

## Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☒ Town ☐ Village  
(Select one:)

of Augusta

Local Law No. 1 of the year 2014

A local law A local law to ammend and supplement the Zoning Law of the  
(Insert Title)  
Town of Augusta adopted January 14, 1986 (as heretofore amended), by:  
Establishing a Severability Clause; Confirming and Clarifying that  
any Uses not Expressly Permitted are Prohibited; Articulating Certain  
Explicitly Prohibited Uses; Adding Certain New Definitions, and Changing  
Certain Existing Definitions; and Modifying, Clarifying, and Adding to  
the Provisions Regarding Special Use Permits and Variances.

Be it enacted by the Town Board

☐ County ☐ City ☒ Town ☐ Village  
(Select one:)

of the

of Augusta

as follows:

\* See Attached

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 2014 of the (County)(City)(Town)(Village) of Augusta was duly passed by the Town Board on Feb. 19 2014, in accordance with the applicable provisions of law.  
(Name of Legislative Body)

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.  
(Name of Legislative Body) (Elective Chief Executive Officer\*)

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**


I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph \_\_\_\_\_ above.

  
Louisa M. Furrer  
Clerk of the county legislative body, City, Town or Village Clerk or  
officer designated by local legislative body

Date: February 24, 2014

(Seal)





STATE OF NEW YORK  
DEPARTMENT OF STATE  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

ANDREW M. CUOMO  
GOVERNOR

CESAR A. PERALES  
SECRETARY OF STATE

April 21, 2014

Town Clerk

**RE: Town of Augusta, Local Law 1 2014, filed on March 3, 2014**

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, [www.dos.ny.gov](http://www.dos.ny.gov).

Sincerely,  
State Records and Law Bureau  
(518) 474-2755



Town of Augusta  
Local Law No. 1 of the Year 2014

A local law to amend and supplement  
the Zoning Law of the Town of Augusta adopted January 14, 1986  
(as heretofore amended),  
by:

Establishing a Severability Clause;  
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;  
Articulating Certain Explicitly Prohibited Uses;  
Adding Certain New Definitions, and Changing Certain Existing Definitions; and  
Modifying, Clarifying, and Adding to the Provisions  
Regarding Special Use Permits and Variances.

*Be it enacted by the Town Board of the Town of Augusta as follows:*

## **Article I. General Provisions**

### **Section 1.1. Authority for Adoption**

The Town Board hereby adopts this Local Law pursuant to the authority described at Section 1. of **Appendix A** attached hereto, which **Appendix A** is hereby incorporated and made a part of this Local Law for all purposes by this reference.

### **Section 1.2. Findings of Fact**

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Local Law, and a copy of the text of such findings, determinations, and declarations is set forth at Section 2. of **Appendix A** attached hereto.

### **Section 1.3. Purpose & Intent**

The Purposes and Legislative Intent underlying the Town Board's passage of this Local Law are set forth at Section 3. of **Appendix A** attached hereto.

### **Section 1.4. Definition of "Existing Zoning Law," this "Local Law," and "this "Law"**

As used in this Local Law, the term "Existing Zoning Law" shall mean and be the Town of Augusta Zoning Ordinance adopted January 14, 1986, as amended to date, including by: Local Law No. 1 of 1988, Local Law No. 2 of 1989, and Local Law No. 1 of 1997.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 1 of 2014.

As used in Article II of this Local Law, the term "this Law," "this chapter," and "herein" shall mean, be, and refer to the Existing Zoning Law as amended by this Local Law.

### **Section 1.5. Interpretation**

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Law effected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

This Local Law is intended to supersede any provision of the New York State Town Law that is inconsistent herewith.

## **Article II. Amendments of Existing Zoning Law**

### **2.1. Amendments to Article 1 of the Existing Zoning Law**

Article 1 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("Short Title and Purposes") with the words "Short Title; Purpose and Intent; Severability"; and (ii) so as to delete the (present) Section headings and text of Sections 1, 1.10, 1.20, and 1.30 in the entirety, and to substitute the following text therefor:

#### **"1.10 SHORT TITLE**

This Law shall be known and cited as the "Town of Augusta Zoning Ordinance."

#### **1.20 PURPOSE AND INTENT**

The purposes and intent of this Law are to: promote the health, safety and general welfare of the present and future inhabitants of the Town; guard against loss of life and damage to property due to flooding through protection of natural drainage features; preserve features of historical significance; encourage the most appropriate development of the Town in accordance with the Comprehensive Plan of the Town; encourage the preservation of the scenic and natural assets of the Town, and of the rural residential character of the community; protect property values; regulate location and use of buildings and the uses of land within each district with regard to residential, commercial, , and other purposes; lessen congestion in streets; secure safety from fire, flood, panic, and other dangers; provide adequate light and air and acceptable noise levels; prevent overcrowding of land and avoid undue concentration of population; facilitate the adequate provision of transportation, water, sewage disposal, schools, parks and other public requirements; and establish districts in which regulations concerning the size of buildings and other structures, the percentage of lots that may be covered, the size of yards, and the use of



buildings, structures and land for trade, commerce, residence, and other purposes are restricted and regulated as hereinafter provided.

### **1.30 SEVERABILITY**

If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable."

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## **2.2. Amendments to Article 2 of the Existing Zoning Law**

A. Section 2.10 of the Existing Zoning Law is hereby amended so as to add the following sentence as the (new) final sentence of said Section 2.10, to be inserted immediately after the (present) words "... is mandatory and not optional.": "The word "lot" includes the words "plot" and "parcel."

B. Section 2.20 of the Existing Zoning Law is hereby amended so as to insert the following text immediately below the Section heading "Definitions" and immediately preceding the (present) definition of 'Accessory Use or Structure':

"Except where specifically defined or otherwise specifically provided herein, all words used in this Law shall carry their customary dictionary meanings. For purposes hereof, the following terms and words shall have the meanings set forth below:"

C. Section 2.20 of the Existing Zoning Law is hereby further amended, so as to amend the (present) definition of 'Automobile Service Station' by deleting the words "tires and automobile accessories" therefrom, and substituting the words "tires, automobile accessories, or any of the foregoing" therefor.

D. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Below-Regulatory Concern" therein, said definition to be inserted immediately after the definition of "Automobile Service Station" and immediately before the present definition of "Building":



**"BELOW-REGULATORY CONCERN.**

Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town."

E. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following text regarding the terms "Commercial; Commercial Uses" therein, said text to be inserted immediately after the definition of "Building Height" and immediately before the present definition of "Dwellings":

**"COMMERCIAL; COMMERCIAL USES.**

Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms "commercial," "commercial uses," or any variation thereof, be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses."

F. Section 2.20 of the Existing Zoning Law is hereby further amended, so as to amend the definition of "Dwellings" by deleting the words "as defined herein" from the (present) second sentence thereof.

G. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Explicitly Prohibited Uses" therein, said definition to be inserted immediately after the definition of "Dwellings" and immediately before the present definition of "Factory Manufactured Homes":

**"EXPLICITLY PROHIBITED USES.**

Shall mean and be the Explicitly Prohibited Uses defined and described in Article 4A of this Law."

H. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Gravel Mining" therein, said text to be inserted immediately after the definition of "Farm" and immediately before the present definition of "Home Occupation":

**"GRAVEL MINING.**

Any of the following activities: (a) the extraction of overburden and minerals from the earth; (b) the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, sorting, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use (exclusive of



any manufacturing processes at the mine location); (c) the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; (d) the disposition of overburden, tailings and waste at the mine location; or (e) any combination of the above activities. In no event shall "gravel mining" be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities, Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use," nor shall "gravel mining" include (i) the excavation, removal or disposition of minerals from the site of, and incidental to, a construction project as to which all required permits are in force and, or (ii) excavations incidental to bona fide Farm use activities, For the purpose of this definition:

(A) Minerals - mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth. "Minerals" include, but are not limited to, peat, topsoil, gravel, and stone. For purposes hereof, Natural Gas and other subsurface hydrocarbons shall not be considered "minerals."

(B) Overburden - means all of the earth, vegetation and other materials that lie above or alongside a mineral deposit.

(C) Spoil and Tailings - have the meanings given to them by Article 23 of the NYS Environmental Conservation Law or any similar or successor statute."

I. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following text regarding the terms "Industrial; Industry; Industrial Uses" therein, said text to be inserted immediately after the definition of "Home Occupation" and immediately before the present definition of "Junk Yard Business":

**"INDUSTRIAL; INDUSTRY; INDUSTRIAL USES.**

Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms "industrial," "industry," "industrial uses," or any variation thereof, be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses."

J. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Injection Well" therein, said text to be inserted immediately after the (newly inserted) text regarding "Industrial; Industry; Industrial Use" and immediately before the present definition of "Junk Yard Business":

**"INJECTION WELL.**



A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days."

K. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Land Application Facility" therein, said text to be inserted immediately after the definition of "Junk Yard Business" and immediately before the present definition of "Lot":

**"LAND APPLICATION FACILITY.**

A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil."

L. Section 2.20 of the Existing Zoning Law is hereby further amended, so as to delete the present heading and definition of 'Lot Non Conforming' in the entirety.

M. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Natural Gas," (ii) "Natural Gas and/or Petroleum Exploration Activities," (iii) "Natural Gas and/or Petroleum Extraction Activities," (iv) "Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes," (v) "Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility," (vi) "Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump," (vii) "Natural Gas Compression Facility," and (viii) "Natural Gas Processing Facility" therein, said definitions to be respectively inserted immediately after the definition of "Mobile Home Park" and immediately before the present definition of "Non Conforming Use":

**"NATURAL GAS.**

Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

**NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES.**

Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

**NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES.**



The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

**NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES.**

Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Farm use.

**NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY.**

Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

**NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DUMP.**

Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or



Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

**NATURAL GAS COMPRESSION FACILITY.**

Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

**NATURAL GAS PROCESSING FACILITY.**

Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams."

N. Section 2.20 of the Existing Zoning Law is hereby further amended so as: (i) to delete the present heading and definition of "Non Conforming Use" in the entirety, and (ii) to insert the following respective definitions of (w) "Non-Conforming Lot," (y) "Non-Conforming Structure," and (z) "Non-Conforming Use" in substitution thereof:

**"NON-CONFORMING LOT.**

A lot of record which was created legally but which no longer complies with the area, shape, frontage, or locational provisions of this Law for the district in which such lot is located.

**NON-CONFORMING STRUCTURE.**

A structure which does not satisfy the dimensional requirements of this Law for the district in which it is located, but which was not in violation of applicable requirements when constructed.

**NON-CONFORMING USE.**

Any use lawfully existing at the time of the adoption or amendment of this Law or any preceding zoning law or ordinance, where such use has continued but is not permitted by or does not conform with the use regulations of this Law for the district in which it is located."

O. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Public Utility" therein, said text to be inserted immediately after the definition of "Planned Unit Development" and immediately before the present definition of "Special Use":

**"PUBLIC UTILITY.**



**Public Utility:** An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility facility, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall 'Public Utility' or 'Public Utility Facility' be construed to mean, be, or include a Natural Gas Compression Facility or a Natural Gas Processing Facility, or any other Explicitly Prohibited Use."

P. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Radiation," and (ii) "Radioactive Material" therein, said definitions to be respectively inserted immediately after the (newly inserted) definition of "Public Utility" and immediately before the present definition of "Special Use":

**"RADIATION.**

The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

**RADIOACTIVE MATERIAL.**

Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is "radioactive material" for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency."

Q. Section 2.20 of the Existing Zoning Law is hereby further amended, so as to delete the text of the (present) definition of 'Special Use' in the entirety, and to substitute the following text therefor:

"A use that because of its unique characteristics requires individual consideration through a procedure of review by the Zoning Board of Appeals, in order to determine whether a Special Use Permit should be granted, conditionally granted, or denied."

R. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definition of "Subsurface" therein, said text to be inserted immediately after the definition of "Special Use" and immediately before the present definition of "Variance":

**"SUBSURFACE.**

Below the surface of the earth, or of a body of water, as the context may require."

S. Section 2.20 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of (i) "Underground Injection," and (ii) "Underground Natural Gas



Storage" therein, said definitions to be respectively inserted immediately after the (newly inserted) definition of "Subsurface" and immediately before the present definition of "Variance":

**"UNDERGROUND INJECTION.**

Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well."

**UNDERGROUND NATURAL GAS STORAGE.**

Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines."

T. Section 2.20 of the Existing Zoning Law is hereby further amended so as: (i) to delete the present heading and definition of "Variance" in the entirety, and (ii) to insert the following respective definitions of (w) "Variance," (y) "Variance, Area," and (z) "Variance, Use" in substitution thereof:

**"VARIANCE.**

An area variance or a use variance, as the context may admit.

**VARIANCE, AREA.**

The authorization by the Zoning Board of Appeals for the use of land in a manner that 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."

**2.3. Amendments to Article 3 of the Existing Zoning Law**

A. Section 3.20 of the Existing Zoning Law is hereby amended so as to delete the text presently below the Section heading "Zoning Map" (beginning "Said districts are bounded ... ") in the entirety, and to substitute the following text therefor:

"The boundaries of the zoning districts are shown on the map entitled "Zoning Map of the Town of Augusta," which is hereby declared to be a part of this Law. The official Zoning Map shall be kept on file in the office of the Town Clerk. Unofficial reductions of this map shall be for reference purposes only. Changes may be made in district boundaries only by a zoning amendment adopted by the Town Board. Any such changes shall be noted by the Town Clerk on the official Zoning Map promptly after the Town Board adopts such an amendment. In the



event of a conflict between the Zoning Map in the Town Clerk's office and the specific local law adopting a Zoning Map amendment, the specific local law shall be the controlling authority as to the current zoning status of lands, structures and uses in the Town."

**B. Section 3.31 of the Existing Zoning Law is hereby amended so as to delete the text presently below the Section heading "Designation of District Boundaries" (beginning "The district boundary lines ...") in the entirety, and to substitute the following text therefor:**

"The district boundary lines, unless shown otherwise, are intended generally to follow street centerlines, railroad right-of-way boundary lines, or their centerlines, other similar right-of-way lines, or lot lines or boundaries of subdivisions, or Town boundary lines. If the district boundary line does not follow such a line, but is shown parallel to such a line on the Zoning Map, the distance between the parallel lines shall be as dimensioned on the Zoning Map. Such dimensions shall be construed to read from the centerline of all rights-of-way rather than from their outside edges. Where district boundaries are indicated as approximately following lot lines, such lot lines as they existed at the time of enactment or amendment of this Law shall be construed to be said boundaries. Where the boundary of a district is indicated as following shorelines of ponds and lakes, said boundary line shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline. Where the boundary of a district is indicated as following a stream or other watercourse, said boundary line shall be construed to follow the centerline of such stream or watercourse and, in the event of change in the same, shall be construed as moving with the actual stream or other watercourse. When the location of a district boundary line cannot be otherwise determined, the determination thereof shall be made by scaling the distance on the Zoning Map from a line of known location to such district boundary line."

#### **2.4. Amendments to Article 4 of the Existing Zoning Law**

**A. Article 4 of the Existing Zoning Law is hereby amended so as to replace the present title of such Section ("District Regulations") with the words "District Regulations; Any Use Not Specifically Permitted Is Prohibited."**

**B. Section 4.20 of the Existing Zoning Law is hereby amended so as to delete the text of present clause "a." thereof (beginning "No building shall be erected ...") in the entirety, and to substitute the following text therefor:**

"Any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it

is specifically set forth as a permitted use in said other district.

Except as otherwise provided herein: (i) no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (ii) no building or structure shall hereafter be erected or altered to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building or structure is located. "

## **2.5. Amendment to add (new) Article 4A of the Existing Zoning Law**

The Existing Zoning Law is hereby further amended so as to add the following new Article 4A thereto, said new Article to be inserted immediately after the text of present Article 4 of the Existing Zoning Law, and immediately prior to Article 5 of the Existing Zoning Law:

### **"ARTICLE 4A**

**Explicitly Prohibited Uses: Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.**

A. Explicitly Prohibited Uses. The following uses and activities are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

- (i) Land Application Facility;
- (ii) Natural Gas And/Or Petroleum Exploration Activities;
- (iii) Natural Gas And/Or Petroleum Extraction Activities;
- (iv) Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility;
- (v) Natural Gas And/Or Petroleum Exploration, Extraction, Or Production Wastes Dump;
- (vi) Natural Gas Compression Facility;
- (vii) Natural Gas Processing Facility;
- (viii) Underground Injection;



- (ix) Underground Natural Gas Storage;
- (x) Ammonia, bleaching powder, or chlorine manufacture;
- (xi) Asphalt batching, manufacture, or storage;
- (xii) Fireworks or explosives manufacture or storage;
- (xiii) Gasoline, naptha, or petroleum refining; and
- (xiv) Commercial fertilizer manufacture or bulk storage.

Any condition caused or permitted to exist in violation of this Clause A. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as "Explicitly Prohibited Uses," any one of the above expressly prohibited uses may be referred to in this law as an "Explicitly Prohibited Use," and any combination of more than one such use may also be referred to as "Explicitly Prohibited Uses."

**B. Prohibition against Natural Gas And/Or Petroleum Exploration,**

is specifically set forth as a permitted use in said other district.

Except as otherwise provided herein: (i) no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (ii) no building or structure shall hereafter be erected or altered to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building or structure is located. "

**2.5. Amendment to add (new) Article 4A of the Existing Zoning Law**

The Existing Zoning Law is hereby further amended so as to add the following new Article 4A thereto, said new Article to be inserted immediately after the text of present Article 4 of the Existing Zoning Law, and immediately prior to Article 5 of the Existing Zoning Law:

**"ARTICLE 4A**

**Explicitly Prohibited Uses: Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.**

**A. Section 6.20 of the Existing Zoning Law is hereby amended so as to replace the present title of such Section ("Required Site Plan") with the words "Required Site Plan Review."**

**B. Article 6 of the Existing Zoning Law is hereby amended so as to delete the heading and text of (present) Section 6.30 (including present subsections 6.31 through 6.36) in the entirety, and to substitute the following text therefor:**

**"6.30 SPECIAL USES.**

**All special permit uses shall require site plan review. Special permit uses are uses for which approval of the Zoning Board of Appeals is required and for which conformance to additional standards is required, in addition to all other requirements of this Law. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific case or use shall be considered as an individual case that requires consideration of the merits and details of each proposed use to assure that such proposed use is in harmony with this Law, the Town's Comprehensive Plan and land use and similar goals and plans from time to time adopted by the Town Board and in effect at the time in question, and that such proposed use will not adversely affect the general character of the surrounding area if the conditions of the special use permit are met."**

**6.31 In evaluating a request for a special use permit, the Zoning Board of Appeals shall require evidence of the satisfaction of each and every of the following standards by findings entered into the record of the proceedings:**

- (a) that the special use is specifically authorized by this Law (the decision shall set forth the exact subsection of this Law containing the jurisdictional authorization);**
- (b) that the special use meets all of the criteria set forth in the subsection of this Law authorizing such special use; and**
- (c) that the granting of the special use permit will not alter the general character of the surrounding area, or impair the intent or purpose of this Law, or of the Town's Comprehensive Plan, or of land use and similar goals and plans from time to time adopted by the Town Board and in effect at the time in question. In so doing, the Zoning Board of Appeals shall consider factors such as: (i) location and size of the proposed project; (ii) the nature and intensity of the operations involved; (iii) the size of the site in relation to the size of the proposed project; (iv) the location of the site with respect to the existing or future streets giving**



access to it with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe; (v) whether the location, nature and height of buildings walls, and fences will discourage the appropriate development and use of adjacent land and buildings and properties generally in the district or impair the value thereof; (vi) whether the operations in connection with the proposed project will be more objectionable in nature to nearby properties and properties generally in the district by reason of noise, fumes, vibration, flashing lights, increased traffic or any other objectionable reasons, than would be the operations of any use permitted as of right; (vii) the impact on existing and planned capacity of infrastructure systems, including but not limited to roads, water, sewer, energy and drainage; (viii) whether environmentally sensitive features will be protected; and (ix) whether any authorization hereunder shall create fiscal burdens upon the community at large."

6.32 No special permit shall be issued for a use on a property where there is a violation of this Law or other Town law or regulation. A special use permit shall authorize only one particular special use, and shall expire if the subject use shall cease for any reasons for six months or longer."

C. Section 6.42 of the Existing Zoning Law ('Essential Services') is hereby amended so as to add the following text thereto, said additional text to be inserted at the end of the (present) sentence beginning "Such uses shall be limited ..."):

"; provided, however, that for purposes hereof, "Essential Services" and related systems and facilities shall in no event be construed to mean, be, or include Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, a Natural Gas Compression Facility, a Natural Gas Processing Facility, or any other Explicitly Prohibited Uses."

D. Clause c. 5. of Section 6.43 of the Existing Zoning Law ('Other Standards') is hereby amended so as to add the following text thereto, said additional text to be inserted at the end of the (present) sentence beginning "All other standards for the zone ..."):

"Notwithstanding any provision of this Law to the contrary, in no event shall any of the following uses be allowed to be conducted within any planned unit development: Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility,



Natural Gas Processing Facility, or any other Explicitly Prohibited Uses."

E. Section 6.70 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("LAND EXCAVATION; SANITARY LANDFILL") with the words "GRAVEL MINING; SANITARY LANDFILL"; and (ii) so as to delete the words "land excavation or mining activities such as quarrying or gravel extraction" from the first sentence of said Section 6.70, and to substitute the words "Gravel Mining" therefor.

#### **2.7. Amendment to Article 7 of the Existing Zoning Law**

Clause b. of Section 7.31 of the Existing Zoning Law is hereby amended so as to delete the second sentence thereof (beginning "In the case of any ....") in the entirety, and substitute the following sentence therefor:

"In the case of any use which is allowed in the district in question by virtue of Article 4 hereof but which is not otherwise specified in Section 7.33, the number of spaces shall be determined by the Planning Board, giving due consideration to the Town's Comprehensive Plan and the purposes and intent underlying this Law."

#### **2.8. Amendment to Article 8 of the Existing Zoning Law**

Article 8 of the Existing Zoning Law is hereby amended: (i) so as to replace the present title of such Section ("NON CONFORMING BUILDINGS, LOTS AND SIZES") with the words "NON-CONFORMING USES, STRUCTURES, AND LOTS; PRE-EXISTING, LEGAL NON-CONFORMING NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES"; and (ii) so as to insert the following new Section 8.90, said new Section 8.90 to be inserted immediately following the text of present Section 8.80, and immediately prior to Article 9 of the Existing Zoning Law:

##### **"8.90 PRE-EXISTING, LEGAL NON-CONFORMING NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES"**

Notwithstanding any provision of this Law to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

a.1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation the possession of valid, non-revoked permits for all matters for which permits are required, and including compliance with each, any, and all permit conditions, as are or may be required by the New York State Department of Environmental Conservation ("DEC") and/or all other regulating local, state, and federal governments, bureaus, or



agencies, then and only then the conduct of such Activity by or on behalf of the holder of the permit(s) shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses b. and c. of this Section 8.90.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause a. 1. of this Section 8.90 shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses), and shall in all respects be prohibited as contemplated by Article 4A hereof.

b. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause a. 1. of this Section 8.90, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities for a period of more than twelve (12) months, then and in either of such events the pre-existing and/or non-conforming use status (and any related 'grandfathering rights') of or relating to such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Article 4A hereof.

c. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause a. 1. of this Section 8.90 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion of such well, whether as to its production, depth, horizon(s) or otherwise, shall not be grandfathered under Clause a. 1. of this Section 8.90 and instead shall in all respects be prohibited as contemplated by Article 4A hereof."

## **2.9. Amendment to Article 9 of the Existing Zoning Law**

Clause b. of Section 9.30 of the Existing Zoning Law is hereby amended so as to delete the second sentence thereof (beginning "The Board may establish ....") in the entirety, and substitute the following sentence therefor:

"In the case of any use which is allowed in the district in question by virtue of Article 4 hereof but which is not otherwise specified in Section 7.33, parking requirements shall be determined by the Planning Board, giving due consideration to the Town's Comprehensive Plan and the purposes and intent underlying this Law."



## **2.10. Amendment to Article 10 of the Existing Zoning Law**

Article 10 of the Existing Zoning Law is hereby amended so as to delete the heading and text of present Section 10.22 ("Variances") in the entirety, and substitute the following text therefor:

### **"10.22. Variances.**

#### **A. Use Variances**

1. If a use variance is granted, the applicant shall obtain site plan review approval from the Planning Board prior to commencing the use and prior to obtaining a Building Permit.

2. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

(i) **Unnecessary Hardship.** In order to prove such unnecessary hardship the applicant is required to clearly demonstrate to the Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each and every of the following four criteria is satisfied: (w) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (x) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved; (y) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (z) that the alleged hardship has not been self-created.

(ii) **Reasonable Rate of Return.** In evaluating whether the applicant can realize a reasonable rate of return, the Board of Appeals shall examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed, written "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

(iii) **Unique Hardship.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of



Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

- (iv) **Essential Character of the Neighborhood.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the proposed project will not alter the essential character of the neighborhood. In making its determination of whether the proposed project will alter the essential character of the neighborhood, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (a) the rural residential, agricultural and historic character of the Town, (b) its irreplaceable recreation and tourism sites, (c) the extent of hazard to life, limb or property that may result from the proposed project, (d) health impacts, (e) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (f) the impact on property values, and (g) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.
  - (v) **Self-Created Hardship.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the alleged hardship was not self-created. The Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (x) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (y) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (z) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.
3. In addition to the application requirements from time to time established pursuant to law and this Law, an application for any use variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for a use variance, including:
- (a) **Competent Financial Evidence.** Competent written financial evidence containing reasonable written specification of, and back-up



(confirmation) for, the nature and factual particulars of such claim, and articulating the basis for the applicant's claim, and including, at a minimum (as to the entire parcel of which the proposed project is a part): (i) date of acquisition; (ii) the purchase price; (iii) present value of the property; (iv) the amount of real estate taxes; (v) the amount of mortgages or liens and other expenses; (vi) the asking price for the property when it had been offered for sale; (vii) the costs of demolishing any existing structures on the property; (viii) cost of erecting a new building(s) for each and every permitted use in the zoning district (including uses allowed by special use permit); (ix) efforts to market the property; and (x) a schedule of all other property in common ownership at either the date of the enactment of this law or thereafter.

- (b) Competent written financial evidence must include written "dollars and cents proof" such as appraisals, economic studies, and any other written evidence supporting the applicant's contention that the desired relief is appropriate, including appraisals relating to any alleged diminution of all or substantially all of the fair market value of property. For the purposes of this Law, common ownership means all other interests in property either located within the Town or contiguous to the Town that is held by the any of the applicants (if more than one), whether such ownership is of a legal or equitable interest, in whole or in part, contiguous or not, and whether such property interest is held by any of the applicants through a legal or equitable interest in a(nother) corporation, partnership, trust, business, entity, association, fund, joint venture, or individually.
- (c) Unique Nature of the Property. The applicant must provide evidence demonstrating the unique nature of the parcel as a whole. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto. Exceptional topographic conditions are an example of a factor demonstrating the unique nature of the property.
- (d) Alteration of the Essential Character of the Neighborhood. The applicant must demonstrate that the proposed project will not adversely change the essential character of the neighborhood with regard to physical, economic, social or environmental elements. Adverse impacts to the essential character of the neighborhood include, but are not limited to, decreased quality or increased quantity of stormwater runoff, increased soil erosion, increased traffic congestion, decreased road quality, impairment of the scenic or rural character of roads, increased noise, dust, odor and/or glare, reduced wildlife habitat, decreased air quality, decreased water quality, impairment of the viewshed, creation of solid wastes, negative impacts on sustainability efforts, increased social costs, increased emergency response times, negative impacts to public



infrastructure, decreased property values, and negative impacts on the health of area residents.

- (e) **Hardship Not Self-Created.** In order to show that the hardship is not self-created, the applicant must demonstrate that either (i) when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or did not otherwise apply, or (ii) some other change has occurred since the applicant's purchase which makes the use non-conforming, as long as that change was not caused by the applicant.
- 4. The Board of Appeals, in the granting of use variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.
- 5. The Board of Appeals, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.

#### **B. Area Variances.**

- 1. In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the Board shall consider each of the following factors: (a) 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; (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the



neighborhood or district; and (e) whether the alleged difficulty was self-created. (In contrast to the context of a *use* variance, in the context of an *area* variance application whether or not the alleged difficulty was self-created shall be relevant to the decision of the Board of Zoning Appeals but a finding that the difficulty was self-created shall not in and of itself preclude the granting of the area variance.)

2. The Board of Appeals, in the granting of area variances, shall grant the minimum area variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. In addition to the application requirements from time to time established pursuant to law and this Law, applications for an area variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for an area variance.

4. The Board of Appeals shall, in the granting of area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such area variance may have on the neighborhood or community. If the applicant refuses to accept such requirements and conditions, the area variance shall be denied."

#### **2.11. Amendments to Schedule 1 ('USE CONTROLS') of the Existing Zoning Law**

A. Schedule 1 ('USE CONTROLS') of the Existing Zoning Law is hereby amended so as to delete in the entirety the text under the Column heading 'USES PURPOSE' respecting the "I-2 Industrial" district (which text begins "To delineate those areas ..."), and to substitute the following text therefor: "To delineate those areas of the Town where Gravel Mining may be permitted, subject to the requirements of this Law."

B. Schedule 1 ('USE CONTROLS') of the Existing Zoning Law is hereby amended so as to delete in the entirety the text under the Column heading 'PERMITTED PRINCIPAL' respecting the "I-2 Industrial" district (which text begins "The extraction of ..."), and to substitute the following text therefor: "Gravel Mining."

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#### **2.12. Severability**

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or



the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

### **2.13. Effective Date of this Local Law**

This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.

Adopted by the Augusta Town Board on February 19, 2014

**APPENDIX A**  
ATTACHED TO AND FORMING A PART OF  
TOWN OF AUGUSTA (NY) LOCAL LAW NO. 1 of the YEAR 2014  
being:

A local law to amend and supplement  
the Zoning Law of the Town of Augusta adopted January 14, 1986,  
(as heretofore amended),  
by:

Establishing a Severability Clause;  
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;  
Articulating Certain Explicitly Prohibited Uses;  
Adding Certain New Definitions, and Changing Certain Existing Definitions; and  
Modifying, Clarifying, and Adding to the Provisions  
Regarding Special Use Permits and Variances.

Augusta Local Law No. 1 of 2014 the Local Law to which this Appendix A is attached, is herein sometimes referred to as "the Local Law," "this Local Law" or "this Law."

This Appendix A is a part of the Local Law to which it is attached for all purposes.

**Section 1. Authority.** This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Augusta under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law § 135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

**Section 2. Findings of Fact.**

1. Augusta is a community in Oneida County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources.
2. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.



(2) Protection of Private Drinking Water Supplies. This Local Law is intended to protect drinking water supplies and is intended to supplement and enhance and is not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control programs administered by the Environmental Protection Agency.

(3) Matters of Local Concern. This Local Law is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(4) Negative Externalities. This Local Law is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health, and safety of the surrounding land.

(5) Land Use Control. This Local Law is intended to act as and is hereby declared to be an exercise of the permissive "incidental control" of a police power law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community. This Law is not intended to regulate the operational processes of any business. This Local Law is a law of general applicability and is intended to promote the interests of the community as a whole.

-- END --

3. Preservation of the Town's irreplaceable historic and recreation sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.

4. The Town's rich natural and visual environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.

### **Section 3. Purposes and Intent.**

The Purposes and Legislative Intent respecting this Local Law are as follows:

A. Purposes. This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town's air and water and historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and is declared by the Town Board to:

- (1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;
- (2) promote the health, safety, and welfare of the Town;
- (3) protect the Town's priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here; and
- (4) protect the Town's irreplaceable historic, water quality, air quality, scenic and other natural resources.

#### **B. Declaration of Intent.**

(1) Exercise of Police Power. This Local Law is a police power, public nuisance and land use regulation, designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of rural and agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts.