**Roseboom Land Use Ordinance**

**Article 1. General Provisions**

**Section 1.01. Title**

This Local Law shall be known and may be cited as ”The Town of Roseboom Land Use Ordinance,” adopted as Local Law No. \_\_\_\_\_\_. This Local Law shall be herein referred to as “the Land Use Ordinance”, or “this Local Ordinance”.

**Section 1.02. Enactment and Authority**

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

**Section 1.03. Purposes**

The purpose of this Land Use Ordinance is to support the Comprehensive Plan of the Town of Roseboom by providing for the orderly growth of the Town while retaining and enhancing its unique rural, historical, scenic and agricultural character.

In addition, this Land Use Ordinance will be used to promote the protection, order, conduct, health, safety and well-being of the residents of the Town of Roseboom and the lands which lie within the Town’s borders.

**Section 1.04. Community Development Objectives**

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

More specifically, the provisions of this Land Use Ordinance achieve the following objectives for the Town of Roseboom and its residents:

Land Use

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

Critical Environmental Areas

Protect Critical Environmental Areas and resources including but not limited to wetlands,

floodplains, steep slopes, and ground surface waters such as seeps, springs and streams critical to maintaining the health of groundwater resources in the Town of Roseboom.

Forestry

Sustain and enhance the Town of Roseboom’s forested land, and its value as an economic,

recreational, and scenic resource.

Cultural/Archeological & Historical Resources

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

Aesthetic/Visual Resources

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

**Section 1.05. Right to Farm**

No provision of this Local Ordinance shall be interpreted, administered, or enforced in a manner that unreasonably restricts farm operations within a State Certified Agricultural District established pursuant to Article 25AA of the New York State Agricultural and Markets Law, unless it can be shown that the public health and safety are threatened.

**Section 1.06. Applicability**

This Land Use Ordinance, and any future amendments to it, shall apply to any land use, land alteration, construction, or development of any kind in any area of the Town of Roseboom. Any existing building or land not in conformity with the provisions of the regulations herein prescribed shall be regarded as non- conforming, but may be continued, extended, or changed pursuant to this Local Law with respect to non-conforming buildings, structures, or uses.

**Article 2. Definitions**

**Section 2.01. Word Usage**

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

1. Words used in the present tense include the future.

2. The singular includes the plural.

3. The word “person” includes an individual; firm, partnership, corporation, company, association, or government entity including a trustee, a receiver, an assignee, or similar representative.

4. The word “lot” includes the word “plot” or “parcel”.

5. The word “shall” is mandatory; the word “may” is permissive.

6. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be occupied”.

7. The words “Board of Appeals” shall always mean the Board of Appeals for the Town of

Roseboom.

**Section 2.02. Definitions**

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

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

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

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

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

Board of Appeals: The official body whose principal duties are to hear appeals and, where appropriate, grant variances from the strict application of this land use ordinance..

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

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

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

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

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

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

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

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

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

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

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

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

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

Dwelling: A building designed or used exclusively as the living quarters of one or more persons. Dwelling, Two Family: A detached building designed or occupied exclusively by two families.

(See Family)

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

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

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

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

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

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

FEMA.

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

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

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

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

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

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

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

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

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

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

Mega-Farm: A very large, factory-style farm.

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

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

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

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

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

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

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

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

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

50 feet of the principal structure or dwelling.

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

Place of Public Assembly: Land or buildings under the auspices of a governmental unit, public agency or involving public benefit or advantage. Hospitals, schools, parks, and recreational facilities, cemeteries, passenger stations, libraries, fire stations, public utility installations, government offices or facilities, philanthropic institutions, places of worship, community centers, day care nurseries, and like uses are included in this definition.

Plat - A plat is a map, drawn to scale, showing the divisions of a piece of land.

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

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

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

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

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

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

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

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

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

Roseboom: Always refers to the entire Town of Roseboom.

Sandwich Board: A freestanding portable sign consisting of two rigid boards connected by hinges.

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

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

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

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

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

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

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

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

Slope of Site: the vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of storm water runoff. Should the site be sufficiently large in the judgment of the Planning Board.and heterogeneous in character (difference of one or more slope factors), the site should be divided into different measurement units, with a gradient defined for each.

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

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

Sub-division: means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development.

Variance: Permission to depart from the literal requirements of the Land Use Ordinance.

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

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

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

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

**Article 3. Land Use District and Regulations**

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

To fulfill the purposes of this Local Ordinance one land use district (Agricultural/Rural Residential) is hereby established and shown on the Property Tax Map accompanying this Ordinance.

**Section 3.02. Purpose of District**

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

1. To maintain and encourage the agricultural endeavors practiced in the rural areas of the

Town.

2. To protect, enhance and encourage the preservation of open space, scenic views, wildlife habitat, and other natural resources including but not limited to wetlands, streams, seeps, floodplains, steep slopes, and surface and ground water supplies.

3. To provide the opportunity for residential development on properly serviced sites while maintaining the rural atmosphere and values of the community.

4. To maintain and protect rural residential and rural neighborhood qualities while recognizing the importance of meeting the residential housing needs of Town residents.

5. To provide and encourage a mixture of housing types and housing opportunities.

6. To allow for continuance of forestry, and mineral extraction operations.

**Section 3.03 Clustering**

*1*. Clustered subdivision development pursuant to the Town of Roseboom Land Use Ordinance, may be voluntarily applied to any parcel of land anywhere in the Town of Roseboom. All applications presented to the Planning Board must include an environmental review pursuant to SEQRA. A subdivision is subject to mandatory planning by a professional planner. All subdivision requests to the Town of Roseboom Planning Board, after the presentation of an initial sketch plan, must be accompanied by a subdivision plan prepared by a professional planner. The professional planner must endeavor to create a clustered subdivision plan that will meet the objectives of the Town of Roseboom Comprehensive Plan. The Planning Board must approve the prepared subdivision plan.

2. The Planning Board is further authorized to vary or modify lot size, setbacks, and layout requirements in order to meet the objectives of this Section and of the Town of Roseboom Land Use Ordinance. When a clustered subdivision is proposed, the Planning Board’s authority to vary or modify lot size, setback, and layout requirements may be used to impose conditions for the approval of any plat.

**Article 4. Land Use and Lot Dimension Standards**

**Section 4.01 Land Uses Requiring a Permit**

1. All land use activities within the Town of Roseboom shall require site plan review and approval before being undertaken.

a. Construction of one or two-family dwelling and ordinary accessory structures, and related land use activities.

b. Landscaping or grading, including but not limited to substantial timber cutting, which is intended to be used in connection with a residential, commercial or industrial land use.

c. Exterior alterations or additions to existing commercial structures which would

increase the square footage of the existing structure by more than twenty-five percent (25%) and having a cost value of more than $10,000.

d. Free-standing signs over thirty-two (32) square feet.

2. All agricultural, commercial and residential uses, shall be permitted provided all lot sizes, setbacks or other requirements of this Local Ordinance are met.

3. Mineral extraction operations shall be permitted pursuant to the New York State Mined Land Reclamation Law including such mining operations that extract less than one thousand (1000) tons or seven hundred and fifty (750) cubic yards of minerals per year.

4. All subdivisions shall be designed by a professional planner, to create a lot layout that is consistent with the objectives of the Town of Roseboom Comprehensive Plan.

5. The Planning Board reserves the right to review all subdivisions.

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

**Section 4.02 Lot Areas, Setbacks and Other Dimensions**

1. Lot s shall be o f su ffic ie nt size to acco mmo date build ings and ind ividua l sanit ar y sewage dispo sal s yst ems designed in accor dance wit h New York

State Health Department Sanitary Code and shall require the approval of the Otsego

County Department of Health.

2. Lots s ha ll no t be le s s t ha n five (5)acres and shall have a m in i mu m r o ad fr o nt a ge of at least two hundred (200) feet. All lots should be of sufficient width and depth to accommodate a residence with setbacks of at least twenty-five (25) feet from side and rear lot lines and seventy-five (75) feet from the street center line.

Planning Board variance needed for shared driveway.

**Article 5. General Land Use Regulations**

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

**Section 5.01. Residential and Agricultural Area**

Activities other than residential and agricultural functions may be permitted in the Agricultural/Residential land use area as long as these activities do not alter the essential residential or agricultural character of the neighborhood.

**Section 5.02. Principal Building per Lot**

There shall be only one principal building per lot. The identified land area associated with each principal building shall be sufficient to provide independent water supply and sewage system in accordance with the requirements with the New York State Health Department Sanitary Code and shall require the approval of the Otsego County Department of Health.

**Section 5.03. Mobile Homes Regulations.**

1. Mobile home owners must apply for a general building permit before the mobile home can be moved to the property and used for living quarters.

2. Mobile home owners must satisfy all state health codes before the mobile home can be moved to the property.

3. The mobile home must be at least fifty (50) feet from the shoulder of the road and at least fifty (50) feet from the boundaries of the property on which it is to be set and at least fifty (50) feet from any existing living quarters on the same property.

4. The foundation for a mobile home shall be a six (6) inch minimum slab of reinforced concrete with at least a six (6) inch base of gravel under it. This foundation shall extend at least to the edge of the walls of the mobile home.

5. An approved metal, wood or other suitable rigid skirting or framing, properly ventilated and attached, shall enclose that area from the bottom of the floor line of the mobile home to the ground for any mobile home hereafter located in the Town, unless the mobile home is mounted on an enclosed foundation.

6. Any mobile home unit removed and replaced by another unit shall be required to meet the standards in paragraph 3 and 4 above.

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

**Section 5.04. Uses with Nuisance Effect**

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

**Section 5.05. Dumping of Waste Material**

Dumping, piling or accumulation of refuse, scrap, garbage (other than in closed containers which are regularly emptied in a lawful manner), sewage, construction and demolition debris is prohibited.

**Section 5.06. Lighting**

1. All lighting shall be aimed, located, designed, fitted, and maintained so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property, or local traffic.
2. All exterior lights shall be downcast and shall not illuminate the sky. Caps or covers on such lights are required.

**Section 5.07.**

**Commercial Junk Yards**

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

1. The minimum lot size for a commercial junkyard is twenty five (25) acres.

No junkyard shall be permitted within a one thousand (1000) foot linear distance from a lake, watercourse, or wetland.

2. The outdoor area devoted to the storage of junk shall be hidden from public view completely surrounded with an eight (8) foot high fence, made of suitable opaque materials. The fence may not be made of vegetation or of any materials considered to be part of the junkyard that are intended to be concealed behind the fence. Such fence must be set back at least fifty (50) feet from all property lines. All wreckage, parts, work, or other activity involving the junkyard must take place within the closure.

3. All Federal and State laws shall be satisfied.

4. All junk shall be stored or arranged so as to permit access by fire-fighting equipment and to prevent the accumulation of water, and with no junk piled to a height greater than eight (8) feet.

5. No oil, grease, tires, gasoline, or other similar material shall be burned at any time.

6. Any junkyard shall be maintained in such a manner as to cause no public or private nuisances, nor to cause any offensive or noxious sounds or odors, nor to cause the breeding or harboring of rats, flies, mosquitoes, or other vermin.

7. No junkyard shall be located on land with a slope in excess of five percent (5 %).

**Section 5.08. Ponds**

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

**Section 5.09. Landscaped Areas Between Certain Uses**

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

**Section 5.10 Development in Designated Flood Hazard Areas**

All requirements, procedures, and standards of the Flood Damage Prevention Law (NFIP Local Law 1 of 2017)

**Article 6. Signs**

**Section 6.01. Purpose**

The purpose of sign regulations are:

1. To encourage the effective use of signs as a means of communication in the Town.

2. To maintain and enhance the aesthetic environment and the Town’s ability to attract

sources of economic development and growth.

3. To improve pedestrian and traffic safety.

4. To minimize the possible adverse effect of signs on nearby public and private property,

5. To enable the fair and consistent enforcement of these sign restrictions.

**Section 6.02. General Regulations**

1. Freestanding Signs:

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

2. Removal of Signs:

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

***Section 6.03. Procedures***

Any sign that exceeds thirty-two (32) square feet or greater than fifteen (15) feet high requires a permit.Sign applications shall be made to the Town Planning Board on forms provided by the Town on the Town Web Site. Fee schedules, if any and duration of permits shall be set by resolution by the Town Board. Such fees and permit procedures may be amended, as the Town Board considers necessary.

**Section 6.04. Exempt Signs**

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

1. Signs two square feet or smaller identifying a residential structure or location.
2. Flags.
3. Restorations or re-creations of historic signs or markers on the lot where such sign stood before restoration.

4. Signs related to agriculture, displayed on the premises where the agricultural activity is conducted, provided that the principal use of the lot is residential or agricultural. Examples include, but are not limited to: advertisements promoting milk drinking, signs indicating the breed of animal or type of seed used on the farm, manufacturer's trademark on silos, signs advertising the sale of agricultural goods.

5. “Posted” or "No trespassing" signs, or signs of similar meaning, one square foot or smaller.

6. Signs warning of a hazard or danger.

7. Sandwich boards in non-residential and non-agricultural zoning districts, if displayed on the premises where the advertised goods or services are available, and if taken inside nightly at or before sundown. In addition, non-conforming business or commercial uses in the Agricultural/Rural Residential or Agricultural/Rural Residential districts may display sandwich board signs following these standards

8. "For sale" signs not larger than two square feet affixed to cars, boats, etc., provided the premises on which the vehicles are displayed are not used regularly for such sales.

*9*. Signs for garage sales, auctions, etc., provided the premises are not used regularly for such sales shall not be displayed for more than fourteen (14) days.

10. One on-premises sign advertising real estate for sale or rent, not larger than six square feet. Such sign shall be removed no later than thirty (30) days after closing.

11. One sign, not larger than sixteen (16) square feet, listing the designer or builder on premises where construction, renovation or repair is in progress. Such sign shall be removed no later than thirty (30) days after completion of work.

12. Political posters, signs promoting a non-commercial cause or activity, or not-for-profit fund raising devices, not larger than six (6) square feet, in residential or agricultural land use districts. Such signs shall be removed no later than one week after the advertised activity ends.

13. Signs for which permits have been issued by the State of New York prior to 1995 and for which permits have been kept current under New York State rules and regulations.

14 Signs erected by the Town of Roseboom are exempt from the size and placement restrictions of this section.

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

**Article 7. Home Occupations**

The home occupation shall not affect the safety or comfortable enjoyment of neighboring properties.

**Article 8. Non-Conforming Structures and Uses**

**Section 8.01. Application**

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

**Section 8.02. Continuation**

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

**Section 8.03. Adjoining Lots**

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

**Section 8.04. Non-Conforming Uses**

1. Discontinuance or Removal. A non-conforming use that is discontinued or removed for any reason other than fire, flood, or other natural disaster for a period of one (1) year or more shall not be re-established. A non-conforming use that is discontinued due to fire, flood, or other natural disaster for a period of two (2) years or more, commencing on the date of such natural disaster, shall not be re-established. Any subsequent use shall conform to this Local Ordinance. The Planning Board is empowered to extend the two (2) year time period upon receipt of a written request from the owner at least thirty (30) days in advance of the expiration of this time period.

2. Changes. No non-conforming use shall be changed except to a conforming use. When so changed, the non-conforming use shall not be resumed. Pre-existing uses shall not be altered in such a way as to create a non-conforming use or to increase the degree of non- conformity.

3. Extension. No non-conforming use shall be enlarged or extended beyond the area occupied by such use on the effective date of this Local Ordinance. A non-conforming use may be extended throughout any part of a building for such use if on the effective date of this Local Ordinance a majority portion of the building was used for such non-conforming use.

**Section 8.05. Non-Conforming Buildings or Structures**

1. Alterations. A non-conforming building or structure shall not be enlarged, extended, or have exterior alterations beyond the limits of the original building or structure, unless such enlargement, extension, or alteration shall be in accordance with this Local Ordinance.

2. Reconstruction. A non-conforming building may be reconstructed to its original dimensions, subject to the Site Plan Review. The purpose of Site Plan Review is to provide the Roseboom Planning Board the opportunity to reduce the level of non-conformance of the building. In no case shall the level of non- conformance be increased. This section does not provide any modification of this Article as to discontinuance, removal, modification, or extension of a non-conforming use.

**ARTICLE 9: ADMINISTRATION and ENFORCEMENT**

**Section 9.01 Enforcement Officer**

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

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

1. In consultation with the Planning Board, to develop such forms, rules and regulations

as deemed necessary for proper administration and enforcement of this Local Ordinance. Said form, rules and regulations shall be reviewed and approved by the Town Board and shall be available for public view at the Town Clerk's Office.

2. To enter upon, examine or inspect, for the purpose of administering or enforcing this Local Ordinance with reasonable arrangements with the owner, any land, building or structure which is the subject of an application. To make follow up visits after site plan approval to ensure adherence to the approval granted. A written report of each examination or inspection shall be kept on file in the Office of the Town Clerk.

1. To receive complaints of violations of this Local Ordinance or to make complaints against the owner or occupant of the premises where there appears to exist a violation of any provision.
2. To act upon any and all complaints and to serve a written notice of violation upon the owner or occupant of the premises where there appears to exist a violation of any provision of this Local Ordinance.

5. To accept applications required by this Local Ordinance and to issue, subject to conditions, or refuse to issue any requested permit, certificate or license within ten (10) working days of his/her receipt of the application thereto, except that where such application involves review by an official board under the provisions of this Local Ordinance. All applications that require subdivision or site plan review will be forwarded to the Planning Board. All applications clearly in violation of the provision of this Local Ordinance shall be rejected. Where conformity with the Local Ordinance is uncertain the application shall be referred to the Planning Board for disposition under the Planning Board's site plan review authority. Where such review is required, the Enforcement Officer shall notify the applicant of such fact and of any necessary applications, statements, plans, or other documentation required for such review within ten (10) working days of receipt of the original application. The Enforcement Officer shall notify the applicant of meetings at which his application will be acted upon by any reviewing board and said officer shall take such action as may be directed by such Board.

6. To file with the Town Clerk copies of all applications received and permits issued.

7. To perform any other administrative or enforcement duties specified in this Local Ordinance including but not limited to the issuance of permits, licenses or certificates, accepting or reviewing applications, plans, or plats, and carrying out any lawful order of the Town Planning Board, the Town Board, the Town Board of Appeals, or a Court having jurisdiction over this law.

8. Failure to comply with the standards set below, shall give the Enforcement Officer the legal authority to deny renewal of the permit or to revoke the permit if it is clearly in violation of the ordinance and the owner refuses to comply with the standards of any issued permit.

**Section 9.02 Fees**

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

**Section 9.03 Violations**

A. A violation of this Local Ordinance is hereby declared to be an offense punishable by a fine to be determined by the Town Board. Violations of any of its provisions shall be considered an unclassified misdemeanor, Penal Law Section 55-10 (2). Failure to adhere to the site plan approved by the Planning Board and/or the special conditions required by the Planning Board shall be a violation of this law. It shall be a violation of this law to deviate in any way from any area variance or use variance granted by the Board of Appeals.

B. Where land is used or where any building or structure is erected, constructed, converted, altered, used or maintained in violation of this Local Ordinance, the Enforcement Officer, in addition to other remedies, may institute any appropriate action or proceedings to prevent erection, construction, conversion, alteration, use, maintenance or occupancy. These remedies may include the revocation or suspension of a building permit, denial of new permits, issuance of a Stop Work Order, or Issuance of a Cease and Desist Order.

C. A complaint of violation of this Local Ordinance may be made by any resident, property owner, or Town Official, including the Enforcement Officer. Such complaint shall be filed orally, electronically or in writing with the Town Clerk and shall include the following information:

1. The name, address and telephone number of the alleged violator if such information is available.

2. A description of the nature of the alleged violation including a reference to the provision of this Local Ordinance allegedly being violated, including the date and time.

D. All recorded complaints shall include follow-up. An immediate follow-up letter confirming that the complaint had been received and will be investigated shall be provided by the Enforcement Officer to the complainant.

E. Upon receipt of a complaint of violation, the Enforcement Officer shall investigate to determine the presence of a violation and upon finding a violation shall issue to the landowner a notice including the items listed under Section 9.03 C together with any observations made by the Enforcement Officer on the basis of this investigation. Such notice shall also specify what corrective action is required by the owner or occupant of the property, and the date by which such action shall be taken. The term violation as used in Section 9.03 A shall exist only if the date of required action, as specified in the notice to the owner or occupant**,** passes without such specified corrective action having taken place.

F. Notices required by this Section shall be issued by the Enforcement Officer either by personal service to the owner or occupant or by certified mail to the address of same shown on the tax rolls of the Town or contained in the statement of complaint.

**ARTICLE 10: BOARD OF APPEALS**

**Section 10.01 Board of Appeals**

The Board of Appeals of the Town of Roseboom shall hear and decide appeals from and review any order, requirement, decision or determination made by the Enforcement Officer. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Enforcement Officer. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the Town by filing with the Enforcement Officer and the Board of Appeals all papers constituting the record upon which the action appealed was taken. An appeal stays all proceeding in furtherance of the action appealed unless the Enforcement Officer certifies to the Board, after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application. The Board of Appeals may reverse or affirm wholly or partially or may modify the order, requirement, decision or determination as in its opinion ought to be made in the circumstances.

**Section 10.02 Procedures and Referrals**

A. All applications for action by the Board of Appeals shall be made to the Enforcement Officer on such forms as he may prescribe. Such applications may be made at any time except that an application for appeal under Section 10.01 above shall be made within sixty-two (62) days of the action being appealed.

B. The Enforcement Officer shall transmit a copy of the application, together with any accompanying documents, to the Board of Appeals who shall schedule a hearing thereon. Public notice of said hearing shall be given by publication in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof and the Board shall deliver at least five (5) days before such hearing, mail notices thereof to the parties. Where any variance or permit application affects any real property lying within five hundred (500) feet from the boundary of any city, village or town or from any state, city, village or town property the Board of Appeals shall notify the Otsego County Planning Board of said application and submit copies of the application and any supporting documents thereto. No action shall be taken upon any matter referred to the Otsego County Planning Board until said Board shall have made a recommendation thereon to the Board of Appeals or thirty (30) days shall have elapsed since the date of referral.

C. The hearing of an appeal or application shall take place within ninety (90) days of the filing of the appeal or application.

D. Rehearing - Upon a motion initiated by any member and adopted by the unanimous vote of the members present, but not less than a majority of all the members, the Board of Appeals shall review at a rehearing, held upon notice given upon an original hearing, any order, decision, or determination of the Board not previously reviewed. Upon such rehearing, and provided it shall appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon concurring vote of all members present, reverse, modify or annul its original order, decision or determination.

E. The Board of Appeals shall reach a decision on any application or appeal within sixty- two (62) days of the final hearing thereon. Such decisions shall be promptly filed in the office of the Town Clerk and shall be a public record. Within seven (7) days of such decision, notice thereof shall be transmitted to the Otsego County Planning Board whenever such decision related to an application referred to said County Planning Board.

**Section 10.03 Variance Appeals:**

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

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

A. An application for such variance shall be made to the Enforcement Officer for transmittal to the Board, said application to contain the following items:

1. the name, address and telephone number of the applicant;

2. the location and land use district of the property for which the variance is sought;

3. the existing use of said property including a description of any existing buildings;

4. the provision of the Local Ordinance for which the variance is requested;

5. a justification of the request for variance.

B. Area Variances: In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall consider:

1. whether an undesirable change will be produced in the character of the

neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

2. whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

3. whether the requested area variance is substantial;

4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

C. Use Variances: The Board of Appeals, on appeal from the decision or determination of the Enforcement Officer, shall have the power to grant use variances, as defined herein. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that land use regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that:

1. under applicable land use regulations the applicant is deprived of all economic use benefit from the property in question, which deprivation must be established by competent financial evidence;

2. that the alleged hardship related to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

3. that the requested use variance, if granted, will not alter the essential character of the neighborhood, and

4. that the alleged hardship has not been self-created.

D. In granting a variance the Board, in its resolution, shall specify its findings and the fact that all of the conditions specified above are met.

E. In the exercise of its power and duties, the Board of Appeals, through its chairperson, or in his/her absence, its acting chairperson, may compel the attendance of witnesses and may administer oaths prior to taking the testimony of any witness.

F. In addition to the findings required before the granting of any variance or permit under this local law, the Board of Appeals may consider any other evidence necessary to show compliance to the intent and purpose of this Local Ordinance.

G. The Board, in granting any appeal, variance or permit may attach such conditions to said approval as, in its determination, are necessary to achieve the intent and purpose of this Local Law.

**Section 10.04 Judicial Review**

A. Any person or persons aggrieved by any decision of the Board of Appeals or any officer, department, board or bureau of the Town may apply to the NYS Supreme Court for review by a proceeding under Article Seventy-Eight (78) of the New York Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision in the office of the Town Clerk. The Court may take evidence or appoint a referee to take evidence as it may direct and report the same with his findings of fact and conclusions of laws if it shall appear that testimony is necessary for the proper disposition of the matter. The Court, at a Special Term, shall itself dispose of the case on the merits, determining all questions which may be presented for determinations.

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

C. All issues in any proceeding under this Section shall have preference over all other civil actions and proceedings.D. If, upon the hearing of the NYS Supreme Court, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

**ARTICLE 11: MISCELLANEOUS PROVISIONS**

**Section 11.01 Amendments**

A. No proposed amendment, supplement, change or modification of these regulations or the boundaries shown on the land use map shall be approved or disapproved until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

B. At least ten (10) days notice of such Public Hearing shall be published in a paper of general circulation within the Town. A written notice of any proposed change or amendment affecting a housing project authorized under the Public Housing Law, or within five hundred (500) feet of the boundaries of any city, village, town, or county or state, city, village town or county property shall be given the appropriate city, village, county, state bodies at least ten (10) days in advance. Such city, village, county, town or state shall have the right to appear and to be heard at such Public Hearing with respect to any such proposed change or amendment but shall not have the right to review by a court.

C. Any land use regulation or amendment thereof which would change the classification of or the regulations applying to real property lying within distance of five hundred (500) feet from the boundary of any city, village, or town or from any county or state highway shall, before the Town Board takes final action on such matters, be referred to the Otsego County Planning Board. If the County Board disapproves any such proposal or recommends modification, the Town Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after adopting a resolution fully setting forth the reasons for such contrary action.

D. Every amendment to this land use local law excluding any map incorporated therein, adopted pursuant to this section, shall be entered in the minutes of the Town Board; such minutes shall describe and refer to any map adopted in connection with such amendment. All map changes will be filed with the Town Clerk.

**Section 11.02 Referral to Town Board of Appeals**

Any application requiring a variance shall be referred to the Town Board of Appeals whenever said application relates to a site plan under review by the Planning Board. The Town Planning Board may approve any such site plan, conditional upon approval of a variance by the Town Board of Appeals.

**Section 11.03 Interpretation and Conflict with Other Laws**

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

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

Where the requirements of another statute, law, ordinance, rule, or regulation conflict with this

Land Use Ordinance, the more restrictive provision shall control.

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

**Section 11.04 Separability**

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

**Section 11.04 Interpretation; Conflict With Other Laws**

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

**Section 11.05 Effective Date**

This Local Law and the accompanying map shall take effect immediately upon their filing with the Office of the Secretary of State of the State of New York, in accordance wit h the applicable provisions of law, specifically, Article 3, Section 27 of the New York State Municipal Home

Rule Law.