

TOWN OF CONCORD PLANNING BOARD  
Town Hall

October 5, 2021  
7:00 p.m.

**ITEM # 1:**

The meeting was called to order by Planning Board Chairman Karl R. Lux, at 7 p.m.

**ITEM #2: Roll Call**

**Present:**

Karl R. Lux, Chairman  
Bruce Luno  
James Jozwiak  
Julie Zybert  
Joseph Edbauer  
Raymond Hilliker  
Michael Cochran

**Also Present:**

Clyde M. Drake, Supervisor  
Darlene Schweikert, Secretary  
Jeff Singleton, Code Enforcement Officer  
Steve Bugary

**ITEM #3: Citizen Participation**

There was no one for Citizen Participation.

**ITEM #4: Comments from Liaison Supervisor Drake**

a) There will be a work session meeting on October 7<sup>th</sup> at 6 p.m. to review the Comprehensive Plan. Andrew Reilly from Wendel Companies will be in attendance to explain the changes. He encouraged the members to attend.

b) A draft copy of the Battery Energy Storage System Law was passed out to the members. The Town of Hamburg's law was used as a template since it is a better match to the NYS model law. Since the Town does not have an electrical permit (page 4, (5) General Requirements), this will need to be changed. He noted that this is a work in progress; read it over for discussion at the November meeting. He is hoping that the law will be approved before the end of the year.

**ITEMS #5: Approval of Minutes**

a) September 7, 2021 – J. Jozwiak made the motion, seconded by J. Edbauer, to approve the Minutes as presented. All in favor. Carried.

**ITEM #6: Home Occupation Permit - Bugary**

Steve Bugary explained to the members that he has obtained his federal firearms license and wants to start doing gun sales online with some in-person by appointment

only. It will not be a full-blown gun store; just an online store and when something gets sent to his house, the person will have to come to his house to pick it up. He has been approved for his federal firearms licenses; Erie County is giving him his New York dealers license and now he just needs the Home Occupancy Permit. CEO Singleton noted that this application is similar to the other two the town already approved. Chairman Lux asked CEO Singleton how he would keep a handle on these permits over the next few years; CEO Singleton advised that he would drive by the premises. He has stopped by the other two locations in the past and has found nothing in violation. R. Hilliker made the motion, seconded by M. Cochran to approve the Home Occupation Permit Application of Steve Bugary. All in favor. Carried. (Mr. Bugary thanked the Board and left the meeting at 7:05 p.m.)

**ITEM #7: Zoning 150-18 language re: trailer/truck bodies**

This was discussed at the September 7, 2021 meeting and Chairman Lux asked the members to review the language for rewording. Chairman Lux asked the Board to look at Section 150-18 (32) "A trailer or detached truck body for storage purposes, in any zone, whether on wheels or other supports." Chairman Lux wanted to remove "or detached truck body for storage purposes." M. Cochran asked if something could be done about the way it is written in the other document to just delete the permitting aspect of this section says that the Town does not allow them. Why have a permit fee for it and charge for something that the Code says is not allowed? J. Edbauer noted that that is why it was being modified. Chairman Lux advised that a fee was just set. M. Cochran questioned why charge a fee for something that the Code said is not allowed? J. Edbauer noted that the purpose is because the Town wanted to allow them but then maybe there should be limitations on how many are allowed. CEO Singleton advised that he brought up square footage previously; there is nothing in the Code right now on storage containers and they are everywhere and he can't control it. Some have been here for years. J. Jozwiak noted that these are cheaper than buying a shed so people are using them as sheds. If the Town charges a fee for a shed, then there should be a permit fee for these. J. Edbauer noted that to make it easier for CEO Singleton is to add a fee and try to limit them. CEO Singleton advised that there would be an increase on the resident's tax assessment. CEO Singleton said placement of these detached truck bodies should be discussed so that they are not in the front yard. If it is in the Code, then he can enforce it; right now, he can't enforce storage containers at all. M. Cochran asked if the Town has fines against doing something against the Code? Grandfather the existing ones and say that residents cannot do it anymore. J. Edbauer said there would be no way of knowing where all the existing ones are located. J. Edbauer advised that he thinks there should be a limit so someone can't have an abundance of these; modify this section to reflect limits. CEO Singleton suggested rewording so placement cannot be in the front the house; a camping trailer cannot be kept in the front yard. CEO Singleton suggested putting placement on the permit form. R. Hilliker noted that there could be an exception; any trailer or storage container if not permitted would be in violation. The fee is a one-time fee but the assessment would go up so the tax increase would be annually. R. Hilliker would recommend putting the language in the Code as an exception; except any trailer, container, permitted per use. If it is not permitted, the resident did not obtain a

permit, it would be in violation of this law and it is not allowed; using the same language as used when a fee was added. The members liked this language. Chairman Lux stated that there is a definition already in our Code defining a trailer (Section 150-7). Chairman Lux questioned if Section 150-18 (32) should be amended to “any permitted trailer” and remove “detached truck body for the purpose of storage” because it is already in another law. A trailer does have a definition; a detached truck body is not defined in our Code. Previously the Town Board removed the language about storage units up to 144 square and kept the language in for anything over 144 square feet. R. Hilliker recommended to add the trailer, detached truck body or shipping container so it is picked up in both sections so it is clearly not allowed unless it is permitted. CEO Singleton questioned if this would mention placement or would that be a different section; R. Hilliker noted that this section does not say anything about placement. Chairman Lux advised CEO Singleton to put that information on the permit application. CEO Singleton advised that it should be in the Code somewhere. A prohibitive use would be any non-permitted trailer, detached truck body or container. R. Hilliker noted that if this language is put under the exceptions, it would say any “permitted trailer, detached truck body or shipping container.” R. Hilliker does not believe that 150-18 (32) needs to be changed at all; just need to add the exception by adding (c). R. Hilliker made the recommendation that it should say: “A trailer, detached truck body or shipping container for storage purposes in any zone...” and then add exception (c) “Any permitted trailer, detached truck body or shipping container for storage purposes in any zone.” R. Hilliker made the motion, to amend Section 150-18 (32) as follows:

(32) “A trailer, detached truck body or shipping container for storage purposes, in any zone, whether on wheels or other supports. For the purpose of this subsection, the following exceptions shall apply:

- (a) Any trailer designated primarily for personal occupancy or recreational use.
- (b) Any trailer used in connection with construction of a structure for which a building permit has been issued may remain on the construction site for the duration of construction, but in no event for more than one year, unless otherwise extended by the Concord Town Board. The number of any such construction trailers shall be limited to one per 5,000 square feet of building under construction.
- (c) Any permitted trailer, detached truck body or shipping container for storage purposes.

CEO Singleton questioned if the word “shipping” should be deleted. He felt that this will be a problem. Chairman Lux noted that the Board has had this conversation several times regarding shipping containers and storage units. In April, the Board put all of the terms in the language: storage unit, shipping container, etc. R. Hilliker does not believe it hurts to put the word “shipping” in the language.

R. Hilliker amended his motion to amend Section 150-18 (32) as follows:

(32) "A trailer, detached truck body, shipping container or other storage unit for storage purposes, in any zone, whether on wheels or other supports. For the purpose of this subsection, the following exceptions shall apply:

- (d) Any trailer designated primarily for personal occupancy or recreational use.
- (e) Any trailer used in connection with construction of a structure for which a building permit has been issued may remain on the construction site for the duration of construction, but in no event for more than one year, unless otherwise extended by the Concord Town Board. The number of any such construction trailers shall be limited to one per 5,000 square feet of building under construction.
- (f) Any permitted trailer, detached truck body, shipping container or other storage unit for storage purposes.

Motion seconded by J. Edbauer. All in favor. Carried.

**ITEM #8: Business from the Members**

a) Chairman Lux had noticed the rebuilding of a railroad bridge along Route 240 by Crane Road. It is about 80 feet long. CEO Singleton noted that he had seen the wood there on the ECRT. The bridge is being sturdied up and rebuilt. Chairman Lux asked how it could be built without a permit. CEO Singleton advised that it is the railroad's private property. The way the Code is written is if it is a fire apparatus access road, then the CEO can enforce it. Supervisor Drake advised that the same group who spoke at the August meeting went before the Colden Planning Board. Colden's Board advised them that they have a change of use law in their Code and that the group would have to approach the Board to get a change of use approved. R. Hilliker noted that the snowmobile club builds bridges all the time and he would assume that they are protected under the NYS Snowmobile Association insurance policy. J. Jozwiak noted that this construction is sitting on the original beams so the bridge is just be sturdied up. Chairman Lux was just concerned that it was being built without a permit and no SEQR.

**ITEM #9: Motion of Adjourn**

B. Luno made the motion, seconded by M. Cochran, to adjourn the meeting at approximately 7:49 p.m. All in favor. Carried. The next meeting is November 2<sup>nd</sup>.



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Darlene G. Schweikert  
Planning Board Secretary

**TOWN OF CONCORD NEW YORK**  
**Draft Battery Energy Storage System Law**  
**Oct, 2021**

**1. Authority**

This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, § 10 (1) and (7); sections 261-263 of the Town Law section 10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

**2. Statement of Purpose**

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Concord by creating regulations for the installation and use of battery energy storage systems, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
- B. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
- C. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.

**3. Definitions**

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

ANSI: American National Standards Institute

BATTERY(IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM: An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM: One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include

a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system is classified as a Tier 1, Tier 2 or Tier 3 Battery Energy Storage System as follows:

- A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
- B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.
- C. Tier 3 Battery Energy Storage Systems (Utility Grade system) are systems that are designed independent of a User, with a purpose to store energy and then put that energy back into the power grid.

**CELL:** The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

**COMMISSIONING:** A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

**DEDICATED-USE BUILDING:** A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

- 1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- 2) No other occupancy types are permitted in the building.
- 3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- 4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
  - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
  - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

**ENERGY CODE:** The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

**FIRE CODE:** The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

**NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL):** A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

**NEC:** National Electric Code.

**NFPA:** National Fire Protection Association.

**NON-DEDICATED-USE BUILDING:** All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

**NON-PARTICIPATING PROPERTY:** Any property that is not a participating property.

**NON-PARTICIPATING RESIDENCE:** Any residence located on Non-participating Property.

**OCCUPIED COMMUNITY BUILDING:** Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

**PARTICIPATING PROPERTY:** A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

**UL:** Underwriters Laboratory, an accredited standards developer in the US.

**UNIFORM CODE:** the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

#### **4. Applicability**

A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in Town of Concord after the effective date of this Local Law, excluding general maintenance and repair.

B. Battery energy storage systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.

C. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law.

## 5. General Requirements

A. A building permit and an **electrical permit** shall be required for installation of all battery energy storage systems.

B. Issuance of permits and approvals by the Concord Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

C. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.

## 6. Permitting Requirements for Tier 1 Battery Energy Storage Systems

Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code and the "Battery Energy Storage System Permit," and exempt from site plan review.

## 7. Permitting Requirements for Tier 2 Battery Energy Storage Systems

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a special use permit within all non-residential zoning districts and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section. Tier 2 Battery Energy Storage Systems associated with a Solar or Wind Energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the Zoning Districts that allow the particular solar and wind project).

A. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

- 1) reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development,

Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within 10 business days (of the first Planning Board meeting on the application) of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

- 2) subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation in the Town in accordance with the Town's special use permit requirements. Applicants shall also have delivered the notice by first class mail to adjoining landowners or landowners within [200] feet of the property at least [10] days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
- 3) referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.
- 4) upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing (or after the SEQQR process is completed, if not completed on the day of the public hearing), which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and Applicant.

B. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

C. Signage.

- 1) The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
- 2) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

D. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

E. Vegetation and tree-cutting. Areas within [10] feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt

provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

F. Noise. The [1-hour] average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 45 dBA as measured at the outside wall of any non-participating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

G. Decommissioning.

- 1) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
  - a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
  - b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
  - c. The anticipated life of the battery energy storage system;
  - d. The estimated decommissioning costs and how said estimate was determined;
  - e. The method of ensuring that funds will be available for decommissioning and restoration;
  - f. The method by which the decommissioning cost will be kept current;
  - g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  - h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- 2) Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney for the removal of the battery energy storage system, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of

New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

H. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information:

- 1) Property lines and physical features, including roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- 3) A one- or three-line (as determined by the Town) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- 4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
- 5) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
- 6) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
- 7) Zoning district designation for the parcel(s) of land comprising the project site.
- 8) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.
- 9) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

- 10) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- 11) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established in the Town of Concord and by the Planning Board through the approval process.
- 12) Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
- 13) Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
  - a. Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
  - b. Procedures for inspection and testing of associated alarms, interlocks, and controls.
  - c. Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
  - d. Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
  - e. Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
  - f. Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
  - g. Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.

- h. Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

#### I. Special Use Permit Standards.

- 1) Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.
- 2) Height. Tier 2 Battery Energy Storage Systems shall comply with the building height limitations for principal structures of the underlying zoning district.
- 3) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
- 4) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

J. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of Concord of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

### **8. Permitting Requirements for Tier 3 Battery Energy Storage Systems**

Tier 3 Battery Energy Storage Systems are permitted only in the Industrially zoned areas of the Town through the issuance of a special use permit and shall be subject to the Uniform Code and the site plan application requirements set forth in the Tier 2 Section and other applicable sections of these regulations and the Town Code.

### **9. Safety**

A. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage

systems and Equipment) with subcomponents meeting each of the following standards as applicable:

- 1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
- 2) UL 1642 (Standard for Lithium Batteries),
- 3) UL 1741 or UL 62109 (Inverters and Power Converters),
- 4) Certified under the applicable electrical, building, and fire prevention codes as required.
- 5) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

B. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.

C. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

## **10. Permit Time Frame and Abandonment**

- A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

## **11. Enforcement**

Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town.

## **12. Severability**

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.



- (b) Underground storage of petroleum products in the M Zone. Such storage shall comply with all applicable state and local laws and regulations.
- (20) Printing ink manufacture.
- (21) Rubber or gutta-percha manufacture from crude or scrap materials; rubber reclaiming or processing.
- (22) Soap, tallow, grease or lard manufacturing or rendering.
- (23) Caustic soda or washing compound manufacture.
- (24) Sulfurous, sulfuric, nitric or hydrochloric acid manufacture.
- (25) Tanning, curing or storage of rawhides or skins.
- (26) Tar distillation and tar roofing manufacture.
- (27) Yeast manufacture.
- (28) Those uses which are noxious, offensive or hazardous by reason of dust, fumes, gas, glare, lights, noise, refuse matter, smoke or any waterborne or airborne waste.
- (29) The manufacture or processing of any substance or product which results in waste material which is radioactive.
- (30) Parking off the public highway of vehicles used for commercial or industrial purposes in any R District, except:
- (a) Where such vehicle is being used during the course of construction, alteration or repair of the building or buildings on the premises where parked.
- (b) Where the commercial vehicle does not exceed a capacity of 18,000 GVW and/or does not exceed 25 feet in overall length. Not more than two such vehicles may be housed or parked in a private garage or off-street parking area, but such vehicles may not be housed or parked in any front yard or within 10 feet of a side lot line.
- (c) Where the commercial vehicles are being stored, inside or outside, in the R-AG District in connection with the operation of a farm, as defined by this chapter.
- (31) Those uses which involve toxic substances, specifically designated as such by statute or state regulations.
- (32) A trailer or detached truck body for storage purposes, in any zone, whether on wheels or other supports. For the purpose of this subsection, the following exceptions shall apply:
- (a) Any trailer designated primarily for personal occupancy or recreational use.
- (b) Any trailer used in connection with construction of a structure for which a building permit has been issued may remain on the construction site for the



- (b) Underground storage of petroleum products in the M Zone. Such storage shall comply with all applicable state and local laws and regulations.
- (20) Printing ink manufacture.
- (21) Rubber or gutta-percha manufacture from crude or scrap materials; rubber reclaiming or processing.
- (22) Soap, tallow, grease or lard manufacturing or rendering.
- (23) Caustic soda or washing compound manufacture.
- (24) Sulfurous, sulfuric, nitric or hydrochloric acid manufacture.
- (25) Tanning, curing or storage of rawhides or skins.
- (26) Tar distillation and tar roofing manufacture.
- (27) Yeast manufacture.
- (28) Those uses which are noxious, offensive or hazardous by reason of dust, fumes, gas, glare, lights, noise, refuse matter, smoke or any waterborne or airborne waste.
- (29) The manufacture or processing of any substance or product which results in waste material which is radioactive.
- (30) Parking off the public highway of vehicles used for commercial or industrial purposes in any R District, except:
- (a) Where such vehicle is being used during the course of construction, alteration or repair of the building or buildings on the premises where parked.
- (b) Where the commercial vehicle does not exceed a capacity of 18,000 GVW and/or does not exceed 25 feet in overall length. Not more than two such vehicles may be housed or parked in a private garage or off-street parking area, but such vehicles may not be housed or parked in any front yard or within 10 feet of a side lot line.
- (c) Where the commercial vehicles are being stored, inside or outside, in the R-AG District in connection with the operation of a farm, as defined by this chapter.
- (31) Those uses which involve toxic substances, specifically designated as such by statute or state regulations.
- (32) A trailer or detached truck body for storage purposes, in any zone, whether on wheels or other supports. For the purpose of this subsection, the following exceptions shall apply:
- (a) Any trailer designated primarily for personal occupancy or recreational use.
- (b) Any trailer used in connection with construction of a structure for which a building permit has been issued may remain on the construction site for the



duration of construction, but in no event for more than one year, unless otherwise extended by the Concord Town Board. The number of any such construction trailers shall be limited to one per 5,000 square feet of building under construction.

- (33) Sale of used motor vehicles, except:
- (a) Sale by a state-licensed automobile dealer.
  - (b) Casual sale by an individual, partnership or corporation of a used motor vehicle which was previously used by the seller for personal use only. Roadside display of such vehicles shall not exceed 60 days.
- (34) The commercial collection, storage or disposal of nuclear waste and medical or surgical waste materials, except in hospital, nursing home, medical, dental or veterinary facilities.

**B. Exceptions.**

- (1) Franchised automobile and truck dealers. Outside storage shall be permitted as follows:
- (a) Motor vehicles able to pass inspection pursuant to the New York State motor vehicle inspection standards as provided by the Vehicle and Traffic Law of the State of New York and all rules and regulations promulgated by the Commissioner of Motor Vehicles for the periodic inspection of motor vehicles in the state and as the same may be amended from time to time: six months.
  - (b) Other motor vehicles: 30 days.
- (2) Garages, public. Outside storage of motor vehicles shall be permitted for a period not to exceed 30 days.

**ARTICLE VII**

**R-E Single-Family Residence-Estate District Regulations**

**§ 150-19. Permitted uses and structures.**

Permitted uses and structures shall be as follows:

**A. Principal uses and structures.**

- (1) Single-family dwelling constructed or erected on-site. No clustering shall be permitted.
- (2) Church or other place of worship or religious education, parish house, convent, rectory or parsonage.
- (3) Fire station without club facilities.



TOURIST HOME — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

TOWNHOUSE — A building or dwelling designed for or occupied by no more than one family and attached to other similar buildings or dwellings by not more than two common walls extending from the foundation to the roof thereof and providing two direct means of access from the outside. A townhouse is individually owned, with an owner receiving a deed enabling him/her to sell, mortgage or exchange his/her dwelling unit independent of the owners of any other dwelling unit attached thereto by common wall.

TRAILER — A vehicle, other than a mobile home, used as sleeping or living quarters, whether self-propelled or towed, or a camper body mounted on a motor vehicle. A "trailer" shall also include any vehicle towed or used for carrying goods, equipment, machinery or recreational vehicles or as a site office.

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

UTILITY-SCALE WIND ENERGY CONVERSION SYSTEM — A wind energy conversion system that is intended solely to generate electrical power for sale to the power grid.  
[Added 3-6-2008 by L.L. No. 3-2008]

WIND ENERGY CONVERSION SYSTEM (WECS) — Any mechanism designed for the purpose of converting wind energy into electrical energy. A WECS may include one or more wind turbines, towers, associated control or conversion electronics, transformers and/or other maintenance or control facilities or other component used in the system. A WECS may be either a utility-scale wind energy conversion system or a small-scale wind energy conversion system. [Added 3-6-2008 by L.L. No. 3-2008]

YARD — That portion of a lot extending open and unobstructed from the ground upward along a lot line.

YARD, REAR — On an interior lot, a yard extending for the full length of the rear lot line between side lot lines; and on a corner lot, a yard extending along a rear lot line between an interior side line and a side yard which abuts a street/road.

YARD, REQUIRED FRONT — A yard extending the full length of the front lot line between side lot lines. The front yard depth of a lot located on a curve shall be measured from the chord connecting the arc of the front lot line.

YARD, SIDE — A yard extending along a side lot line from the required front yard to the required rear yard, except that, on a corner lot where the side lot line abuts a street/road, the side yard shall extend from the required front yard to the rear lot line.

A. EXTERIOR SIDE YARD — A side yard extending along a street or road line.

B. INTERIOR SIDE YARD — A side yard extending along a lot line of an adjoining lot.

