

- A. A special use permit shall expire if meaningful construction has not been commenced within one year, and has not been completed within two years, of final special permit approval or, if no construction is involved, if the use has not been commenced within one year of final special use permit approval.
- B. Said permit shall expire if the special use, once begun, ceases operation, for any reason, for more than six consecutive months. For seasonal uses, the use will be considered ceased if there is no operation for at least 12 consecutive months.

**§ 116-48 Revocation of special use permit.**

- A. A use authorized by special permit may be revoked by the Town Board if it is found and determined that there has been a material failure of compliance with any one of the terms, conditions, limitations or requirements imposed by said permit. The Town Board shall hold a public hearing to consider whether or not the special use permit grantee has violated the terms and conditions of said special use permit. Said public hearing shall be held only after the permit grantee has been notified, as hereinafter described, by the Zoning Official. Notice of the violations and of the date, place and time of the public hearing shall be mailed to the special permit grantee by certified mail, return receipt requested, directed to the last known address of the permit grantee.
- B. At least 10 days before said public hearing, a legal notice of said hearing shall be published in a newspaper of general circulation in the Town.

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**§ 116-49 Existing violations.**

No application for a Town Board special use permit shall be accepted for a property where there is an existing violation of any code of the Town of Aurora.

Article IV  
**Small Wind Energy Conversion Systems**

**§ 116-50 Purpose and intent.**

The purpose of these regulations for small wind energy conversion systems (SWECS) is to:

- A. Protect and enhance the Town's physical and visual environment.
- B. Protect and enhance the health, safety and welfare of residents of the Town of Aurora.
- C. Provide standards for the effective and efficient placement, construction, modification and maintenance of small wind energy conversion systems, which are designed and used to reduce on-site consumption of utility power.

**§ 116-51 Definitions.**

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

**AGRICULTURAL DISTRICT**

A district set up under Article 25-AA of the New York State Agriculture and Markets Law to conserve, protect and encourage development and improvement of agricultural lands.

**AGRICULTURAL OR FARM OPERATIONS**

The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation and conducted in accordance with the New York State Agriculture and Markets Law.

**AMBIENT SOUND LEVEL**

The sound from all sources other than the particular sound of interest; also known as the "background sound level." The ambient sound measurement (A-weighted sound level) is taken where the offending sound cannot be heard or with the sound source shut off. The ambient sound level, rarely found to be constant over time, can be quite variable. The ambient sound level is considered to be the level that is exceeded 90% of the time when a sound measurement is taken.

**EAF**

Environmental assessment form used in the implementation of SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.



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## **ENVIRONMENT**

Includes, but is not limited to, land, air, noise, water, flora, fauna, threatened and endangered species and critical habitat areas, agricultural resources, aesthetic resources, historical and archaeological resources, open space and recreational areas.

## **FALL-DOWN ZONE**

The area surrounding the tower described as 1 1/2 times the total height of the tower measured from its base radially.

## **SEQRA**

The New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, and its implementing regulation in Title 6 of New York Codes, Rules and Regulations, Part 617.

## **SITE**

The parcel of land where a proposed wind turbine is to be located. The site can be publicly or privately owned by an individual or groups of individuals controlling a single property.

## **SMALL WIND ENERGY CONVERSION SYSTEM**

A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 20 kW and a maximum total height of 100 feet and which is intended to primarily reduce on-site consumption of utility power.

## **TOTAL HEIGHT (MAXIMUM OVERALL HEIGHT)**

The height of the SWECS as measured from ground elevation to the top of the tip of the blade in the vertical position.

## **TOWER**

The support structure, including guyed, monopole and lattice types, upon which a wind turbine and other mechanical devices are mounted.

## **TOWER HEIGHT**

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

## **TURBINE**

The parts of the SWECS, including the blades, generator and tail.

## **WIND ENERGY CONVERSION SYSTEM (WECS)**

A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").



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### **WIND ENERGY FACILITY (WEF)**

Any part of a SWECS or wind measurement tower, including all related infrastructure, electrical systems and substations, access roads and accessory structures included therein.

### **WIND MEASUREMENT TOWER**

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

### **WIND TURBINE**

Any piece of electricity-generating equipment that converts wind energy into electrical energy through the use of airfoils, rotating turbine blades or similar devices to capture the wind.

#### **§ 116-52 Permitted use.**

Small wind energy systems shall be a permitted use in all zoning classifications, subject to a site plan review and approval by the Town of Aurora Town Board and the issuance of a SWECS permit by the Town of Aurora Building Department as set forth in Chapter **65** of the Town of Aurora Code.

#### **§ 116-53 Requirements for application.**

- A. All applicants for a SWECS permit shall submit an application, including applicable fees, to the Town Building Department. Applicants shall provide all of the following documentation to the Town Building Department before the application is considered complete and ready for review and processing. Upon determination by the Code Enforcement Officer that all standards/requirements have been met, a complete copy of the documentation will be given to the Aurora Town Clerk for distribution to the Town Board, Town Engineer and Town Attorney.
- B. In the event that the Code Enforcement Officer determines that the standards are not met, the application will be forwarded to the Zoning Board of Appeals for consideration of a variance. The Zoning Board of Appeals determination will be forwarded to the Town Board.
- C. Upon receipt of the application for a wind energy conversion system, the Town Board shall forward the documentation to the Town Planning Board for site plan review and for the Planning Board's overall recommendation. Upon receipt of the Planning Board's recommendation, the Town Board will call a public hearing on the application.
- D. The Town Board will render a final decision on the application for a wind energy conversion system.
- E. A SWECS application shall include:
  - (1) A completed SWECS permit application form.
  - (2) A completed site plan review application form.

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- (3) A full environmental assessment form with completed Part 1, a visual addendum, and such other part requiring completion by the applicant.
- (4) Compliance with General Municipal Law § 239-m if applicable.
- (5) A copy of a certified property survey that also shows:
  - (a) The proposed location of the SWECS tower.
  - (b) The radius of the fall-down zone around the SWECS tower.
- (6) A site plan in form and content acceptable to the Town Board, prepared to scale and in sufficient detail and accuracy, showing, at a minimum:
  - (a) The proposed location of the SWECS, together with guy wires and guy anchors.
  - (b) The maximum height of the proposed tower, including blades in vertical position.
  - (c) A detail of tower type (monopole, guyed, freestanding or other).
  - (d) The color or colors of the SWECS tower.
  - (e) The location, type and intensity of any lighting on the SWECS tower.
  - (f) A contour/topography map of the property and adjacent parcels of sufficient scale as to clearly indicate appropriate drainage and erosion impact on and off site as well as jurisdictional wetlands.
  - (g) The location of all structures on the property and all structures on any adjacent property within 500 feet of the property lines, together with the distance of these structures to the SWECS tower and the distance of the SWECS tower from all property lines and public roads or rights-of-way.
  - (h) The names and mailing addresses of all adjacent landowners within 1,000 feet of any boundary of the site on which the SWECS is proposed to be located.
  - (i) The location, nature and extent of any proposed fencing and landscaping or screening to be constructed around or in conjunction with the SWECS tower.
  - (j) The location and nature of any utility easements and access roads proposed or existing in connection with the SWECS tower.
  - (k) Building elevations of accessory structures and buildings immediately adjacent to the proposed SWECS tower and related facilities.

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- (l) Evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the system.
- (m) Turbine information: specific information on the type, size, height, rotor material, rated power output, and performance safety and noise characteristics of the SWECS.
- (n) Written notice that the electrical utility service provider has been informed, and permit requested, as required, to connect to the public grid, adhering to all guidelines set forth by the utility service provider.
- (o) Signage of a minimum of one foot by two feet in size indicating the potential of electric shock located at a height of five feet above the surrounding ground surface clearly visible and secured on the base of the tower.
- (p) Manufacturer's specifications and certification on manual and automatic over-speed controls built into SWECS and on-site certification by a qualified installer.
- (q) Certified sound rating data covering the SWECS sound-producing features, including the overall sound pressure levels measured with an A-weighted scale throughout the operating range of design wind speed. The report shall include low-frequency, infrasound, pure tone, and repetitive impulsive sound.
- (r) The location of noise-sensitive receptors (i.e., hospitals, libraries, schools, places of worship, parks and recreational facilities or other sensitive receptors identified by the Town Planning Board) within 2,500 feet of the proposed SWECS location.
- (s) Proof of the current and reasonably anticipated on-site electricity demand of the applicant.

**§ 116-54 Exemptions.**

The following are exempt from the requirements of this chapter.

- A. No permit or other approval shall be required under this chapter for SWECS utilized solely for farm operations in a county-adopted, state-certified agricultural district, as long as the facility (SWECS) is set back at least 1 1/2 times its total height from a property line and does not exceed 100 feet in total height. Towers over 100 feet in total height utilized solely for agricultural operations in a county-adopted, state-certified agricultural district shall apply for a permit in accordance with this section, but shall not require a height variance. Prior to the construction of a SWECS under this exemption, the property owner of a designated agent shall submit a sketch plan or building permit application to the Town of Aurora Code Enforcement Officer and Building Inspector to demonstrate compliance with the setback requirements.
- B. Existing SWECS towers may be repaired and maintained without restriction.

**§ 116-55 Standards and procedure.**

- A. No wind energy conversion system other than a small wind energy conversion system (SWECS), as

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defined herein, shall be constructed, reconstructed, modified, operated or replaced in the Town of Aurora.

- B. All SWECS shall require a site plan review, reviewed by the Town of Aurora Planning Board and applicable criteria from this chapter to assist in the approval process deemed appropriate by this chapter.
- C. Structural safety. The applicant shall provide a certificate from a qualified licensed professional engineer certifying that the tower and its foundation meet applicable structural safety standards, including but not limited to wind loading and seismic effects due to soil conditions. The Town Board or Town Planning Board may request renewed safety certification from the applicant every five years, unless the Town Board has reasonable grounds to believe the tower is in unsafe condition, in which event such a request may be made on a more frequent basis.
- D. The Town Board and/or Town Planning Board may request reasonable additional information, including but not limited to any visual and aesthetic information, it deems appropriate on a case-by-case basis. Such additional information may include, among other things, a professionally engineered wind study, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from neighboring viewpoints, microwave interference, etc.
- E. The Town Board and/or Town Planning Board shall require that SWECS towers be set back a sufficient distance from adjacent property lines and/or structures, and public roadways to safeguard the general public and/or adjacent property from damage in the event of tower failure or falling debris, which distance shall take into account the fall-down zone of any tower and/or antenna. Guy wires erected must adhere to Code-approved setback standards as well as fencing requirements.
- F. The "fall-down zone" will not be located closer to any property line equal to 1 1/2 times the total height and a minimum of 500 feet from existing structures not owned by the applicant. Notwithstanding the limitations contained herein, the Town Board can set a different fall-down zone upon receipt of information from the applicant or adjoining property owners which demonstrates the safety of the general public or adjacent property is protected.
- G. Each SWECS tower shall be located a minimum of:
  - (1) Five hundred feet from the nearest public road.
  - (2) Five hundred feet from the nearest off-site residence at the time of application, measured from the exterior of such residence.
  - (3) One and one-half times the total height of the SWECS from any on-site non-SWECS structure or any aboveground facilities or utilities.

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- (4) One thousand feet from federal or state-identified wetlands, to protect bird and bat populations. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land uses and other factors that influence the flight patterns of resident birds.
- (5) SWECS shall not be located in the front yard of a site. "Yard, Front" is defined in § **116-4**, Definitions.
- H. The applicant must comply with all applicable state and federal regulations, including FAA regulations.
- I. Towers shall be constructed to provide one or more of the following means of access control:
  - (1) Tower climbing apparatus located no closer than 12 feet from the ground.
  - (2) A locked anticlimb device installed on the tower.
  - (3) A locked protective fence at least six feet in height that encloses the tower and guy wires.
- J. Only one SWECS per legal lot shall be allowed.
- K. No SWECS tower shall contain any signage, other than electrical shock warning, or advertising of any kind.
- L. No person operating a SWECS shall willfully, negligently or through failure to provide necessary equipment, service or maintenance or to take necessary precautions cause, suffer, allow or permit unnecessary emissions from said SWECS source of sound that may cause noise to adjacent properties. This policy specifies that the ambient sound level, measured at the property line upon which the SWECS facility is located, shall not be increased by more than three decibels weighted for the "A" scale (dBA) due to the operation of the SWECS.
- M. In order to reduce visual impact, the SWECS:
  - (1) Shall be painted a nonreflective, unobtrusive color that blends the system with the surrounding landscaping.
  - (2) Shall be designed and located in a manner that will minimize adverse visual impacts from public view areas (e.g., public parks, public roads, public trail, public playgrounds).
- N. Intermittent shadow or flutter shadow shall not be cast on any adjacent residence more than a total of 10 minutes a day.
- O. Exterior lighting on any SWECS shall not be allowed unless mandated by the Federal Aviation Administration.

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- P. All structures which may be charged with lightning will be grounded according to New York State adopted National Electric Code. Whenever possible, all wiring associated with a SWECS shall be installed underground within the "fall-down zone."
- Q. All SWECS shall be operated in such a fashion as to minimize disruptive electromagnetic interference as is evident in television, microwave and radio reception/transmission. If it is determined that a SWECS is causing electromagnetic interference, the operator shall immediately take the necessary corrective action to eliminate the interference, including relocation or removal of the SWECS tower.
- R. Erosion control and sedimentation will be addressed by the Town Planning Board after a review of the soil conditions at the proposed site. The Town Planning Board recommendations will be managed by the property owner in a manner consistent with all applicable state and federal laws and regulations.
- S. Removal of SWECS tower. The property owner shall agree to remove the tower if said tower ceases to be used for its intended purpose for 12 consecutive months.

**§ 116-56 Permit and related fees.**

- A. Permit fees pertaining to SWECS tower permit or building permit issues pursuant to this section are listed in Standard Schedule of Fees and may be changed from time to time by resolution adopted by the Town Board.
- B. All fees associated with the engineering, wind measurement statistics or any special testing and/or inspections are the sole responsibility of the project sponsor.

**§ 116-57 Enforcement; penalties for offenses; remedies for violations.**

- A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this section.
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a small wind energy conversion system in violation of this chapter or in noncompliance with the terms and conditions of any permit issued pursuant to this chapter or any order of an enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250 for each violation, and each week said violation continues shall be deemed a separate violation.

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## Article V Adult Uses

### § 116-58 **Purpose.**

Buildings and establishments operated as adult uses are detrimental and harmful to the health, safety, morals and general welfare of a community in that they engender adverse effects which contribute to the blighting or downgrading of a surrounding neighborhood. In order to promote the health, safety, morals and general welfare of the residents of the Town of Aurora, this section is intended to restrict adult uses to nonresidential areas of the Town and to otherwise regulate their operation. Moreover, because the operational characteristics of adult uses which are concentrated in a particular area are such that the deleterious impact on the surrounding neighborhood is increased, this section is intended to promote the health, safety, morals, general welfare and good order of the residents of the Town of Aurora by regulating the concentration of such uses.

### § 116-59 **Definitions.**

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

#### **ADULT BOOKSTORE**

An establishment having as a substantial or significant portion of its stock-in-trade books, magazines, films for sale or viewing on premises by use of motion-picture devices or any other coin-operated means and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section devoted to the sale or display of such material.

#### **ADULT ENTERTAINMENT CABARET**

A public or private establishment which is licensed to serve food and/or alcoholic beverages and which features topless dancers, strippers, male or female impersonators or similar entertainers.

#### **ADULT MINI MOTION-PICTURE THEATER**

An enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

#### **ADULT MOTION-PICTURE THEATER**

An enclosed building with a capacity of 50 or more persons used regularly and routinely for presenting material having, as a dominant theme, material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

#### **ADULT USE**

Any establishment or business involved in the dissemination of material distinguished or characterized

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by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, including but not limited to adult bookstores, adult motion-picture theaters, adult mini motion-picture theaters and adult entertainment cabarets.

## **PERSON**

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

## **SPECIFIED ANATOMICAL AREAS**

- A. Less than completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

## **SPECIFIED SEXUAL ACTIVITIES**

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Acts of human masturbation, sexual intercourse or sodomy.
- C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

## **SUBSTANTIAL CONNECTION**

- A. In a sole proprietorship, an individual who owns, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.
- B. In a partnership, limited or general, an individual who shares in any potential profits or losses of the business or who shares in the ownership of any of the assets of the partnership business.
- C. In a corporation, an individual who is an officer, director or a holder, either directly, indirectly or beneficially, of more than 20% of any class of stock.
- D. Any person who furnishes more than 20% of the capital financing or assets of such business, whether in cash, goods or services.

## **§ 116-60 Restrictions affecting adult uses.**

Adult uses, including but not limited to adult bookstores, adult motion-picture theaters, adult mini motion-picture theaters and adult entertainment cabarets, shall be permitted, subject to the following restrictions:

- A. No such adult use shall be allowed within 500 feet of another existing adult use.
- B. No such adult use shall be located within 500 feet of the boundaries of any premises zoned R-1, R-2, R-



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3, or RR, nor shall such use be located within 500 feet of the boundaries of a property used for residential purposes.

- C. No such adult use shall be located within 500 feet of a preexisting school or place of worship, public park, playground or playing field.
- D. No such adult use shall be located in any zoning district except those zoned I Industrial.

**§ 116-61 Registration.**

- A. No person, firm or corporation shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains an adult use, without first complying with the provisions of this section as set forth below.
- B. In addition to any and all other necessary licenses and permits, no form of adult use shall be allowed to operate, or allowed to continue to operate, until a certificate or registration is filed with the Clerk of the Town of Aurora. Such certificate shall contain the following information:
  - (1) The address of the premises.
  - (2) The name and address of the owner(s) of the premises and the name and address of the beneficial owner(s) if the property is in a land trust.
  - (3) The name of the business or the establishment subject to the provisions of this section.
  - (4) The name(s), business and home address(es) and business or home phone number(s) of all owners of the business or establishment subject to the provisions of this section.
  - (5) The name(s), business and home address(es) and business or home phone number(s) of all those persons having a substantial connection with the business or establishment subject to the provisions of this section.
  - (6) The date of the initiation of the adult use.
  - (7) The nature of the adult use.
  - (8) If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease.
- C. If there occurs any change in the information required for the certificate of registration, the Clerk of the Town of Aurora shall be notified of such change, and a new or amended certificate shall be filed within 30 days of such change.

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- D. The processing fee for each such certificate of registration or amendment thereto shall be \$50.
- E. No certificate of registration issued under the provisions of this section shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than that stated in the certificate of registration.
- F. The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this section to be prominently displayed on the premises, building or location for which it is issued.
- G. Any knowingly false statement, or any statement which the registrant or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for rejection, suspension or revocation of the certificate of registration.
- H. It is a violation of this section for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate an adult use without having in force a certificate of registration complying with this section.

**§ 116-62 Prohibition regarding public observation.**

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

**§ 116-63 Special use permit.**

- A. No use as described in this section shall be established until a special use permit is issued by the Town Board of the Town of Aurora. Application for such a special use permit shall be in conformity with Article **III** of this chapter and as provided for herein.
- B. A special use permit issued under the provisions of this article shall not be transferable.

**Article VI  
Nonconforming Uses**

**§ 116-64 Continuation.**

Except as provided in this article, any nonconforming use of any structure or land existing on the effective date of this chapter may be continued.

**§ 116-65 Abandonment.**

In any district, whenever a nonconforming use of land, premises, building or structure has been discontinued for a period of one year, such nonconforming use shall not be reestablished, and all future use shall be in conformity with the provisions of this chapter.

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**§ 116-66 Required discontinuance of certain uses.**

- A. Notwithstanding any other provisions of this chapter, any automobile wrecking yard, junkyard, nonconforming billboard or similar advertising structure in existence in any R District on the initial effective date of this chapter shall, at the expiration of three years from such date, become a prohibited and unlawful use and shall be discontinued.
- B. Notwithstanding any other provisions of this chapter, any nonconforming sign in existence in any district on the effective date of this chapter, as amended, shall, at the expiration of five years from such date, become a prohibited and unlawful use and shall be discontinued.

**§ 116-67 Change in use.**

Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a use of the same classification upon approval of the Zoning Board of Appeals or to a use of more-restricted classification, and when so changed to a more-restricted classification, such use thereafter shall not be changed to a less-restricted classification.

**§ 116-68 Extension of use.**

A nonconforming use of buildings or land occupied on the effective date of this chapter may be enlarged, extended, or remodeled upon obtaining approval from the Zoning Board of Appeals specifying the conditions of such enlargement, extension or remodeling. All approvals from the Zoning Board of Appeals shall be in accordance with § 116-90.

**§ 116-69 Alterations and restoration.**

A nonconforming building or structure shall not be structurally altered or reconstructed, except for such alteration, maintenance and repair work as required to keep said building or structure in safe condition. However, a nonconforming building which is damaged or destroyed by fire, flood, wind, other calamity, act of God or act of the public enemy may be restored, and the nonconforming occupancy thereof may be resumed or continued, provided that the restoration is started within a period of one year, is diligently prosecuted to completion and does not increase either the floor area or the cubical contents of such building.

**§ 116-70 Effect of amendments.**

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district or a different classification or whenever the text of this chapter shall be changed with respect to the uses permitted in a district, the foregoing provisions shall also apply to any nonconforming uses existing therein.

**§ 116-71 Exceptions.**

Notwithstanding any other provision of this chapter, any farm operation and any farm building formerly conducted or used in any district hereafter classified as "A" may be reestablished, renewed or restored in the location and to the degree and extent that formerly existed.

**§ 116-72 Effect of approved subdivision maps.**

- A. Where a subdivision map has been submitted and an agreement made imposing building restrictions thereon which have been approved and accepted by the Town Board of the Town of Aurora after

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September 1953 and prior to the date of adoption of this chapter, the provisions of such subdivision map and building restrictive agreement with respect to the minimum floor area of dwelling, minimum lot size, front yard depth or setback, side yard and minimum depth of rear yard shall apply in lieu, place and stead of the provisions and regulations of this chapter.

- B. Where a subdivision map or plat has been submitted to the Town Board showing the layout of lots and streets for the purpose of approving a special improvement district or districts within said subdivision and/or the dedication of streets as Town highways as shown on said map or plat and such special improvement district or districts have been approved and established and/or such streets or part of them have been accepted as Town highways prior to the date of adoption of this chapter, the layout of such subdivision as to the size of lots and the location of streets or highways appearing on such map or plat, including width and area of lots, shall be considered a prior use and shall apply in lieu, place and stead of the provisions and regulations of this chapter. Nothing contained in this section shall be construed to modify or nullify any of the provisions in § 334 of the Real Property Law pertaining to subdivision plats.

**§ 116-73 Certificate of nonconformity.**

All persons claiming a nonconforming use under this article shall, within six months of the date of the adoption of this chapter, secure a certificate of nonconformity from the Code Enforcement Officer showing the claimed nonconforming use and its location, the size and specifications of any structures utilized in this nonconforming use, the size of the lot and the specific portions of the lot or the building or buildings claimed to be utilized in connection with the nonconforming use. The Code Enforcement Officer shall require supporting proof subject to verification for such applications and shall deny a certificate without such proof.

## Article VII Communications Facilities

**§ 116-74 Legislative intent.**

The Town of Aurora recognizes the increased demand for wireless communications transmitting facilities and the need for the services they provide. Often, these facilities require the construction of a communications tower and/or similar facilities. The intent of this article is to protect the Town's interest in properly siting towers and/or similar facilities in a manner consistent with sound land use planning by:

- A. Minimizing adverse visual effects of towers and/or similar facilities through careful design, siting and vegetative screening;
- B. Avoiding potential damage to adjacent properties from tower failure or falling debris through engineering and careful siting of tower structures; and
- C. Maximizing the use of any existing tower or existing building and/or structures to reduce the number of towers and/or similar facilities needed, while also allowing wireless service providers to meet their technological and service objectives.

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**§ 116-75 Definitions.**

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

**ACCESSORY STRUCTURE**

An accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility and located on the same lot as the communications tower. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

**ANTENNA**

A system of electrical conductors that transmit or receive radio or similar communications frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, data transmission, personal communications services and microwave communications.

**CO-LOCATED ANTENNAS**

Telecommunications facilities which utilize existing towers, buildings or other structures for placement of antenna(s) and do not require construction of a new tower, a significant structural modification of an existing telecommunications facility or the construction of a new antenna at a height in excess of any existing antennas located on any such tower, building or other structure.

**FALL-DOWN AND/OR SAFETY ZONE**

The radius around a tower within which all portions of the tower and antenna(s) would fall, regardless of any claimed provisions for the breakoff of a portion of such a tower in the event of a structural failure of the tower.

**TELECOMMUNICATIONS FACILITIES**

Towers and/or antennas and accessory structures which together are used in connection with the provision of cellular telephone services, data transmission services, personal communications services, paging services, radio and television broadcast services and similar broadcast services.

**TOWER**

A structure designed to support antennas. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures which do or do not employ camouflage technology.

**TOWER PERMIT**

A permit to facilitate the construction of a tower and/or telecommunications facilities pursuant to this article.

**§ 116-76 Approvals required for telecommunications facilities.**

- A. Co-located antennas. Telecommunications facilities comprised of co-located antennas (and accessory structures) are permitted as of right in any district upon the issuance of a building permit. Such facilities shall comply with all Zoning and Building Code requirements set forth in the Town Code ("Code

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requirements"), provided that any such co-located antennas which require the erection of additional tower sections shall require a special use permit, site plan review and approval by the Town Board and a tower permit as set forth in this article.

- B. Municipal or government-owned property. Telecommunications facilities requiring construction of a new tower and/or antenna on municipal or government-owned property shall require a site plan review and approval by the Town Board. If the tower and/or antenna is less than or equal to 100 feet in height, it may be constructed upon the issuance of a building permit, provided that a supermajority of the Town Board recommends the issuance of such a building permit and the facility in question complies with all Code requirements. If the tower and/or antenna is over 100 feet in height, construction and operation will require the issuance of a tower permit. Additionally, facilities to be located on property owned by municipalities or other governmental entities other than the Town of Aurora shall, to the extent applicable, comply with any additional legal requirements imposed by such municipalities or other governmental entities.
- C. Nonresidential districts. Telecommunications facilities requiring construction of a new tower on nonmunicipal or non-government-owned property in any nonresidential zoning district shall require a special use permit, site plan review and approval by the Town Board and the issuance of a tower permit as set forth in this article.
- D. Residential districts. Telecommunications facilities requiring construction of a new tower in a residential zoning district shall in all cases require a special use permit, site plan review and approval by the Town Board and the issuance of a tower permit as set forth in this article. Additionally, applications for such telecommunications facilities in residential districts shall be treated as a Type I action for purposes of the State Environmental Quality Review Act and shall also require the submission of a visual environmental assessment form addendum to the Town Board.

**§ 116-77 Tower permit application materials.**

- A. All applicants for a tower permit shall make a written application to the Town Board, which should initially be delivered to the office of the Town Clerk, which application shall include:
  - (1) Town-supplied tower special use permit application form to be used as tower permit application form.
  - (2) Town-supplied site plan review application form.
  - (3) Town-supplied environmental assessment form.
  - (4) A site plan ("site plan") in form and content acceptable to the Town, prepared to scale and in sufficient detail and accuracy, showing at a minimum:
    - (a) The exact location of the proposed tower and/or antenna, together with guy wires and guy anchors.

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- (b) The maximum height of the proposed tower and/or antenna.
- (c) A detail of tower type (monopole, guyed, freestanding or other).
- (d) The color or colors of the tower.
- (e) The location, type and intensity of any lighting on the tower and antenna.
- (f) The property's boundaries of the property on which the tower and/or antenna is proposed to be constructed (the "property"); a copy of a property survey must also be provided.
- (g) Proof of the landowner's consent if the applicant will not own the property. (A copy of a lease agreement must also be provided if the applicant will not own the property.)
- (h) The location of all structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the tower and the distance of the tower from all property lines and public roads or rights-of-way.
- (i) The names and mailing addresses of all of adjacent landowners.
- (j) The location, nature and extent of any proposed fencing and landscaping or screening to be constructed around or in conjunction with the tower and/or any telecommunications facilities applicable to the tower.
- (k) The location and nature of any utility easements and access roads proposed or existing in connection with the tower or applicable telecommunications facilities.
- (l) Building elevations of accessory structures and/or immediately adjacent buildings to the proposed tower and related telecommunications facilities.
- (m) The location and nature of any power generators existing or to be constructed in connection with a proposed tower and/or related telecommunications facilities.
- (5) "Before" and "after" propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.
- (6) A "search ring" prepared by a qualified radio frequency engineer and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Town Board why it selected the proposed site, discuss the availability (or lack



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of availability) of a suitable structure within the search ring which would have allowed for co-located antenna(s) and to what extent the applicant explored locating the proposed tower in a more-intensive use district or other available sites which are more consistent with the site preferences set forth in § **116-78**.

- (7) The Town Board, upon reviewing the application, may request reasonable additional information, including but not limited to any visual and aesthetic information it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the Town Board or its designated agents (including the Town's Engineer) or representatives.

**§ 116-78 Communications facility permit standards.**

The following criteria will be considered by the Town Board prior to the approval/denial of a request for a tower permit and may be used as a basis to impose reasonable conditions on the applicant to the issuance of such a tower permit:

A. Siting preferences. The Town Board may express a preference that the proposed telecommunications facility be located in a higher-intensity use district or on higher-intensity use property, provided that there is a technologically feasible and available location. A guideline for the Town Board's preference, from most favorable to least favorable districts/property, is as follows:

- (1) Property with an existing structure suitable for co-location.
- (2) Municipal or government-owned property.
- (3) Property located in a C3 Zoning District.
- (4) Property located in a C1 or C2 Zoning District.
- (5) Property located in an A Zoning District.
- (6) Property located in a residential zoning district.

NOTE: Any request by the Town Board for information on a preferred alternate site shall not unreasonably delay the application.

B. Aesthetics. Telecommunications facilities shall be located and buffered to the maximum extent which is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences or properties to the extent possible, the Town Board may impose reasonable conditions on the applicant, including but not limited to the following:

- (1) The Town Board may require a monopole or guyed tower (if sufficient land is available to the applicant)



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instead of a freestanding tower. Monopoles are a preferred design.

- (2) The Town Board may require reasonable landscaping consisting of trees or shrubs to screen the base of the tower and/or to screen the tower to the extent possible from adjacent property. Existing on-site trees and vegetation shall be preserved to the maximum extent possible. Additionally, landscaping shall include two lines of spruce trees having a minimum height of six feet, each planted 10 feet apart, the first such line to be located 10 feet outside any required fence around a permitted tower and the second to be located 25 feet outside any required fence around a permitted tower planted between the trees planted in the first line of such trees so that such trees will appear from a distance to be five feet apart.
  - (3) The Town Board may require the applicant to show that it has made good-faith efforts to co-locate on existing towers or other available and appropriate co-located structures and/or to construct new towers near existing towers in an effort to consolidate visual disturbances. However, such request shall not unreasonably delay the application.
  - (4) Towers should be designed and sited so as to avoid, whenever possible, application of Federal Aviation Administration (FAA) lighting and painting requirements. Towers shall not be artificially lighted except as provided herein or as required by the FAA. Towers shall be a galvanized finish or painted matte gray unless otherwise required by the FAA or the ZBA. Any lighting which may be required by the FAA shall not consist of strobe lights, unless specifically mandated by the FAA. Notwithstanding any of the above, applicable tower permits or building permits will require a red blinking light on the top of any approved tower and/or antenna and solid nonblinking red lights every 50 feet of the tower's and/or antenna's height, installed in a manner which will make such lighting visible from all four sides of any particular tower or antenna.
  - (5) No tower shall contain any signs or advertising devices.
  - (6) The applicant must submit a copy of its policy regarding co-location on the proposed tower with other potential future applicants. Such policy shall not be changed without the written consent of the Town Board and shall be applicable to any assignee or transferee of the applicant and shall require the applicant to allow co-location if the new antenna(s) and equipment do not exceed structural loading requirements, interfere with tower space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment; the party desiring to co-locate pays the applicant an appropriate and reasonable sum to co-locate; and the party desiring to co-locate has or is willing to adopt a similar policy of co-location for the applicant.
- C. Radio frequency effect. The Town Board may impose a condition on the applicant that any approved antennas be operated only at Federal Communications Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency technical exposure limits and that the applicant provide competent documentation to support that maximum allowable frequencies, power levels and

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exposure limits for radiation will not be exceeded.

D. Traffic, access and safety.

- (1) A road turnaround and at least one parking space shall be provided to assure adequate emergency and service access to all telecommunications facilities. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road rights-of-way for the siting of a tower or antenna(s) or accessory structures is prohibited. All such roads shall be maintained and kept free of snow to assure appropriate access at all times.
  - (2) All towers and accessory structures, including guy anchors, if applicable, shall be enclosed by a chain-link-type fence eight feet in height or otherwise sufficiently protecting such facilities from trespassing or vandalism. The height limitations and material limitations applicable to such fences contained elsewhere in this chapter are exempt as they affect this section. Fencing shall be a minimum of 100 feet by 100 feet and be constructed at least 50 feet from the base of the tower.
  - (3) No tower, including any antenna annexed thereto, or antenna, whether freestanding or constructed on an existing structure or facility, shall exceed 250 feet in height (including the height of any structure or facility upon which such a tower and/or antenna is constructed) unless the applicant can demonstrate the existence of a necessary and/or special need to construct a higher tower and/or antenna in order to obtain a reasonable level of performance.
  - (4) The applicant must comply with all applicable state and federal regulations, including but not limited to FAA and FCC regulations.
  - (5) The Town Board may require that towers and antenna(s) be set back a sufficient distance from adjacent property lines and/or structures to safeguard the general public and/or adjacent property from damage in the event of tower failure or falling debris such as ice, which distance shall take into account the fall-down zone of any tower and/or antenna. In all instances, towers and/or antennas shall be located no closer than 800 feet from any public road or right-of-way and 500 feet from any existing residences. The fall down zone should be equal to the height of the tower and any antenna annexed thereto from any adjacent property line. Notwithstanding the limitations contained herein, the Town Board can set a different fall-down zone upon receipt of information from the applicant or adjoining property owners which demonstrates the safety of the general public or adjacent property is protected.
  - (6) If the Town Board deems it appropriate, it may require a reasonably acceptable security alarm or alarms to be installed in connection with any tower or related telecommunications facilities as a condition to the issuance of a tower permit.
- E. Removal of tower. The applicant shall agree to remove the tower, antenna and/or telecommunications facility if said tower, antenna or telecommunications facility becomes obsolete or ceases to be used for

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its intended purpose for 12 consecutive months. The Town Board shall require the applicant to provide a demolition bond (the "bond") reasonably acceptable to the Town Board and Town Attorney to assure appropriate removal of a telecommunications facility, antenna and/or tower in case the applicant fails to do so as required, in the amount and for the term deemed appropriate by the Town Board. If requested in writing by the Town Board, the amount of said bond will be adjusted, no more frequently than once every five years, to reflect current removal cost. Notwithstanding any other provision of this article to the contrary, the Town Board may waive the requirement for a demolition bond in those instances where a particular tower and/or antenna is co-located on an existing tower and/or antenna, the removal of which is assured by an acceptable existing demolition bond.

- F. Structural safety. Upon written request from the Town Board, either during the application process and/or after construction of the tower and/or antenna, the applicant shall provide a certificate from a qualified licensed engineer certifying that the tower and/or antenna meets applicable structural safety standards. Such requests from the Town Board shall not occur more often than once every five years, unless the Town has reasonable grounds to believe the tower and/or antenna is in an unsafe condition, in which event such a request may be made on a more frequent basis. In any such event, the certificate described herein shall be delivered to the Town Clerk within 30 days of such request, and any repairs recommended in such a certificate shall be commenced, and if possible completed, within 30 days of the date of such certificate.
- G. Maintenance of telecommunications facility. Notwithstanding any other provision contained herein, all telecommunications facilities shall be maintained in good order and repair as required by the Code requirements and all applicable state and local statutes and regulations. Failure to make such repairs within 10 days of receipt of a written request to do so from the Town or to maintain an acceptable demolition bond as described in § **116-78E** shall constitute a violation of this article and subject the applicant and/or any owner, lessee or operator of such facility or facilities to a fine of up to \$250 per day, with each day thereafter on which such violation continues to exist constituting a separate violation of this article.
- H. Lease or sublease of telecommunications facilities.
  - (1) All lessees, sublessees or operators of towers or telecommunications facilities, other than the applicant, who use or operate any approved-of facilities shall, as a condition of said use, agree in writing to be bound by the provisions of any existing tower permit and site plan approval.
  - (2) No applicant will lease or sublease any approved tower or telecommunications facilities without the Town's written consent, which will not be unreasonably withheld.
- I. Required landscaping around towers or telecommunications facilities shall be maintained at all times. Dead trees shall be replaced within 150 days with similar-sized trees, regardless of height, if possible.

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Property shall be mowed regularly to a height of six inches or less twice a month during the growing season.

- J. Notice of operation. At all times during which a tower and/or antenna regulated by this article is located or operated within the Town, the owner, lessee and/or operator shall provide the Town Clerk with written notice of the name, address and telephone number of at least two individuals who are located within 50 miles of the Town who can be reached on a twenty-four-hour basis in case emergency maintenance or safety precautions are required at such tower or any telecommunications facilities relating to such tower.

**§ 116-79 Exemptions from requirements of this article.**

The following are exempt from the requirements of this article:

- A. Existing towers and antenna(s) may be repaired and maintained without restriction.
- B. An antenna used solely for residential household television and radio reception which, together with any tower or other structure to which it is attached, does not exceed 45 feet in height, provided that the antenna or any tower to which it is attached is at least the same distance from any adjoining property line.
- C. Satellite antennas measuring two meters or less in diameter and located in agricultural (A) or commercial (C) zoning district and satellite antennas one meter or less in diameter, regardless of location.

**§ 116-80 Procedure.**

- A. The Town Board may waive or vary any requirements in this article for good cause shown.
- B. This article is meant to control and regulate the construction and use of towers, antennas, related telecommunications facilities and similar facilities in the Town. Unless specifically referenced in this article, other sections of this chapter are intended to be inapplicable to such facilities (such as height limitations normally required in the relevant zoning district).

**§ 116-81 Permit and related fees.**

- A. Permit fees pertaining to tower permits or building permits issues pursuant to this article are listed on the Standard Schedule of Fees annexed hereto and may be changed from time to time by resolution adopted by the Aurora Town Board.
- B. As a condition to the issuance of any related building or tower permit to facilitate the construction of a tower, antenna or telecommunications facilities pursuant to this section, the Town Board may require the applicant to pay the fees of an independent engineer retained by the Town to assist in the evaluation of the permit application.

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## Article VIII Administration and Enforcement

### § 116-82 **Enforcement official.**

- A. The Town Board shall appoint a Code Enforcement Officer for the proper enforcement of this chapter and the issuance of building and other permits required under this chapter.
- B. Such Code Enforcement Officer shall keep records of all applications made and the granting or denial thereof and shall perform such other duties as may be required.
- C. Such Code Enforcement Officer may be the Code Enforcement Officer appointed pursuant to Chapter **65**, Fire Prevention and Building Construction.
- D. Pursuant to Article **VIII** of the New York State Environmental Conservation Law and Section 1910.3 of the Rules and Regulations of the National Flood Insurance Protection Program, the Code Enforcement Officer shall coordinate with state and federal agencies to ensure that development within the special flood hazard area shall have all necessary permits.

### § 116-83 **Building and occupancy permits.**

- A. No building or other structure shall hereafter be constructed, erected, built, altered, used or demolished until a building permit therefor has been issued in accordance with this chapter [and Chapter 65](#). No building or structure hereafter erected shall be used or occupied and no use of land shall be hereafter established until an occupancy permit has been issued after inspection from which it appears that the provisions of this chapter have been complied with. Building and occupancy permits may be combined with or be part of the permits to be issued pursuant to the State Uniform Fire Prevention and Building Code.
- B. Within a special flood hazard area, as shown on the FIRM, no land shall be used or developed until a building permit therefor has been issued in accordance with this chapter.
- C. ~~Notwithstanding any other provision contained in the Aurora Town Code to the contrary, no swimming pool shall be filled with water following its initial construction until it has first been enclosed by fencing which complies in all respects with any then existing New York State, Erie County or Town of Aurora statutes, codes or regulations and said fencing has been approved of by a representative of the Building Department of the Town of Aurora.~~ [Covered under chapter 65](#)

### § 116-84 **Exceptions to permit requirements.**

- A. The provisions of § **116-83** shall not apply to the erection, alteration or use of any farm structure, other than a dwelling or development, within a special flood hazard area depicted on the FIRM or to the use of land for agricultural purposes in any district where such structures and uses are permitted. It is not the intent of this chapter to impose any requirements or limitations on farm structures except that they shall

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be constructed in accordance with good trade practices, shall comply with all applicable health and safety laws and regulations and shall be located at least the distances specified in this chapter from any highway or property line.

B. Zoning verification permits.

- (1) The Town of Aurora Code Enforcement Officer is delegated with the authority to issue zoning verification permits under the circumstances in § 280-a of the Town Law, and recognizing the exemption cited in the Building Code of New York State (BCNYS), Section 101.2, Scope, Exception 2: "Agricultural buildings, including barns, shed, poultry houses and other buildings and equipment on the premises, used directly and solely for agricultural purposes." ~~New York State Department of State Code Division has deemed the issuance of a zoning permit allowable "to insure that the construction of agricultural buildings meets local zoning laws and to alert the Assessor."~~ [Do not find this verbiage](#)
- (2) Any agricultural proposal which requires a Town of Aurora agriculture zoning verification permit must first be reviewed by the Town of Aurora Code Enforcement Officer to determine whether the proposal violates any provision(s) of the Town of Aurora Zoning Law. This officer's determination is based upon information submitted on a Building Department-supplied application/form by the applicant. Such determination is subject to review and change if the project is modified at a subsequent date. The Code Enforcement Officer reserves the right to request further information if it is deemed necessary. A disapproval of the application by the Code Enforcement Officer means the project, as designed, cannot proceed for the reasons provided. If the applicant disagrees with the Code Enforcement Officer's determination, the applicant may appeal to the Town of Aurora Zoning Board of Appeals.
- (3) All zoning verification permit applications will be accompanied by a site plan in the form of a survey marked with proposed changes with all lot line setback distances noted, along with an application fee as established by the Town Board.

**§ 116-85 Application for permits.**

A. All applications for building permits under this chapter shall be in writing, signed by the owner, on forms furnished by the Building Department, filed with the Building Department, and shall ~~briefly state~~ [include all requirements set forth in \[Section 4\] of Chapter 65:](#)

- ~~(1) The nature and definite purpose of the building or use sought.~~
- ~~(2) A description of the property and building thereon and to be placed thereon.~~
- ~~(3) A statement of any restrictions by deed or other instrument of record.~~
- ~~(4) An estimated cost of such improvements.~~

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- ~~(5) The name and address of the general building contractor.~~
  - ~~(6) An agreement to comply with this chapter and all other laws, ordinances and regulations that may be applicable.~~
  - ~~(7) Such other information as the Town Board, the Board of Appeals or the Code Enforcement Officer may require.~~
- B. ~~Such applications may be combined with or be part of applications for permits pursuant to the State Uniform Fire Prevention and Building Code.~~

**§ 116-86 Expiration of permits.**

- A. A building permit, occupancy permit or zoning verification permit shall expire and be automatically nullified one year after the date of issuance unless the construction has been completed within such period or unless the occupancy has been substantially established within such period.
- B. Notwithstanding any other provision contained in this Chapter **116** to the contrary, all work required or proposed to be completed pursuant to a demolition permit issued by the Building Department of the Town of Aurora shall be completed within three months of the date of the issuance of such a permit so as to minimize health and safety hazards attributable to any such a demolition project and the unsightly appearance of a structure in the process of being demolished. Failure to complete a permitted demolition within this time period shall constitute a violation of the Aurora Town Code and subject the offender to the penalties described in § **116-94** of this chapter.
- C. Notwithstanding any other provision contained in this Chapter **116** to the contrary, all work required or proposed to be completed pursuant to a pool permit issued by the Building Department of the Town of Aurora shall be completed within three months of the date of issuance of such permit so as to minimize health and safety hazards attributable to the requirements of the issued pool permit, including the enclosing of such pool. Failure to complete the permitted requirements, including the proper enclosing of such pool, within this time period shall constitute a violation of the Aurora Town Code and subject the offender to the penalties described in § **116-94** of this chapter.

**§ 116-87 Permit fees.**

- A. The fees for building permits shall be the fees specified for administering and enforcing the State Uniform Fire Prevention and Building Code in the Town of Aurora.
- B. Where a building permit has been issued, no additional charge shall be made for the issuance of an occupancy permit with respect to the same project. Where no building permit has been issued and none is required, the fee for an occupancy permit shall be listed on the Town of Aurora building permit fee schedule.



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- C. In the case of an application to the Town Board or to the Board of Appeals for a special permit or in the case of any other application or appeal to the Board of Appeals, the actual cost and expenses for investigation and public hearing shall be estimated and paid in advance. Such cost and expenses shall be later adjusted and fixed at the actual cost and expense of processing such application or appeal and shall be in addition to the cost of any building and occupancy permits.

## Article IX Board of Appeals

### § 116-88 **Creation; terms; organization.**

- A. There is hereby created a Board of Appeals, which shall consist of five members to be appointed by the Town Board, each to serve for a term of five years, except that of the members first appointed, one shall hold office for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years.
- B. The Chairman shall be designated by the Town Board.
- C. The Town Clerk shall serve as Clerk of the Board of Appeals.

### § 116-89 **Alternate members.**

- A. Legislative intent. This section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Zoning Board of Appeals in the Town of Aurora.
- B. Declaration of policy. It is sometimes difficult to maintain a quorum on the Zoning Board of Appeals because members are ill or on extended vacation or find they have a conflict of interest situation on a specific matter before such Board. In such instances, official business cannot be conducted, which may delay or impede adherence to required timelines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this section.
- C. Definitions. As used in this section, the following terms shall have the meanings indicated:

#### **ALTERNATE MEMBER**

An individual appointed by the Town Board when a regular member is unable to participate on an application or matter before the respective Board, as provided herein.

#### **MEMBER**

An individual appointed by the Town Board to serve on the Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Board of Appeals.

#### **ZONING BOARD OF APPEALS**

The Zoning Board of Appeals of the Town of Aurora, as established by the Town Board pursuant to the



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provisions of § 267 of Town Law and Code of the Town of Aurora § **116-88**.

D. Authorization/effect.

- (1) The Town Board of the Town of Aurora hereby enacts this section to provide a process for appointing alternate members of the Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the respective Board.
- (2) Alternate members of the Zoning Board of Appeals shall be appointed by the Town Board or other duly authorized appointing authority for a term of three years, with the terms to expire on December 31 of the third year after the date of their appointment.
- (3) The Chairperson of the Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board meeting at which the substitution is made.
- (4) All provisions of state law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

E. Supersession of Town Law. This section is hereby adopted pursuant to the provisions of § 10 of the New York State Municipal Home Rule Law and § 10 of the New York State Statute of Local Governments. It is the intent of the Town Board, pursuant to § 10 of the New York State Municipal Home Rule Law, to supersede the provisions of:

- (1) Section 267 of the Town Law relating to the appointment of members to the Town Zoning Board of Appeals.
- (2) Section **116-88** of the Code of the Town of Aurora relating to the organization of the Zoning Board of Appeals.

§ 116-90 **Powers and duties.**

The Board of Appeals shall have the power:

- A. Upon an appeal, to review any order or decision of the Code Enforcement Officer in case of alleged error or misinterpretation of the provisions of this chapter, including the location of any district boundary as to which there is an uncertainty, and to affirm, modify or reverse such order or decision.
- B. Upon an appeal based on practical difficulty or unnecessary hardship in the way of carrying out the

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strict letter of this chapter, to grant a variance from the requirements thereof. However, the hardship must be unique, applying to the premises in question but not applying generally to other premises in the same district. It must not be self-created by any person having an interest in the property or the result of mere disregard for or ignorance of the provisions of this chapter. Any relief granted shall be only that reasonably required to effect substantial justice, shall not be arbitrary or discriminatory and shall be granted with due consideration for its effect on the ultimate development of the district in accord with the Zoning Map.

- C. Upon an application for a special permit, to approve any structure or use in any case where this chapter requires the approval of the Board of Appeals.
- D. Upon an application for a temporary permit, to approve, for a period not exceeding one year on any single permit, any structure or use in an undeveloped section of the Town, provided that such structure or use:
  - (1) Is important to the development of such undeveloped section.
  - (2) Will not be prejudicial to adjoining and neighboring sections already developed.
  - (3) Does not require the approval of the Town Board under the terms of this chapter.
- E. Upon an application, to permit any public service, public utility or public building found to be necessary for the public health, safety or general welfare.
- F. Upon an application, to approve the extension of any building, structure or use existing at the effective date of this chapter not more than 50 feet into an adjacent, more-restrictive district.
- G. Upon an application, to vary the provisions relating to special flood hazard areas, provided that no increase in base flood level or discharge would result thereby and that the variance shall be the minimum necessary to afford relief. Where a variance is approved by the Board of Appeals, written notice shall be given that the building will be subject to increased cost for flood insurance and that a hazard to human habitation exists by virtue of base flood conditions. The Board of Appeals shall not grant any variance of these provisions unless save-harmless provisions are filed in favor of the Town of Aurora prior to the filing of such variances.

**§ 116-91 Rules of procedure; hearings; appeals.**

- A. The Board of Appeals shall determine its own rules of procedure consistent with the Town Law and this chapter, and all its deliberations, resolutions and orders shall be in accordance therewith.
- B. All hearings shall be public, and the Board shall keep complete minutes of its proceedings. Said minutes shall be a public record, shall show the Board's findings and reasons for its decisions and shall indicate

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the vote of each member on each case.

- C. The Board of Appeals shall take no action except after public hearing on notice as hereinafter provided.
- D. Appeals and applications to the Board of Appeals shall be made, in writing, on forms prescribed by said Board, shall be signed and verified by the party seeking relief from the Board; shall set forth a brief and concise statement of the facts involved, the relief sought and the grounds therefor; and shall be filed with the Clerk of the Board of Appeals, who shall forthwith notify the Chairman and members thereof and also the Town Attorney and Code Enforcement Officer, in writing.
- E. The Board of Appeals may submit any appeal or application to the Town Planning Board, the Town Attorney and the Code Enforcement Officer, or any of them, requesting an advisory opinion on such appeal or application before or after the hearing thereon.
- F. Notice of all hearings before the Board of Appeals shall consist of a brief and concise statement of the matter involved, specifying the date, time and place of hearing. Such notice shall be published at least once, not more than 15 days nor less than five days before such hearing, in the newspaper designated by the Town Board for the publication of official Town notices, and a like notice shall be mailed first class, postage prepaid, addressed to the owners of all property abutting on the premises or lot affected by or involved in such application or appeal. The names and addresses of such owners shall be taken from the current assessment and tax rolls of the Town of Aurora. Such mailing shall be made in a United States post office in the County of Erie, New York, not more than 15 days nor less than five days before such hearing.
- G. The Board of Appeals may adjourn hearings from time to time, administer oaths, subpoena witnesses, hear testimony and receive evidence, inspect the premises involved and, by resolution containing a full recital of its findings, render its decision, which shall be filed in the office of the Town Clerk, all in accordance with law.
- H. Strict rules of evidence need not be observed at hearings before the Board of Appeals, and no stenographic record need be made of the testimony of proceedings, but minutes shall be kept of all proceedings in accordance with law.

## Article X Amendments

### § 116-92 **Compliance with statute required; submission of proposed amendments; fees.**

- A. All amendments to this chapter shall be in accordance with the provisions of the Town Law applicable thereto.
- B. Any proposed amendment shall be submitted on a petition to be furnished by the Town and

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accompanied by an application fee as listed on the Standard Schedule of Fees, no part of which shall be refundable. Any proposed amendment shall be submitted to the Town Planning Board for report and recommendation prior to final action thereon by the Town Board.

**§ 116-93 Development plans for Zoning Map changes.**

- A. Before approving any amendment of the Zoning Map so as to create a new or enlarged C District, the Town Board may require the submittal of development plans, including the location and character of proposed structures and conditions of use for the premises concerned, and in approving any such amendment, the Town Board may specify that no building permit or certificate of occupancy may be issued with respect to said premises under the amended district classification except in accordance with said plans and conditions of use as submitted or as revised to meet the requirements of the Town Board in furthering the purposes of this chapter.
- B. Where an amendment to the Zoning Map involves a reclassification from one district to another, the Town Board may require the petitioner to submit a development plan showing the extent, location and character of the proposed structures and uses and may require such plan to be modified, revised or amended as it may be deemed for the best interests of the Town and of the neighborhood.
- C. The Town Board is hereby empowered to authorize the proposed amendment after a hearing duly held according to law on the conditions that no building or use permits shall be issued except in accordance with the development plan as approved and that if the development, as approved, has not been commenced within such time as may be fixed by the Town Board and/or completed within such further time as may be fixed by said Board, such amendment and approval shall be void, and the zoning classification shall revert automatically and without further action to that which it was when the petition was filed.

**Article XI  
Violations**

**§ 116-94 Penalties for offenses.**

- A. Any person or persons, association or corporation committing an offense against this chapter or any section or provision thereof is guilty of a violation punishable by a fine not exceeding \$250 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment.
- B. This chapter may also be enforced by civil action or by proceedings by the Town of Aurora.
- C. Each week that a violation is permitted to exist shall constitute a separate offense.